SGA
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COMPOSITE JOURNAL
(July Issue 13 to September Issue 18)

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APPEAL – CONDONATION OF DELAY – IMPROPER SERVICE OF ORDER – DISMISSAL OF APPEAL BY FIRST APPELLATE AUTHORITY VIDE ORDER DATED 2009 – DELIVERY OF ORDER CONTENDED TO HAVE BEEN DONE AT BRANCH OFFICE INSTEAD OF ADDRESS MENTIONED IN MEMORANDUM OF APPEAL – NON RECEIPT OF ORDER AT EITHER PLACE –- DELAYED FILING OF APPEAL BEFORE TRIBUNAL – CONTENTIONS REJECTED - CONDONATION OF 907 DAYS NOT GRANTED PRESUMING SERVICE U/S 27 OF INDIAN EVIDENCE ACT AND ILLUSTRATION (F) OF SEC 114 OF INDIAN EVIDENCE ACT- APPEAL BEFORE HIGH COURT – COPY OF ORDER OUGHT TO BE SENT AT ADDRESS MENTIONED IN MEMORANDUM OF APPEAL *MANDATORILY* – WRONG PRESUMPTION OF SERVICE BY TRIBUNAL – DELAY IN FILING CONDONED - APPEAL ACCEPTED -TRIBUNAL DIRECTED TO DECIDE THE APPEAL ON MERITS- *SECTION 62, 64 OF PVAT ACT; RULE 71 OF PVAT RULES* - **B.K. STEELS Vs STATE OF PUNJAB AND ANR.** 195

APPEAL - PREDEPOSIT – ENTERTAINMENT OF – ADDITIONAL DEMAND RAISED ON ACCOUNT OF WRONGLY CLAIMED INPUT TAX CREDIT – DISMISSAL OF FIRST APPEAL DUE TO FAILURE OF PREDEPOSIT - APPEAL FILED BEFORE TRIBUNAL FOR WAIVER OF CONDITION OF PREDEPOSIT ON THE BASIS THAT THE ASSESSMENT ORDER IS ILLEGAL AND WITHOUT JURISDICTION- ORDER NOT FOUND VOID – MERITS OF THE CASE TO BE SEEN DURING ARGUMENTS – APPELLANT OUGHT TO COMPLY WITH THE PROVISION OF S. 62 LEST THE REVENUE MAY SUFFER HUGE LOSS – APPELLANT GIVEN TIME TO DEPOSIT THE AMOUNT – APPEAL DISMISSED – *S. 62(5) OF PVAT ACT* - **KANNAN INTERNATIONAL Vs STATE OF PUNJAB** 329

ASSESSMENT

PRE-DEPOSIT – ENTERTAINMENT OF APPEAL – ASSESSMENT - NOTICE – EX-PARTE ASSESSMENT FRAMED – DISMISSAL OF 1ST APPEAL FOR FAILURE OF PRE-DEPOSIT – IMPUGNED ORDER ALLEGED TO BE INVALID – WAIVER OF CONDITION OF PRE-DEPOSIT PLEADED BEFORE TRIBUNAL – NOTICES SERVED BY DEPARTMENT INCOMPLETE – PENALTY ORDER (HANDWRITTEN) PASSED ON 10.6.2014 NEVER DISPATCHED YET TYPED ORDER SHOWN TO BE RECEIVED ON 10.9.2014 THEREBY RAISING SUSPICION – TDN OUGHT TO HAVE BEEN ISSUED ON SAME DAY AS PASSING OF PENALTY ORDER – APPELLANT HELD NOT SERVED PROPERLY – CASE REMITTED BACK TO ETO FOR FRAMING FRESH ASSESSMENT – APPEAL ACCEPTED – *SEC. 29 & 62(5) OF PVAT ACT; RULE 47 OF PVAT RULES* - **BALAJI IMPEX Vs. STATE OF PUNJAB** 230

ASSESSMENT – DISALLOWANCE OF INPUT TAX CREDIT – ITC DISALLOWED FOR WANT OF PURCHASE INVOICES – APPEAL DISMISSED BY FIRST APPELLATE AUTHORITY FOR NON COMPLIANCE OF CONDITION OF PREDEPOSIT – APPEAL BEFORE TRIBUNAL – CONTRADICTORY ORDERS PASSED BY ASSESSING OFFICER AS OFFICER ADMITTED THAT INVOICES WERE PRODUCED – MATTER REMITTED FOR FRAMING DENOVO ASSESSMENT – APPEAL ACCPPETED- *SEC 62 (5) AND SEC 13 OF THE PVAT ACT* - **AMCO INDUSTRIAL ENTERPRISES PVT. LTD Vs. STATE OF PUNJAB** 236

ASSESSMENT – LIMITATION – APPEAL - PREDEPOSIT – ENTERTAINMENT OF APPEAL – ASSESSMENT FOR THE YEAR 2008-09 FRAMED IN 2013- ADDITIONAL DEMAND RAISED – FIRST APPEAL DISMISSED FOR NON FULFILLMENT OF CONDITION OF PREDEPOSIT – PLEADED BEFORE TRIBUNAL THAT IMPUGNED ORDER OF ASSESSMENT BEING TIME BARRED CONDITION OF PREDEPOSIT OUGHT TO BE WAIVED OFF – HELD BY TRIBUNAL THAT ASSESSMENT COULD BE FRAMED WITHIN SIX YEARS FROM DATE OF FILING OF RETURNS AS PER THE AMENDED SEC 29(4) OF THE ACT – THEREFORE, IMPUGNED ORDER WAS WITHIN LIMITATION PERIOD – APPELLANT GIVEN ONE MONTH'S TIME FOR PREDEPOSIT FOR ENTERTAINMENT OF APPEAL FAILING WHICH ORIGINAL ASSESSMENT ORDER TO PREVAIL – *SEC 29(4) & SEC 62(5)OF PVAT ACT.*- **LARSEN & TOUBRO LIMITED Vs. STATE OF PUNJAB** 253

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ASSESSMENT – LIMITATION – ASSESSMENT YEAR 2005-06 – FRAMING OF ASSESSMENT IN YEAR 2011 – ASSESSMENT CONTENDED TO HAVE BEEN FRAMED AFTER EXPIRY OF LIMITATION PERIOD OF THREE YEARS – HELD, IN VIEW OF SEC 29(4-A) ASSESSMENT OUGHT TO HAVE BEEN FRAMED WITHIN THREE YEARS OF FILING OF RETURN – SEC 29(4-A) IS NON OBSTANTE CLAUSE AND OVERRIDES OTHER PROVISIONS - ASSESSMENT FRAMED AFTER 2009 IS THEREFORE, TIME BARRED – APPEAL ACCEPTED AND IMPUGNED ORDER SET ASIDE- *SEC 29(4-A) OF PVAT ACT* - **SPORTKING INDIA LIMITED Vs. STATE OF PUNJAB** 283

PRECEDENTS – ASSESSMENT - SHOW CAUSE NOTICE ISSUED AGAINST REJECTION OF INPUT TAX CREDIT – WRIT FILED APPREHENDING THAT ASSESSING AUTHORITY WOULD NOT FOLLOW LAW BINDING ON THEM – CONTENTION THAT AUTHORITY OUGHT TO FOLLOW JUDGEMENT PASSED BY THE JURISDICTIONAL COURT INSTEAD OF ONE PASSED BY BOMBAY HIGH COURT – WRIT DISPOSED OF WITH A DIRECTION TO FOLLOW THE JUDGEMENT OF THE DIVISION BENCH OF P&H HIGH COURT IF IT APPLIES TO PETITIONER'S CASE – ASSESSING AUTHORITY TO FURNISH DETAILED REASONS FOR THE DECISION IN RESPECT OF PETITIONER'S SUBMISSIONS – *SEC. 13 OF PVAT ACT* - **M. AGGARWAL & CO. Vs STATE OF PUNJAB AND OTHERS** 128

REMAND – JURISDICTION OF FIRST APPELLATE AUTHORITY – ASSESSMENT – RECTIFICATION – SCOPE OF SEC 29(8)- PENDENCY OF APPEAL AGAINST PROVISIONAL ASSESSMENT BEFORE DETC- REGULAR ASSESSMENT FRAMED WITHOUT NOTICING PROVISIONAL ASSESSMENT - MATTER REMANDED BY DETC ON REQUEST OF AETC TO RECTIFY THE REGULAR ASSESSMENT – APPEAL BEFORE TRIBUNAL QUESTIONING JURISDICTION OF FIRST APPELLATE AUTHORITY TO REMAND THE MATTER FOR RECTIFICATION INSTEAD OF DECIDING THE LEGALITY OF THE PROVISIONAL ORDER – HELD RECTIFICATION OF REGULAR ASSESSMENT COULD BE DONE EVEN DURING PENDENCY OF APPEAL – NO FETTERS UPON AETC TO RECTIFY THE ORDER U/S 29(8) OF THE ACT – REMITTING THE ORDER ON BASIS OF RECTIFICATION IS BAD IN EYES OF LAW – DETC DIRECTED TO DECIDE AFRESH REGARDING VALIDITY OF PROVISIONAL ASSESSMENT ORDER- AETC GIVEN LIBERTY TO RECTIFY REGULAR ASSESSMENT FRAMED – APPEAL ACCEPTED -*SEC 29(8) & 30 OF PVAT ACT* - **LITTLE BEE IMPEX Vs. STATE OF PUNJAB** 280

REVISION – ASSESSMENT – ASSESSMENT YEAR 2005-06-ASSESSMENT FRAMED IN YEAR 2010 - ORDER REVISED IMPOSING TAX ON ASSESSEE – CONTENDED THAT ASSESSMENT WAS FRAMED BEYOND THE PRESCRIBED PERIOD OF LIMITATION, NO REVISION OF VOID ORDER CAN BE MADE – REVISION PETITION ACCEPTED – TAX IMPOSED QUASHED AND IMPUGNED ORDER SET ASIDE- *SEC 29(4) AND SEC 65 OF PVAT ACT* - **S.K. WOOLEN MILLS Vs. STATE OF PUNJAB** 273

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

OF CST ACT, RULE 12 OF CST (R&T) RULES, 1957 - **SHANTI SALES (INDIA) PVT. LTD. Vs STATE OF PUNJAB** 303

ASSESSMENT – LIMITATION – CONSTITUTIONAL VALIDITY – AMENDMENT -EXTENSION OF LIMITATION PERIOD FOR THREE YEARS TO SIX YEARS THROUGH AMENDMENT IN THE ACT – AMENDMENT ALSO PROVIDING FOR FRAMING OF ASSESSMENT FOR THE YEAR 2006-07 UPTO 20/11/2014 – AMENDMENT IS RETROSPECTIVE IN OPERATION THOUGH COMMENCING FROM THE DATE OF AMENDMENT – ALSO APPLICABLE FOR THE ASSESSMENT YEARS WHOSE PERIOD OF SIX YEARS NOT EXPIRED – AMENDMENT NOT ARBITRARY OR UNCONSTITUTIONAL - AMENDING ACT IS NOT OVERRULING A JUDGEMENT OF COURT BUT REMOVES THE BASIS OF THE EARLIER JUDGEMENT – EXPIRY FOR PERIOD FOR MAINTENANCE OF BOOKS MAY BE A DIFFICULTY FACED BY THE ASSESSE BUT THE SAME WOULD NOT RENDER THE AMENDMENT UNCONSTITUTIONAL – ASSESSING AUTHORITY CANNOT DRAW ADVERSE INFERENCE FOR NON-PRODUCTION OF BOOKS BEYOND THE PERIOD PRESCRIBED UNDER THE ACT – PETITIONS DISMISSED – PETITIONERS RELEGATED TO THE APPROPRIATE REMEDY UNDER THE ACT ON ALL OTHER ISSUES – *SEC. 29(4), 29(10-A) OF PVAT ACT, ARTICLES 14 & 19 OF CONSTITUTION* - **AMRIT BANASPATI COMPANY LIMITED Vs STATE OF PUNJAB AND OTHERS** 148

REFUND – ASSESSMENT – ASSESSMENT ORDER PASSED - PETITIONER ENTITLED TO REFUND – REFUND DEMANDED THROUGH LETTER- NO PROCESSING OF LETTER BY DEPARTMENT- WRIT FILED – RESPONDENTS DIRECTED TO REFUND THE AMOUNT IF APPLICATION FOUND IN ORDER ALONGWITH INTEREST, IF ANY, BY THE DATE SPECIFIED – WRIT DISPOSED OF – *SEC 20 OF HVAT ACT* - **GARG CONSTRUCTION CO. Vs STATE OF HARYANA AND ANOTHER** 187

ASSESSMENT – NATURAL JUSTICE – NOTICE – ASSESSMENT YEAR 2009-10 – DEMAND RAISED ON ACCOUNT OF DISPARITY BETWEEN LARGELY PURCHASED RAW MATERIAL AS COMPARED TO LOW EXTENT OF PRODUCTION AND SALE – GROSS TURNOVER AND TAX ASSESSED UPHELD ON APPEAL – INTEREST QUASHED – APPEAL BEFORE TRIBUNAL – ASSESSMENT ORDER PASSED IN ABSENCE OF ASSESSEE – NO PROPER SERVICE OF NOTICE PRIOR THERETO – ASSESSEE NOT CONFRONTED WITH THE DOCUMENTS WHICH WERE MADE BASIS OF ASSESSMENT – ASSESSMENT ORDER LACKING DETAILS OF SUCH DOCUMENTS – ORDER PASSED BY FIRST APPELLATE AUTHORITY NOT REASONED – APPEAL ACCEPTED – MATTER REMITTED TO DESIGNATED OFFICER TO DECIDE AFRESH- *S. 29 OF PVAT ACT* - **JAI BHOLE BRICKS INDUSTRIES Vs STATE OF PUNJAB** 331

JURISDICTION – ASSESSMENT - TERRITORIAL JURISDICTION OF DESIGNATED OFFICER TO FRAME ASSESSMENT – ADDITIONAL DEMAND RAISED BY DESIGNATED OFFICER OF DISTRICT A – WRIT FILED – ORDER SET ASIDE FOR FRESH ASSESSMENT BY AUTHORITY OUTSIDE DISTRICT 'A' – CASE TRANSFERRED TO DISTRICT B AS A RESULT THEREOF– DEMAND RAISED ONCE AGAIN BY OFFICER OF DISTRICT 'B'– APPEAL FILED – MATTER REMITTED BACK – CONSEQUENTLY ASSESSMENT FRAMED BY DESIGNATED OFFICER OF DISTRICT 'A' RAISING ADDITIONAL DEMAND - APPEAL BEFORE TRIBUNAL QUESTIONING JURISDICTION OF OFFICER OF DISTRICT 'A' WHEN ALREADY CASE SENT OUTSIDE THE SAID DISTRICT FOR DECISION – NO NOTIFICATION SHOWN BY RESPONDENT CONFERRING POWER UPON THE OFFICER OF DISTRICT 'A' TO TAKE COGNIZANCE OF THE CASE AND FRAME ASSESSMENT – MATTER REMITTED TO OFFICER OF DISTRICT 'B' FOR FRESH ASSESSMENT AS AGREED BY BOTH PARTIES - APPEAL ACCEPTED- *S. 29 OF PVAT ACT* - **IDASA INDIA LTD. Vs STATE OF PUNJAB** 325

LIMITATION – ASSESSMENT – ASSESSMENT YEAR 2005-06 – ASSESSMENT ORDER PASSED IN YEAR 2011- APPEAL BEFORE TRIBUNAL – ASSESSMENT FOR THE YEAR 2005-06 OUGHT TO HAVE BEEN FRAMED WITHIN A PERIOD OF THREE YEARS FROM THE DATE OF FILING OF RETURNS AS PER S.29(4-A) OF THE ACT – S. 29(4-A) IS A NON OBSTANTE CLAUSE AND OVERRIDES OTHER SECTIONS – THEREFORE, ASSESSMENT FRAMED BEYOND THE LIMITATION PERIOD I.E. 2009 IS HELD TO BE TIME BARRED – APPEAL ACCEPTED – *S. 29(4-A) OF THE PVAT ACT* - **GOEL RICE & GEN MILLS Vs STATE OF PUNJAB** 341

EXCISE DUTY – CENTRAL EXCISE AND SALT ACT - ASSESSMENT – DEATH OF ASSESSEE – WHETHER ASSESSMENT PROCEEDINGS TO CONTINUE AGAINST THE LEGAL HEIRS OF THE DECEASED MANUFACTURER – HELD NO – ABSENCE OF MACHINERY PROVISIONS IN THE ACT – NO SUMS ARE PAYABLE U/S 11 AS NO MACHINERY PROVISIONS INCORPORATED IN THE ACT – PROCEEDINGS TO ASSESS AND COLLECT TAX ABATE WITH THE DEATH OF THE ASSESSEE - LEGAL HEIRS WHO ARE NOT PERSONS CHARGEABLE TO DUTY UNDER THE ACT CANNOT BE BROUGHT WITHIN THE AMBIT OF ACT BY STRETCHING ITS PROVISIONS- PRINCIPLES OF MORALITY WITH RESPECT TO UNLAWFUL ENRICHMENT NOT RELEVANT - *S.11 AND 11 A OF CENTRAL EXCISE AND SALT ACT, 1944* - **SHABINA ABRAHAM & ORS. Vs COLLECTOR OF CENTRAL EXCISE & CUSTOMS** 85

DEVELOPER – ASSESSMENT – ASSESSEE DEVELOPER OF FLATS/APARTMENTS - ASSESSED TO TAX CONSIDERING HIM AS LUMP SUM DEALER – WRIT FILED CONTENDING THAT DEVELOPER OTHER THAN CONTRACTOR NOT TO BE IMPOSED TAX ON THERE BEING NO MECHANISM FOR COMPUTATION OF TAX – LEVY OF TAX PLEADED TO BE UNCONSTITUTIONAL – POINT OF LIMITATION ALSO TAKEN UP – HELD IN VIEW OF AN EARLIER JUDGEMENT THE SAME ISSUE IS ALREADY ADJUDICATED – MATTER REMANDED IN PURSUANCE TO THAT -PETITIONER AT LIBERTY TO AGITATE POINT OF LIMITATION BEFORE THE ASSESSING AUTHORITY WHO SHALL PASS A SPEAKING ORDER – WRIT

DISPOSED OF – *S. 2 (1) (zg) OF HVAT ACT, R. 25(2) OF HVAT RULES* - **HAMILTON HEIGHTS P LTD. Vs STATE OF HARYANA AND OTHERS** 218

LIMITATION – ASSESSMENT – NOTICE -VALIDITY OF PUBLIC NOTICE –ASSESSMENT YEAR 2006-07 – FRAMING OF ASSESSMENT IN 2011 I.E. BEYOND LIMITATION PERIOD -EXTENSION ORDER BY COMMISSIONER FOR FRAMING ASSESSMENT U/S 29(4) CONTENDED TO HAVE BEEN PASSED IN 2010 THROUGH WEBSITE AND PUBLIC NOTICE – TRIBUNAL HELD SUCH ASSESSMENT ORDER AS TIME BARRED AS NOTICE NEVER COMMUNICATED TO ASSESSEE – APPEAL FILED BY DEPARTMENT – RELYING ON AN EARLIER JUDGEMENT PASSED BY DIVISION BENCH OF HIGH COURT, APPEAL DISMISSED – ABSENCE OF INDIVIDUAL NOTICES RENDERS THE ASSESSMENT ORDER VOID – *S.29(4)OF PVAT ACT AND RULE 86 OF PVAT RULES* - **STATE OF PUNJAB AND OTHERS Vs CHIRAG INDUSTRIES** 221

APPELLATE AUTHORITY

APPELLATE AUTHORITY – POWER OF - REMAND – APPEAL – WHETHER APPELLATE AUTHORITY HAS THE POWER TO GO BEYOND THE SCOPE OF THE ISSUES FOR WHICH APPEAL IS PREFERRED BEFORE IT – HELD YES, THE APPELLATE AUTHORITY HAS POWERS TO SET THE ORDER RIGHT WHICH MAY BE FAULTY – RIGHTS OF THE APPELLANT ARE NOT EFFECTED IN THE INSTANT CASE – ISSUE LEFT OPEN TO BE DECIDED BY DESIGNATED OFFICER – REMANDING CASE WITH CERTAIN OBSERVATIONS TO BE LOOKED INTO BY DESIGNATED OFFICER FOR PASSING SPEAKING ORDER IS HELD WITHIN JURISDICTION OF THE AUTHORITY – APPEAL DISMISSED – *SEC 62(7) AND ORDER 41 R33 OF CPC* - **AMBUJA CEMENTS PVT. LTD Vs. STATE OF PUNJAB** 257

APPELLATE AUTHORITY – BINDING NATURE OF ORDERS – EXEMPTION – APPLICATION FOR EXEMPTION FILED – DEPARTMENT INTIMATED ABOUT SENDING OF MACHINERY FROM HARYANA TO CHENNAI AT APPELLANT'S PREMISES- INSPECTION CONDUCTED AT CHENNAI HENCEFORTH - REJECTION OF CLAIM ON ACCOUNT OF MACHINERY BEING OLD – APPEAL BEFORE SECRETARY – MACHINERY HELD TO BE NEW – ORDER ATTAINED FINALITY- MATTER REOPENED BY HLSC RAISING A NEW CONTENTION THAT THE MACHINERY IN QUESTION OUGHT TO BE INSTALLED IN HARYANA FOR CLAIMING EXEMPTION- DISMISSAL OF APPEAL BY TRIBUNAL HOLDING THAT IT WAS OPEN TO HLSC TO RAISE A NEW ISSUE NOT CONSIDERED BY SECRETARY- WRIT FILED – NEW CONTENTION RAISED BY HLSC IMPLIEDLY IN ITS KNOWLEDGE EARLIER AND NOT DISPUTED – HLSC NOT PERMITTED TO MODIFY THE ORDER OF APPELLATE AUTHORITY HAVING ATTAINED FINALITY – SCHEME OF HIERARCHY AND BINDING NATURE OF ORDERS OF AUTHORITIES TO BE TAKEN INTO ACCOUNT – RESPONDENTS TO COMPLY WITH ORDERS OF SECRETARY – WRIT ALLOWED. *RULE 28 A OF HGST RULES,1975; SECTION 13B OF HGST ACT, 1973* - **HPL SOCOMEC P. LTD. Vs STATE OF HARYANA AND ORS.** 198

ATTEMPT TO EVADE TAX

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – INGENUINE DOCUMENTS – JURISDICTION –GOODS IN TRANSIT – INVOICE AND GR PRODUCED DATED 4.2.2014 – UNDERVALUATION SUSPECTED – GOODS DETAINED AND PENALTY IMPOSED – OBSERVED BY TRIBUNAL THAT THE TRANSACTION IN QUESTION RELATED TO PREVIOUS CONTRACT OF APPELLANT – BILL SHOWN WAS OF YEAR 2013 – CURRENT BILL PRODUCED WAS AN AFTERTHOUGHT – CASE OF CLEAR MENSREA - INVOICE BEING UNDERVALUED AND FAKE QUA DATE OF ISSUE CHECK POST OFFICER HELD TO APPEAL HAVE EXCERCISED POWER WITHIN JURISDICTION – PENALTY UPHELD - *SEC 51(7)(b) OF PVAT ACT* - **GODREJ AGROVET LTD. Vs. STATE OF PUNJAB** 249

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – MENSREA – GOODS X AND Y IN TRANSIT – INVOICE REFLECTING ONLY GOODS X IN TWO COUNTS I.E. 150 AND 220 BAGS – MISDESCRIPTION OF GOODS FOUND BY CHECKING OFFICER – SLIGHTLY EXCESS QUANTITY TRANSPORTED – RATE OF TAX APPLICABLE ON X AND Y IS SAME – NO SUBSTANTIAL DIFFERENCE IN VALUE OF GOODS AS SHOWN IN INVOICE AND ACTUALLY FOUND IN TRUCK – VOLUNTARY REPORTING – ELEMENT OF MENSREA RULED OUT – PENALTY QUASHED – APPEAL ACCEPTED – *SEC 51(7)(c) OF PVAT ACT* - **BHARAT CABLES, SANGRUR Vs. STATE OF PUNJAB** 241

PENALTY – CHECK POST/ ROADSIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT DETAINED SUSPECTING UNDERVALUATION AND EXCESS QUANTITY – BILL BOOK PRODUCED - BILLS ISSUED FOR SMALLER AMOUNTS AS COMPARED TO BILL IN QUESTION – TEMPERING OF BILL BOOK SUSPECTED – PENALTY IMPOSED FOR INGENUINE DOCUMENTS – DISMISSAL OF FIRST APPEAL HOLDING THAT PREVIOUS TRANSACTION NOT ENTERED IN ACCOUNT BOOKS AND BILL FOR PRESENT TRANSACTION INSERTED LATER IN ACCOUNT BOOKS – HELD BY TRIBUNAL THAT DIVERGENT BASIS TAKEN BY DESIGNATED OFFICER AND APPELLATE AUTHORITY FOR IMPOSING PENALTY – NON ENTERING OF PREVIOUS TRANSACTION NOT TO BE PENALIZED U/S 51(7)(c) OF THE ACT - NO MENS REA FOUND – NO DEFECT POINTED OUT IN ACCOUNT BOOKS BY PENALIZING OFFICER – NO EVIDENCE REGARDING INSERTION OF BILLS FOR CURRENT TRANSACTION IN BOOKS LATER ON – IMPUGNED ORDER SET ASIDE – PENALTY DELETED AND

APPEAL ACCEPTED – *SEC 51(7)(c) OF THE PVAT ACT* - **BHOLA RAM SHRI KRISHAN Vs. STATE OF PUNJAB** 245

MENS REA – PENALTY – CHECK POST/ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT FROM SAHNEWAL TO KAPURTHALA – DOCUMENTS SCRUTINIZED – GOODS SHOWN TO BE PURCHASED FROM OUTSIDE INDIA - FAILURE TO FURNISH INFORMATION AT ICC RECORDED – NO E-ICC FURNISHED BY APPELLANT – SUSPECTING EVASION OF TAX ASSUMING GOODS TO BE PURCHASED LOCALLY , PENALTY IMPOSED U/S 51(7)(*c*) OF THE ACT – APPEAL BEFORE TRIBUNAL – RELEVANT CERTIFICATE ISSUED BY CUSTOM AUTHORITIES PRODUCED SHOWING GOODS BEING BROUGHT FROM OUTSIDE INDIA – PAYMENTS MADE THROUGH BANKS – ACCOUNT BOOKS INDICATED NO CONCEALMENT OF TRANSACTION – MERE NON REPORTING AT ICC NOT SUFFICIENT TO ESTABLISH ATTEMPT TO EVADE TAX – FAILURE TO ESTABLISH MENSREA ON PART OF APPELLANT BY AUTHORITIES – APPEAL ACCEPTED AND PENALTY DELETED- *SEC 51 (4),51(7)(c)OF THE PVAT ACT, RULE 64 (B) &(C)OF PVAT RULES* - **RAIL FAB Vs STATE OF PUNJAB** 308

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX -GOODS SOLD FROM H.P. TO PUNJAB VIDE BILL A – GOODS SOLD TO DELHI PARTY VIDE INVOICE NO. B CARRIED THROUGH ANOTHER VEHICLE – INVOICE A SHOWN AT ICC BEFORE ENTERING PUNJAB – INVOICE C OF AN EARLIER DATE RECOVERED ON SEARCH OF VEHICLE – GOODS DETAINED– SUSPICION RAISED REGARDING INVOICE B AS TO HOW GOODS WERE SENT TO TWO DIFFERENT PLACES THROUGH THE SAME INVOICE – NO EXPLANATION TENDERED BY DRIVER -GOODS RELATING TO INVOICE B PRESUMED TO BE UNLOADED SOMEWHERE IN PUNJAB – NO INFORMATION REGARDING INVOICE C FURNISHED AT THE CHECK POST OF HP AND VEHICLE NOT STOPPED AT ICC MULLANPUR – PENALTY IMPOSED FOR ATTEMPT TO EVADE TAX – APPEAL BEFORE TRIBUNAL – ALLEGATION REGARDING SALE OF GOODS IN PUNJAB REJECTED AS GOODS PERTAINING TO INVOICE B HAD NOT ENTERED PUNJAB YET – CLERICAL ERROR ADMITTED TO HAVE BEEN COMMITTED BY ICC BAROTIWALA WHILE TYPING INVOICE NO B INSTEAD OF A- DRIVER NOT RESPONSIBLE FOR CLERICAL ERROR OF ICC STAFF - INVOICE C HAS NOTHING TO DO WITH CURRENT TRANSACTION IN QUESTION – PENALTY IMPOSED ON TOTAL VALUE OF BOTH INVOICES A &C NOT RIGHT AS THERE IS NO DISCREPANCY REGARDING INVOICE A – NO PENALTY IS HELD TO BE PAYABLE AS DRIVER HAD REQUISITE DOCUMENTS COVERING THE GOODS – PENALTY DELETED – APPEAL ACCEPTED – *SEC 51(7) OF THE PVAT ACT* - **HIM TECHNOFORGE LTD. Vs STATE OF PUNJAB** 289

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RECTIFICATION OF MISTAKES – TRIBUNAL - PENALTY – CHECK POST – ATTEMPT TO EVADE TAX- TRIBUNAL UPHELD THE LEVY OF PENALTY U/S 51 – RECTIFICATION APPLICATION FILED – CONTENTION RAISED THAT THE ORDER WRONGLY MENTIONED ABSENCE OF ACCOUNTING FOR TRANSACTION- ARGUMENT REGARDING TRANSACTION BEING DULY ACCOUNTED FOR DURING ASSESSMENT WHICH WAS MUCH BEFORE PASSING OF ORDER OF TRIBUNAL REJECTED – HELD, ACCOUNTING OF TRANSACTION IS SHOWN MONTHS LATER DURING ASSESSMENT THAN THE DATE OF SEIZURE AND LEVY OF PENALTY – OBSERVATION OF TRIBUNAL, THEREFORE, NOT TO BE NEGATED – PENALTY WAS UPHELD ON THE BASIS OF OTHER DISCREPANCIES TOO- RECTIFICATION IS BARRED BY LIMITATION BEING FILED AFTER MORE THAN THREE YEARS – APPEAL DISMISSED – *S.66 & 51OF PUNJAB VAT ACT* - **S.R.M.B. UDYOG Vs STATE OF PUNJAB** 358

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APPEAL- CESTAT – APPEAL FILED BY CENTRAL EXCISE OFFICER BEFORE APPELLATE TRIBUNAL ON BEHALF OF AUTHORITY – NO DIRECTION ISSUED TO THE OFFICER BY THE COMMITTEE OF COMMISSIONERS OF CENTRAL EXCISE TO FILE AN APPEAL-MERE TENDERING OF DOCUMENTS AT BAR DURING HEARING OF APPEALS NOT INDICATIVE OF COMPLIANCE OF SEC 35B(2) OF THE ACT- PREREQUIREMENT OF DIRECTION TO OFFICER NOT FULFILLED – APPEAL DISMISSED – *SEC 35B(2) OF THE CENTRAL EXCISE ACT, 1944* - **COMMISSIONER, CENTRAL EXCISE COMMISSIONERATE Vs. ELEGANT ENTERPRISES** 137

COMPLIANCE OF ORDER

COMPLIANCE OF ORDER – WRIT FILED PRAYING TO DIRECT RESPONDENTS TO PASS FRESH ASSESSMENT ORDER AS PER THE ORDER OF THE TRIBUNAL – RESPONDENT DIRECTED BY HIGH COURT TO FOLLOW THE ORDER OF TRIBUNAL BY THE DATE SPECIFIED FAILING WHICH OPEN TO PETITIONER TO SEEK INTEREST IN THIS WRIT PETITIONER BY SEPARATE APPLICATION. - **OCEAN METALS PVT. LTD. Vs. STATE OF PUNJAB AND OTHERS** 146

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ASSESSMENT – LIMITATION – CONSTITUTIONAL VALIDITY – AMENDMENT -EXTENSION OF LIMITATION PERIOD FOR THREE YEARS TO SIX YEARS THROUGH AMENDMENT IN THE ACT – AMENDMENT ALSO PROVIDING FOR FRAMING OF ASSESSMENT FOR THE YEAR 2006-07 UPTO 20/11/2014 – AMENDMENT IS RETROSPECTIVE IN OPERATION THOUGH COMMENCING FROM THE DATE OF AMENDMENT – ALSO APPLICABLE FOR THE ASSESSMENT YEARS WHOSE PERIOD OF SIX YEARS NOT EXPIRED – AMENDMENT NOT ARBITRARY OR UNCONSTITUTIONAL - AMENDING ACT IS NOT OVERRULING A JUDGEMENT OF COURT BUT REMOVES THE BASIS OF THE EARLIER JUDGEMENT – EXPIRY FOR PERIOD FOR MAINTENANCE OF BOOKS MAY BE A DIFFICULTY FACED BY THE ASSESSE BUT THE SAME WOULD NOT RENDER THE AMENDMENT UNCONSTITUTIONAL – ASSESSING AUTHORITY CANNOT DRAW ADVERSE INFERENCE FOR NON-PRODUCTION OF BOOKS BEYOND THE PERIOD PRESCRIBED UNDER THE ACT – PETITIONS DISMISSED – PETITIONERS RELEGATED TO THE APPROPRIATE REMEDY UNDER THE ACT ON ALL OTHER ISSUES – *SEC. 29(4), 29(10-A) OF PVAT ACT, ARTICLES 14 & 19 OF CONSTITUTION* - **AMRIT BANASPATI COMPANY LIMITED Vs STATE OF PUNJAB AND OTHERS** 148

DEALER

DEALER - SALES TAX – OFFICIAL LIQUIDATOR – WHETHER A 'DEALER' – SALE OF ASSETS OF LIQUIDATING COMPANY TO AUCTION PURCHASER – WHETHER SALES TAX PAYABLE BY OFFICIAL LIQUIDATOR ON SUCH SALE CONSIDERING HIM A DEALER – HELD, YES, AS PER SECTION 2(vi) AND 2(viii) OF THE ACT, ANY PERSON OR ENTITY CARRYING ON ANY ACTIVITY OF SELLING GOODS IS TERMED AS A DEALER – OFFICIAL LIQUIDATOR STEPS INTO THE SHOES OF THE COMPANY, A DEALER AND IS LIABLE TO PAY SALES TAX AS PER RULE 54 OF KGST RULES, 1963 - AS PER SECTION 5(1) OF THE ACT, TRANSACTION IN QUESTION HAS BECOME TAXABLE AT THE FIRST POINT OF SALE AND THE LIABILITY IS TO BE DISCHARGED BY THE OFFICIAL LIQUIDATOR WHO IS THE RECEIVER/MANAGER OF ALL ASSETS - *SECTIONS 2(*vi), *2(*viii*), 5, 5(1), 5A OF KGST ACT 1963, RULE 54 OF KGST RULES 1963*. - **ASSITANT COMMISSIONER, ERNAKULAM Vs. HINDUSTAN URBAN INFRASTRUCTURE LTD** 45

DECLARATION FORMS

DECLARATION FORMS – LATE SUBMISSION – TAX IMPOSED ON GOODS MEANT FOR STOCK TRANSFER DUE TO FAILURE TO PRODUCE F-FORMS IN TIME - REQUISITE FORMS PRODUCED AFTER PRESCRIBED TIME NOT ENTERTAINED – REFUSAL TO ENTERTAIN FORMS WITHOUT GIVING ANY REASON WHEN NO OTHER DISCREPANCIES POINTED OUT IS NOT RIGHT – AUTHORITY EMPOWERED TO GRANT EXTENSION OF TIME ON SUFFICIENT GROUNDS – CASE REMITTED BACK TO CONSIDER GROUNDS FOR ENTERTAINMENT AND CONDONING DELAY IN THE EVENT OF WHICH SPEAKING ORDER TO BE PASSED BY THE AUTHORITY – APPEAL ACCEPTED – *SEC. 6-A OF CST ACT, 1956; RULE 12 OF CST RULES,1956; RULE 40 OF PVAT RULES* - **BAJAJ CONSUMER CARE LTD. Vs. STATE OF PUNJAB** 225

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

OF CST ACT, RULE 12 OF CST (R&T) RULES, 1957 - **SHANTI SALES (INDIA) PVT. LTD. Vs STATE OF PUNJAB** 303

DEVELOPER

DEVELOPER – ASSESSMENT – ASSESSEE DEVELOPER OF FLATS/APARTMENTS - ASSESSED TO TAX CONSIDERING HIM AS LUMP SUM DEALER – WRIT FILED CONTENDING THAT DEVELOPER OTHER THAN CONTRACTOR NOT TO BE IMPOSED TAX ON THERE BEING NO MECHANISM FOR COMPUTATION OF TAX – LEVY OF TAX PLEADED TO BE UNCONSTITUTIONAL – POINT OF LIMITATION ALSO TAKEN UP – HELD IN VIEW OF AN EARLIER JUDGEMENT THE SAME ISSUE IS ALREADY ADJUDICATED – MATTER REMANDED IN PURSUANCE TO THAT -PETITIONER AT LIBERTY TO AGITATE POINT OF LIMITATION BEFORE THE ASSESSING AUTHORITY WHO SHALL PASS A SPEAKING ORDER – WRIT DISPOSED OF – *S. 2 (1) (zg) OF HVAT ACT, R. 25(2) OF HVAT RULES* - **HAMILTON HEIGHTS P LTD. Vs STATE OF HARYANA AND OTHERS** 218

ENTRIES IN SCHEDULE

ENTRIES IN SCHEDULE – FLAVOURED MILK – CLARIFICATION SOUGHT U/S 56(3) REGARDING RATE OF TAX ON FLAVOURED MILK – COMPOSITION OF PRODUCT NOT GIVEN – BUSINESS INTENDED TO BE STARTED IN THIS PRODUCT – ENTRY NOT HELD TO BE COVERED UNDER ANY OF THE SCHEDULES – RATE OF TAX @ 12.5% LEVIABLE AS PER CLARIFICATION – *SEC. 56(3) OF HVAT ACT, 2003* - **PINDORI COPY HOUSE, FARIDABAD** 377

ENTRIES IN SCHEDULE – STAINLESS STEEL BARS AND ROUNDS- AS PER ENTRIES IN CLAUSE IV OF SEC 14 OF CST ACT, STAINLESS STEEL BEING AN ALLOY FORMS A SPECIAL TYPE OF STEEL WHICH FALLS UNDER HEADING IX OF CLAUSE IV OF SEC 14 OF THE ACT – STEEL ROUNDS ARE COVERED UNDER ENTRY IV OF CLAUSE IV OF SEC 14- STAINLESS STEEL BEING A SPECIAL TYPE OF STEEL, THE ROUNDS MADE OF STAINLESS STEEL ALSO FALL UNDER THE SAME HEADING – THEREFORE, STAINLESS STEEL BARS AND ROUNDS FALL UNDER DECLARED GOODS U/S 14 OF CST ACT AND ARE TAXABLE @ 3.85% - **JH METALS (JALANDHAR)** 366

ENTRIES IN SCHEDULE – POPCORN - CONTENTED TO BE FALLING UNDER ENTRY 123 OF SCHEDULE B TERMING IT AS NAMKEEN – HELD IN COMMON PARLANCE POPCORNS ARE DIFFERENT FROM NAMKEENS AS LATTER ARE PRESERVED UNLIKE POPCORNS WHICH ARE SOLD FRESH – POPCORNS DIFFER FROM NAMKEEN AS THERE ARE DIFFERENT FLAVOURS AVAILABLE UNLIKE NAMKEEN WHICH IS ONLY SALTED – HELD TO BE AN UNSPECIFIED ITEM TAXABLE @ 14.30 % - **PVR LIMITED (LUDHIANA)** 369

ENTRIES IN SCHEDULE – BRASS FORGINGS – CLAIMED TO HAVE SAME OBJECT AS METAL CASTINGS FALLING UNDER ENTRY 70 OF SCHEDULE B OF PVAT ACT – DIFFERENCE FOUND IN TWO COMMODITIES – TAXABLE @ 14.30% - **JH METALS (JALANDHAR)** 366

ENTRIES IN SCHEDULE – WHIP TOPPING CREAM – ALLEGED TO BE RAW MATERIAL FALLING UNDER 'INDUSTRIAL INPUTS' OF SCHEDULE B OF PVAT ACT - CONTENTION REJECTED TERMING IT AS FINISHED PRODUCT - HELD TO BE A SEPARATE COMMODITY – FOLLOWING THE JUDGEMENT PASSED BY ALLAHABAD HIGH COURT HELD TAXABLE @ 14.30 % BEING UNSPECIFIED ITEM(INCLUDING SURCHARGE) - **RICH GRAVISS PRODUCTS PVT LTD (MOHALI)** 372

ENTRIES IN SCHEDULE – CLARIFICATION – SECTION 85 - ALOO TIKKI, FRENCH FRIES, SUPER WEDGES ETC – CLARIFICATION SOUGHT REGARDING RATE OF TAX – CONTENDED TO BE NOTHING BUT PROCESSED VEGETABLES AND TAXABLE UNDER ITEM 8 OF ENTRY 15 OF SCHEDULE E @ 6.25% - HELD TO BE 'FROZEN READY TO EAT PRODUCT' DIFFERENTLY MARKETABLE THAN ITS RAW MATERIALS – RAW MATERIALS USED ARE SEPARATE GOODS – PRODUCT IN QUESTION IS NOT A FROZEN PRODUCT PACKED AND FROZEN TO INCREASE SHELF LIFE(LIKE PEAS) – HENCE, TAXABLE UNDER ITEM 6 OF ENTRY 15 OF SCHEDULE E @ 14.5% PLUS SURCHARGE- *ITEM NO. 6 & 8 OF ENTRY 15 OF SCHEDULE E OF PVAT ACT* - **MCCAIN FOODS INDIA PVT. LTD.** 360

ENTRIES IN SCHEDULE – UNIVERSAL DRAIN HOSE PIPES- CLARIFICATION U/S 85 – PIPES IN QUESTION ARE FLEXIBLE IN NATURE- CONTENDED TO BE DIFFERENT FROM STEEL PIPES- HOSEPIPES HELD SEPARATELY CONTAINED UNDER ENTRY 49 OF SCHEDULE B OF THE ACT – HENCE, THE ITEM IS TAXABLE @ 6.05% INCLUDING SURCHARGE- *S.85 OF PVAT ACT* - **GODREJ & BOYCE MFG CO LTD.** 364

ENTRY TAX

ENTRY TAX – STEEL FABRICATED MATERIAL – V SHAPE CROSS ARM – SINCE MANUFACTURING V SHAPE ARM INVOLVES ALL THOSE STEPS AS REQUIRED BY STEEL FABRICATED ITEM AND A NEW COMMODITY EMERGES,

THEREFORE, ENTRY TAX IS LEVIABLE AS IT FALLS UNDER STEEL 'FABRICATED MATERIAL' - **SPEED CRAFT INDUSTRIES (H.P.)** 375

ENTRY TAX – SUGAR – INTERIM ORDER – ORDINANCE PASSED LEVYING ENTRY TAX ON SUGAR AS PER THE SCHEDULE APPENDED- WRIT FILED CHALLENGING THE POWER OF PRINCIPAL SECRETARY TO NOTIFY THE SCHEDULE APPENDED TO THE ORDINANCE – RECOVERY OF TAX BY COERCIVE STEPS STAYED BY COURT TILL EXAMINATION OF POWER OF PRINCIPAL SECRETARY TO NOTIFY THE SCHEDULE AND INCLUDE SUGAR - **LUXMI TRADING COMPANY Vs. STATE OF PUNJAB AND OTHERS** 142

EVASION OF TAX

HIGH SEA SALE – EVASION OF TAX – INSPECTION OF BUSINESS PREMISES – GOODS FOUND TO BE IMPORTED FROM PAKISTAN INTO PUNJAB – INCOMPLETE ACCOUNT BOOKS FOUND – GOODS IMPORTED ALLEGED TO BE SOLD AS HIGH SEA SALE THEREBY REQUIRING NO PAYMENT OF TAX – ABSENCE OF BILL OF LADING / BILL OF ENTRY – NO EVIDENCE FOUND IN THE ACCOUNT BOOKS OF THE ALLEGED BUYERS REGARDING HIGH SEA SALE MADE BY THE APPELLANT – NO AGREEMENT BETWEEN THE PARTIES PRODUCED – NO COMMUNICATION OF THE SAID SALE TO THE CUSTOM AUTHORITY- SALE IN QUESTION COULD NOT BE TREATED AS HIGH SEA SALE – HELD LIABLE TO BE TAXED – APPEAL DISMISSED. *SEC 3 AND SEC 5 OF CST ACT* - **KESHAV IMPEX Vs. STATE OF PUNJAB** 267

PENALTY – EVASION OF TAX – STOCK TRANSFER- PROOF OF GOODS RECEIVED – GOODS IN TRANSIT – NO TAX CHARGED ON GOODS – PENALTY IMPOSED U/S 51(7)(B) OF THE ACT – APPEAL BEFORE TRIBUNAL – STOCK TRANSFER CHALLAN PRODUCED TO SHOW GOODS BEING RETURNED TO HEAD OFFICE – DOUBT RAISED ABOUT THE RECEIPT OF SAME GOODS EARLIER FROM HEAD OFFICE - APPELLANT READY TO PRODUCE RELEVANT DOCUMENTS – MATTER REMITTED – APPEAL ACCEPTED – *SEC 51(7)(b) OF THE PVAT ACT* - **PAN INDIA NETWORK INFRAVEST PVT. LTD Vs. STATE OF PUNJAB** 277

EXCISE DUTY

EXCISE DUTY – INSPECTION – PENALTY – REMOVAL OF GOODS – INSPECTION CONDUCTED AT BUSINESS PREMISES – SHORTAGE OF AROUND 14 LAC PIECES OF NUTS AND BOLTS SUSPECTED -CLANDESTINE REMOVAL OF GOODS (PIECES OF NUTS AND BOLTS) WITHOUT ISSUING INVOICE ALLEGEDLY ADMITTED BY APPELLANT – SUBSEQUENT RETRACTION AT FIRST STAGE ITSELF - HUGE AMOUNT COLLECTED FROM MANUFACTURER AND ENCASHED BEFORE CONFIRMATION OF DEMAND- IMPOSITION OF PENALTY - ON APPEAL BEFORE HIGH COURT BY REVENUE HELD THAT CONFESSIONAL STATEMENT WHICH WAS RETRACTED AT FIRST STAGE SHOULD NOT FORM THE BASIS OF PENALTY – NO PHYSICAL INVENTORY MADE BY OFFICERS TO FIND THE SHORTAGE – NO CORROBORATIVE EVIDENCE FOUND TO PROVE CLANDESTINE REMOVAL – PENALTY LEVIED ARBITRARILY – APPEAL DISMISSED – *SEC 11-A OF CENTRAL EXCISE ACT, 1944* - **COMMISSIONER OF CENTRAL EXCISE Vs NEXO PRODUCTS (INDIA)** 188

EXEMPTION

APPELLATE AUTHORITY – BINDING NATURE OF ORDERS – EXEMPTION – APPLICATION FOR EXEMPTION FILED – DEPARTMENT INTIMATED ABOUT SENDING OF MACHINERY FROM HARYANA TO CHENNAI AT APPELLANT'S PREMISES- INSPECTION CONDUCTED AT CHENNAI HENCEFORTH - REJECTION OF CLAIM ON ACCOUNT OF MACHINERY BEING OLD – APPEAL BEFORE SECRETARY – MACHINERY HELD TO BE NEW – ORDER ATTAINED FINALITY- MATTER REOPENED BY HLSC RAISING A NEW CONTENTION THAT THE MACHINERY IN QUESTION OUGHT TO BE INSTALLED IN HARYANA FOR CLAIMING EXEMPTION- DISMISSAL OF APPEAL BY TRIBUNAL HOLDING THAT IT WAS OPEN TO HLSC TO RAISE A NEW ISSUE NOT CONSIDERED BY SECRETARY- WRIT FILED – NEW CONTENTION RAISED BY HLSC IMPLIEDLY IN ITS KNOWLEDGE EARLIER AND NOT DISPUTED – HLSC NOT PERMITTED TO MODIFY THE ORDER OF APPELLATE AUTHORITY HAVING ATTAINED FINALITY – SCHEME OF HIERARCHY AND BINDING NATURE OF ORDERS OF AUTHORITIES TO BE TAKEN INTO ACCOUNT – RESPONDENTS TO COMPLY WITH ORDERS OF SECRETARY – WRIT ALLOWED. *RULE 28 A OF HGST RULES,1975; SECTION 13B OF HGST ACT, 1973* - **HPL SOCOMEC P. LTD. Vs STATE OF HARYANA AND ORS.** 198

EXEMPTED UNIT

INPUT TAX CREDIT – EXEMPTED UNIT – COTTON PURCHASED FROM FIRM B AFTER PAYMENT OF TAX – ITC ALREADY REFUNDED ORDERED TO BE RECOVERED IN VIEW OF NOTIFICATION ON THE BASIS THAT FIRM B HAD IN TURN PURCHASED IT FROM AN EXEMPTED UNIT A – UNIT A SHOWED ITS ENTIRE SALES AS EXEMPTED SALES – APPEAL BEFORE TRIBUNAL -HELD THAT EXEMPTED UNIT NOT EXEMPTED FOR COTTON BUT COTTON YARN – THEREFORE, FIRM B CANNOT BE SAID TO HAVE PURCHASED COTTON FROM EXEMPTED UNIT - APPELLANT PURCHASED COTTON

FROM FIRM B AS PER RECORD AFTER PAYING TAX – REFUND OF ITC AROSE ON ACCOUNT OF ACTUAL INPUT TAX CREDIT AND NOT NOTIONAL TAX CREDIT – RECOVERY COULD BE MADE FROM THE EXEMPTED UNIT – REFUND RIGHTLY GIVEN TO APPELLANT – APPEAL ACCEPTED – *S. 13, 92(3)(A) OF PVAT ACT AND CONDITIONS DATED 6/4/05 FOR DEFERMENT & EXEMPTION* - **AARTI INTERNATIONAL LTD.Vs STATE OF PUNJAB** 334

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ENTRIES IN SCHEDULE – FLAVOURED MILK – CLARIFICATION SOUGHT U/S 56(3) REGARDING RATE OF TAX ON FLAVOURED MILK – COMPOSITION OF PRODUCT NOT GIVEN – BUSINESS INTENDED TO BE STARTED IN THIS PRODUCT – ENTRY NOT HELD TO BE COVERED UNDER ANY OF THE SCHEDULES – RATE OF TAX @ 12.5% LEVIABLE AS PER CLARIFICATION – *SEC. 56(3) OF HVAT ACT, 2003* - **PINDORI COPY HOUSE, FARIDABAD** 377

HIGH SEA SALE

HIGH SEA SALE – EVASION OF TAX – INSPECTION OF BUSINESS PREMISES – GOODS FOUND TO BE IMPORTED FROM PAKISTAN INTO PUNJAB – INCOMPLETE ACCOUNT BOOKS FOUND – GOODS IMPORTED ALLEGED TO BE SOLD AS HIGH SEA SALE THEREBY REQUIRING NO PAYMENT OF TAX – ABSENCE OF BILL OF LADING / BILL OF ENTRY – NO EVIDENCE FOUND IN THE ACCOUNT BOOKS OF THE ALLEGED BUYERS REGARDING HIGH SEA SALE MADE BY THE APPELLANT – NO AGREEMENT BETWEEN THE PARTIES PRODUCED – NO COMMUNICATION OF THE SAID SALE TO THE CUSTOM AUTHORITY- SALE IN QUESTION COULD NOT BE TREATED AS HIGH SEA SALE – HELD LIABLE TO BE TAXED – APPEAL DISMISSED. *SEC 3 AND SEC 5 OF CST ACT* - **KESHAV IMPEX Vs. STATE OF PUNJAB** 267

INCOME TAX

INCOME TAX – REASSESSMENT – VALUATION OF LAND – DOCUMENTS SEIZED ON SEARCH AT PREMISES OF X – TRANSACTIONS REFLECTED WITH Y, THE PURCHASER OF LAND OF APPELLANT'S BROTHER – LAND INDICATED TO HAVE BEEN SOLD IN 2006-07 AT A HIGHER RATE THAN DISCLOSED – REASSESSMENT APPLYING THE SAME RATE TO APPELLANT'S TRANSACTION IN YEAR 2005-06 – APPEAL FILED BEFORE HIGH COURT – HELD, NO EFFORT MADE ON PART OF DEPARTMENT TO ASCERTAIN THE RATE – MERELY RELYING UPON THE RATE AT WHICH THE LANDS WERE SOLD IN SUBSEQUENT YEARS IS NOT ENOUGH – APPEAL ALLOWED REMANDING THE MATTER TO ASSESSING OFFICER TO ASCERTAIN THE RATE AT WHICH APPELLANT COULD HAVE SOLD HIS LAND. SECTIONS 147, 148 OF INCOME TAX ACT, 1961 - **DALIP SINGH Vs INCOME TAX OFFICER, MUKTSAR**

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REVISION – INCOME TAX – ASSESSMENT ORDER PASSED – ASSESSEE FILED APPEAL – REVISIONAL PROCEEDINGS ALSO INITIATED AGAINST ASSESSMENT ORDER – ASSESSEE'S APPEAL ACCEPTED – REVISIONAL ORDER SET ASIDE BY ITAT – WHETHER TWO PARALLEL PROCEEDINGS OF APPEAL AND REVISION AGAINST SAME ASSESSMENT ORDER PERMISSIBLE – HELD, NO – *SEC. 263 OF INCOME TAX ACT, 1961* - **COMMISSIONER OF INCOME TAX-II, AMRITSAR Vs. VIJAY BHARAT CIGARETTE STORE** 109

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INPUT TAX CREDIT

INPUT TAX CREDIT – DENIAL OF - GOODS PURCHASED SENT FOR JOB WORK – GOODS NOT RETURNED IN THE SAME ASSESSMENT YEAR - ITC DENIED ON PURCHASE OF SUCH GOODS– APPEAL BEFORE TRIBUNAL – HELD GOODS SENT FOR JOB WORK OUGHT TO BE RETURNED WITHIN 90 DAYS AS PER RULE 20 OR IN THE SAME ASSESSMENT YEAR TO CLAIM ITC – NO EXTRAORDINARY CIRCUMSTANCES SEEN AS PER RULE 20 TO CONDONE THE DELAY FOR RETURN OF GOODS IN QUESTION– ITC OUGHT TO BE REVERSED AS RULE 20 IS MANDATORY- RESTORATION OF ITC NOT

POSSIBLE U/S 13(3) OF THE ACT AS GOODS ADMITTEDLY RETURNED IN SUBSEQUENT YEARS – MERE COMMUNICATION OF ORDER POST LIMITATION PERIOD DOES NOT RENDER THE ORDER AS TIME BARRED–– *SEC13(3) OF PVAT ACT AND RULE 20 OF PVAT RULES* - **RELIANCE RETAIL LTD. Vs STATE OF PUNJAB** 296

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INPUT TAX CREDIT – EXEMPTED UNIT – COTTON PURCHASED FROM FIRM B AFTER PAYMENT OF TAX – ITC ALREADY REFUNDED ORDERED TO BE RECOVERED IN VIEW OF NOTIFICATION ON THE BASIS THAT FIRM B HAD IN TURN PURCHASED IT FROM AN EXEMPTED UNIT A – UNIT A SHOWED ITS ENTIRE SALES AS EXEMPTED SALES – APPEAL BEFORE TRIBUNAL -HELD THAT EXEMPTED UNIT NOT EXEMPTED FOR COTTON BUT COTTON YARN – THEREFORE, FIRM B CANNOT BE SAID TO HAVE PURCHASED COTTON FROM EXEMPTED UNIT - APPELLANT PURCHASED COTTON FROM FIRM B AS PER RECORD AFTER PAYING TAX – REFUND OF ITC AROSE ON ACCOUNT OF ACTUAL INPUT TAX CREDIT AND NOT NOTIONAL TAX CREDIT – RECOVERY COULD BE MADE FROM THE EXEMPTED UNIT – REFUND RIGHTLY GIVEN TO APPELLANT – APPEAL ACCEPTED – *S. 13, 92(3)(a) OF PVAT ACT AND CONDITIONS DATED 6/4/05 FOR DEFERMENT & EXEMPTION* - **AARTI INTERNATIONAL LTD.Vs STATE OF PUNJAB** 334

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INTEREST – INPUT TAX CREDIT – DENIAL OF - GOODS PURCHASED SENT FOR JOB WORK – GOODS NOT RETURNED IN THE SAME ASSESSMENT YEAR - ITC DENIED ON PURCHASE OF SUCH GOODS ALONGWITH LEVY OF PENALTY AND INTEREST– APPEAL BEFORE TRIBUNAL- ITC OUGHT TO BE REVERSED ON NON RETURN OF GOODS WITHIN STIPULATED PERIOD -LEVY OF INTEREST UPHELD ON ACCOUNT OF WITHHOLDING THE AMOUNT BY APPELLANT FOR HIS OWN BUSINESS – REDUCTION OF ITC CLAIMED FROM THE EXCESS ITC CARRIED FORWARD NOT PERMISSIBLE AS EVERY YEAR IS INDEPENDENT AND IS TO BE ASSESSED SEPARATELY- *SEC13(3) AND SEC 32 OF PVAT ACT AND RULE 20 OF PVAT RULES* - **RELIANCE RETAIL LTD. Vs STATE OF PUNJAB** 296

REFUND – INTEREST – WHETHER INTEREST IS PAYABLE ON REFUND FROM THE DATE OF DEPOSIT – ADDITIONAL DEMAND RAISED – ENTIRE AMOUNT INCLUSIVE OF TAX, INTEREST AND PENALTY DEPOSITED FOR HEARING OF APPEAL DURING APRIL 1995 TO AUG 1996 – MATTER REMITTED BY TRIBUNAL FOR FRESH ASSESSMENT – REFUND GRANTED VIDE ORDER DATED MAY 2009 – INTEREST CLAIMED BY ASSESSEE ON AMOUNT OF REFUND FROM DATE OF DEPOSIT BUT GRANTED ONLY FOR FOUR MONTHS FROM AUG 2009 TO DEC 2009 – WRIT FILED – NO JUSTIFICATION FOR DENYING INTEREST TO ASSESSEE FOR THE PERIOD BENEFITED BY REVENUE WITH THE AMOUNT IT WAS NOT ENTITLED TO – PETITIONER'S CLAIM ESTABLISHED ON EQUITY – NO EXPRESS BAR IN SEC 43 OR RULE 35 ON PAYMENT OF INTEREST FOR PRIOR PERIOD – PREVIOUS JUDGEMENTS OF THE COURT ALLOWING INTEREST FROM

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FOUND IN THIS REGARD – APPEAL DISMISSED – *SEC 31 AND SEC 40 OF HGST ACT, 1973* - **ELIS EXPORTS Vs STATE OF HARYANA AND ANOTHER** 122

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APPEAL – CONDONATION OF DELAY – LIMITATION – DELAY IN FILING APPEAL BEFORE TRIBUNAL BY 25 DAYS – BONAFIDE IMPRESSION THAT LIMITATION IS OF 90 DAYS INSTEAD OF 60 DAYS - PLEA ACCEPTED BY HIGH COURT ON APPEAL AS NOTHING ON RECORD TO INDICATE ANY LAPSE ON PART OF APPELLANT – APPEAL ACCEPTED – TRIBUNAL DIRECTED TO HEAR APPEAL ON MERITS- *SEC 5 OF LIMITATION ACT* - **BABBAR HOSIERY Vs. STATE OF HARYANA AND ANOTHER** 118

APPEAL – LIMITATION – CONDONATION OF DELAY – PENALTY ORDER DISPATCHED ON 18/6/04- CLAIMED TO HAVE BEEN RECEIVED ON 15.3.2012 – DELAY IN FILING OF FIRST APPEAL BY 8 YEARS – NO SATISFACTORY EXPLANATION TENDERED – APPEAL DISMISSED – APPEAL BEFORE TRIBUNAL – CONDUCT OF APPELLANT NOT COOPERATIVE DURING EARLIER PROCEEDINGS – NO AFFIDAVIT SUBMITTED REGARDING NON RECEIPT OF ORDERS IN TIME – APPELLANT HELD TO BE FULLY AWARE OF THE DISPATCH OF ORDERS – TIME TAKEN TO PUT OFF PENALTY – CONDONATION DECLINED – APPEAL DISMISSED - *SEC. 64 OF PVAT ACT* - **AMRITSAR DYES & CHEMICAL Vs. STATE OF PUNJAB** 238

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APPEAL – ENTERTAINMENT OF – PREDEPOSIT – ASSESSMENT – LIMITATION – ASSESSMENT YEAR 2009-10 – ASSESSMENT FRAMED IN YEAR 2013- DISMISSAL OF FIRST APPEAL FOR FAILURE OF PREDEPOSIT U/S 62 OF THE ACT – APPEAL BEFORE TRIBUNAL – CONTENTION REGARDING EXPIRY OF LIMITATION PERIOD RAISED – CONTENTION REJECTED HOLDING THAT LIMITATION IS TO EXPIRE AFTER SIX YEARS AS PER AMENDED SEC 29(4) OF THE ACT – THEREFORE, ASSESSMENT HELD TO BE FRAMED WITHIN THE REQUISITE TIME PERIOD – PLEA TO ADJUST THE AMOUNT DEPOSITED FOR ENTERTAINMENT OF A CONNECTED APPEAL WHICH STOOD ACCEPTED BY TRIBUNAL TOWARDS THE PREDEPOSIT IN THE PRESENT CASE – FIRST APPELLATE AUTHORITY TO DECIDE THE QUESTION OF ADJUSTMENT OF TAX – APPEAL DISMISSED WITH GRANT OF TIME TO APPELLANT TO DEPOSIT 25% OF ADDITIONAL DEMAND RAISED. – *SEC 62(5) AND SEC 29 (4) OF THE PVAT ACT* - **SHANTI SALES (INDIA) PVT. LTD. Vs. STATE OF PUNJAB** 287

ASSESSMENT – LIMITATION – ASSESSMENT YEAR 2005-06 – FRAMING OF ASSESSMENT IN YEAR 2011 – ASSESSMENT CONTENDED TO HAVE BEEN FRAMED AFTER EXPIRY OF LIMITATION PERIOD OF THREE YEARS – HELD, IN VIEW OF SEC 29(4-A) ASSESSMENT OUGHT TO HAVE BEEN FRAMED WITHIN THREE YEARS OF FILING OF RETURN – SEC 29(4-A) IS NON OBSTANTE CLAUSE AND OVERRIDES OTHER PROVISIONS - ASSESSMENT FRAMED AFTER 2009 IS THEREFORE, TIME BARRED – APPEAL ACCEPTED AND IMPUGNED ORDER SET ASIDE- *SEC 29(4-A) OF PVAT ACT* - **SPORTKING INDIA LIMITED Vs. STATE OF PUNJAB** 283

ASSESSMENT – LIMITATION – CONSTITUTIONAL VALIDITY – AMENDMENT -EXTENSION OF LIMITATION PERIOD FOR THREE YEARS TO SIX YEARS THROUGH AMENDMENT IN THE ACT – AMENDMENT ALSO PROVIDING FOR FRAMING OF ASSESSMENT FOR THE YEAR 2006-07 UPTO 20/11/2014 – AMENDMENT IS RETROSPECTIVE IN OPERATION THOUGH COMMENCING FROM THE DATE OF AMENDMENT – ALSO APPLICABLE FOR THE ASSESSMENT YEARS WHOSE PERIOD OF SIX YEARS NOT EXPIRED – AMENDMENT NOT ARBITRARY OR UNCONSTITUTIONAL - AMENDING ACT IS NOT OVERRULING A JUDGEMENT OF COURT BUT REMOVES THE BASIS OF THE EARLIER JUDGEMENT – EXPIRY FOR PERIOD

FOR MAINTENANCE OF BOOKS MAY BE A DIFFICULTY FACED BY THE ASSESSE BUT THE SAME WOULD NOT RENDER THE AMENDMENT UNCONSTITUTIONAL – ASSESSING AUTHORITY CANNOT DRAW ADVERSE INFERENCE FOR NON-PRODUCTION OF BOOKS BEYOND THE PERIOD PRESCRIBED UNDER THE ACT – PETITIONS DISMISSED – PETITIONERS RELEGATED TO THE APPROPRIATE REMEDY UNDER THE ACT ON ALL OTHER ISSUES – *SEC. 29(4), 29(10-A) OF PVAT ACT, ARTICLES 14 & 19 OF CONSTITUTION* - **AMRIT BANASPATI COMPANY LIMITED Vs STATE OF PUNJAB AND OTHERS** 148

LIMITATION – ASSESSMENT – ASSESSMENT YEAR 2005-06 – ASSESSMENT ORDER PASSED IN YEAR 2011- APPEAL BEFORE TRIBUNAL – ASSESSMENT FOR THE YEAR 2005-06 OUGHT TO HAVE BEEN FRAMED WITHIN A PERIOD OF THREE YEARS FROM THE DATE OF FILING OF RETURNS AS PER S.29(4-A) OF THE ACT – S. 29(4-A) IS A NON OBSTANTE CLAUSE AND OVERRIDES OTHER SECTIONS – THEREFORE, ASSESSMENT FRAMED BEYOND THE LIMITATION PERIOD I.E. 2009 IS HELD TO BE TIME BARRED – APPEAL ACCEPTED – *S. 29(4-A) OF THE PVAT ACT* - **GOEL RICE & GEN MILLS Vs STATE OF PUNJAB** 341

LIMITATION – ASSESSMENT – NOTICE -VALIDITY OF PUBLIC NOTICE –ASSESSMENT YEAR 2006-07 – FRAMING OF ASSESSMENT IN 2011 I.E. BEYOND LIMITATION PERIOD -EXTENSION ORDER BY COMMISSIONER FOR FRAMING ASSESSMENT U/S 29(4) CONTENDED TO HAVE BEEN PASSED IN 2010 THROUGH WEBSITE AND PUBLIC NOTICE – TRIBUNAL HELD SUCH ASSESSMENT ORDER AS TIME BARRED AS NOTICE NEVER COMMUNICATED TO ASSESSEE – APPEAL FILED BY DEPARTMENT – RELYING ON AN EARLIER JUDGEMENT PASSED BY DIVISION BENCH OF HIGH COURT, APPEAL DISMISSED – ABSENCE OF INDIVIDUAL NOTICES RENDERS THE ASSESSMENT ORDER VOID – *S.29(4)OF PVAT ACT AND RULE 86 OF PVAT RULES* - **STATE OF PUNJAB AND OTHERS Vs CHIRAG INDUSTRIES** 221

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PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – MENSREA – GOODS X AND Y IN TRANSIT – INVOICE REFLECTING ONLY GOODS X IN TWO COUNTS I.E. 150 AND 220 BAGS – MISDESCRIPTION OF GOODS FOUND BY CHECKING OFFICER – SLIGHTLY EXCESS QUANTITY TRANSPORTED – RATE OF TAX APPLICABLE ON X AND Y IS SAME – NO SUBSTANTIAL DIFFERENCE IN VALUE OF GOODS AS SHOWN IN INVOICE AND ACTUALLY FOUND IN TRUCK – VOLUNTARY REPORTING – ELEMENT OF MENSREA RULED OUT – PENALTY QUASHED – APPEAL ACCEPTED – *SEC 51(7)(C) OF PVAT ACT* - **BHARAT CABLES, SANGRUR Vs. STATE OF PUNJAB** 241

MENS REA – PENALTY – CHECK POST/ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT FROM SAHNEWAL TO KAPURTHALA – DOCUMENTS SCRUTINIZED – GOODS SHOWN TO BE PURCHASED FROM OUTSIDE INDIA - FAILURE TO FURNISH INFORMATION AT ICC RECORDED – NO E-ICC FURNISHED BY APPELLANT – SUSPECTING EVASION OF TAX ASSUMING GOODS TO BE PURCHASED LOCALLY , PENALTY IMPOSED U/S 51(7)(c) OF THE ACT – APPEAL BEFORE TRIBUNAL – RELEVANT CERTIFICATE ISSUED BY CUSTOM AUTHORITIES PRODUCED SHOWING GOODS BEING BROUGHT FROM OUTSIDE INDIA – PAYMENTS MADE THROUGH BANKS – ACCOUNT BOOKS INDICATED NO CONCEALMENT OF TRANSACTION – MERE NON REPORTING AT ICC NOT SUFFICIENT TO ESTABLISH ATTEMPT TO EVADE TAX – FAILURE TO ESTABLISH MENSREA ON PART OF APPELLANT BY AUTHORITIES – APPEAL ACCEPTED AND PENALTY DELETED- *SEC 51 (4),51(7)(c)OF THE PVAT ACT, RULE 64 (B) &(C)OF PVAT RULES* - **RAIL FAB Vs STATE OF PUNJAB** 308

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PRE-DEPOSIT – ENTERTAINMENT OF APPEAL – ASSESSMENT - NOTICE – EX-PARTE ASSESSMENT FRAMED – DISMISSAL OF 1ST APPEAL FOR FAILURE OF PRE-DEPOSIT – IMPUGNED ORDER ALLEGED TO BE INVALID – WAIVER OF CONDITION OF PRE-DEPOSIT PLEADED BEFORE TRIBUNAL – NOTICES SERVED BY DEPARTMENT INCOMPLETE – PENALTY ORDER (HANDWRITTEN) PASSED ON 10.6.2014 NEVER DISPATCHED YET TYPED ORDER SHOWN TO BE RECEIVED ON 10.9.2014 THEREBY RAISING SUSPICION – TDN OUGHT TO HAVE BEEN ISSUED ON SAME DAY AS PASSING OF PENALTY ORDER – APPELLANT HELD NOT SERVED PROPERLY – CASE REMITTED BACK TO ETO FOR FRAMING FRESH ASSESSMENT – APPEAL ACCEPTED – *SEC. 29 & 62(5) OF PVAT ACT; RULE 47 OF PVAT RULES* - **BALAJI IMPEX Vs. STATE OF PUNJAB** 230

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DETC FOR PASSING SPEAKING ORDER – APPEAL ACCEPTED- *SEC 51 AND SEC 62 OF PVAT ACT* - **SHRIRAM TRANSPORT FINANCE CO. LTD. Vs STATE OF PUNJAB** 305

ASSESSMENT – NATURAL JUSTICE – NOTICE – ASSESSMENT YEAR 2009-10 – DEMAND RAISED ON ACCOUNT OF DISPARITY BETWEEN LARGELY PURCHASED RAW MATERIAL AS COMPARED TO LOW EXTENT OF PRODUCTION AND SALE – GROSS TURNOVER AND TAX ASSESSED UPHELD ON APPEAL – INTEREST QUASHED – APPEAL BEFORE TRIBUNAL – ASSESSMENT ORDER PASSED IN ABSENCE OF ASSESSEE – NO PROPER SERVICE OF NOTICE PRIOR THERETO – ASSESSEE NOT CONFRONTED WITH THE DOCUMENTS WHICH WERE MADE BASIS OF ASSESSMENT – ASSESSMENT ORDER LACKING DETAILS OF SUCH DOCUMENTS – ORDER PASSED BY FIRST APPELLATE AUTHORITY NOT REASONED – APPEAL ACCEPTED – MATTER REMITTED TO DESIGNATED OFFICER TO DECIDE AFRESH- *S. 29 OF PVAT ACT* - **JAI BHOLE BRICKS INDUSTRIES Vs STATE OF PUNJAB** 331

NOTICE – LACK OF ACTION ON PART OF DEPARTMENT – REPLY FILED AGAINST THE SHOW CAUSE NOTICE ISSUED – NO ACTION TAKEN BY DEPARTMENT THEREON – WRIT FILED FOR QUASHING OF NOTICE – DEPARTMENT DIRECTED TO DECIDE THE CASE BY PASSING A SPEAKING ORDER AFTER HEARING THE APPELLANT WITHIN THE PERIOD SPECIFIED – *S. 47 OF HGST ACT* - **MACHINO POLYMERS LIMITED Vs STATE OF HARYANA AND ANOTHER** 210

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APPEAL - NON-SPEAKING ORDER – EXCESS PURCHASES SHOWN THEREBY AVAILING EXCESS ITC - NON-DEPOSIT OF TDS AND NON-DEDUCTION ON PART OF APPELLANT – NOTICE ISSUED FOR LEVYING PENALTY AND INTEREST – DISMISSAL OF 1ST APPEAL WITHOUT DECIDING THE ISSUES REGARDING LIMITATION AND REPLY GIVEN BY THE APPELLANT – CASE REMANDED BY TRIBUNAL TO DETC TO PASS A REASONED AND SPEAKING ORDER – APPEAL ACCEPTED – *SEC. 62 OF PVAT ACT* - **ARADHANA DRINKS AND BEVERAGES PVT. LTD. Vs. STATE OF PUNJAB** 233

APPEAL - NON SPEAKING ORDER – NOTICE – IMPROPER SERVICE OF – LOAN ADVANCED BY FINANCE COMPANY FOR PURCHASE OF VEHICLE BY BORROWER – VEHICLE SURRENDERED FOR FAILURE TO PAY INSTALLMENTS – VEHICLE TAKEN TO LUDHIANA FOR PARKING IN COMPANY YARD – PENALTY IMPOSED WHILE CROSSING ICC CONSIDERING IT AS AUCTION OF VEHICLE WITHOUT BEING REGISTERED – NO PROPER NOTICE SERVED ON APPELLANT BEFORE PENALIZING – FIRST APPEAL DISMISSED WITHOUT CONSIDERING ARGUMENTS RAISED BY APPELLANT COMPANY – CONTENTIONS RAISED NOT DEALT WITH - NON SPEAKING ORDER PASSED – ORDER PASSED BY DETC SET ASIDE BY TRIBUNAL FOR IMPROPER SERVICE OF NOTICE AND NO OPPORTUNITY OF BEING HEARD GIVEN – CASE REMITTED TO DETC FOR PASSING SPEAKING ORDER – APPEAL ACCEPTED- *SEC 51 AND SEC 62 OF PVAT ACT* - **SHRIRAM TRANSPORT FINANCE CO. LTD. Vs STATE OF PUNJAB** 305

NATURAL JUSTICE

ASSESSMENT – NATURAL JUSTICE – NOTICE – ASSESSMENT YEAR 2009-10 – DEMAND RAISED ON ACCOUNT OF DISPARITY BETWEEN LARGELY PURCHASED RAW MATERIAL AS COMPARED TO LOW EXTENT OF PRODUCTION AND SALE – GROSS TURNOVER AND TAX ASSESSED UPHELD ON APPEAL – INTEREST QUASHED – APPEAL BEFORE TRIBUNAL – ASSESSMENT ORDER PASSED IN ABSENCE OF ASSESSEE – NO PROPER SERVICE OF NOTICE PRIOR THERETO – ASSESSEE NOT CONFRONTED WITH THE DOCUMENTS WHICH WERE MADE BASIS OF ASSESSMENT – ASSESSMENT ORDER LACKING DETAILS OF SUCH DOCUMENTS – ORDER PASSED BY FIRST APPELLATE AUTHORITY NOT REASONED – APPEAL ACCEPTED – MATTER REMITTED TO DESIGNATED OFFICER TO DECIDE AFRESH- *S. 29 OF PVAT ACT* - **JAI BHOLE BRICKS INDUSTRIES Vs STATE OF PUNJAB** 331

NATURAL JUSTICE – TIN NUMBER – LOCKING OF – PETITIONER'S TIN NUMBER LOCKED BY DEPARTMENT – WRIT FILED- CONTENTION REGARDING LACK OF OPPORTUNITY OF HEARING PRIOR TO LOCKING NOT DISPUTED BY DEPARTMENT – LOCKING OF TIN SET ASIDE IN VIEW OF VIOLATION OF NATURAL JUSTICE – FRESH SPEAKING ORDER TO BE PASSED BY RESPONDENT AFTER HEARING THE PETITIONER – *RULE 51 A OF PVAT RULES* - **UPASNA ENTERPRISES Vs STATE OF PUNJAB AND ANOTHER** 212

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – OPPORTUNITY OF BEING HEARD – GOODS IN TRANSIT REACHED ICC– INVOICE IN FAVOUR OF JALANDHAR FIRM – GOODS SUSPECTEDLY MEANT FOR UNLOADING IN BHATHINDA – PENALTY IMPOSED U/S 51(7) ON BASIS OF CONSIGNEE FIRM NOT FUNCTIONING AT GIVEN ADDRESS AND NO ACCOUNT BOOKS PRODUCED BY APPELLANT – APPEAL BEFORE TRIBUNAL – NO SERVICE OF NOTICE UPON APPELLANT BY DETAINING OFFICER – NOTICE ISSUED BY DESIGNATED OFFICER ON EMPLOYEE OF FIRM - NO PROOF OF RECEIPT OF SUCH NOTICE – ABSENCE OF ENQUIRY REPORT INDICATING NON EXISTENCE OF BUSINESS PREMISES AT GIVEN ADDRESS – APPEAL ACCEPTED ON BASIS OF IMPROPER SERVICE OF NOTICE AND LACK OF REASONABLE OPPORTUNITY OF HEARING – MATTER REMITTED BACK TO FOR HEARING OF APPELLANT BEFORE

PASSING A SPEAKING ORDER- *S. 51(7) OF PVAT ACT* - **WELSPUN PROJECTS LTD. Vs STATE OF PUNJAB** 338

OFFICIAL LIQUIDATOR

DEALER - SALES TAX – OFFICIAL LIQUIDATOR – WHETHER A 'DEALER' – SALE OF ASSETS OF LIQUIDATING COMPANY TO AUCTION PURCHASER – WHETHER SALES TAX PAYABLE BY OFFICIAL LIQUIDATOR ON SUCH SALE CONSIDERING HIM A DEALER – HELD, YES, AS PER SECTION 2(vi) AND 2(viii) OF THE ACT, ANY PERSON OR ENTITY CARRYING ON ANY ACTIVITY OF SELLING GOODS IS TERMED AS A DEALER – OFFICIAL LIQUIDATOR STEPS INTO THE SHOES OF THE COMPANY, A DEALER AND IS LIABLE TO PAY SALES TAX AS PER RULE 54 OF KGST RULES, 1963 - AS PER SECTION 5(1) OF THE ACT, TRANSACTION IN QUESTION HAS BECOME TAXABLE AT THE FIRST POINT OF SALE AND THE LIABILITY IS TO BE DISCHARGED BY THE OFFICIAL LIQUIDATOR WHO IS THE RECEIVER/MANAGER OF ALL ASSETS - *SECTIONS 2(vi), 2(viii), 5, 5(1), 5A OF KGST ACT 1963, RULE 54 OF KGST RULES 1963.* - **ASSITANT COMMISSIONER, ERNAKULAM Vs. HINDUSTAN URBAN INFRASTRUCTURE LTD** 45

PURCHASE TAX

PURCHASE TAX – KGST ACT – AUCTION PURCHASER – WHETHER LIABLE TO PAY PURCHASE TAX ON ASSETS PURCHASED FROM LIQUIDATING COMPANY – OFFER TO PURCHASE ASSETS OF LIQUIDATING COMPANY EXPRESSLY STATING THAT THE AMOUNT OFFERED WOULD BE INCLUSIVE OF ALL STATUTORY LEVIES SUCH AS SALES TAX, CST, EXCISE DUTY ETC. – OFFER ACCEPTED AND CONFIRMED – INCORPORATION OF SALES TAX REGISTRATION NUMBER REQUESTED BY PURCHASER TO LIQUIDATOR FOR TRANSPORTING THE PURCHASED ASSETS ACROSS STATE BORDERS – REQUEST DECLINED ALLEGING BEFORE THE COURT THAT AUCTION PURCHASER LIABLE TO PAY PURCHASE TAX ON THE TRANSACTION – ON REVIEW BY HIGH COURT HELD, OFFICIAL LIQUIDATOR NOT BEING A DEALER, NO TAX IS PAYABLE BY HIM BUT PURCHASE TAX IS LEVIABLE ON AUCTION PURCHASER U/S 5A OF THE ACT – APPEAL BEFORE SUPREME COURT BY REVENUE – HELD SINCE SALES TAX IS PAYABLE BY LIQUIDATOR AS PER SECTION 5(1) OF THE ACT, NO PURCHASE TAX COULD BE COLLECTED FROM AUCTION PURCHASER – *SECTIONS 5, 5(1), 5A OF KGST ACT 1963.* - **ASSITANT COMMISSIONER, ERNAKULAM Vs. HINDUSTAN URBAN INFRASTRUCTURE LTD** 45

PRECEDENTS – PURCHASE TAX – SUGARCANE – LEVY OF PURCHASE TAX ON SUGARCANE BY DEPARTMENT FOLLOWING SUPREME COURT JUDGEMENT IN CASE 'X' UNDER THE SAME ENACTMENT – TRIBUNAL UPHELD THE ORDER IGNORING ANOTHER SUPREME COURT JUDGEMENT RELIED UPON BY APPELLANT IN CASE 'Y' UNDER A DIFFERENT STATUTE – APPEAL BEFORE HIGH COURT – ARGUMENT RAISED BY APPELLANT BEFORE HIGH COURT NEVER CONSIDERED BY SUPREME COURT WHILE DECIDING CASE 'X' AS CONTENDED- PLEA THAT CASE 'Y' IDENTICAL TO ISSUE OF THE CASE OF APPELLANT AND OUGHT TO HAVE BEEN FOLLOWED – HELD, CASE 'X' IS DIRECTLY ON THE ISSUE BEFORE HIGH COURT UNDER THE SAME ENACTMENT - DIFFERENT VIEW CANNOT BE TAKEN EVEN THOUGH POINT BEING RAISED BEFORE HIGH COURT NOT CONSIDERED BY SUPREME COURT – JUDGMENT 'X' IS A BINDING PRECEDENT - APPEAL DISMISSED – *SEC. 4-B, 4(1) OF PGST ACT; BIHAR FINANCE ACT; PUNJAB SUGARCANE (REGULATION OF PURCHASE AND SUPPLY) ACT, 1953; BIHAR SUGARCANE SUGARCANE (REGULATION OF PURCHASE AND SUPPLY) ACT, 1981* - **AB SUGARS LTD Vs. STATE OF PUNJAB AND ANOTHER** 130

PENALTY

PENALTY – SALE TAX – CONCEALMENT OF SALE – BURDEN OF PROOF – PENALTY LEVIED ON ACCOUNT OF ALLEGED CONCEALMENT OF SALE OF GOODS – APPEAL DISMISSED – WRIT FILED CONTENDING ONUS IS ON DEPARTMENT TO SHOW ASSESSEE'S CONNECTION WITH SUCH TRANSACTION – NO MATERIAL ON RECORD TO SHOW ANY ENQUIRY BEING MADE FROM VEHICLE OWNER REGARDING ALLEGED EXPORT – ASSESSEE NOT CONFRONTED WITH ANY MATERIAL – FAILURE TO PRODUCE MATERIAL TO ESTABLISH NEXUS WITH REMOVAL OF GOODS WITHOUT PAYMENT OF TAX – UNIT BEING EXEMPTED TAKEN INTO ACCOUNT – WRIT ALLOWED – *SEC. 48 OF HGST ACT, 1973* - **CHHATTAR SINGH AND OTHERS Vs. THE STATE OF HARYANA AND OTHERS** 106

ALTERNATIVE REMEDY – JURISDICTION – PENALTY – NOTICE FOR PENALTY ISSUED ALLEGING INGENUINE TRANSACTION – WRIT FILED PRIMARILY CONTENDING THE TRANSACTION TO BE GENUINE – QUESTION OF JURISDICTION OF THE OFFICER IMPOSING PENALTY RAISED ALTERNATIVELY – ENTERTAINING WRIT ON QUESTION OF JURISDICTION NOT APPROPRIATE AT THIS STAGE - MATTER TO BE FIRST CONTESTED ON MERITS –AUTHORITIES TO DECIDE THE SHOW CAUSE NOTICE AFTER REPLY IS FILED AGAINST THE IMPUGNED NOTICE BY PETITIONER – *SEC 51(7)(c) OF PVAT ACT R/W SEC. 7 OF PUNJAB DEVELOPMENT OF TRADE, COMMERCE & INDUSTRIES ORDINANCE, 2015; ARTICLE 226 OF CONSTITUTION OF INDIA* - **MADAN SINGH TODAR SINGH Vs. STATE OF PUNJAB & ORS.** 112

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – INGENUINE DOCUMENTS – JURISDICTION –GOODS IN TRANSIT – INVOICE AND GR PRODUCED DATED 4.2.2014 – UNDERVALUATION SUSPECTED – GOODS DETAINED AND PENALTY IMPOSED – OBSERVED BY TRIBUNAL THAT THE TRANSACTION IN QUESTION RELATED TO PREVIOUS CONTRACT OF APPELLANT – BILL SHOWN WAS OF YEAR 2013 – CURRENT BILL PRODUCED WAS AN AFTERTHOUGHT – CASE OF CLEAR MENSREA - INVOICE BEING UNDERVALUED AND FAKE QUA DATE OF ISSUE CHECK POST OFFICER HELD TO APPEAL HAVE EXCERCISED POWER WITHIN JURISDICTION – PENALTY UPHELD - *SEC 51(7)(b) OF PVAT ACT* - **GODREJ AGROVET LTD. Vs. STATE OF PUNJAB** 249

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – MENSREA – GOODS X AND Y IN TRANSIT – INVOICE REFLECTING ONLY GOODS X IN TWO COUNTS I.E. 150 AND 220 BAGS – MISDESCRIPTION OF GOODS FOUND BY CHECKING OFFICER – SLIGHTLY EXCESS QUANTITY TRANSPORTED – RATE OF TAX APPLICABLE ON X AND Y IS SAME – NO SUBSTANTIAL DIFFERENCE IN VALUE OF GOODS AS SHOWN IN INVOICE AND ACTUALLY FOUND IN TRUCK – VOLUNTARY REPORTING – ELEMENT OF MENSREA RULED OUT – PENALTY QUASHED – APPEAL ACCEPTED – *SEC 51(7)(c) OF PVAT ACT* - **BHARAT CABLES, SANGRUR Vs. STATE OF PUNJAB** 241

PENALTY – CHECK POST/ ROADSIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT DETAINED SUSPECTING UNDERVALUATION AND EXCESS QUANTITY – BILL BOOK PRODUCED - BILLS ISSUED FOR SMALLER AMOUNTS AS COMPARED TO BILL IN QUESTION – TEMPERING OF BILL BOOK SUSPECTED – PENALTY IMPOSED FOR INGENUINE DOCUMENTS – DISMISSAL OF FIRST APPEAL HOLDING THAT PREVIOUS TRANSACTION NOT ENTERED IN ACCOUNT BOOKS AND BILL FOR PRESENT TRANSACTION INSERTED LATER IN ACCOUNT BOOKS – HELD BY TRIBUNAL THAT DIVERGENT BASIS TAKEN BY DESIGNATED OFFICER AND APPELLATE AUTHORITY FOR IMPOSING PENALTY – NON ENTERING OF PREVIOUS TRANSACTION NOT TO BE PENALIZED U/S 51(7)(c) OF THE ACT - NO MENS REA FOUND – NO DEFECT POINTED OUT IN ACCOUNT BOOKS BY PENALIZING OFFICER – NO EVIDENCE REGARDING INSERTION OF BILLS FOR CURRENT TRANSACTION IN BOOKS LATER ON – IMPUGNED ORDER SET ASIDE – PENALTY DELETED AND APPEAL ACCEPTED – *SEC 51(7)(c) OF THE PVAT ACT* - **BHOLA RAM SHRI KRISHAN Vs. STATE OF PUNJAB** 245

PENALTY – EVASION OF TAX – STOCK TRANSFER- PROOF OF GOODS RECEIVED – GOODS IN TRANSIT – NO TAX CHARGED ON GOODS – PENALTY IMPOSED U/S 51(7)(b) OF THE ACT – APPEAL BEFORE TRIBUNAL – STOCK TRANSFER CHALLAN PRODUCED TO SHOW GOODS BEING RETURNED TO HEAD OFFICE – DOUBT RAISED ABOUT THE RECEIPT OF SAME GOODS EARLIER FROM HEAD OFFICE - APPELLANT READY TO PRODUCE RELEVANT DOCUMENTS – MATTER REMITTED – APPEAL ACCEPTED – *SEC 51(7)(b) OF THE PVAT ACT* - **PAN INDIA NETWORK INFRAVEST PVT. LTD Vs. STATE OF PUNJAB** 277

EXCISE DUTY – INSPECTION – PENALTY – REMOVAL OF GOODS – INSPECTION CONDUCTED AT BUSINESS PREMISES – SHORTAGE OF AROUND 14 LAC PIECES OF NUTS AND BOLTS SUSPECTED -CLANDESTINE REMOVAL OF GOODS (PIECES OF NUTS AND BOLTS) WITHOUT ISSUING INVOICE ALLEGEDLY ADMITTED BY APPELLANT – SUBSEQUENT RETRACTION AT FIRST STAGE ITSELF - HUGE AMOUNT COLLECTED FROM MANUFACTURER AND ENCASHED BEFORE CONFIRMATION OF DEMAND- IMPOSITION OF PENALTY - ON APPEAL BEFORE HIGH COURT BY REVENUE HELD THAT CONFESSIONAL STATEMENT WHICH WAS RETRACTED AT FIRST STAGE SHOULD NOT FORM THE BASIS OF PENALTY – NO PHYSICAL INVENTORY MADE BY OFFICERS TO FIND THE SHORTAGE – NO CORROBORATIVE EVIDENCE FOUND TO PROVE CLANDESTINE REMOVAL – PENALTY LEVIED ARBITRARILY – APPEAL DISMISSED – *SEC 11-A OF CENTRAL EXCISE ACT, 1944* - **COMMISSIONER OF CENTRAL EXCISE Vs NEXO PRODUCTS (INDIA)** 188

MENS REA – PENALTY – CHECK POST/ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT FROM SAHNEWAL TO KAPURTHALA – DOCUMENTS SCRUTINIZED – GOODS SHOWN TO BE PURCHASED FROM OUTSIDE INDIA - FAILURE TO FURNISH INFORMATION AT ICC RECORDED – NO E-ICC FURNISHED BY APPELLANT – SUSPECTING EVASION OF TAX ASSUMING GOODS TO BE PURCHASED LOCALLY , PENALTY IMPOSED U/S 51(7)(*c*) OF THE ACT – APPEAL BEFORE TRIBUNAL – RELEVANT CERTIFICATE ISSUED BY CUSTOM AUTHORITIES PRODUCED SHOWING GOODS BEING BROUGHT FROM OUTSIDE INDIA – PAYMENTS MADE THROUGH BANKS – ACCOUNT BOOKS INDICATED NO CONCEALMENT OF TRANSACTION – MERE NON REPORTING AT ICC NOT SUFFICIENT TO ESTABLISH ATTEMPT TO EVADE TAX – FAILURE TO ESTABLISH MENSREA ON PART OF APPELLANT BY AUTHORITIES – APPEAL ACCEPTED AND PENALTY DELETED- *SEC 51 (4),51(7)(c)OF THE PVAT ACT, RULE 64 (B) &(C)OF PVAT RULES* - **RAIL FAB Vs STATE OF PUNJAB** 308

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

PENALTY UPHELD- *SEC13(3) AND SEC 56 OF PVAT ACT AND RULE 20 OF PVAT RULES* - **RELIANCE RETAIL LTD. Vs STATE OF PUNJAB** 296

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX -GOODS SOLD FROM H.P. TO PUNJAB VIDE BILL A – GOODS SOLD TO DELHI PARTY VIDE INVOICE NO. B CARRIED THROUGH ANOTHER VEHICLE – INVOICE A SHOWN AT ICC BEFORE ENTERING PUNJAB – INVOICE C OF AN EARLIER DATE RECOVERED ON SEARCH OF VEHICLE – GOODS DETAINED– SUSPICION RAISED REGARDING INVOICE B AS TO HOW GOODS WERE SENT TO TWO DIFFERENT PLACES THROUGH THE SAME INVOICE – NO EXPLANATION TENDERED BY DRIVER -GOODS RELATING TO INVOICE B PRESUMED TO BE UNLOADED SOMEWHERE IN PUNJAB – NO INFORMATION REGARDING INVOICE C FURNISHED AT THE CHECK POST OF HP AND VEHICLE NOT STOPPED AT ICC MULLANPUR – PENALTY IMPOSED FOR ATTEMPT TO EVADE TAX – APPEAL BEFORE TRIBUNAL – ALLEGATION REGARDING SALE OF GOODS IN PUNJAB REJECTED AS GOODS PERTAINING TO INVOICE B HAD NOT ENTERED PUNJAB YET – CLERICAL ERROR ADMITTED TO HAVE BEEN COMMITTED BY ICC BAROTIWALA WHILE TYPING INVOICE NO B INSTEAD OF A- DRIVER NOT RESPONSIBLE FOR CLERICAL ERROR OF ICC STAFF - INVOICE C HAS NOTHING TO DO WITH CURRENT TRANSACTION IN QUESTION – PENALTY IMPOSED ON TOTAL VALUE OF BOTH INVOICES A &C NOT RIGHT AS THERE IS NO DISCREPANCY REGARDING INVOICE A – NO PENALTY IS HELD TO BE PAYABLE AS DRIVER HAD REQUISITE DOCUMENTS COVERING THE GOODS – PENALTY DELETED – APPEAL ACCEPTED – *SEC 51(7) OF THE PVAT ACT* - **HIM TECHNOFORGE LTD. Vs STATE OF PUNJAB** 289

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS VEHICLE- GOODS(GOLD BARS) CARRIED IN PUBLIC BUS BY TWO PERSONS – SEARCH BY POLICE – PERSONS HANDED OVER TO EXCISE AND TAXATION OFFICER FOR VERIFICATION – NO DOCUMENTS PRODUCED IN RESPECT OF GOODS ALLEGED TO BE SOLD BY DELHI TRADER TO BATALA – PENALTY IMPOSED U/S 51(7)(c) OF THE ACT - APPEAL BEFORE TRIBUNAL – PROCEEDINGS NOT VOID MERELY ON BASIS OF CHECKING BY POLICE AS PERSONS WERE HANDED OVER TO THE CONCERNED OFFICER – INVOICE PRODUCED LATER BORE NO REGISTRATION NUMBER AND WAS ISSUED BY SOME THIRD PARTY – DOCUMENT FOUND MANIPULATED FOR NOT BEING IN CONSONANCE WITH SEC 50 OF DELHI VAT ACT – MERE NON DETENTION OF VEHICLE NOT TO EXONERATE LIABILITY FROM PAYMENT OF TAX AND PENALTY – PERSONS CARRYING GOODS THEMSELVES INCLUDED TO BE CARRIERS OF GOODS AS PER SEC 2(E) OF THE ACT - NON DISCLOSURE AT ICC DUE TO LIFE THREAT ON ACCOUNT OF EXPENSIVE GOODS BEING CARRIED HELD NOT CONVINCING AS DOCUMENTS WERE TO BE ACCOMPANIED ALONGWITH INVARIABLY- PENALTY UPHELD ON BASIS OF ATTEMPT TO EVADE TAX AND MANIPULATED INVOICE – *SEC 51(2), (7)*(c),*OF PVAT ACT; SEC 50 (2) OF DELHI VAT ACT* - **KAARTIKE GOLD ENTERPRISES Vs STATE OF PUNJAB** 313

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – OPPORTUNITY OF BEING HEARD – GOODS IN TRANSIT REACHED ICC– INVOICE IN FAVOUR OF JALANDHAR FIRM – GOODS SUSPECTEDLY MEANT FOR UNLOADING IN BHATHINDA – PENALTY IMPOSED U/S 51(7) ON BASIS OF CONSIGNEE FIRM NOT FUNCTIONING AT GIVEN ADDRESS AND NO ACCOUNT BOOKS PRODUCED BY APPELLANT – APPEAL BEFORE TRIBUNAL – NO SERVICE OF NOTICE UPON APPELLANT BY DETAINING OFFICER – NOTICE ISSUED BY DESIGNATED OFFICER ON EMPLOYEE OF FIRM - NO PROOF OF RECEIPT OF SUCH NOTICE – ABSENCE OF ENQUIRY REPORT INDICATING NON EXISTENCE OF BUSINESS PREMISES AT GIVEN ADDRESS – APPEAL ACCEPTED ON BASIS OF IMPROPER SERVICE OF NOTICE AND LACK OF REASONABLE OPPORTUNITY OF HEARING – MATTER REMITTED BACK TO FOR HEARING OF APPELLANT BEFORE PASSING A SPEAKING ORDER- *S. 51(7) OF PVAT ACT* - **WELSPUN PROJECTS LTD. Vs STATE OF PUNJAB** 338

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – EXCESS GOODS – GOODS(TMT BARS AND PIPES) IN TRANSIT – DOCUMENTS PRODUCED – DISCREPANCY FOUND IN WEIGHMENT SLIP – GOODS FOUND IN EXCESS THAN MENTIONED IN DOCUMENTS – GOODS DETAINED – ADMISSION BY APPELLANT REGARDING EXCESS WEIGHT BEING CARRIED – PENALTY IMPOSED U/S 51(7) OF THE ACT ON THE ENTIRE VALUE OF GOODS AS CARRIED IN TRUCK AND THOSE FOUND IN EXCESS – APPEAL BEFORE TRIBUNAL- ADMISSION REGARDING EXCESS WEIGHT BEING CARRIED NOT PROVED INCORRECT – VAT STOOD PAID ON QUANTITY MENTIONED IN DOCUMENTS – PENALTY TO BE PAID ON THE DIFFERENCE AND NOT THE ENTIRE VALUE OF GOODS – APPEAL ACCEPTED – *S. 51(7) OF PVAT ACT* - **PUNJAB IRON STORE Vs STATE OF PUNJAB** 350

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – INGENUINE INVOICE – GOODS IN TRANSIT – INVOICE PRODUCED ON INTERCEPTION SUSPECTED – STATEMENT OF DRIVER SUBMITTING GOODS BEING LOADED FROM ANOTHER FIRM A – ENQUIRY HELD – ADMISSION BY PARTNER OF FIRM B REGARDING GOODS BEING LOADED FROM ITS PREMISES WITHOUT INVOICE – GOODS DETAINED – INVOICE SHOWING PURCHASE FROM FIRM C PRODUCED DURING PROCEEDINGS BY APPELLANT – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL – INVOICE SHOWN DURING INTERCEPTION REFLECTED GOODS SENT FROM ONE SISTER CONCERN TO ANOTHER IN SAME LOCALITY AND SAME ADDRESS – INVOICE PRODUCED BY APPELLANT LATER APPEARS TO BE MANIPULATED – STATEMENT OF DRIVER HELD TO BE UNTRUE IN THE ABSENCE OF ANY INVOICE SHOWING THE ALLEGED PURCHASE – STATEMENT OF PARTNER OF FIRM C FOUND CORRECT – EVASION OF TAX ATTEMPTED - PENALTY UPHELD– APPEAL DISMISSED – *S. 51(7) OF PVAT ACT* - **SAHIB STEEL INDUSTRIES Vs STATE OF PUNJAB** 355

RECTIFICATION OF MISTAKES – TRIBUNAL - PENALTY – CHECK POST – ATTEMPT TO EVADE TAX- TRIBUNAL UPHELD THE LEVY OF PENALTY U/S 51 – RECTIFICATION APPLICATION FILED – CONTENTION RAISED THAT THE ORDER WRONGLY MENTIONED ABSENCE OF ACCOUNTING FOR TRANSACTION- ARGUMENT REGARDING TRANSACTION BEING DULY ACCOUNTED FOR DURING ASSESSMENT WHICH WAS MUCH BEFORE PASSING OF ORDER OF TRIBUNAL REJECTED – HELD, ACCOUNTING OF TRANSACTION IS SHOWN MONTHS LATER DURING ASSESSMENT THAN THE DATE OF SEIZURE AND LEVY OF PENALTY – OBSERVATION OF TRIBUNAL, THEREFORE, NOT TO BE NEGATED – PENALTY WAS UPHELD ON THE BASIS OF OTHER DISCREPANCIES TOO- RECTIFICATION IS BARRED BY LIMITATION BEING FILED AFTER MORE THAN THREE YEARS – APPEAL DISMISSED – *S.66 & 51OF PUNJAB VAT ACT* - **S.R.M.B. UDYOG Vs STATE OF PUNJAB** 358

PREDEPOSIT

PRE-DEPOSIT – ENTERTAINMENT OF APPEAL – ASSESSMENT - NOTICE – EX-PARTE ASSESSMENT FRAMED – DISMISSAL OF 1ST APPEAL FOR FAILURE OF PRE-DEPOSIT – IMPUGNED ORDER ALLEGED TO BE INVALID – WAIVER OF CONDITION OF PRE-DEPOSIT PLEADED BEFORE TRIBUNAL – NOTICES SERVED BY DEPARTMENT INCOMPLETE – PENALTY ORDER (HANDWRITTEN) PASSED ON 10.6.2014 NEVER DISPATCHED YET TYPED ORDER SHOWN TO BE RECEIVED ON 10.9.2014 THEREBY RAISING SUSPICION – TDN OUGHT TO HAVE BEEN ISSUED ON SAME DAY AS PASSING OF PENALTY ORDER – APPELLANT HELD NOT SERVED PROPERLY – CASE REMITTED BACK TO ETO FOR FRAMING FRESH ASSESSMENT – APPEAL ACCEPTED – *SEC. 29 & 62(5) OF PVAT ACT; RULE 47 OF PVAT RULES* - **BALAJI IMPEX Vs. STATE OF PUNJAB** 230

ASSESSMENT – LIMITATION – APPEAL - PREDEPOSIT – ENTERTAINMENT OF APPEAL – ASSESSMENT FOR THE YEAR 2008-09 FRAMED IN 2013- ADDITIONAL DEMAND RAISED – FIRST APPEAL DISMISSED FOR NON FULFILLMENT OF CONDITION OF PREDEPOSIT – PLEADED BEFORE TRIBUNAL THAT IMPUGNED ORDER OF ASSESSMENT BEING TIME BARRED CONDITION OF PREDEPOSIT OUGHT TO BE WAIVED OFF – HELD BY TRIBUNAL THAT ASSESSMENT COULD BE FRAMED WITHIN SIX YEARS FROM DATE OF FILING OF RETURNS AS PER THE AMENDED SEC 29(4) OF THE ACT – THEREFORE, IMPUGNED ORDER WAS WITHIN LIMITATION PERIOD – APPELLANT GIVEN ONE MONTH'S TIME FOR PREDEPOSIT FOR ENTERTAINMENT OF APPEAL FAILING WHICH ORIGINAL ASSESSMENT ORDER TO PREVAIL – *SEC 29(4) & SEC 62(5)OF PVAT ACT*.- **LARSEN & TOUBRO LIMITED Vs. STATE OF PUNJAB** 253

APPEAL – ENTERTAINMENT OF – PREDEPOSIT – ASSESSMENT – LIMITATION – ASSESSMENT YEAR 2009-10 – ASSESSMENT FRAMED IN YEAR 2013- DISMISSAL OF FIRST APPEAL FOR FAILURE OF PREDEPOSIT U/S 62 OF THE ACT – APPEAL BEFORE TRIBUNAL – CONTENTION REGARDING EXPIRY OF LIMITATION PERIOD RAISED – CONTENTION REJECTED HOLDING THAT LIMITATION IS TO EXPIRE AFTER SIX YEARS AS PER AMENDED SEC 29(4) OF THE ACT – THEREFORE, ASSESSMENT HELD TO BE FRAMED WITHIN THE REQUISITE TIME PERIOD – PLEA TO ADJUST THE AMOUNT DEPOSITED FOR ENTERTAINMENT OF A CONNECTED APPEAL WHICH STOOD ACCEPTED BY TRIBUNAL TOWARDS THE PREDEPOSIT IN THE PRESENT CASE – FIRST APPELLATE AUTHORITY TO DECIDE THE QUESTION OF ADJUSTMENT OF TAX – APPEAL DISMISSED WITH GRANT OF TIME TO APPELLANT TO DEPOSIT 25% OF ADDITIONAL DEMAND RAISED. – *SEC 62(5) AND SEC 29 (4) OF THE PVAT ACT* - **SHANTI SALES (INDIA) PVT. LTD. Vs. STATE OF PUNJAB** 287

PREDEPOSIT – APPEAL - ENTERTAINMENT OF – ADDITIONAL DEMAND RAISED – DISMISSAL OF APPEAL FOR NON COMPLIANCE OF PREDEPOSIT – APPEAL BEFORE TRIBUNAL - CONTENTION RAISED THAT APPELLANT IN POSSESSION OF PURCHASE BILLS WHICH COULD BE CONSIDERED FOR ADJUSTMENT OF ITC TOWARDS THE REQUIREMENT OF PREDEPOSIT —IMPUGNED ORDER REVEALED AVAILING OF INGENUINE ITC – TRIBUNAL HELD THAT ISSUE OF PURCHASE INVOICES COULD BE RAISED DURING ARGUING THE APPEAL – PURCHASE INVOICES NOT TO BE VERIFIED AT THIS STAGE – APPEAL DISMISSED GRANTING TIME TO APPELLANT TO DEPOSIT 25% OF ADDITIONAL DEMAND- *SEC. 13 & SEC 62(5) OF THE PVAT ACT* - **RANJIT PLASTIC INDUSTRIES Vs. STATE OF PUNJAB** 275

APPEAL – PREDEPOSIT – ENTERTAINMENT OF – APPLICATION FILED BEFORE TRIBUNAL FOR WAIVER OF CONDITION OF PREDEPOSIT – VIOLATION OF NATURAL JUSTICE ON ACCOUNT OF LACK OF SUPPLY OF DOCUMENTS BASED ON WHICH DUTY WAS IMPOSED AS WELL AS DEPRIVATION FROM OPPORTUNITY TO CROSS EXAMINE - PRESUMPTION REGARDING PAYMENT SOME DUTY AMOUNT WOULD BE STILL PAYABLE – NO PRIMA FACIE FINDING GIVEN TO REACH THE CONCLUSION – FINANCIAL HARDSHIP OF ASSESSEE NOT CONSIDERED – ASSESSEE DIRECTED TO PAY THE AMOUNT OF PREDEPOSIT FOR MAINTAINABILITY OF APPEAL – APPEAL BEFORE HIGH COURT – ISSUES OUGHT TO HAVE BEEN CONSIDERED BY TRIBUNAL – MATTER REMANDED FOR FRESH CONSIDERATION ON THE QUESTION OF PREDEPOSIT – *SEC 35F OF CENTRAL EXCISE ACT, 1944* - **HR ENTERPRISES / HVR INDUSTRIES PVT. LTD Vs COMMISSIONER OF CENTRAL EXCISE** 191

APPEAL - PREDEPOSIT – ENTERTAINMENT OF – RECTIFICATION - RECTIFICATION ORDER PASSED BY DESIGNATED OFFICER U/S 66 OF THE ACT- DISMISSAL OF FIRST APPEAL FOR NON COMPLIANCE OF SEC 62(5) OF THE ACT - APPEAL BEFORE TRIBUNAL - EXEMPTION CLAIMED FROM CONDITION OF PREDEPOSIT ON THE GROUND THAT THE RECTIFICATION ORDER HAVING BEEN PASSED U/S 66 INSTEAD OF SEC 29(8) IS VOID – SEC 29(8) OF THE ACT

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SUPREME COURT OF INDIA

CIVIL APPEAL NOS. 354-355 OF 2015

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ASSITANT COMMISSIONER, ERNAKULAM
Vs.
HINDUSTAN URBAN INFRASTRUCTURE LTD

H.L. DATTU, C.J.I., AND S.A. BOBDE, J.

13th January, 2015

HF ▶ Revenue

The official liquidator of the liquidating company is a 'dealer' and is liable to pay tax on sale of its assets.

DEALER - SALES TAX – OFFICIAL LIQUIDATOR – WHETHER A 'DEALER' – SALE OF ASSETS OF LIQUIDATING COMPANY TO AUCTION PURCHASER – WHETHER SALES TAX PAYABLE BY OFFICIAL LIQUIDATOR ON SUCH SALE CONSIDERING HIM A DEALER – HELD, YES, AS PER SECTION 2(vi) AND 2(viii) OF THE ACT, ANY PERSON OR ENTITY CARRYING ON ANY ACTIVITY OF SELLING GOODS IS TERMED AS A DEALER – OFFICIAL LIQUIDATOR STEPS INTO THE SHOES OF THE COMPANY, A DEALER AND IS LIABLE TO PAY SALES TAX AS PER RULE 54 OF KGST RULES, 1963 - AS PER SECTION 5(1) OF THE ACT, TRANSACTION IN QUESTION HAS BECOME TAXABLE AT THE FIRST POINT OF SALE AND THE LIABILITY IS TO BE DISCHARGED BY THE OFFICIAL LIQUIDATOR WHO IS THE RECEIVER/MANAGER OF ALL ASSETS - *SECTIONS 2(vi), 2(viii), 5, 5(1), 5A OF KGST ACT 1963, RULE 54 OF KGST RULES 1963.*

PURCHASE TAX – KGST ACT – AUCTION PURCHASER – WHETHER LIABLE TO PAY PURCHASE TAX ON ASSETS PURCHASED FROM LIQUIDATING COMPANY – OFFER TO PURCHASE ASSETS OF LIQUIDATING COMPANY EXPRESSLY STATING THAT THE AMOUNT OFFERED WOULD BE INCLUSIVE OF ALL STATUTORY LEVIES SUCH AS SALES TAX, CST, EXCISE DUTY ETC. – OFFER ACCEPTED AND CONFIRMED – INCORPORATION OF SALES TAX REGISTRATION NUMBER REQUESTED BY PURCHASER TO LIQUIDATOR FOR TRANSPORTING THE PURCHASED ASSETS ACROSS STATE BORDERS – REQUEST DECLINED ALLEGING BEFORE THE COURT THAT AUCTION PURCHASER LIABLE TO PAY PURCHASE TAX ON THE TRANSACTION – ON REVIEW BY HIGH COURT HELD, OFFICIAL LIQUIDATOR NOT BEING A DEALER, NO TAX IS PAYABLE BY HIM BUT PURCHASE TAX IS LEVIABLE ON AUCTION PURCHASER U/S 5A OF THE ACT – APPEAL BEFORE SUPREME COURT BY REVENUE – HELD SINCE SALES TAX IS PAYABLE BY LIQUIDATOR AS PER SECTION 5(1) OF THE ACT, NO PURCHASE TAX COULD BE COLLECTED FROM AUCTION PURCHASER – *SECTIONS 5, 5(1), 5A OF KGST ACT 1963.*

For the liquidation of the company, an official liquidator was appointed by the High Court who invited tenders for sale of assets of company. The auction purchaser offered to buy

expressly stating that the price offered would be inclusive of all statutory levies such as sales tax, CST, excise duty, if any. The offer was accepted and confirmed. Subsequently, the purchaser requested to liquidator to incorporate sales tax registration Number in the sale invoices for transportation of assets across multiple borders which was denied by the liquidator stating that he would neither be collecting nor paying any cess or sales tax in respect of sale effected and that the auction purchaser should be directed by the High Court to meet any expenses or liability towards payment of cess, sales tax etc. when sales becomes payable. It was held by the High Court in review that the official liquidator cannot be treated as a dealer under the Act and is not exigible for payment of sales tax. The court viewed that the auction purchaser is liable to pay purchase tax u/s 5A of the Act.

On appeal before Supreme Court by the revenue, it was contended that the liquidator is liable to pay sales tax on this transaction as he was a dealer. The counsel for the official liquidator argued that since he was only discharging statutory functions of selling assets of the company he cannot be perceived to be carrying 'business' as defined under the Act and is not exigible to tax. It was also alleged that the liability was on the auction purchaser to pay purchase tax. The Hon'ble Court has viewed that as per Section 2(vi) and 2(viii) of the KGST Act, it can be concluded that any person or entity that carries on any activity of selling goods, could be termed as a dealer under the Act. Referring to various cases, it can be concluded that the definition of dealer would include persons involved in carrying on any business or trading activity such as machinery in present case. Therefore, the company in liquidation whose assets are sold by way of auction would be a dealer.

The official liquidator is an officer of the court and steps into the shoes of the company in liquidation. Since the conduct of an auction sale involved transfer of goods it falls within the ambit of Section 2(viii)(f) of the Act. Following the case of Re Mesco Prop, it is held that if tax requires to be collected from the company in liquidation, the liquidator is the proper officer for the same. As per Rule 54 of KGST Rules, liability to pay sales tax would be on the liquidator in the same manner as the dealer i.e. the company in liquidation as the official liquidator is the receiver/manager of the property of the company in liquidation.

As per Section 5 of KGST Act 1963, liability to pay sales tax will be incurred by the company in liquidation, as a dealer, as sales tax is payable on the machinery sold at point of a sale. So transaction in question is exigible to tax under Section 5(1) of the Act. The liability to pay purchase tax as per Section 5A arises if tax is not payable under sub-Sections (1), (2), (3), (4), (5) of Section 5 of the Act.

As regards the liability of the auction purchaser, the auction purchaser is not liable to pay sales tax. The offer of the auction purchaser as accepted by the official liquidator and confirmed by the high Court, was inclusive of all taxes. It would have been the bounden duty of official liquidator to have separated an amount for the payment of taxes under the Act, to avoid any liability.

The appeal is allowed.

Cases referred

1. *Chowringhee Sales Bureau (P) Ld. Vs CIT, (1973) 1 SCC 46.*
2. *State of U.P. vs Unon of India, (2003)3 SCC 239*
3. *State of Tamil Nadu vs Shakti Estates, (1989) 1 SCC 636*
4. *State of Tamil Nadu vs M.K. Kandaswami, (1975)4 SCC 745*
5. *Karya Palak Engineer, CPWD vs Rajasthan Taxation Board, (2004)7 SCC 195.*
6. *State of Orissa v. Titaghur Paper Mills Co. Ltd., 1985 Sipp SCC 280*
7. *Food Corporation of India vs State of Kerala, (1997)3 SCC 410.*
8. *Navlakha & Sons v Ramanuja Das, (1969)3 SCC 537*
9. *Hari Prasad Javantilal & Co. v V.S. Gupta, Income Tax Officer, Ahmedabad and anr. AIR 1966 SC 1481.*
10. *Ajay G. Podar v. Official Liquidator of J.S. & W.M & Others, (2008)14 SCC 217*

Case followed
Re Mesco Properties, (1980)1 All ER 117

Present: For Appellant(s): Mr. V. Giri, Mr. Jogy Scaria

For Respondent(s): Mr. C.S. Rajan, Mr. B. Mohan

****

H.L. DATTU, CJI.

1. Leave granted.

2. The issue that arises for our consideration and decision in the present appeals is whether an "Official Liquidator" is a "dealer" within the meaning of section 2 (viii) of the Kerala General Sales Tax Act, 1963 (for short, "the Act, 1963"), and therefore would be required to collect sales tax in respect of the sales effected by him pursuant to winding up proceedings of a company in liquidation.

3. These appeals are directed against the judgment(s) and order(s) passed by the High Court of Kerala in M.F.A. No.1394 of 2002, dated 11.02.2003, and in Review Petition No.191 of 2003, dated 21.03.2003. The Division Bench of the High Court in review confirmed the finding in M.F.A. No.1394 of 2002 and concluded that the Official Liquidator is not a "dealer" under the Act, 1963. However, by the impugned judgment, the High Court has set aside the finding of the learned Single Judge which held that the machinery purchased in the auction sale conducted by the Official Liquidator is not be liable to be taxed under the Act, 1963. The impugned judgment has further accepted a fresh plea raised by the appellant that the auction purchaser would be liable to pay purchase tax under section 5A of the Act, 1963.

4. It is relevant to state that respondent No.1, that is, Hindustan Urban Infrastructure Ltd., had filed a separate appeal- Civil Appeal No.5048 of 2003 against the specific finding of the High Court in the impugned judgment with regard to the liability to pay purchase tax which was imposed upon the auction purchaser thereunder. This Court has separately dealt with the aforesaid question by its order dated 04.09.2014 in the said civil appeal.

FACTS:-

5. To appreciate the issues involved, it would be necessary to notice the facts leading up to the present appeals. M/s. Premier Cable Company Ltd. (for short, "the Company"), was registered under the Companies Act, 1956 (for short, "the Act, 1956"), and engaged in the manufacturing of PVC power cables, Aluminium conductors, enameled wires, etc. Pursuant to a recommendation by the Board for Industrial and Financial Reconstruction, (for short, "BIFR"), the Company was ordered to be wound up by an order passed by the High Court in C.P. No.2 of 1996, dated 18.06.1998. Respondent No.2, that is, the Official Liquidator attached to the High Court was appointed to take charge of the assets and liabilities of the Company and to deal with the same in accordance with the provisions of the Act, 1956 and the Rules framed thereunder.

6. Pursuant to the aforesaid order, the Official Liquidator issued a notice inviting tenders, in respect of the sale of assets of the Company in liquidation, dated 26.11.2001. The aforesaid assets included land with factory building, workshop building, canteen building, godowns, quarters and other auxiliary buildings and also plant and machinery of the company in liquidation. The Terms and Conditions of the sale of the assets of the Company expressly provided, *inter alia*, that such sale would be subject to confirmation by the High Court and further subject to any subsequent terms and conditions as may be imposed by the High Court.

7. Respondent No.1-auction purchaser, in response to the notice inviting tenders issued by the Official Liquidator, offered to purchase Lot Nos.1-2 for a total amount of Rs.5,76,00,000/- (Rupees Five Crore Seventy Six Lakh only), by an offer letter dated 18.12.2001. It was expressly stated therein that the said amount would be inclusive of all statutory levies such as Sales Tax, Central Sales Tax, Excise Duty, etc., if any, as may be applicable. After accepting the offer so made, the Official Liquidator had placed the same before the learned Judge dealing with the company matters for its confirmation.

8. Subsequent to the confirmation of the said sale, the auction purchaser, being desirous to transport the purchased assets across the border of multiple States, had requested the Official Liquidator to incorporate the relevant sales tax registration numbers in the sale invoices, vide letter dated 29.08.2002. By letter dated 03.09.2002, the Official Liquidator had declined to accede to the request so made.

9. Subsequently, the Official Liquidator filed an affidavit before the learned Single Judge of the High Court, *inter alia*, stating that the Official Liquidator would neither be collecting nor be paying any cess or sales tax in respect of the sale effected by the respondent No.2. It was stated that, in the opinion of the Official Liquidator, the auction purchaser should be directed by the High Court to meet any expenses or liability towards payment of cess, sales tax, etc., if and when the same becomes payable.

10. An application was also filed by the Official Liquidator, in the Company Petition before the learned Singe Judge, *inter alia*, seeking clarification on certain aspects of the matter including whether the auction purchaser would be liable to pay tax on the purchase of goods, pursuant to the auction conducted and further to direct the auction purchaser to pay any tax as may be leviable by the Sales Tax Department. The learned Single Judge after considering the prayers made in the application has passed an order, in C.A. No.293 of 2002 and C.A. No.333 of 2002 in C.P. No.2 of 1996, dated 30.10.2002, wherein it was held that the sale in question cannot be treated as a sale by the Central Government or by a registered dealer entitled to collect tax and further has observed that the auction purchaser cannot be treated as a dealer under the Act, 1963 and further that the said sale in question would not be exigible to sales tax.

11. The Appellant, aggrieved by the order of the learned Single Judge, filed an appeal against the order dated 30.10.2002, *inter alia*, contending that the Official Liquidator would be bound to pay sales tax as and when a sale of the assets of the company in liquidation would be effected by him. The Division Bench of the High Court by an order passed in M.F.A. No.1394 of 2002, observed that the "Official Liquidator" would not fall within the definition of "dealer" under the Act, 1963, dated 11.02.2003. Accordingly the appeal was dismissed and the order of the learned Single Judge was confirmed.

12. Aggrieved by the aforesaid order dated 11.02.2003, the appellant filed Review Petition No.191 of 2003 before the High Court. In the Review Petition, a new plea was advanced by the appellant claiming that even if the Official Liquidator did not fall within the definition of dealer under the Act, 1963, section 5A of the said Act would be attracted insofar as the auction purchaser is concerned.

13. By the impugned judgment(s) and order(s) passed in Review Petition No.191 of 2003, dated 21.03.2003, the High Court held that the Official Liquidator cannot be treated as a dealer under the Act, 1963, and therefore it is not exigible for payment of sales tax. However, the Court was of the view that the auction purchaser is liable to pay purchase tax under section 5A of the Act, 1963.

ISSUES:-

14. The issues that arise for the consideration in the present appeals are *firstly*, whether the Official Liquidator is a "dealer" within the meaning of the Act, 1963, and *secondly*,

whether the Official Liquidator would be required to pay sales tax in respect of sales effected pursuant to a winding up proceedings.

SUBMISSIONS:-

15. Shri V. Giri, learned counsel for the appellant, submits that the consistent stand taken by the Revenue, is that the Official Liquidator is liable to pay sales tax on the transaction in question. He would state that the Official Liquidator was held to be a "dealer" under the Act, 1963 by the learned Single Judge as well as by the Division Bench of the High Court, and that it is only in review that the said finding was reversed. To support the decision of the learned Single Judge and the Division Bench of the High Court, he would rely upon the definition of "dealer" as provided under the Act, 1963 and submit that the Official Liquidator is an agent of the Central Government and therefore would deemed to be a dealer as provided under explanation 2 to section 2(viii)(f) of the Act, 1963. To further substantiate his contention, he would refer to the Statement filed, by the Special Government Pleader (Taxes), appearing for the Sales Tax Authorities, before the learned Single Judge of the High Court, wherein it was categorically stated that the Official Liquidator would be liable to pay tax at the relevant rate under the Act, 1963, whether or not he had collected the same from the auction purchaser.

16. Shri C.S. Rajan, learned counsel for the Official Liquidator- respondent No.2, would support the findings of the High Court in the review petition and state that the Official Liquidator would not be liable to pay any tax under the Act, 1963. He would further state that the liability would in fact be on the auction purchaser who would be exigible to purchase tax under section 5A of the Act, 1963.

17. Shri Rajan would then elaborate upon the nature of the activities carried on by the Official Liquidator and submit that since an Official Liquidator is an officer of the Court, he merely discharges statutory functions imposed upon him and therefore cannot be held liable to pay tax under the Act, 1963. To support this submission, he would further refer to various provisions of the Act, 1956 and the Companies (Court) Rules, 1959 (for short, "the Rules, 1959"). Shri Rajan would lastly submit that since the Official Liquidator discharges statutory functions of selling the assets of the Company in liquidation, he cannot be perceived to be carrying on "business" as defined under the Act, 1963 and thus cannot be exigible to tax.

18. Shri S.K. Bagaria, learned senior counsel for the auction purchaser would submit that the question of payment of purchase tax could not arise because *firstly*, the contention was raised for the first time in the review petition, and *secondly*, the said tax is a single-point levy at the first point of sale. He would contend that the auction purchaser could not be made liable for a tax that was not even imposed or demanded by the competent authority. He would then contend that the Official Liquidator makes the sale on behalf of the Company and not as the owner. Lastly, Shri Bagaria would refer to Rule 54 of the Kerala General Sales Tax Rules, 1963 (for short, "the Rules, 1963") and section 17 of the Central Sales Tax Act, 1956 (for short, "the CST Act") to demonstrate that the liability to pay sales tax was clearly on the Official Liquidator.

19. We have heard the learned counsel for the parties to the lis and also carefully perused the orders passed by the courts and the forums below.

20. The point for the consideration and decision of this Court is whether the Official Liquidator is a "dealer" within the meaning of the Act, 1963, and whether or not he would be required to pay sales tax in respect of sales effected by him pursuant to winding up proceedings.

RELEVANT PROVISIONS:-

21. To appreciate the arguments canvassed it is relevant to notice the relevant provisions. They are- sections 448, 456, 457 of the Act, 1956; Rules 232, 233 of the Rules, 1959; sections 2 (vi), 2 (viii), 5, 5A, 22 of the Act, 1963; and Rule 54 of the Rules, 1963. Since these provisions have been amended from time to time, we have considered the provisions as they were in statute book during the relevant period.

22. Sections 448, 456, 457 of the Act, 1956 deal with the appointment and powers of the Official Liquidator. Section 448 of the Act, 1956 provides for the appointment of an Official Liquidator for the purpose of winding up of a company. The Official Liquidator so appointed conducts the proceedings in the winding up of the company and performs other duties, as the court imposes upon him, in consonance with the provisions of the Act, 1956. Section 456 of the Act, 1956 states that pursuant to a winding up order, the liquidator shall take into his custody or under his control, all the properties, effects and actionable claims to which the company is or appears to be entitled to. By the said provision, all the properties and effects of the company are deemed to be in the custody of the court, from the date of the winding up order. Section 457 of the Act, 1956 lists the powers of the Official Liquidator. The powers include, *inter alia*, to carry on business of the company for its beneficial winding up, to sell the immovable and movable property and actionable claims of the company, by public auction or private contract, and to do all things as may be necessary for winding up the affairs of the company and distribution of its assets. However, the powers conferred by virtue of the section 457 of the Act, 1956, on the liquidator, are subject to the control of the Court.

23. In exercise of the powers conferred by sub-sections (1) and (2) of section 643 of the Act, 1956, the Rules, 1959 were enacted. The relevant rules regarding the collection and distribution of assets in a winding-up by court are found under Rules 232 to 234 of the Rules, 1959. Rule 232 deals with the powers of the Official Liquidator. As per the rule, the duties imposed on the Court under section 467(1) of the Act, 1956 concerning the collection of the assets of the company and the application of the assets in discharge of the company's liabilities must be discharged by the Official Liquidator as an officer of the Court. The discharge of the aforesaid functions would be subject to the control of the Court and to the proviso in section 643(2) of the Act, 1956. Rule 233 states that in discharge of the duties imposed upon the Official Liquidator, pursuant to section 467(1) of the Act, 1956, and for the purpose of acquiring and retaining possession of the property of the company, he must be treated as a Receiver of the property appointed by the Court.

24. Section 2 of the Act, 1963 provides for the meaning of certain expressions in the said Act. Section 2(vi) defines "business" as follows: "(vi) "Business" includes: -

(a) *any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce, or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and*

(b) *any transaction in connection with, or incidental or ancillary to such trade, commerce, manufacture, adventure or concern;"*

25. Section 2(viii) of the Act, 1963 deals with the definition of the term 'dealer' as under:

"(viii) "Dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, transferring the right to use any goods or supplying by way of or as part of any service, any goods directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes, -

(a) [Omitted]

(b) a casual trader;

(c) x x x x

(d) x x x x

(e) x x x x

(f) a person who whether in the course of business or not:

(1) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or deferred payment or other valuable consideration;

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

(3) delivers any goods on hire-purchase or any system of payment by installments;

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

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

Explanation:- (1) A society including a co-operative society, club or firm or an association or body of persons, whether incorporated or not) which whether or not in the course of business, buys, sells, supplies or distributes goods from or to its members for cash or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act;

Explanation: - (2) The Central Government or a State Government, which whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act.

(g) a bank or a financing institution, which, whether in the course of its business or not, sells any gold or other valuable article pledged with it to secure any loan, for the realisation of such loan amount.

Explanation I: - Bank for the purposes of this clause includes a Nationalized Bank or a Schedule Bank or a Co-operative Bank; Explanation II: - Financing Institution means a financing institution other than a bank;"

26. On perusal of the aforementioned definitions, it would appear that the term "business" has been given a broad meaning by including within its ambit both incidental and ancillary transactions. Further, it has also eliminated the requirement of a profit motive as being an essential component. The definition of "dealer" has also been given a wide ambit. It includes any person carrying on business of, *inter alia*, buying, selling, supply or distribution of goods, whether directly or otherwise. All modes of payment whether by way of cash, commission, remuneration or other valuable consideration have been included therein. It also includes, *inter alia*, a casual trader, a non-resident dealer, a commission agent, a broker, an auctioneer and other mercantile agents. Sub-section (f) of the definition further expands the scope of the provision by including within its ambit, an array of transactions, which may or

may not be in the course of business. Section 2(viii)(f)(1) expressly includes, within the definition of a "dealer", a person who whether in the course of business or not transfers any goods, whether in the pursuance of a contract or not, for cash or deferred payment.

27. Section 5 of the Act, 1963 is the charging provision under the said Act and provides for the levy of tax on the sale and purchase of goods. It provides that every dealer, whose total turnover for that year is not less than Rs.2,00,000/-, would be liable to pay tax as per rates and at points as specified in the Schedules to the Act, 1963. The First Schedule to the Act, 1963 would be relevant for the purpose of the present appeal. Serial No.84 of the said Schedule deals with, *inter alia*, Machinery and it provides that the point of levy shall be at the point of first sale in the State by a dealer who is liable to tax under section 5 of the Act, 1963.

28. Section 5A of the Act, 1963 is the charging provision as regard to the imposition of purchase tax. Under the said provision, the purchaser of any goods which may be consumed, used, disposed or dispatched to any place outside the State from a registered dealer will incur liability for payment of purchase tax. The provision amply clarifies that purchase tax would be applicable only in circumstances in which no tax is payable under sub-sections (1), (3), (4) or (5) of section 5 of the Act, 1963.

29. The Rules, 1963, have been enacted in exercise of the powers conferred by section 57 of the Act, 1963. Rule 54 of the Rules, 1963, reads as follows:

> *"54. Liability of Court of Wards, Official Trustee etc.- In the case of business, owned by a dealer whose estate or any portion of whose estate is under the control of Court of Wards, the Administrator General, the official trustee or any Receiver or manager (including any person whatever be his designation, who in fact manages the business on behalf of the dealer) appointed by, or, under any order of a Court, the tax shall be levied upon and recoverable from such Court of Wards, Administrator General, Official Trustee, Receiver or Manager in like manner and on the same terms as it would be leviable upon and recoverable from the dealer if he were conducting the business himself, and all the provisions of the Act and Rules made there under shall apply accordingly."*

30. The aforementioned Rule contemplates a scenario wherein a business, owned by a dealer, is under the control of, *inter alia*, the official trustee or receiver or manager, including any other person who manages the business of the said dealer, who is appointed by an order of a Court. In such an event, tax would be recoverable from such a person who controls the business of the dealer in the same or like manner, as would have been recoverable from the dealer itself.

DISCUSSION:-

31. At the outset, it would be necessary to make reference to the Statement/Affidavit filed by the Special Government Pleader (Taxes), appearing for the Revenue, before the learned Single Judge of the High Court. In the said Statement/Affidavit, the Revenue has stated that a sale by the Official Liquidator, whether by auction or otherwise, is a sale by the Central Government and therefore the Official Liquidator becomes a dealer under the Act, 1963. It was further stated that although tax may be collected only by a registered dealer, the Central Government is empowered to collect tax in the manner a registered dealer is entitled to. The Revenue, in its conclusion therein, has stated that the Official Liquidator would be liable to pay tax at the relevant rate, whether he had collected the same or not.

32. To appreciate the stand of the Revenue, it would be profitable to refer to Section 2(viii) of the Act, 1963 which defines the expression "dealer" as any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, transferring right to use any goods or supplying by way of or as part of any service, any goods

directly or indirectly. The aforementioned activities are carried out for the payment of consideration, in the form of cash, deferred payment, commission, remuneration, etc. Thus, the emphasis under this clause of "carrying on business" is to be understood in a wide sense and not merely restricted to the activity of buying and selling.

33. The expression "business" has been given a wide and inclusive definition, whereby 'any business, trade, commerce or manufacture or any activity of the said nature, whether or not it is carried on with a motive for profit' has been expressly included. It further includes any transaction in connection with such trade, commerce, etc. including within its purview, all ancillary or incidental activities in connection with any trade, commerce, etc.

34. Section 2(viii)(f) further expands the definition of "dealer" enabling a far wider class of persons to fall within its ambit. It includes any person who transfers any goods, transfers property in goods involved in the execution of a works contract, delivers any goods on hire purchase or any system of payment by installments, transfers the right to use any goods for any purpose and lastly, any food or beverage supplier or service provider, fit for human consumption. The Explanation 1 to sub-clause (f) includes a society, club, firm or an association or body of persons, whether incorporated or not. Explanation 2 includes the Central Government, State Government and any of its apparatus within the scope of this section.

35. Therefore, given the exceptionally wide scope of the definition, *prima facie*, it can be concluded that any person or entity that carries on any activity of selling goods, could be categorized as a "dealer" under the Act, 1963. To test the aforesaid conclusion in the context of the issue at hand, we would delve into the interpretation ascribed by this Court to the term "dealer". A careful reading of the definition of "dealer" under the Act, 1963, would make it evident that the legislature intended to provide for an inclusive criterion and broaden the ambit of the said classification. The legislature did not propose to restrict the scope of the term as perceived in common parlance. *(emphasis supplied)*

36. The definition of a dealer under various sales tax legislations has been given a wide import by several decisions of this *Court.* ***In Chowringhee Sales Bureau (P) Ltd. v. CIT, (1973) 1 SCC 4***6, *inter alia*, a challenge was made to the explanation to the definition of "dealer" under the Bengal Finance (Sales Tax) Act, 1941 on the ground that is sought to levy a tax on a person who is neither a seller nor a purchaser. A three- Judge Bench of this Court, rejecting the said challenge, held that the term "dealer" would include an auctioneer who carries on the business of selling and who has in the customary course of business authority to sell goods belonging to the principal. It was further observed that the given explanation sought to tax a transaction of sale of goods. It was held that, a statutory provision providing for a levy of sales tax on a person such as an auctioneer, would be permissible, if there is a close and direct connection between the transaction of sale and the person made liable for the payment of sales tax.

37. In ***State of U.P. v. Union of India, (2003) 3 SCC 239***, this Court held that the Central Government, when involved in the business of buying and selling, could be treated as a "dealer" under the U.P. Sales Tax Act, 1940. The Court observed as follows:

> *"11. ...It is thus clear that in regard to a transfer of the right to use any goods both a person and a Government will be within the ambit of the definition of "dealer" subject to the following distinction: a person to be a "dealer" should carry on the business of buying, selling etc., whether regularly or otherwise, but a Government which buys, sells etc. (whether in the course of business or otherwise) will be a "dealer" for purposes of the U.P. Act. Inasmuch as the definition of "sale" includes any transfer of property in the goods and a transfer of the right to use any goods for any purpose, DoT which engages in transfer of right to use any goods will be a "dealer" within the meaning of sub-clause (iv) of clause (c) of section 2 of the U.P. Act."*

38. In ***State of T.N. v. Shakti Estates, (1989) 1 SCC 636***, this Court while ascertaining whether the assessee could be treated as a dealer gave a wide import to the term under the Tamil Nadu General Sales Tax Act, 1959. The Court observed as follows:

> *"10. Moreover, we have also to give full effect to the definitions in the statute we are concerned with. The definition of a "business" also includes "any transaction in connection with or incidental to or ancillary" to a trade and thus, even on the assessees' own arguments, these activities were incidental and ancillary to the business which the assessee was carrying on or definitely intended to carry on. It is also immaterial, on this definition that the assessees may not have had a "motive of making a profit or gain" on these sales though on the facts, it is clear that such motive must have existed and, in any event, could not be ruled out. The reference to a "casual" dealer in the second definition also renders it immaterial that the assessees may not have intended to be regular dealers in sleepers, timber, firewood or charcoal but that this was something casual or incidental to the acquisition and exploitation of a forest for running a plantation."*

39. In ***State of T.N. v. M.K. Kandaswami, (1975) 4 SCC 745***, this Court while determining the interpretation of the term "dealer" under the Madras General Sales Tax Act, 1959 gave a broad interpretation to include a person who not only carries on business of "selling, supplying or distributing" goods but also the one who carries on the business of "buying" only.

40. In ***Karya Palak Engineer, CPWD v. Rajasthan Taxation Board, (2004) 7 SCC 195***, this Court held that a contractor, despite not being the owner but merely the custodian of the goods, as a dealer under the Rajasthan Sales Tax Act, 1994.

41. In ***State of Orissa v. Titaghur Paper Mills Co. Ltd., 1985 Supp SCC 280***, while ascertaining whether the Central Government or its agents could be treated as be "dealer", this Court observed as follows: "26. What is pertinent to note about the new definition of "dealer" is that in the case of the Central Government, a State Government or any of their employees acting in official capacity on behalf of such Government, it is not necessary that the purchase, sale, supply or distribution of goods should be in the course of business, while in all other cases for a person to be a dealer he must be carrying on the business of purchasing, selling, supplying or distributing goods."

42. In ***Food Corporation of India v. State of Kerala, (1997) 3 SCC 410***, this Court was ascertaining whether the procurement of food grains by the Food Corporation of India, pursuant to levy orders could amount to sale or purchase to incur sales/ purchase tax liability as levied by the States. This Court held that since there was no statutory compulsion in the matter of sale or purchase of fertilizers and parties had the discretion to enter into consensual contractual agreements subject minimal restrictions such as price fixation, quota requirements, etc., there is no hesitation in holding that the activity of distribution of fertilizers, pursuant to levy orders would amount to sale which is eligible to incur tax liability. This Court stated that supply or distribution of goods need not be in course of business to be considered a sale.

43. Thus, on perusal of the aforesaid decisions of this Court, we are of the view that the definition of "dealer" under various sales tax legislations has been given a broad and inclusive interpretation. It would be gainsaid to state that such a broad and expansive interpretation is in consonance with what the legislature intended with regard to imposing sales tax liability on all transactions of sale of goods. Therefore, it can be concluded that the definition of a "dealer" under the Act, 1963, would include persons, if they are involved in carrying on any business or trading activity, such as the sale of machinery as in the present case. Therefore, as a necessary *sequitur*, the Company in liquidation, whose assets are sold by way of an auction, would be a "dealer" under the Act, 1963.

44. Section 5 of the Act, 1963 is the charging provision with regard to imposition of sales tax. It envisages levy of tax on sale or purchase of goods by a dealer. Section 5(1) of the Act, 1963 imposes liability on every dealer whose total turnover for one year is not less than Two Lakh rupees. Section 5(1)(i) enumerates tax liability in case of goods specified in the First or Second Schedule to the Act, 1963 at the rates and only at the points specified against such goods in the said Schedules. Serial No.84(i) of the First Schedule stipulates the rate of tax payable on sale of, *inter alia*, machinery. In this regard, the point of levy of sales tax is at the point of first sale in the State by a dealer who is liable to tax under section 5 of the Act, 1963.

45. Thus, pursuant to section 5 of the Act, 1963, in the case of goods specified in the First and Second Schedule, the single point tax could be levied only at the rates and points specified against such goods in the said Schedules. The First Schedule specifies that the point of levy of tax for the goods in question could be only at the point of first sale in the State by a dealer. In the instant case, the dealer under the Act, 1963 would be liable to pay sales tax for the machinery sold at the point of first sale, as per section 5 read with the First Schedule of the Act, 1963. In light of the above, we are of the considered opinion that the transaction in question in the present appeal would be exigible to tax under Section 5(1) of the Act, 1963.

(emphasis supplied)

46. Section 5-A of the Act, 1963 stipulates certain situations wherein purchase tax could be imposed on any dealer who purchases any goods, either from a registered dealer or from any other person, the sale or purchase of which is liable to tax under Act, 1963. The aforesaid provision however will apply only in circumstances when no tax is payable under sub-sections (1),(3),(4),(5) of section 5. However, as noticed hereinabove, the given transaction is exigible to tax under Section 5(1) of the Act, 1963, and therefore tax liability under Section 5A of the Act, 1963 would not apply to the said transaction. *(emphasis supplied)*

47. Before delving into whether the Official Liquidator could also be treated as a "dealer" under the Act, 1963, it would be apposite to take into account the powers of the Official Liquidator, as provided under the Act, 1956. The Official Liquidator, in generic terms, is an officer appointed to conduct the proceedings and to assist the Court in the winding up of a company.

48. In ***A. Ramaiya, Guide to the Companies Act, 16th Edition (2004)***, while interpreting the powers of the Official Liquidator under section 457 of the Act, 1956 observed as follows:

> *"A liquidator is an agent employed for the purpose of winding up of the company. His principal duties are to take possession of assets, to make out the requisite lists of contributors and of creditors, to have disputed cases adjudicated upon, to realise the assets subject to the control of the court in certain matters and to apply the proceeds on the payments of the company's debts and liabilities in due course of administration, and having done that, to divide the surplus amongst the contributories and to adjust their rights."*

49. Section 457(3) of the Act, 1956 expressly states that the powers of the liquidator are subject to control by the court. The powers conferred upon the liquidator can be exercised by him alone and he cannot authorise any other person to exercise those powers. The expression 'control by court' was discussed by this Court in ***Navlakha & Sons v. Ramanuja Das, (1969) 3 SCC 537***, wherein it was observed that when the liquidator exercises or proposes to exercise any of the powers, a creditor or contributory may apply to the Court with respect of such exercise. It is the duty of the Court to safeguard the interests of the company and its creditors and satisfy itself with the adequacy of the price fetched. It may also be appropriate to consider Rule 232 of the Rules, 1959 which enumerates the duty of an Official Liquidator in the

collection and application of the assets of the company, which is discharged by him as an officer of the Court.

50. In the case of ***Hari Prasad Jayantilal & Co. v. V.S. Gupta, Income Tax Officer, Ahmedabad & Anr., AIR 1966 SC 1481***, this Court held that the liquidator is merely an agent of the company to administer its property for the purposes prescribed by the Act, 1956. The Court held that while distributing the assets, including accumulated profits, the liquidator acts merely as an agent or administrator for and on behalf of the company. The Court observed as follows:

> *"7. ...The property of the Company does not vest in the liquidator: it continues to remain vested in the Company. On the appointment of a liquidator, all the powers of the Board of directors and of the managing or whole-time directors, managing agents, secretaries and treasurers cease (s*. 491), and the liquidator may exercise the powers mentioned in s. 512, including the power to did such things as may be necessary for winding up the affairs of the Company and distributing its assets. The liquidator appointed in a members' winding up is merely an agent of the Company to administer the property of the Company for purpose prescribed by the statute. In distributing the assets including accumulated profits the liquidator acts merely as an agent or administrator for and on behalf of the Company."

51. In ***Ajay G. Podar v. Official Liquidator of J.S. & W.M. & Others, (2008) 14 SCC 17***, this Court considered the question pertaining to bar of limitation under the Act, 1956 for misfeasance proceedings filed by the Official Liquidator. While discussing the powers of the Official Liquidator under section 457(1) of the Act, 1956, the Court was of the view that the Official Liquidator must be authorised to take steps for recovery of assets by the Company Court under the winding up order and the said proceedings must be initiated in the name of the company and on behalf of the company to be wound up. This Court had further opined that the Official Liquidator derives his authority from the provisions of the Act, 1956.

52. It would be beneficial to notice the views of Courts in England insofar as powers of the Official Liquidator during winding up proceedings. In ***Re Mesco Properties, (1980) 1 All ER 117***, the Court of Appeal was ascertaining as to whether a company could incur tax liability in consequence of the realization of its assets after a winding up order was passed and whether the Official Liquidator was the proper officer to incur such liability. The Court, in the ***Re Mesco Properties case*** (supra), at p. 120, observed as follows:

> *"... It must, in my view, be open to a liquidator to apply to the court for guidance upon the question whether, if he discharges a certain liability of the company in liquidation, the payment will be a necessary disbursement within the meaning of rule 195. That is what the liquidator is doing in this case. The company is liable for the tax which is due. The tax ought to be paid. The liquidator is the proper officer to pay it. When he pays it, he will clearly make a disbursement. In my judgment it will be a necessary disbursement within the meaning of the rule. Moreover common sense and justice seem to me to require that it should be discharged in full in priority to the unsecured creditors, and to any expenses which rank lower in priority under rule 195. The tax is a consequence of the realisation of the assets in the course of the winding up of the company. That realisation was a necessary step in the liquidation; that is to say, in the administration of the insolvent estate. The fact that in the event there may be nothing available for the unsecured creditors does not, in my view, mean that the realisation was not a step taken in the interests of all who have claims against the company. Those claims must necessarily be met out of the available assets in due order of priority. Superior claims may baulk inferior ones, but the liquidator's duty is to realise the assets for the benefit of all in accordance with their rights. If in consequence of the*

realisation, the company incurs a liability, the discharge of such liability must, in my judgment, constitute a charge or expense incurred in the winding up within section 267 of the Companies Act 1948 and must also, in my view, fall within rule 195."

53. Further, the House of Lords in ***Ayerst (Inspector of Taxes) v. C & K (Construction) Ltd., (1975) 2 All ER 537***, held that a company, pursuant to a winding up order, ceases to have the custody and control of its assets which are thereafter administered exclusively for the benefit of those persons who are entitled to share in the proceeds of realisation of the assets. The House of Lords elaborately discussed the role of the Official Liquidator in this regard and observed, at p. 177, as follows: *"The functions of the liquidator are thus similar to those of a trustee (formerly official assignee) in bankruptcy or an executor in the administration of an estate of a deceased person. There is, however, this difference: that whereas the legal title in the property of the bankrupt vests in the trustee and the legal title to property of the deceased vests in the executor, a winding-up order does not of itself divest the company of the legal title to any of its assets. Though this is not expressly stated in the Act it is implicit in the language used throughout Part V, particularly in sections 243 to 246 which relate to the powers of liquidators and refer to 'property ... to which the company is... entitled,' to 'property... belonging to the company,' to 'assets... of the company' and to acts to be done by the liquidator 'in the name and on behalf of the company."*

54. In light of the aforesaid, we would conclude that an Official Liquidator- (i) derives its authority from the provisions of the Act, 1956; (ii) acts on behalf of the company in liquidation for the purposes prescribed by the Act, 1956; (iii) is appointed by and is under the control and supervision of the Court while discharging his duties.

55. Having determined the status of an Official Liquidator under the Act, 1963, it would now be appropriate for this Court to look into the nature of liability, if any, imposed on the Official Liquidator for the purposes of taxation. For this purpose, we require to consider Rule 54 of the Rules, 1963 which imposes liability, *inter alia*, on a receiver or manager or other person appointed by an order of the court, in the event that a business owned by a dealer, is under the control of the said receiver or manager or person, whatever be his designation, who in fact manages the business on behalf of the dealer. The aforesaid rule expressly provides that tax shall be levied upon and recoverable from such receiver, manager, etc., in the same manner, as it would be leviable upon and recoverable from the dealer. Such tax liability may be incurred by any person managing or conducting the business on behalf of the dealer. The tax liability incurred by such person will be equivalent to the liability which would be levied upon the dealer if he were conducting such business. Further that under Rule 233 of the Rules, 1959, for the purposes of acquiring and retaining possession of the property of the company in liquidation, the Official Liquidator would be in the same position as a receiver.

56. Since the Official Liquidator is akin to an agent employed for the purpose of winding up of a company, he steps into the shoes of the Directors of the said Company for the purposes of discharging the statutory functions of an Official Liquidator. Thus, during the said proceedings, the Directors cease to exercise any functions from the date on which the Official Liquidator is appointed and all powers and functions for carrying on the business of the company thereafter vest with the official liquidator.

57. Having glanced through the settled principles of law, we would revert back to the controversy in the present appeals. The first issue canvassed before this Court by the learned counsel for the parties to the lis, is whether the Official Liquidator herein would fall under the purview of a "dealer" as defined under the Act, 1963. And secondly, whether the Official Liquidator would be liable to pay sales tax in respect of sales effected by him pursuant to winding up proceedings.

58. In the present case, the Official Liquidator had issued a notice inviting tenders for the sale of the assets of the Company. The offer of the auction purchaser was accepted and duly confirmed by the High Court. However, the dispute herein arose in respect to determination of which party would be exigible to sales tax.

59. From the discussion in the preceding paragraphs, we can conclude an Official Liquidator is an officer of the Court and that for the purpose of discharging statutory obligations imposed under the Act, 1956, the Official Liquidator merely steps into the shoes of the company in liquidation. By virtue of the notice issued by the Official Liquidator for inviting tenders, dated 26.11.2001, it is amply evident that the liquidator intended to conduct a transfer of the said goods in liquidation. Since the conduct of an auctioned sale involved transfer of goods, it falls within the wide ambit of section 2(viii)(f) of the Act, 1963.

(emphasis supplied)

60. The observation of the Court of Appeals in the ***Re Mesco Properties*** case (supra), would appear to be squarely applicable to be present factual matrix, that is, during a winding up proceedings, if tax requires to be collected from the Company in liquidation, the liquidator would be the proper officer to pay the same.

61. This Court has noticed hereinabove that the Company in liquidation is a "dealer" with regard to the sale of its assets by way of an auction under a winding up order. Further, we have noticed the settled law that an Official Liquidator steps into the shoes of the Director of the company in liquidation and performs his statutory functions in accordance with the directives of the Court. Furthermore, Rule 54 of the Rules, 1963 contemplates a situation where a business owned by a dealer, is under the control of a receiver or manager or any other person, irrespective of his designation, who manages the business on behalf of the said dealer. In the said scenario, the said person, in-charge of the business on behalf of the dealer, would be exigible to sales tax in the same manner as it would have been leviable upon and recoverable from the dealer itself. Therefore, it can be concluded that the liability to pay sales tax, in the present case, would be on the Official Liquidator in the same manner as the dealer, that is, the Company in liquidation. *(emphasis supplied)*

62. Pursuant to section 5 of the Act, 1963, the Company in liquidation, as a dealer, will incur liability to pay sales tax at the point of first sale as incurred by any other dealer under the said Act. By placing reliance upon Rule 54 of the Rules, 1963, the liability to pay sales tax is borne by the Official Liquidator as a manager or receiver of the property of the company in liquidation. Therefore, we are of the considered opinion that the Official Liquidator would be required to pay the tax payable on the sale of the assets of the company in liquidation.

63. As regards the liability of the auction purchaser, this Court, in an order passed in Civil Appeal No.5048 of 2003, has observed that in view of facts and circumstances of the case, the auction purchaser would not be liable to pay sales tax. The offer of the auction purchaser, as accepted by the Official Liquidator and confirmed by the High Court, was inclusive of all taxes. It would have been the bounden duty of the Official Liquidator to have separated an amount for the payment of taxes under the Act, 1963 to avoid any liability. It would be gainsaid in repeating that the Special Government Pleader (Taxes), on behalf of the Revenue, before the learned Single Judge of the High Court had clearly stated that the liability to pay sales tax would be on the Official Liquidator.

64. In the result, we allow these appeals and set aside the impugned judgments and orders passed by the High Court.

Ordered accordingly.

SUPREME COURT OF INDIA

CIVIL APPEAL NO. 6770 OF 2004

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COMMISSIONER, CENTRAL EXCISE & CUSTOMS
Vs
LARSEN & TOUBRO LTD.

A.K. SIKRI AND R.F. NARIMAN, JJ.

20th August, 2015

HF ▶ Assessee

In absence of Rules, Charging of tax and Machinery for levy of Service Tax under Finance Act 1994, composite indivisible works contracts are not exigible to service tax before 1/7/07

WORKS CONTRACT - SERVICE TAX – SCOPE OF S. 65 OF FINANCE ACT OF 1994 – WHETHER SERVICE TAX IS LEVIABLE ON COMPOSITE INDIVISIBLE WORKS CONTRACTS PRIOR TO FINANCE ACT OF 2007 – HELD NO-– ACT OF 1994 ONLY LEVIES TAX ON SERVICES SIMPLICITER AND NOT ON COMPOSITE INDIVISIBLE WORKS CONTRACTS –REMOVING THE NON – SERVICE ELEMENTS FROM THE COMPOSITE CONTRACTS BY DEDUCTING FROM GROSS VALUE OF THE WORKS CONTRACT THE VALUE OF PROPERTY IN GOODS TRANSFERRED IN THE EXECUTION OF A WORKS CONTRACT NOT PROVIDED IN THE ACT OF 1994 – PURSUANT TO AMENDMENT RULE 2(A) OF SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006 ENVISAGES SEGREGATING 'GOODS' COMPONENT AND 'SERVICE' COMPONENT FROM THE WORKS CONTRACTS FOR THE FIRST TIME - NO CHARGING OF TAX AND MACHINERY PROVIDED FOR LEVY OF TAX IN THE EARLIER ACT – ABSENCE OF ANY RULES FOR LEVY THEREOF – NOTIFICATION MEANT FOR EXEMPTION OF SERVICE TAX PRIOR TO AMENDED ACT HELD TO BE BASELESS IN VIEW OF SERVICE TAX ITSELF BEING NON EXISTENT PREVIOUSLY – APPEAL ACCEPTED- *ARTICLE 366 (29A) OF CONSTITUTION, S. 64, 65,66 & 67 & 65(105) (zzzza) OF FINANCE ACT, 1994; RULE 2(A) OF SERVICE TAX (DETERMINATION OF VLAUE) RULES, 2006; S. 9(2) CST ACT, 1956*

Facts:

In this case the question arose as to whether Service Tax can be levied on indivisible works contracts prior to the introduction of Finance Act, 2007 which expressly makes such works contracts liable to service tax.

It was contended by the Revenue that after 46th Amendment, after taking out the 'goods' element from such contracts, what remains is "labour and service" element which has been subjected to tax by various entries in the Finance Act, 1994. It is contended that the Act of 1994 contains both the charge of tax as well as the machinery by which labour and service element in these indivisible contracts is taxable as the statute need not do what the

constitutional amendment has already done i.e. splitting the works contracts into one of goods and the other of labour and services.

However, the assessee argued that indivisible contract has to be split into its constituent parts by necessary legislation which would then contain a charge to service tax together with the necessary machinery to enforce such charge which was missing in the said Act. Only cases of pure services were contended to be taxable under the Act of 1994 having no goods element involved.

Held:

In view of judgement passed in case of Second Ganon Dunkerley (1993) 1 SCC 364, it is seen that the splitting of an indivisible contract has to be done by taking into account the eight heads of deduction as given in the constitution. The Act of 1994 is silent on the charging of service tax on that portion of works contracts which contain service element derived from the gross amount charged for works contract minus the value of property in goods. Therefore, it is clear that any charge to tax under five heads in Section 65(105) would only be of service contracts simpliciter and not composite indivisible works contracts. There is no attempt to remove the non – service elements from the composite contracts by deducting from gross value of the works contract the value of property in goods transferred in the execution of a works contract in the Act of 1994.

Relying on the judgements of Larsen and Toubro & Kone Elevator India, it is held that there is no charge to tax of works contracts in the Finance Act, 1994.Various judgements have been discussed which indicate that the statute should clearly state the subject of tax, the rate and the person on whom it is to be levied. Reliance in this regard has been placed in the cases of Mathuram's case;Govind Saran Ganga Saran case and B.C. Srinivasa Setty case.

Infact, post amendment, for the first time section 67 prescribes that where the provision of service is for consideration which is not ascertainable, to be the amount as may be determined in the prescribed manner. Pursuant to this amendment Rule 2(A) has been framed which segregates the "service" component of a works contract from the 'goods' component. It is this scheme which complies with constitutional requirement in bifurcating composite indivisible works contract and sees that no element of property in goods transferred enters while computing service tax.

Moreover, pursuant to the speech made by the Finance Minister in moving the Bill to tax composite works contracts, not only statute was amended and rules framed but a Works Contract Rules, 2007 were notified regarding payment of Service Tax by service providers ranging from 2% to 4% of the gross value of the works contract. Also many services of national interest were excluded while introducing the concept of service tax on indivisible works contracts which were never the subject matter of Finance Act 1994.

The judgement of Mahim Patram Private Ltd. has been wrongly interpreted in concluding that when no rules are framed for computation of tax, tax would still be leviable.

The Supreme court has taken into account the Larsen and Toubro case whereby it has been rightly held that machinery provisions cannot be provided by circulars and therefore, the statute being unworkable, assessments framed thereunder would have no effect.

To sum up: the Act of 1994 does not bifurcate, ascertain and then tax the service elements as it ignores the second Gannon Dunkerley decision of this court. Further, section 67 of the Act of 1994 only speaks of 'gross amount charged' for service provided and not of the works contracts as a whole from which deductions have to be made to arrive at service element. Thus the Act of 1994 does not contain machinery and charge required for levy of service tax on indivisible works contracts. The fact that several exemption notifications have been granted qua service tax levied by the Finance Act, 1994 does not make any difference as the service tax

itself being non existent would render such notifications baseless. The appeals of the assessee are accepted and of the revenue are dismissed.

Cases referred:

- *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., 1959 SCR 379*
- *Builders' Assn. of India v. Union of India, (1989) 2 SCC 645*
- *Mcdowell and Company Ltd. v. Commercial Tax Officer, 1985 (2) SCC 230*
- *M/s Larsen & Toubro Ltd. v. CST,Delhi, 2015-TIOL-527- CESTAT-DEL-LB*
- *Bharat Sanchar Nigam Limited v. Union of India, (2006) 3 SCC 1*
- *Larsen and Toubro Ltd. v. State of Tamil Nadu and Ors., [1993] 88 STC 289*
- *Larsen & Turbo v. State of Orissa, (2008) 012 VST 0031*

Cases followed:

- *Gannon Dunkerley 1993(1) SCC 364*

Cases relied upon:

- *Kone Elevator India (P) Ltd. v. State of T.N., (2014) 7 SCC 1*
- *Larsen & Toubro Ltd. v. State of Karnataka, (2014) 1 SCC 708*
- *Mathuram Agrawal v. State of M.P., (1999) 8 SCC 667*
- *Govind Saran Ganga Saran v. CST, 1985 Supp SCC 205*
- *CIT v. B.C. Srinivasa Setty, (1981) 2 SCC 460*
- *Heinz India (P) Ltd. v. State of U.P., (2012) 5 SCC 443*
- *Shabina Abraham & Ors. v. Collector of Central Excise & Customs, judgment dated 29th July, 2015, in Civil Appeal No.5802 of 2005*
- *State of Jharkhand v. Voltas Ltd., East Singhbhum, (2007) 9 SCC 266*

Case explained:

- *Mahim Patram Private Ltd. v. Union of India, 2007 (3) SCC 668*

Case reversed:

- *G.D. Builders v. UOI and Anr., 2013 [32] S.T.R. 673 (Del.)*

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R.F. NARIMAN, J.

1. This group of appeals is by both assessees and the revenue and concerns itself with whether service tax can be levied on indivisible works contracts prior to the introduction, on 1st June, 2007, of the Finance Act, 2007 which expressly makes such works contracts liable to service tax.

2. It all began with **State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.**, 1959 SCR 379. A Constitution Bench of this Court held that in a building contract which was one and entirely indivisible, there was no sale of goods and it was not within the competence of the State Provincial Legislature to impose a tax on the supply of materials used in such a contract, treating it as a sale. The above statement was founded on the premise that a works contract is a composite contract which is inseparable and indivisible, and which consists of several elements which include not only a transfer of property in goods but labour and service elements as well. Entry 48 of List II to the 7th Schedule to the Government of India Act, 1935 was what was under consideration before this Court in **Gannon Dunkerley**'s case. It was observed that the expression "sale of goods" in that entry has become "*nomen juris*" and that therefore it has the same meaning as the said expression had in the Sale of Goods Act, 1930. In other words, the essential ingredients of a sale of goods, namely, that there has to be an agreement to sell movables for a price, and property must pass therein pursuant to such agreement, are both preconditions to the taxation power of the States under the said entry. This Court, after considering a large number of judgments, ultimately came to the following conclusion:-

> *"To sum up, the expression "sale of goods" in Entry 48 is a* ***nomen juris****, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement. In a building contract which is, as in the present case, one, entire and indivisible — and that is its norm, there is no sale of goods, and it is not within the competence of the Provincial Legislature under Entry 48 to impose a tax on the supply of the materials used in such a contract treating it as a sale." (at page 425)[1]*

3. The Law Commission of India in its 61st Report elaborately examined the law laid down in **Gannon Dunkerley**'s case and suggested that the relevant entry contained in the 7th Schedule to List II to the Constitution of India - Entry 54 - could either be amended; or a fresh entry in the State List could be added; or Article 366 which is a definition clause could be amended so as to widen the definition of "sale", and include therein indivisible composite works contracts. Having regard to the said recommendation of the Law Commission, the Constitution (46th Amendment) Act was passed in 1983 by which Parliament accepted the 3rd alternative of the Law Commission, and amended Article 366 by adding sub-clause (29A). We are concerned with sub-clause (b) of Article 366 (29A) which reads as follows:-

> *366 (29A) "tax on the sale or purchase of goods" includes-*
>
> *(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;*
>
> *and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;*

4. The Constitutional amendment so passed was the subject matter of a challenge in **Builders' Assn. of India v. Union of India, (1989) 2 SCC 645**. This challenge was ultimately repelled and this Court stated:-

> *"... After the 46th Amendment, it has become possible for the States to levy sales tax on the value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of the goods and materials supplied in a building contract which had been entered into in two distinct and separate parts as stated above." (at para 36)*

5. This is the historical setting within which the present controversy arises.

6. Service tax was introduced by the Finance Act, 1994 and various services were set out in Section 65 thereof as being amenable to tax. The legislative competence of such tax is to be found in Article 248 read with Entry 97 of List I of the 7th Schedule to the Constitution of India. All the present cases are cases which arise before the 2007 amendment was made, which introduced the concept of "works contract" as being a separate subject matter of taxation. Various amendments were made in the sections of the Finance Act by which "works contracts" which were indivisible and composite were split so that only the labour and service element of such contracts would be taxed under the heading "Service Tax".

7. Learned counsel for the revenue has essentially raised four arguments before us in which he assails the judgments of various Tribunals and High Courts which have decided against the revenue on this point. According to him, the 46th Amendment has itself divided works contracts by Article 366 (29A)(b). After taking out the "goods" element from such contracts, what remains is the "labour and service" element which, according to him, has been subjected to tax by various entries in the Finance Act, 1994. Further, relying upon Section 23 of the Contract Act and **Mcdowell and Company Ltd. v. Commercial Tax Officer**, 1985 (2) SCC 230, he went on to argue that post 1994 all indivisible works contracts were made with a view to evade or avoid tax and that therefore being contrary to public policy, the principles in **Mcdowell**'s judgment should apply to make such so-called indivisible contracts taxable under the Finance Act, 1994. According to him, the Finance Act, 1994 itself contains both the charge of tax as well as the machinery by which only the labour and service element in these indivisible contracts is taxable, it being his contention that the statute need not do what the constitutional amendment has already done – namely, split the indivisible works contract into a separate contract of transfer of property in goods involved in the execution of the works contract on the one hand, which is taxable by the States, and the labour and services element on the other, which is taxable, according to him, by the Central Government. Further, he argued that the fact that the 2007 Amendment Act has, in fact, defined works contract for the first time and sought to split it, and tax only the element of labour and service would make no difference because, according to him, whatever elements of works contracts were taxable under the Finance Act, 1994 would continue to be taxable and would be untouched by the said amendment.

8. On the other hand, learned counsel for the assessees assailed the judgments of the Tribunals and the High Courts against them, in particular the judgment in **G.D. Builders v. UOI and Anr**., 2013 [32] S.T.R. 673 (Del.), of the Delhi High Court. In answer to revenue's contention, learned counsel argued that a works contract is a separate species known to the world of commerce and law as such. That being so, an indivisible works contract would have to be split into its constituent parts by necessary legislation which would then contain, post splitting, a charge to service tax together with the necessary machinery to enforce such charge. According to learned counsel, not only was there no such charge pre-2007 but there were no machinery provisions as well to bring indivisible works contracts under the service tax net. According to learned counsel, what was taxable under the Finance Act, 1994 was only cases of

pure service in which there was no goods element involved. Further, according to them, for various reasons, the sheet anchor of revenue's case, the Delhi High Court judgment in **G.D. Builders** (supra), was wholly incorrect, and the minority judgment of the judicial members of a Full Bench of the Delhi Tribunal in **M/s Larsen & Toubro Ltd. v. CST,Delhi**, 2015-TIOL-527- CESTAT-DEL-LB, comprehensively discussed all the authorities that were relevant to this issue and arrived at the correct conclusion.

9. We have heard learned counsel for the parties. Before examining the contentions made on the both sides, it will be necessary to set out the Finance Act, 1994 insofar as it pertains to the levy of service tax.

10. ***Section 64. Extent, commencement and application.***

(1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It shall apply to taxable services provided on or after the commencement of this Chapter.

Section 65. Definitions. In this Chapter, unless the context otherwise requires, --

(105) "taxable service" means any service provided-

(g) to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering [but not in the discipline of computer hardware engineering or computer software engineering;

(zzd) to a customer, by a commissioning and installation agency in relation to erection, commissioning or installation;

(zzh) to any person, by a technical testing and analysis agency, in relation to technical testing and analysis;

(zzq) to any person, by a commercial concern, in relation to construction service;

(zzzh) to any person, by any other person, in relation to construction of a complex;

Explanation : For the purposes of this sub-clause, construction of a complex which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorized by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer;"

Section 66. Charge of service tax

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of ten per cent. Of the value of the taxable services referred to in sub-clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn), (zo), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz), (zza), (zzb), (zzc), (zzd), (zze), (zzf), (zzg), (zzh), (zzi), (zzj), (zzk), (zzl), (zzm), (zzn),

(zzo), (zzp), (zzq), (zzr), (zzs), (zzt), (zzu), (zzv), (zzw), (zzx), and (zzy) of clause (105) of section 65 and collected in such manner as may be prescribed.

Section 67. Valuation of taxable services for charging service tax.-

For the purposes of this Chapter, the value of any taxable service shall be the gross amount charged by the service provider for such service rendered by him.

Explanation.1- For the removal of doubts, it is hereby declared that the value of a taxable service, as the case may be, includes,-

a) the aggregate of commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;

b) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;

c) the amount of premium charged by the insurer from the policy holder;

d) the commission received by the air travel agent from the airline;

e) the commission received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;

f) the reimbursement received by the authorized service station from manufacturer for carrying out any service of any automobile manufactured by such manufacturer; and

g) the commission or any amount received by the rail travel agent from the Railways or the customer, but does not include, -

(i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit:

(ii) the cost of unexposed photography film, unrecorded magnetic tape or such other storage devices, if any, sold to the client during the course of providing the service;

(iii) the cost of parts or accessories, or consumables such as lubricants and coolants, if any, sold to the customer during the course of service or repair of motor cars, light motor vehicle or two wheeled motor vehicles;

(iv) the airfare collected by air travel agent in respect 0f service provided by him;

(v) the rail fare collected by rail travel agent in respect of service provided by him;

(vi) the cost of parts or other material, if any, sold to the customer during the course of providing maintenance or repair service;

(vii) the cost of parts or other material, if any, sold to the customer during the course of providing erection, commissioning or installation service; and

(viii) interest on loans.

Explanation 2. - Where the gross amount charged by a service provider is inclusive of service tax payable, the value of taxable service shall be

such amount as with the addition of tax payable, is equal to the gross amount charged."

11. By the Finance Act, 2007, for the first time, Section 65 (105)(zzzza) set out to tax the following:-

"(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation : For the purposes of this sub-clause, "works contract" means a contract wherein,-

i) Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

ii) Such contract is for the purposes of carrying out,-

a) Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

b) Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

c) Construction of a new residential complex or a part thereof; or

d) Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

e) Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"

12. Section 67 of the Finance Act 1994 was amended to read as follows:-

"Valuation of taxable services for charging Service tax –

(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,—

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner."

13. Pursuant to the aforesaid, the Service Tax (Determination of Value) Rules, 2006 were made, Rule 2A of which reads as under:-

"2A. Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation.-For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include,-

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services;

(c) where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy per cent of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub- clauses (A) and (B) including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable' property, service tax shall be

payable on sixty per cent of the total amount charged for the works contract.

Explanation I.-For the purposes of this rule,-

(a) "original works" means-

(l) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(d) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.-For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004."[2]

14. Crucial to the understanding and determination of the issue at hand is the second **Gannon Dunkerley** judgment which is reported in (1993) 1 SCC 364. By the aforesaid judgment, the modalities of taxing composite indivisible works contracts was gone into. This Court said:-

"On behalf of the contractors, it has been urged that under a law imposing a tax on the transfer of property in goods involved in the execution of a works contract under Entry 54 of the State List read with Article 366(29-A)(b), the tax is imposed on the goods which are involved in the execution of a works contract and the measure for levying such a tax can only be the value of the goods so involved and the value of the works contract cannot be made the measure for levying the tax. The submission is further that the value of such goods would be the cost of acquisition of the goods by the contractor and, therefore, the measure for levy of tax can only be the cost at which the goods involved in the execution of a works contract were obtained by the contractor. On behalf of the States, it has been submitted that since the property in goods which are involved in the execution of a works contract passes only when the goods are incorporated in the works, the measure for the levy of the tax would be the value of the goods at the time of their incorporation in the works as well as the cost of incorporation of the goods in the works. We are in agreement with the submission that measure for the levy of the tax contemplated by Article 366(29-A)(b) is the value of the goods involved in the execution of a works contract. In Builders' Association case [(1989) 2 SCC 645 : 1989 SCC (Tax) 317 : (1989) 2 SCR 320] it has been pointed out that in Article 366(29-A)(b), "[t]he emphasis is on the transfer of property in goods (whether as goods or in some other

form)". (SCC p. 669, para 32: SCR p. 347). This indicates that though the tax is imposed on the transfer of property in goods involved in the execution of a works contract, the measure for levy of such imposition is the value of the goods involved in the execution of a works contract. We are, however, unable to agree with the contention urged on behalf of the contractors that the value of such goods for levying the tax can be assessed only on the basis of the cost of acquisition of the goods by the contractor. Since the taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works, the value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in the works and not the cost of acquisition of the goods by the contractor. We are also unable to accept the contention urged on behalf of the States that in addition to the value of the goods involved in the execution of the works contract the cost of incorporation of the goods in the works can be included in the measure for levy of tax. Incorporation of the goods in the works forms part of the contract relating to work and labour which is distinct from the contract for transfer of property in goods and, therefore, the cost of incorporation of the goods in the works cannot be made a part of the measure for levy of tax contemplated by Article 366(29-A)(b).

Keeping in view the legal fiction introduced by the Forty- sixth Amendment whereby the works contract which was entire and indivisible has been altered into a contract which is divisible into one for sale of goods and other for supply of labour and services, the value of the goods involved in the execution of a works contract on which tax is leviable must exclude the charges which appertain to the contract for supply of labour and services. This would mean that labour charges for execution of works, [item No. (i)], amounts paid to a sub-contractor for labour and services [item No. (ii)], charges for planning, designing and architect's fees [item No. (iii)], charges for obtaining on hire or otherwise machinery and tools used in the execution of a works contract [item No. (iv)], and the cost of consumables such as water, electricity, fuel, etc. which are consumed in the process of execution of a works contract [item No. (v)] and other similar expenses for labour and services will have to be excluded as charges for supply of labour and services. The charges mentioned in item No. (vi) cannot, however, be excluded. The position of a contractor in relation to a transfer of property in goods in the execution of a works contract is not different from that of a dealer in goods who is liable to pay sales tax on the sale price charged by him from the customer for the goods sold. The said price includes the cost of bringing the goods to the place of sale. Similarly, for the purpose of ascertaining the value of goods which are involved in the execution of a works contract for the purpose of imposition of tax, the cost of transportation of the goods to the place of works has to be taken as part of the value of the said goods. The charges mentioned in item No. (vii) relate to the various expenses which form part of the cost of establishment of the contractor. Ordinarily the cost of establishment is included in the sale price charged by a dealer from the customer for the goods sold. Since a composite works contract involves supply of materials as well as supply of labour and services, the cost of establishment of the contractor would have to be apportioned between the part of the contract involving supply of materials and the part involving supply of labour and services. The cost of establishment of the contractor which is relatable to supply of labour and services cannot be included in the value of the

goods involved in the execution of a contract and the cost of establishment which is relatable to supply of material involved in the execution of the works contract only can be included in the value of the goods. Similar apportionment will have to be made in respect of item No. (viii) relating to profits. The profits which are relatable to the supply of materials can be included in the value of the goods and the profits which are relatable to supply of labour and services will have to be excluded. This means that in respect of charges mentioned in item Nos. (vii) and (viii), the cost of establishment of the contractor as well as the profit earned by him to the extent the same are relatable to supply of labour and services will have to be excluded. The amount so deductible would have to be determined in the light of the facts of a particular case on the basis of the material produced by the contractor. The value of the goods involved in the execution of a works contract will, therefore, have to be determined by taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would cover—

(a) Labour charges for execution of the works;

(b) amount paid to a sub-contractor for labour and services;

(c) charges for planning, designing and architect's fees;

(d) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;

(e) cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and

(f) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;

(g) other similar expenses relatable to supply of labour and services;

(h) profit earned by the contractor to the extent it is relatable to supply of labour and services. The amounts deductible under these heads will have to be determined in the light of the facts of a particular case on the basis of the material produced by the contractor.

Normally, the contractor will be in a position to furnish the necessary material to establish the expenses that were incurred under the aforesaid heads of deduction for labour and services. But there may be cases where the contractor has not maintained proper accounts or the accounts maintained by him are not found to be worthy of credence by the assessing authority. In that event, a question would arise as to how the deduction towards the aforesaid heads may be made. On behalf of the States, it has been urged that it would be permissible for the State to prescribe a formula on the basis of a fixed percentage of the value of the contract as expenses towards labour and services and the same may be deducted from the value of the works contract and that the said formula need not be uniform for all works contracts and may depend on the nature of the works contract. We find merit in this submission. In cases where the contractor does not maintain proper accounts or the accounts maintained by him are not found worthy of credence it would, in our view, be permissible for the State legislation to prescribe a formula for determining the charges for labour and services by fixing a particular percentage of the value of the works contract and to allow deduction of the amount thus determined from the value

> *of the works contract for the purpose of determining the value of the goods involved in the execution of the works contract. It must, however, be ensured that the amount deductible under the formula that is prescribed for deduction towards charges for labour and services does not differ appreciably from the expenses for labour and services that would be incurred in normal circumstances in respect of that particular type of works contract. Since the expenses for labour and services would depend on the nature of the works contract and would not be the same for all types of works contracts, it would be permissible, indeed necessary, to prescribe varying scales for deduction on account of cost of labour and services for various types of works contracts."(at paras 45, 47 and 49)*

15. A reading of this judgment, on which counsel for the assessees heavily relied, would go to show that the separation of the value of goods contained in the execution of a works contract will have to be determined by working from the value of the entire works contract and deducting therefrom charges towards labour and services. Such deductions are stated by the Constitution Bench to be eight in number. What is important in particular is the deductions which are to be made under sub-paras (f), (g) and (h). Under each of these paras, a bifurcation has to be made by the charging Section itself so that the cost of establishment of the contractor is bifurcated into what is relatable to supply of labour and services. Similarly, all other expenses have also to be bifurcated insofar as they are relatable to supply of labour and services, and the same goes for the profit that is earned by the contractor. These deductions are ordinarily to be made from the contractor's accounts. However, if it is found that contractors have not maintained proper accounts, or their accounts are found to be not worthy of credence, it is left to the legislature to prescribe a formula on the basis of a fixed percentage of the value of the entire works contract as relatable to the labour and service element of it. This judgment, therefore, clearly and unmistakably holds that unless the splitting of an indivisible works contract is done taking into account the eight heads of deduction, the charge to tax that would be made would otherwise contain, apart from other things, the entire cost of establishment, other expenses, and profit earned by the contractor and would transgress into forbidden territory namely into such portion of such cost, expenses and profit as would be attributable in the works contract to the transfer of property in goods in such contract. This being the case, we feel that the learned counsel for the assessees are on firm ground when they state that the service tax charging section itself must lay down with specificity that the levy of service tax can only be on works contracts, and the measure of tax can only be on that portion of works contracts which contain a service element which is to be derived from the gross amount charged for the works contract less the value of property in goods transferred in the execution of the works contract. This not having been done by the Finance Act, 1994, it is clear that any charge to tax under the five heads in Section 65(105) noticed above would only be of service contracts simpliciter and not composite indivisible works contracts.

16. At this stage, it is important to note the scheme of taxation under our Constitution. In the lists contained in the 7th Schedule to the Constitution, taxation entries are to be found only in lists I and II. This is for the reason that in our Constitutional scheme, taxation powers of the Centre and the States are mutually exclusive. There is no concurrent power of taxation. This being the case, the moment the levy contained in a taxing statute transgresses into a prohibited exclusive field, it is liable to be struck down. In the present case, the dichotomy is between sales tax leviable by the States and service tax leviable by the Centre. When it comes to composite indivisible works contracts, such contracts can be taxed by Parliament as well as State legislatures. Parliament can only tax the service element contained in these contracts, and the States can only tax the transfer of property in goods element contained in these contracts.

Thus, it becomes very important to segregate the two elements completely for if some element of transfer of property in goods remains when a service tax is levied, the said levy would be found to be constitutionally infirm. This position is well reflected in **Bharat Sanchar Nigam Limited v. Union of India**, (2006) 3 SCC 1, as follows:-

> *"No one denies the legislative competence of the States to levy sales tax on sales provided that the necessary concomitants of a sale are present in the transaction and the sale is distinctly discernible in the transaction. This does not however allow the State to entrench upon the Union List and tax services by including the cost of such service in the value of the goods. Even in those composite contracts which are by legal fiction deemed to be divisible under Article 366(29-A), the value of the goods involved in the execution of the whole transaction cannot be assessed to sales tax. As was said in Larsen & Toubro v. Union of India[(1993) 1 SCC 364] : (SCC p. 395, para 47) :-*
>
> > *"The cost of establishment of the contractor which is relatable to supply of labour and services cannot be included in the value of the goods involved in the execution of a contract and the cost of establishment which is relatable to supply of material involved in the execution of the works contract only can be included in the value of the goods."*
>
> *For the same reason the Centre cannot include the value of the SIM cards, if they are found ultimately to be goods, in the cost of the service. As was held by us in Gujarat Ambuja Cements Ltd. v. Union of India [(2005) 4 SCC 214] , SCC at p. 228, para 23:-*
>
> > *"This mutual exclusivity which has been reflected in Article 246(1) means that taxing entries must be construed so as to maintain exclusivity. Although generally speaking, a liberal interpretation must be given to taxing entries, this would not bring within its purview a tax on subject- matter which a fair reading of the entry does not cover. If in substance, the statute is not referable to a field given to the State, the court will not by any principle of interpretation allow a statute not covered by it to intrude upon this field." (at paras 88 and 89)*

17. We find that the assessees are correct in their submission that a works contract is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and law as such, and has to be taxed separately as such. In **Gannon Dunkerley**, 1959 SCR 379, this Court recognized works contracts as a separate species of contract as follows:–

> *"To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the learned Judges of the Court below to be. The several forms which such kinds of contracts can assume are set out in Hudson on Building Contracts, at p. 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell, from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment." (at page 427)*

18. Similarly, in **Kone Elevator India (P) Ltd. v. State of T.N.**, (2014) 7 SCC 1, this Court held:-

> *"Coming to the stand and stance of the State of Haryana, as put forth by Mr Mishra, the same suffers from two basic fallacies, first, the supply and installation of lift treating it as a contract for sale on the basis of the overwhelming component test, because there is a stipulation in the contract that the customer is obliged to undertake the work of civil construction and the bulk of the material used in construction belongs to the manufacturer, is not correct, as the subsequent discussion would show; and second, the Notification dated 17-5-2010 issued by the Government of Haryana, Excise and Taxation Department, whereby certain rules of the Haryana Value Added Tax Rules, 2003 have been amended and a table has been annexed providing for "Percentages for Works Contract and Job Works" under the heading "Labour, service and other like charges as percentage of total value of the contract" specifying 15% for fabrication and installation of elevators (lifts) and escalators, is self- contradictory, for once it is treated as a composite contract invoking labour and service, as a natural corollary, it would be works contract and not a contract for sale. To elaborate, the submission that the element of labour and service can be deducted from the total contract value without treating the composite contract as a works contract is absolutely fallacious. In fact, it is an innovative subterfuge. We are inclined to think so as it would be frustrating the constitutional provision and, accordingly, we unhesitatingly repel the same." (at para 60)*

19. In Larsen & Toubro Ltd. v. State of Karnataka, (2014) 1 SCC 708, this Court stated:-

> *"In our opinion, the term "works contract" in Article 366(29- A)(b) is amply wide and cannot be confined to a particular understanding of the term or to a particular form. The term encompasses a wide range and many varieties of contract. Parliament had such wide meaning of "works contract" in its view at the time of the Forty-sixth Amendment. The object of insertion of clause (29-A) in Article 366 was to enlarge the scope of the expression "tax on sale or purchase of goods" and overcome Gannon Dunkerley (1) [State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd., AIR 1958 SC 560 : 1959 SCR 379] . Seen thus, even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract. The additional obligations in the contract would not alter the nature of contract so long as the contract provides for a contract for works and satisfies the primary description of works contract. Once the characteristics or elements of works contract are satisfied in a contract then irrespective of additional obligations, such contract would be covered by the term "works contract". Nothing in Article 366(29-A)(b) limits the term "works contract" to contract for labour and service only. The learned Advocate General for Maharashtra was right in his submission that the term "works contract" cannot be confined to a contract to provide labour and services but is a contract for undertaking or bringing into existence some "works". We are also in agreement with the submission of Mr K.N. Bhat that the term "works contract" in Article 366(29-A)(b) takes within its fold all genre of works contract and is not restricted to one specie of contract*

to provide for labour and services alone. Parliament had all genre of works contract in view when clause (29-A) was inserted in Article 366." (at para 72)

20. We also find that the assessees' argument that there is no charge to tax of works contracts in the Finance Act, 1994 is correct in view of what has been stated above.

21. This Court in **Mathuram Agrawal v. State of M.P.,** (1999) 8 SCC 667, held:-

"Another question that arises for consideration in this connection is whether sub-section (1) of Section 127-A and the proviso to sub-section (2)(b) should be construed together and the annual letting values of all the buildings owned by a person to be taken together for determining the amount to be paid as tax in respect of each building. In our considered view this position cannot be accepted. The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter.

This construction, in our considered view, amounts to supplementing the charging section by including something which the provision does not state. The construction placed on the said provision does not flow from the plain language of the provision. The proviso requires the exempted property to be subjected to tax and for the purpose of valuing that property alone the value of the other properties is to be taken into consideration. But, if in doing so, the said property becomes taxable, the Act does not provide at what rate it would be taxable. One cannot determine the rateable value of the small property by aggregating and adding the value of other properties, and arrive at a figure which is more than possibly the value of the property itself. Moreover, what rate of tax is to be applied to such a property is also not indicated." (at paras 12 and 16)

22. Equally, this Court in **Govind Saran Ganga Saran v. CST**, 1985 Supp SCC 205, held:- "The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity." (at para 6)

23. To similar effect is this Court's judgment in **CIT v. B.C. Srinivasa Setty**, (1981) 2 SCC 460, held:-

> *"Section 45 charges the profits or gains arising from the transfer of a capital asset to income tax. The asset must be one which falls within the contemplation of the section. It must bear that quality which brings Section 45 into play. To determine whether the goodwill of a new business is such an asset, it is permissible, as we shall presently show, to refer to certain other sections of the head, "Capital gains". Section 45 is a charging section. For the purpose of imposing the charge. Parliament has enacted detailed provisions in order to compute the profits or gains under that head. No existing principle or provision at variance with them can be applied for determining the chargeable profits and gains. All transactions encompassed by Section 45 must fall under the governance of its computation provisions. A transaction to which those provisions cannot be applied must be regarded as never intended by Section 45 to be the subject of the charge. This inference flows from the general arrangement of the provisions in the Income Tax Act, where under each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the computation provisions in each case bears a relationship to the nature of the charge. Thus the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt there is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by the construction of a particular computation provision. But the question here is whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to the fundamental integrality of the statutory scheme provided for each head." (at para 10)*

24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.

25. In fact, by way of contrast, Section 67 post amendment (by the Finance Act, 2006) for the first time prescribes, in cases like the present, where the provision of service is for a consideration which is not ascertainable, to be the amount as may be determined in the prescribed manner.

26. We have already seen that Rule 2(A) framed pursuant to this power has followed the second **Gannon Dunkerley** case in segregating the 'service' component of a works contract from the 'goods' component. It begins by working downwards from the gross amount charged for the entire works contract and minusing from it the value of the property in goods transferred in the execution of such works contract. This is done by adopting the value that is adopted for the purpose of payment of VAT. The rule goes on to say that the service component of the works contract is to include the eight elements laid down in the second **Gannon Dunkerley** case including apportionment of the cost of establishment, other expenses and profit earned by the service provider as is relatable only to supply of labour and services. And, where value is not determined having regard to the aforesaid parameters, (namely, in those cases where the books of account of the contractor are not looked into for any reason) by determining in different works contracts how much shall be the percentage of the total amount charged for the works contract, attributable to the service element in such contracts. It is this scheme and this scheme alone which complies with constitutional requirements in that it bifurcates a composite indivisible works contract and takes care to see that no element attributable to the property in goods transferred pursuant to such contract, enters into computation of service tax.

27. In fact, the speech made by the Hon'ble Finance Minister in moving the Bill to tax Composite Indivisible Works Contracts specifically stated:-

> *"State Governments levy a tax on the transfer of property in goods involved in the execution of a works contract. The value of services in a works contract should attract service tax. Hence, I propose to levy service tax on services involved in the execution of a works contract. However, I also propose an optional composition scheme under which service tax will be levied at only 2 per cent of the total value of the works contract."*

28. Pursuant to the aforesaid speech, not only was the statute amended and rules framed, but a Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 was also notified in which service providers could opt to pay service tax at percentages ranging from 2 to 4 of the gross value of the works contract.

29. It is interesting to note that while introducing the concept of service tax on indivisible works contracts various exclusions are also made such as works contracts in respect of roads, airports, airways transport, bridges, tunnels, and dams. These infrastructure projects have been excluded and continue to be excluded presumably because they are conceived in the national interest. If learned counsel for the revenue were right, each of these excluded works contracts could be taxed under the five sub-heads of Section 65(105) contained in the Finance Act, 1994. For example, a works contract involving the construction of a bridge or dam or tunnel would presumably fall within Section 65(105)(zzd) as a contract which relates to erection, commissioning or installation. It is clear that such contracts were never intended to be the subject matter of service tax. Yet, if learned counsel for the revenue is right, such contracts, not being exempt under the Finance Act, 1994, would fall within its tentacles, which was never the intention of Parliament.

30. It now remains to consider the judgment of the Delhi High Court in **G.D. Builders**.

31. In the aforesaid judgment, it was held that the levy of service tax in Section 65(105)(g), (zzd), (zzh), (zzq) and (zzzh) is good enough to tax indivisible composite works contracts. Various judgments were referred to which have no direct bearing on the point at issue. In paragraph 23 of this judgment, the second **Gannon Dunkerley** judgment is referred to in passing without noticing any of the key paragraphs set out hereinabove in our judgment. Also, we find that the judgment in **G.D. Builders** (supra) went on to quote from the judgment

in **Mahim Patram Private Ltd. v. Union of India**, 2007 (3) SCC 668, to arrive at the proposition that even when rules are not framed for computation of tax, tax would be leviable.

32. We are afraid that the Delhi High Court completely misread the judgment in **Mahim Patram's** case. This judgment concerned itself with works contracts being taxed under the Central Sales Tax Act. What was argued in that case was that in the absence of any rule under the provisions of the Central Act, the determination of sale price would be left to the whims and fancies of the assessing authority. This argument was repelled by this Court after setting out Sections 2(g) and 2(ja), which define "sale" and "works contract". The Court then went on to discuss Sections 9(2) and 13(3) of the Central Sales Tax Act. Section 9(2) of the Central Sales Tax Act provides:-

> *"Section 9. Levy and collection of tax and penalties.—*
>
> *(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:*
>
> *Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section."*

33. Section 13(3) of the Central Sales Tax Act says:-

> *"The State Government may make rules, not inconsistent with the provisions of this Act and the rules made under sub-section (1), to carry out the purposes of this Act."*

34. In the aforesaid judgment it was found that Section 9(2) of the Central Sales Tax Act conferred powers on officers of the various States to utilize the machinery provisions of the States' sales tax statutes for purposes of levy and assessment of central sales tax under the Central Act. It was also noticed that the State Government itself had been given power to make rules to carry out the purposes of the Central Act so long as the said rules were not inconsistent with the provisions of the Central Act. It was found that, in fact, the State of Uttar Pradesh had framed such rules in exercise of powers under Section 13(3) of the Central Act as a result of which the necessary machinery for the assessment of central sales tax was found to be there. The Delhi High Court judgment unfortunately misread the aforesaid judgment of this Court to arrive at the conclusion that it was an authority for the proposition that a tax is leviable even if no rules are framed for assessment of such tax, which is wholly incorrect. The extracted passage from **Mahim Patram's** case only referred to rules not being framed under the Central

Act and not to rules not being framed at all. The conclusion therefore in paragraph 36(2) of the Delhi High Court judgment is wholly incorrect. Para 36(2) reads as follows:-

> *"(2) Service tax can be levied on the service component of any contract involving service with sale of goods etc. Computation of service component is a matter of detail and not a matter relating to validity of imposition of service tax. It is procedural and a matter of calculation. Merely because no rules are framed for computation, it does not follow that no tax is leviable." [at para 36]*

35. The aforesaid finding is in fact contrary to a long line of decisions which have held that where there is no machinery for assessment, the law being vague, it would be open to the assessing authority to arbitrarily assess to tax the subject. Various judgments of this Court have been referred to in the following passages from **Heinz India (P) Ltd. v. State of U.P**., (2012) 5 SCC 443. This Court said:-

> *"This Court has in a long line of decisions rendered from time to time, emphasised the importance of machinery provisions for assessment of taxes and fees recoverable under a taxing statute. In one of the earlier decisions on the subject a Constitution Bench of this Court in K.T. Moopil Nair v. State of Kerala [AIR 1961 SC 552] examined the constitutional validity of the Travancore-Cochin Land Tax Act (15 of 1955). While recognising what is now well-settled principle of law that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, this Court found that the enactment in question was violative of Article 14 of the Constitution for inequality was writ large on the Act and inherent in the very provisions under the taxing section thereof. Having said so, this Court also noticed that the Act was silent as to the machinery and the procedure to be followed in making the assessment. It was left to the executive to evolve the requisite machinery and procedure thereby making the whole thing, from beginning to end, purely administrative in character completely ignoring the legal position that the assessment of a tax on person or property is a quasi-judicial exercise."*
>
> *Speaking for the majority Sinha, C.J. said: (K.T. Moopil case [AIR 1961 SC 552] , AIR p. 559, para 9)*
>
> *"9. ... Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher civil court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of Section 3 of the Madras Revenue Recovery Act, 1864, the landholders may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the Executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character." (emphasis supplied)*
>
> *In Rai Ramkrishna v. State of Bihar [AIR 1963 SC 1667] this Court was examining the constitutional validity of the Bihar Taxation on Passengers and*

Goods (Carried by Public Service Motor Vehicles) Act, 1961. Reiterating the view taken in K.T. Moopil Nair [AIR 1961 SC 552] this Court held that a statute is not beyond the pale of limitations prescribed by Articles 14 and 19 of the Constitution and that the test of reasonableness prescribed by Article 304(b) is justiciable. However, in cases where the statute was completely discriminatory or provides no procedural machinery for assessment and levy of tax or where it was confiscatory, the Court would be justified in striking it down as unconstitutional. In such cases the character of the material provisions of the impugned statute may be such as may justify the Court taking the view that in substance the taxing statute is a cloak adopted by the legislature for achieving its confiscatory purpose.

In Jagannath Baksh Singh v. State of U.P. [AIR 1962 SC 1563] this Court was examining the constitutional validity of the U.P. Large Land Holdings Tax Act (31 of 1957). Dealing with the argument that the Act did not make a specific provision about the machinery for assessment or recovery of tax, this Court held: (AIR pp. 1570-71, para 17)

"17. ... if a taxing statute makes no specific provision about the machinery to recover tax and the procedure to make the assessment of the tax and leaves it entirely to the executive to devise such machinery as it thinks fit and to prescribe such procedure as appears to it to be fair, an occasion may arise for the courts to consider whether the failure to provide for a machinery and to prescribe a procedure does not tend to make the imposition of the tax an unreasonable restriction within the meaning of Article 19(5). An imposition of tax which in the absence of a prescribed machinery and the prescribed procedure would partake of the character of a purely administrative affair can, in a proper sense, be challenged as contravening Article 19(1)(f)." (emphasis supplied)

In State of A.P. v. Nalla Raja Reddy [AIR 1967 SC 1458] this Court was examining the constitutional validity of the Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act, 1962 (22 of 1962) as amended by the Amendment Act (23 of 1962). Noticing the absence of machinery provisions in the impugned enactments this Court observed: (AIR p. 1468, para 22)

"22. ... if Section 6 is put aside, there is absolutely no provision in the Act prescribing the mode of assessment. Sections 3 and 4 are charging sections and they say in effect that a person will have to pay an additional assessment per acre in respect of both dry and wet lands. They do not lay down how the assessment should be levied. No notice has been prescribed, no opportunity is given to the person to question the assessment on his land. There is no procedure for him to agitate the correctness of the classification made by placing his land in a particular class with reference to ayacut, acreage or even taram. The Act does not even nominate the appropriate officer to make the assessment to deal with questions arising in respect of assessments and does not prescribe the procedure for assessment. The whole thing is left in a nebulous form. Briefly stated under the Act there is no procedure for assessment and however grievous the blunder made there is no way for the aggrieved party to get it corrected. This is a typical case where a taxing statute does not provide any machinery of assessment." (emphasis supplied)

The appeals filed by the State against the judgment of the High Court striking down the enactment were on the above basis dismissed.

Reference may also be made to Vishnu Dayal Mahendra Pal v. State of U.P. [(1974) 2 SCC 306] and D.G. Gose and Co. (Agents) (P) Ltd. v. State of Kerala [(1980) 2 SCC 410] where this Court held that sufficient guidance was available from the Preamble and other provisions of the Act. The members of the committee owe a duty to be conversant with the same and discharge their functions in accordance with the provisions of the Act and the Rules and that in cases where the machinery for determining annual value has been provided in the Act and the rules of the local authority, there is no reason or necessity of providing the same or similar provisions in the other Act or Rules.

There is no gainsaying that a total absence of machinery provisions for assessment/recovery of the tax levied under an enactment, which has the effect of making the entire process of assessment and recovery of tax and adjudication of disputes relating thereto administrative in character, is open to challenge before a writ court in appropriate proceedings. Whether or not the enactment levying the tax makes a machinery provision either by itself or in terms of the Rules that may be framed under it is, however, a matter that would have to be examined in each case." (at paras 15-21)

36. In a recent judgment by one of us, namely, **Shabina Abraham & Ors. v. Collector of Central Excise & Customs**, judgment dated 29th July, 2015, in Civil Appeal No.5802 of 2005, this Court held:-

"It is clear on a reading of the aforesaid paragraph that what revenue is asking us to do is to stretch the machinery provisions of the Central Excises and Salt Act, 1944 on the basis of surmises and conjectures. This we are afraid is not possible. Before leaving the judgment in Murarilal's case (supra), we wish to add that so far as partnership firms are concerned, the Income Tax Act contains a specific provision in Section 189(1) which introduces a fiction qua dissolved firms. It states that where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Income Tax Act would apply to assessment of such dissolved firm. Interestingly enough, this provision is referred to only in the minority judgment in M/s. Murarilal's case (supra).

The impugned judgment in the present case has referred to Ellis C. Reid's case but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short levy which has been noticed during the lifetime of the deceased and then goes on to state that equally therefore legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court. It flies in the face of first principle when it comes to taxing statutes. It is therefore necessary to reiterate the law as it stands. In Partington v. A.G., (1869) LR 4 HL 100 at 122, Lord Cairns stated:

"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject

within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute". (at paras 26 and 31)

37. We find that the Patna, Madras and Orissa High Courts have, in fact, either struck down machinery provisions or held machinery provisions to bring indivisible works contracts into the service tax net, as inadequate. The Patna High Court judgment was expressly approved by this Court in **State of Jharkhand v. Voltas Ltd., East Singhbhum**, (2007) 9 SCC 266. This Court held:-

"Section 21 of the Bihar Finance Act, 1981, as amended states:

"21. Taxable turnover.—(1) For the purpose of this part the taxable turnover of the dealer shall be that part of his gross turnover which remains after deducting therefrom—

(a)(i) in the case of the works contract the amount of labour and any other charges in the manner and to the extent prescribed;"

Rule 13-A of the Bihar Sales Tax Rules which was also amended by a notification dated 1-2-2000 reads as follows:

"13-A. Deduction in case of works contract on account of labour charges.—If the dealer fails to produce any account or the accounts produced are unreliable deduction under sub-clause (i) of clause (a) of sub-section (1) of Section 21 on account of labour charges in case of works contract from gross turnover shall be equal to the following percentages..."

The aforesaid provisions have been adopted by the State of Jharkhand vide notification dated 15-12-2000 and thus are applicable in the State of Jharkhand.

Interpretation of the amended Section 21(1) and the newly substituted Rule 13-A fell for consideration of a Division Bench of the Patna High Court in Larsen & Toubro Ltd. v. State of Bihar [(2004) 134 STC 354] . The Patna High Court in the said decision observed as under:

"Rule 13-A unfortunately does not talk of 'any other charges'. Rule 13-A unfortunately does not take into consideration that under the Rules the deduction in relation to any other charges in the manner and to the extent were also to be prescribed. Rule 13-A cannot be said to be an absolute follow- up legislation to sub-clause (i) of clause (a) of Section 21(1). When the law provides that something is to be prescribed in the Rules then that thing must be prescribed in the Rules to make the provisions workable and constitutionally valid. InGannon Dunkerley & Co. [(1993) 1 SCC 364 : (1993) 88 STC 204] the Supreme Court observed that as sub-section (3) of Section 5 and sub-rule (2) of Rule 29 of the Rajasthan Sales Tax Act and the Rules were not providing for particular deductions, the same were invalid. In the present matter the constitutional provision of law says that particular deductions would be provided but unfortunately nothing is provided in relation to the other charges either in Section 21 itself or in the Rules framed in exercise of the powers conferred by Section 58 of the Bihar Finance Act.

***

In our considered opinion sub-clause (i) of clause (a) of Section 21(1) read with Rule 13-A of the Rules did not make sub- clause (1) fully workable because the manner and extent of deduction relating to any other charges has not been provided/prescribed by the State." (at paras 9-12)

38. Similarly, the Madras High Court in **Larsen and Toubro Ltd. v. State of Tamil Nadu and Ors.**, [1993] 88 STC 289, struck down Rules 6A and 6B of the Tamil Nadu General Sales Tax Rules as follows:-

"…The eight principles are the criteria and the norms which every State legislation has to conform as per the decision of the apex Court which has been already adverted to by us supra. In addition thereto, we have also referred to at considerable length the particular reasons assigned by the apex Court while striking down section of the Rajasthan Sales Tax Act and rule 29(2) of the Rules made thereunder. The impugned rules 6-A and 6- B of the Rules, in our view, do not pass the above vital and essential test and the basic requirements laid down by the ratio of the decision of the apex Court in Gannon Dunkerley's case supra; . The impugned rules are squarely opposed to the ratio of the said decision and particularly the ratio laid down in conclusion Nos. 1, 2, 3, 6 and 7 of the decision in Gannon Dunkerley's case [1993] 88 STC 204 supra; and also reiterated by the apex Court in the second Builders Association of India case [1993] 88 STC 248 (SC); [1992] 2 MTCR 542. In the light of the above, we see no merit in the stand taken for the respondents relying upon the decisions reported in [1957] 8 STC 561 (SC) (A. V. Fernandez v. State of Kerala) and [1969] 23 STC 447 (Mad.) (Kumarasamy Pathar v. State of Madras) that the omission to exclude certain items relating to non-taxable turnovers is of no consequence and does not affect or undermine the validity of the impugned proceedings. Consequently, applying the ratio of the above decisions, we hereby strike down rules 6-A and 6-B as illegal and unconstitutional, besides being violative of sections 3 to 6, 14 and 15 of the Central Sales Tax Act and consequently unenforceable.

The provisions of section 3-B merely levied the tax on the transfer of property in goods involved in the execution of the works contract. The assessment, determination of liability and recovery had to be under the provisions of the Act read with the relevant rules. In exercise of rule-making power conferred under section 53(1) and (2)(bb), rules 6-A and 6-B came to be made and published. The rules miserably failed to provide the procedure and principles for effectively determining the taxable turnover, after excluding the items of turnover relating to such works contract which could not be subjected to levy of tax by the State in exercise of its power of legislation under entry 64 of the State List. Rule 6 by its own operation had no application in the matter of determination of liability under section 3- B since it has been made applicable only in respect of determining the taxable turnover of a dealer under section 3, 3- A, 4 or 5. Consequently, with our decision above striking down rules 6-A and 6-B of the Rules, there is no proper machinery provisions to determine the taxable turnover for purposes of section 3-B. The provisions of section 3-B, therefore, in the absence of the necessary rules for enforcing the same and determining the taxable turnover for the purposes of section 3- B is rendered dormant, ineffective and unenforceable. Such would be the position till

sufficient provisions are made either in the Act itself or in the rules by virtue of the rule-making power to ignite, activate and give life and force to section 3-B of the Act." (at paras 32, 33)

39. And the Orissa High Court in **Larsen & Turbo v. State of Orissa**, (2008) 012 VST 0031, held that machinery provisions cannot be provided by circulars and held that therefore the statute in question, being unworkable, assessments thereunder would be of no effect.

40. Finally, in para 31, the Delhi High Court holds:-

"The contention of the petitioners that the impugned notifications override the statutory provisions contained in Section 65(105), which defines the term "taxable service", Section 66, which it is claimed is a charging section, and Section 67, the valuation provisions of the Finance Act, 1994, has to be rejected. We have, as already stated above, rejected the argument of the petitioners on bifurcation/vivisect and held that as per the provisions of Section 65(105)(zzq) and (zzzh), service tax is payable and chargeable on the service element of the contract for construction of industrial and commercial complexes and contract for construction of complexes as specified and in case of a composite contract, the service element should be bifurcated and ascertained and then taxed. The contention that the petitioners are paying sales tax or VAT on material in relation to execution of the contract under composite contracts for construction of industrial/commercial complexes and construction contracts as specified under Section 65(105)(zzq) and (zzzh) therefore fails. The contention that there was/is no valid levy or the charging section is not applicable to composite contracts under clauses (zzq) and (zzzh) of Section 65(105) stands rejected. But the petitioners have rightly submitted that only the service component can be brought to tax as per provisions of Section 67 which stipulates that value of taxable service is the "gross amount charged" by the service provider for such services provided or to be provided by him and not the value of the goods provided by customers of service provider and the service tax cannot be charged on the value of the goods used in the contract."

41. We are afraid that there are several errors in this paragraph. The High Court first correctly holds that in the case of composite works contracts, the service elements should be bifurcated, ascertained and then taxed. The finding that this has, in fact, been done by the Finance Act, 1994 Act is wholly incorrect as it ignores the second Gannon Dunkerley decision of this Court. Further, the finding that Section 67 of the Finance Act, which speaks of "gross amount charged", only speaks of the "gross amount charged" for service provided and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. We find therefore that this judgment is wholly incorrect in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contracts.

42. It remains to consider the argument of Shri Radhakrishnan that post 1994 all indivisible works contracts would be contrary to public policy, being hit by Section 23 of the Indian Contract Act, and hit by Mcdowell's case.

43. We need only state that in view of our finding that the said Finance Act lays down no charge or machinery to levy and assess service tax on indivisible composite works contracts, such argument must fail. This is also for the simple reason that there is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services.

44. We have been informed by counsel for the revenue that several exemption notifications have been granted qua service tax "levied" by the 1994 Finance Act. We may only state that whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise. With these observations, these appeals are disposed of.

45. We, therefore, allow all the appeals of the assessees before us and dismiss all the appeals of the revenue.

SUPREME COURT OF INDIA

CIVIL APPEAL NO. 5802 OF 2005

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SHABINA ABRAHAM & ORS.
Vs
COLLECTOR OF CENTRAL EXCISE & CUSTOMS

A.K. SIKRI AND R.F. NARIMAN, JJ.

29th July, 2015

HF ▶ Appellant

There being no machinery provisions in the Act, excise duty is not recoverable from the legal heirs of the deceased manufacturer.

**EXCISE DUTY – CENTRAL EXCISE AND SALT ACT - ASSESSMENT – DEATH OF ASSESSEE – WHETHER ASSESSMENT PROCEEDINGS TO CONTINUE AGAINST THE LEGAL HEIRS OF THE DECEASED MANUFACTURER – HELD NO – ABSENCE OF MACHINERY PROVISIONS IN THE ACT – NO SUMS ARE PAYABLE U/S 11 AS NO MACHINERY PROVISIONS INCORPORATED IN THE ACT – PROCEEDINGS TO ASSESS AND COLLECT TAX ABATE WITH THE DEATH OF THE ASSESSEE - LEGAL HEIRS WHO ARE NOT PERSONS CHARGEABLE TO DUTY UNDER THE ACT CANNOT BE BROUGHT WITHIN THE AMBIT OF ACT BY STRETCHING ITS PROVISIONS- PRINCIPLES OF MORALITY WITH RESPECT TO UNLAWFUL ENRICHMENT NOT RELEVANT - *S.11 AND 11 A OF CENTRAL EXCISE AND SALT ACT, 1944*

ASSESEE – MEANING OF – CENTRAL EXCISE AND SALT ACT - 'ASSESSEE' IN SECTION 4(3)(*a*) OF CENTRAL EXCISE AND SALT ACT, MEANS A PERSON WHO IS LIABLE TO PAY DUTY OF EXCISE UNDER THIS ACT – LIVING PERSON ONLY LIABLE TO PAY IT - NOTICE SERVED IS ONLY ON THE PERSON CHARGEABLE WITH EXCISE DUTY – LEGAL HEIRS OF DECEASED NOT WITHIN THE AMBIT OF THE TERM ASSESSEE – *S. 4(3)(a) OF THE CENTRAL EXCISE AND SALT ACT.*

Facts

Mr. GV was the sole proprietor of a business of manufacturing of tread rubber. It was alleged that for the period 1983 to 1985, he had made clandestine removal of goods with an attempt to evade excise duty. Duty together with penalty was sought to be imposed. Pursuant to his death in 1989, a show cause notice was served on his wife and daughters to make submissions regarding the demand of duty which was challenged by them as being without jurisdiction. Since the authorities did not pass an order on the maintainability of the notice, the legal heirs filed a writ before the high court. The High Court quashed the proceedings due to absence of provisions to continue assessment proceedings against the legal heirs. However, the Division Bench reversed the order of the single judge. An appeal is filed before the Supreme Court.

Held

1) *Following the case of Ellis C. Reid it is held that 'assessee' in section 4(3)(a) of Central Excise and Salt Act, means a person who is liable to pay duty of excise under this Act. The present tense used suggests that the liability to pay it is only on the living person. The 'means and includes' definition is exhaustive in nature and there is no scope to read anything further into the said definition. The notice served is only on the person chargeable with excise duty.*

2) *The counsel for the revenue argued that as per section 11, attachment and sale of excisable goods can belong to a dead person and can continue despite death of such person. The Supreme Court rejected this contention and held that S. 11 is limited to recovery of sums due to the government and modes of recovery. It does not deal with the machinery provision for assessment the hands of the estate of a dead person. The insertion of proviso also shows that nothing can be read in the Act by implication. The sums have to be first payable, only then the provisions get attracted. The duty and sums do not become payable without the machinery provisions.*

3) *Following the case of Jullunder Vegetables Syndicate, it is held that in the absence of machinery provision to assess and collect tax from a deceased person, all proceedings against such deceased person abate.*

4) *Distinguishing the case of Muralilal Mahabir Prasad, it is held that In the present case an individual proprietor has died naturally and it is nobody's case that h has maneuvered his own death to evade excise duty. The Revenue has asked to stretch the machinery provisions in the Central Excise and Salt Act on the basis of conjectures and surmises which is not possible.*

5) *The counsel for the revenue has also relied upon the definition of 'person' under the General Clauses Act, 1897. But 'person' does not include legal representatives of persons who are dead.*

6) *The argument that S.6 of the Central Excise Act which prescribes a procedure of registration also does not throw any light on the question regarding dead person's assessment continuing after death in respect of excise duty.*

7) *The contention that the general principle of law states that an action begun in court of law does not cease with his death is also not applicable in this case.*

8) *Approving the case of Dhiren Gandhi, it is held that legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. To apply the moral principle of unlawful enrichment flies in the face of first principles when it comes to taxing statutes.(case relied upon Parington v. A.G.)*

9) *Judgements passed in Cape Brandy Syndicate and Modi Sugar Mills are approved wherein it has been held that nothing can be implied. Only language of the Act used is to be looked at. Therefore, appeal is allowed and judgement passed by Division bench of High court is set aside.*

Cases approved:

- *Additional Tahsildar, Raipur v. Gendalal, (1968) 21 STC 263.*
- *Cape Brandy Syndicate v. IRC, (1921) 1 KB 64 at 71*
- *Commissioner of Central Excise, Bangalore –III v. Dhiren Gandhi, 2012 (281) E.L.T. 64 (Karnataka)*

Cases referred:

- *C.A. Abraham v. The Income-Tax Officer, Kottayam & Another, AIR 1961 SC 609 at 612 para 6: (1961) 2 SCR 765 at page 771*
- *Bengal Immunity Co. Ltd. v. State of Bihar (1955) 6 STC 446*
- *Commissioner of Income Tax v. Amarchand N. Shroff, [1963] 48 I.T.R. 59*
- *Commissioner of Income-tax, Madras v. S.V. Angidi Chettiar (1962) 44 ITR 739 (SC)*
- *Commissioner of Income Tax v. Darabsha Nasarwanji Mehta, 1935 A.I.R. Bombay 167*
- *Commissioner of Income Tax, Bombay v. James Anderson, [1964] 51 I.T.R. 345*
- *Commissioner of Sales Tax, Delhi & Others v. Shri Krishna Engineering Co. & Others, (2005) 2 SCC 695, page 702, 703 paras 19 to 23*
- *Girja Nandini Devi & Ors. v. Bijendra Narain Choudhury, [1967] 1 S.C.R. 93 at paragraph 15*
- *Shri Rameshwar Manjhi v. Management of Sangramgarh Colliery & Ors., (1994) 1 SCC 292*
- *State of Tamil Nadu v. M.K. Kandaswami & Others, Air 1975 SC 1871 (para 26): (1975) 4 SCC 745 (para 26)*
- *Wallace Brothers & Co. Ltd. v Commissioner of Income-tax (1948) 16 ITR 240 (PC)*
- *Yeshwantrao v. The Commissioner of Wealth Tax, Bangalore, AIR 1967 SC 135*
- *Whitney v. Commissioners of Inland Revenue (1925) 10 TC 88 (HL)*

Case distinguished:

- *Murarilal Mahabir Prasad and others v. Shri B.R. Vaid and others, (1975) 2 SCC 736*

Cases Relied upon:

- *Commissioner of Income Tax, Bombay v. Ellis C. Reid, A.I.R. 1931 Bombay 333*
- *Commissioner of Sales Tax Commissioner, Uttar Pradesh v. Modi Sugar Mills, 1961 (2) SCR 189 at 198*
- *Khushi Ram Behari Lal & Co. v. Assessing Authority, Sangrur, (1967) 19 STC 381*
- *Partington v. A.G., (1869) LR 4 HL 100 at 122*
- *State of Punjab v. Jullunder Vegetables Syndicate, [1966] 2 S.C.R. 457*

Present:

For Appellant(s): Mr. Rajshekhar Rao,Adv.
Mr. Atul Shankar Vinod,Adv.
Mr. Varun Mishra,Adv.
Mr. M. P. Vinod,Adv.

For Respondent(s) Mr. A.K.Panda,Sr.Adv.
Mr. Rajiv Nanda,Adv.
Mr. B. Krishna Prasad,Adv.
Mr. Surendra Kumar Gupta,Adv.
Ms. Disha Singh,Adv.

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R.F. NARIMAN, J.

1. *"Nothing is certain except death and taxes."* Thus spake Benjamin Franklin in his letter of November 13, 1789 to Jean Baptiste Leroy. To tax the dead is a contradiction in terms. Tax laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such person's property. This appeal raises questions as to whether the dead person's property, in the form of his or her estate, can be taxed without the necessary machinery provisions in a tax statute. The precise question that arises in the present case is whether an assessment proceeding under the Central Excises and Salt Act, 1944, can continue

against the legal representatives/estate of a sole proprietor/manufacturer after he is dead. The facts of the case are as follows.

2. One Shri George Varghese was the sole proprietor of Kerala Tyre and Rubber Company Limited. By October 1985, this proprietary concern had stopped manufacture and production of tread rubber. By a show cause notice dated 12.6.1987, for the period January 1983 to December 1985, it was alleged that the assessee had manufactured and cleared tread rubber from the factory premises by suppressing the fact of such production and removal with an intent to evade payment of excise duty. The provisions of Section 11A, as they then stood, of the Central Excises and Salt Act were invoked and duty amounting to Rs.74,35,242/- was sought to be recovered from the assessee together with imposition of penalty for clandestine removal.

3. On 14.3.1989, the said Shri George Varghese died. As a result of his death, a second show cause notice was issued on 18.10.1989 to his wife and four daughters asking them to make submissions with regard to the demand of duty made in the show cause notice dated 12.6.1987. By their reply dated 25.10.1989, the said legal heirs of the deceased stated that none of them had any personal association with the deceased in his proprietary business and were not in a position to locate any business records. They submitted that the proceedings initiated against the deceased abated on his death in the absence of any provision in the Central Excises and Salt Act to continue assessment proceedings against a dead person in the hands of the legal representatives. The said show cause notice was, therefore, challenged as being without jurisdiction.

4. As the Central Excise Authorities posted the matter for hearing and refused to pass an order on the maintainability of the show cause notice alone, the legal heirs approached the High Court under Article 226 of the Constitution by filing a Writ Petition in January, 1990. The learned single Judge of the High Court quashed the proceedings against the legal heirs stating that the Central Excises and Salt Act did not contain any provisions for continuing assessment proceedings against a dead person. Against this, revenue went in appeal. The Division Bench of the High Court of Kerala reversed the single Judge's judgment.

5. Shri Rajshekhar Rao, learned counsel appearing for the legal heirs made submissions before us with great clarity and persuasiveness. He submitted that a reading of Sections 2(f), (3), Section 4(3)(a), Section 11 and 11A as they stood at the relevant time would show that unlike the provisions of the Income Tax Act, there is no machinery provision in the Central Excises and Salt Act for continuing assessment proceedings against a dead individual. He stressed the fact that an assessee under the said Act means "the person" who is liable to pay the duty of excise under this Act and further stressed the fact that in cases of short levy, such duty can only be recovered from a person who is chargeable with the duty that has been short levied. He further invited our attention to the Central Excise Rules and Rules 2(3) and 7 in particular to buttress his submission that there is no machinery provision contained either in the Act or in the Rules to proceed against a dead person's legal heirs. He cited certain judgments before us which we will advert to later on in this judgment.

6. Shri A.K. Panda, learned senior advocate appearing on behalf of the revenue contended that a close reading of Section 11 of the Central Excises and Salt Act will indicate that sums are recoverable from an assessee by an attachment and sale of excisable goods belonging to such assessee and further that if the amount so recoverable falls short, it can be recovered from the person himself as an arrear of land revenue. Inasmuch as a dead man's property can be attached and sold and proceeded against, it is clear that the necessary machinery is contained in the Central Excises and Salt Act. His further submission is that Section 11A of the said Act is a machinery provision and, therefore, the rule to be applied is that that construction should be preferred which makes a machinery Section workable. He also

referred us to the definition of "person" in Section 3(42) of the General Clauses Act to buttress his submission that a legal representative would be included within a "person" as so defined. He referred us to Section 6 of the said Act dealing with registration and argued that registration of a person makes him a legal entity liable to be assessed as such. His other submission is that the general principle, namely, that a cause of action abates when a person who institutes a proceeding dies is not applicable in the present case and cited various judgments before us in support of the said principle. He also submitted that the position under the Income Tax Act would be entirely different as income tax is a tax leviable on a person whereas a duty of excise is leviable on manufacture of goods. He also cited a number of decisions which will be dealt with in the course of this judgment.

7. We have heard learned counsel for the parties. Before entering into a discussion on the merits of the case, it is necessary to set out the statutory provisions contained in the Central Excises and Salt Act at the relevant time, which are given below:-

> ***2****(f) "manufacture" includes any process incidental or ancillary to the completion of a manufactured product; and*
>
> *i) In relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff,*
>
> *(ia) in relation to manufactured tobacco, includes the labeling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer.*
>
> *ii) In relation to salt, includes collection, removal, preparation, steeping, evaporation, boiling, or any one or more of these processes, the separation or purification of salt obtained in the manufacture of saltpeter, the separation of salt from earth or other substance so as to produce elementary salt, and the excavation or removal of natural saline deposits or efflorescence;*
>
> *iii) In relation to patent or proprietary medicines, as defined in Item No. 14-E of the first Schedule and in relation to cosmetics and toilet preparations as defined in Item No.14- F of that Schedule, includes the conversion of powder into tablets or capsules, the labeling or relabeling of containers intended for consumers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumers;*
>
> *iv) In relation to goods comprised to Item No.18-A of the First Schedule, includes sizing, beaming, warping, wrapping, winding or reeling, or any one or more of these processes, or the conversion of any form of the said goods into another form of such goods;*
>
> *And the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."*
>
> ***3.*** *Duties specified in the First Schedule to be levied.*

(1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates set forth in the First Schedule.

***4.** Valuation of excisable goods for purposes of charging of duty of excise. –*

(1)Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section be deemed to be –

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale:"

(4) For the purposes of this section, -

> *(a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;"*

11. Recovery of sums due to Government. - In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder, the officer empowered by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

11A. Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded.-

1) *When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short- paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:*

> *Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words "six months", the words "five years" were substituted."*

Rule 2(3) and Rule 7 of the Central Excises Rules, 1944, read as under:

> ***"2. Definitions.***—*In these rules, unless there is anything repugnant in the subject or context—*
>
> *(3) "assessee" means any person who is liable for payment of duty assessed and also includes any producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored;*
>
> ***7. Recovery of duty.***- *Every person who produces, cures or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty or duties leviable on such goods, at such time and place and to such persons as may be designated, in, or under authority of these rules, whether the payment of such duty or duties is secured by bond or otherwise.*
>
> *Provided that nothing contained in this rule shall apply to molasses produced in a khandsari sugar factory. Provided further that in respect of goods falling under Chapter 62 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), manufactured on job-work, the provisions of these rules shall apply subject to the provisions of rule 7AA."*

8. On a reading of the aforesaid provisions, it is clear that Shri Rajshekhar Rao, learned counsel appearing on behalf of the appellants is correct – there is in fact no separate machinery provided by the Central Excises and Salt Act to proceed against a dead person when it comes to assessing him to tax under the Act.

9. The position under the Income Tax Act, 1922 was also the same until Section 24B was introduced by the Income Tax (Second Amendment) Act of 1933. Prior to the introduction of the aforesaid Section, the Bombay High Court had occasion to deal with a similar question in **Commissioner of Income Tax, Bombay v. Ellis C. Reid, A.I.R. 1931 Bombay 333**. A Division Bench of the Bombay High Court noticed the definition of "assessee" contained in Section 2(2) of the 1922 Act which definition stated that "'assessee' means a person by whom income tax is payable". The Division Bench went on to say that the words "or by whose estate" are conspicuous by their absence in the said definition. The Division Bench then went on to say that there appears to be nothing in the charging Section to suggest that a man who has once become liable to tax can avoid payment of tax by dying before such tax has been assessed or paid. However, the Act has to contain appropriate provisions for continuing an assessment and collecting tax from the estate of a deceased person which was found to be absent in the 1922 Act before it was amended by insertion of Section 24B. Having noticed various provisions of the said Act, the Division Bench went on to say:-

> *"These are, I think, the only material provisions, of the Act. It is to be noticed that there is throughout the Act no reference to the decease of a person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have been present to the mind of the legislature that whatever privileges the payment of Income-tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and in practically every case, before the last installment has been collected, and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from, the estate of a deceased person. In order that the Government may succeed and the assessment made in this case may be held legal I think, one must do a certain amount of violence to the language of Section 23(4); I think one must either do a certain amount of violence - I should say a considerable amount of violence - to the language of Section 27, or else hold that the privilege conferred on a living person assessed under Section 23(4) of getting the assessment set aside is not to be enjoyed by the estate of a deceased person - a distinction for which I*

can see no logical reason. One must also construe Section 29 so as to give to the word "assessee" one meaning in one place and another meaning in another place.

In my judgment, in construing a taxing Act the Court is not justified in straining the language in order to hold a subject liable to tax. If the legislature intends to assess the estate of a deceased person to tax charged on the deceased in his lifetime, the legislature must provide proper machinery and not leave it to the Court to endeavor to extract the appropriate machinery out of the very unsuitable language of the statute. We are not concerned with the case which may arise of the death of a person after assessment but before payment." (at page 335)

10. Given the aforesaid decision of the Bombay High Court, the legislature was quick to amend the Income Tax Act, 1922 by inserting Section 24B which reads as follows:-

Section 24B : Tax of deceased person payable by representative-

(1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person."

11. This judgment of the Bombay High Court has been affirmed in two judgments of this Court. In Commissioner of Income Tax, Bombay City I v. Amarchand N. Shroff, [1963] 48 I.T.R. 59, this Court referred with approval to Ellis C. Reid and held:-

"The correct position is that apart from section 24B no assessment can be made in respect of the income of a person after his death. See Ellis C. Reid v. Commissioner of Income- tax. In that case, and that was a case before section 24B was enacted, a person was served with a notice under section 22(2) of the Income-tax Act but no return was made within the period specified and he died. It was held that no assessment could be made under section 23(4) of the Act after his death. At p.106 it was observed:-

> *"It is to be noticed that there is throughout the Act no reference to the decease of a person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have been present in the mind of the legislature that whatever privileges the payment of income-tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and, in practically every case, before the last instalment has been collected, and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from the estate of a deceased person".*
>
> *The individual assessee has ordinarily to be a living person and there can be no assessment on a dead person and the assessment is a charge in respect of the income of the previous year and not a charge in respect of the income of the year of assessment as measured by the income of the previous year. Wallace Brothers & Co. Ltd. v Commissioner of Income-tax. By section 24B the legal representatives have, by fiction of law, become assessees as provided in that section but that fiction cannot be extended beyond the object for which it was enacted. As was observed by this Court inBengal Immunity Co. Ltd. v. State of Bihar legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field. In the present case the fiction is limited to the cases provided in the three sub sections of section 24B and cannot be extended further than the liability for the income received in the previous year."* (at page 66)

12. Similarly, in **Commissioner of Income Tax, Bombay v. James Anderson, [1964] 51 I.T.R. 345**, this Court referred with approval to the judgment in **Ellis C. Reid's case** and further held that even after Section 24B was enacted tax cannot be assessed on receipts on the footing that it is the personal income of the legal representative. This Court held:-

> *"It was then urged that apart from section 24B, the legal representatives of a deceased person also represent his estate in the matter of taxation of income and it is competent to the taxing authorities to assess them on income received on behalf of the estate. Counsel did not rely upon any specific provision of the Act in support of the contention, and merely asserted that the Act seeks to tax all assessable incomes, and income received by a legal representative of the estate of a deceased person should not be permitted to escape tax to the detriment of public revenue. But if the Legislature has failed to set up the procedure to assess such income, the Courts cannot supply it. The expression "assessee" in section 2(2) as substituted by the Indian Income Tax (Amendment) Act, (25 of 1953), with effect from April 1, 1952, means a person by whom income-tax or any other sum of money is payable under the Act, and includes every person in respect of whom any proceeding and this Act has been taken for the assessment of his income or of the loss sustained by him or of the amount of refund due to him. By section 3 where income-tax is chargeable for any year at any rate or rates prescribed by the Act of the Central Legislature, tax at that rate shall be charged for that year in accordance with and subject to the provisions of the Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually. The charge to income- tax has therefore to be in accordance with and subject to the provisions of the Act, and the Legislature has not provided that the income received by a legal representative which would, but for the death of the deceased, have been received by such deceased*

person, is to be regarded for the purpose of assessment as the personal income of the legal representative. To assess tax on such receipts on the footing that it is the personal income of the legal representative is to charge tax not in accordance with the provisions of the Act." (at page 352)

13. In **Commissioner of Income Tax, Bombay v. Darabsha Nasarwanji Mehta, A.I.R. 1935 Bombay 167**, the Bombay High Court held that Section 24B of the 1922 Act was not retrospective and stated that as Avabai N. Mehta died before the said Act came into force and before she had made any return, her estate was not liable to be assessed to tax particular regard being had to the opening words of Section 24B which state "where a person dies" which are words in the present tense.

14. Pursuant to the 12th Law Commission Report, a new Income Tax Act was passed in 1961 which contained elaborate provisions for assessment of deceased persons after they die. The anomalies left by Section 24B of the 1922 Act, as pointed out in the two Supreme Court judgments referred to above, were sought to be rectified in the new provisions contained in the 1961 Act. Sections 159 and 168 of the Act are apposite in this regard and read as follows:-

"159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.

(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—

(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;

(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and

(c) all the provisions of this Act shall apply accordingly.

(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.

(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.

(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub- section (5), be limited to the extent to which the estate is capable of meeting the liability."

"168. (1) Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—

a) if there is only one executor, then, as if the executor were an individual; or

b) if there are more executors than one, then, as if the executors were an association of persons;

and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.

4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee." |

15. It will be noticed that under Section 159(2), for the purpose of making any assessment, any proceeding taken against the deceased before his death is by deeming fiction deemed to have been taken against his legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased. Further, the legal representative under sub-section (3) of 159 is again by deeming fiction deemed to be an assessee himself. However, the liability of such representative is limited only to the extent to which the estate left by the deceased is capable of meeting the tax liability subject to the contingencies mentioned in sub-sections (4) and (5) of Section 159.

16. Similarly, under Section 168, where the assessee has left a Will, the income of the estate of the deceased person becomes chargeable in the hands of the executor of such will. This is made clear by Section 168.

17. It will be seen that the definition of "assessee" contained in Section 4(3)(a) of the Central Excises and Salt Act is similar to the definition of assessee contained in the Income Tax Act, 1922. Under that Act, as we have already seen, an assessee means "a person by whom income tax is payable." Under the Central Excises and Salt Act, an assessee means "the person who is liable to pay the duty of excise under this Act". The present tense being used, it is clear that the person referred to can only be a living person as was held in Ellis C. Reid (supra). Further, the only extension of the definition of "assessee" under the Central Excises and Salt Act is that it would also include an assessee's agent, which has nothing to do with the facts of the present case. It is well settled that a "means and includes" definition is exhaustive in nature and that there is no scope to read anything further into the said definition.

18. As has been correctly pointed out by learned counsel for the appellants, the notice that is served under Section 11A is only on the person chargeable with excise duty, which takes us back to "assessee" as defined.

19. Learned counsel for the revenue relied upon Section 11 of the Act, which, according to him, indicates that an attachment and sale of excisable goods can belong to a dead person and such attachment and sale can continue notwithstanding the death of such person. Apart from the fact that there is nothing about dead persons in Section 11, Section 11 is limited only to recovery of sums that are due to the Government. The very opening words in Section

11 show that duty and other sums must first be payable to the Central Government under the Act or the rules. If such sums are not "payable" then the provisions of the Section do not get attracted at all. We have seen that the Act contains no machinery provisions for proceeding against a dead person's legal heirs, such as are contained in the Income Tax Act. Obviously, therefore, duty and other sums do not become "payable" without such machinery provisions. Further, Section 11 deals with modes of recovery of tax payable and does not deal with the subject matter at hand – namely machinery provisions for assessment in the hands of the estate of a dead person and, therefore, does not have much bearing on the matter in issue in the present case. The argument, therefore, as to the insertion of the proviso to Section 11 by an Amendment Act of 2004 so as to provide that if a person from whom some recoveries are due transfers his business to another person, then the excisable goods in the possession of the transferee can also be attached and sold again leads us nowhere. In fact learned counsel for the appellants also relied on this proviso to argue that the Legislature's need to add the proviso shows that nothing can be read into the Central Excises andSalt Act by implication. As has been stated above, Section 11 deals with an entirely different situation and the addition of the proviso therein is not of much significance as far as the question we have to answer is concerned.

20. Learned counsel for the revenue, however, contended that the principles applied in the case of the Income Tax Act should not be applied to the Central Excises and Salt Act as the latter Act is a tax on manufacture of goods and not on persons. We are afraid this argument cannot be countenanced in view of this Court's judgment in **State of Punjab v. M/s Jullunder Vegetables Syndicate, [1966] 2 S.C.R. 457**. In that judgment, the question before this Court was whether a dissolved firm could be assessed to sales tax under the East Punjab General Sales Tax Act, 1948, with respect to its pre-dissolution turn over. After analyzing the East Punjab General Sales Tax Act, this Court held:-

> *"The scheme of the Act is a simple one. A firm is a dealer; the said dealer is assessable to tax on its turnover, if its turnover exceeds the prescribed limit. It cannot do business while being liable to pay tax under the Act without getting itself registered and possessing a registration certificate. It is assessed to tax under Section 11 of the Act in the manner prescribed thereunder. If it discontinues its business, it shall within the specified time inform the prescribed authority accordingly. A dealer and its partners are jointly and severally responsible to pay the tax assessed on the dealer. But there is no provision expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution. The question is whether such a power can be gathered by necessary implication from the other provisions of the Act."* (at page 461)
>
> The Court went on to say:
>
> *"Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, income-tax as well as sales-tax, it is a legal entity. If that be so, on dissolution, the firm ceases to be a legal entity. Thereafter, on principle, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm which ceased to have a legal existence. As in the present case, admittedly, the firm was dissolved before the order of assessment was made, the said order was bad."* (at page 462)

The Court went on to consider various High Court decisions and ultimately concluded as follows:-

> *"Strong reliance was placed upon two judgments of this Court. This Court in C.A. Abraham v. Income-tax Officer, Kottayam, speaking through Shah, J., held that S.44 of the Income-tax Act set up a machinery for assessing the tax liability of firms which have discontinued their business. This was followed by this Court again inCommissioner of Income-tax, Madras v. S.V. Angidi Chettiar. These two decisions are of no help to the Revenue in the present case. Indeed, in a sense they are against it.The Income-tax Act contains an express provision for assessing a dissolved firm. Indeed, but for that provision no assessment could be made under that Act on dissolved firms.*
>
> *For the foregoing reasons we hold that the High Court was right in holding that the assessment order on the dissolved firm could not be supported under the provisions of the Act. The High Court has given a correct answer to the question propounded for its decision."* (at page 464)

21. This judgment is a complete answer to the contention of learned counsel for the revenue inasmuch as on a parity of reasoning, sales tax is not a personal tax but a tax on the sale of goods. Nevertheless, this Court held that in the absence of any machinery provisions to assess and collect sales tax from a deceased person – in that case it was a dissolved partnership firm – all proceedings against such deceased person/dissolved firm abate. The aforesaid judgment has been followed by this Court in **Khushi Ram Behari Lal & Co. v. Assessing Authority, Sangrur, (1967) 19 STC 381** and in **Additional Tahsildar, Raipur v. Gendalal, (1968) 21 STC 263**.

22. Learned counsel for the revenue, however, strongly relied upon **M/s. Murarilal Mahabir Prasad and others v. Shri B.R. Vad and others, (1975) 2 SCC 736**, a case arising under the Bombay Sales Tax Act, 1953. Since this judgment has been relied upon as the sheet anchor of the revenue's case, it is important to deal with it in some detail.

23. The question that arose in the aforesaid case was whether a dissolved firm could be re-assessed to sales tax in respect of its pre- dissolution turnover. By a two to one (2:1), decision, this Court held that the Bombay Act contained the necessary provisions to re- assess such a dissolved firm in respect of its pre-dissolution turnover. The majority judgment referred to the definition of "dealer" in the Bombay Act of 1953 and referred to this Court's judgment in **State of Punjab v. M/s Jullunder Vegetables Syndicate** (supra). We find that the majority judgment of this Court relied heavily on the fact that dishonest persons may dissolve a firm in order to escape liability to assessment of taxes legitimately due from them but which have escaped assessment. In paragraph 19, the majority held:

> *"It is plausible that a distinction ought to be made between the death of an individual and the dissolution of a firm. Human beings, as assessees, are not generally known to court death to evade taxes. Death, normally, is not volitional and it is understandable that on the death of an individual, his liability to be assessed to tax should come to an end unless the statute provides to the contrary. With firms it is different, because a firm which incurs during its existence a liability to pay sales- tax may, with a little ingenuity, evade its liability by the voluntary act of dissolution. The dissolution of a firm could therefore be viewed differently from the death of an individual and the partners could be denied the advantage of their own wrong. But we do not want to strike this new path because the Jullundur case (supra) and the two cases which follow it have likened the dissolution of a firm to the death of an individual. Let us therefore proceed to examine the other provisions of the 1953 Act."*

It then went on to quote Section 15(1) of the Bombay Sales Tax Act, 1953 and then arrived at this conclusion:

> *"22. Section 15(1) contains an important clause that action thereunder can be taken by the Collector after giving a notice to the assessee under Section 14(3) of the Act within the prescribed period. Once such a notice is given, the Collector gets the jurisdiction to assess or re-assess the amount of tax due from the dealer and all the provisions of the Act "shall apply accordingly as if the notice were a notice served under" Section 14(3). Section 14(3) speaks of the power of the Collector to assess the amount of tax due from the dealer after giving notice to him, if the Collector is not satisfied that the returns furnished are correct and complete. The jurisdiction to assess or reassess which is conferred by section 15(1) is thus equated with the original jurisdiction to assess the dealer under section 14. By this method, the continuity of the legal personality of the assessee is maintained in order to enable the assessment of turnover which has escaped assessment. It is no answer to a notice under section 15 that the partners having dissolved the firm, the assessment cannot be reopened. It puts a premium on one's credulity to accept that having created a special jurisdiction to assess or reassess an escaped turnover, the Legislature permitted that salutary jurisdiction to be defeated by the device of dissolution. The argument of the appellants really comes to this: suppress the turnover, evade the sales-tax, dissolve the firm and earn your freedom from taxation."*

The Court then went on to add:

> *"24. Section 15A confers on the Collector analogous powers to asses or re-assess a dealer for taxes due prior to November 21, 1956 when the States were reorganised, if either no assessment was made for the prior period or if any turnover had escaped assessment. This provision, like the one contained in Section 15, is of general application and makes no exception in favour of dissolved firm. Therefore, if a firm was not assessed prior to the re-organisation of States or if any part of its turnover had escaped assessment, it is competent to the Collector to assess or re-assess the firm notwithstanding its subsequent dissolution. This is the necessary implication of Section 15A. It must follow as a corollary that the power to rectify a mistake apparent from the record can be exercised by the Collector under Section 35 of the Act of 1953 even after the dissolution of an assessed firm, though on conditions specified in the section. The section contains a compelling implication that evident errors can be corrected no matter whether the firm is in existence or is dissolved. Dissolution is not a panacea for liability to pay sales-tax."*

It also added in paragraph 32:

> *"It is indisputable that the first appellant firm was liable to be charged to sales tax on its business turnover. The charging provisions are contained in Chapter III of the Act of 1953 and Chapter II of the Act of 1959. In this appeal, we have to construe the machinery provisions of those Acts. In accordance with the view taken in the cases cited above, the machinery sections ought to be construed so as to effectuate the charging sections. The construction which we have placed on the machinery provisions of the 1953 Act will give meaning and content to the charging sections, in the sense that our construction will effectuate the provision contained in the charging sections. <u>The resourcefulness and ingenuity which go into well-timed dissolution of firms ought not to be allowed to be used as convenient instruments of tax evasion.</u> As observed by Lord Dunedin in Whitney v. Commissioners of Inland Revenue:*

> *"A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission of clear direction makes that end unattainable."*

Far from there being any crucial omission or a clear direction in the present case which would make the end unattainable, the various provisions to which we have drawn attention leave it in no doubt that a dissolved firm can be assessed on its pre- dissolution turnover."

24. It is clear that on a conjoint reading of these paragraphs this Court found that the machinery provisions contained in the Bombay Sales Tax Act, 1953, were sufficient to reassess a dissolved firm in respect of income that had escaped assessment before its dissolution. A distinction was drawn between an individual who dies and a firm that is dissolved as a device to evade tax. The Court laid great stress on the provision contained in Section 15(1) of the said Act by which the jurisdiction to assess or reassess under Section 15(1) is equated with the original jurisdiction to assess the dealer under Section 14. By this method, the Court found the continuity of the legal personality of the assessee is maintained in order to enable the assessment of turnover which has escaped assessment. The crucial difference, therefore, between Section 15(1) of the Bombay Sales Tax Act, 1953 and Section 11A of the Central Excises and Salt Act is that Section 11A does not contain any such provision as is contained in Section 15(1) which equates the jurisdiction to assess or reassess with the original jurisdiction to assess the dealer in the very first place. Further, this Court also construed Section 19 of the Bombay Sales Tax Act, 1959 which would throw light on the earlier Bombay Sales Tax Act, 1953, as containing the necessary machinery provisions to assess dissolved firms in respect of escaped turnover pre-dissolution. Hence, this Court added:

> *"35. It is relevant, though we did not refer to this aspect while dealing with the provisions of the 1953 Act, that section 19(3) of the 1959 Act contains a clear indication that the legislature intended that a dissolved firm could be assessed under the 1953 Act also. Section 19(3) speaks of the liability of partners for the tax due from a dissolved firm and provides that they shall be jointly and severally liable to pay the tax due from the firm under the Act of 1959 or "under any earlier law", whether such tax has been assessed before or after dissolution. Section 2(12) of the 1959 Act defines "earlier law" to mean, inter alia, the Bombay Sales Tax Act, 1953. Thus, one of the postulates of section 19(3) at any rate is that a dissolved firm could be assessed under the 1953 Act. Such a postulate accords with the principle that if the legislature provided for a charge of sales-tax, it could not have intended to render that charge ineffective by permitting the partners to dissolve the firm, an easy enough thing to do. Nothing, in fact, would be easier to evade a tax liability than to declare that the firm, admittedly liable to pay tax, has been dissolved. Section 19(3) of the 1959 Act not only makes clear what was necessarily implied in the 1953 Act, but it throws additional light on the true construction of the earlier law. But we thought it advisable to keepsection 19(3) of the 1959 Act apart while construing the 1953 Act because it is the courts, not the legislature, who have to construe the laws of the land authoritatively. As said in Craies on Statute Law:*

> > *Except as a parliamentary exposition, subsequent Acts are not to be relied on as an aid to the construction of prior unambiguous Acts. (6th Ed., p. 146).*

The limited use which may be made of the language of section 19(3) of the 1959 Act, though such a course is unnecessary, is for saying that it serves to throw

> *some light on the Act of 1953, in case the argument is that the Act of 1953 is ambiguous.*
>
> *36. Section 19(3) being quite clear and explicit, it is unnecessary to dwell on the other provisions of the Act of 1959 in order to show that a dissolved firm can be assessed under it. We may only point out that the Act of 1959 contains provisions similar to those in sections 15, 15A and 35 of the Act of 1953 on which we have dwelt at some length. Those provisions can be found in sections 35, 35A and 62 of the Act."*

25. A reading of the ratio of the majority decision contained in **Murarilal's case** (supra) would lead to the conclusion that the necessary machinery provisions were already contained in the Bombay Sales Tax Act, 1953 which were good enough to bring into the tax net persons who wished to evade taxes by the expedient of dissolving a partnership firm. The fact situation in the present case is entirely different. In the present case an individual proprietor has died through natural causes and it is nobody's case that he has maneuvered his own death in order to evade excise duty. Interestingly, in the written submissions filed by revenue, revenue has argued as follows:-

> *"It is pertinent to mention that in the present case, Shri George Varghese (predecessor in interest of the appellants herein) was doing business in the name of manufacturing unit namely M/s. Kerala Tyre & Rubber Company and after the death of Shri George Varghese, his legal representatives (appellants herein) might have been in possession of the plant, machinery, stock etc. and continuing the same business, but might be in some other name in order to avoid the excise duty chargeable to the previous manufacturing unit."*

26. It is clear on a reading of the aforesaid paragraph that what revenue is asking us to do is to stretch the machinery provisions of the Central Excises and Salt Act, 1944 on the basis of surmises and conjectures. This we are afraid is not possible. Before leaving the judgment in **Murarilal's case** (supra), we wish to add that so far as partnership firms are concerned, theIncome Tax Act contains a specific provision in Section 189(1) which introduces a fiction qua dissolved firms. It states that where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Income Tax Act would apply to assessment of such dissolved firm. Interestingly enough, this provision is referred to only in the minority judgment in **M/s. Murarilal's case** (supra).

27. The argument that Section 11A of the Central Excises and Salt Act is a machinery provision which must be construed to make it workable can be met by stating that there is no charge to excise duty under the main charging provision of a dead person, which has been referred to while discussing Section 11A read with the definition of "assessee" earlier in this judgment.

28. Learned counsel for the revenue also relied upon the definition of a "person" under theGeneral Clauses Act, 1897. Section 3(42) of the said Act defines "person as under:

> *"(42) "Person" shall include any company or association or body of individuals whether incorporated or not."*

It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central Excises Act, which prescribes a procedure for registration of certain persons who are engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person's assessment is to continue after his death in respect of excise duty that may have

escaped assessment. Also, the judgments cited on behalf of revenue, namely, **Yeshwantrao v. The Commissioner of Wealth Tax, Bangalore, AIR 1967 SC 135 at pages 140**, 141 para 18: (1966) Suppl. SCR 419 at 429 A-B, **C.A. Abraham v. The Income-Tax Officer, Kottayam & Another,** AIR 1961 SC 609 at 612 para 6: (1961) 2 SCR 765 at page 771, **The State of Tamil Nadu v. M.K. Kandaswami & Others**, Air 1975 SC 1871 (para 26): (1975) 4 SCC 745 (para 26), **Commissioner of Sales Tax, Delhi & Others v. Shri Krishna Engineering Co. & Others**, (2005) 2 SCC 695, page 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the context of construing provisions which are designed to prevent tax evasion. The question at hand is very different – it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no relation to the construction of provisions designed to prevent tax evasion.

29. Learned counsel for the revenue also cited **Girja Nandini Devi & Ors. v. Bijendra Narain Choudhury**, [1967] 1 S.C.R. 93 at paragraph 15, and **Shri Rameshwar Manjhi (deceased) Through his son Shri Lakhiram Manjhi v. Management of Sangramgarh Colliery & Ors.**, (1994) 1 SCC 292 at paragraph 12, in support of the general principle that an action begun in a court of law by a person does not cease with his death. The context of both decisions was very different. The first decision was in the context of proceedings in relation to partition of a joint family whereas the second was under the Industrial Disputes Act. Neither judgment has any direct bearing on the controversy before us.

30. It remains to consider a judgment cited by learned counsel for the appellants, namely, **Commissioner of Central Excise, Bangalore –III v. Dhiren Gandhi, 2012 (281) E.L.T. 64** (Karnataka). This judgment is correct in its conclusion that while interpreting the provisions of the Central Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. To the extent that this judgment holds what is set out hereinbelow, it is correct:-

> *"We do not find any provision in the Act which foists any such liability in the case of intestate succession. In other words, there is no provision which empowers the authorities to recover due from a deceased assessee by proceeding against his legal heirs. The way section 11 and 11A are worded, it is amply clear, the legislature has consciously kept away the legal heirs from answering to liabilities under the Act."* (at page 69)

31. The impugned judgment in the present case has referred to **Ellis C. Reid's case** but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short levy which has been noticed during the lifetime of the deceased and then goes on to state that equally therefore legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court. It flies in the face of first principle when it comes to taxing statutes. It is therefore necessary to reiterate the law as it stands. In **Partington v. A.G.**, (1869) LR 4 HL 100 at 122, Lord Cairns stated:

> *"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly,*

such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute".

32. In **Cape Brandy Syndicate v. IRC**, (1921) 1 KB 64 at 71, Rowlatt J. laid down:

"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

33. This Court has, in a plethora of judgments, referred to the aforesaid principles. Suffice it to quote from one of such judgments of this Court in Commissioner of Sales Tax Commissioner, Uttar Pradesh v. Modi Sugar Mills, 1961 (2) SCR 189 at 198:-

"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."

34. We are, therefore, of the view that this appeal must be allowed and the judgment of the High Court of Kerala is, accordingly set aside and that of the learned Single Judge restored.

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PUNJAB & HARYANA HIGH COURT

INCOME TAX APPEAL NO. 284 OF 2014

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DALIP SINGH
Vs
INCOME TAX OFFICER, MUKTSAR

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

25th May, 2015

HF ▶ Assessee/appellant

To ascertain the rate at which the land has been sold, aspects like price rise, location etc. need to be taken into account rather than merely relying upon the rate at which lands were sold in subsequent year by different assessee.

INCOME TAX – REASSESSMENT – VALUATION OF LAND – DOCUMENTS SEIZED ON SEARCH AT PREMISES OF X – TRANSACTIONS REFLECTED WITH Y, THE PURCHASER OF LAND OF APPELLANT'S BROTHER – LAND INDICATED TO HAVE BEEN SOLD IN 2006-07 AT A HIGHER RATE THAN DISCLOSED – REASSESSMENT APPLYING THE SAME RATE TO APPELLANT'S TRANSACTION IN YEAR 2005-06 – APPEAL FILED BEFORE HIGH COURT – HELD, NO EFFORT MADE ON PART OF DEPARTMENT TO ASCERTAIN THE RATE – MERELY RELYING UPON THE RATE AT WHICH THE LANDS WERE SOLD IN SUBSEQUENT YEARS IS NOT ENOUGH – APPEAL ALLOWED REMANDING THE MATTER TO ASSESSING OFFICER TO ASCERTAIN THE RATE AT WHICH APPELLANT COULD HAVE SOLD HIS LAND. SECTIONS 147, 148 OF INCOME TAX ACT, 1961.

During the search conducted at the premises of X, some documents were seized reflecting its transactions with Y, who in turn had purchased various pieces of land from appellant's brother. The documents indicated that the lands were sold at a much higher rate of about Rs. 19,837/- per marla in 2006-07 than disclosed. On the basis of this search, reassessment of the appellant was made and this higher rate was applied to his transactions pertaining to the previous year, i.e. 2005-06. On appeal before High court, it is held that on the face of it, prima facie it appears that the rate of Rs. 5000/- as reflected in the appellant's transactions is very low. But the authorities ought to have made an effort to ascertain the price rather than relying upon the rate at which lands were sold in subsequent year. Allowing the appeal, the matter is remanded to the Assessing Officer to ascertain the rate, within 12 months, at which the appellant could have sold his lands.

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

Mr.Rohit Kaul, Advocate, for
Mr.G.S.Hooda, for the Respondent.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

1. This is an appeal against the order of the Income Tax Appellate Tribunal, Amritsar (for short, the 'Tribunal') dated 27.03.2014 (Annexure A-7), upholding the decision of the Commissioner of Income Tax (Appeals) (for short, the 'CIT'), which in turn, computed the balance of the long term capital gains in respect of the land sold by the appellant at Rs.55,93,517/-. The matter pertains to the assessment year 2006-07.

2. A search was conducted at the premises of one Rajan Setia. The documents seized at the search reflected transactions between the said Mr.Setia and one Y.Lali, who in turn, had purchased various pieces of land *inter alia* from the appellant's brother. The documents seized indicated that the lands were sold at a rate of about Rs.19,837/- per marla. In the re-assessment proceedings, it is this rate which has been applied in the case of the appellant's transactions.

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

"1. Whether on the facts and circumstances of the case, the Ld. AO was justified in framing assessment u/s 147 and applying the same sale price to the land sold by the appellant, which was sold in a different year?

2. Whether on the facts and circumstances of the case, the Ld. AO was justified in applying the same sale price to the land sold by the appellant vis-a-vis land sold by Shri Surjit Singh though the lands were sold by the appellant one year before the sale of land by Shri Surjit Singh?

3. Whether on the facts and circumstances of the case, the Ld. AO was justified in applying the same rate of sale price of land as applied by Shri Surjit Singh even though the land of Shri Surjit Singh was located opposite to Office of Deputy Commissioner and was on the road whereas property of the appellant was on back of land of Shri Surjit Singh and would fetch lesser price?"

4. By an order dated 06.02.2015, the earlier Division Bench noticed the submission on behalf of the appellant's counsel that the only argument that he pressed was that even if it is accepted that a contiguous piece of land was sold @ Rs.19,000/- per marla, in the financial year 2006-07, the said rate could not be applied to a transaction of the year 2005-06. The appellant's transaction pertains to the year 2005-06. This concession was rightly made as the proceedings under Sections 147 & 148 of the Income Tax Act, 1961 (for short, the 'Act') cannot be faulted. There were sufficient grounds for the authorities to believe that income had escaped assessment on account of the appellant's failure to point out all the relevant facts.

5. *Prima facie*, it does appear that the rate of about Rs.5000/-, as mentioned in the documents pertaining to the appellant's transaction, are very low. The only reason why we have decided to interfere with the orders of the authorities is that there does not appear to be even any attempt at arriving at the real/actual rate. There are certain aspects which require consideration. For instance, the rate of Rs.19,837/- per marla was in respect of the transaction in the year 2006-07 whereas the appellant's transaction was in the previous year. There is a possibility, to say the least, of the prices having increased during the year. There are certain other aspects which require consideration such as the fact that the appellant's lands were not on the main road but behind those which abutted the main road and the lands that abutted the main road fetched the price of Rs.19,837/- per marla.

6. The questions of law are, therefore, answered in favour of the assessee/appellant, only for this limited reason, namely, the authorities ought to have made an effort to ascertain the price rather than merely relying upon the rate at which the lands were sold in the subsequent year.

7. The appeal is, accordingly, allowed. The impugned order dated 27.03.2014 (Annexure A-7) is set aside and the matter is remanded to the Assessing Officer, only for the limited purpose of ascertaining the rate at which the appellant could have sold his lands. Considering the nature of the matter, we would request the Assessing Officer to complete the exercise within 12 weeks from today. He shall not entertain any application for adjournment from the appellant.

PUNJAB & HARYANA HIGH COURT

CWP NO. 1605 OF 2001

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CHHATTAR SINGH AND OTHERS
Vs.
THE STATE OF HARYANA AND OTHERS

AJAY KUMAR MITTAL AND FATEH DEEP SINGH, JJ.

6th August, 2014

HF ▶ Assessee/appellant

Penalty on concealment of sale is set aside due to absence of material showing nexus with the alleged removal of goods.

PENALTY – SALE TAX – CONCEALMENT OF SALE – BURDEN OF PROOF – PENALTY LEVIED ON ACCOUNT OF ALLEGED CONCEALMENT OF SALE OF GOODS – APPEAL DISMISSED – WRIT FILED CONTENDING ONUS IS ON DEPARTMENT TO SHOW ASSESSEE'S CONNECTION WITH SUCH TRANSACTION – NO MATERIAL ON RECORD TO SHOW ANY ENQUIRY BEING MADE FROM VEHICLE OWNER REGARDING ALLEGED EXPORT – ASSESSEE NOT CONFRONTED WITH ANY MATERIAL – FAILURE TO PRODUCE MATERIAL TO ESTABLISH NEXUS WITH REMOVAL OF GOODS WITHOUT PAYMENT OF TAX – UNIT BEING EXEMPTED TAKEN INTO ACCOUNT – WRIT ALLOWED – *SEC. 48 OF HGST ACT, 1973.*

The petitioner's unit was exempted under Section 13B from 4.11.1986 to 3.11.1998. It was closed down in 1988-89 due to loss and poor financial position. As per assessment, an additional demand was raised on account of alleged concealment of six entries not incorporated in books of accounts. The appeal was dismissed by the Tribunal. A writ is, therefore, filed before the Hon'ble High Court pleading that the petitioner never made any of these transactions. It is held that as per the record summoned, no material is available on record to show that any enquiry was made through the vehicle owners in which alleged goods were exported. In the absence of any material being confronted to assessee-dealer, liability cannot be fastened on it. There is no proof regarding material on record having nexus of the petitioner in removing goods without payment of tax. Also, the factum of unit being exempted till 1988 thereby eliminating requirement to conceal sale on part of assessee was not disputed. The writ is allowed and order is set aside.

Case referred:

CIT (Central), Calcutta v. Daulat Ram Rawatmull (1973) 3 SCC 133

Present: Mr. K.L. Goyal, Senior Advocate with Mr. Rishab Kapoor, Advocate for the Petitioners.

Ms. Mamta Singla Talwar, AAG, Haryana with
Mr. Vijay Yadav, Excise and Taxation Officer.

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AJAY KUMAR MITTAL, J.

1. Challenge in this writ petition filed under Articles 226/227 of the Constitution of India is to the orders dated 19.7.1994 (Annexure P-9), dated 30.11.1994 (Annexure P-11), dated 7.2.2000 (Annexure P-20) and dated 17.7.2000 (Annexure P-22).

2. Put shortly, the facts necessary for adjudication of the instant petition as narrated therein are that petitioner No.1 is a physically handicapped and is the sole proprietor of petitioner No.2. He started his business of oil extraction in November, 1986 at village Sundrehti on individual basis to earn his livelihood with the help of petitioner No.3. He was registered under the provisions of Haryana General Sales Tax Act, 1973 (in short "the Act") during the period he did his business till its closure in 1988-89 due to loss and poor financial position. Petitioner No.3 being a close relative of petitioner No.1 stood witness/guarantor for him before the Excise and Taxation Department for any kind of tax arrears. The said business was run by obtaining a small amount of loan from Bank/financial institution through the help of petitioner No.3 who was given General Power of Attorney (Annexure P-1). Petitioner No.2 was given exemption from payment of tax on sale of oil manufactured by it under Section 13B of the Act vide certificate dated 5.11.1986 (Annexure P-2) valid from 4.11.1986 to 3.11.1987 which was extended upto 3.11.1988. The gross turnover of the dealer for the assessment year 1988-89 was Rs. 1,52,908/-. The net profits, even if estimated, shall be about Rs. 16,000/- per year at the rate of 10%. During the assessment proceedings, notice dated 13.1.1993 (Annexure P-3) was issued to the dealer to explain as to why six entries mentioned in the notice had not been incorporated in the books of account. The dealer/petitioner No.2 through petitioner No.3 filed an affidavit dated 13.1.1993 (Annexure P-4) and pleaded that these goods were never sold by the petitioners and the dealer had no concern with these transactions. The assessing authority vide order dated 22.3.1993 (Annexure P-5) made an addition of Rs. 2,75,279/- in the gross turnover and after taxing it at the rate of 10%, raised a demand of Rs. 27,528/-. The penalty under Section 48 of the Act amounting to Rs. 55,100/- at the rate of 200% of the tax payable was also imposed. Thus, an additional demand of Rs. 82,628/- was raised. Feeling aggrieved, the dealer filed an appeal (Annexure P-6) before the Joint Excise and Taxation Commissioner (Appeals) [for brevity "the JETC(A)"] who vide order dated 28.9.1993 (Annexure P-8) set aside the order of the assessing authority and remanded the matter for fresh decision after confronting with the material checked to the dealer and giving an opportunity to rebut the same. The assessing authority vide order dated 19.7.1994 (Annexure P-9) again raised the same demand. Still dissatisfied, the dealer filed an appeal (Annexure P-10) before the JETC (A). The JETC(A) vide order dated 30.11.1994 (Annexure P-11) dismissed the appeal against which the dealer filed an appeal (Annexure P-12) before the Sales Tax Tribunal Haryana (hereinafter referred to as "the Tribunal"). However, an application under Section 39(5) of the act was made for entertaining the appeal without payment. Installment of Rs. 2000/- per month was made which first the dealer could not deposit and later on when the full payment was made, an application was made for condoning the delay in making the payment. The said application was allowed with costs and the matter was heard on merits. The Tribunal vide order dated 7.2.2000 (Annexure P-20) dismissed the appeal. Thereafter, the dealer moved an application (Annexure P-21) for review of the order dated 7.2.2000 (Annexure P-20). The said application was also dismissed vide order dated 17.7.2000 (Annexure P-22). Hence, the present writ petition. The averments made in the writ petition were controverted by respondents No.1 to 3 by filing written statement.

3. Learned counsel for the petitioners submitted that the liability was sought to be fastened on the petitioners as according to the department the petitioner through six vehicles had exported Mustard Oil from Sundrehti to Delhi via S.T.C.B. Badli (Rohtak) on different

dates. According to the learned counsel, the petitioners had never entered into any of these transactions and an affidavit dated 13.1.1993 (Annexure P-4) to that effect was submitted with the assessing authority. Learned counsel while placing reliance upon the judgment of the Hon'ble Supreme Court in **C.I.T. (Central), Calcutta v. Daulat Ram Rawatmull (1973) 3 Supreme Court Cases 133** contended that the onus was upon the department to *prima facie* show that the assessee had some connection with these transactions. It was urged that the revenue had not even made attempts to examine the owners of the vehicles in which the alleged goods according to the revenue were exported. It was argued that the vehicle numbers were available with the revenue and in such a situation, some material could have been confronted to the assessee to establish that the assessee had transacted unaccounted sales. Additionally, it was pointed out that the petitioner was an exempted unit till 3.11.1988 without any limit of tax exemption and in such circumstances there was no occasion for the dealer to conceal any sales.

4. On the other hand, learned State counsel supported the orders passed by the authorities below.

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

6. On the aforesaid premise of the petitioners, the record of the case was summoned and the same has been produced today in Court. It could not be disputed that no material is available on record to show that any enquiry was made through the vehicle owners or any material was confronted to the assessee-dealer. Further, in the absence of the same, we find that fastening of liability on the petitioners in the facts and circumstances was uncalled for.

7. The Apex Court in **Daulat Ram Rawatmull's case (supra)** in para 17 had recorded as under:-

> *"The onus to prove that the apparent is not the real is on the party who claims it to be so. As it was the department which claimed that the amount of fixed deposit receipt belonged to the respondent firm even though the receipt had been issued in the name of Biswanath, the burden lay on the department to prove that the respondent was the owner of the amount despite the fact that the receipt was in the name of Biswanath. A simple way of discharging the onus and resolving the controversy was to trace the source and origin of the amount and find out its ultimate destination. So far as the source is concerned, there is no material on the record to show that the amount came from the coffers of the respondent firm or that it was tendered in Burrabazar Calcutta branch of the Central Bank on November 15, 1944 on behalf of the respondent. As regards the destination of the amount, it has already been mentioned that there is nothing to show that it went to the coffers of the respondent. On the contrary, there is positive evidence that the amount was received by Biswanath on January 22, 1946. It would thus follow that both as regards the source as well as the destination of the amount. The material on the record gives no support to the. Claim of the department."*

8. Still further, the revenue had failed to *prima facie* demonstrate with reference to any material on record that there existed some nexus of the petitioners to remove the alleged goods without payment of tax in accordance with law. Furthermore, the factum of the petitioners being exempted unit till 3.11.1988 was also not disputed.

9. In view of the above, the present writ petition is allowed and the orders dated 19.7.1994 (Annexure P-9), dated 30.11.1994 (Annexure P-11), dated 7.2.2000 (Annexure P-20) and dated 17.7.2000 (Annexure P-22) cannot legally sustain and are set aside. The record produced today in Court be returned to the learned State counsel forthwith.

PUNJAB & HARYANA HIGH COURT

INCOME TAX APPEAL NO. 247 OF 2011

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COMMISSIONER OF INCOME TAX-II, AMRITSAR
Vs.
VIJAY BHARAT CIGARETTE STORE

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

27th May, 2015

HF ▶ Assessee

Two parallel proceedings of Revision and Appeal cannot be allowed against the same assessment order.

REVISION – INCOME TAX – ASSESSMENT ORDER PASSED – ASSESSEE FILED APPEAL – REVISIONAL PROCEEDINGS ALSO INITIATED AGAINST ASSESSMENT ORDER – ASSESSEE'S APPEAL ACCEPTED – REVISIONAL ORDER SET ASIDE BY ITAT – WHETHER TWO PARALLEL PROCEEDINGS OF APPEAL AND REVISION AGAINST SAME ASSESSMENT ORDER PERMISSIBLE – HELD, NO – *SEC. 263 OF INCOME TAX ACT, 1961*

The Assessing officer reopened assessment and an order u/s 143 was passed on 3.7.2007 assessing appellant's income at a higher level. On filing of appeal before CIT, the order was set aside on 2.1.2012. This order was not challenged and was final.

In the meanwhile, vide order dated 12.3.2010, the assessment order dated 3.7.2007 was revised directing the Assessing Officer to pass a fresh order after proper examination of the matter. On appeal, the Tribunal set aside this order of revision passed by CIT vide order dated 31.1.2011.

The fresh assessment order passed by the Assessing Officer pursuant to the order dated 12.3.2010 passed by Commissioner u/s 263 were also set aside in view of the order dated 31.1.2011 passed by Tribunal.

The Commissioner filed appeal against the order of Tribunal. It is held that two parallel proceedings cannot be allowed against the same assessment order. The assessment order dated 2.1.2012 has attained finality and not challenged. It is not possible to proceed any further in parallel proceedings u/s 263 of the Act. The revenue appeal is dismissed.

Present: Mr. Denesh Goyal, Advocate, for the appellant.
Mr. S.K.Mukhi, Advocate, for the respondent.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

This is an appeal against the order of the Income Tax Appellate Tribunal allowing the respondent's appeal against the order of the Commissioner of Income Tax (Appeals) passed under Section 263 of the Income Tax Act, 1961 (for short 'the Act') for the assessment year 2004-05. The appellant contends that the following substantial question of law arises in this appeal:-

> "*Whether on the facts and circumstances of the case, Hon'ble ITAT Bench was justified in law and on the facts in holding that learned CIT has no jurisdiction under section 263 of the Act to substitute his view in place of view taken by the A.O. being quasi-judicial authority."*

In our view, the substantial question of law does not arise in this case.

2. On 01.11.2004, the respondent filed its return of income in the sum of Rs.7,07,630/-. On 11.02.2005, the return was processed under section 143(1) of the Act. The Assessing Officer adopted proceedings for reopening under Sections 147 and 148 of the Act and on 03.07.2007 made an assessment under section 143(3) and 147 of the Act at an income of Rs. 9,21,340/-.

3. On 13.08.2007, the respondent filed an appeal against the above order of assessment dated 03.07.2007. The Commissioner of Income Tax (Appeals) dealt with in detail the respondent's case regarding payment of interest to its partners. By an order dated 02.01.2012, C.I.T. (A) noted that under Clause 17 of the partnership-deed, the partners were entitled to receive from the firm the interest @ 12% per annum on their capital as per books of the firm to be calculated in their credit balance in the firm's books as on the first day of the accounting period. It was held that the payment of interest was in accordance with the provisions of Section 40(b)(iv) of the Act and the C.I.T. (A) deleted disallowance of 1,66,968/- and held the respondent to be entitled to total relief of 2,13,710/-. It is important to note that it was held that the partners had a credit balance on the last date of the previous accounting year and could claim interest on this balance as per the terms of the partnership deed. This order has attained finality and has not been challenged.

4. In the meantime, the C.I.T. (A) had initiated proceedings under section 263 of the Act contending that the Assessing Officer had failed to make necessary enquiries and to consider the matter in its correct perspective. On 25.01.2010, a notice to show-cause was issued in respect of the proceedings under section 263 of the Act. By an order dated 12.03.2010, C.I.T. passed an order in the proceedings under section 263 of the Act. The C.I.T. set-aside the assessment order dated 03.07.2007 and directed the Assessing Officer to pass a fresh order after proper examination of the matter.

5. By the order dated 31.01.2011 impugned in the present appeal, the Tribunal set-aside the order dated 12.03.2010.

6. This brings us to parallel proceedings in revision which has led to the passing of the order impugned in the present appeal. 7. On 30.12.2010, a fresh assessment order was passed by the Assessing Officer pursuant to the order dated 12.03.2010 passed under section 263 of the Act. By an order dated 24.03.2011, the Tribunal set-aside this order in view of the order dated 31.01.2011 which is impugned in the present appeal. As we noted earlier, the order dated 31.01.2011 set-aside the order dated 12.03.2010 passed under section 263 of the Act. As we also noted earlier, by an order dated 02.01.2012 C.I.T. (A) had allowed the respondent's appeal against the order of assessment dated 03.07.2007 and this order has attained finality. It has admittedly not been challenged by the respondent.

8. In view of the fact that the order dated 02.01.2012 has attained finality, it would in any event not be possible to proceed any further in the parallel proceedings under section 263 of the Act. The observations in the order dated 02.01.2012 regarding the validity of the payment of interest by the respondent/assessee have also attained finality.

9. The appellant can not succeed in the proceedings under section 263 only by an order and upon a finding which would be contrary to and in conflict with the findings and the decision dated 02.01.2012 of the C.I.T. (A) in the appeal filed by the respondent against the order of assessment dated 03.07.2007. This would be impermissible as two parallel proceedings cannot be allowed against the same assessment order.

10. The question of law, therefore, not only does not, but cannot arise in the present case.

11. The appeal is therefore, dismissed.

PUNJAB & HARYANA HIGH COURT

CWP NO. 12671 OF 2015

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MADAN SINGH TODAR SINGH
Vs.
STATE OF PUNJAB & ORS.

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

29th June, 2015

HF ▶ None

Since the petitioner may succeed on merits by seeking alternative remedy it is not appropriate to entertain writ on the question of jurisdiction.

ALTERNATIVE REMEDY – JURISDICTION – PENALTY – NOTICE FOR PENALTY ISSUED ALLEGING INGENUINE TRANSACTION – WRIT FILED PRIMARILY CONTENDING THE TRANSACTION TO BE GENUINE – QUESTION OF JURISDICTION OF THE OFFICER IMPOSING PENALTY RAISED ALTERNATIVELY – ENTERTAINING WRIT ON QUESTION OF JURISDICTION NOT APPROPRIATE AT THIS STAGE - MATTER TO BE FIRST CONTESTED ON MERITS – AUTHORITIES TO DECIDE THE SHOW CAUSE NOTICE AFTER REPLY IS FILED AGAINST THE IMPUGNED NOTICE BY PETITIONER – *SEC 51(7)(c) OF PVAT ACT R/W SEC. 7 OF PUNJAB DEVELOPMENT OF TRADE, COMMERCE & INDUSTRIES ORDINANCE, 2015; ARTICLE 226 OF CONSTITUTION OF INDIA.*

A notice for levy of penalty under the Punjab development of Trade, Commerce and Industries Ordinance, 2015 and sec 51(7)(c) of the VAT Act was issued on the basis of scrutiny of documents by detaining officer indicating ingenuine transaction as per the said ordinance.

A writ is filed mainly contending that the transaction was genuine and not liable to tax under the ordinance. It was also contended alternatively that the officer had no power to impose penalty.

It is held that since the main contention was based on merits, to entertain the writ at this stage on the question of jurisdiction would not be appropriate. The authorities are directed to decide the show cause notice within two weeks after the reply is filed by the petitioner against the impugned notice.

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

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

The petitioner has challenged a notice dated 16.06.2015 (Annexure P3) and a notice (Annexure P5) stating that penal action would be initiated against the petitioner under the Punjab Development of Trade, Commerce and Industries Ordinance, 2015 and Section 51(7)(c) of the Punjab Value Added Tax Act, 2005.

2. It is alleged that the petitioner's vehicle carrying sugar was stopped on 16.06.2015 on the ground that the detaining officer upon scrutiny of the documents found that the transaction was not genuine as per the said Ordinance. The proceedings were forwarded to the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana.

3. The petitioner has also contended that under Section 7 of the Ordinance, there is no power to impose penalty. This argument is in the alternative. The petitioner's main contention is that the transaction is genuine and was not liable to tax under the said Ordinance. If the main contention is accepted, it would not be necessary to go into the issue as to whether the authorities have power or jurisdiction to impose penalty under the said Ordinance. In these circumstances, we do not deem it appropriate to entertain this writ petition on the question of jurisdiction at this stage. If the petitioner succeeds on merits, the issue of law would be academic.

4. However, the petitioner's vehicle was detained on 16.06.2015. It is only fair that the respondents pass an order after the reply is filed to the impugned notice (Annexure P5) as expeditiously as possible. We are informed that the matter has been placed today before the authorities under the said Ordinance. Mr. Goyal, learned counsel for the petitioner states that the reply will be filed today before the authorities.

5. If the reply is filed, the authorities shall decide the show cause notice within two weeks.

6. The petition is accordingly disposed of.

PUNJAB & HARYANA HIGH COURT

CWP NO. 4709 OF 2015

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SUMIT AGENCIES
Vs
STATE OF PUNJAB & OTHERS

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

30th June, 2015

HF ▶ Assessee- Petitioner

Encashment of cheques given by petitioner at the time of inspection in the absence of any assessment is not justified and arbitrary on part of the department.

COLLECTION OF TAX – INSPECTION –TWO CHEQUES TAKEN IN ANTICIPATION OF TAX LIABILITY ON BASIS OF INSPECTION WITHOUT FRAMING ANY ASSESSMENT – ENCASHMENT OF ONE BY DEPARTMENT BEFORE NOTICE SERVED FOR PROVISIONAL ASSESSMENT – PAYMENT OF SECOND STOPPED BY PETITIONER – WRIT FILED ALLEGING MALAFIDES AGAINST THE OFFICER – PROVISIONAL ASSESSMENT RAISING DEMAND MADE DURING PENDENCY OF WRIT ADJUSTING THE AMOUNT ALREADY ENCASHED — ENCASHING CHEQUES TO DISCHARGE ANTICIPATED LIABILITY IN ABSENCE OF ASSESSMENT NOT JUSTIFIED - ARBITRARINESS ON PART OF DEPARTMENT - PROVISIONAL ASSESSMENT FRAMED QUASHED – AMOUNT ALREADY ENCASHED ORDERED TO BE REFUNDED - OTHER CHEQUE TO BE RETURNED TO PETITIONER - COSTS OF RS. 10,000/- IMPOSED ON RESPONDENT OFFICER – WRIT ALLOWED

The Excise and Taxation Officer had inspected the premises of the petitioner and taken two cheques by coercion amounting to Rs 3 lacs each towards the anticipated liability. One of them was encashed and thereafter a notice was served to which the petitioner replied against the encashment of one and stopped payment of another cheque. A writ was filed before High Court. It is alleged by the department that the officer had inspected the premises and found discrepancies and huge amount of stocks lying were found without documents. That is why the cheques were taken in anticipation of the liability. During the pendency of writ, the provisional assessment was framed and produced before the court alleging that the demand of Rs 11,20,281 was due from petitioner against which Rs 3 lacs have been adjusted as already taken and the balance is due to be paid.

It is held by the High court that in the absence of any assessment, the action of the respondent to take two cheques in favour of department was not justified. This procedure smacks of arbitrariness and high headedness on part of authorities. The provisional assessment so framed is quashed as it was done by the officer who had inspected the premises of the petitioner during the pendency of writ petition. The petitioner is to be refunded the amount of Rs 3,10,000/- within a period of one week and a sum of Rs 10,000/- shall be recovered from the

respondent officer for his arbitrary action. The other cheque is to be returned. The proceedings are to be decided by an officer not connected with the inspection in this case. To safeguard the interest of the revenue, Rs 3 lacs shall have to be maintained by the petitioner in his bank account from which cheque was encashed during the pendency of proceedings.

Present: Mr.Aman Bansal, Advocate, for the petitioner.

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

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G.S.SANDHAWALIA J.

1. Challenge in the present writ petition is to the action of the respondent No.3, the Excise & Taxation Officer, Mobile Wing, Ludhiana, whereby two cheques bearing Nos.053461 & 053462, amounting to Rs. 3 lacs each, were taken from the petitioner, without any liability and notice. Prayer is, accordingly, made for conducting an independent and impartial enquiry on the ground that there was no order against the petitioner and in the absence of the liability, the cheques could not be taken.

2. The pleaded case of the petitioner is that the petitioner-Firm is engaged in the business of supply of cigarette, biddi, pan masala etc. And duly registered under the Punjab Value Added Tax Act, 2005 (for short, the 'PVAT') and was not a defaulter. It has been alleged that respondent No.3, Navjeet Singh, the Excise & Taxation Officer, Mobile Wing, Ludhiana, who has been impleaded in his personal capacity, came to his premises on 16.02.2015 and threatened him and demanded exorbitant amounts with the help of police. The cheques in question amounting to Rs.3 lacs each were taken despite the fact that no notice had ever been issued and under the threat of coercion on account of completion of target of Revenue before 31.03.2015. The said respondent had also taken the signatures of the petitioner on blank papers and thereafter, encashed one cheque bearing No.053461 on 21.02.2015, as per the bank's statement. Thereafter, notice had been served upon the petitioner on 09.03.2015 to which a reply had been filed that the two cheques were forcibly taken and one of the cheque, amounting to Rs.3 lacs had already been encashed and the payment of the second cheque had been stopped by the petitioner. Resultantly, the present writ petition has been filed for the necessary relief, mentioned above.

3. In the written statement, filed by the said respondent No.3 on behalf of respondents No.1 & 2, the defence taken was that there was prior permission of the Assistant Excise & Taxation Commissioner, Mobile Wing, Ludhiana and inspection was conducted along with other officers and supporting team. The Proprietor of the Firm, namely, Harish Kumar, had run away and the local police was called and he had returned with some person and thereafter, inspection was carried out in his presence and two cheques were taken as anticipatory tax liability because huge stock of goods were found, without any documents. The proceedings were in progress and many irregularities were found and true and correct account had not been maintained resulting in evasion of tax. Several discrepancies were pointed out and the plea taken was that the cheques were submitted voluntarily at the time of inspection. Thereafter, one of the cheque was encashed with full knowledge as the petitioner had desired to discharge his anticipated liability in parts. Notice had been issued to the petitioner for provisional assessment of the income under the PVAT Act.

4. At the time of arguments on 30.06.2015, counsel for the State had placed on record the provisional assessment order, passed on 26.06.2015 by one Manmohan Singh, Excise & Taxation Officer, Mobile Wing, Ludhiana, whereby a sum of Rs.11,20,281/- has been assessed as provisional assessment, without prejudice to the outcome of the present writ petition and the

sum of Rs.3 lacs, as per cheque No.053461 dated 16.02.2015 has been adjusted against the said amount and a demand for the balance amount of Rs.8,20,281/- has been raised. The original record has also been produced for perusal of this Court to see that in which manner the authorities have exercised their jurisdiction. A perusal of the same would go on to show that the authorities have acted in an arbitrary and illegal manner.

5. Respondent No.3, firstly, has filed his reply on behalf of respondents No.1 & 2 also and not replied against the allegations of *mala fides* levelled against him and accordingly, it is presumed that the same are true and correct since there is no denial on his part. Counsel for the State could not demonstrate that in the absence of any demand or liability how the two cheques amounting to Rs.3 lacs each had been taken and one of them had been encashed on 21.02.2015. As per the file, respondent No.3 had asked the petitioner/Proprietor-Harish Kumar to produce the necessary documents on 16.02.2015. The said respondent had, thereafter, conducted proceedings and notice of motion was issued by this Court on 17.03.2015. As per the zimni order dated 10.03.2015, recorded by respondent No.3, it has been noticed that one of the cheques has been encashed in favour of the Department. Thereafter, the said official had further conducted proceedings and he was informed on 08.04.2015 that the matter is pending in this Court and proceedings continued on account of the fact that there was no stay.

6. On 09.06.2015, permission was taken by respondent No.3, firstly, for entrusting the proceedings to some other officer which was granted and one Manmohan Singh, Excise & Taxation Officer, Mobile Wing, Ludhiana was entrusted with the said file. Thereafter, permission was taken from respondent No.2 to frame provisional assessment on the same date, i.e., 09.06.2015. The said officer, thereafter, issued notice for 17.06.2015 and noticed that written reply has been received but none had appeared despite numerous opportunities given and the Proprietor was wilfully avoiding appearance. Accordingly, the judgment was reserved on 17.06.2015 and as noticed above, the provisional assessment was framed and accordingly, a demand of Rs.11,20,281/- was raised by passing the impugned order on provisional assessment on 26.06.2015.

7. The said procedure smacks of arbitrariness and highhandedness of the authorities on the face of the record itself, which cannot be appreciated, in any manner. In the absence of any assessment, the action of respondent No.3 to take two cheques on 16.02.2015 amounting to Rs.3 lacs each in favour of the respondent-Department, was not justified. The encashment five days later to the tune of Rs.3 lacs, allegedly in discharge of the anticipated liability, as per the reply filed, cannot be appreciated, in any manner. The eagerness of the official-respondents to meet their targets at the end of the financial year, by following this method of recovery, cannot be approved.

8. Though there is no challenge to the provisional assessment framed thereafter, but in view of the above facts and circumstances, since it has been done during the pendency of the writ petition, we are of the opinion that the same is liable to be quashed since the same was done by an officer who was entrusted with the proceedings inspite of the fact that he was also part of the inspection team which had visited the premises of the petitioner on 16.02.2015. Therefore, it is apparent, *prima facie* that such a huge liability has been made out against the petitioner without giving him proper opportunity to put-forth his case merely on account of the fact that the petitioner was prosecuting his remedy, in accordance with law. The said order, though not specifically challenged, has apparently been passed to spite the petitioner and is necessarily to be quashed. Accordingly, the provisional assessment order dated 26.06.2015 is hereby quashed.

9. Accordingly, the present writ petition is allowed by directing that the respondents shall refund a sum of Rs.3,10,000/-, within a period of one week from the receipt of a certified copy of this order and a sum of Rs.10,000/- shall be recovered from respondent No.3, by the

State, for his arbitrary action. The cheque bearing No.053462 amounting to Rs.3 lacs shall also be returned to the petitioner. However, to safeguard the interests of the Revenue, the petitioner shall maintain a sum of Rs.3 lacs in his bank account from which the cheque was encashed, during the pendency of the assessment proceedings which have now been initiated under the Act. The said proceedings shall be decided by an officer of competent jurisdiction, who was not associated with the inspection conducted on 16.02.2015 and who would be appointed by respondent No.2. The said proceedings shall be finalized within a period of 2 months from the date of the receipt of the certified copy of this order. In case of any demand, it shall be open to the respondents to recover the same, in accordance with law and to the petitioner to agitate in appeal, if required. The original record of the case be returned to Mr. Jagmohan Bansal, Addl.A.G., Punjab, under proper receipt, for onward transmission.

10. With the abovesaid directions, the present writ petition stands allowed.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 116 OF 2014

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BABBAR HOSIERY
Vs.
STATE OF HARYANA AND ANOTHER

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

29th June, 2015

HF ▶ Appellant

Delay in filing of appeal is condoned as there is nothing on record to show any lapse on part of appellant

APPEAL – CONDONATION OF DELAY – LIMITATION – DELAY IN FILING APPEAL BEFORE TRIBUNAL BY 25 DAYS – BONAFIDE IMPRESSION THAT LIMITATION IS OF 90 DAYS INSTEAD OF 60 DAYS - PLEA ACCEPTED BY HIGH COURT ON APPEAL AS NOTHING ON RECORD TO INDICATE ANY LAPSE ON PART OF APPELLANT – APPEAL ACCEPTED – TRIBUNAL DIRECTED TO HEAR APPEAL ON MERITS- *SEC 5 OF LIMITATION ACT*

The appellant was under a bonafide impression that limitation for filing of appeal is 90 days instead of 60 days. The delay was not condoned by Tribunal. However, the High Court has condoned the delay as there is nothing on record to indicate that there was any lapse on part of appellant. The impugned order is set aside and Tribunal is directed to hear the appeal on merits.

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

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

CM No. 20424-CII of 2014

Heard. In view of the fact that the appellant after signing the papers forwarded the same to its counsel by courier and there was a delay in delivery of the parcel resulting in consequent delay of 60 days in filing of the appeal, the delay is condoned.

VATAP No. 116 of 2014 (O&M)

The appeal is admitted on the following substantial question of law:-

1) Whether on the facts in the circumstances of the case the learned Tribunal was justified in dismissing the appeal of the appellant by majority on the ground of delay of 25 days?

The Haryana Tax Tribunal disbelieved the appellant's case that the appellant was under a bonafide impression that the period of filing the appeal was 90 days. The appellant fairly stated in his application that he was under the impression that limitation was 90 days and when he approached his counsel, he was informed that the limitation for filing the appeal is 60 days and not 90 days. There is nothing on record which indicates that there was any lapse on the part of the appellant. There is no reason why the appellant would not have filed the appeal within 60 days, had the appellant actually been aware of the correct period of filing an appeal.

In the circumstances, the question of law is answered in favour of the appellant. The impugned order and judgment is se-aside. The Tribunal shall hear the appeal on-merits.

Issue 15
August 2015

PUNJAB & HARYANA HIGH COURT

CWP NO. 14096 OF 2015

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THE JAI HIND COOPERATIVE L&C SOCIETY LTD
Vs
STATE OF PUNJAB AND OTHERS

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

16th July, 2015

HF ▶ Revisional authority

Direction issued by High Court to decide the application of refund based on record made available by the petitioner.

REFUND – APPLICATION OF – APPLICATION FOR REFUND FILED- PETITIONER INSTRUCTED TO DEPOSIT ORIGINAL TDS CERTIFICATES BY DEPARTMENT – LETTER FILED CONTENDING DOCUMENTS ALREADY WITH THE RESPONDENTS – WRIT FILED PRAYING FOR DISPOSAL OF APPLICATION OF REFUND – DIRECTION ISSUED TO DEPARTMENT TO FINALLY DECIDE THE APPLICATION ON THE BASIS OF RECORD MADE AVAILABLE TO THEM BY THE PETITIONER BY THE DATE SPECIFIED IN THE ORDER- WRIT DISPOSED OF – *SEC. 39 OF PVAT ACT*

The petitioner had filed an application for refund. The AETC stated that the petitioner had not filed TDS certificates in original and instructed him to deposit them in order to have the refund decided. The petitioner replied to the same through a letter stating that the respondents had deducted the sales tax and had deposited the same with the respondents and that the respondents would have the necessary documents in their records. A writ is filed in this regard. The Hon'ble High court has held that the respondents would finally decide the application based on record made available to them by the petitioner and the petitioner would be at liberty to produce more documents within two weeks of the date of the order. The writ petition is disposed of accordingly.

Present: Mr. Munish Bansal, Advocate, for the petitioner.

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

1.The petitioner's grievance is that the respondents have not finally disposed of their application for refund dated 13.01.2015. By a communication dated 27.01.2015, the Assistant Excise and Taxation Commissioner, Bathinda stated that the petitioner had not attached

original TDS certificates. The petitioner was, therefore, instructed to deposit the same in order to have the refund application decided.

2. The petitioner replied to the same by a letter dated 23.02.2015. The petitioner, inter alia, stated that the respondents had deducted the sales tax and had deposited the same with the respondents and that the respondents would have the necessary documents in their records.

3. It is necessary for the respondents to take a final decision on the application for refund based on the record as has been made available by the petitioner and as is available with the respondents. The petitioner shall be at liberty to furnish any further documents also within two weeks from today. Whether the petitioner does so or not, final decision shall be taken by the respondents on the refund application latest by 15.08.2015.

4. The writ petition is accordingly disposed of.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 13 OF 2013

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ELIS EXPORTS
Vs
STATE OF HARYANA AND ANOTHER

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

20th July, 2015

HF ▶ Department

Mistake of law on part of assessing authority on examination of documents and books of accounts while passing of assessment order is a valid ground for revision u/s 40 of the Act.

REVISION – REASSESSMENT – JURISDICTION OF REVISIONAL AUTHORITY TO EXAMINE THE ASSESSMENT ORDER ON ACCOUNT OF ESCAPED ASSESSMENT OF SALE OF DEPB LICENSES - ACCOUNT BOOKS AND DOCUMENTS EXPRESSLY STATED TO HAVE BEEN EXAMINED BY AUTHORITY BEFORE PASSING ASSESSMENT ORDER – REVISION ON BASIS OF ESCAPED ASSESSMENT OF SALE OF DEPB LICENSE LIABLE TO BE TAXED – APPEAL BEFORE TRIBUNAL QUESTIONING JURISDICTION OF REVISIONAL AUTHORITY INSTEAD OF REASSESSMENT – REVISIONAL JURISDICTION UPHELD - MISTAKE OF LAW AS SALE OF DEPB NOT TAXED BY ASSESSING AUTHORITY - NO PERVERSE FINDING BY TRIBUNAL FOUND IN THIS REGARD – APPEAL DISMISSED – *SEC 31 AND SEC 40 OF HGST ACT, 1973.*

The appellant had been exporting medicines. Returns were filed for the year 1998-99 and the gross turnover of export of Rs 4.94 crores was accepted as per books of accounts of the assessee and was exempted from tax. Again for the year 1999-2000 an assessment order was passed and not being satisfied with the return version, a notice was issued under the Act. The appellant produced books of accounts and relevant documents. It was expressly stated that the these books and documents were examined in detail and found to be maintained in the normal course of business and the assessing authority passed the order keeping in view the same. Nil demand was raised as assessing officer found gross turnover to be in respect of exports.

By a notice dated 20.2.2003 it was observed that the assessment order suffered from illegalities and improprieties as regards the sale of DEPB which had escaped assessment and therefore the assessment order needed revision. The appellant questioned the jurisdiction of revisional authority .It was decided on merits that appellant was liable to pay tax on sale of DEPB license to exporters. And the case was sent back to assessing authority for determining the tax liability on account of sale of DEPB by appellant.

An appeal was filed before Tribunal. A special bench upheld the revisional jurisdiction rejecting the contention that it was a case of reassessment.

On further appeal, it is observed by the High Court that the Tribunal came to a finding that the assessment order was passed on account of a mistake of law and that the assessing authority had considered the entire record and not brought to tax the sale proceeds of DEPB in view of the legal position perceived by it. In fact in most cases the sale proceeds of DEPB sale were not brought to tax before this assessment order. Since the Tribunal has rightly observed that the assessing authority has taken the case into consideration and all records have been examined in detail, thus the order of Tribunal is upheld and appeal is dismissed.

Cases referred:

Haryana Agro Industries Corporation Limited vs. State of Haryana and others, [2002] 125 STC 18 (P&H)
Bidar Sahakar Sakkare Karkhane Ltd. v. State of Karnataka [1985] 58 STC 65
Philco Exports vs. Sales Tax Officer and others, [2001] 124 STC 503 (Delhi)
Liberty Enterprises vs. State of Haryana and another, [2007] 5 VST 12 (P&H)
Jindal Drugs Limited and another vs. State of Maharashtra and another [2008 of 17 VST 164 (Bom)]
Yasha Overseas vs. Commissioner of Sales Tax & Ors., (2008) 8 Supreme Court Cases 681.

Present: Mr. Rohit Gupta, Advocate for the appellant

Ms. Mamta Singla Talawar, AAG, Haryana

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

1. This is an appeal under Section 36 of the Haryana Value Added Tax Act, 2003, against the order of the Special Bench of the Haryana Tax Tribunal dated 17.11.2009.

The Special Bench was constituted as the members of the Division Bench had differed on the question as to whether the revisional authority had jurisdiction under Section 40 of the Haryana General Sales Tax Act, 1973 (hereafter to be referred to as 'the HGST Act'). The Special Bench held that the revisional jurisdiction had rightly been invoked by the revisional authority. The appellant contends that assuming that the case on merits is well founded, it was a case for re-assessment under Section 31 by the assessing authority and not one for revision under Section 40.

2. Sections 31 and 40 of the HGST Act read as under:-

"31. Reassessment of tax - If in consequence of definite information which has come into his possession, the assessing authority discovers that the turnover of the business of a dealer has been under assessed, or has escaped assessment in any year, the assessing authority may, at any time within three years from the date of final assessment order and after giving the dealer a reasonable opportunity, in the prescribed manner, of being heard, proceed to reassess the tax payable on the turnover which has been under assessed or has escaped assessment."

"40. Revision- (1) The Commissioner may on his own motion call for the record of any case pending before, or disposed of by, any officer appointed under sub-section (1) of section 3 of the Act to assist him or any Assessing Authority or Appellate Authority, other than the Tribunal, for the purposes of satisfying himself as to the legality or to propriety of any proceedings or of any order made therein and may pass such order in relation thereto as he may think fit:

Provided that no order, shall be so revised after the expiry of a period of five years from the date of the order:

Provided further that the aforesaid limitation of period shall not apply where the order in a similar case is revised as a result of the decision of the Tribunal or any court of law:

Provided further that the assessee or any other person shall have no right to invoke the revisional powers under this sub-section (2) The State Government may, by notification, confer on any officer the powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.

(3) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard."

3. The appellant contends that the following substantial question of law arises in this appeal:-

"Whether on the facts and circumstances of the case, it was a case fit for revision under Section 40 of the Haryana General Sales Tax Act, 1973 or a case fit for reassessment under Section 31 of the said Act."

4. The appellant carries on business *inter alia* of the export of medicines. The appellant returned an aggregate turn over of about Rs.7.25 crores for the year 1998-99 in the quarterly returns filed with the Assessing Authority. At the time of assessment, the assessee contended that its true turnover as per books of accounts was only Rs.4.94 crores. The appellant furnished the balance-sheet along with a reconciliation statement which was accepted by the Assessing Authority. The assessing authority accepted the gross turnover to be Rs.4.94 crores as per the books. As the entire turnover of Rs.4.94 crores related to exports, the same was exempted from tax.

It is important to note a few aspects regarding the assessment order made by the ETO-cum-Assessing Authority under the HGST Act for the assessment year 1999-2000. The order *inter alia* states that the dealer had filed his returns assessing the gross turnover to be towards export out of India and accordingly had not deposited any tax. The order further states as follows. Being not satisfied with the returned sale version, a statutory notice was issued under Section 28(2) of the HGST Act. In response to the notice, the appellant produced the books of accounts and other relevant documents. It is important to note that the order expressly states that these books and relevant documents had been examined in detail and found to be maintained in the normal course of business. It is also important to note that the order states that there was some difference in sales in the return filed and in the books produced and that the appellant had furnished a reconciliation statement for the purpose of assessment. It is equally important to note that the Assessing Authority expressly stated that the account books of the dealer had been examined in detail and that the assessment order was passed keeping in view the same. The case was filed with a 'nil' demand as the Assessing Officer found the gross turnover to be almost entirely in respect of the exports.

A similar order was passed by the Assessing Authority under the Central Sales Tax Act, 1956. The order records that after allowing for the export claim no taxable turnover was left for the purpose of assessment and the case was filed ending in 'nil' demand.

5. This brings us to the disputed action initiated and taken by the Deputy Excise Taxation Commissioner under Section 40 of the HGST Act. By a notice dated 20.02.2003, addressed to the appellant, the revisional authority stated that he had examined and inspected the record for the said assessment year for the purpose of satisfying himself as to the legality and propriety of the assessment order. He recorded that he had observed that the assessment order suffered from the following illegalities and improprieties:-

"1. Sale of Duty Entitlement Pass Book Licence to exporters worth Rs.53,05,167/- has escaped assessment as per information and Rs.2278165 as per balance sheet."

The notice stated that the assessment order, therefore, needed to be revised. By the notice, the appellant was given an opportunity to explain as to why the order be not revised.

6. The appellant filed a reply to the above notice. For the purpose of this appeal, it is necessary only to note the appellant's contention that the revisional authority had no jurisdiction to invoke the provisions of Section 40 of the HGST Act.

7. The revisional authority by an order dated 28.04.2004 held that this was a fit case under Section 40. On merits, it was held that the appellant was liable to tax on account of sale of Duty Entitlement Pass Book (DEPB) license to exporters. The revisional authority accordingly sent the matter back to the Assessing Authority for determining the tax liability on account of sale of DEPB by the appellant.

8. The appellant filed an appeal before the Tribunal. As we mentioned earlier, the members of the Division Bench of the Tribunal differed on the question as to whether the jurisdiction under Section 40 was rightly invoked or not. The matter was, therefore, referred to a special bench, which answered the question in the affirmative.

9. As noted by the Tribunal, when the assessment order was passed, it was a contentious issue. The DEPB was held to be goods by a Division Bench judgment of the Delhi High Court dated 24.07.2001 in *Philco Exports vs. Sales Tax Officer and others, [2001] 124 STC 503 (Delhi).* A similar view was taken by this Court in *Liberty Enterprises vs. State of Haryana and another, [2007] 5 VST 12 (P&H),* by the Bombay High Court in *Jindal Drugs Limited and another vs. State of Maharashtra and another [2008 of 17 VST 164 (Bom)]* and finally by the Supreme Court in *Yasha Overseas vs. Commissioner of Sales Tax & Ors., (2008) 8 Supreme Court Cases 681*. As we noted earlier, the assessment order was passed for the year 1998-99 on 18.05.2000 and for 1999-2000 on 27.4.2001 and for 2000-01 on 10.06.2002. The assessment orders in respect of the first two years were passed even before the judgment of the Delhi High Court. The Tribunal noted that while passing the assessment order dated 10.6.2002 for the assessment year 2000-01, the Assessing Officer had obviously not noted the above judgments.

On merits, it was admitted that in view of the judgment of the Supreme Court, which we will shortly refer to, the appellant was liable to pay tax in respect of the sale of DEPB. The only question urged before us was that even so it was, at the highest, a case for re-assessment under Section 31 and not for revision under Section 40.

10. Mr. Gupta, however, submitted that there is a clear demarcation between the powers under Section 31 and Section 40 of the HGST Act. In this regard, he relied upon a judgment of this Court in *Haryana Agro Industries Corporation Limited vs. State of Haryana and others, [2002] 125 Sales Tax Cases 18 (P&H).* The Division Bench held:-

> *"8. A conjoint reading of the provisions quoted above shows that while section 31 speaks of reassessment of tax, section 40 provides for revision. Under section 31, the Assessing Authority can reassess the tax payable on the turnover which has been underassessed or has escaped assessment. This power can be exercised within three years from the date of finalisation of assessment and subject to the giving of notice and reasonable opportunity of hearing to the dealer. Section 40(1) empowers the Commissioner to suo motu call for the record of the case pending before, or disposed of by, any officer appointed under section 3(1) to assist him or any Assessing Authority or Appellate Authority for the purposes of satisfying himself as to the legality or to propriety of any proceedings or of any order made therein and pass such order in relation to said proceedings or order as he may think fit. The period of limitation prescribed for exercise of power under this sub-section is five years from the date of the order. Sub-section (2) of section 40 empowers the State Government to issue*

notification conferring on any officer the powers of the Commissioner under sub-section (1). Sub-section (3) of section 40 represents embodiment of the rule of hearing. It provides that no order under section 40 can be passed adversely affecting any person unless such person is given a reasonable opportunity of being heard.

9. The above analysis of sections 31 and 40 shows that the Legislature has conferred powers upon the Assessing Authority and the Commissioner to deal with different types of cases and has prescribed different periods of limitation for exercise of powers under the two sections. While the Assessing Authority can undertake the exercise for reassessment if it discovers that the turnover of the business of a dealer has been under-assessed or escaped assessment, the Commissioner has been vested with the power to call for the record of pending as well as decided cases to satisfy himself as to the legality and/or propriety of any proceedings or of any order and then pass appropriate order. In our opinion, the use of different phraseology in the two sections is clearly indicative of the Legislature's intention to confer powers upon different authorities to deal with different situation and, therefore, the power exercisable by one authority cannot be exercised by another authority. In other words, the power vested in the Commissioner to suo motu call for the record of pending proceedings or decided cases to satisfy himself as to the legality and/or propriety of the pending proceedings or final order cannot be used for dealing with a case of escaped assessment which is the exclusive preserve of the Assessing Authority. In view of this, we are inclined to agree with Shri Sawhney that the notices issued by respondent No.2 under section 40 of the Act were ultra vires of the powers of the said respondent and on that ground alone the impugned orders are liable to be quashed.

……. ……. …….. ……

13. In Bidar Sahakar Sakkare Karkhane Ltd. v. State of Karnataka [1985] 58 STC 65, a division the Bench of Karnataka High Court interpreted sections 12-A and 21(2) of the Karnataka Sales Tax Act, 1957 and held as under:

"The revisional power cannot be exercised in respect of a matter which falls within the power to reassess escaped turnover. The revising authority, in other words, should not trench upon the powers which are expressly reserved to the assessing authority under section 12-A of the Karnataka Sales Tax Act, 1957 the Deputy Commissioner, in exercise of his revisional jurisdiction, should not ignore that limitation. It is clear from the provisions of section 12-A of the Act that the reason for the turnover escaping assessment is immaterial. It might be by oversight, mistake or by design. If the record reveals no application of mind by the assessing authority in respect of a part of the turnover, then it must be deemed to have escaped assessment. It would therefore be a clear case falling within the exclusive jurisdiction of the assessing authority for reassessment, no matter whether that part of the turnover was in or outside the record of assessment. If, on the other hand, the assessing authority has applied his mind and erroneously excluded any part of the turnover, then certainly it would be a case for the revisional authority to revise the assessment.

Where the assessee, a co-operative institution having a sugarcane factory, included harvesting charges incurred in the purchase of sugarcane to the factory, the assessing authority without applying his mind omitted to include those expenses in the taxable turnover, and the Deputy Commissioner in exercise of his powers under section 21(2) of the Karnataka Sales Tax Act set aside the assessment and directed the assessing authority to redo the assessment by including in the purchase turnover, the harvesting charges incurred by the assessee.

Held, that since the assessing authority did not apply his mind to the disputed turnover, the revising authority could not have invoked the powers under section 21(2) of the Act."

The argument of Shri Jaswant Singh that the expression "legality or propriety" used in section 40(1) of the Act should be liberally construed so as to include a case of escaped assessment sounds attractive but having regard to the scheme of the Act, we are unable to accept the same. If the Legislature intended to invest the revisional authority with the jurisdiction and power to deal with all types of cases, then it would have incorporated a non obstante clause in section 40. In the absence of such clause, we are unable to interpret section 40(1) as empowering the Commissioner or other designated officer to exercise power conferred upon the Assessing Authority under section 31.

15. We are further of the view that the expression "legality or propriety" would take within its folds all types of illegalities and improprieties which may have crept in the proceedings pending before the Assessing Authority or which may have affected the final adjudication, but it cannot take within its sweep, the cases of escaped assessment because in such cases there is no assessment/adjudication by the Assessing Authority or Appellate Authority."

Mr. Gupta also relied upon the notice in that case, which was extracted in the judgment, and contended that the wording thereof was similar to the wording of the notice in the present case dated 20.02.2003. He relied upon paragraph-17 of the Division Bench judgment where the Division Bench held that notice did not even advert to the relevant provisions of the Act else it would have indicated that the proposed action was being taken on account of a particular illegality or impropriety.

11. The question whether the assessment order suffers from any illegality or impropriety in the present case at least is one of fact. The Tribunal construed the assessment order in detail and came to a positive finding that the assessment order was passed on account of a mistake of law and that the Assessing Authority had, in fact, considered the entire record and had not brought to tax the sale proceeds on account of the sale of DEPB in view of the legal position as he perceived it to be. We were, in fact, informed that prior to the assessment order, the proceeds for the sale of DEPB were not brought to tax in the case of most of the assessees. The point was first decided by the Delhi High Court and thereafter by several other High Courts and finally by the Supreme Court.

12. We are unable to say that the finding of the Tribunal that the Assessing Authority had taken the case into consideration is perverse, unreasonable or totally unsustainable. The Tribunal has taken the relevant facts in this regard into consideration. For instance, as we noted earlier, the assessment order was passed pursuant to the notice issued under Section 28(2) on account of the Assessing Authority not being satisfied with the returned sale version. Pursuant thereto, the appellant produced the account books and other relevant documents. The order expressly states that the same had been "examined in detail and found to be maintained in normal course of business". The issue, therefore, did not escape the Assessing Authority. The balance-sheet, admittedly, was also produced. The balance-sheet had attached to it the trading, profit and loss account for the year ending as on 31.03.2000. There is a specific entry regarding the sales of the DEPB. The balance-sheet was also examined by the Assessing Authority. Considering all the facts and circumstances of the case, the Tribunal's view cannot be said to be an impossible one.

13. The appeal, therefore, does not raise a substantial question of law.

14. The appeal is dismissed.

PUNJAB & HARYANA HIGH COURT

CWP NO. 14451 OF 2015

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M. AGGARWAL & CO.
Vs
STATE OF PUNJAB AND OTHERS

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

21st July, 2015

HF ▶ None

Assessing authority ought to follow the judgement of jurisidictional court if it applies to petitioner's case.

PRECEDENTS – ASSESSMENT - SHOW CAUSE NOTICE ISSUED AGAINST REJECTION OF INPUT TAX CREDIT – WRIT FILED APPREHENDING THAT ASSESSING AUTHORITY WOULD NOT FOLLOW LAW BINDING ON THEM – CONTENTION THAT AUTHORITY OUGHT TO FOLLOW JUDGEMENT PASSED BY THE JURISDICTIONAL COURT INSTEAD OF ONE PASSED BY BOMBAY HIGH COURT – WRIT DISPOSED OF WITH A DIRECTION TO FOLLOW THE JUDGEMENT OF THE DIVISION BENCH OF P&H HIGH COURT IF IT APPLIES TO PETITIONER'S CASE – ASSESSING AUTHORITY TO FURNISH DETAILED REASONS FOR THE DECISION IN RESPECT OF PETITIONER'S SUBMISSIONS – *SEC. 13 OF PVAT ACT.*

The petitioner has challenged the notice issued to show cause as to why ITC on purchases made by them in respect of a firm be not rejected and penalty and interest be not imposed. The petitioner filed a writ submitting that the assessing authority ought to follow the judgement of the division bench in this court in Gheru Lal Bal Chand which is a judgment of jurisdictional court. It was contended that the authority might follow the judgement of Bombay high court in case of Maha Laxmi Ginning Pressing and Oil Industries. The high court has disposed of the writ with a direction that the authority ought to consider the case of Punjab & Haryana High Court if that is applicable in the instant case and also take into account the that the provisions of Maharashtra Act are different from PVAT Act. The assessing authority shall furnish detailed reasons for the decision especially in respect of petitioner's submissions. Petition disposed of.

Cases referred:
Gheru Lal Bal Chand Vs State of Haryana and another [2011] 45 VST 195 (P&H)
Maha Laxmi Ginning Pressing and Oil Industries Vs State of Maharashtra and others [2012] 51 VST 1 (Bom)

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

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

1.The petitioner – a partnership firm has challenged a notice dated 13.05.2015 calling upon them to show cause as to why the input tax credit on the purchases made by them from M/s Salasar Ispath be not rejected and penalty proceedings under Section 56 of the Punjab Value Added Tax Act, 2005 (in short the Act) and interest under Section 32(3) of the Act be not imposed.

2. We do not see any reason to interfere with the proceedings at this stage. The petitioner has already appeared before the assessing authority. We would like to believe that the petitioner's apprehension that the authority would not follow a law binding upon it is not justified.

3. Mr. Goyal submitted that the assessing authority ought to follow the judgement of the Division Bench of this Court in *Gheru Lal Bal Chand Vs State of Haryana and another* [2011] 45 VST 195 (P&H), which is a jurisdictional Court, for two reasons.

Firstly, that the authority is bound by the judgement of the jurisdictional Court and not of any other Court except of course the Supreme Court.

Secondly, that the authority is likely to follow the judgement of the Bombay High Court in the case of *Maha Laxmi Ginning Pressing and Oil Industries Vs State of Maharashtra and others* [2012] 51 VST 1 (Bom).

4. If indeed the judgement of the Division Bench of this Court applies to the petitioner's case, there is no reason to believe that the assessing authority will not follow the judgement. Indeed, it would be bound to do so.

5. Mr. Goyal also states that the provisions of the relevant enactment in Maharashtra are different from those of the Act as applicable in Punjab. We are sure that the assessing authority will take that into consideration as well.

6. The writ petition is, therefore, disposed of.

7. The assessing authority shall furnish detailed reasons for the decision especially in respect of Mr. Goyal’s aforesaid submissions.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 176 OF 2013

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AB SUGARS LTD
Vs.
STATE OF PUNJAB AND ANOTHER

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND HARINDER SINGH SINDHU

15th July, 2015

HF ▶ Revenue

Earlier judgment under the same enactment is binding precedent than later judgment under another Act even though earlier judgment did not consider these issues raised in later judgment.

PRECEDENTS – PURCHASE TAX – SUGARCANE – LEVY OF PURCHASE TAX ON SUGARCANE BY DEPARTMENT FOLLOWING SUPREME COURT JUDGEMENT IN CASE 'X' UNDER THE SAME ENACTMENT – TRIBUNAL UPHELD THE ORDER IGNORING ANOTHER SUPREME COURT JUDGEMENT RELIED UPON BY APPELLANT IN CASE 'Y' UNDER A DIFFERENT STATUTE – APPEAL BEFORE HIGH COURT – ARGUMENT RAISED BY APPELLANT BEFORE HIGH COURT NEVER CONSIDERED BY SUPREME COURT WHILE DECIDING CASE 'X' AS CONTENDED- PLEA THAT CASE 'Y' IDENTICAL TO ISSUE OF THE CASE OF APPELLANT AND OUGHT TO HAVE BEEN FOLLOWED – HELD, CASE 'X' IS DIRECTLY ON THE ISSUE BEFORE HIGH COURT UNDER THE SAME ENACTMENT - DIFFERENT VIEW CANNOT BE TAKEN EVEN THOUGH POINT BEING RAISED BEFORE HIGH COURT NOT CONSIDERED BY SUPREME COURT – JUDGMENT 'X' IS A BINDING PRECEDENT - APPEAL DISMISSED – *SEC. 4-B, 4(1) OF PGST ACT; BIHAR FINANCE ACT; PUNJAB SUGARCANE (REGULATION OF PURCHASE AND SUPPLY) ACT, 1953; BIHAR SUGARCANE SUGARCANE (REGULATION OF PURCHASE AND SUPPLY) ACT, 1981.*

Purchase tax was levied on sugarcane on purchase of sugarcane from sugarcane growers by the assessing authority. On dismissal of appeals below, an appeal is filed before High court.

It is contended by the appellant that the argument he is now developing before the High court was not considered by the Supreme Court in the case of M/s Jagjit Sugar Mills Co. Ltd. which has been applied by the department. Arguing against the applicability of the case, the appellant contended that the tax is not leviable under the PGST Act as is levied by the officer. It is to be levied under the Punjab Sugarcane (Regulation of Purchase & Supply) Act. For this the appellant relied upon the judgement passed by Supreme Court in the case of M/s Gobind Sugar Mills considering Bihar Finance Act.

While deciding in favour of revenue, the high court has held that the judgement of M/s Jagjit Sugar Mills is directly on the point before high court. It deals with the provisions and enactments that fall for consideration of the court. Therefore, keeping doctrine of precedent in view, the High court cannot deviate from the view taken by Supreme Court. Relying upon another judgement, it is held that the high court cannot question the correctness of the decision of Supreme Court even though the point raised before high court was not considered by supreme court. Judgement of Supreme Court cannot be assailed on the ground that certain aspects were not considered or brought to notice of supreme court. Different view cannot be taken on the ground that the Supreme Court did not consider the provisions of Punjab Sugarcane (Regulation of Purchase & Supply) Act. Once the principle is decided by the Apex court, it is the duty of High Court to follow it. Hence, the appeal is dismissed.

Case followed:
M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab and another 1995(1) SCC 67

Case distinguished:
Gobind Sugar Mills Ltd. v. State of Bihar and others (1999) 7 SCC 76.

Cases relied upon:
Suganthi Suresh Kumar v. Jagdeeshan (2002) 2 SCC 420
Director of Settlements A.P. and others v. M.R.Apparao and another (2002)4 SCC 638

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

Mr. Piyush Kant Jain, Additional Advocate General, Punjab,
for the respondents.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

1.This is an appeal under section 68 of the Punjab Value Added Tax Act, 2005 against the order of the Value Added Tax Tribunal, Punjab dated 20.03.2008 upholding the order passed by the Deputy Excise & Taxation Commissioner (Appeals)-First Appellate Authority dismissing the appellant's appeal against the order of the Assessing Officer.

2. The appellants have pressed the following questions, which according to them, raise substantial questions of law:-

i) "Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in ignoring the judgment of M/s Gobind Sugar Mills and following the judgment of M/s Jagatjit Sugar Mills case despite the fact that the issue and facts in Govind Sugar Mills case are almost identical to the issues and facts of the present case?

ii) Whether in the facts and circumstances of the case, the appellant is liable to pay tax on the purchase of sugarcane under the provisions of Punjab General Sales Tax Act, 1948, when the Punjab Sugarcane (Regulation of Purchase & Supply) Act, 1953 is in force which is a special Act?"

3. The Assessing Officer-Deputy Excise & Taxation Commissioner and Value Added Tax Tribunal rightly held that the appellant is liable to pay tax on the purchase of sugarcane under the provisions of the Punjab General Sales Tax Act, 1948 (for short 'PGST Act') in view of the judgment of a bench of three learned Judges of the Supreme Court in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab and another 1995(1) SCC 67,* which was a judgment on the very provisions which fall for consideration before us.

4. Mr. Sandeep Goel, the learned counsel appearing on behalf of the appellant, however, contends that the authorities ought not to have followed and that we ought not to follow this judgment, although it would normally be binding on us as the Supreme Court failed to consider an argument now raised before us and which, it is contended, is supported by another judgment of the Supreme Court in *Gobind Sugar Mills Ltd. v. State of Bihar and others (1999) 7 Supreme Court Cases 76.*

5. We are unable to agree. In our view we are bound by the judgment of the Supreme Court in M/s Jagatjit Sugar Mill's case (supra) as the Supreme Court in this case dealt with the very provisions with which we are concerned. The question that arose in that case was whether the petitioner-sugar mill was liable to pay the purchase tax on the sugarcane purchased by it from the growers. The respondents therein contended that sugarcane was exempted from purchase tax inter-alia in view of section 4-B of the PGST Act. The Supreme Court noted the definitions in Section 2 of the PGST Act of the terms *"dealer', 'goods' 'purchase' 'sale' and 'turnover*'. The Supreme Court also noted Section 4 of the PGST Act which was the main charging section and section 5 which defines the expression 'taxable turnover'. Sections 4 and 4-B of the PGST Act, which were also noted, in so far as they are relevant, read as under:-

> ***"4. Incidence of taxation. - (1)*** *Subject to the provisions of sections 5 and 6 every dealer except one dealing exclusively in goods declared tax - free under section 6 whose gross turnover during the year immediately proceeding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the coming, into force of this Act and purchases made after the commencement of the East Punjab General Sales Tax (Amendment) Act, 1958:*
>
> *Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the assessing authority to have been entered into before the commencement of this Act.*
>
> ***"4-B. Levy of purchase tax on certain goods****. –*
>
> *Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule B from any source and –*
>
> *i. uses them within the Union Territory of Chandigarh in the manufacture of goods specified in Schedule B, or*
> *ii. uses them within the Union Territory in the manufacture of any goods, other than those specified in Schedule B, and sends the goods so manufactured outside the Union Territory in any manner 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, or*
> *iii. uses such goods for a purpose other than that of resale within the Union Territory, or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or*
> *iv. sends them out side the Union Territory other than by the way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, and no tax is payable on the purchase of such goods under any other provision of this Act, there shall be levied a tax on the purchase of such goods at such rate not exceeding the rate specified under sub-section (1) of section 5 as the Central Government may direct".*

The question before the Supreme Court was whether the petitioner therein was liable to pay purchase tax on the sugarcane purchased by it from the growers of the sugarcane. This is the very question before us as well. Paragraphs 14, 22 and 23 of the judgment read as under:-

*"**14.** The contention of the learned counsel for the petitioner is this: Section 4-B, which levies purchase tax, expressly excludes the goods mentioned in Schedule B from its purview. In other words, Schedule B goods are exempt from tax on their sale by virtue of Section 6 and exempt from tax on their purchase by virtue of Section 4-B. The emphasis is upon the opening words of Section 4-B which reads: "Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule B from any source…." We find it difficult to agree. The said argument, in our opinion, is based upon an incorrect premise that purchase tax is levied by Section 4-B in the Act and not by any other provision. The said argument also ignores the fact that Section 4 levies tax not only upon "all sales effected" but also on "purchases made". If the assumption underlying the argument of the learned counsel for the petitioner were to be accepted then no purchase tax was leviable on Schedule C goods prior to introduction of Section 4-B. Similarly, no purchase tax should be leviable even now on Schedule C goods (Schedule C, even according to the counsel for petitioners, mentions goods subject to purchase tax) inasmuch as Section 4-B does not refer to Schedule C nor does Section 4-B levy purchase tax on the purchase of goods in Schedule C. In our opinion, the purpose of Section 4-B is altogether different. It is designed really to identify and affirm — in a broad sense, create — the levy of purchase tax in some cases and to provide for exemption from purchase tax in certain other specified situations. This is done in the interest of manufacturers-dealers, consuming public and other dealers — a common feature in almost all the sales tax enactments, as we shall presently demonstrate. To explain what we say, let us analyse the section. For attracting the levy of purchase tax under Section 4-B, the following requirements must be satisfied:*

(a) A dealer (liable to pay tax under the Act) purchases goods other than those specified in Schedule B from any source;
(b) No tax is payable on the purchase of such goods under any other provisions of the Act;
(c) The goods so purchased are used/disposed of etc. in one of the modes mentioned in clauses (i), (ii), (iii) or (iv).

***22.** It is, therefore, idle to contend that Section 4-B imposes purchase tax or is the only provision imposing purchase tax. As analysed hereinbefore, it is mainly designed to affirm or exempt, as the case may be, the purchase of certain goods from purchase tax in certain specified situations. It, of course, does not deal with the goods specified in Schedule B. Its object is to ensure inter alia that purchase of raw material is not taxed where the sale of manufactured goods brings in tax to the State or serves the national interest, as explained hereinbefore. If, however, manufactured goods are so disposed of as not to bring in tax to the State nor so as to serve national interest aforementioned, then the purchase of goods (broadly referred to as raw material in this judgment), the State retains and collects the purchase tax on raw material. Similarly, where the very goods are sold in such a manner as to bring in revenue to State by way of tax on their sale, (i.e., sale within the State, inter-State sale or export sale, as the case may be) then again the purchase of such goods is exempt from tax as explained and elaborated hereinabove.*

***23.** If so, the question arises which is the provision which levies the purchase tax? The answer is — Section 4(1) itself. Section 4(1) not only levies tax on all sales but also levies tax on all purchases as well. Of course, in no case will both the sale point and purchase point of the same transaction be taxed, which feature is indicated in sub-section (2-A) of Section 4 also. It is, therefore, obvious that where the sale of certain goods is exempt from tax by virtue of Section 6, their purchase will be taxed and*

conversely where the Act expressly taxes the purchase of certain goods their sale simultaneously will not be taxed — subject, of course, to any express provisions providing exemptions. In the case of sugarcane, it being an agricultural produce — and in cases where it is sold by the grower himself — such sale is exempt from tax by virtue of Section 6 read with Schedule B. If so, the purchaser thereof is liable to pay tax on its purchase by virtue of Section 4(1). That is the position in the cases before us. Since Section 4-B does not apply to Schedule B goods, the said provision is not relevant to the petitioners. The purchase tax on sugarcane is levied by Section 4(1), since it being an agricultural produce, and said to be sold by growers themselves, is exempt from tax on its sale under Section 6."

6. Mr. Goel rightly did not even contend that the judgment is not applicable to the case before us. He, however, contended that the Supreme Court did not consider the argument which he developed before us. He contended that the petitioner is not liable to pay the purchase tax under the Punjab General Sales Tax Act, 1948 as purchase tax is levied under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. He submitted that the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 being a special enactment for levying purchase tax exclusively on purchase of sugar overrides the Punjab General Sales Tax Act, 1948. He further contended that on a harmonious construction of the two Acts, the State can levy purchase tax on purchase of sugarcane only under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. In support of this contention, he relied upon the judgment of the Supreme Court in *Gobind Sugar Mills Ltd. v. State of Bihar and others (supra).* 7. The Supreme Court in that case dealt with the Bihar Finance Act, 1981 and Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 which are referred to in that judgment as 'the Finance Act' and 'the Sugarcane Act', respectively. It was contended that the State legislature having once provided for levy of purchase tax under the Sugarcane Act, cannot impose the same levy under the Finance Act. Analyzing the provisions of the Finance Act, the Supreme Court observed that it provides for levy of different types of commercial taxes which are generally leviable in the State of Bihar and that the object of the Sugarcane Act was to regulate the production, supply and distribution of sugarcane intended for use in sugar factories and for taxation of sugarcane and matters incidental thereto. Mr. Goel, relied upon paragraph 11 of the judgment which reads as under:-

***"11.** The next contention on behalf of the State, as noted above, is that the two enactments operate in different fields inasmuch as while the Finance Act is an enactment for the purpose of generating revenue for the State, the Sugarcane Act is enacted generally for the purpose of production, supply and distribution of sugar. The power of taxation contemplated under this Act is only incidental to further the object of Section 49(8) of the Sugarcane Act. In other words, an attempt was made to contend that the tax which was levied and collected under Section 49 of the Sugarcane Act was to be appropriated towards the requirements of the Board and the Council constituted under the Sugarcane Act. In this connection, it was contended that Section 3 of the Sugarcane Act contemplated establishment of the Sugarcane Board with specific power to fulfill the objects of the said Act. Therefore, the levy that was being collected as purchase tax under Section 49(1)(b) of the Act, being an exclusive levy for the purpose of the requirement of the Board, the same cannot be equated with the levy of purchase tax contemplated under Section 4 of the Finance Act. We do not find sufficient force in this argument to repel the contention of the appellant that the tax collected under Section 49(1)(b) of the Sugarcane Act is the same as is contemplated under Section 4 of the Finance Act but confined to sugarcane. A perusal of Section 49(8) of the Sugarcane Act shows that a part of the amount of purchase tax collected under its sub-section (3) is utilised for the purpose of the Board and the Council as grant but subsection (8) of*

Section 49 does not, in any manner, indicate that the entirety of this collection under sub-section (1)(b) of Section 49 is solely earmarked for the purpose of the expenditure of the Board or the Council. A perusal of Sections 6 and 9 of the Sugarcane Act clearly shows that the legislature has made separate provisions for the funds of the Board as well as the Council under the said Act, and only a portion of the collection under sub-section (1)(a) of Section 49 is earmarked for these purposes; hence, it is clear that the balance of collection goes to the State Exchequer/General Fund. So, there is no merit in the arguments advanced on behalf of the State that the collection of purchase tax under sub-section (1)(b) of Section 49 is for the purpose of creating a fund for the exclusive use of the Board and the Council created under the said Act."

8. We will assume that the observations of the Supreme Court in *Gobind Sugar Mills Ltd. v. State of Bihar and others (supra)* are of assistance to the appellant. It may have been possible for the appellant to rely upon this judgment to draw an analogy with the provisions of the enactments that fall for our consideration. However, the judgment in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab* (supra) is directly on point. It dealt with the provisions of the very enactments that fall for our consideration. It cannot be disputed that absent anything else we are bound by the judgment.

9. Keeping the doctrine of precedent in mind we are not entitled to take a different view based on Mr. Goel's additional submission founded on the provisions of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. In *Suganthi Suresh Kumar v. Jagdeeshan (2002) 2 Supreme Court Cases 420,* the Supreme Court held that the High Court cannot question the correctness of the decision of the Supreme Court even though the point raised before the High Court was not considered by the Supreme Court. In *Director of Settlements A.P. and others v. M.R.Apparao and another (2002)4 Supreme Court Cases 638,* the Supreme Court held that the decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered by, or that relevant provisions were not brought to the notice of the Supreme Court. It was further observed that once the Supreme Court decides the principle it would be the duty of the High Court to follow the decision.

10. We, therefore, cannot take a view different from the one taken by the Supreme Court in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab* (supra) on the ground that the Supreme Court did not consider the provisions of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. Nor we are entitled to ignore this judgment on the basis of the judgment of the Supreme Court in *Gobind Sugar Mills Ltd. v. State of Bihar (supra) as* in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab* (supra) the Supreme Court considered the very provisions that fall for our consideration. In *Gobind Sugar Mills Ltd. v. State of Bihar (supra)* different enactments fell for the consideration of the Supreme Court.

11. This is not even a case where the enactments considered in *Gobind Sugar Mills Ltd. v. State of Bihar (supra)* were identical to the Punjab General Sales Tax Act and the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 or that there were no difference between the two enactments. Section 49(8) of the Sugarcane Act which fell for consideration in *Gobind Sugar Mills Ltd. v. State of Bihar (supra)* expressly provides that a part of the amount of purchase tax collected under subsection (3) is to be utilized for the purpose of the Board and the Council as grant but did not indicate that the entirety of this collection was solely earmarked for the purpose of expenditure of the Board or the Council. Such a provision is absent in the enactments before us. Infact, the statement of object and reasons of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 expressly state as under:-

*"**Statement of Objects and Reasons- "**With the promulgation of the Industries (Development and Regulation) Act, 1951, with effect from the 8th May, 1952, this regulation of sugarcane industry has become exclusively a Central subject. The State*

Government are now only concerned with the supply of sugarcane to sugar factories: moreover in view of lean financial position of the State, the State Government are not in a position to provide adequate funds for extensive Cane Development work in the areas supplying cane to sugar factories with the result that the factories are not getting cane of good quality. The Bill is being introduced in order to provide for a rational distribution of sugarcane to factories for its development on organized scientific lines making adequate funds available after imposing a tax on sugarcane purchases by factories, to protect the interests of cane growers and of the Industry and to put the new Act permanently on the Statute Books" (vide Punjab Government Gazette Extraordinary, dated the 9th October, 1953, p. 1630)."

12. Faced with this, Mr. Goel submitted that in any event in view of Article 266 of the Constitution of India the amounts collected under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 would be transferred to the consolidated fund of India and the enactments thereafter cannot direct the manner in which the same is to be utilized. He further submitted that once the amounts are credited to the consolidated fund of India, the Act cannot say how it is to be utilized. Only the legislature can do so.

Even assuming this to be so we do not see how it can make a difference. The legislature has imposed the tax. The amounts collected may well be available to the legislature to be spent for the purposes mentioned therein and in the statement of objects and reasons. These are aspects which can be gone into only by the Supreme Court and not by this Court for accepting these submissions would in effect result in this Court holding that the judgment of the Supreme Court in Jagatjit Sugar Mill's case (supra) is not good law.

13. Considering the view taken by us on Mr. Goyal's submission, it is not necessary to consider Mr. Jain's further submission that the appellant has infact challenged the validity of the Punjab General Sales Tax Act, 1948 and that such a challenge could not have been taken before the authorities.

14. In the circumstances, the questions of law, are answered against the appellant. The appeal is accordingly dismissed.

PUNJAB & HARYANA HIGH COURT

CEA NO. 67-69 &71 OF 2014

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COMMISSIONER, CENTRAL EXCISE COMMISSIONERATE
Vs.
ELEGANT ENTERPRISES

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND HARINDER SINGH SINDHU

15th July, 2015

HF ▶ Respondent

Filing of appeal by Central Excise Officer without direction of Committee of Commissioners is not maintainable.

APPEAL- CESTAT – APPEAL FILED BY CENTRAL EXCISE OFFICER BEFORE APPELLATE TRIBUNAL ON BEHALF OF AUTHORITY – NO DIRECTION ISSUED TO THE OFFICER BY THE COMMITTEE OF COMMISSIONERS OF CENTRAL EXCISE TO FILE AN APPEAL-MERE TENDERING OF DOCUMENTS AT BAR DURING HEARING OF APPEALS NOT INDICATIVE OF COMPLIANCE OF SEC 35B(2) OF THE ACT- PREREQUIREMENT OF DIRECTION TO OFFICER NOT FULFILLED – APPEAL DISMISSED – *SEC 35B(2) OF THE CENTRAL EXCISE ACT, 1944.*

An appeal was filed before the Appellate Tribunal by the Central excise officer on behalf of the Appellate commissioner of central excise. But it was dismissed on the ground that no direction was given to the officer which is a prerequisite to file an appeal as per sec 35B (2) of the Central excise act. On filing of appeal before high court, the order passed by the Appellate Tribunal was upheld as compliance of sec 35B is necessary to file an appeal before appellate tribunal. Mere exchange of documents at Bar is not enough.

Cases relied upon:

Commissioner of Central Excise, Delhi-III (Gurgaon) vs. B.E. Office Automation Products Pvt. Ltd, (2010) 249 ELT 24
CCE, Vadodara vs. Rohit Pulp and Paper Mills, (1998) 101 ELT 5 (SC)

Present: Mr. Sukhdev Sharma, Advocate, for the appellant.

Mr. Abhishek Jaju, Advocate, for the respondent.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

1. We are informed that the appeals are against a common order and are identical in all respects. We, therefore, dispose of all the appeals by this common order and judgment.

2. These appeals have been filed against the order of the CESTAT dismissing the appellants' appeals on the ground that the appellants had not complied with the provisions of Section 35B(2) of The Central Excise Act, 1944. The said Section reads thus:-

> *"**35B. Appeals to the Appellate Tribunal**.- (2) The Committee of Commissioners of Central Excise may, if it is of opinion that an order passed by the Appellate Commissioner of Central Excise under section 35, as it stood immediately before the appointed day, or the Commissioner (Appeals) under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on its behalf to the Appellate Tribunal against such order."*

3. It has been held by a Division Bench of this Court in ***Commissioner of Central Excise, Delhi-III (Gurgaon) vs. B.E. Office Automation Products Pvt. Ltd, (2010) 249 ELT 24*** that the compliance with the Section is necessary and that in the event of the failure to comply with the same, no appeal is deemed to have been instituted in the eyes of law. The Division Bench, in that case, dealt with Section 130 of the Customs Act, 1962, which is *para materia* to Section 35B(2) of the Central Excise Act, 1944, with which we are concerned.

4. The Supreme Court in ***CCE, Vadodara vs. Rohit Pulp and Paper Mills, (1998) 101 ELT 5 (SC)*** held that the provisions of Section 35B (2) are clearly required as a prerequisite to the direction to any Central Excise Officer to file an appeal. As no such direction was produced, the appeal was dismissed. In the present case also, Section 35B(2) has not been complied with. The documents tendered across the Bar during the hearing of these appeals also do not indicate compliance of the provisions of Section 35B(2) of the Act.

5. The appeals are, therefore, dismissed.

PUNJAB & HARYANA HIGH COURT

CWP NO. 14727 OF 2015

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ARSS INFRASTRUCTURE PROJECTS LTD.
Vs.
STATE OF HARYANA AND OTHERS

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

22nd July, 2015

HF ▶ Assessee petitioner

Assessee cannot to be compelled to carry forward the amount of refund granted to him.

REFUND – PETITIONER ENTITLED TO REFUND AS PER ASSESSMENT ORDER – WRIT FILED AGAINST COMPULSION TO CARRY IT FORWARD – DEPARTMENT ORDERED TO REFUND THE AMOUNT ALONG WITH INTEREST IF PAYABLE – WRIT DISPOSED OF – *SEC 20 OF HVAT ACT.*

The petitioner was entitled to refund of about Rs 1,33,493/-.But the department was compelling him to carry forward the amount. A writ was filed against this. It has been held that the petitioner should be given the refund along with the interest if payable.

Present: Mr. Avneesh Jhingan, Advocate, for the petitioner.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Issue notice of motion.

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

2. The petitioner has been granted a refund to the extent of about Rs. 1,33,493/-. The petitioner is entitled to the same as per the assessment order itself. The petitioner cannot be compelled to carry it forward.

3. In these circumstances, the amount shall be refunded by 31.08.2015 alongwith statutory interest, if payable.

4. The writ petition is accordingly disposed of.

PUNJAB & HARYANA HIGH COURT

CWP NO. 15113 OF 2015

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GREATWAYS OVERSEAS
Vs.
STATE OF PUNJAB AND OTHERS

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

27nd July, 2015

HF ▶ Petitioner

Application for renewal of Advance tax exemption to be processed by the authorities by the date fixed.

ADVANCE TAX – EXEMPTION- RENEWAL OF CERTIFICATE – APPLICATION FOR RENEWAL OF EXEMPTION CERTIFICATE FILED BEFORE ITS EXPIRY DATE – APPLICATION NOT CONSIDERED- REMINDER ADDRESSED TO THE DEPARTMENT POST EXPIRY — WRIT FILED WITH A GRIEVANCE THAT DELAY IN RENEWAL WOULD RESULT IN PAYMENT OF ADVANCE TAX AND THEN SEEKING REFUND – WRIT DISPOSED OF WITH A DIRECTION TO THE AUTHORITIES TO CONSIDER THIS MATTER IN A FAIR AND JUDICIOUS WAY – AUTHORITIES TO PROCESS APPLICATION OF PETITIONER FOR RENEWAL BY THE DATE FIXED BY COURT- *SEC. 6(7) OF PVAT ACT.*

The certificate of exemption of Advance Tax was granted to the petitioner which came to an end on 30.6.2015. The petitioner sought its renewal vide letter dated 22/6/2015. The application was not considered due to which a reminder was addressed on 8/7/2015. A writ is filed in this behalf. The grievance of the petitioner is that the delay in issuing of exemption certificate or renewal thereof would prejudice it as till it is granted the assessee would be bound to pay the advance tax and then seek refund. Also, it is not clear whether the petitioner would be entitled to any compensation by way of interest for the period for which advance tax was paid by him which ultimately is not payable by him.

Disposing of the writ, the court has directed the authorities to consider this matter in a fair and judicious way within 4 weeks from the date of the order being passed. The respondents are directed to process the petitioner's application for the renewal certificate of advance tax exemption by 15.8.2015.

Present: Mr. Avneesh Jhingan, Advocate, for the petitioner.

****

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Issue notice of motion.

1. Service of the notice is waived, as Mr. Jagmohan Bansal, learned Additional Advocate General, Punjab accepts notice on behalf of the respondents.

The petitioner has sought a renewal of the certificate of advance tax exemption granted to it under a notification dated 04.10.2013. Its existing exemption certificate came to an end on 30.06.2015. The petitioner had sought renewal by a letter dated 22.06.2015. The application not having been considered, the petitioner addressed a reminder dated 08.07.2015.

2. The exemption is processed in terms of the said notification clause 2 (d) whereof reads as under:-

> *"(2) who intends to dispose of such goods, in any of the following manner, namely:-*
>
> *(d) by making zero rated sales as given under section 17 of the Act of such goods, or of the goods manufactured therefrom, he may make an application, to the Designated Officer, who, if after verifying all aspects of the case, arrives at a decision that the payment of the aforesaid tax, would result in refund, may exempt such taxable person from the payment of the said tax or reduce the rate of advance tax, with the approval of the Deputy Excise and Taxation Commissioner, In-charge of the concerned Division, by passing a speaking order, in this regard."*

3. The notification does not prohibit the authorities from granting the exemption certificate even for a longer duration or even till it is otherwise revoked or terminated. The petitioner's grievance, as indeed it must also be the grievance of several other applicants, is that the delay in issuing the exemption certificate or any renewal in respect thereof prejudices it substantially for till it is granted the assessee would be bound to pay the advance tax and then seek refund. It is not clear as yet as to whether such an assessee would be entitled to any compensation including by way of interest during the period that the advance tax which ultimately is not payable is deposited with the authorities. The grievance is not without substance. It is, however, a matter which the respondents must in the first instance consider. We would request the respondents to consider addressing this grievance of the assessee in a fair and judicious manner.

For instance, the authorities may consider whether the exemption ought to be open-ended subject to the right to revoke the same and also insisting for information in the meantime. They may also consider whether the exemption certificate ought to be granted for a longer duration than for three months. It may also be possible to permit the parties to apply for the renewal well before the expiry date of the existing certificate and to direct the authorities to take a decision on such application, if any, before the expiry of the date of the existing certificate.

4. The writ petition is accordingly disposed of by requesting the authorities to consider what we have just said preferably within four weeks from today. The respondents are also directed to process the petitioner's application for the renewal certificate of advance tax exemption by 15.08.2015. The rights and contentions of the parties are kept open.

PUNJAB & HARYANA HIGH COURT

CWP NO. 15286 OF 2015

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LUXMI TRADING COMPANY
Vs.
STATE OF PUNJAB AND OTHERS

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

29th July, 2015

HF ▶ Petitioner dealer

Interim stay on coercive action to recover entry tax on sugar.

ENTRY TAX – SUGAR – INTERIM ORDER – ORDINANCE PASSED LEVYING ENTRY TAX ON SUGAR AS PER THE SCHEDULE APPENDED- WRIT FILED CHALLENGING THE POWER OF PRINCIPAL SECRETARY TO NOTIFY THE SCHEDULE APPENDED TO THE ORDINANCE – RECOVERY OF TAX BY COERCIVE STEPS STAYED BY COURT TILL EXAMINATION OF POWER OF PRINCIPAL SECRETARY TO NOTIFY THE SCHEDULE AND INCLUDE SUGAR.

As per clause 4 of the ordinance it was provided that entry tax on the goods specified in the schedule would be levied. However, the appended schedule was notified by the Principal secretary, department of industries and commerce on 29.5.2015. The petitioner challenged the power of the principal secretary to notify the schedule and include sugar in it. An interim order has been passed by the court staying the recovery of entry tax on sugar by coercive action based on the schedule till further orders.

Present: Mr. Akshay Bhan, Senior Advocate,
with Mr. Alok Mittal, Advocate, for the petitioner.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Issue notice of motion returnable on 08.09.2015.

1. Service of the notice is waived, as Mr. Piyush Kant Jain, learned Additional Advocate General, Punjab accepts notice on behalf of the respondents. Let a complete set of paper book be supplied to him during the course of the day.

2. Clause 4 of the ordinance provides that there shall be levied and collected a tax on entry of goods specified in the Schedule. "Schedule" is defined in Section 2(k) to mean a Schedule appended to the ordinance. The Schedule was notified by the Principal Secretary, Department of Industries and Commerce on 29.05.2015. It is necessary to examine as to under what power the Principal Secretary has specified the Schedule and included sugar

therein.

3. In these circumstances, till furthers orders, no coercive action shall be taken for the recovery of tax based on the Schedule.

4. List again on 08.09.2015.

PUNJAB & HARYANA HIGH COURT

CWP NO. 15499 OF 2015

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TAX BAR ASSOCIATION, HISAR
Vs.
STATE OF HARYANA AND OTHERS

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

30th July, 2015

HF ▶ Tax Bar Association- Petitioner

Direction issued to respondents to accept manual tax returns filed for the current quarter.

RETURNS – WRIT FILED BY TAX BAR AGAINST SYSTEM OF E- FILING OF RETURNS AND REFUSAL TO ACCEPT MANUAL RETURNS BY THE DEPARTMENT – RESPONDENTS READY TO ACCEPT MANUAL RETURNS FOR THIS QUARTER – TO ISSUE NOTIFICATION REGARDING E – FILING - WRIT DISPOSED OF BY GRANTING LIBERTY TO PETITIONER TO FILE MANUAL RETURNS – DATE OF FILING OF RETURNS EXTENDED UPTO 10 AUGUST, 2015 DUE TO UNCERTAINTY IN THE MATTER DUE TO TRANSITIONAL STAGE FROM MANUAL TO E-FILING – *SEC. 14 OF HVAT ACT, RULE 16 OF HVAT RULES.*

A writ is filed against the system of filing of e –returns introduced by the department and refusal to accept the manual returns. The respondents have stated that e- filing is being encouraged but atleast for this quarter they are not refusing manual returns and that they shall issue a notification in this regard. Hence, petitioner is granted liberty to file manual returns for this quarter. Due to uncertainty regarding the matter, time to file manual returns is extended upto 10.8.2015. The petitioner is open to challenge the notification to be issued by department, if any.

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

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Issue notice of motion.

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

The petitioner's grievance is that the respondents have introduced a system of e-filing of the tax returns under the Haryana Value Added Tax Act, 2003 and that the respondents are refusing to accept manual returns.

2. Ms. Talwar appearing on behalf of the respondents, on having instructions, states that the respondents are undoubtedly encouraging e-filing of the tax returns, but that the

respondents are not at least for this quarter refusing to accept the manual returns. They intend issuing a notification.

3. The petitioner's grievance, therefore, stands redressed at this stage.

4. Needless to add that it is always open to the petitioner to challenge the notification, if any. In view of the said statement, the petitioner is at liberty to file the manual returns for this quarter. The respondents state that they will accept the same, if filed. As there was some uncertainty regarding the matter which is at a transitional stage from manual filing to e-filing, the time to file the manual returns or e-returns is extended only upto 10.08.2015.

5. The petition is accordingly disposed of.

PUNJAB & HARYANA HIGH COURT

CWP NO. 15294 OF 2015

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OCEAN METALS PVT. LTD.
Vs.
STATE OF PUNJAB AND OTHERS

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

29th July, 2015

HF ▶ Petitioner

Direction is issued to the designated officer to pass assessment orders to comply with the orders of the tribunal.

COMPLIANCE OF ORDER – WRIT FILED PRAYING TO DIRECT RESPONDENTS TO PASS FRESH ASSESSMENT ORDER AS PER THE ORDER OF THE TRIBUNAL – RESPONDENT DIRECTED BY HIGH COURT TO FOLLOW THE ORDER OF TRIBUNAL BY THE DATE SPECIFIED FAILING WHICH OPEN TO PETITIONER TO SEEK INTEREST IN THIS WRIT PETITIONER BY SEPARATE APPLICATION.

A writ is filed praying that the respondent was not complying with the orders passed by the tribunal which had attained finality. Disposing of the writ, the high court has directed the respondent i.e. the designated officer to frame fresh assessment as per the orders of the Tribunal by 15.9.05 failing which it is opening to the petitioner to seek interest in this writ petition by a separate application.

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

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Notice of motion.

1. Service of the notice is waived, as Mr. Piyush Kant Jain, learned Additional Advocate General, Punjab accepts notice on behalf of the respondents.

The petitioner merely seeks an order directing the respondents to pass a fresh assessment order in accordance with the order of the Punjab Value Added Tax Tribunal dated 14.09.2012. That order has now attained finality. There is no reason why the order should not be complied with.

2. In these circumstances, the writ petition is disposed of by directing the respondent No. 2 – Excise and Taxation Officer-cum-Designated Officer, Jaitu, District Faridkot to pass the fresh assessment order as directed by the said order of the Tribunal dated 14.09.2012.

3. This order shall be complied with latest by 15.09.2015 failing which it will be open to the petitioner to seek interest in this writ petition itself by a separate application.

PUNJAB & HARYANA HIGH COURT

CWP NO. 21811 OF 2014

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AMRIT BANASPATI COMPANY LIMITED
Vs
STATE OF PUNJAB AND OTHERS

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

7th August, 2015

HF ▶ Revenue

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

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

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

Rejecting the challenge the court held :

1) *The contention of the petitioners that the amendment Act is prospective is misconceived as the commencement of the Act is different from the operation of the Act. Even though in the present case the amendment is applicable from 15/11/2013 but the same is operational even for the periods prior thereto. A combined reading of the amendment shows along with the explanations that the Legislature has made its intentions very*

clear when Explanation 1 provides for the applicability of extended period even to those cases where the aforesaid period of six years has not expired. Moreover, for the year 2006-07 a special proviso has been added to allow the framing of the assessment upto 20/11/2014. The amendment, therefore, has the retrospective effect and all the contentions are examined in the light of this presumption.

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

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

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

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

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

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

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

Cases referred:

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

Cases relied upon:

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

Cases Distinguished:

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

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

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

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

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

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

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

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

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

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

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

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

Before amendment on 15.11.2013 Section 29(4)	**Amendment from 15.11.2013 Section 29(4)**
*An assessment under sub section (2) or sub-section (3) may be made within **(three)** years, after the date when the annual statement was filed or due to be filed whichever is later.* *PROVIDED THAT where circumstances so warrant, the Commissioner may by an order in writing, allow assessment of a taxable person or a registered person after three years, but not later than six years, from the date, when annual statement was filed or due to be filed by such person, whichever is later.*	*An assessment under sub-section (2) or sub-section (3), may be made within **(six)** after the date when the annual statement was filed or due to be filed whichever is later.* *PROVIDED THAT the assessment under sub section (2) or sub-section (3), in respect of which annual statement for the assessment year 2006-07 has already been filed, can be made till the 20th day of November, 2014.* ***EXPLANATION:*** *(1) The limitation period of six years for an assessment under sub-section (2) or sub-section (3), shall also apply to those cases in which the aforesaid period of six years has yet not e expired.* *(2) It is clarified that prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, the Commissioner was not required to issue any notice to the concerned person before extending the limitation period of assessment.* ***29(10A)*** *Notwithstanding anything to the contrary contained in any judgment, decree or order of any Court, tribunal or other authority, an order passed by the Commissioner under sub-section (4) prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, shall not be invalid on the ground of prior service of notice or communication of such order to the concerned person."*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

80. In the circumstances, the petition is dismissed.

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

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

PUNJAB & HARYANA HIGH COURT

CWP NO. 16213 OF 2014

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

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

7th August, 2015

HF ▶ Assessee petitioner

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

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

Facts:

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

Held:

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

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

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

Cases referred:

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

Cases followed:

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

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

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

******

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

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

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

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

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

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

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

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

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

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

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

> *(1) The assessing authority or a person appointed to assist the Commissioner under subsection (1) of section 3, as the case may be shall, in the prescribed manner, refund to a dealer or to any other person the amount of tax or penalty or interest paid by him in excess of the amount due from him under this Act, either by a refund voucher, or at the option of the dealer by adjustment of the amount so paid against the amount due from him in respect of any other period;*
>
> *Provided that the assessing authority or a person appointed to assist the Commissioner under subsection (1) of Section 3, as the case may be, shall first adjust the amount to be refunded towards the recovery of any amount due, on the date of adjustment from the dealer and shall then refund the balance, if any.*
>
> *(2) Where an amount required to be refunded by the assessing authority to any person by virtue of an order issued under this Act is not so refunded to him within the period as may be prescribed, the dealer shall be entitled to interest at such rates and on such terms and conditions as may be prescribed."*

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

> *"**35 1(a)** While framing the assessment of a dealer, the assessing authority shall, after such scrutiny of its record and after making such enquiries as it considers necessary, determine the amount paid by him, in excess, if any, and thereafter direct the refund of such amount as may remain after deducting any amount due from him. The assessing authority shall then issue to the dealer at his option a refund payment in form S.T.R. 34 prescribed under the Punjab Subsidiary Treasury Rules or refund adjustment order in form S.T. 34 and send it alongwith the assessment order.*
>
> *(b) Where a refund of any amount paid by any dealer or other person becomes payable as a result of the order of any appellate or revisional authority or any court and the same is not the subject matter of any further proceedings, the dealer or such other person shall make an application to the assessing authority concerned alongwith the original order or the copy thereof duly attested by the dealer, which constitutes the basis for refund, the assessing authority shall order the refund of excess amount in the manner specified in clause (a) within ninety days of the receipt of such application failing which interest shall be payable to the dealer or other person at the rate specified in subsection (5) of Section 25 of the Act, unless the Commissioner for reasons to be recorded in writing condones the delay.*
>
> ***38. Order Sanctioning Interest on Delayed Refunds***
>
> *(1) Where a refund payment order or a refund adjustment order is issued the authority issuing such order shall simultaneously record an order sanctioning the interest payable if any on such refunds, specifying therein, the amount of refund, the payment of which was delayed, the period of delay for which such interest is payable and the amount of interest payable by the State Government , and shall communicate the same to the dealer to whom the interest is payable and also to the Commissioner stating briefly the reasons for the delay in allowing the refund.*
>
> *(2) Where an order for the payment of interest on delayed refunds under sub-rule (1) has been made, the sanctioning authority shall issue to the dealer interest payment order in form S.T. 35."*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PUNJAB & HARYANA HIGH COURT

CWP NO. 15900 OF 2015

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GARG CONSTRUCTION CO.
Vs
STATE OF HARYANA AND ANOTHER

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

5th August, 2015

HF ▶ Petitioner- Assessee

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

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

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

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

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

Issue notice of motion.

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

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

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

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CEA NO. 80 OF 2014

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COMMISSIONER OF CENTRAL EXCISE
Vs
NEXO PRODUCTS (INDIA)

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

7th August, 2015

HF ▶ Assessee

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

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

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

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

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

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

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

Mr.Sudip Singh, Advocate, for the respondent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CEA NO. 23 OF 2015

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

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

7th August, 2015

HF ▶ Assessee

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

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

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

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

Mr. Sukhdev Sharma, Advocate, for the respondents.

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

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

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

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

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

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

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

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

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

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

PUNJAB & HARYANA HIGH COURT

CWP NO. 7211 OF 2015

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AJAY YADAV
Vs
UNION OF INDIA & ANOTHER

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

30th July, 2015

HF ▶ Assessee

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

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

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

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

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

Mr.Sunish Bindlish, Advocate, for the respondents.

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

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

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

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

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

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

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

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

PUNJAB & HARYANA HIGH COURT

VATAP NO. 214 of 2014

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B.K. STEELS
Vs
STATE OF PUNJAB AND ANR.

A.K. MITTAL AND RAMENDRA JAIN, JJ.

10th August, 2015

HF ▶ Appellant

Service of copy of order has to be done at the address mentioned in the memorandum of appeal.

APPEAL – CONDONATION OF DELAY – IMPROPER SERVICE OF ORDER – DISMISSAL OF APPEAL BY FIRST APPELLATE AUTHORITY VIDE ORDER DATED 2009 – DELIVERY OF ORDER CONTENDED TO HAVE BEEN DONE AT BRANCH OFFICE INSTEAD OF ADDRESS MENTIONED IN MEMORANDUM OF APPEAL – NON RECEIPT OF ORDER AT EITHER PLACE –- DELAYED FILING OF APPEAL BEFORE TRIBUNAL – CONTENTIONS REJECTED - CONDONATION OF 907 DAYS NOT GRANTED PRESUMING SERVICE U/S 27 OF INDIAN EVIDENCE ACT AND ILLUSTRATION (f) OF SEC 114 OF INDIAN EVIDENCE ACT- APPEAL BEFORE HIGH COURT – COPY OF ORDER OUGHT TO BE SENT AT ADDRESS MENTIONED IN MEMORANDUM OF APPEAL *MANDATORILY* – WRONG PRESUMPTION OF SERVICE BY TRIBUNAL – DELAY IN FILING CONDONED - APPEAL ACCEPTED -TRIBUNAL DIRECTED TO DECIDE THE APPEAL ON MERITS- *SECTION 62, 64 OF PVAT ACT; RULE 71 OF PVAT RULES*

The appellant had filed an appeal before the Ld. DETC who dismissed the appeal vide order dated 22.5.09. An appeal was filed before Tribunal alongwith an application for condonation of delay of 907 days. It was contended that the impugned order was never received by appellant. The authorities contended that they had dispatched the order at the branch office address instead of the one mentioned in memorandum of appeal which was not received at the branch office either. Two written letters were sent enquiring the status of its appeal but no response was given to it. The appellant came to know about the dismissal of appeal in 2012 only when he personally stepped into the office of the authorities. Rejecting the plea raised, the Tribunal dismissed the appeal and did not condone the delay presuming the service upon the appellant u/s s 27 of Indian Evidence Act and illustration(f) of sec 114 of Indian Evidence Act. On appeal before High court, it is held that the service of order should mandatorily be done at the address mentioned in memorandum of appeal as per Rule 71(1)(a) of the Rules. The Tribunal wrongly presumed the service upon the appellant. No satisfactory explanation was tendered for not sending the copy at the address given in memorandum of appeal. No party should be condemned unheard and a case should be decided on merits unless delay is due to gross negligence of a party. Therefore, the appeal is accepted and Tribunal is directed to hear the appeal on merits.

Case Referred:

The Commissioner of Income Tax, Punjab, Haryana, Jammu and Kashmir, Himachal Pradesh and Chandigarh, Patiala V/s Lalita Kapur' (P&H)(DB), 1970 CurLJ 523

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

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

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RAMENDRA JAIN, J.

1. The appellant has approached this Court *inter alia* for setting aside the impugned order dated 29.04.2013 passed by the learned Value Added Tax, Tribunal, Punjab ('the Tribunal' for short) dismissing its application seeking condonation of 907 days' delay in filing the appeal as well as the appeal, being barred by limitation.

2. Brief facts, are that on 04.03.2006 a vehicle transporting M.S. Bars from U.P. to Punjab was intercepted by the Excise and Taxation Officer, Rajpura. The documents in the custody of driver were found not proper. Hence, the goods were detained under Section 51(6)(a) of the Punjab Value Added Tax Act, 2005 ('Act' for short). After affording an opportunity to the owner of the goods, the detaining officer being not satisfied referred the case to the Enquiry Officer, who after conducting the inquiry imposed a penalty of ₹ 1,51,687/under Section 51(7)(b) of the Act upon the appellant, being owner of the goods.

3. Feeling aggrieved, the appellant preferred an appeal before the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala, who after hearing the appellant as well as the department's representative remanded the case back to the Enquiry Officer vide order dated 15.05.2006. The appellant preferred an appeal before the learned Tribunal against the said order of remand, but remained unsuccessful. Thereafter, in remand the Enquiry Officer i.e. Assistant Excise and Taxation Officer, Patiala, again imposed a penalty of ₹ 1,51,687/under Section 51(7)(b) of the Act vide order dated 29.04.2008. Again, the appellant preferred an appeal which was dismissed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala vide order dated 22.05.2009. Since, the appellant was still unsatisfied with the aforesaid order dated 22.05.2009, therefore, he preferred an appeal along with an application under Section 64 of the Act seeking condonation of 907 days' delay in filing the appeal, which were dismissed vide order dated 29.04.2013.

4. It is contended that it was obligatory upon the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala to dispatch the copy of the order dated 22.05.2009 passed by him to the dealer of the appellant on the address given in the memorandum of appeal, but it was never sent there, rather was sent to its branch office at Rajpura. Since the said order was never communicated to the appellant, therefore, it wrote two letters on 16.03.2011 and then on 15.11.2011 to the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala to know about the status of its appeal. When the above letters went unresponded, the appellant made personal inquiry and came to know on 04.04.2012 that its appeal has already been decided on 22.05.2009 and the order was sent to the address of its branch office at Rajpura. However, the same was never received. Hence, the delay of 907 days in filing the appeal was not intentional or deliberate, rather was on account of above facts and circumstances.

5. It is further contended that the learned Tribunal taking presumption of service upon the appellant under Section 27 of the General Clauses Act, 1897 and the illustration (f) to Section 114 of the Indian Evidence Act, rejecting the above contention of the appellant, wrongly dismissed its application seeking condonation of 907 days delay in filing the appeal as well as the appeal vide impugned order dated 29.04.2013.

6. This Court has to decide the following question of law:

> *i) Whether on the facts and circumstances of the case, the learned Tribunal was justified in dismissing the appeal of the appellant on the ground of delay even though there was a serious dispute with regard to the communication of the order?*

7. It is not in dispute that the appellant in its memorandum of appeal before the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala has shown its address as "M/s B.K. Steels, G.T. Road, Rajpura, Head Office, Mandi No.1, Abohar C/o Sh. S.L. Bansal, Advocate, 5Circular Road, Abohar 152116 (Punjab)". Hence, it was mandatory upon the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala under Rule 71(1)(a) of Punjab Value Added Tax Rules, 2005 to send the copy of his order dated 22.05.2009 to the above address of the appellant at Abohar. However, he instead of sending the above order at the aforesaid address of the appellant at Abohar had sent the same to the Branch Office of the appellant at Rajpura, which as per appellant was never received. More so, when no response was received by the appellant against its letters dated 02.11.2010 and 16.03.2011, its counsel personally went to the office of DETC on 04.04.2012 to know the status of its appeal and then only came to know about the order dated 22.05.2009 passed by him, dismissing the appeal.

8. In view of the above factual position, the learned Tribunal has wrongly drawn presumption of service upon the appellant under Section 27 of the General Clause Act, 1897 and the illustration (f) to Section 114 of the Indian Evidence Act, more particularly when it was incumbent upon the Deputy Excise and Taxation Commissioner (A), Patiala to send the copy of order dated 22.05.2009 to the appellant at its address given in the memorandum of appeal.

9. In ***'The Commissioner of Income Tax, Punjab, Haryana, Jammu and Kashmir, Himachal Pradesh and Chandigarh, Patiala V/s Lalita Kapur' (P&H)(DB), 1970 CurLJ 523,*** a Division Bench of this Court has held that presumption under Section 27 of the General Clauses Act, 1897 stands rebutted in case the service is effected on an assessee under Section 63 (1) of the Income Tax Act, 1922 through its agent never appointed by it, as it shall not be a valid service.

10. In the instant case, the appellant never requested the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala to send the copy of the order upon the address of its branch office at Rajpura.

11. Learned counsel for the respondents could not give any satisfactory explanation for not sending the copy of the order dated 22.05.2009 to the appellant, upon its address given in the memorandum of appeal.

12. More so, by this time, it is well settled that a party should not be condemned unheard and the case should not be rejected on technical grounds, rather should be decided on merit unless delay is attributable to gross negligence of a party. Since learned counsel for the respondents has miserably failed to prove proper service of the order dated 22.05.2009 upon the appellant at its proper address, therefore, we are of the considered view that the impugned judgment dated 29.04.2013 passed by the learned Tribunal is liable to be set aside and consequently, the same is hereby set aside.

13. The application of the appellant filed before the learned Tribunal seeking condonation of 907 days' delay in filing the appeal is hereby allowed and the aforesaid delay in filing the appeal is condoned. Consequently, appeal of the appellant is also restored.

14. The learned Tribunal is directed to decide the appeal of the appellant on merit in accordance with law.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 10 OF 2013

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HPL SOCOMEC P. LTD.
Vs
STATE OF HARYANA AND ORS.

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

14th August, 2015

HF ▶ Petitoner

Order of Appellate Authority having attained finality is binding on lower level authority and cannot be modified.

APPELLATE AUTHORITY – BINDING NATURE OF ORDERS – EXEMPTION – APPLICATION FOR EXEMPTION FILED – DEPARTMENT INTIMATED ABOUT SENDING OF MACHINERY FROM HARYANA TO CHENNAI AT APPELLANT'S PREMISES- INSPECTION CONDUCTED AT CHENNAI HENCEFORTH - REJECTION OF CLAIM ON ACCOUNT OF MACHINERY BEING OLD – APPEAL BEFORE SECRETARY – MACHINERY HELD TO BE NEW – ORDER ATTAINED FINALITY- MATTER REOPENED BY HLSC RAISING A NEW CONTENTION THAT THE MACHINERY IN QUESTION OUGHT TO BE INSTALLED IN HARYANA FOR CLAIMING EXEMPTION- DISMISSAL OF APPEAL BY TRIBUNAL HOLDING THAT IT WAS OPEN TO HLSC TO RAISE A NEW ISSUE NOT CONSIDERED BY SECRETARY- WRIT FILED – NEW CONTENTION RAISED BY HLSC IMPLIEDLY IN ITS KNOWLEDGE EARLIER AND NOT DISPUTED – HLSC NOT PERMITTED TO MODIFY THE ORDER OF APPELLATE AUTHORITY HAVING ATTAINED FINALITY – SCHEME OF HIERARCHY AND BINDING NATURE OF ORDERS OF AUTHORITIES TO BE TAKEN INTO ACCOUNT – RESPONDENTS TO COMPLY WITH ORDERS OF SECRETARY – WRIT ALLOWED. *RULE 28 A OF HGST RULES,1975; SECTION 13B OF HGST ACT, 1973*

Facts:

The petitioner had been manufacturing changeover switches, switch boards and parts. It applied for exemption certificate. The HLSC(Higher Level Screening Committee) wanted to inspect the machinery. But since the machinery was sent to Chennai at the premises of the appellant where it was sent for job work of the appellant, the officer conducted inspection at Chennai. The eligibility certificate was denied by the HLSC on the basis that the investment of Rs 54.08 lacs was made in old machinery i.e. dies and tools purchased from Noida which formed more than 25% of the total capital investment .

However, on appeal before the Financial Commissioner & Secretary Industries, Department of Industries, the appeal was allowed holding that the tools and dies were new at the time of purchase and that the HLSC had wrongly concluded otherwise. This order had attained finality in view of Rule 28 A(5)(g).

The HLSC was directed to issue the certificate. But instead it reopened the matter and declined issuing the certificate on a new finding that the machinery in question had to be installed in Haryana as per the Rules which was not done. On appeal before Tribunal, it was held that since the issue was not considered by Secretary, it was open for HLSC to reopen the case suo motu.

Held:

On writ before the High Court, it is held that the issue regarding setting up of unit in Haryana was never ever contended by the department earlier. Infact, the site visits were made and they were fully aware that the machinery had been shifted to Chennai to the premises rented by the appellant for his job work.

The High Court has held that the HLSC had no jurisdiction to deal with the matter as it had merged into the order of the Secretary and it ought to have issued the certificate. The scheme of Rule 28 A(5) establishes the hierarchy of the authorities and the binding nature of their orders. The appeal against the original order of HLSC lies to the Secretary and the decision so given would be final. The HLSC had no power to modify, review or set aside the order of the Secretary. The lower authority is not entitled to reopen a matter which has attained finality before the appellate authority. Therefore, the respondents are directed to comply with the order of the Secretary. The orders passed by the Tribunal and HLSC are set aside.

Present: Mr. Rajiv Agnihotri, Advocate for the appellant

Ms. Mamta Singla Talawar, AAG, Haryana

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

1. This is an appeal under Section 36 of the Haryana Value Added Tax Act, 2003 against the order of the Haryana Tax Tribunal dated 05.09.2011 dismissing the appellant's appeal against the order of the Higher Level Screening Committee (HLSC) dated 10.08.2005 by which the HLSC held the appellant's industrial unit to be eligible for sales tax exemption only on the fixed capital investment of Rs.3,26,210/- and for the issuance of an eligibility certificate entitling the appellant to avail exemption to that extent alone, as against the appellant's claim for sales tax exemption of Rs.54.08 lacs. The appellant has also challenged the order of the Tribunal dated 22.06.2012 rejecting its application for review of the order dated 05.09.2011.

2. In paragraph-27 of the appeal, several questions of law have been raised. We, however, admit the appeal on the following substantial questions of law as framed by us:-

i) *Whether the Higher Level Screening Committee is entitled to reopen a case on its own where its earlier decision had been overruled by the appellate authority-Secretary in exercise of powers under Rule 28A(5)(g) of the Haryana General Sales Tax Rules, 1975?*

ii) *Whether the Higher Level Screening Committee is entitled to ignore the order of the appellate authority i.e. Secretary passed under Rule 28A(5)(h) and to refuse to comply with the order on the basis that it was doing so on a ground that had not been considered by the appellate authority?*

We have answered the questions in the negative, in favour of the appellant/assessee.

3. The appellant is engaged in the manufacture of onload changeover switches, switch boards and parts and accessories in relation thereto. The appellant's unit commenced commercial production on 24.06.1993. On 26.06.1993, the appellant applied for an eligibility certificate. The application was pending till the year 1998.

4. On 28.11.1996, the Deputy Excise and Taxation Commissioner reported to the HLSC that the appellant was not eligible for exemption as out of the total fixed capital investment of Rs.58.75 lacs claimed in the application, Rs.54.08 lacs was in respect of purchase of old moulds and dies. On a finding that the investment in old moulds and dies was more than 25% of the fixed capital investment, it was held that the company did not qualify to be a new industrial unit in view of rule 28A of the Haryana General Sales Tax Rules, 1975. Accordingly, it was observed that the appellant was not qualified for the grant of an eligibility certificate. By an order dated 29.01.1998, the HLSC held that the appellant was not entitled to be issued the eligibility certificate and rejected the appellant's application which was made in Form S.T.70. What is recorded in the order is important and as follows.

The appellant's claim was enquired into by the field authorities and was also scrutinized by the Deputy Excise and Taxation Commissioner and G.M., DIC, Gurgaon. A joint inspection report was put up before the HLSC. The HLSC ordered another joint inspection of the appellant's unit. The appellant was directed to call back the entire machinery which had been sent to Chennai. The appellant, however, informed the district authorities that the machinery could not be called back from Chennai and requested for the inspection of the machinery at Chennai. An officer of the department visited Chennai and made necessary enquiries regarding the machinery which was available with a concern by the name of M/s Devi Polymers Limited at Chennai. The appellant's application for an adjournment thereafter before the HLSC was rejected with the observation that the appellant was deliberately trying to delay the matter after having availed the maximum exemption. It was held that the investment of Rs.54.08 lacs had been made in old machinery i.e. dies and tools. They have been shown as having been purchased from Havell's Circuit Breakers Private Limited, Noida. It was held that the machinery had earlier been used by M/s Havell's Circuit Breakers Private Limited, Noida and had been purchased from them. The order contains reasons in respect of the finding that the machinery in respect of which the exemption was claimed was old. It is not necessary to refer to these reasons for ultimately it has been held that the machinery was new and that finding has attained finality. It has not been challenged before us by the respondents/ department.

5. The appellant's first appeal before the Commissioner Industries was dismissed on 26.07.1999. The appellant filed Civil Writ Petition No.11173 of 1999 in this Court challenging this order. This Court by an order dated 26.5.2000 directed the HLSC to hold a fresh enquiry into the question as to whether the moulds and dies were old or new and directed the company to be associated with the enquiry.

6. The HLSC, by an order dated 17.05.2002, once again concluded that the same were old.

7. This brings us to the most crucial aspect of the matter. The appellant filed an appeal before the Financial Commissioner & Secretary Industries, Department of Industries. The appeal was allowed by an order dated 09.05.2003. It is important to note that the Secretary by the said order observed that it was not disputed that the appellant purchased a part of the machinery in question from HPL India Limited in the year 1993 of the value of Rs.54.08 lacs and commenced commercial production on 26.06.1993 and that the appellant at some point of time shifted this machinery to M/s Devi Polymers Limited at Chennai who was doing job work for the appellant. It was further noted that the final product was assembled in the premises rented by the appellant. These observations are important in view of the contention now raised

that the machinery had never been installed in Haryana. It is significant that the order notes that a visit was made to the appellant's premises by the DETC, Gurgaon on 22.06.1995 where he was told that the machinery had been sent to Chennai. At that time, it was not even contended that the machinery had not earlier been installed in Gurgaon as is now sought to be contended. The order has commented adversely upon the fact that though the notices were issued in October, 1993, the first visit was made by the DETC to the appellant's premises only in June, 1995. It was conclusively held that the tools and dies were new at the time of purchase and that the HLSC had wrongly concluded otherwise. This finding has attained finality. The Secretary passed the following order which is vital for the purposes of this appeal:-

> *"I, therefore, quash the impugned order, accept the appeal & direct the HLSC to issue eligibility certificate to the appellant."*

This order too has attained finality.

By the impugned order, the HLSC has sought to reopen the entire matter and to reject the application to a substantial extent now on the ground that the machinery had never been installed in Haryana. It is necessary to examine the consideration of the impugned order by referring to the relevant provisions of the Act and the rules.

We have come to the conclusion that under the scheme under Rule 28A the order of the Secretary had attained finality and that it was not open to the HLSC to ignore the order and to hear the matter afresh on the ground that the HLSC had failed to consider a particular aspect of the matter.

8. Rules 28A(2)(c), (f)(i), (g)(iii), 5(a) to (h) of the Haryana General Sales Tax Rules, 1975, read as under:-

> *"Rule-28A*
>
> *CLASS OF INDUSTRIES, PERIOD AND OTHER CONDITIONS FOR EXEMPTION/DEFERMENT FROM PAYMENT OF TAX.*
>
> *(2) For the purpose of this Chapter, unless the context otherwise requires.*
>
> *(a) & (b) …… ……. ……. ……*
>
> *(c) "New industrial Unit" means a unit which is or has been set up in the State of Haryana and comes or has come into commercial production for the first time during the operative period and has not been or is not formed as a result of purchase or transfer of old machinery except when purchased in the course of import into the territory of India or when the cost of old machinery does not exceed 25% of the total cost of machinery re-establishment, amalgamation, change of lease, change of ownership, change in constitution, transfer of business, reconstruction or revival of the existing unit;*
>
> *(d), (e) …… ……. ……. ……*
>
> *(f) 'eligible industrial unit' means:-*
>
> *(i) a new Industrial Unit of expansion or diversification of the existing unit, which-*
>
> *(I) to (V) & (ii) …… ……. ……. ……*
>
> *(g) "fixed capital investment" means investment in-*
>
> *(i)& (ii) …… ……. ……. ……*
>
> *(iii) new plant and machinery Including generating set), tools and equipment.*

…… …… …… ……

5(a) Every eligible Industrial Unit which is desirous of availing benefit under this rule shall make an application in form S.T.70 in triplicate alongwith attested copies of the documents mentioned therein to the General Manager District Industries Centre within 90 days of the date of its going into commercial production or the date of coming into force of this rule whichever is later. No application shall be entertained if not preferred within time. An application with incomplete or incorrect particulars including the documents required to be attached therewith shall be deemed as having not been made if the applicant fails to complete it on an opportunity afforded to him in this behalf.

b) Applications from small scale units will be considered by the Lower Level Screening Committee and those from Medium/Large scale units by the Higher Level Screening Committee.

(c) The General Manager, District Industries Centre shall immediately forward one copy of the application and documents on receipt to the Deputy Excise and Taxation Commissioner incharge of the District who will send his comments within a period of 21 days. In case of medium/Large scale industry, a copy of the comments will also be sent by him to the Commissioner.

(d) The General Manager, District Industries Centre will, within 30 days of receipt of the application from the small scale industry, place the proposal before the Lower Level Screening Committee with his report and recommendations alongwith comments, if any of the Deputy Excise and Taxation Commissioner concerned for its decision.

(e) The General Manager, District Industries Centre will within 30 days of receipt of the application from the medium/large scale industry, forward his report and recommendations alongwith the comments if any, of the deputy Excise and Taxation Commissioner to the Additional Director of Industries who will place his proposal before the Higher Level Screening Committee within a further period of 15 days for its decision.

(f) An appeal from the original decision of the lower Level Screening Committee shall lie to the Higher Level Screening Committee, if preferred within 30 days of communication of the decision. The decision of the Higher Level Screening Committee in such appeal shall be final.

(g) An appeal from the original decision of the Higher Level Screening committee shall lie to the Secretary Industries, if preferred within 30 days of communication of the decision. The decision of the Secretary Industries shall be final."

(h) The eligibility certificate will be issued by the General Manager District Industries Centre in cases approved by the Lower Level Screening Committee and by the Director of industries or any officer nominated by him not below the rank of Additional Director in cases approved by the Higher Level Screening Committee normally within a period of 45 days from the date of receipt of the application in the office of the General Manager, District Industries Centre. The certificate shall be valid from the date of commercial production or from the date of issue of entitlement/exemption certificate as the case may be for a period as laid down under sub-rule(4) unless cancelled or withdrawn. A copy of

the eligibility certificate shall also be sent to the Deputy Excise and Taxation Commissioner concerned."

9. The appellant's application would be considered against the provisions of rule 28A(2)(c),(f),(i), (g)(iii). In order to be considered an eligible industrial unit, the enterprise must be a new industrial unit or an extension or diversification of existing unit which fulfills the conditions in clauses (I) to (V) of rule 28A(2)(f)(i). In order to be considered a new industrial unit within the meaning of Section 28A(2)(c), the unit must be one which has been set up in the State of Haryana and has not been or is not formed as a result of purchase or transfer of old machinery except when purchased in the course of import into the territory of India or when the cost of old machinery does not exceed 25% of the total cost of machinery, etc. Thus, as far as the second part is concerned, it was conclusively held by the Secretary that the machinery was new and not old. That finding has attained finality.

The issue as to whether the unit has been set up in the State of Haryana or not was not considered, as the appellant's application for the eligibility certificate was not rejected on that ground. It was never contended by the department that the unit had not been set up in the State of Haryana. This is despite the fact that site visits were made and during those visits, the authorities were fully aware of the fact that the machinery had been shifted to Chennai to the premises of M/s Devi Polymers Limited who were doing job work for the appellant at the premises rented by the appellant. As noted earlier, the order of the Secretary expressly records that it was not disputed that the appellant had purchased a part of the machinery in the year 1993 of the value of Rs.54.08 lacs and had come into commercial production on 24.06.1993 and that the appellant had shifted this machinery to Chennai. Implied therein is a finding that the machinery had been set up in Haryana. There is an implied if not an express admission to that effect in the order. In any event, it was not contended in the earlier proceedings that the machinery had not been set up in Haryana.

10. To reiterate, therefore, the Secretary had by the order dated 09.05.2003 directed the HLSC to issue the eligibility certificate to the appellant. The scheme of rule 28A(5) establishes the hierarchy of the authorities and the binding nature of their orders. The appellant is a medium/large scale industry. It made the application for the eligibility certificate in Form S.T.70 as required by sub-rule 5(a) and (c), to the General Manager, District Industries Centre. The appellant being a medium/large scale unit, its application was to be considered by the HLSC. Under clause (c), the General Manager, District Industries Centre was to immediately forward a copy of the application to the Deputy Excise & Taxation Commissioner who was to send his comments. Under clause (e), the General Manager, District Industries Centre was to forward his report and recommendations along with the comments, if any, of the DETC to the Additional Director of Industries. The Additional Director of Industries was to place his proposal before the HLSC. What is important for the present purposes is to note that an appeal against the decision of the Lower Level Screening Committee (LLSC) lies to the HLSC and the decision of the HLSC in such appeal shall be final and an appeal from the original decision of the HLSC lies to the Secretary Industries and the decision of the Secretary Industries shall be final. The appellant had challenged the decision of the HLSC dated 29.01.1998 refusing to grant the eligibility certificate before the Secretary and the Secretary had, by the order dated 09.05.2003, expressly directed the HLSC to issue the eligibility certificate to the appellant. This order attained finality in view of rule 28A(5)(g). The HLSC thereafter had nothing to do with the matter. It had passed its order dated 29.01.1998 upon which it became *functus officio*. Its order was amenable to an appeal under rule 28A(5)(g) whereunder the decision of the Secretary became final which had not been challenged by the respondents.

11. In fact, upon the decision of the Secretary Industries, the HLSC had no jurisdiction to deal with the matter for any purpose and in any respect. The order of the HLSC dated

29.01.1998 had merged into the order of the Secretary dated 09.05.2003. Under clause (h), the Director of Industries or any officer nominated by him not below the rank of Additional Director ought to have issued the eligibility certificate, as the eligibility certificate ordered to be granted by the order of the Secretary dated 09.05.2003 must be deemed to have been an eligibility certificate issued by the HLSC.

12. Pursuant to the order of the Secretary, the matter was put up before the HLSC. The HLSC examined the matter treating the moulds and tools as new. Indeed, It was bound to do so in view of the order of the Secretary and the findings therein. The HLSC ought to have, in compliance with the order of the Secretary in appeal, granted the eligibility certificate. Instead, in its meeting held on 30.06.2004, it recorded its *prima facie* finding that the machinery had not been erected at Gurgaon and it was being used in Chennai and that an investment of only Rs.3.26 lacs could be considered for tax benefits. The HLSC, on the one hand, recorded that nobody had appeared for the appellant at the final meeting and, on the other hand, recorded that "it was an undisputed fact" that the machinery worth Rs.54.08 lacs was not erected at the appellant's industrial unit at Gurgaon but was sent to M/s Devi Polymers Limited at Chennai.

13. In fact, as recorded in the order of the Secretary, the undisputed fact was to the contrary. As we indicated earlier, the undisputed fact was, albeit impliedly, that the machinery had been set up in Haryana and was shifted to Chennai. In view of the fact that the Secretary's order had attained finality, this dispute is entirely irrelevant if the HLSC did not have any jurisdiction to go into this new point on its own. The HLSC, however, held that the only point decided by the Secretary was that the dies and moulds were new and that the Secretary had not taken any decision as to whether the same had been set up at the appellant's unit in Haryana. Having come to the finding entirely without jurisdiction, that the machinery had not been set up in Haryana, the HLSC held the appellant to be entitled for tax exemption only to the extent of Rs.3,26,210/- as against the appellant's claim of Rs.54.08 lacs.

14. Under the scheme of Rule 28A, there is a clear hierarchy. The orders of the LLSC are appealable to the HLSC and the orders of the HLSC are appealable to the Secretary. In the first case, the order of the HLSC in appeal shall be final and in the second case the order in appeal of the Secretary shall be final. The orders appealed against merge into the orders of the appellate authorities. It is not open then for the HLSC to reopen the order of the Secretary which had attained finality on another ground. This would be permissible only if the order of the Secretary in appeal had been reviewed, modified or set aside, assuming, of course, that the order could have been reviewed, modified or set aside. The HLSC, in any event, had no power or jurisdiction to review, modify or set aside the order of the Secretary. A view to the contrary would lead to an absurdity. Such a view would entitle the HLSC to refuse to comply with the order of the appellate authority i.e. the Secretary *ad infinitum*. There would be no end to the proceedings for in that event irrespective of the number of times that the order of the HLSC is overruled and set aside in appeal by the Secretary, it would be open to the HLSC to reconsider the matter on another ground neither urged before nor considered by the Secretary, i.e., the appellate authority. This would in effect permit the HLSC to sit in appeal over the orders of the appellate authority.

15. The appellant challenged the order of the HLSC before the Haryana Tax Tribunal, which passed the impugned order. The Tribunal held that the order in appeal of the Secretary had not mentioned the amount for which the eligibility certificate was to be issued and that the order was passed only on the issue of the machinery being old or new. Had we come to the conclusion that it was open to the HLSC to revisit the matter on another ground, we would have remanded the matter to the Tribunal for there is no satisfactory consideration even on facts as to whether the machinery had been installed in Haryana or not. However, as we are of the view that the HLSC had no jurisdiction to reopen the issue on another ground, we do not

consider it necessary to do so. It would be an exercise in futility in view of our finding that the HLSC had no jurisdiction to reopen the issue. The Tribunal wrongly held that merely because an issue had not been considered in the appeal, it was open to the HLSC to suo motu reopen the case.

16. Once an order of the Secretary in appeal against the order of the HLSC attains finality, the HLSC cannot reopen the same case including on a ground which had not either been urged before the Secretary or pressed by the department. It is true, as contended by Ms. Talwar, the learned Deputy Advocate General, Haryana, that the appellate order passed by the Secretary recorded that the only question which was to be decided was whether the tools and dies were new when the appellant purchased the same. That however would make no difference. It would not entitle the lower authority, in this case the HLSC, to reopen a matter which has attained finality before the appellate authority.

17. The questions are, therefore, answered in favour of the appellant and against the respondents. The impugned order of the Tribunal and of the HLSC are set aside. The respondents are ordered and directed to comply with the order of the Secretary dated 09.05.2003.

PUNJAB & HARYANA HIGH COURT

CWP NO. 15403 OF 2015

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ZIMIDARA TRADING COMPANY
Vs
STATE OF PUNJAB AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

13th August, 2015

HF ▶ Petitioner

Facts leading to cancellation of Registration Certificate being disputed, department directed to pass fresh speaking order in respect of the same.

REGISTRATION CERTIFICATE - RESTORATION OF – ONLINE RETURNS NOT ACCEPTED BY RESPONDENTS' SYSTEM – SUBSEQUENT CANCELLATION OF REGISTRATION CERTIFICATE – RESTORATION PRAYED FOR BEFORE HIGH COURT PLEADING CANCELLATION APPEARS TO BE DONE DUE TO UNACCEPTED RETURNS – ARGUMENT DISPUTED BY DEPARTMENT ON FACTS - DEPARTMENT READY TO PASS FRESH ORDERS AFTER GIVING OPPORTUNITY OF HEARING – WRIT DISPOSED OF – RESPONDENTS DIRECTED TO PASS A SPEAKING ORDER REGARDING DISCONTINUATION/ CONTINUATION OF REGISTRATION CERTIFICATE ALONGWITH OPPORTUNITY OF HEARING TO PETITIONER - *S. 21 & 24 OF PVAT ACT*

The petitioner had filed its online returns for the last quarter which were not accepted by the computer of department's system. The Registration Certificate has been cancelled in such circumstances as appears to the petitioner. A writ is filed for the restoration of the R.C.

The respondents have undertaken to pass a fresh order either allowing the benefit of R.C. or discontinuing it for which opportunity of hearing would be given to the petitioner.

Thus disposing of the writ, the respondents are directed to pass a speaking order regarding continuation/ discontinuation of Registration Certificate within a period of one week from the date of receipt of the order after allowing opportunity of hearing.

Present: Mr. Avneesh Jhingan, Advocate for the petitioner.

Mr. Piyush Kant Jain, Addl. AG, Punjab.

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AJAY KUMAR MITTAL, J.

1. Grievance in this writ petition filed under Article 226 of the Constitution of India is to direct the respondents to restore the Registration Certificate (R.C.) of the petitioner firm.

2. The petitioner filed the online returns for the 4th quarter report of 2013-2014, which were not accepted by the systems of the respondents. In these circumstances, the petitioner has prayed that it appears that the Registration Certificate has been cancelled which be directed to be restored.

3. Learned State counsel has produced the record, wherein, an order cancelling the Registration Certificate was passed on 22nd August, 2013. This fact is seriously disputed by the learned counsel for the petitioner by relying upon Annexure P-2 to submit that the online returns filed in January, 2014 for 3rd quarter of 2013-14 had been accepted inspite of the same.

4. Faced with this situation, learned State counsel submitted that the respondents shall pass a fresh order in accordance with law either to allow the benefit of the Registration Certificate or to discontinue the Registration Certificate for which opportunity of hearing shall be afforded to the petitioner.

5. Accordingly, while disposing of the present writ petition, we direct that respondent No.2 shall pass a speaking order regarding continuation/discontinuing the Registration Certificate of the petitioner. Needless to say, this shall be done after affording an opportunity of hearing to the petitioner and by passing a speaking order in accordance with law. This shall be done within a period of one week from the date of receipt of certified copy of this order.

6. The original record be returned to the learned State counsel after receipt.

PUNJAB & HARYANA HIGH COURT

CWP 7696 OF 2015

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SUPER THREADING (INDIA) PVT. LTD. AND ANOTHER
Vs
UNION OF INDIA AND OTHERS

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

24th April, 2015

HF ▶ Petitioner- assessee

Appeal not to be treated as non maintainable for failure of predeposit in view of recent amendment of section 35-F of Central Excise Act

INTERIM ORDER - PREDEPOSIT – CENTRAL EXCISE – APPEAL - ENTERTAINMENT OF – AMENDMENT OF SECTION 35-F OF THE ACT – DEMAND RAISED - APPEAL NOT ENTERTAINED ON GROUNDS OF FAILURE TO DEPOSIT 7.5% OF THE AMOUNT REQUIRED – WRIT FILED SEEKING STAY ON DEMAND RAISED – IN VIEW OF AMENDMENT OF SEC 35-F OF THE ACT HAVING COME INTO EFFECT FROM 6/8/2014 APPEAL NOT TO BE TREATED AS NON MAINTAINABLE – ORDERS SO BEING PASSED NOT TO BE CONSIDERED AS A STAY ON THE DEMAND – PETITIONER AT LIBERTY TO APPLY FOR INTERIM RELIEFS STAYING THE DEMAND ON THE BASIS OF EARLIER PROVISION – TRIBUNAL OPEN TO CONSIDER QUESTION REGARDING CONDITIONAL STAY OF DEMAND OR OTHERWISE – *S. 35-F OF CENTRAL EXCISE ACT, 1944*

The appeal filed by the petitioner before Tribunal was not entertained for non compliance of the condition of predeposit of 7.5% of the duty/ penalty as the case may be. A writ has been filed seeking stay of predeposit. The Hon'ble High Court has held that in view of the amended section 35-F of Central Excise Act, 1944 which came into effect on 6/8/2014, the respondents shall not treat the appeal as being non maintainable on account of failure to deposit. The orders being passed by the High court are however not to be considered as a stay of the demand. The petitioners will be entitled in the interim period to make an application for interim reliefs staying the demand on the basis of the basis of the provisions as they stood prior amendment. The Tribunal would be at liberty to consider whether to grant a stay conditional or otherwise.

Case relied upon:
M/s Muthoot Finance Ltd Vs Union of India and another 2015- TIOL -632 – HC Kerala

Editorial Note:
This is for the information of our readers that during the pendency of writ petition when an interim relief had been granted, an application filed for stay of pre deposit before the CESTAT has been decided on 11th August, 2015. In such a situation the writ petition has been rendered infructuous. The Hon'ble High Court has passed the final order on 13th August, 2015 vide CWP No. 7696 of 2015 granting liberty to the petitioners to challenge the order of CESTAT declining stay of pre deposit.

Present: Mr. Sudhir Malhotra, Advocate, for the petitioners.

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S.J. VAZIFDAR ACTING CHIEF JUSTICE

1. Issue notice of motion to the respondents returnable on 29.06.2015.

2. The petitioners seek a stay of the pre-deposit. They state that instructions have been issued that the appeals are not to be entertained in the event of the amount of 7.5% of the duty and/or penalty, as the case may be, not being deposited. In view of the orders passed by a learned Single Judge of the Kerala High Court in the case titled M/s Muthoot Finance Ltd. Vs Union of India and another, 2015-TIOL-632-HC Kerala-ST, the respondents shall not treat the appeal as being not maintainable on account of the failure to deposit the amounts as per the amended Section 35-F of the Central Excise Act, 1944 which came into effect on 06.08.2014.

3. We, however, make it clear that this order of ours ought not to be considered as a stay of the demand. The petitioners will in the interim period be entitled to make an application for interim reliefs staying the demand on the basis of the provisions as they stood prior to 06.08.2014. It would be open to the Tribunal to consider whether to grant a stay conditional or otherwise.

PUNJAB & HARYANA HIGH COURT

CWP NO. 13034 OF 2015

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MACHINO POLYMERS LIMITED
Vs
STATE OF HARYANA AND ANOTHER

A.K. MITTAL AND RAMENDRA JAIN, JJ.

18th August, 2015

HF ▶ None

Pursuant to the reply filed against the show cause notice, the department is directed to decide the case of petitioner by passing a speaking order.

NOTICE – LACK OF ACTION ON PART OF DEPARTMENT – REPLY FILED AGAINST THE SHOW CAUSE NOTICE ISSUED – NO ACTION TAKEN BY DEPARTMENT THEREON – WRIT FILED FOR QUASHING OF NOTICE – DEPARTMENT DIRECTED TO DECIDE THE CASE BY PASSING A SPEAKING ORDER AFTER HEARING THE APPELLANT WITHIN THE PERIOD SPECIFIED – *S. 47 OF HGST ACT*

Facts:

The petitioner was a manufacturer of polypropylene at Gurgaon. The returns were filed treating the goods as general goods taxable @ 10%. Pursuant to orders passed in the case of ***Excise and Taxation Commissioner Vs. SK and Company Pvt. Ltd.,*** *the department concluded that the goods in question were plastic goods. Hence, Revisional authority revised the assessment order by imposing additional liability. A show cause notice was issued by respondent to the petitioner for penal action and a reply was filed in this regard by the petitioner. A writ is filed stating that no action has been taken despite filing of reply and hence the notice be quashed.*

Held:

The writ is disposed of by directing the respondent to decide the case by passing a speaking order after hearing the appellant within a period of one month.

Present: Mr. Amar Pratap Singh, Advocate and
Mr. Amrinder Singh, Advocate for the petitioner.

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

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AJAY KUMAR MITTAL, J.

This is an application under Section 151 of the Code of Civil Procedure for placing on record Annexures P-3 to P-5.

Annexures P-3 to P-5 filed along with the application are taken on record subject to all just exceptions. CM stands disposed of accordingly.

CWP NO. 13034 OF 2015

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the show cause notice dated 28.5.2015 (Annexure P-1) issued by respondent No.2.

2. The petitioner is a dealer registered under the Haryana General Sales Tax Act, 1973 (in short "the Act") as also under the Central Sales Tax Act, 1956 and is filing prescribed quarterly returns and discharging tax obligations. It is engaged in the business of manufacture of polypropylene at Gurgaon. The petitioner was granted eligibility certificate on 17.9.1999 and exemption was granted for the period from 28.11.1996 to 27.11.2003 for a maximum quantum of ₹1528.31 lacs. The petitioner filed returns for the assessment year 1997-98 by treating their product as general goods taxable @ 10%. It also filed returns for the assessment year 2001-02 on the similar lines. The department was treating the goods manufactured by the petitioner as general goods liable to tax @ 10% and not plastic goods. This Court vide order dated 17.3.2009 in the case of Excise and Taxation Commissioner v. SK and Company Private Ltd. held that the goods in question were taxable as plastic goods. In pursuance thereto, the revisional proceedings under Section 40 of the Act were initiated against the petitioner for the assessment year 2001-02. The revisional authority vide order dated 13.8.2012 (Annexure P-2) revised the assessment order dated 11.4.2005 for the assessment year 2001-02 by imposing additional liability of ₹ 51,88,606/-. A show cause notice dated 28.5.2015 (Annexure P-1) was issued by respondent No.2 to the petitioner for penal action under Section 47 of the Act. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that to the show cause notice dated 28.5.2015 (Annexure P-1) issued by respondent No.2, the petitioner has filed reply, but no action has so far been taken thereon.

4. After hearing learned counsel for the parties, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to decide the case of the petitioner, in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order.

PUNJAB & HARYANA HIGH COURT

CWP NO. 17251 OF 2015

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UPASNA ENTERPRISES
Vs
STATE OF PUNJAB AND ANOTHER

A.K. MITTAL AND RAMENDRA JAIN, JJ.

21st August, 2015

HF ▶ Petitioner –dealer

Locking of TIN before providing opportunity of hearing to the dealer set aside in view of violation of natural justice.

NATURAL JUSTICE – TIN NUMBER – LOCKING OF – PETITIONER'S TIN NUMBER LOCKED BY DEPARTMENT – WRIT FILED- CONTENTION REGARDING LACK OF OPPORTUNITY OF HEARING PRIOR TO LOCKING NOT DISPUTED BY DEPARTMENT – LOCKING OF TIN SET ASIDE IN VIEW OF VIOLATION OF NATURAL JUSTICE – FRESH SPEAKING ORDER TO BE PASSED BY RESPONDENT AFTER HEARING THE PETITIONER – *RULE 51 A OF PVAT RULES*

The petitioner's TIN number had been locked by the department. A writ has been filed praying for its opening. It is not disputed by the respondents that before locking the TIN number the petitioner was not granted an opportunity of hearing. The court has held that rules of natural justice ought to be observed before taking any adverse action against the party. Setting aside the locking of TIN, the respondents are directed to pass a fresh speaking order after affording an opportunity of hearing to the petitioner.

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

Mr. Jagmohan Bansal, Addl. AG, Punjab

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AJAY KUMAR MITTAL, J.

1. The petitioner has approached this Court under Articles 226 and 227 of the Constitution of India for issuance of a writ of mandamus directing the respondents to open the TIN (Tax Identification Number) of the petitioner, which was locked vide notice dated 11.8.2015(Annexure P-1).

2. It has been claimed that the petitioner had produced the necessary account books and there is no occasion for the respondents to have locked the TIN.

3. Notice of motion was issued. Reply has been filed today in Court and the same is taken on record.

4. On a query being put to learned counsel for the respondents as to whether any opportunity of hearing was provided to the petitioner before locking the TIN on 11.8.2015, he does not dispute the fact that no hearing CWP No. 17251 of 2015 -2- was afforded to the petitioner prior thereto.

5. The principles of natural justice warrant that an opportunity of hearing is provided to the party before taking any adverse action against it including locking of the TIN.

6. In such circumstances, while setting aside the locking of TIN vide Annexure P-1, we direct the petitioner to appear before respondent No. 2 on 24.8.2015 along with the relevant record. Respondent No. 2 is directed to pass a fresh speaking order in accordance with law by 26.8.2015, after affording an opportunity of hearing to the petitioner.

7. Petition stands disposed of.

PUNJAB & HARYANA HIGH COURT

CWP NO. 17790 OF 2015

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DURABLE CERAMICS PVT. LTD
Vs
STATE OF PUNJAB & ANR.

A.K. MITTAL AND RAMENDRA JAIN, JJ.

26th August, 2015

HF ▶ Petitioner

Assessing authority is directed to pay the refund on account of excess Input Tax Credit within the period specified.

REFUND- INPUT TAX CREDIT – EXCESS INPUT TAX CREDIT CALCULATED ON ASSESSMENT – APPLICATION FOR REFUND FILED – NO DECISION TAKEN – LEGAL NOTICE SENT – NO RESPONSE RECEIVED – WRIT FILED- OFFICER DIRECTED TO TAKE A DECISION ON THE APPLICATION FOLLOWED BY LEGAL NOTICE AND PAY THE AMOUNT IF PETITIONER FOUND ENTITLED TO IT – *S. 39 OF PVAT ACT*

The appellant was assessed for the year 2013-14 whereby excess ITC amounting to Rs1,33,83,948/-was calculated. The dealer applied for refund of the said amount but to no effect. Thereafter, a legal notice for refund was sent by the dealer but no response was received by him. Therefore, a writ was filed in this regard.

The Hon'ble High Court has directed the Excise and Taxation Officer-cum – Assessing Authority to take a decision on the application so filed by the dealer followed by the legal notice by passing a speaking order and after affording an opportunity of being heard to the petitioner within a period of one month from the date of receipt of the certified copy of the order. If the petitioner is entitled to refund, it may be paid within next one month. The writ is disposed of.

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

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AJAY KUMAR MITTAL, J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing respondent No.2 to refund the amount of tax paid in excess by the petitioner and as assessed by the assessing authority vide order dated 16.1.2015 (Annexure P-1).

2. The petitioner is engaged in the business of manufacturing and export of ceramic insulators and is also undertaking works contract being carried out at Focal Point, Kotkapura. It

is registered with the Sales Tax Department vide TIN 0375244291. For the assessment year 2013-14, the petitioner filed all its quarterly returns in time along with the annual return in Form VAT-20. The assessment was framed by the Excise and Taxation Officer-cum-Designated Officer, Kotkapura vide order dated 16.1.2015 (Annexure P-1) for the year 2013-14 wherein excess ITC/ refund amounting to Rs. 1,33,83,948/- has been calculated. In pursuance thereto, the petitioner applied for refund of the said amount by way of application dated 9.2.2015 (Annexure P-2) in Form VAT-29, but to no effect. Thereafter, the petitioner sent a legal notice dated 24.7.2015 to respondent No.2 for refund, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner moved an application dated 9.2.2015 (Annexure P-2) followed by legal notice dated 24.7.2015 (Annexure P-3) to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing the Excise and Taxation Officer-cum-Assessing Authority to take a decision on the application dated 9.2.2015 (Annexure P-2) followed by the legal notice dated 24.7.2015 (Annexure P-3), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order. It is further directed that in case it is found that the petitioner is entitled to the amount of refund, the same be paid to it within next one month in accordance with law.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 18101 OF 2015

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B.R. STEEL INDUSTRIES & ANR.
Vs
STATE OF PUNJAB & ORS.

A.K. MITTAL AND RAMENDRA JAIN, JJ.

31st August, 2015

HF ▶ Petitioner

Respondent is directed to consider the letters sent claiming interest on refund and pass a speaking order thereto.

INTEREST – REFUND – DELAYED PAYMENT OF VAT -EXCESS VAT REFUNDED OUT OF WHICH SOME AMOUNT WITHHELD – APPEAL FILED – RESPONDENT ORDERED TO CONSIDER THE CASE ON MERITS – CONSEQUENTLY BALANCE AMOUNT ORDERED TO BE REFUNDED– LETTERS SENT CLAIMING INTEREST ON DELAYED PAYMENT OF VAT REFUND – LACK OF RESPONSE ON PART OF DEPARTMENT – WRIT FILED – RESPONDENT ORDERED TO DECIDE AND PASS A SPEAKING ORDER WITH RESPECT TO THE LETTERS SENT – PETITIONER TO BE GRANTED REFUND, IF ENTITLED, WITHIN ONE MONTH – WRIT DISPOSED OF - *S.39 OF PVAT ACT.*

Facts

The petitioner had submitted Form 15 to the respondents for excess VAT for all the four quarters in the year 2006-07. Out of the excess VAT, some amount was refunded in 2009 while some of it was withheld by the respondents. On appeal, the authority directed the respondent no.2 to pass a speaking order on merits after considering all the facts. Pursuant to that respondent ordered for refund vide order dated 13.1.2014. The petitioners sent various letters to respondents for payment of interest on delayed payment of VAT refund but no response was received. A writ is filed in this regard.

Held

That the respondent no.2 is directed to take a decision on the letters sent by the petitioner and pass a speaking order after affording an opportunity of hearing to the petitioners within a period of two months from the date of receipt of certified copy of the order. If the petitioners are entitled to refund, the same be released within next one month. The writ is disposed of.

Present: Mr. S.D. Bansal, Advocate for the petitioners

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AJAY KUMAR MITTAL, J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of mandamus directing the respondents to pay interest @ 18% per annum on the delayed payment of Value Added Tax (VAT) refund for the accounting year 2006-07, amounting to Rs.18,86,978/-as per order dated 13.1.2014 (Annexure P-3) passed by respondent No.2 and the directions issued by respondent No.4 vide order dated 21.6.2013 (Annexure P-2) which was partly refunded in three installments i.e. on 16.2.2009 (Rs.4,56,872/-), 3.8.2009 (Rs.1,81,277/-) and 26.3.2014 (Rs.12,26,220/-) to them and the balance VAT amount of Rs. 22,659/-.

2 Petitioner No.1 is engaged in the business of manufacturing of the C.R. Strips and Iron Stamping and is registered with the Excise & Taxation Department, Punjab since 1999, having TIN No. 03711037902. The petitioners submitted Form VAT 15 to respondent No.2 on 28.7.2006 for excess VAT amounting to Rs.97,870/-for the first quarter ending 30th June, 2006, Form VAT 15 for the second quarter on 30.10.2006 for refund of Rs.3,35,046/-as excess VAT, Form VAT 15 on 30.1.2007 for the third quarter for refund of Rs.9,27,960/-as excess VAT and Form VAT 15 for the fourth quarter on 30.4.2007 for refund of excess VAT amounting to Rs.18,86,978/-for the accounting year 2006-07. Out of the said amount, the respondents refunded an amount of Rs.4,56,872/-on 16.2.2009. Respondent No.2 vide order dated 7.7.2009 (Annexure P-1) issued VAT refund voucher amounting to Rs.1,81,227/-and withheld the balance amount of the excess VAT refund. The petitioners filed an appeal against the order, Annexure P-1, passed by respondent No.2 and respondent No.4 vide order dated 21.6.2013 (Annexure P-2) remanded the matter to respondent No.2 for passing the self speaking and final order on merits after considering all the facts within two months. In pursuance thereto, respondent No.2 vide order dated 13.1.2014 (Annexure P-3) ordered for refund of Rs.12,26,220/-. Thereafter, the petitioners sent various letters including letters dated 1.9.2014, 6.1.2015 and 28.4.2015 (Annexure P-4 Colly) to respondents No.2 and 3 for payment of interest on delayed payment of VAT refund, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that for the relief claimed in the writ petition, the petitioners sent various letters including letters dated 1.9.2014, 6.1.2015 and 28.4.2015 (Annexure P-4 Colly) to respondents No.2 and 3, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the letters dated 1.9.2014, 6.1.2015 and 28.4.2015 (Annexure P-4 Colly), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioners within a period of two months from the date of receipt of certified copy of the order. It is further directed that in case it is found that the petitioners are entitled to the amount of refund, the same be released to them within next one month in accordance with law.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 13029 OF 2015

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HAMILTON HEIGHTS P LTD.
Vs
STATE OF HARYANA AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

25th August, 2015

HF ▶ Petitioner

DEVELOPER – ASSESSMENT – ASSESSEE DEVELOPER OF FLATS/APARTMENTS - ASSESSED TO TAX CONSIDERING HIM AS LUMP SUM DEALER – WRIT FILED CONTENDING THAT DEVELOPER OTHER THAN CONTRACTOR NOT TO BE IMPOSED TAX ON THERE BEING NO MECHANISM FOR COMPUTATION OF TAX – LEVY OF TAX PLEADED TO BE UNCONSTITUTIONAL – POINT OF LIMITATION ALSO TAKEN UP – HELD IN VIEW OF AN EARLIER JUDGEMENT THE SAME ISSUE IS ALREADY ADJUDICATED – MATTER REMANDED IN PURSUANCE TO THAT -PETITIONER AT LIBERTY TO AGITATE POINT OF LIMITATION BEFORE THE ASSESSING AUTHORITY WHO SHALL PASS A SPEAKING ORDER – WRIT DISPOSED OF – *S. 2 (1) (zg) OF HVAT ACT, R. 25(2) OF HVAT RULES*

Facts

The petitioner is a developer engaged in the development and sale of apartments, flats, units. Pursuant to the notification dated 12.8.2014, which was issued defining 'developer' other than the contractor, the petitioner could not be held to be lump sum dealer. However, he was assessed as a lump sum dealer vide assessment order dated 30.3.2015 for the year 2010-11 u/s 15 of the Act. A writ is filed in this regard contending that since the developer is engaged in the sale of immovable property where stamp duty was paid and also there being no mechanism provided in the Act for computing tax, imposition of tax was unconstitutional. Also, point of limitation barring the assessment proceedings and the notice issued was taken up.

Held

That in view of judgement passed in the case of CHD Developers Ltd. V State of Haryana wherein these issued have already been decided, the writ is disposed of in same terms while leaving it open to the petitioner to agitate the point of limitation before the assessing authority who shall adjudicate the same and pass a speaking order.

Case Relied upon:

CHD Developers Limited, Karnal v. The State of Haryana and others) 81 VST 344

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

Ms. Mamta Singla Talwar, DAG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

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AJAY KUMAR MITTAL, J.

1. By way of instant petition filed under Articles 226/227 of Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the assessment order dated 30.3.2015 (Annexure P-1 Colly) passed by respondent No.3 seeking to make assessment of Value Added Tax (VAT) and for treating the petitioner as lump sum dealer who is not a contracter but a developer; for quashing the circular issued vide memo Nos. 952/ST-1 dated 7.5.2013, 1166/ST-1 dated 4.6.2013 and 259/ST-1 dated 10.2.2014 (Annexure P-2 Colly) issued by respondent No.2 being in violation of the provisions of the Haryana Value Added Tax Act, 2003 (in short "the Act"). Further, a writ of mandamus has been sought declaring Section 3 and Explanation (i) to Section 2(1)(zg) of the Act and Rule 25(2) of the Haryana Value Added Tax Rules, 2003 (hereinafter referred to as "the Rules") in particular and other related provisions in so far as they include the value of land for charging VAT on builders/developers to be *ultra vires* the Constitution of India in so far as it violates Article 246 of the Constitution of India read with Schedule VII, List II, Entry 54; for issuance of a writ in the nature of certiorari for declaring the statutory notice in Form N-2 as barred by limitation; for issuance of a writ of mandamus directing the respondents not to charge and to refund the stamp duty already paid in so far as it relates to the value of materials sought to be charged to VAT; to direct respondent No.3 not to recover the additional demand created vide assessment order.

2. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner is a developer engaged in the business of development and sale of apartments/flats/units and got itself registered with the Department of Sales Tax w.e.f. 20.8.2008. A circular dated 7.5.2013 was issued by respondent No.2 stating therein that the developers entering into agreements for sale of constructed apartments or flats prior to or during construction were chargeable to VAT. Consequently, a circular dated 4.6.2013 was issued regarding making of assessments on builders and developers. Subsequently, vide circular dated 10.2.2014, the circular dated 7.5.2013 was varied and value of the land was sought to be included for imposition of VAT. The said circulars are appended as Annexure P-2 Colly. Notification dated 12.8.2014 (Annexure P-3) was issued defining 'developer' other than contractor and in view thereof, the petitioner could not be held to be a lump sum dealer. However, the petitioner was assessed as lump sum dealer vide assessment order dated 30.3.2015 Annexure P-1) for the year 2010-11 under Section 15 (3) of the Act. The developer being engaged in the sale of immovable property where stamp duty was paid and also there being no mechanism provided under the Act for computation of tax, the imposition of tax insisted by the authorities was unconstitutional and beyond the provisions of the Act and Rules. Hence, the present writ petition.

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

4. Learned counsel for the parties are agreed that the issues raised in the present petition have been adjudicated by this Court in **CWP No. 5730 of 2014 (CHD Developers Limited, Karnal v. The State of Haryana and others)** decided on 22.4.2015. It was urged by the learned counsel for the petitioner that additionally the proceedings initiated were barred by limitation and even the statutory notice in Form N-2 issued, considering the petitioner as lump sum dealer, is also barred by limitation.

5. Accordingly, while disposing of the present writ petition in terms of **CWP No. 5730 of 2014 (CHD Developers Limited, Karnal v. The State of Haryana and others)** decided on 22.4.2015, it shall be open to the petitioner to agitate the question of limitation before the

assessing authority who shall adjudicate the same also after hearing the petitioner or its representative and by passing a speaking order in accordance with law.

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PUNJAB & HARYANA HIGH COURT

VATAP No. 71 OF 2014

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STATE OF PUNJAB AND OTHERS
Vs
CHIRAG INDUSTRIES

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

7th August, 2015

HF ▶ Appellant

Notice on website is not considered proper service of notice for extending period of framing of assessment by commissioner.

LIMITATION – ASSESSMENT – NOTICE -VALIDITY OF PUBLIC NOTICE –ASSESSMENT YEAR 2006-07 – FRAMING OF ASSESSMENT IN 2011 I.E. BEYOND LIMITATION PERIOD -EXTENSION ORDER BY COMMISSIONER FOR FRAMING ASSESSMENT U/S 29(4) CONTENDED TO HAVE BEEN PASSED IN 2010 THROUGH WEBSITE AND PUBLIC NOTICE – TRIBUNAL HELD SUCH ASSESSMENT ORDER AS TIME BARRED AS NOTICE NEVER COMMUNICATED TO ASSESSEE – APPEAL FILED BY DEPARTMENT – RELYING ON AN EARLIER JUDGEMENT PASSED BY DIVISION BENCH OF HIGH COURT, APPEAL DISMISSED – ABSENCE OF INDIVIDUAL NOTICES RENDERS THE ASSESSMENT ORDER VOID – *S.29(4) OF PVAT ACT AND RULE 86 OF PVAT RULES*

Facts

Assessment for the year 2006-07 was framed in 2011 thereby raising a demand. The said assessment was done under the extension order u/s 29(4) granted by Commissioner which was uploaded on the website on 15.11.2010 and a public notice was issued on 22.10.2010. After dismissal of first appeal, an appeal was filed before the Tribunal. It was held by Tribunal that the notice of extension was never passed or communicated to the assessee. The assessment ought to have been framed by 2010. It being framed in 2011 was time barred. Aggrieved by the order, an appeal is filed before the High Court.

Held

Reliance is placed on the judgement passed in the case of M/s Olam Agro India Ltd whereby it was held that the Rule 86 does not envisage service of general notice or by publication on the website of department. Absence of Individual notice renders the assessment order void. The appeal is therefore, dismissed as the extension orders have been put on the website and not communicated.

Case followed:

Civil Writ Petition No. 15695 of 2014 Sony India Pvt. Ltd. v. M/s Olam Agro India Ltd.
VAT Appeal No. 84 of 2013 State of Punjab v. M/s Olam Agro India Ltd.

Case referred:

A.B. Sugars Limited v. The State of Punjab and others 2010(29) VST 538 (P&H)

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

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

CM No.12286-CII of 2014
Heard. In view of the averments made in the application, delay of 205 days in filing the appeal is condoned. Application stands disposed of.

CM No. 12287-CII of 2014
Heard. Exemption from filing certified copies of Annexures A-1 to A-4 is granted. Application stands disposed of.

Vat Appeal No. 71 of 2014

1. The present appeal has been filed under section 68 of the Punjab Value Added Tax Act, 2005 (hereafter referred to as 'the Act') against the order dated 16.05.2013 passed by the Value Added Tax Tribunal, Punjab.

2. The assessment order in question is 2006-07 and the assessment was framed on 22.07.2011 whereby additional demand of Rs. 15,24,148/- was created by the Designated Officer. The said assessment was in view of the extension granted by the Excise & Taxation Commissioner under Section 29(4) of the Act, which extension order was uploaded on the website on 15.11.2010 and a public notice had also been issued in the press on 22.10.2010. The appeal was dismissed by the First Appellate Authority on 16.11.2010 (Annexure A-2) and the demand was confirmed. The Tribunal has noticed that the extension had never been confronted to the assessee and neither any order had been passed which was communicated to the assessee. Accordingly, keeping in view the judgment of this Court in *A.B.Sugars Limited v. The State of Punjab and others 2010(29) VST 538 (P&H)*, it was noticed that the last date for filing the return was 20.11.2007 and the assessment was to be finalized within three years from the said date and the assessment order had to be passed by 20.11.2010. Accordingly, it was held that the assessment order passed on 22.07.2011 was time barred.

3. In similar circumstances where extension orders had been put on the website and not communicated, while placing reliance upon VAT Appeal No. 84 of 2013 *State of Punjab v. M/s Olam Agro India Ltd.* notices under section 29(4) of the Act, were set-aside in Civil Writ Petition No. 15695 of 2014 *Sony India Pvt. Ltd. v. M/s Olam Agro India Ltd.* on 27.04.2015. The relevant portion whereof reads as under:-

> *"The present cases are covered in favour of the petitioner by a judgment dated 20.08.2013 passed by a Division Bench of this Court in a group of matters, the first of which is VATAP No. 84 of 2013, State of Punjab vs. M/s. Olam Agro India Ltd. The Division Bench held that Rule 86 of the Rules does not envisage service of a general notice or by publication on the website of the department. The Division Bench held that the service of an individual notice is a sine qua non for invoking powers and the absence of such individual notice renders the assessment orders illegal and void.*
>
> *Admittedly, in the present cases, individual notices were not given. Even in the present cases, general notices were put up on the website. In view of the judgment of the Division Bench, this is insufficient."*

4. Resultantly, the present appeal is dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 22437 OF 2013

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SINGLA BUILDERS AND PROMOTERS LTD
Vs
STATE OF PUNJAB & ORS.

A.K. MITTAL AND RAMENDRA JAIN, JJ.

7th September, 2015

HF ▶ Petitioner

Appellate Authorities shall not dismiss the appeals on the basis of non deposit of additional demand in the case where vires of S 62(5) are under challenge.

INTERIM ORDER – PREDEPOSIT – APPEAL – ENTERTAINMENT OF – DIRECTION IS GIVEN BY THE HON'BLE HIGH COURT TO THE APPELLATE AUTHORITY NOT TO DISMISS THE APPEAL FOR FAILURE OF PREDEPOSIT TILL THE PENDENCY OF THE MATTER – *S.62(5) OF THE ACT.*

An interim order is passed issuing direction to the Appellate Authority not to dismiss the appeals on the grounds of non compliance of condition of predeposit required for entertainment of appeal.

Editorial Note

The aforesaid judgment is concluded on 09.09.2015 and the judgment was reserved. The High Court has continued the interim order.

Present: Mr. K.L. Goyal, Senior Advocate with
Mr. Sandeep Goyal, Advocate
Mr. J.S. Bedi, Advocate
Mr. G.R. Sethi, Advocate
Mr. Avnish Jhingan, Advocate
Mr. Varun Chadha, Advocate
Dr. Naveen Rattan, Advocate
Mr. Divya Suri, Advocate with
Mr. Sachin Bhardwaj, Advocate and
Mr. Madhur Sharma, Advocate
for the petitioners

Ms. Radhika Suri, Addl. AG, Punjab

Mr. IPS Doabia, Advocate, for
respondents No. 2 & 3 in CWP No. 8361 of 2015

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AJAY KUMAR MITTAL, J.

1. Written statement filed on behalf of respondents No.2 and 3 in CWP No. 8361 of 2015, is taken on record. Office to tag the same at appropriate place.

2. Learned State counsel has concluded her arguments.

3. For arguments in rebuttal, to come up on 9.9.2015.

4. In the meantime, the appellate authorities shall not dismiss the appeals on the ground of non deposit of additional demand.

5. Photocopy of this order be placed on the connected case files.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 347 OF 2013

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BAJAJ CONSUMER CARE LTD.
Vs.
STATE OF PUNJAB

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

18th May, 2015

HF ▶ Dealer

Refusal to accept declaration forms after prescribed period by the Assessing Authority without giving any reason despite having power to condone the delay is not right.

DECLARATION FORMS – LATE SUBMISSION – TAX IMPOSED ON GOODS MEANT FOR STOCK TRANSFER DUE TO FAILURE TO PRODUCE F-FORMS IN TIME - REQUISITE FORMS PRODUCED AFTER PRESCRIBED TIME NOT ENTERTAINED – REFUSAL TO ENTERTAIN FORMS WITHOUT GIVING ANY REASON WHEN NO OTHER DISCREPANCIES POINTED OUT IS NOT RIGHT – AUTHORITY EMPOWERED TO GRANT EXTENSION OF TIME ON SUFFICIENT GROUNDS – CASE REMITTED BACK TO CONSIDER GROUNDS FOR ENTERTAINMENT AND CONDONING DELAY IN THE EVENT OF WHICH SPEAKING ORDER TO BE PASSED BY THE AUTHORITY – APPEAL ACCEPTED – *SEC. 6-A OF CST ACT, 1956; RULE 12 OF CST RULES,1956; RULE 40 OF PVAT RULES.*

Assessment for the year 2006-07 was made and an additional demand was raised imposing tax @ 12.5% on goods meant for stock transfer due to failure to produce F-forms within time. An appeal filed before the First Appellate Authority was dismissed. The Tribunal observed that as per record the appellant had produced 102 Declaration Forms but the authority refused their entertainment on the grounds of delayed submission by the dealer. It is held that though F-Forms were submitted but the assessing authority has not disclosed the date. There is no such allegation that the Forms were manipulated or did not relate to stock transfer. Refusing to entertain the forms without giving any reason is not right. The proviso to Rule 12(7) of CST Rules empowers the authority to grant extension of time on sufficient grounds. Therefore, allowing the appeal, the case is remitted back to the assessing authority to consider grounds for entertainment of Forms. If it reaches the conclusion that there are sufficient grounds to condone the delay then the F Forms should be entertained and speaking order should be passed.

Case relied upon
State of Andhra Pradesh vs Hyderabad Asbestos Cement Production Ltd. (94 STC 410)

Present: Mr. K.L.Goyal, Sr. Advocate alongwith Mr. Rohit Gupta,
Advocate Counsel for the appellant.
Mr. S.S.Brar, Additional Advocate General for the date.

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

1.This appeal is directed against the order dated 9.12.2010 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala(herein referred as the First Appellate Authority) dismissing the appeal against the order dated 3.8.2009 passed by the Excise and Taxation Officers cum-Designated Officer, S.A.S.Nagar, Mohali creating an additional demand of Rs,8,33,43,970/- under the Punjab Value Added Tax Act, 2005.

2.The appellant firm is engaged in the resale of all kind of Hair Oil and is registered under the Punjab Value Added Tax Act/Central Sales Tax at Mohali. The appellant filed all the quarterly returns on time.

3.On scrutiny of the quarterly returns for the assessment year 2006-07, it was detected that the appellant had not paid the tax correctly and had failed to furnish 'F' Forms in respect of stock transfer. A notice was served upon the appellant on 29.6.2009 for showing cause as to why the tax should not be imposed @ 12.5% as he had failed to submit the 'F' Forms within time. Ultimately, the Excise and Taxation Officer vide order dated 3.8.2009, while holding that the appellant failed to produce 'F' Forms on time, created additional demand to the tune of Rs.8,33,43,970/-_ The Deputy Excise and Taxation 'Commissioner (herein referred as the First Appellate Authority) dismissed the appeal of appellant.

4. Arguments heard, Record perused.

5. Section 6-A of the Central Sales Tax Act, 1956 deals with the taxable goods which are transferred by way of stock transfer or otherwise then by way of sale. Section 6~A Sub Clause-I reads as under:

(1) *Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, alongwith the evidence of dispatch of such goods [and if the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.)*

6. Rule 12 (5) refers to the form in which declaration is to be furnished. Rule 12(5) reads as under :-

" Declaration referred to in sub section-1 of Section 6 A shall be in form `F'.

7. The statue also prescribed the rule introduced under Central Sales Tax (R&T) Rules, 1957 which prescribe the period of limitation. In this connection, Rule 12 (7) of the Rules reads as under :-

"(7) The declaration in Form C or Form F or the certificate in Form E-I or Form E~II, shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate relates; ,

PROVIDED THAT if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit."

8. According to this 'rule the 'F' form could be furnished to the prescribed authority within three months after the end of the period to which the declaration or certificate relates. The rules also prescribed that the authority, if finds that there is a sufficient cause for not furnishing the declaration within the aforesaid time could extend such time and permit the appellant to furnish such declaration at a later stage.

9. Similar Rule 40 was introduced in the Punjab Value Added Tax Rules regarding the furnishing of 'F' Forms. Rule 40 reads as under :

Rule 40 (1) In addition to the returns prescribed under sub-rules (1) and (2) of rule 36, every taxable person and registered person, shall file an annual statement in Form VAT-20 or Form VAT-21, as the case may be, by giving therein the final liability of tax for the year by the 20" day of November in case of a taxable person and by the 20" day of August in case of a registered person. This statement shall be accompanied by the receipt, evidencing the payment of tax less paid, if any, together with due interest thereon, and the details of the goods in stock existing on the 31 day of march of the year to which the statement relates.

(2) Every taxable person shall also furnish alongwith the annual statement, a copy of the Trading account, Profit and Loss account and Balance Sheet as on the 31" day of March of that year alongwith statutory declaration in Form 'D' and other relevant Forms under Central Sales Tax Act, 1956;

PROVIDED THAT for the year 2005-06, 2006-07, the statutory declaration under the Central Sales Tax Act, 1956 should have been filled up to 30" day of September, 2007, 31st day of March, 2008 respectively and for the year 2007-08, the same shall be filled upto 31st day of March, 2009;

PROVIDED FURTHER THAT for the year 2008-09, the statutory declaration under the Central Sales Tax Act, 1956 shall be filled up to 31st day of March, 2010.

PROVIDED FURTHER THAT for the year 2009-10, the statutory declaration under the Central Sales Tax Act,1956 shall be filed upto 31st day of March, 2011.

10. Thus on combined reading Rule-12 of the Central Sales Tax Act and Rule 40 of the Punjab Value Added Tax Act, it is apparent that the statutory declaration for the stock transfer relating to the year 2006-07 could be furnished by 31.3.2008. However, this case relates to the submission of 'F' Forms relating to the Central Sales Tax Act, therefore, the principles as envisaged under the Central Sales Tax Act would govern the submission of the forms in the present case. The framing of the rule 40 in the Punjab VAT Act would not repeal Rule 12 of

the Central Sales Tax Act. The proviso appended to rule 12 (7) has specifically provided that on sufficient cause shown, the time for submission of forms could be extended.

11. A The record reveals that during the proceedings pending before the Excise and Taxation Officer-cum-Notified Authority, the appellant had produced 102 forms but the authority refused to entertain those forms on the ground of delay in submission thereof. The appellant while assailing the findings of the authorities below raised the following grounds:-

1. Since the stock transfer was against 'F' Forms, therefore, no loss of revenue is involved.
2. No tax is attracted on these transactions. The consignee purchaser also recorded these transactions in their account books and paid the tax in that State in accordance with law.
3. The entire turn over is a stock transfer and no tax is payable in case of stock transfer.
4. Section 6-A only provides regulatory measures by way of furnishing of the 'F' Forms. The delay in furnishing such forms could be condoned for sufficient reasons.
5. The tax could be imposed if the Government succeeds to prove that it was a sale;
6. The Department is not even alleging that the transaction is sale at all. They are not denying that the transaction is a stock transfer.
7. There are sufficient grounds for condoning the delay in submitting the `F' Forms.

12. The Counsel has argued that the Deputy Excise and Taxation Commissioner failed to meet with the aforesaid arguments, but dismissed the appeal merely on the ground that the appellant had failed to produce the solid documentary evidence before him during the appeal proceedings.

13. Having heard the contentions, I find merit in some of the arguments. No doubt, he had to submit the `F' Form with three months of the end of the period to which the forms related. The Assessing Authority admits that 'F' Forms were submitted but has not disclosed the date as to when the forms were submitted. The Assessing Authority did not consider the sufficient grounds for condoning the delay in submitting the 'F' Forms. It is not the allegation that the forms submitted to the Assessing Authority were manipulated or that the forms do not relate to the stock transfer. If sufficient cause has not been shown by the appellant for not furnishing the `F; Forms then the Assessing authority could refuse to entertain the same. The refusing to entertain such forms without assigning any reason is not the correct approach of the officer. Rule 40 of the Punjab Value Added Tax Act do not abrogate the provisions the Central Act and the rules made thereunder where the legislature enacted a specific provision which provided for condoning the delay in furnishing 'F' Forms in appropriate cases. Similar view was taken in case of ***State of Andhra Pradesh V/s Hyderabad Asbestos Cement Production Ltd. Vol. 94***,decided on 28" April, 1994 wherein, it was observed as under :-

> *"At this stage, we may consider the reasons for which the proviso to subsection (4) was added by the amending Act No. 61 of 1972 and the proviso to sub-rule (7) of rule 12 was inserted. In Sales Tax Officers v. Abraham [1967] 20 STC 367, it was held by this Court that the phrase "in the prescribed manner" occurring in section 8(4) of the Act confers upon the rule-making authority the power to prescribe a rule stating the particulars to be mentioned in the prescribed form, the nature and the value of the goods sold, the parties to whom they are sold and to which authority the form is to be*

furnished but that it does not authorize the rule-making authority to prescribe a time-limit within which the declaration is to be filed by the registered dealer. With a view to remedy the lacuna pointed out by this Court, the Parliament enacted the aforesaid Amendment Act No. 61 of 1972. The proviso empowers the rule-making authority to prescribe the time within which form C, i.e. the declaration referred to in clause (a) of subsection (4) is to be furnished. The proviso not only empowers the rule-making authority to prescribe such time but also provides that for sufficient reasons, the assessing authority may permit the said forms to be filed within the time prescribed (?). Pursuant to the said proviso, the rule making authority introduced the proviso to sub-rule (7). While the main limb of sub-rule (7) says that form C can be furnished "up to the time of the assessment by the first assessing authority", the proviso says that if the prescribed 'authority is satisfied that the dealer was prevented by sufficient cause from furnishing such certificate "within the aforesaid time-limit" he may allow such certificate to be furnished within such further time as he may permit. Reading sub-rule (7) as a whole it follows that form C shall be furnished up to the time of assessment by the first assessing authority but in a proper case the prescribed authority (which means in the context the assessing authority) may permit such forms to be filed within such further time as he may permit. This necessarily means that the assessing authority will complete the assessment but at the same time permit the dealer to file form 'C' within the time specified by him. In case the dealer files the form 'C' within the time specified, it is obvious, the assessing authority will revise the T order of assessment granting the requisite relief."

14. The aforesaid judgment was pronounced at the time when the authority could accept the `C Forms till the time the matter remains pending before the assessing authority. However, lateron the Sub-Rule (7) was amended, so as to fix the time for entertaining such forms within three months of the end of the period to which the 'C' Forms (in Punjab 'F' Form) relate. However, the proviso to Rule 12 (7) still remains on the statue book which empowers the authority to grant extension of time on sufficient ground.

15. No doubt in the aforesaid judgment also, the officer could condone the delay in furnishing 'F' Forms but in the present case, no reason for, declining the entertainment of 'F' Forms have been assigned. No reasons for refusing to condone the delay have been assigned.

16. Faced with the situation Mr. S.S. Brar, Counsel for the appellant has stated that the said form could be subject to verification by the Assessing Authority to which the counsel for the appellant has not disputed.

17. Resultantly, this appeal is accepted, impugned orders are set-aside and the case is remitted back to the Assessing Authority to consider the grounds for entertaining the forms and if it reaches the conclusion that there are sufficient grounds to condone the delay, then it would entertain the same and verify 'F' Form and then to pass a speaking order after hearing both the parties regarding the taxability of the goods. The appellant is directed to appear before the Assessing Authority on 24.7.2015.

Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 543 OF 2014

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BALAJI IMPEX
Vs.
STATE OF PUNJAB

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

25th May, 2015

HF ▶ Appellant

Due to improper service of notice and invalid order served to the appellant the assessment order is held to be bad in the eyes of law.

PRE-DEPOSIT – ENTERTAINMENT OF APPEAL – ASSESSMENT - NOTICE – EX-PARTE ASSESSMENT FRAMED – DISMISSAL OF 1ST APPEAL FOR FAILURE OF PRE-DEPOSIT – IMPUGNED ORDER ALLEGED TO BE INVALID – WAIVER OF CONDITION OF PRE-DEPOSIT PLEADED BEFORE TRIBUNAL – NOTICES SERVED BY DEPARTMENT INCOMPLETE – PENALTY ORDER (HANDWRITTEN) PASSED ON 10.6.2014 NEVER DISPATCHED YET TYPED ORDER SHOWN TO BE RECEIVED ON 10.9.2014 THEREBY RAISING SUSPICION – TDN OUGHT TO HAVE BEEN ISSUED ON SAME DAY AS PASSING OF PENALTY ORDER – APPELLANT HELD NOT SERVED PROPERLY – CASE REMITTED BACK TO ETO FOR FRAMING FRESH ASSESSMENT – APPEAL ACCEPTED – *SEC. 29 & 62(5) OF PVAT ACT; RULE 47 OF PVAT RULES.*

An additional demand was raised on framing of ex-parte assessment. First appeal filed was dismissed on the ground of non-compliance of Section 62(5) of the Act. It was argued before the Tribunal that since the impugned order was bad in the eyes of law, the compliance of pre-deposit u/s 62(5) was not essential. The Tribunal observed that all the notices served to the appellant did not conform to Rule 47 as required. They created suspicion as they were incomplete regarding date of issue, date of receipt, person through whom they were served etc. or when they were delivered. The order imposing tax and penalty dated 10.6.2014 which is hand written was never dispatched. A type written order has shown to be received on 10.9.2014. If the order was passed on 10.6.2014, then TDN should have been issued on that very day but it was not done. Therefore, the appellant is held to have been not served properly. The case is remitted back to ETO for framing fresh assessment after hearing the appellant. The appeal is accepted.

Present: Mr. K.L.Goyal, Sr. Advocate alongwith Mr. Rohit Gupta, Advocate counsel for the appellant.
Mr. S.S.Brar, Additional Advocate General for the State.

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

1. This appeal is directed against the order dated 30.10.2014 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissing the appeal against the order dated 10.6.2014 passed by the Excise and Taxation Officer-cum-Designated Officer, Ludhiana-1 creating an additional demand of Rs.5,48,82,379/- while framing the exparte assessment for the year 2010-11. The appeal filed by the appellant was dismissed by the Deputy Excise and Taxation Commissioner on the ground of non compliance of Section 62(5) of the Act.

2. At the very outset, the Counsel for the appellant has urged that the order passed by the Designated officer is void, therefore, the Deputy Excise and Taxation Commissioner should not have looked forward for compliance of Section 62 (5) of the Act as compliance is not essential in cases where the order is found bad in eyes of law at the face of it. Since the order was likely to be set-aside, therefore, there was no fun for depositing 25% of the additional demand.

3. To the contrary Mr. S.S. Brar, Advocate has urged that the order is quite valid and appeal could not be entertained without compliance of Section 62 (5) of the Punjab Value Added Tax Act, 2005.

4. Having heard the rival contentions and having gone through the record of the case, this Tribunal finds substance in the arguments raised by the counsel for the appellant.

5. The assessment of 2010-11 is in question for which the return was filed on time. The Notices for framing for the assessment was first given on 9.1.2014 for 22.1.2014. Again 22.1.2014 fresh notice was given on 12.2.2014 then on 12.2.2014 fresh notice was given for 20.2.2014. On 20.2.2014 none appeared then the file was taken up on 19.5.2014 and notice was issued for 28.5.2014.On 2.6.2014 a letter was received regarding adjournment then a notice was issued for 9.6.2014. On 9.6.2014 none appeared. Ultimately, an exparte order was passed on 10.6.2014.

6. From zimini orders as recorded on file, it transpires that though notices were issued time and again and received, but the officer did not proceed against the appellant ex-parte in response to those notices. None of the notices was valid conforming to Rule 47 of the Rules as framed under the Punjab VAT Act which provide for ten days clear notice. Actually, the notices and the zimini orders create suspicion in my mind about the date of their recording. The date of issue and date of receipt; and the person through whom these notices were served are missing from the notices. There is nothing on the notice dated 9.1.2014 in order to show that as to whom it was handed over and when it was dispatched. Similarly, the notice which was issued for 12.2.2014 is silent qua the date when it was issued and dispatched and through whom, it was served and upon whom it was served. The notice dated 13.2.2014 appears to have been signed by the recipient on 13.2.2014 itself but the date was lateron changed from 13.2.2014 to 14.2.014. There is another undated notice which does not indicate as to on which date it was issued and on which date it was delivered. Though another undated notice was issued for 9.6.2014 and it is stated to have been served on 4.6.2014, but no proceedings for declaring the appellant ex-parte had taken place on 9.6.2014 There is a hand written order dated 10.6.2014 passing an exparte order against the appellant holding him liable to pay tax and penalty to the tune of Rs.5,48,82,379/- mainly on the ground that the appellant had failed to produce the invoices and other documents supporting sales. This order was never dispatched to the appellant but a type written order is shown to have been received on 10.9.2014. Thus, it is clear that a hand written order was passed on 10.6.2014 and the type written order was recorded same times later if the order has been passed on 10.6.2014 itself, then TDN should

have been issued on that very day but it was not so done. Thus, without further commenting on the facts and circumstances of the case, it would be suffice to say that the appellant was not duly served in the case. Therefore, the ex-parte proceedings as well as the orders passed by the Designated Officer are bad in the eyes of law. Faced with the situation Shri S.S.Brar has stated that the matter may be remitted back to the Designated Officer to make an elaborate enquiry and frame a fresh assessment order after affording an opportunity to the appellant of being heard.

7. Resultantly, this appeal is accepted, impugned orders are set-aside and the case is remitted back to the Excise and Taxation Officer-cum-Designated Officer, Ludhiana-2 for framing the assessment afresh after hearing of the appellant. The appellant is directed to appear before the Designated Officer on 17.7.2015.

Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 664 & 665 OF 2013

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ARADHANA DRINKS AND BEVERAGES PVT. LTD.
Vs.
STATE OF PUNJAB

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

30th April, 2015

HF ▶ Appellant

The matter is remanded to the First Appellate Authority to pass a reasoned order as the impugned order is silent about issues raised by the appellant.

APPEAL - NON-SPEAKING ORDER – EXCESS PURCHASES SHOWN THEREBY AVAILING EXCESS ITC - NON-DEPOSIT OF TDS AND NON-DEDUCTION ON PART OF APPELLANT – NOTICE ISSUED FOR LEVYING PENALTY AND INTEREST – DISMISSAL OF 1ST APPEAL WITHOUT DECIDING THE ISSUES REGARDING LIMITATION AND REPLY GIVEN BY THE APPELLANT – CASE REMANDED BY TRIBUNAL TO DETC TO PASS A REASONED AND SPEAKING ORDER – APPEAL ACCEPTED – *SEC. 62 OF PVAT ACT*.

For the assessment year 2006-07, notice for levy of penalty and interest u/s 32, 27(7), 53 for availing excess ITC and non-deposit of TDS was issued. It was contended before the 1st appellate authority that the assessment could be filed by 20.11.2007. In the absence of any extension, it could be framed within three years but in the present case it was framed after the expiry of three years. This issued was raised but not decided or discussed by DETC. Also, it was contended that the assessment was framed on the basis of audit report. The appeal was, however, dismissed. On appeal before Tribunal, it is observed by the Court that the order of 1st appellate authority is silent about issues raised and arguments given by the appellant. The issues were decided without considering the reply. Therefore, the matter is remitted back to the 1st appellate authority to pass a speaking and a reasoned order taking into view the amendment made in the Punjab VAT Act w.e.f. 15.11.2013. The appellant would appear before the assessing Officer who would decide the matter within three months of receipt of the order of Tribunal.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith Mr. Rohit Gupta,
Advocate Counsel for the appellant.
Mr. N.D.S. Mann, Addl. Advocate General for the State

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

1. This judgment of mine shall disposal off two appeals No. 664 and 665 of 2013 titled as Aradhana Drinks and Beverages Pvt. Ltd., Zirakpur, District Mohali vs. State of Punjab. Since both the cases involve the common question of law, therefore, both are decided by a common judgment.

2. The Assistant Excise and Taxation Commissioner-cum-Designated Officer, SAS Nagar, Mohali vide his order dated 30.10.2012 created an additional demand to the tune of Rs. 13,43,465/- under the Punjab Value Added Tax Act and Rs. 1,39,240/- under the Central sales Tax Act, while framing the assessment for the year 2006-07.

3. Feeling aggrieved, the appellant preferred the appeal before the Deputy Excise and Taxation Commissioner, Patiala Division Patiala (herein referred as the First appellate authority) who vide his order dated 26.08.2013 dismissed the appeal, hence this second appeal.

4. Brief facts of the case are that the demand in question was raised on account of non deduction and deposit of TDS and availing of an excess ITC by showing excess purchases from M/s Dhillon kool drinks. The Assessing Officer issued notice regarding the discrepancies qua the aforesaid aspects. He has also issued notice u/s 32, 27(7) and 53 of the Act for imposing penalty and interest upon the appellant for availing an e cess ITC and non deduction/deposit of TDS resulting in the demand in question. The First Appellate Authority while observing that "the arguments raised by the counsel for the appellant are not base don facts; the appellant committed default in non deduction and deposit of TDS and had also availed excess ITC on purchases made from M/s Dhillon kool drinks; the Designated Officer had dealt with all the issues very minutely,'' therefore he dismissed the appeal, hence this second appeal.

5. The Counsel for the appellant has urged that the case involves assessment for the year 2006-07. The assessment could be filed, in the ordinary course by 20-11.2007. In the absence of any extention granted by the Excise and Taxation Commissioner, the assessment at the most could be framed within 3 years but in the present case the assessment was framed beyond three years. It has been stated that this issue was raised before the Deputy Excise and Taxation Commissioner, but he has neither mentioned the arguments nor discussed about the same. Secondly he has urged that the assessment was framed on the basis of the audit. In such cases though the Act has not provided any limitation yet the limitation of three years may be treated as reasonable, during which the assessment could be framed.

6. To the contrary, the counsel for the respondent has submitted that no limitation has been provided by the state when the assessment is framed on the basis of audit report. Therefore the assessment in case arising out of the audit report could be framed within a reasonable time i.e. 5 years.

7. Having heard the rival contentions and gone through the file, it is observed that though the designated officer passed 18 page order whereby he answered 6 issues but the order does not reveal as to what issues were raised by the appellant and what arguments were raised by the counsel for the appellant. The order transpires that the officer noticed some facts and reply to those facts as given by the appellant, thereafter the issues were decided without discussing the reply.

8. That apart, the assessing authority as well as the first appellate authority did not decide the following three issues:-

1. Whether the assessment for the year 2006-07 having been framed on 30.10.2012 that too without any extention from the Excise and Taxation Commissioner is time barred.

2. Whether the assessment could be framed on the basis of audit.

3. Whether this assessment was framed on the basis of the audit and if it so then what would be period of limitation.

9. The Assessing Authority while deciding the assessment would also take care of the amendments made in the state i.e. the PVAT Act (2nd Amendment 2013) w.e.f. 15 November, 2013 as published vide Department of Legal and Legislative Affairs, Punjab notification No. 49-Leg/2013 dated 15-11-2013.

10. Resultantly, this appeal is accepted, impugned order is set-aside and the Deputy Excise and Taxation Commissioner is directed to decide the aforesaid issues by passing a reasoned and speaking order. The appellant is directed to appear before the Designed Officer on 7.7.2015. The Assessing Authority would decide the case within three months from the receipt of the copy of the order.

11. A copy of the order be also placed in appeal No. 665 of 2013.

Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 242 OF 2014

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AMCO INDUSTRIAL ENTERPRISES PVT. LTD
Vs.
STATE OF PUNJAB

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

29th May, 2015

HF ▶ Assessee

Denovo assessment to be framed as assessment orders observed to be contradictory to the admission made by the officer.

ASSESSMENT – DISALLOWANCE OF INPUT TAX CREDIT – ITC DISALLOWED FOR WANT OF PURCHASE INVOICES – APPEAL DISMISSED BY FIRST APPELLATE AUTHORITY FOR NON COMPLIANCE OF CONDITION OF PREDEPOSIT – APPEAL BEFORE TRIBUNAL – CONTRADICTORY ORDERS PASSED BY ASSESSING OFFICER AS OFFICER ADMITTED THAT INVOICES WERE PRODUCED – MATTER REMITTED FOR FRAMING DENOVO ASSESSMENT – APPEAL ACCPPETED- *SEC 62 (5) AND SEC 13 OF THE PVAT ACT*

Assessment order was passed raising an additional demand. The ld. DETC dismissed the appeal on grounds of non compliance of the condition of predeposit. It was observed by Tribunal that the officer had admitted that original invoices were produced by appellant but has disallowed ITC on basis of non production of purchase invoices. On the basis of contradictory orders passed, the impugned orders are set aside as they have been decided without application of mind. The case is remitted back to assessing authority for framing denovo assessment after hearing the appellant. The appeal is accepted.

Present: Mr. Bal Krishan Gupta, Advocate Counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

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

1.This appeal is directed against the order dated 15.4.2014 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissing the appeal against the order framing the assessment for the year 2009-10 dated 1.11.2013 passed by the Assessing Authority-cum-Designated officer, Ludhiana-I on the ground of non compliance of Section 62(5) of the Punjab Value Added Tax, 2005.

2. The counsel for the appellant has urged that the order passed by the Assessing Authority is void for the following reasons:-

> *It is contradictory in as much as in the first part of the order, the officer observed as under:-*
>
> > *There is no incriminating material on the file which needs verification. Sales are progressive as compared to the last year. The dealer has produced purchase invoices, which have been scrutinized, but in the later part of the order ITC was not allowed for want of original purchase bills.*

3. The counsel has also urged that the appellant was not allowed to confront with the material while creating additional demand. To the contrary State has disputed the fact that the order is contradictory in nature.

4. It may also observed that when the officer admitted that original VAT Invoice has been produced then the officer should not have recorded the observations that "ITC disallowed for want of original purchase invoices" or he would have mentioned as to which invoices were not produced or could not be verified.

5. Faced with the situation State Counsel has stated that the case may be remitted back to the Assessing Authority to frame the denovo assessment. In view of the above, this Tribunal is the view that it is fit case for setting aside both the orders being not sustainable in the eyes of law, as the Assessing Authority as well as the Deputy Excise and Taxation Commissioner did not deal with the real question into controversy, but proceeded to decide the same without application of mind.

6. Resultantly, this appeal is accepted, impugned orders are set-aside and the case is remitted back to the Assessing Authority to frame the denovo assessment after hearing the appellant.

7. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 1 OF 2014

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AMRITSAR DYES & CHEMICAL
Vs.
STATE OF PUNJAB

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

23rd April, 2015

HF ▶ Revenue

Condonation of delay declined due to the conduct of appellant indicating his delay in filing of appeal to put off penalty.

APPEAL – LIMITATION – CONDONATION OF DELAY – PENALTY ORDER DISPATCHED ON 18/6/04- CLAIMED TO HAVE BEEN RECEIVED ON 15.3.2012 – DELAY IN FILING OF FIRST APPEAL BY 8 YEARS – NO SATISFACTORY EXPLANATION TENDERED – APPEAL DISMISSED – APPEAL BEFORE TRIBUNAL – CONDUCT OF APPELLANT NOT COOPERATIVE DURING EARLIER PROCEEDINGS – NO AFFIDAVIT SUBMITTED REGARDING NON RECEIPT OF ORDERS IN TIME – APPELLANT HELD TO BE FULLY AWARE OF THE DISPATCH OF ORDERS – TIME TAKEN TO PUT OFF PENALTY – CONDONATION DECLINED – APPEAL DISMISSED - *SEC. 64 OF PVAT ACT*

The penalty order was dispatched by post on 18.6.04. The appellant claims it to have been received on 15.3.2012. The first appeal was dismissed for delayed filing on the ground that the appellant did not appear to explain the circumstances leading to the delay. The Tribunal observed that during the proceedings the conduct of the appellant remained non cooperative. The letters dated 28th Feb and 15th May 2007 indicate his knowledge regarding orders passed by the designated officer. No affidavit was ever given before the Court regarding his not receiving orders by the department on 18.6.04The contentions raised by the appellant are not supported by any evidence. Wrong statement regarding the condonation of delay by DETC before the Tribunal was made by the appellant's counsel. Thus due to the conduct of the counsel it is apparent that he had full knowledge of passing of order and the delay was just to put off the responsibility to pay penalty .Therefore, condonation is declined and the appeal is dismissed.

Present: Mr. Ravi Kant Sharma, Advocate Counsel for the appellant.

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

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

1. This is an appeal against the order dated 18-06-2013 passed by Deputy Excise and Taxation Commissioner (Appeals) cum Joint Director (Investigation) Patiala Division, Patiala dismissing the appeal of the appellant on the ground of delay of 9 years in filing the appeal.

2. The Assistant Excise and Taxation Commissioner ICC Shambu Import passed an order on 28-4-2004, imposing a penalty of Rs. 1,63,000/- u/s 14(B)(7)(ii) of the Punjab General Sales Tax Act, 1948. The copy of the judgment reveals that it was sent by post to the appellant on 18-06-2004.

3. Appellant preferred the appeal against the said order on 19.4.2012 on the basis of a notice received by the counsel. The appeal is not accompanied by an application for condonation of delay.

4. The Counsel for the appellant has sought condonation of delay on the ground that the delay in filing the appeal is unintentional. Actually he had not received the certified copy of the order allegedly dispatched on 18.06.2004 but it was received on 15.3.2012, therefore he filed the appeal on 23.4.2012 thus there was no delay in filing the appeal. It was within time from the date of receipt of the copy of the order. It was further argued that the delay if any in filing the appeal, being unintentional, the same be condoned.

5. On the other hand Mrs Sudeepti Sharma, Counsel for the respondents has agitated the issue by urging that the order was passed on 28-4-2004 and copy of the order was sent on 18-6-2014 through the ICC staff by way of registered post, therefore the presumption would be that the appellant had received the copy of the order. The appellant did not appear before the Deputy Excise and Taxation Commissioner to explain the circumstances leading to the delay whereupon the Deputy Excise and Taxation Commissioner with the assistance of record as well as Sh. Darshan Kumar Excise and Taxation Inspector dismissed the appeal on the ground that there was unexplained delay of more than 8 years and he was not satisfied with the reasons as explained by the appellant.

6. Being dissatisfied the appellant had filed this 2nd appeal. Having scrutinized the case of the appellant to the depth, it is observed that the conduct of the appellant remained non-cooperative throughout the proceedings and the fact that appellant did not have the knowledge of the order and it remained incommunicable to him, is without any substance.

7. While going through the order dated 28.4.2004, it transpires that in response to the notice Bharat Bhushan Accountant of the appellant firm had appeared but he could neither explain nor justify his case against detention of goods nor produced the book of accounts. Again on 19-4-2004 Shri Bhagirath Upadhayaya, another partner appeared before the designated officer along with Sh. Ravi Kant Sharma, Advocate but did not respond to the request regarding production of books of account for verification of the covering documents. The department has been issuing notices time and again even thereafter, but the appellant did not appear to explain the things. The letter dated 28th February, 2005 and 15th May 2007, indicate that the appellant was in the knowledge of the order passed by the designated officer.

8. The appellant neither appeared before the DETC nor before this court to file an affidavit to the effect that he was never in the knowledge of order passed by the designated officer and he did not receive the order sent by the Department on 18-6-2004. He had applied for the copy of the order for filing the appeal. Thus the contentions raised by the appellant remained unsupported by any documents and evidence much less an affidavit. Therefore this inordinate delay of more than 8 ears can't be condoned for no reasons.

9. It is cardinal principle of law that the delay of minutes, hours or days need not be explained with such mathematical precisions, certainty and proof yet rights can not be created

by condoning the unexplained delay of long years altogether as after such long pause (more than 8 years) even the departmental record is destroyed. Sometimes, the modus oprandi of the litigants is to knock the door of the Courts/authorities after the evidence against them is lost or destroyed. The non cooperative and habitual conduct of the appellant is also an important factor to be looked into at the time of condoning the delay.

10. In the present case the circumstances speak for themselves that the appellant had the knowledge of the proceedings as well as the passing of the order and he was served with the order. Appellant has not denied, by way of duly sworn affidavit, that he did not receive the copy of the order as dispatched by the department through registered post. The appellant even did not cooperate with the Deputy Excise and Taxation Commissioner at the time of arguments in appeal before him. Moreover, there is 57 days unexplained delay in filing the appeal. It may also be observed that when once it is proved that the letter was dispatched by the authorities by post at the last known address, then it would be presumed that the letter has been duly received by the addressee unless it is proved otherwise. The appellant has nowhere stated that the address which letter was sent was not his last known address therefore he had not received the copy of the order and that the letter was returned undelivered.

11. It may further be observed that on 9-1-2015 Shri Ravi Kant Sharma Counsel for the appellant had stated orally before the Tribunal that the Deputy Excise and Taxation Commissioner vide a separate order 28-6-2014 had condoned the delay but when the file of Deputy Excise and Taxation Commissioner was called and scrutinized as brought before me today, this statement (oral) made by the counsel was found to be false. Deputy Excise and Taxation Commissioner in none of his orders had condoned the delay in filing the appeal. Thus this conduct of the appellant is to be viewed seriously.

12. In these circumstances this court is of the view that the appellant had full knowledge of passing of order and that there are neither sufficient grounds to condone the delay nor it is in the interest of justice to ignore this delay and decide the appeal on merits rather the appeal appears to have been filed just to put off the responsibility to pay the penalty. Resultantly, the prayer for condonation of delay in filing the appeal is declined. Consequently, the appeal fails and is dismissed.

PUNJAB VAT TRIBUNAL

APPEAL NO. 688 OF 2013

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BHARAT CABLES, SANGRUR
Vs.
STATE OF PUNJAB

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

21st May, 2015

HF ▶ Dealer

Element of mensrea cannot be attributed to the transaction on mere misdescription of goods in invoice when rate of tax applicable is same for both items and not much difference in their value as shown in invoice and on physical verification is found.

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – MENSREA – GOODS X AND Y IN TRANSIT – INVOICE REFLECTING ONLY GOODS X IN TWO COUNTS I.E. 150 AND 220 BAGS – MISDESCRIPTION OF GOODS FOUND BY CHECKING OFFICER – SLIGHTLY EXCESS QUANTITY TRANSPORTED – RATE OF TAX APPLICABLE ON X AND Y IS SAME – NO SUBSTANTIAL DIFFERENCE IN VALUE OF GOODS AS SHOWN IN INVOICE AND ACTUALLY FOUND IN TRUCK – VOLUNTARY REPORTING – ELEMENT OF MENSREA RULED OUT – PENALTY QUASHED – APPEAL ACCEPTED – *SEC 51(7)(C) OF PVAT ACT.*

As per the invoice, the goods entering into the state of Punjab consisted of 150 bags and 220 bags of PVC compound. On physical verification, they were found 165 bags of PVC compound instead of 150 bags and 234 bags of PVC coil instead of 220 bags of PVC Compound. The driver admitted the mistake. Penalty u/s 51 was imposed.

On appeal before Tribunal it is observed that PVC coil and PVC compound is subject to same rate of tax i.e. 12.5.% . Excise duty was duly paid by appellant. Entry tax @ 2% was also paid and the goods were voluntarily reported. Also, there was not much difference regarding value of goods as shown in invoice and goods actually found in the truck at the time of physical verification. Therefore, intention to evade tax cannot be assumed. Tax cannot be imposed on mere misdescription of goods. The tax under PVAT would be payable only when goods are sold in the state of Punjab. No loss to the state is found. Element of mensrea to evade tax is not reflected. Therefore, the appeal is accepted and penalty quashed.

Case relied upon:
M/s Bhushan Power & Steel Ltd., R.C 5.l Road, Mandi Gobindgarh Vs State of Punjab (2012) 43 PHT 321

Present: Mr. Rishab Singla, Advocate Counsel for the appellant.

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

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

1. The crucial question involved in the present appeal is "whether there is element of mensrea on the part of the appellant to evade tax?

2. This appeal is directed against the order dated 12.7.2013 passed by the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Patiala Division, Patiala (herein referred as the First Appellate Authority) dismissing the appeal against the order dated 9.7.2011 passed by the Excise and Taxation Officer-cum-Designated Officer/ Information Collection Centre, Dhabi Gujran imposing a penalty of Rs. 2,05,535/- under Section 51 (7) (c) of the Punjab Value Added Tax Act, 2005 (herein referred as the Act of 2005). ;

3. The factual matrix of the case is that on 25.5.2011, the driver of the truck bearing No. HR-62-5852, when reached the information Collection Centre, Dhabi Gujran, produced the following documents:-

1. Invoice No.195 dated 24.6.2011 of M/s Bansal Polyplast Pvt. Ltd. Narela Delhi issued in favour of M/s Bharat Cables Tunga Road, Sangrur for Rs.7,08,788/- (including VAT).
2. GR No.48442 dated 24.6.2011 of M/s Ludhiana Hemkunt Sahib Transport Co., Delhi.

4. The PVC Compound as shown in the bill was on two counts one was relating to 150 bags and the other was relating to 220 bags. The price of both the items including tax was shown as Rs.7,08,788/-.

5. On physical verification of the goods, the goods loaded in the vehicle mismatched with the goods actually loaded. The PVC compound was found to be 165 bags against 150 bags. The other commodity found was 234 bags of PVC Coils each bag containing three coils instead of 220 bags of PVC compund and price of the each Coil was 585/-.

6. Since there was mis-description of the goods, the detaining Officer detained the goods and issued notice U/s 51 (6) (b) of the Punjab Value Added Tax Act, 2005. In response to the notice, the driver admitted his fault of transporting PVC Coils in the place of PVC compound. Shri Naresh Kumar, who had also appeared before the Detaining Officer, admitted that value of the one Coil was Rs.585/- and the total value of PVC Coils was Rs.4,10,670/- The appellant also failed to produce any account books. The Detaining Officer, thereafter, forwarded the case to the Designated Officer who also served a notice upon Shri Naresh Kumar, partner of the firm. Whereupon Shri Pardeep Bansai, Advocate and Shri Santosh Kumar, Partner of the appellant firm appeared on 9.7.2011. The appellant produced the account books before the Designated Officer. Ultimately, the penalty to the tune of Rs.2,05,535/- was imposed.

7. Arguments heard. Record perused. There is no denying a fact that the consignment was consisting of two parts; one part was relating to 150 bags of PVC compound and other was relating to 220 bags of PVC' compound. On verification, 165 bags of PVC compound were found from the truck as against 150 bags. Similarly, in place of 220 bags of PVC compound, 234 bags of PVC Wire Coils were recovered from the vehicle. Each bag contained three PVC Wire Coils. It is also admitted that the PVC Coils were subject to the same rate of tax as is recoverable from PVC compound i.e. 12.5%. It was also admitted by Shri Naresh Kumar, partner of the appellant firm that he was importing PVC Coils instead of PVC compound and the entry in the bill was the result of bonafide mistake. It is also not in dispute that the PVC Coils roll as well as PVC compound were excisable items for which the appellant had paid excise duty to the tune of Rs.37,080/- and had paid sales tax @ 2% amounting to Rs.7,920/- before the entry into of Punjab. The sales tax was to be paid under the Punjab VAT Act at the

first stage of sale in the State of Punjab. The rate of tax was the same on PVC compound as well as on Wire Coil. The appellant was to receive back the excise duty which he had paid as he had to claim sanamen credit. He had also reported the matter voluntarily at the ICC. The goods had been purchased against 'C' Form. The tax over 235 bags of wire coil is almost equal to the tax levied over 220 bags of PVC compound. Therefore, the question of concealing the good in order to evade tax does not arise.

8. It is also pertinent to mention here that the Excise and Taxation Officer did not proceed to impose tax on 15 bags which were found excess at the time of physical verification.

9. Now the questions arise as to "whether there was any element of Mens Rea on the part of the appellant to evade tax?" and if not, then "whether penalty could be imposed on account of mis-description of the goods in the given circumstances of the case?"

10. Admittedly, the goods as shown in the consignment were 220 bags of PVC compound, whereas the goods detected from the truck were 234 bags of wire coils. It is also not disputed that the price of wire coils at the relevant time was 585/- per coil including tax and the total price of the coils comes to Rs.4,10,670/-. If the price of 234 bags of' wire coils is calculated at the rate of admitted price of 585/- per coil, it comes to Rs.4,05,021/-. Had there been a big margin between the price of the goods as mentioned in the invoice and the goods found at the time of physical verification, then the things would have been different and the appellant could be said to have made an attempt to evade tax. There is not much difference regarding the value of the goods as shown in the invoice and the goods actually found in the truck at the time of physical verification. The Central Sales Tax as well as the Central Excise stood already paid on the goods being transported. The rate of tax chargeable on the wire coils was the same as on PVC compound. Therefore, the intention to evade tax cannot be calculated. In such circumstances, the appellant could not be imposed tax because of mis-description of the goods. The tax under the Punjab Value Added Tax would be payable only when the goods are sold in the Punjab State. As such the mis- description of the goods in the consignment has not resulted into any loss of revenue to the State ex-chequer. Similar view was taken by the Tribunal in case of M/s Bhushan Power & Steel Ltd., R.C 5.l Road, Mandi Gobindgarh Vs State of Punjab (2012) 43 PHT 321, whereas, it appears as under:-

> *"The penalty has been imposed on the solitary ground that on scrutiny of the 'documents it was found that the goods were described to be `Bloom-Tariff 72071920' though on physical verification, these were found not be Steel plates." Under the stress of arguments, the ld. State counsel admitted that the rate of tax on Blooms and Mis-rolled plates is the same. When it is so, there was no occasion for the detaining officer to detain the goods or for the AETC to impose penalty. The Department has also not placed on record any expert opinion showing that the goods were "Steel plates." If it is assumed to be a case of mis-description of goods, attempt to evade tax has been made. In any case, if there was any dispute with regard to the nomenclature of alleged mis-description of the goods, the only remedy or alternative available to the authority was to refer the matter to the Assessing Authority of the appellant. The goods had moved from Orissa State and were to reach Mandi Gobindgarh (Punjab). Therefore, in view of the provisions of Section 3 of the Central Sales Tax Act, 1956, it is an interstate sale transaction. Consequently, the tax was chargeable in Orissa State as the goods had moved from there. More to point, the transaction was a stock transfer. The tax of Punjab State would be involved only when the goods are sold in this State. Since the transaction has been reported at the ICC, therefore, the goods can not be kept out of 'account books. To add further to it, "Blooms" or be it "Steel Plates", these are raw materials for different Industries and when these are used by the industries, they become entitled to MODV T credit of excise suffered by the goods. The excise amount is*

much more than the tax amount. No prudent business man would do away with credit of almost 16% of Excise for 4% of tax. The tax due," if any, was to be collected by the concerned authority of Orissa State from where the goods had moved. Thus to my mind, element of tax of Punjab State is not involved in this transaction."

11. In the present case also the value of the goods taken into consideration by the Designated Officer is the same as has been depicted in the bills. The driver had voluntarily reported at the ICC. The fault on the part of the consignor, who prepared the manual bills carelessly, is not sufficient to contribute to impose tax by the Designated Officer.

12. Having examined the impugned orders, the same do not appear to be correct as both the authorities did not proceed to examine the element of mensrea on the part of the appellant to evade tax. When the actual amount of tax has been paid for the goods as recorded in the consignment and the same amount of tax was levyable on the goods which were found on physical verification, then to hold mensrea of the appellant to evade tax would be remote observation. Had there been any substantial difference of tax paid or to be paid, then mensrea on the part of appellant to evade tax could be made out. But the present case does not reflect such guilty intention of the appellant. Consequently, the orders passed by the authorities below cannot be sustained.

13. Resultantly this appeal is accepted, impugned orders are set aside and the penalty stands quashed.

14. Pronounced in the open court.

SGA LAW OFFICES

PUNJAB VAT TRIBUNAL

APPEAL NO. 536 OF 2013

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BHOLA RAM SHRI KRISHAN
Vs.
STATE OF PUNJAB

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

12th May, 2015

HF ▶ Dealer

Non entering of previous transaction cannot be made basis for detention and imposing penalty U/s 51(7)(b) of the Act.

PENALTY – CHECK POST/ ROADSIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT DETAINED SUSPECTING UNDERVALUATION AND EXCESS QUANTITY – BILL BOOK PRODUCED - BILLS ISSUED FOR SMALLER AMOUNTS AS COMPARED TO BILL IN QUESTION – TEMPERING OF BILL BOOK SUSPECTED – PENALTY IMPOSED FOR INGENUINE DOCUMENTS – DISMISSAL OF FIRST APPEAL HOLDING THAT PREVIOUS TRANSACTION NOT ENTERED IN ACCOUNT BOOKS AND BILL FOR PRESENT TRANSACTION INSERTED LATER IN ACCOUNT BOOKS – HELD BY TRIBUNAL THAT DIVERGENT BASIS TAKEN BY DESIGNATED OFFICER AND APPELLATE AUTHORITY FOR IMPOSING PENALTY – NON ENTERING OF PREVIOUS TRANSACTION NOT TO BE PENALIZED U/S 51(7)(c) OF THE ACT - NO MENS REA FOUND – NO DEFECT POINTED OUT IN ACCOUNT BOOKS BY PENALIZING OFFICER – NO EVIDENCE REGARDING INSERTION OF BILLS FOR CURRENT TRANSACTION IN BOOKS LATER ON – IMPUGNED ORDER SET ASIDE – PENALTY DELETED AND APPEAL ACCEPTED – *SEC 51(7)(c) OF THE PVAT ACT.*

The goods in transit were detained suspecting undervaluation and being excess in quantity. The account book and bill book were produced before the AETC. It was concluded that the appellant had issued bills for smaller amounts i.e. below Rs 2000/- only and the bill in question was of bigger amount. Tempering of bill book was suspected. It was observed that the dealer has issued bills from another parallel bill book and in case of checking the said invoice is inserted in the regular bill book. Penalty was imposed u/s 51(7)© for ingenuine documents. The first appellate authority dismissed the appeal on the ground that the previous transactions were not entered in account books. It is observed by the Tribunal that the basis of detention is quite contradictory to the notice issued by the designated office. The first appellate authority has ignored the observations made by the designated officer and has raised the point of non entering of transaction in contradiction to the points raised by designated officer. On appeal before Tribunal held:-

Imposition of penalty for non entering of previous transactions is beyond the scope of sec 51(7)(c) of the Act. No mensrea has been established on part of appellant. The allegation by the first appellate authority regarding insertion of bill relating to the transaction in question

later on is held to be untrue after examination. The impugned orders are set aside ad penalty is deleted. The appeal is accepted.

Case relied upon:
B.S Traders, Goniana, District Bhathinda Vs State of Punjab(2008 31 PHT 310 (PVT).

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

Mrs Sudeepti Sharma, Deputy Advocate General for the State.

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

1. This appeal is directed against the order dated 21-2-2013 passed by the Deputy Excise and Taxation Commissioner (Appeals) Faridkot Division, HQ, Bathinda, "dismissing the appeal against the order dated 31-7-2006 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda imposing a penalty of Rs. 31,900/- u/s 51(7)(b) of the Punjab Value Added Tax Act 2005 (herein referred as the Act of 2005).

2. In nutshell, the facts as emanating from the record are that on 20.7.2006 the Excise and Taxation Officer, Mobile wing, Bathinda detained the goods i.e. Cotton Yarn being transported through the vehicle bearing No. HR-39 9833. When the vehicle was on its way from Bareta to Kotkapura, the Detaining Officer while suspecting that the goods were under valued and excess in quantity, detained the goods.

3.The driver produced the following documents :-

Invoice No. 000129 & 000130 dated 20-7-2006 issued by the appellant for Rs 49,920/-.'

4.On enquiry, the Detaining Officer opined that the dealer had not shown regular and proper bills, suppressed the sales and is evading the tax. Consequently, he referred the matter to Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda (herein referred as the designated officer) who issued notice u/s51(7)(b) of the Punjab Value Added Tax Act 2005. Shri Ujwal Kumar, proprietor of the firm along with Shri S.K. Jindal, Advocate appeared in response to the notice. When confronted with the allegations, the appellant produced account book and bill books ; one from serial No. 101- 125 and the other from serial No. 126-150, and further pleaded that the goods were accompanied by proper and genuine documents.

5.On concluding the enquiry, the Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda reached the conclusion that the appellant had issued the bills for smaller amounts i.e. below Rs 2000/- only and the bill in question was of bigger amount. He also observed that bill book was rebound, hence tempered. It was also opined that the modus operandi of the dealer is that bills are issued from another parallel bill book and in case of checking the said invoice is inserted in the regular bill book, therefore the documents covering the goods were neither genuine nor proper. Ultimately the Designated Officer imposed a penalty of Rs 31,900/- u/s 51(7)(b) of the PVAT Act 2005.

6.On appeal, the Deputy Excise and Taxation Commissioner (Appeals), Faridkot dismissed the same while observing that the issue involved in this case is non entering of the transactions in the regular account books. Since the appellant had not entered the previous transaction in the account books, therefore, he was not maintaining the true account books. Consequently, he dismissed the appeal.

7. Heard the basis of detention is quite contradictory to the notice issued by the designated officer. Reasons for detention as assigned by the Detaining Officer are as under:-

(i) The goods are under valued and excess in quantity.

8. The Designated Officer While' imposing the penalty observed as under:-

(i) The appellant has two parallel bill books and bills are issued from parallel bill book and in case of checking, the copies of the actual bill copied would be inserted in the regular bill book, in addition to it, other reason was that carbon copies of the bill in question have been inserted in the regular bill book. Therefore, documents covering the goods are not proper and genuine.

9. The 1st appellate authority, while dismissing the appeal, ignored the observations as framed by the designated officer and took the view that the issue involved in this case was regarding non entering of the previous bills in the regular account books. The point raised by him is contradictory to the points raised by Designated Officer.

10. The plain reading of the order passed by the Deputy Excise and Taxation Commissioner suggests that there was no issue of under valuation or excess quantity on the basis of which the goods were detained. It is pertinent to mention here that the designated officer as well as the first appellate authority were divergent in their opinion and the basis which was made to impose the penalty.

11. That the imposition of penalty on the basis of non entering of the previous transactions in the account books is totally against the scope of Section 51(7) of the Act because the Section 51(7) (b) is applicable to the goods under transportation. It has been observed by this Tribunal in case B.S. Traders, Goniana, District Bathinda Vs State of Punjab (2008 31 PHT 310 (PVT) that previous transactions cannot be made the basis for levying penalty. The relevant observation made by the Tribunal are reproduced as under:-

There is also nothing on record to suggest if after detention or during the enquiry proceedings any officer made any attempt to verify the earlier transactions regarding sales and purchases of the wheat, by the appellant firm from other sources. Even otherwise the previous transactions could not made basis for detaining the goods and imposition of penalty under Section 51(7) © of the Act. The genuineness of those earlier transactions could only be scrutinized.

12. It may also be observed that the designated officer has observed nothing about the existence of mensrea on the part of appellant to evade tax. The appellant produced account books before Ld. A.E.T.C but he did not point any defect in the account books.

13. The designated officer, in his order, has only observed that the account books are doubtful for the reason that the firm has issued bills for smaller amounts with regard to other transactions i.e. below Rs 2,000/- where as the entry in question is for a larger amount however he has not observed that the present entry in the books was in anyway tempered. Any way the 1st appellate authority did not concur with such findings and dismissed the appeal on a different point.

14. Thus the tribunal concludes that the Designated Officer as well as the 1st appellate authority while deviating from recording any observation on the original allegations on the basis of which the goods were detained started probing the books of account relating to the previous transactions. As such the impugned orders can't be sustained. As regards the specific allegation that the bills relate to the present transaction were inserted later in the book of account, as recorded by the Deputy Excise and Taxation Commissioner, it may be observed that on examination of the books of account in question to the depth., the same does not appear

to be tempered. Therefore the impugned orders passed by the authorities being against the facts and law are liable to be set aside.

15. Resultantly, this appeal is accepted impugned order is set aside and penalty as awarded by the designated officer is quashed.

PUNJAB VAT TRIBUNAL

APPEAL NO.337 OF 2014

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GODREJ AGROVET LTD.
Vs.
STATE OF PUNJAB

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

5th May, 2015

HF ▶ Revenue

Presenting one year old bill at check post in relation to the transaction in question shows clear mensrea to evade tax.

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – INGENUINE DOCUMENTS – JURISDICTION –GOODS IN TRANSIT – INVOICE AND GR PRODUCED DATED 4.2.2014 – UNDERVALUATION SUSPECTED – GOODS DETAINED AND PENALTY IMPOSED – OBSERVED BY TRIBUNAL THAT THE TRANSACTION IN QUESTION RELATED TO PREVIOUS CONTRACT OF APPELLANT – BILL SHOWN WAS OF YEAR 2013 – CURRENT BILL PRODUCED WAS AN AFTERTHOUGHT – CASE OF CLEAR MENSREA - INVOICE BEING UNDERVALUED AND FAKE QUA DATE OF ISSUE CHECK POST OFFICER HELD TO APPEAL HAVE EXCERCISED POWER WITHIN JURISDICTION – PENALTY UPHELD - *SEC 51(7)(b) OF PVAT ACT.*

The manual invoice and GR dated 4/2/2014 with respect to the goods in transit were produced at the ICC. On checking, the invoice was found to be undervalued and goods were detained. Computerized bill was produced by the seller admitting that manual bill was wrong by mistake. However, penalty u/s 51(7)(b) was imposed. The first appeal was dismissed. On further appeal, the Tribunal has observed that the transaction in question related to a previous contract of the appellants. The courts below have failed to notice that the invoice and GR dated 4/2/2013 were handed over and not of 4/2/2014 at the ICC. The bill invoice dated 4.2.2014 was an afterthought and prepared after the vehicle was checked. Since the driver had presented one year old bill against the goods sold on 4/2/2014, there is clear mensrea to evade the tax.

Regarding the question of jurisdiction raised by appellant, the court has held that the bill being contradictory to date of purchase, price and weight, the officer at the check post was competent to refer the case for enquiry. Therefore, due to ingenuine documents being shown, the appeal is dismissed.

Case distinguished

M/s Devi Dyal Gopal Krishan Ltd., Moga vs State of Punjab (2009) 33 PHT 413 (P&H)
M/s Ess Aar Soap Mills vs. State of Punjab (2014) 22 STM3 (PVAT-Tri)

Present: Mr. Harminder Singh, Advocate Counsel for the appellant.

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

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

1.This appeal is directed against the order dated 5.8.2014 passed by the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Bathinda (herein referred as the First Appellate Authority) dismissing the appeal against the order dated 20.2.2014 passed by Officer Incharge-Cum-Excise and Taxation Officer, Information Collection Centre, Doomwali, imposing a penalty of Rs.I,73,551/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

2.On 5.2.2014, the driver of the vehicle bearing No. PB-29D-9673 loaded with Groundnut DOC from Jaipur to Khanna, when reached the Information Collection Centre, Doomwali presented the following documents:-

1. Invoice No.430 dated 4.2.2014 of M/s Shree Ji Enterprises, Jaipur valuing Rs.64,994/- issued from the manual VAT Invoice book.
2. GR No. 2096 dated 4.2.2014 issued by New Zira Ferozepur Transport Co., Bikaner.
3. VAT XXXVI dated 5.2.2014 for Rs.64,994/-
4. Receipt of advance tax of Rs.4620/-

3. The Excise and Taxation Inspector suspected the goods to be under weight. On physical verification, the value of the Groundnut DOC as loaded in the vehicle was much higher than the value given in the Invoice. Consequently, the goods were detained U/s 51 (6) (a) of the Punjab Value Added tax Act, 2005 for verification, in response to which, Shri Ram charan, Manager of M/s Shree Ji Enterprises, Jaipur and Shri J.M. Khan, Sales Manager of the appellant firm appeared before the Detaining Officer and they produced computerized invoice No.430 dated 4.2.2014 issued by M/s Shree Ji Enterprises, Jaipur showing the value of the goods as 6,49,935/-.The appellant admitted his mistake saying that manual bill was not correct where the value of the goods has been shown as Rs.64,994/-. The Excise and Taxation Inspector while observing that against the earlier defective hill, the company/appellant corrected itself and issued computerized invoice for the value of Rs. 6,49,935/- .

4. The notice U/s 51(7) (b) was issued against the appellant for 20.2.2014. The appellant appeared and explained the mistake. Ultimately after enquiry the Officer Incharge-cum-Excise and Taxation Officer, information Collection Centre, Doomwali, District Bathinda while observing that no account books were produced and the mistake committed by him has not been clarified as such thee was evasion of tax. He consequently imposed penalty of Rs. 1,73,551/-. The Deputy Excise and Taxation Commissioner also dismissed his appeal. Hence this second appeal.

5. Arguments heard. Record perused. The transaction related to a previous contract of the appellants with M/s Shree Ji Enterprises, Jaipur which was affected on 30.1.2014. According to which appellants had purchased 50 MT of Groundnut DOC @ Rs.26,000/- per Ton. The total value for the said 50 Tons of Groundnut DOC was to be paid at Rs. 13,00,000/-. The said contract fell flat because, as per invoice dated 4.2.2014 the appellants are said to have purchased 25 Tons of goods for Rs.6,43,500/-. An invoice and G.R. were handed over to the driver for delivery of the goods at Khanna.

6. Both the courts below have not taken note of the actual things. The driver handed over the invoice and GR. of 4.2.2013 and not of 4.2.2014 at the Information Collection Centre. Thus, it appears that neither the goods were sold by M/s Ji Enterprises as per contract nor as per rate as agreed between the parties. The invoice shows that Shri ji Enterprises prepared the bill @2,574.- per ton i.e.Rs 64350.00 whereas the computerized bill shows that the price of 25 ton was Rs.6,43,500/-. The bill invoice No.430 dated 4.2.2014 appears to be an after thought and prepared after the vehicle was detected and checked. The driver had presented the bill of 25 ton dated 4.2.2013 bearing the price of 64350/- Thus; it is apparent that the driver presented one year old bill against the goods which has been sold on 4.2.2014, thus there is clear menserea to evade the tax.

7. The Counsel has urged that on 4.2.2011 computer ystem of consignor was out of order and in order to complete the supply order in time they had to raise the invoice manually, thus while preparing the manual invoice due to an oversight and inadvertently the clerical staff could not differentiate the rate of goods to be charged for per metric ton or per quintal and calculated the taxable value of goods @ 2,574/- a metric ton instead of Rs.2,574/- per quintal. The driver of the vehicle started his journey and voluntarily generated the VAT XXXVI at Information Collection Centre and produced the documents accompanying the transaction, therefore, no mensrea could be attributed to him. The argument is not tenable as the bill and the invoice which he was carrying were one year old. Had the manual bills and computerized bill been of the same date then the argument could be said to have some weight but both the bills are of different dates therefore Mens Rea could be attributed to the appellant.

8. It is further urged that as per Section 14 B of the General Sales Tax Act, 1948 read with 3 A of the Central Sales Tax(Punjab) Rules, 1957,the Officer Incharge was not competent to detain the goods and impose penalty on the ground that the Designated Officer has no jurisdiction to examine the price and quantity of the goods. In this regard, the Counsel has referred as judgment delivered in case of M/s Devi Dyal Gopal Krishan Ltd., Moga vs State of Punjab (2009) 33 PHT 413 (P&H) wherein it was observed as under:-

> *"The plain language employed in the Section as well as in its intendment does not clothe the check post officer with jurisdiction to make an assessment as long as the documents carried in the vehicle satisfy the requirement of the prescription-**His job is to ascertain whether the prescribed document accompanied the vehicle and the goods which in turn are liable to tax under the Act. Anything else he does would be jurisdiction and liable to be quashed."***

9. The aforesaid judgment is not applicable to the facts present case because in this case, the Designated Officer on checking the documents was not satisfied about their genuineness. The goods were checked on 4.2.2014 whereas, the documents which the driver was carrying were dated 4.2.2013. The bill was contradictory and unmatching to the date of purchase, the price and the weight, therefore, the Officer Incharge of the Check Post, in such circumstances, was competent to refer the case for enquiry. The Counsel has also referred the judgment delivered in case of M/s Ess Aar Soap Mills vs. State of Punjab (2014) 22 STM3 (PVAT-Tri) wherein, it was observed as under;

> *"The penalty has been imposed on the solitary ground that the price of the goods i.e. Animal Fat as shown in the Invoice No.12 ibid is less than the market price. As alleged by the department, the market price of the goods in question is Rs.35/- per kg. Such a question regarding difference in price of the goods can only be determined by the Assessing Authority of the appellant dealer and not by the officers in exercise of the powers vested under Section 51 of the Act, 2005 by assuming the role of the assessing authority".*

10. The aforesaid judgment is also not applicable to the facts of the present case. Here the goods loaded were not only undervalued but the G.R. and the bill were false quo the date of issue as well, therefore the authority of the Officer Incharge of the Information Collection Centre to detain the goods could not be challenged.

11. In view of the facts and circumstances as referred to above, it is Cristal clear that there is a lot of evidence to conclude that the goods being carried in the truck were not accompanying the genuine and valid documents.

12. Resultantly, I do not find any merit in the appeal and the same is dismissed.

13. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 553 OF 2013

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LARSEN & TOUBRO LIMITED
Vs.
STATE OF PUNJAB

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

28th April, 2015

HF ▶ Revenue

The condition of predeposit for entertainment of appeal against the assessment framed within a period of six years from date of filing of returns cannot be waived off.

ASSESSMENT – LIMITATION – APPEAL - PREDEPOSIT – ENTERTAINMENT OF APPEAL – ASSESSMENT FOR THE YEAR 2008-09 FRAMED IN 2013- ADDITIONAL DEMAND RAISED – FIRST APPEAL DISMISSED FOR NON FULFILLMENT OF CONDITION OF PREDEPOSIT – PLEADED BEFORE TRIBUNAL THAT IMPUGNED ORDER OF ASSESSMENT BEING TIME BARRED CONDITION OF PREDEPOSIT OUGHT TO BE WAIVED OFF – HELD BY TRIBUNAL THAT ASSESSMENT COULD BE FRAMED WITHIN SIX YEARS FROM DATE OF FILING OF RETURNS AS PER THE AMENDED SEC 29(4) OF THE ACT – THEREFORE, IMPUGNED ORDER WAS WITHIN LIMITATION PERIOD – APPELLANT GIVEN ONE MONTH'S TIME FOR PREDEPOSIT FOR ENTERTAINMENT OF APPEAL FAILING WHICH ORIGINAL ASSESSMENT ORDER TO PREVAIL – *SEC 29(4) & SEC 62(5)OF PVAT ACT.*

An Assessment for the year 2008-09 was framed on 27.02.2013 raising an additional demand under the local Act as well as under the CST Act. The first appeal was dismissed for non compliance of sec 62(5) of the Act. It was alleged before the Tribunal that the last date for framing of assessment was 20.11.2012 but the assessment was framed on 27.2.2013. So the assessment being time barred in view of sec 29(4) of the Act, compliance of condition of pre deposit was not necessary.

The Tribunal has observed that as per the amendment of the sec 29 (4) ,the assessment that could be framed within three years can now be framed in six years from the date of filing of annual return. In the present case it could be filed upto 20.11.2015. The amendment was made with retrospective effect such that all pending cases where assessment was pending, could be framed where six years were not expired. However, the appellant is given a month's time for pre deposit for entertainment of appeal, failing which the orders passes by the excise and taxation commissioner shall remain intact.

Cases distinguished:

State of Punjab and Another Versus K.C. Motors (2013) 59 VST page/187
State of Punjab and Another Versus Novelty Associates Pvt. Ltd. (2013) 59 VST-page/185
Ahluwalia Contracts (I) Ltd. Versus State of Punjab and Others (2013) 59 VST page 183

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

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

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

1.This order of mine shall dispose two connected appeals No. 553 & 554 of 2013. The appeals are directed against the order dated 26.8.2013 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala(herein referred as the First Appellate Authority) dismissing the appeal of the appellant for non compliance of Section 62 (5) of the Punjab Value Added Tax Act, 2005.

2.The appellant is engaged in the business of works contract and trading by the name of M/s Larsen & Toubro Limited (herein referred as the appellant) having its place of business at Mohali vide TIN No. 036311056652. The appellant firm is engaged in construction business and execution of works contracts for different clients including the State and Central Govt. Departments, Public Sector Undertakings, Electricity Board, Public and Private Limited Companies.

3.The appellant filed the return for the assessment 2008-09 while showing a gross turnover of Rs.50,54,95,244/-. The Assessing Authority was not satisfied with the return, therefore after giving an opportunity to the appellant, the Assessing Authority vide its order dated 27.2.2013 issued additional demand for Rs.38,08,319/- against the appellant under the Punjab Value Added Tax Act, 2005. The Officer also framed additional demand to the tune of Rs.39,34,726/- under the Central Sales Tax Act, 1956. The appeal filed by the appellants was not entertained for non compliance of Section 62 (5) of the Act of 2005 as such the same was dismissed vide order dated 26.8.2013, hence this second appeal.

4. The counsel for the appellant has contended that the assessment for the year 2008-09 was filed on 20.11.2009. The Assessing Authority issued notice on 8.3.2011. The last date for framing the assessment was on 20.11.2012, but the assessment was actually framed on 27.2.2013. Therefore, the assessment order in the light of Section 29(4) of the Act is time barred, consequently the order being bad in the eye of law, the compliance of Section 62 (5) of the Act was not necessary. Since the order of assessment was not passed within time therefore, the same was liable to be set-aside on this sole ground, as such there was no fun for compelling the appellant to comply with such provisions relating to deposit of tax for entertaining the appeal.

5. Having deliberated over the issue; firstly it is to be seen whether the assessment is time barred. For this, I need to reproduce Section 29(4) of the Punjab Value Added Tax Act, 2005 as amended by ordinance No.10 of 2011, [2011 (7) STM 122 (JS)] dated 17.8.2011 and notification No. 39-Leg./2011, dated 02.11.2011 which reads as under :-

> *29(4) An assessment under sub-section (2) or sub-section (3), may be made within a period of six years after the date when the annual statement was filed or due to be tiled, whichever is later:*
>
> *Provided that the assessment under subsection (2) or subsection (3), in respect of which annual statement for the assessment year 2006-07 has already been filed, can be made till the 20th day of November, 2014.*

5. On the perusal of aforesaid Section, it would be appropriate to hold that the assessment which could be framed within three years (earlier to the amendment) can now be framed within six years from the date when the annual statement was filed, or due to be filed.

In the present case, the annual statement for the assessment year 2008-09 was filed on 20.11.2009. The said assessment was pending adjudication at the time when the amendment was introduced. Therefore, in the light of the amendment dated 17.8.2011, the assessment could be framed upto 20.11.2015. The counsel for the appellant has urged that since the assessment was framed on 27.2.2013, therefore, the amendment which came after the period of limitation stood expired, could not be applied in the facts and circumstances of the present case. The appellant in support of his contention has relied upon the judgment delivered in the case of State of Punjab and Another Versus K.C. Motors (2013) 59 VST page/187 and State of Punjab and Another Versus Novelty Associates Pvt. Ltd. (2013) 59 VST-page/185, Ahluwalia Contracts (I) Ltd. Versus State of Punjab and Others (2013) 59 VST page 183.

6. Having examined the aforesaid judgments, the same are not applicable to the facts of the present case. In the K.C. Motors case supra, the provisional assessment was finalized on 31.5.2010 .The appeal was dismissed by the First Appellate Authority on 10th August, 2010. Thereafter, on appeal the Tribunal had also directed the Deputy Excise and Taxation Commissioner to hear the appeal on merits. All these facts of the said case indicate that assessment in that case stood finalized and the appeal was also dismissed prior to coming into force the amendment of Section 62 (5) of the Act which came into force with the commencement of the ordinance on 17.8.2011 and amendment was made by specific notification on 2.11.2011. As such this judgment is not applicable to the facts of the present case. In case of Novelty Associates supra, the order dated 29th Oct, 2010 was challenged and the Hon'ble High Court had decided the case on 19th May, 2011 i.e. the order was challenged much prior to coming into force the amendment. Similarly, in case of M/s Ahluwalia Contracts supra the matter was disposed off by the Hon'ble High Court on 29" July, 2010 i.e. much prior to coming into the force of the amendment. The judgments appear to have been cited before me just create confusion and mis-conception that amended provision of Section 62 (5) of the Act do not apply to the facts of the present case when actually the order under assessment was passed after coming into force of the aforesaid amendment and the amendment was applicable to the facts of the present case.

7. The matter does not end here, it has been made very clear by adding explanation-I to sub-section(4) of Section 29 that limitation period of six years for an assessment under sub-section (2) & (3) would also apply to those cases in which the aforesaid period of six years has not yet expired. The explanation-1 to Section 29 (4) of the Act reads as under:-

Explanations:-

(1) The limitation period of six years for an assessment under sub- section (2) or sub-section (3), shall also apply to those cases in which the aforesaid period of six years has yet not expired.

8. In the present case, the requisite period of six years had not expired because the assessment for the year 2008-09 could be framed upto 20.11.2015, whereas the Assessing Authority framed the assessment; on 27.2.2013. Therefore, the amended provisions of the Act as discussed above would apply to all the pending assessments. The intention of the Act was very much clear to enforce the amended provisions of Section 29 (4) explanation (1) with retrospective effect. Now, it applies to those cases where the assessment was still pending and six years had yet not expired. No other point has been argued to challenge the impugned order.

9. Resultantly, this appeal being devoid any merit is dismissed. However, in order of provide another chance to the appellant to comply with Section 62 (5) of the Act, so that appeal could be entertained and decided on merits, one month more time is provided. On doing so, the appeal of the appellant shall be entertained and decided on merits. Failing to comply with the

aforesaid section, the orders passed by the Deputy Excise and Taxation Commissioner shall remain intact.

10. Copy of the order be placed in the connected Appeal No.554 of 2014.

11. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 281-284 OF 2014

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AMBUJA CEMENTS PVT. LTD
Vs.
STATE OF PUNJAB

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

30th March, 2015

HF ▶ Department

The appellate authority has the power to go beyond the scope of issues raised by the appellant in appeal before it if the impugned order is observed to be faulty.

APPELLATE AUTHORITY – POWER OF - REMAND – APPEAL – WHETHER APPELLATE AUTHORITY HAS THE POWER TO GO BEYOND THE SCOPE OF THE ISSUES FOR WHICH APPEAL IS PREFERRED BEFORE IT – HELD YES, THE APPELLATE AUTHORITY HAS POWERS TO SET THE ORDER RIGHT WHICH MAY BE FAULTY – RIGHTS OF THE APPELLANT ARE NOT EFFECTED IN THE INSTANT CASE – ISSUE LEFT OPEN TO BE DECIDED BY DESIGNATED OFFICER – REMANDING CASE WITH CERTAIN OBSERVATIONS TO BE LOOKED INTO BY DESIGNATED OFFICER FOR PASSING SPEAKING ORDER IS HELD WITHIN JURISDICTION OF THE AUTHORITY – APPEAL DISMISSED – *SEC 62(7) AND ORDER 41 R33 OF CPC*

The appellant was an exempted unit. An assessment was made by the assessing authority calculating the output tax liability on stock transfers estimating value of goods adding cost of primary freight besides some portion of gross profit. Tax @ 4% was calculated and reduced from total overall exemption limit of the assessee. An additional demand was raised. Assessee filed the appeal on this ground alone. The first appellate authority accepted the same and remitted the case back to the designated officer to frame assessment afresh and pass a speaking order with some observation on merits of case. It was remitted by going beyond the scope of issues taken up by the appellant in appeal. The designated officer was directed to consider why rate of tax @ 12.5% was not imposed and why secondary freight, gross profit and other expenses were excluded. He also pointed out there was a huge difference in between the stock transfer price and price of the cement bag at which it is sold to the consumer. Thus an appeal is filed before Tribunal urging that appellate authority erred in confronting the appellant over the proceedings being carried out at his own instance. The Tribunal has held that regarding the validity of the impugned order, no specific findings are given nor assessment enhanced which affects rights of the appellant. A conjoint reading of order 41 R33 and sec 62(7) of the Act suggest that the appellate court has the powers to set right the order which is faulty, in conflict with the basic tenets of law, completely against evidence and non speaking. The order in question does not affect the rights of the appellant. It is returned with findings and is no manner beyond his jurisdiction. The designated officer would pass orders without being influenced by higher authorities. The appeal is dismissed.

Editorial note:
This is for the information of our readers that appeal against this order has been filed before the Hon'ble HIGH Court and stay has been granted in this case.

Cases referred:
Global Business India Pvt. Ltd. and another vs. State of Haryana, (2013) 45 PHT 439 (P&H)
State of Kerala vs. Vijaya Store (1978) (4) SCC page 41
Varun Polymol Organics Ltd. vs. State of Maharashtra, (1997) STC page 55
State of Haryana vs. Frick India Ltd. Sales Tax Cases Vol. 71 page/148

Cases relied upon:
Kailash Takles vs State of Rajasthan (1908)-109-STC-169 (Raj)

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

Mr. Sudeepti Sharma, Deputy Advocate General for the State.

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

1.This judgment of mine shall disposed off all the aforesaid four connected appeals No. 281 of 284 against the order dated 17.7.2014 passed by the Deputy Excise and Taxation Commissioner(A), Patiala Division, Patiala (herein referred as the First Appellate Authority) accepting the appeals and remitting the cases back to the Assistant Excise and Taxation Commissioner-cum-Designated Officer, Ropar to frame a de novo assessment by considering all the relevant factors and after hearing the appellant/assessee as well as the State and frame assessment within two months. These appeals involve common questions of law and fact therefore, the same are decided by one judgment.

2. The facts in the back ground of the case are that the appellant is a dealer encaged in the manufacturing and sale of cement having its manufacturing units at Ropar and Bathinda in Punjab. Ropar Unit is exempted from payment of tax under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 read with notification dated 6.4.2005 issued under Section 92(3) of the Punjab Value Added Tax Act, 2005 for a period from 24.06.2004 to 23.06.2019 for a maximum amount of Rs. 49,84,97,400/-.

3. Bathinda Unit is exempted for an amount of Rs. 17,1,87,00,000/- for a period from 14.2.2001 to 13.2.2016. The assessment of the appellant for the year 2007-08 was considered by the Assessing Authority on the basis of the annual return filed by it in VAT-20 and the output tax liability on the stock transfers was made by it on the notional basis as per the cost of the manufactured goods (cement) while adding primary freight and a notional profit for the branch transfer so as to arrive at the correct value of the stock transfer. The value so assessed was considered as the "estimated value of the goods" so transferred as per Condition 3(ii) of the Notification dated 6.4.2005 issued under Section 92(3)(a) of the Punjab VAT Act. The Assessing Authority had determined the "estimated value of goods for the purpose of stock transfer while adding the cost and primary freight besides some portion of gross profit whereas other expenses like secondary freight, forwarding expenses, godown rent, administrative expenses and octroi etc. Were left to be borne by the consignee branch. The tax was calculated on the said value @ 4% and reduced from the total overall exemption limit of the assesee, which was available to it at the beginning of the year 2007-08. The notional tax liability thus computed was eligible for adjustment towards the Exemption allowed to the appellant and thus an additional demand of Rs. 5,93,79,760/- was created under the Punjab Value Added tax Act, 2005.

4. On appeal by the appellant, the First Appellate Authority accepted the same and remitted the case back to the Assistant Excise and Taxation Commissioner-cum-Designated officer, Ropar vide its order dated 17.7.2014 to decide the same a afresh by passing a speaking order after considering all the contentions as raised by the appellant.

5.The main issues raised before the Assistant Excise and Taxation Commissioner (on the basis of which additional demand was created on 21.1.2013 by the Designated Officer) were addition of freight and other expenses to the stock transfer value to different States i.e. Haryana, Delhi, U.P. and Himachal Pradesh to work out the notional tax liability @ 4% on stock transfer value liability against 'F' Forms for its reduction from exemption limit which was available to the firm at that point of time. After calling for the detailed Statewise chart of primary freight, secondary freight, octroi and sales expenses i.e. godown rent and administrative expenses etc. Per bag of cement on the stock transfer to work out net stock transfer price, the Assistant Excise and Taxation Commissioner observed that the basis value of the cement should include only primary freight to work out the stock transfer value. However, for calculation of notional tax liability on this account, all other expenses i.e. secondary freight, forwarding expenses, godown rent, administrative expenses, octroi and profit margin are to be added in the sales value of cement per bag at the time of sale in that relevant State after stock transfer to that State by the appellant. In this manner, the Assistant Excise and taxation Commissioner-cum-Designated Officer, Roopnagar calculated the estimated value of the goods at the rate average value plus primary freight for stock transfer i.e. Rs. 14.70 per bag and this total value of primary freight (suppressed amount of stock transfer) was calculated Rs. 33,40,04,874/- and the notional tax liability @ 4% on this suppressed amount of primary freight was assessed at Rs. 1,33,60,195/- which was to be reduced from exemption amount available with the firm at the beginning of the year 2007-08 to work out its carry forward amount of exemption limit at the end of the year 2007-08.

6. The First Appellate Authority did not agree with the order passed by the Designated Officer and he while remitting the case observed as under:-

1. The point as raised by both the parties in the appeal have not been reasonably explaned.
2. The appellant though stated that he had already included the primary freight in the stock transfer yet the same has not been discussed (explained) and answered properly by the Designated Officer.
3. It is not properly explained as to why the secondary freight, gross profit and all other includible expenditures, as pointed by the State representatives have been excluded.
4. The First Appellate Authority also raised the issue that when notional tax liability on enhanced stock transfer price have been calculated @12.5% in the absence of 'F' Forms. Then how the Designated Officer has calculated @4%.

7. It has also referred to Section 2 (xxi) of the Punjab General Sales Tax (Deferment and Exemption) for defining "notional sales tax liability" according to which Notional tax liability means the amount of tax payable on "estimated sales of finished goods" for the purpose of exemption from tax computed at the rates specified under the relevant law. Therefore, the estimated value should have been nearest to the real value of the finished goods, so that reasonably correct amount of notional tax liability could be calculated. But the estimated value of the goods has not been correctly calculated by the Designated Officer as per the aforesaid rule. He has also pointed out that there is a huge difference between the stock transfer price and price of the bag at which it is sold to the consumer.

8. Consequently, while finding the order being short of reasons, he directed the Designated Officer to frame a denovo assessment by considering all the relevant factors and pass a speaking order.

9. While challenging the remand order, the counsel for the appellant has submitted that the Deputy Excise and Taxation Commissioner has gone beyond the scope of the issues for which the appeal was preferred before him for the following reasons:-

1. Though, the appellant had accepted before the Assistant Excise and Taxation Commissioner that it was only value of the goods at the factory gate and primary freight to assess and estimate the value of the goods for stock transfer over which the tax is regularly calculated @ 4%, yet no weight has been given to it.
2. Thought, the ld. Designated Officer had agreed in principle with the appellant that the goods in transit include the primary freight actually incurred by the appellant over the value of the stock transfer yet the Appellate Authority has not considered that the said freight has already been included. Therefore, the question before the Appellate Authority was; whether the primary freight stood already included in the price for stock transfer?''

10. Thus, it was urged that, the First Appellate Authority while ... beyond the scope of issues raised the observations over the matters which were never raised by the respondents by filing the appeal.

11. It was also urged that actually the Appellate Authority erred in confronting the appellant over the proceedings being carried out a his own instance. The appeal has been used as a tool to the benefit the respondent by the First Appellate Authority and that too without granting him any opportunity in that regard. To support this contention, he has referred to the judgment delivered in the case of Global Business India Pvt. Ltd. and another vs. State of Haryana, (2013) 45 PHT 439 (P&H) wherein, it was observed that Court should confine itself to the grounds of appeal filed before it and cannot travel beyond that while passing the judgment. The Court while passing the aforesaid judgment relied upon the judgment of Supreme Court in State of Kerala vs. Vijaya Store (1978) (4) SCC page 41. In this case, the Tribunal had enhanced the tax liability against the appellant in an appeal filed by the appellant himself. The Counsel has also relied upon the judgement of Varun Polymol Organics Ltd. vs. State of Maharashtra, (1997) STC page 55 wherein, it was observed that the powers of State Govt. to calculate that notional sales tax liability on the stock transfer is ultravires of the power of the State Govt. and in case of the exempted units, the tax on branch transfers cannot be calculated even for notional purposes. It was further held by the Hon'ble Bombay High Court that the parliament alone has power to levy tax on the consignment of goods under Article 246(1) of the Constitution read with Entry 92B of list-I contained in 7th Schedule appended to the Constitution. Accordingly, the Hon'ble Court held that the State Executive has no power to treat a notional sales transaction a "deemed sale" nor the State Executive has jurisdiction to levy sales tax directly or indirectly by creating fiction or otherwise on branch transfers. The Hon'ble Court went on to hold that notional sales tax liability required to be computed for purposes of ascertaining the quantum of tax benefit, cannot be more than actual sales tax liability, which would have been incurred by the eligibile unit but for the tax exemption.

12. To the contrary counsel for the respondent has raised the issued stating that powers of appellant court to pass an appropriate judgment on the bsisi of the facts, circumstances and the evidence led by both the parties in the case. The hands of the court cannot be tied by the issues raised in the grounds of appeal when the Appellant court finds the judgment to be suffering from some lacuna, then it is not helpless and divested of the powers to remove such defects and pass a correct judgment on the basis of the facts, circumstances and the evidence before it. The Court of appeal while exercising of the power has to pass an appropriate

judgment which has to be passed on the facts, circumstances and as per law. It is further urged that the respondent had also filed the revision before the Commissioner against the findings returned by the Designated Officer, but in the light of the order passed by the First Appellate Authority, the revision petition was withdrawn being infructuous. Even otherwise, the appellate authority has sought only clarification over the findings returned by the Designated Officer and while finding that the order is non speaking and ambiguous over many issues, with a view to remove the ambiguity, it has remitted the case back to the Assessing Authority. The relevant portion of the order reads as under:-

> *"I have heard the learned counsel for the appellant, the State representative and have gone through the written submissions made by both the parties. Whole issue in this case revolves around fixation of stock transfer price so as to work out correct and just notional sales tax liability. The points raised by the appellant and the State representative have not been reasonably explained in the assessment order under appeal. The inclusion of primary freight, if it was already included as claimed by the appellant has not been explained. On the other hand, exclusion of secondary freight and all other inclusible expenditure as pointed out by State representative have not been reasonably explained in the assessment order under appeal. Further "notional tax liability" on enhanced stock transfer price should have been calculated @12.5% in the absence of 'F' forms but it has been wrongly calculated @ 4%. As per rule 2(xxi) of the PGST (D&E) Rules notional sales tax liability means the amount of tax payable on estimated sales of finished goods for the purpose of exemption from tax computed at the rates specified under the relevant law. Estimated value should be nearest to the real value of the Finished goods so that reasonably correct amount of notional tax liability can be calculated. During proceedings, it was submitted by the appellant that during 2007-08, rate of one bag of 50kg cement sold to consumer was Rs. 230/- (app.) which was almost the same in the whole country. Even if one has to purpose it from Ropar itself where the appellant's factory manufactures it, it was still sold for Rs. 230/- (appl.) per bag. As per calculation sheet submitted by the appellant cost price of bag of cement at factory rate was Rs. 66.86/- and if Excise duty, Cess and profit @ 15% is added to it, then cost price per bag turns out to be Rs. 100.35/- (Approx.). As already said, rate per bag sold to consumer was Rs. 230/- minus VAT of Rs. 256/- (app.) i.e. Rs. 205/- (app.), so huge difference in stock transfer price and price at which sold to consumer has not been explained in the assessment order under appeal."*

Thus, the State Counsel has urged that the order of remand passed by the First Appellate Authority does not suggest of any defect or illegality, therefore, it does not call for any interference.

13. Any hearing the ld. Counsel for both the parties, I don't find myself in argument with the arguments raised by the appellant. The main issue before the Designated Officer was as to what is estimated value of the finished goods on stock transfer for the purpose of issuing the "notional tax liability". It would be appropriate to highlight the provisions regarding the sale price/sale value of the goods as defined under the Section 2(zg) of the Punjab Value Added Tax Act which reads as under:-

(zg) *"sale price" means the amount of valuable consideration received or receivable by a person for any sale made including any sum charge don account of freight, storage, demurrage, insurance and any sum charged for anything done by the person in respect of the goods at the time of or before the delivery thereof;*

Explanation:-

1) *"In relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract, 'sale price' means*

such amount as is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour and other charges incurred and profit accrued other than in connection with transfer of property in goods for such execution. Where such labour and other charges are not quantifiable, the sale price shall be the cost of acquisition of the goods and the margin of profit on them plus the cost of transferring the property. In the goods and al other expenses in relation thereto till the property in such goods, whether as such or in any other form, passes to the contractee and where the property passed in a different form, it shall include the cost of conversion.

2) *In relation to the delivery of goods on hire purchase of any system of payment by instalments, the amount of valuable consideration payable to a person on such delivery.*

3) *In relation to the transfer of right to use any goods for any purpose (whether or not for a specified period), the valuable consideration received or receivable for such transfer.*

4) *The amount of duties levied or leviable on goods under the Central Excise and Salt Act, 1944 (1 of 1944), or the Customs Act, 1962 (52 of 1962), or the Punjab Excise Act, 1914 (1 of 1914), shall be deemed to be part of the sale price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.*

5) *Sale price shall not include tax paid or payable to a person in respect of such sale."*

14. As per the Punjab Tax on Entry of Goods into Local Areas Act, 1999 "Value of Goods as defined in Section 2(o) of the said Act which reads as under:-

(o) "value of the scheduled goods" means the purchase price at which a person has purchased the scheduled goods inclusive of charges borne by him as cost of transportation, packing, forwarding and handling charges, commission, insurance, taxes, duties and the like, or if such goods have not been purchased by him, the prevailing marking price of such goods in the local area.

(2) Words and expression used, but not defined in this Act, shall have he same meanings as assigned to them under the Punjab General Sales Tax Act, 1948."

Thus, on combined reading of the aforesaid Sections to my mind, the estimated value/price of the finished is that goods which company purposes for sale; including any reight, storage, demurrage, insurance and any sum charged anything done by the company in respect of the goods at the time or before the delivery thereof and gross profit, but it would not include the tax paid/payable to a person in respect of such sale.

15. The appellant unit is an exempted unit under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991. The appellant firm is manufacturing the cement for transferring the same for sale in and outside the State and Rule 5 of the exemption Rules of 1991 provides grant for deferment of the tax exemption for the period, for which it has been granted. However, Rule 2(xxi) defines notional tax liability which unit has to deduct from total tax liability till the end of the exemption period. Section 2(xxi) reads as under:-

2(xxi) "Notional Tax Liability" shall mean-

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

EXPLANATION: The sales made on consignment basis within the State of Punjab or Branch transfers within the State shall be deemed to be sales made within State and liable to tax."

From above it, very much clear that the tax to be assessed as notional tax liability is to be assessed on the estimated sale value of the finished products and estimated purchase of raw material otherwise liable to purchase tax of the eligible unit and the sales made on consignment basis within the State or branch transfers within the State shall be treated as deemed sale.

16. The question arises as to "what is estimated value of the finished products?" has to be determined by the Assessing Authority. Rule 4of Exemption Rules refers to the quantum of entitlement

17. With regard to rate of tax, earlier there were certain conditions imposed by the department in the Rules of 1991 but the Government after due consideration vide Notification No. 21/P.O.5/2005/S, 92/2005, dated 6th April, 2005 framed fresh conditions. Relevant Condition is referred as under:-

3(ii) Output tax on inter-State stock transfer calculated at the rate of four per cent on the estimated value of the goods so transferred, on production of Form F as specified in the Central Sales tax Act, 1956;

18. Estimated value of the goods which is required to be mentioned in the invoice on certain transfer also finds reference in Rule 55, 56 & 57 of the Rules, 2005. The rule also refers to the price at which the goods are transferred. The rules are reproduced as under:-

Rule 55. PARTICULARS TO BE METNIONED IN A RETAIL INVOICE (Section 450):

(1) A retail invoice, shall be issued from duly bound invoice or cash memo book, except when the invoices are prepared on computer or any other electronic or mechanical device. It shall be at least in duplicate.

(2) The first copy of a retail invoice shall be issued to the purchaser of goods. The last copy shall be retained by the selling person.

(3) A retail invoice shall carry the following details:-

(a) a consecutive serial number, printed by a mechanical or electronic process.
(b) the name, address and registration number of the selling person.
(c) the name, address and registration number of the selling person.
(d) full description of the goods.
(e) the quantity of the goods.
(f) the value of the goods per unit.
(g) the total value.
(h) signature of proprietor or partner or director or/authorized agent.

(4) A retail invoice for interstate sale and exports out of the country shall carry the following details in addition to the details mentioned in sub-rule (3), namely:-

(a) the name, address and registration number of the purchase;
(b) the rate and amount of tax charged in respect of taxable goods;
(c) serial number of Form VAT-36; and
(d) mode of transportation and details thereof.

Rule 56. PARTICULARS TO BE MENTIONED IN CREDIT OR DEBIT NOTE (Section 45):

(1) A credit or debit note, shall be issued from the VAT or retail invoice book and shall contain the following information:-

(a) Words "debit note' or credit note" shall be written on the invoice prominently.

(b) The name, address and registration number of the person to whom issued.
(c) Number and date of invoice to which credit or debit note relates.
(d) Brief explanation about issuance of debit or credit note.
(e) The value of goods and the amount credited or debited along with tax effect.
(2) The note shall carry the date of issue and signature of proprietor or partner or director or authorized agent.

Thus the value of the goods at which the goods are sold or transferred other then by way of sale is required to be mentioned on the retail invoice on the transfer of good sin or outside the State.

RULE 57. PARTICULARS AND INFORMATION TO BE METNIONED IN A DELIVERY CHALLAN (Section 45 and 51):

(1) A delivery challan for transfer of goods other than by way of sale, shall be issued from duty bound book, except when the challans are prepared on computer or any other electronic or mechanical device. It shall be atleast in triplicate. The first copy shall be for purchaser or consignee. The second copy shall be for the transporter. The last copy shall be retained by the consignor. The serial number shall be printed by a mechanical process.

(2) A delivery challan shall contain the following particulars:-
(a) The words, "Delivery Challan" shall be prominently printed on the documents.
(b) Serial number of Form VAT-36 in case of interstate transaction.
(c) Date of transfer of goods.
(d) Name, address and registration number of the consignee.
(e) Description of goods, weight, quantity, estimated price per unit and total estimated value of goods.
(f) Mode of transportation of goods and details thereof.
(g) Signature of the Consignor.

Without going deep into the issue with regard to the estimated value of goods, lest the designated officer may be influenced by the findings given, I leave it to the Designated Officer to assess the estimated value of the finished goods to be sold inside and outside the State for the purposes the notional tax liability during the relevant period. The Designated officer would also make definite findings whether the primary freight has been included in the so called estimated value as assessed by the Designated Officer earlier.

However while examining the validity of the order in the light of the arguments raised by both the counsel, I am of the opinion that no fault could be found with the impugned order for the reason that the First Appellate Authority has not given any specific findings regarding estimated value of the finished goods rather the issues were left to the Designated Officer to be decided. The First Appellate Authority did not enhance any assessment, so that the order could be treated as adversely affecting the rights of the appellant. Therefore, the judgment delivered in case of State of Haryana vs. Frick India Ltd. Sales Tax Cases Vol. 71 page/148 would not apply to the facts of the present case. The Punjab Value Added Tax Act as well as Punjab General Sales tax do not debar the appellate court to pass any just and appropriate order which may be the outcome of the facts, circumstances, the evidence and the law prevailing at that time. The order 41 Rule 33 of the CPC vests the appellant court with the wide powers to pass any decree or make any order which ought to have been passed, which the facts and circumstances of the case may require.

Though, the Punjab Value Added Tax Act is complete code, however the principles as enshrined in the order 41R33 of the Code of Civil Procedure being procedural in nature could be used have assistance and elucidation in adjudication of the issues particularly when Punjab

Value Added Tax Act has also vested the Appellate Court with the similar powers (though not elaborately explained) . Section 62(7) of the Act reads as under:-

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

(a) Affirming or amending or cancelling the assessment or the order under appeal; or

(b) may pass such order, as it deems to be just and proper. Order 41 Rule 33 CPC reads as under:-

> ***33. Power of Court of Appeal -*** *The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may be require, and this power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. [and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]:*
>
> > *[Provided that the Appellate Court shall not make any order under Section 35-A, in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order.]*

19. On conjoint reading of the aforesaid provisions, the Tribunal is of the opinion that irrespective any appeal or revision, the appellate court has all ample powers to set right the order which may be faulty; in conflict with the basic tenets of law, completely against the evidence and non speaking. However, the appellate court, if passing any judgment, is of the view that it is adversely effecting the rights of the parties and would result in miscarriage of justice, then it may pass such order after giving due notice to the effected party(s). In other words, if any claim as awarded in favour of the party is being decreased or any penalty is enhanced, then such appellant must be heard/ But under Tax statues, the Courts have interpreted the words "pass such order as he thinks fit" in the manner that the Appellate Authority is competent to confirm, reduce, enhance annual tax or penalty. Reference if any could be made to the judgment delivered in case (1908)-109-STC-169 (Raj) Kailash Takles vs State of Rajasthan. Even otherwise, in the present case the respondents had filed a revision petition before Excise and Taxation Commissioner against some findings returned by the Designated Officer, but after the Appellate Authority remitted the case for fresh decision after clarifying the findings (returned by the Designated Officer), the respondents had withdrawn the petition. The relevant part of the order is reproduce as under:-

> *"It has come to my notice that DETC Appeals has set aside the impugned order and remanded the case to Assistant Excise and Taxation Commissioner, Ropar with following directions:-*
>
> > *"So, considering all the submissions as discussed above, I set aside the assessment order under appeal ad remand the case back to Assistant Excise and taxation Commissioner-cum-Designated Officer, Ropar to frame a denovo assessment by considering all the relevant factors and after hearing the appellant/assessee, so that due justice under law is done to the assessee and state exchequer. Assessment must be framed within two months from the receipt of certified copy of this order."*

In any case, the findings returned by the Appellate Authority do not adversely effect the rights of the appellant with the order of remand because the order passed by the Deputy Excise and Taxation Commissioner is in no manner beyond his jurisdiction. He has doubted the order being non speaking and directed the Designated Officer to pass the reasoned order. The words "would clarify" indicate a speaking order. If it is a case of double counting of primary freight, then the Designed Officer would go into it. At the same time, the Designated Officer would also examine as to what is the same value/estimated value of finished products for the purpose for assessing the notional sales tax liability and thereafter would frame a de novo assessment. Nothing aforesaid would be taken as final and conclusive but the designated officer would passed by the higher authorities.

20. Resultantly, finding no merit in the appeals, the same are dismissed. A copy of judgment be placed in each file.

21. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 14 OF 2015

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KESHAV IMPEX
Vs.
STATE OF PUNJAB

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

29th June, 2015

HF ▶ Assessee

In the absence of Bill of lading and agreement between parties the sale cannot be treated as high sea sale and is hence liable to be taxed.

HIGH SEA SALE – EVASION OF TAX – INSPECTION OF BUSINESS PREMISES – GOODS FOUND TO BE IMPORTED FROM PAKISTAN INTO PUNJAB – INCOMPLETE ACCOUNT BOOKS FOUND – GOODS IMPORTED ALLEGED TO BE SOLD AS HIGH SEA SALE THEREBY REQUIRING NO PAYMENT OF TAX – ABSENCE OF BILL OF LADING / BILL OF ENTRY – NO EVIDENCE FOUND IN THE ACCOUNT BOOKS OF THE ALLEGED BUYERS REGARDING HIGH SEA SALE MADE BY THE APPELLANT – NO AGREEMENT BETWEEN THE PARTIES PRODUCED – NO COMMUNICATION OF THE SAID SALE TO THE CUSTOM AUTHORITY- SALE IN QUESTION COULD NOT BE TREATED AS HIGH SEA SALE – HELD LIABLE TO BE TAXED – APPEAL DISMISSED. *SEC 3 AND SEC 5 OF CST ACT.*

On inspection of business premises it was found that the dealer was importing cement and sugar but no tax was accounted for. It was alleged that the goods were disposed off as 'high sea sales' and no tax was liable to be paid since the cement has been sold before it entered into the custom frontiers of India. On enquiry from the alleged buyers, no evidence regarding the sales by the appellant was found from their account books. Thus an additional demand was raised. The first appeal was dismissed. On appeal before Tribunal, the contention of the appellant was rejected as no evidence regarding delivery of goods (taken by two dealers as purported)has been placed on record. No bill of lading or agreement between the parties has been produced which is to be signed after dispatch from origin but before arrival at destination. The onus is on the appellant to establish that the sale of such goods had taken place as per Customs Act and sec 3 and sec 5 of the CST. Therefore, absence of Bill of lading / bill of entry and without communication of the said sale to custom authority of India the alleged sale could not be treated as 'high sea sale' and is liable to be taxed.

Present: Mr. Bal Krishan Gupta, Advocate Counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

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

1.This appeal is directed against the judgment dated 29.10.2014 passed by the First Appellate Authority whereby the appeal of the appellant against the order dated 6.5.2014 passed by the Excise and taxation Officer creating additional demand to the tune of Rs. 1,74,174/- was dismissed.

2. Briefly stated, the facts of the case are that on 8.5.2013, on surprise inspection of the business premises of M/s Keshav Impex, Jagraon TIN No. 03062097160 by a team of the officers of the Excise and taxation Department, it came to liht that the firm was conducting the business of cement and sugar while importing the same from Pakistan, but the tax was not accounted for by the appellant. Shri Rajesh Singla, Partner of the above firm disclosed that all the cement imported from Pakistan was disposed off by them as "High Sea Sales". In this regard, they were maintaining a manual bill book at Amritsar International Border and the other books of account were mainainined on their computer. He has further stated that there was no other sale office, godown or branch office of the appellant firm. Copies of sales account, purchase account etc. Were obtained and placed for further verification. One examination of the books, the same were not found to be complete. A Bundle containing documents relating the year 2012-13, which was found lying in the premises, was taken into possession. The statement of Shri Kumar Gaurav, Manager was recorded and the appellant was directed to appear before the Designated Officer on 09.05.2013 to produce all the books of account.

3. On 16.05.2013 another partner Shri Rohit Singla appeared and placed on record some documents allegedly relating to some sales made on High Sea which were placed on record.

4. The case was thereafter adjourned to 24.05.2013, 29.05.2013, 13.06.2013 and 19.06.2013, but the appellant or his representative did not turn up for clarification and evidence. Thereafter, a notice for appearance was issued for 1.7.2013.

5. On 1.7.2013 Shri 'Kumar Gaurav, Manager of the appellant firm appeared before the Excise and Taxation Officer, _Jagraon through Shri Jagdish Rai Garg, Advocate and presented the written arguments. Wherein he contended that the appellant was not liable to pay any tax as the cement has been sold before the same entered into the custom frontiers of India. The counsel was directed to produce the attested copies of the list of goods lying at the ICP, Attari (Amritsar) and all bank statements relating to the sales. The Counsel sought the dates' for the said purpose and the case was adjourned upto 12.8.2013.

6. On 12.8.2013 Shri Jagdish Rai Garg produced a bank statement. He was directed that he should make clear about the payments received in respect of Imports at the High Sea and the Sales thereof, effected during the period in question. At this, the counsel started seeking dates on one pretext or the other. In the meantime, the Excise and Taxation Officer, Jagraon collected the information from the Custom Authorities Amritsar about the quantum, of cement received by the appellant firm and the Taxation Authorities of other relevant states about the existence and functioning status of the consignee dealers in those States and the quantum of goods received by him by way of purchase. On examination 'of the report, it transpired that the appellant had not supplied the correct information and actually no High Sea Sales were made by the appellant. It was a modus operandi adopted by the appellant for evading the payment of tax. On receipt of the report, the Excise and Taxation Officer, Jagraon again issued a. notice to the appellant on 13.12.2013 for 12.2.2614 to clarify his stand in the light of reports, but the appellant continued getting the dates. In the meantime, similar information was received from the dealers to whom the appellant had allegedly supplied the cement i.e. M/s Krishan Steel Corporation, Una (HP) and M/s Anil Trading Company, Delhi, who had verified that the appellant firm had not made any High Sea Sales to them. The Excise and Taxation Officer

tried to verify sales from the account books of the appellant, but the said sales could not be verified from his account books. Thus, the Excise and Taxation Officer vide order dated 6.5.2014 created the additional demand. The Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissed the appeal.

7. I have heard the arguments raised by both the parties.

8. The first contention raised by the appellant is that the respondents have not agreed with his contention solely ground that the two purchasing 'partners M/s Krishan Steel Corporation, Una (HP) and M/s Anil Trading Company, Delhi have not shown the alleged transaction made to them as "High Sea Sales" in their returns filed before the concerned authorities of the department of Himachal Pradesh and Delhi respectively. It was also argued that this fact, merely should not be sole ground to impose the tax as the goods could be verified from the custom authorities. He further 'urged that since delivery of the imported cement was not taken by the appellant and the transfer had already taken place before 'the goods entered into the custom frontiers of India, therefore inference should be drawn that the goods stood sold at the 'high seas. I do not find myself in agreement with contentions as raised by the appellant. No document with regard to the delivery of the goods (taken by two dealers) has been placed on the record. The copy of the relevant information sheet w.e.f. 1.4.2013 to 8.5.2013 regarding the High Sea Sales made by the said firm has been produced before me which reveals that M/s Krishan- Steel Corporation, Una (HP) had received the supplies of cement, but there is nothing to indicate whether the said cement was purchased by these firms from the appellant firm at the High Seas. No bill of lading/bill of entry or agreement between the appellant and the alleged dealers, which may have been entered between the parties when the goods were at the High Seas, has been produced by the appellant firm to prove the sale at the High Sea. There is evidence that a surprise- inspection of the "business premises of the firm was conducted on 8.5.2013 whereupon, it came to light that the cement imported from Pakistan by the appellant has been disposed off by the appellant firm as "High Sea Sales." Thus, the onus was upon the appellant to establish that the appellant had completed the process with regard to sale of such goods as per customs Act and Section 3 and 5 of the Central Sales Tax Act which are reproduced as under :-

Section 3:-

When is a sale or purchase of goods said to take the Course of inter-State trade or commerce:- *A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-*

(a) occasions the movement of goods from one State to another; or

(b) is effected by a transfer of documents of title the goods during their movement from one State to another.

Explanation 1. *Where goods are delivered to a carrier or other bailee for transmission, the movement of goods shall, for the purpose of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.*

Explanation 2. *Where the movement of goods commences and terminates in the same State it shall not deemed to be a movement of goods from one State, to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.*

Section- 5:-

When is a sale or purchase of goods said to take place in the course of import or export:(1) *A sale or purchase of goods shall be deemed to take place in the course of*

the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title of the goods after the goods have crossed the Customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the Customs frontiers of India.

(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods lout of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the 'purpose of complying with, the agreement or order for or in relation to 'such export.

(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner, a declaration 'duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

9.The term High Sea Sales is used when the goods are transferred by the consigner to a' consignee while the goods are yet on the High Sea or after their dispatch from the port/airport of origin and before their arrival at the port/airport of destination.

10. The High Sea Sales are always under a contract/agreement which should be signed after dispatch of goods from origin and prior to their arrival at destination. The agreement should be on stamp paper. On concluding the High Sea Sales agreement, the bill of lading (B/L) should be endorsed in favour of the new buyer. In respect of air shipment, High Sea Sales seller should write to the airline consol agent informing that the High sea Sales agreement has been established with the High Sea Sales buyer and that the carried document should therefore be considered as endorsed in favour of the High Sea Sales buyer and further Import General Maniface (IGM) should be filed by the carrier in the name of High Sea Sales buyer. If the electronic data interchange (EDI) system allows name of the High Sea buyers to be entered in the system, then there may not be any need to amend the import general maniface (IGM). If the system has no provision for showing the name of High Sea buyer on the B/E, then the import General Maniface should be got amended and B/E tiled in the name of High Sea buyer.

11. In the case of High Sea Sales, the cargo in freight (CIF) value for calculation of duty is taken to be High Sea Sales value. In..the High Sea Sales contracts, the High Sea seller may not like to disclose the import value to the High Sea buyer. However, the customs can call for the original import invoice, in which the case of High Sea seller may have to part with this information. To overcome this, High Sea seller should take on the responsibility of custom clearance or site delivery. After custom clearance, the High Sea seller could withdraw import invoices and only hand over clearance documents, with the High Sea Sales agreement to the High Sea buyer.

12. High-Sea Sales is considered as a sale carried out outside the territorial jurisdiction of India. Accordingly, no sale tax is levied in respect of High Sea Sales. The customs document (bill of entry) is either filed in the name of High Sea Buyer or such Bill of Entry should have an endorsement indicating High Sea Buyer's name. The title of goods transfers to High Sea buyer prior to entry of goods in territorial jurisdiction of India, the relevant provision of the Central Sales Tax Act in case of High Sea Sales are again pointed out as under :-

Sub Section (2) of Section 5 of the Act says that the sale is deemed to take place in the course of import, on fulfilling of the following conditions:-

a) the sale or purchase either occasions such import, or

b) is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontier of India.

Section 2(4) of the sales of goods Act, 1930. defines " documents of title to goods." According to this section

" The documents of title to goods ' include a bill of lading, dock warrant, warehouse-keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof to the possession or control of goods purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented."

The bill of lading is also considered to be a document to title and the sale can be made by endorsement, delivery or by mere delivery of a blank bill of lading before the goods cross the customs frontier.

In Dictionary' of English Language by Eari Jowitt, "document of title" has been defined as a document which enables the possessor to deal with-the property described in it, as if he were the owner. As per this dictionary also, it is mentioned that some documents of title (e.g. Bill of Lading) pass the ownership of goods represented by them, while other documents such as delivery order and dock warrant are merely the authority letters to obtain delivery of the goods.

In Ramdas Vs. S.Amer Chand & Co. (43 I.A.) 164 40 Bom.630) the Judicial Committee, alter referring to the expression "document of title" as defined in the Indian Contract Act, 1872 laid down that whenever any doubt arises as to whether an particular document is a "document showing title", or a "document of title" to goods for the purpose of Indian contract Act the test is whether the document in question is used in the ordinary course of business, as proof of the possession or control over goods, or it authorizes or purports to authorize, either by endorsement or deliver, the possession of the documents to transfer or receive the goods thereby represented. A receipt certificate regarding custody of goods or any such document can't be termed as a document of title, unless it is used in the ordinary course of business as the document to the goods.

The AWB is not considered as negotiable instrument, but it is contract regarding carriage of goods. On face of AWB it is mentioned as "not negotiable". Similar observations were made in case of M/s Nawrojee Wadia & Sons (P) Ltd., (S.A. 42 of 1989 dated 4.5.1990). In this case Maharastra Sales Tax Tribunal observed that AWB is not a negotiable instrument and no high sea sale can be effected by transfer of such AWB.

13. Now coming to the facts and circumstances of the present case, it is noticed that the appellant has shown the "High Sea Sales" to M/s Krishan Steel Corporation, Una (H.P.)for Rs.1,22,32,054/-, but the said sale could not be verified from account books of the appellant. Furthermore, M/s Krishan Steel Corporation," Una has not shown this purchase of High Sea Sales in question in its returns as it has not filed any returns to his respective department. The certificate received from the Assistant Excise and Taxation Commissioner, Una vide letter No.EXN/Una-Vat-2173, dated 10th April, 2014 at entry No.5 shows that M/s Krishan Steel Corp., Barnoh ,TIN No.O280400423 .has not tiled any return for the said period and its RC was cancelled on 13.9.2013'. Copy of the certificate has been placed on the record as Annexure-I. The appellant has also shown that he had sold the goods to M/s Anil Trading Co., Delhi for Rs.68,54,460/- during the year 2013-14 which could not be verified from the account

books of the appellant. It may further be' observed that M/s Anil Trading Co., Delhi has not shown this purchase of High Sea Sales in question in their returns' as it has filed 'Nil' returns to his respective department. The certificate received from the Assistant Commissioner, VAT (Ward-76) New Delhi vide letter No. T&T/Deptt./W076/2013-14/1589 dated 25th Feb., 2014 shows that M/s Anil Trading Co., Delhi TIN No. 07410458814 has filed Nil return for the said period. Copy of the certificate in this regard is Annexure-II.

14. On scrutiny of the aforesaid evidence and after considering all the circumstances prevailing over the case, it transpires that in the absence of any bill of entry/bill of lading and without communication of the said sale to the custom authorities in India, the alleged transfer of cement which laded in Punjab from Pakistan could not be treated as High Sea Sales, therefore liable to be taxed.

15. No other argument has been raised.

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

17. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

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REVISION NO. 1 OF 2014

S.K. WOOLEN MILLS
Vs.
STATE OF PUNJAB

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

10th May, 2015

HF ▶ Assessee

No revision can be made of an assessment order which is void being time barred.

REVISION – ASSESSMENT – ASSESSMENT YEAR 2005-06-ASSESSMENT FRAMED IN YEAR 2010 - ORDER REVISED IMPOSING TAX ON ASSESSEE – CONTENDED THAT ASSESSMENT WAS FRAMED BEYOND THE PRESCRIBED PERIOD OF LIMITATION, NO REVISION OF VOID ORDER CAN BE MADE – REVISION PETITION ACCEPTED – TAX IMPOSED QUASHED AND IMPUGNED ORDER SET ASIDE- *SEC 29(4) AND SEC 65 OF PVAT ACT.*

An Assessment for the year 2005-06 was framed in the year 2010. It ought to have been framed within three years i.e. 2009 as per sec 29(4) of the Act. No tax liability was imposed vide such order. Revision of this order was made by the Assistant Excise and Taxation officer and a tax demand was raised. First appeal was dismissed. A revision petition is filed before Tribunal contending that since the assessment order is itself void, no revision could be made against such void order. It is held by Tribunal that when the assessment order was not passed within time, such order could not be amenable to revision. Accepting the Revision petition, the impugned order and the tax imposed are set aside.

Case relied upon:
Excise and Taxation Commissioner and Another V/s. K.K.K. Mills (2012) 47 VST 31 (P&H)

Present: Mr. Avneesh Jhingan, Advocate Counsel for the appellant.

Mr. Jagmohan Bansal, Additional Advocate General for the State.

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

1. This revision petition is directed against the order dated 27.12.2013 passed by the Assistant Excise and Taxation Commissioner, Amritsar-I revising the assessment for the year 2005-06 and imposing a tax to the tune of Rs. 7.05,472/- under the Central Sales tax Act, 1956.

2. Originally, the Notified Authority, Amritsar-I, vide his order dated 16.03.2010, had framed the assessment for the year 2005-06 holding no tax liability against the appellant, but the Designated Officer (Assitant Excise and Taxation Commissioner, Amritsar-I) revised the assessment order dated 16.3.2010 by imposing the sale tax to the true of Rs. 7,05,472/-.

3. The Counsel for the appellant has strenuously contended that since the assessment for the year 2005-06 was famed after the period of three years as prescribed by the statute i.e. on 16.3.2010, therefore such order could not be revised by further order dated 27.12.2013 by the Assistant Excise and Taxation Commissioner, Amritsar-I. Since the lower authority has failed to appreciate this argument. Therefore, the revisional order cannot be sustained.

4. Having given my thoughtful consideration to this contention raised by the counsel, I find substance in the same. The assessment for the year 2005-06 is involved in this case. According to Section 29(4) of the Punjab Value Added Tax Act, 2005, the Assessing Authority was to frame the assessment within three years i.e. by 20.11.2009, but the Assessing Authority framed the assessment on 16.03.2010. As such the order of the assessment passed by the Notified Authority, Amritsar-I was bad having been passed beyond the period of limitation. Therefore, the revision of such a void order could not be made. Having examined the revisional order, the same appears to have been passed without application of mind.

5. Further more, I also find force in the contention of the counsel of the appellant that when the assessment order was not passed within time. Such order would not be amenable to revision. Similar observations were made by VAT Tribunal, Punjab in the judgment delivered in case of the Excise and Taxation Commissioner and Another vs. K.K.K. Mills (2012) 47 VST 31 (P&H). It was observed as under:-

> *"According to Section 11(3) of the PGST Act, the assessing authority is required to pass an assessment order within a period of three years from the last date prescribed for furnishing the last return in respect of any period. In the facts of the present case the last date for filing of return for the assessment year 2001-02 was April 30,2002 and the assessment could be framed upto April 30,2005. It is not disputed that the assessing authority framed the assessment on April 9, 2007 which was beyond the period of limitation. Once that was so, the assessment order was void and without jurisdiction. The recourse to revisional proceedings by the Excise and Taxation Commissioner after the expiry of more than five years which were initiated on September 8, 2008 was, thus, bad. The decision of the Tribunal is in consonance with the provisions of the statue."*

As such the impugned order being bad in law has to be set-aside.

6. Resultantly, I accept the revision petition and set-aside the impugned order. Consequently, the tax imposed is quashed.

7. Pronounce din the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 506 OF 2013

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RANJIT PLASTIC INDUSTRIES
Vs.
STATE OF PUNJAB

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

21st May, 2015

HF ▶ Revenue

Purchase bills not to be considered towards adjustment of ITC for compliance of condition of predeposit as impugned order reveals ingenuine ITC availed by assessee.

PREDEPOSIT – APPEAL - ENTERTAINMENT OF – ADDITIONAL DEMAND RAISED – DISMISSAL OF APPEAL FOR NON COMPLIANCE OF PREDEPOSIT – APPEAL BEFORE TRIBUNAL - CONTENTION RAISED THAT APPELLANT IN POSSESSION OF PURCHASE BILLS WHICH COULD BE CONSIDERED FOR ADJUSTMENT OF ITC TOWARDS THE REQUIREMENT OF PREDEPOSIT — IMPUGNED ORDER REVEALED AVAILING OF INGENUINE ITC – TRIBUNAL HELD THAT ISSUE OF PURCHASE INVOICES COULD BE RAISED DURING ARGUING THE APPEAL – PURCHASE INVOICES NOT TO BE VERIFIED AT THIS STAGE – APPEAL DISMISSED GRANTING TIME TO APPELLANT TO DEPOSIT 25% OF ADDITIONAL DEMAND- *SEC. 13 & SEC 62(5) OF THE PVAT ACT.*

An additional demand was raised on assessment by the designated officer. The appellant filed an appeal which was dismissed for non compliance of condition of predeposit. An appeal was filed before Tribunal. The grounds of appeal indicate that the appellant is in possession of purchase certificates issued by the parties from whom he had purchased the goods. These purchase bills could be considered for adjustment of the ITC available to the appellant towards the amount required to be deposited for entertainment of appeal. However, it is observed that the same issue was raised before the assessing officer and the appellant had prayed for verification of purchase bills. But the order passed by the designated officer reveals that an ingenuine ITC had been availed by the taxable person to avoid payment of tax. Thus, the argument regarding verification of purchase bills is not to be considered at this stage. It could be raised during argument of the appeal on merits. Dismissing the appeal, one month time is granted to the appellant to deposit 25% of the additional demand failing which order of the first appellate authority would remain intact.

Present: None for the appellant

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

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

1. The Designated Officer cum Excise and Taxation Officer Ludhiana-II vide his order dated 18-4-2013 created additional demand to the tune of Rs. 41,31,391/-. The appeal filed by the appellant was dismissed by Ist appellate authority for non compliance of Section 62(5) of the PVAT Act 2005.

2. After filing of the appeal, none for the appellant appeared on various dates except on one date when Kulbir Singh Advocate appeared. Even today, none has appeared to present his case, therefore I have no option but to proceed against the appellant ex-parte. The order passed by the Excise and Taxation Officer is neither bad nor beyond jurisdiction.

3. Since the assessment for the year 2011-12 is involved, therefore the question of limitation does not arise. Though the Counsel has not come present today yet he has pleaded in the grounds of appeal that appellant is in possession of necessary certificates issued by the parties from whom he had purchased the goods and these deserve to be considered and if the same are considered than there will be no requirement of deposit of the 25% of the additional demand as the ITC allowable to him on the basis of said purchase bills could be adjusted, and his appeal could be entertained and decided on merits.

4. I have heard Mrs Sudeepti Sharma, State Counsel and perused the record. Having heard the contentions, it is observed that the issue with regard to claim of ITC was raised before the assessing officer and the appellant had prayed for verification of the purchase bills. On 9-4-13 the Designated Officer had passed the following orders:-

> *"On 09/04/2013 Sh. Y.P. Sikka (advocate) appeared as an authorized represenatative to plead in this case but failed to produce his power of attorney. On his request the undersigned apprised him with the facts that the taxable person has procured purchase invoices from the firms who are not carrying out their business activity in normal course and the transactions made by them are not bona fide as their own purchases in turn are suspicious and that they are making only paper transactions and thus have been cancelled as per the report received from the district office where such firms were registered. Thus an in genuine ITC has been availed by the taxable person to avoid payment of tax."*

5. In the light of the aforesaid observations, the appellant can not raise this issue again. However this issue could be raised while arguing the appeal on merits, but the aforesaid observations made by the Designated Officer would be sufficient to turn down the argument that the purchase bills may be verified at this stage.

6. The net result would be that the Ist appellate authority was justified in refusing to entertain the appeal without compliance of Section 62(5) of the Act.

7. Resultantly, the appeal being devoid of any merit is dismissed. However, appellant is provide one month more time to comply with the aforesaid provisions and to deposit 25% of additional demand within one month from today. On doing so his appeal would be entertained and decided on merits and on failure to do so, the order passed by Ist appellant authority shall remain intact.

PUNJAB VAT TRIBUNAL

APPEAL NO. 50 OF 2013

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PAN INDIA NETWORK INFRAVEST PVT. LTD
Vs.
STATE OF PUNJAB

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

11th May, 2015

HF ▶ Appellant

Evidence regarding receipt of goods by appellant from head office is necessary to show that it were the same goods being returned against the stock transfer challan.

PENALTY – EVASION OF TAX – STOCK TRANSFER- PROOF OF GOODS RECEIVED – GOODS IN TRANSIT – NO TAX CHARGED ON GOODS – PENALTY IMPOSED U/S 51(7)(b) OF THE ACT – APPEAL BEFORE TRIBUNAL – STOCK TRANSFER CHALLAN PRODUCED TO SHOW GOODS BEING RETURNED TO HEAD OFFICE – DOUBT RAISED ABOUT THE RECEIPT OF SAME GOODS EARLIER FROM HEAD OFFICE - APPELLANT READY TO PRODUCE RELEVANT DOCUMENTS – MATTER REMITTED – APPEAL ACCEPTED – *SEC 51(7)(b) OF THE PVAT ACT.*

The goods were in transit from Amritsar to Mumbai. The driver produced the documents at the ICC. The goods were supposedly taxable and were detained as no tax was charged on them. The plea of the appellant that the goods were being returned to Mumbai (Head office) on account of closure of business was not accepted and penalty u/s 51 was imposed. The first appeal was dismissed .On appeal before Tribunal, It was alleged by the department that the stock transfer challan was produced but no proof of these goods received from the head office, Mumbai to the branch office ,Punjab was shown. It is held by Tribunal that since the appellant has undertaken to produce the relevant document as a proof of receipt of these goods by him from head office which were now being returned against stock transfer challan, the case is remitted back to designated officer whereby the authorities would be satisfied by the appellant by producing the documents required. The appeal is accepted.

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

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

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

1. This appeal is directed against the order dated 25.08.2010 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala dismissing the appeal against

the order dated 28.7.2006 passed by the Assistant Excise and Taxation Commissioner, Information Collection Centre, Shambhu (Export) imposing a penalty of Rs.3,33,995/- u/s 51(7)(b) of the Punjab Value Added Tax Act, 2005.

2. On 16.7.2006, the driver of the vehicle bearing No. PB-10BG-2513 while carrying the goods from Amritsar to Mumbai while reaching at Information Collection Centre, Shambhu (Export) produced the following documents relating to the goods being transported:-

1. Challan no. 075 dated 14.07.2006 issued by M/s Pan India Network Infravest Pvt. Ltd., Amritsar for Rs. 11,11,986/- in favour of M/s Pan India Network Pvt. Ltd. Industrial Area, Navi Mumbai.
2. GR No. 8238985 dated 14.7.2006 from Amritsar to Mumbai. On scrutiny of the documents, the Detaining Officer observed that the goods were taxable but appellant was not charged tax, therefore the transaction required verification from the books of account. Consequently, he detained the goods u/s 51(6) of the Punjab Value Added Tax Act, 2005 (herein referred as the Act, 2005) and issued a show cause notice to the appellant through its driver for 18.7.2006. The appellant was confronted with the facts and he was asked to furnish the account books for verifying the transaction, but he failed to produce the accounts books.

3. The case was referred to the Designated Officer who issued a notice u/s 51(7)(b) of the Punjab Value Added Tax Act, 2005. In response to which the company appeared and represented that the goods were being returned to Mumbai as the same became unnecessary on account of closure of business. However, the plea of the appellant was not accepted and he was imposed a penalty of Rs. 3,33,995/- u/s 51(7)(b) of the Act, 2005.

4. The appeal preferred by the appellant was also dismissed.

5. The prime contention raised by the appellant is that no tax was required to be charged in case of stock transfer from branch to head office from where the goods in question had been received during the past three years. It was also explained that due to closure of the business of online lottery in the State of Punjab, the goods which were of capital nature were being returned to the head office at Navi Mumbai. It was also urged that a copy of the return for the period 1.4.2006 to 30.07.2006 was also produced before the Assistant Excise and Taxation Commissioner in order to show that the company is regularly filing its returns and stand duly registered in the State of Punjab. However, the Designated Officer did not agree with the contention. It is also urged that the goods were covered by proper and genuine documents. The driver had voluntarily reported about the aforesaid stock transfer and got generated the declaration in Form VAT-XXXVI. The goods in question were received by the appellant against the goods transfer challans from its head office at Mumbai during the year 2002-2005 and these were being returned to the head office against stock transfer challan due to closure business of online lotteries in the State of Punjab. Since the goods were reported at the Information Collection Centre and complete information was provided by getting Form VAT-XXXVI, therefore, there was no possibility of keeping the transaction out of books by the appellant and in case the transaction is not shown in the returns, its cognizance would have been taken by the concerned Assessing Authority at the time of assessment and not in summary proceedings by the officers at the Information Collection Centre. Thus, he has urged that the order imposing penalty and interest and the orders passed by the appellate court are set-aside.

6. To the contrary, Counsel for the appellant has stated that the appellant failed to prove the stock transfer by way of showing the account books. Though, the stock transfer challan was produced yet the goods transfer challan w.e.f. 2002-2005 regarding receipt of goods by the appellant in the state of Punjab has not been produced. Therefore, in the absence of proof of the goods received from head office at Mumbai to the branch office Punjab. It could not be said

that the goods were being returned and it were the same goods which were received through the goods transfer challan from the head office at Mumbai. Both the parties agreed that the issue could be resolved by way of production of the necessary documents as referred to above before the Assistant Excise and Taxation Commissioner, Information Collection Centre, Shambhu (Export). The appellant has undertaken to produce the relevant documents in support of the receipt of goods by the appellant from the head office at Mumbai and which was now being returned to the head office against the stock transfer challan.

7. In view of the matter, this appeal is accepted and impugned orders are set-aside and the case is remitted back to the Designated Officer where the appellants would satisfy by relevant documents that the goods which were being received by the appellants from Mumbai to the State of Punjab were being returned by the stock transfer challan. The appellant is directed to appear before the Assistant Excise and Taxation Commissioner, Shambhu (Export) on 7.7.2015.

8. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 175 OF 2013

LITTLE BEE IMPEX
Vs.
STATE OF PUNJAB

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

21st May, 2015

HF ▶ Assessee

If provisional assessment has escaped notice while framing regular assessment, it can be rectified u/s 29(8) of the Act even if appeal against the provisional assessment is pending.

REMAND – JURISDICTION OF FIRST APPELLATE AUTHORITY – ASSESSMENT – RECTIFICATION – SCOPE OF SEC 29(8)- PENDENCY OF APPEAL AGAINST PROVISIONAL ASSESSMENT BEFORE DETC- REGULAR ASSESSMENT FRAMED WITHOUT NOTICING PROVISIONAL ASSESSMENT - MATTER REMANDED BY DETC ON REQUEST OF AETC TO RECTIFY THE REGULAR ASSESSMENT – APPEAL BEFORE TRIBUNAL QUESTIONING JURISDICTION OF FIRST APPELLATE AUTHORITY TO REMAND THE MATTER FOR RECTIFICATION INSTEAD OF DECIDING THE LEGALITY OF THE PROVISIONAL ORDER – HELD RECTIFICATION OF REGULAR ASSESSMENT COULD BE DONE EVEN DURING PENDENCY OF APPEAL – NO FETTERS UPON AETC TO RECTIFY THE ORDER U/S 29(8) OF THE ACT – REMITTING THE ORDER ON BASIS OF RECTIFICATION IS BAD IN EYES OF LAW – DETC DIRECTED TO DECIDE AFRESH REGARDING VALIDITY OF PROVISIONAL ASSESSMENT ORDER- AETC GIVEN LIBERTY TO RECTIFY REGULAR ASSESSMENT FRAMED – APPEAL ACCEPTED -*SEC 29(8) & 30 OF PVAT ACT***

A provisional assessment was famed by the designated officer raising a demand against which an appeal was filed before the first appellate authority. While this appeal was pending the AETC framed the regular assessment u/s 29 of the Act raising an additional demand and also imposed penalty u/s 60 vide order dated 25/11/2011.On knowing that provisional assessment was not brought to his notice while framing regular assessment, he stated before the first appellate authority that he wanted to amend the regular assessment dated 25/11/2011. The first appellate authority remitted the case back to the AETC to pass a fresh order after accepting the appeal. Aggrieved by this, an appeal was filed before the Tribunal questioning the jurisdiction of the first appellate authority in remanding the case for rectification by AETC instead of examining the legality or propriety of the provisional assessment.

Present: Dr. Naveen Rattan Advocate Counsel for the appellant.

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

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

1. The Excise and Taxation Officer-cum-Designated Officer, Ludhiana-I vide order dated 7.4.2010 created an additional demand to the tune of Rs. 13,00,000/- for the period from 1.4.2009 to 6.11.2009.

2. Feeling Aggrieved, the appellant preferred an appeal before the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana (herein referred as First Appellate Authority)

3. In the meantime, the Assistant Excise and Taxation Commissioner-cum-Senior Auditor, Ludhiana vide order dated 25.11.2011, had framed the regular assessment u/s 29 of the Punjab Value Added Tax Act, 2005, whereby he after considering the account books and sale and purchase vouchers created an additional demand to the tune of Rs. 3,05,682/- and also imposed penalty to the tune of Rs. 3,000/- u/s 60 of the Punjab Value Added Tax Act, 2005 vide order dated 25.11.2011.

4. Though, the assessment under Central Sales Tax Act, 1956 was also framed on 25.11.2011 but no demand was raised under the said Act. However during the pendency of the appeal the Assistant Excise and taxation Commissioner-cum-Senior Auditor came to know that the provisional assessment was not brought to his notice at the time of framing the regular assessment therefore assessment framed by him is not correct. Consequently, he appeared before the First Appellate Authority and made the statement that he wanted to amend the regular assessment dated 25.11.2011. In the light of the said statement, the First Appellate Authority accepted the appeal on 4.1.2013 and remitted the case back to the Assistant Excise and Taxation Commissioner-cum-Senior Auditor, Ludhiana to pass a fresh order.

5. The counsel for the appellant has urged that the First Appellate Authority has exceeded its jurisdiction while remanding the case. The scope of the appeal before the Deputy Excise and Taxation Commissioner was to examine the legality or propriety of the provisional assessment, but the same could not be set-aside on the ground that the Assistant Excise and Taxation Commissioner wanted to amend/rectify the regular assessment. As the Assistant Excise and Taxation Commissioner had unfettered powers to amend/rectify the assessment u/s 29(7) & (8) of the Act of 2005, therefore, the order of remand to that extent is not correct. To the contrary, the counsel for the respondent does not dispute with regard to the powers of the Assistant Excise and Taxation Commissioner to amend or rectify the assessment u/s 29(7) & (8) of the Act, 2005 (herein referred as the Act, 2005). Section 29(7) and (8) of the Act of 2005 are reproduced as under: -

29(7) The designated officer may, with the prior permission of the Commissioner, within a period of three years from the date of the assessment order, amend an assessment, made under sub-section (2) or sub-section (3), if he discovers under-assessment of tax, payable by a person for the reason that;-Such a person has committed fraud or wilful neglect; or

(a) such a person has misrepresented facts; or

(b) a part of the turnover has escaped assessment:

Provided that no order amending such assessment shall be made without affording an opportunity of being heard to the affected person.

(8) The designated officer may, within a period of one year from the date of the assessment order, rectify an assessment, made under sub-section (2) or sub-section (3), if he discovers that there is a mistake apparent on the record:

Provided that no order rectifying such assessment shall be made without affording opportunity of being heard to the affected person.

6. The proceedings u/s 30 of the act relating to provisional assessment are quite independent of the proceedings u/s 29 of the Act i.e. relating to the regular assessment. However, as per proviso appended to Section 30 of the act, tax liability of the taxable person was to be finally assessed after he filed the returns in the Form VAT-20. The provisional assessment has certainly to be considered at the time of framing the final assessment. If the Assessing Officer had not considered about the suppression of tax (as detected at the time of provisional assessment) at the time of framing the regular assessment, then he while exercising the powers under Section 29(7) and (8) of the Act of 2005, could amend/rectify the regular assessment as framed by him under sub-section (2) of sub-section (3) of the Act of 2005. The provisions regarding rectification under sub-section (8) of Section 29 can be invited only when the Designated Officer (respondent) discovers that there is a mistake apparent on the record. In this case, there is a mistake apparent on the record as the provisional assessment was not noticed at the time of regular assessment by the Assistant Excise and Taxation Commissioner vide which the tax and penalty were imposed upon the appellant. Notwithstanding the fact that the appeal against provisional assessment was pending, in the absence of any stay of proceedings, there were no fetters upon the Assistant Excise and Taxation Commissioner to rectify the regular assessment u/s 29(8) of the Act. Therefore, the order passed by the Deputy Excise and Taxation Commissioner remanding the case, merely on the ground that the Assistant Excise and Taxation Commissioner wanted to rectify the assessment already framed or amend the assessment, is bad in eye of law and has to be set-aside.

7. Resultantly, this appeal is accepted, the impugned order is set aside and the case is remitted back to the Deputy Excise and Taxation Commissioner with a direction to decide the appeal afresh by examining as to whether the order of the provisional assessment is valid. However, this order would not stand in the way of the Assistant Excise and Taxation Commissioner-cum-Senior Auditor, Ludhiana to rectify his own order after affording an opportunity to the appellant of being heard, the appellant is directed to appear before the First Appellate Authority, Ludhiana on 30.6.2015.

8. Pronounce din the open court.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 332 OF 2013

SPORTKING INDIA LIMITED
Vs.
STATE OF PUNJAB

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

21st May, 2015

HF ▶ Assessee

Assessment for the year 2005-06 could be framed within a period of three years from the date of filing of return in view of sec 29(4-A) of the Act.

ASSESSMENT – LIMITATION – ASSESSMENT YEAR 2005-06 – FRAMING OF ASSESSMENT IN YEAR 2011 – ASSESSMENT CONTENDED TO HAVE BEEN FRAMED AFTER EXPIRY OF LIMITATION PERIOD OF THREE YEARS – HELD, IN VIEW OF SEC 29(4-A) ASSESSMENT OUGHT TO HAVE BEEN FRAMED WITHIN THREE YEARS OF FILING OF RETURN – SEC 29(4-A) IS NON OBSTANTE CLAUSE AND OVERRIDES OTHER PROVISIONS - ASSESSMENT FRAMED AFTER 2009 IS THEREFORE, TIME BARRED – APPEAL ACCEPTED AND IMPUGNED ORDER SET ASIDE- *SEC 29(4-A) OF PVAT ACT* **.**

An assessment for the year 2005-06 was framed on 1.4.2011. It was contended that the assessment is time barred in view of sec 29(4-A) of the Act as it ought to have been framed by 2009 but has been framed after five years. It is held by Tribunal that as per section 29(4-A), the assessment for the year 2005-06 could be framed within three years w.e.f. the date when the annual statement was filed. No order of extension by commissioner could have been passed as it is a non obstante clause which excludes other provisions and provides for only three years period within which the assessment could be framed. Therefore, the appeal is accepted.

Cases followed:
M/s Des Raj Bhim Sen (2012) 43 PHT page/1
State of Punjab and Other versus Bhagwanpura Sugar Mills, VSTI (2014)
Commissioner of Income Tax versus Escorts Farm Pvt. Ltd (1989) 180 ITR page/280

Present: Mr. M.L. Garg, Advocate Counsel for the appellant.

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

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

1. This appeal is directed against the order dated 31.12.2012 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissing the appeal against the order dated 1.4.2011 passed by the Excise and Taxation Officer-cum-Designated Officer, Ludhiana-II creating an additional demand of Rs. 49,11,509/-.

2. The assessment in this case was framed by the Excise and Taxation Officer-cum-Designated Officer, Ludhiana-II for the year 2005-06 on 1.4.2011. The Counsel has urged that the ld. Designated officer has created superfluous demand of Rs. 49,11,509.00 without giving any credit of notional Input tax Credit on purchases from exempted unit as per amended sub conditions (vi) of clause (4) of notification dated 6.4.2005 relating to the conditions for availing benefit of deferment and exemption on purchases made by the appellant from exempted units. It was also contended that the claim with regard to Input tax Credit on diesel is subjudice before the highest court i.e. Hon'ble Supreme Court of India and the appellant would be bound by the decision given by Apex Court in this regard. The counsel has also submitted that the order of the assessment having been passed on 1.4.2011 is barred by limitation in view of Section 29(4-A) of the Act of 2005. The issue was also raised before the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana, but he ignored the arguments without mentioning the same in the judgment. It was also urged that the Assessing Officer was bound to adjust excess Input Tax Credit available during the assessment year under consideration, but has shown, in calculation, this Input Tax Credit as carried forward to the next assessment year which is not in accordance with law. The refund of Rs. 37,93,153/- for the forth quarter of 2009-10 was due to the appellant which has been adjusted towards the demand due and it fulfils the stipulated requirement of prior payment of 25% for entertainment of appeal.

3. The plain argument as advanced by the counsel for the appellant is that the assessment for the year 2005-06 could be framed by 20.11.2009 but it having been framed after five years i.e. 1.4.2011 is clearly time barred. As such the said assessment can be dubbed as void.

4. To the contrary State has failed to advance any valid argument to the controvert this issue.

5. Heard, the main issue which required adjudication is whether the assessment for the year 2005-06 as framed on 1.4.2011 is time barred as per Section 29(4-A) of the Act. The assessments in the normal course of events are required to be framed within three years from the date, the last return is filed. Section 29(4) of the Act as it existed prior to the amendment which was effective from 15th Nov., 2013 reads as under:-

Section 29(4) *"An assessment under sub section (2) or sub-section (3), may be made within three years after the date when the annual statement was filed, whichever is later:*

PROVIDED THAT where circumstances so warrant, the Commissioner may, by an order in writing, allow assessment of a taxable person or a registered person after the years, but not later than six years from the date, when annual statement was filed or due to be filed by such person, whichever is later."

By the amendment of the aforesaid Section w.e.f. 15.11.2013, the new Section (4) has been substituted by the old Section, which reads as under:

An assessment under sub section (2) or sub-section (3), may be made within a period of six years after the date when the annual statement was filed or due to be filed, whichever is later.

6. However in the light of sub section 4-A added to the Section 29 of the Act, the assessments for the year 2005-06 were excluded from the impact of the amendment as the sub-section 4-A has not been omitted even after the amendment of sub section 94) of section 29 of the Act was brought on the statue book. Section 29(4-A) prescribes limitation for the cases of 2005-06, which reads as under:-

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

7. On the plain reading of the Section 29(4) and (4-A) of the Act, it transpires that the unamended provisions of the Act are applicable to the present assessment therefore as per Section 29 (4-A) of the Act, the assessment for the year 2005-06 could be famed within three years w.e.f. the date when the annual statement was filed. In the ordinary course u/s 29(4) of the act the Commissioner by passing a specific order, could extend this period of limitation upto six years. The outer limit to extend the period for framing the assessment under the orders of the Commissioner is six years. The power to extend this period upto six years has been given by statue in cases where there is negligence, wilful, neglect on the part of the officer or to condone the circumstances viz. The officer is so loaded with the work that it was not practically possible for him to decide the return within the time fixed of the officer by vacation of office or transfer, arrest or suspension of the officer or other unforeseen circumstances. He may also extend such period if the mischief was created by the party who contributed to delay the assessment. The counsel for the appellant has argued that the Commissioner was competent to pass the order of extension after adjudication of the matter by separate individual order, but the counsel has failed to show any provision of law where some formal adjudication was required before passing such order however, the statute has imposed a duty upon the Commissioner to record the circumstances which warrant for extension. As such, it would be suffice to observe that the meaning of words "where circumstances so warrant" is subjective satisfaction of the Commissioner while passing such order, since the State is vested with the powers to extend the time for framing the assessment, the minimum and maximum limit to make such extension was fixed and it was not required for the Commissioner to make a formal adjudication but only requirement appears to be that the Commissioner would issue a notice, call for the objections and then after hearing the parties would record his subjective satisfaction regarding the circumstances which enable him to extend or deny the request for extending time. Without going further deep into this controversy, it would be suffice to say that in the present case, no order of extension was required to be passed by the Commissioner as the present case involves the assessment for the year 2005-06, the period of limitation within which the assessment could be framed is governed by Section 29(4-A) of the Act, which begins with the non obstente clause which excludes other provisions and provides for only 3 years period within which the assessment could be framed.

8. While adding this provision, the legislature was clear in its intentions not to frame the assessments by way issuing notice u/s 29(2) of the Act, after the expiry of three years commencing from 20.11.2006. In the instant case also, the assessment year 2005-06 was filed on 20.11.2006. Therefore, the assessment should have been framed upto 20.11.2009 and not beyond that.

9. I find support to my this view from the judgment delivered in the case of State of Punjab and another versus M/s Des Raj Bhim Sen (2012) 43 PHT page/1, wherein, their lordships while affirming the findings returned by the Tribunal, observed that the assessment for the year 2005-06 could not be framed beyond 20.11.2009. Subsequently, in the case of State of Punjab and Other versus Bhagwanpura Sugar Mills, VSTI (2014), B-842, the Hon'ble

High Court while relying upon the judgment delivered in case of Des Raj Bhim Sen (supra) affirmed the view that the assessment for the year 2005-06 without seeking permission to frame the assessment beyond 20.11.2009 from the competent authority, could not be framed after 20.11.2009.

10. In case of Commissioner of Income Tax versus Escorts Farm Pvt. Ltd (1989) 180 ITR page/280 observed that if the assessment is time barred then any decision taken on merits would be of no consequence and would have to be ignored. No judgment to the contrary has been brought to the notice of the Tribunal to take different view then what was framed by me in the present case.

11. Having examined the order passed by the First Appellate Authority, it may be mentioned that the order being non speaking is bad in eye of law. As such the same is bound to be set-aside and the order passed by the Designated officer being time barried has to be ignored.

12. Resultantly, this appeal is accepted and impugned orders are set-aside. However, the department would be at liberty to take any other step for amendment for the assessment by adopting any other procedure as provided under law.

13. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 547 OF 2014

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

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

14th July, 2015

HF ▶ Revenue

Assessment framed for the year 2009-10 in 2013 is within the limitation period in view of amended section 29(4) of the Act.

APPEAL – ENTERTAINMENT OF – PREDEPOSIT – ASSESSMENT – LIMITATION – ASSESSMENT YEAR 2009-10 – ASSESSMENT FRAMED IN YEAR 2013- DISMISSAL OF FIRST APPEAL FOR FAILURE OF PREDEPOSIT U/S 62 OF THE ACT – APPEAL BEFORE TRIBUNAL – CONTENTION REGARDING EXPIRY OF LIMITATION PERIOD RAISED – CONTENTION REJECTED HOLDING THAT LIMITATION IS TO EXPIRE AFTER SIX YEARS AS PER AMENDED SEC 29(4) OF THE ACT – THEREFORE, ASSESSMENT HELD TO BE FRAMED WITHIN THE REQUISITE TIME PERIOD – PLEA TO ADJUST THE AMOUNT DEPOSITED FOR ENTERTAINMENT OF A CONNECTED APPEAL WHICH STOOD ACCEPTED BY TRIBUNAL TOWARDS THE PREDEPOSIT IN THE PRESENT CASE – FIRST APPELLATE AUTHORITY TO DECIDE THE QUESTION OF ADJUSTMENT OF TAX – APPEAL DISMISSED WITH GRANT OF TIME TO APPELLANT TO DEPOSIT 25% OF ADDITIONAL DEMAND RAISED. – *SEC 62(5) AND SEC 29 (4) OF THE PVAT ACT.*

An additional demand was raised by the designated officer from the year 2009-10 vide assessment order dated 2013. The first appeal was dismissed for non compliance of sec 62(5) of the Act. On appeal before Tribunal, it was primarily contended that the assessment was time barred as it was framed after expiry of three years in 2013. This contention was rejected as limitation period expired after six years as per the amended sec 29(4) of the Act.

Also, it was pleaded that as one of the connected appeals was accepted by Tribunal for which a sum of Rs 1 lac was deposited by appellant as predeposit, the amount may be adjusted towards 25% of additional demand raised in present case.

Dismissing the appeal, it is held that question regarding adjustment of the amount already deposited is left to be decided by the Ld. DETC. However, appellant is given two months time for pre deposit of additional demand for entertainment of appeal.

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

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

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

1. An additional demand of Rs. 2,89,843/- has been created under the Punjab Value Added tax Act, 2005 by the Designated officer-cum-Excise and Taxation Officer, Ludhiana-III on 13.12.2013. On appeal, the Deputy Excise and Taxation Officer(A) Ludhiana Division, Ludhiana vide order dated 15.10.2014 dismissed the same for non compliance of Section 62(5) of the Punjab VAT Added Tax Act, 2005.

2. The prime contention raised by the counsel for the appellant is that since the assessment for the financial year 2009-10 has been framed after the expiry of 3 years i.e. on 13.12.2013, therefore the assessment is time barred. As such the order being void there would be no fun to deposit 25% of the additional demand.

3. Having considered the contentions the same do not hold water as the section 29(4) stood amended with effect from 15.11.2013 and the assessment in question was pending adjudication at that time. Therefore, the amendment being procedural in nature, would apply to the pending assessments also. In this view of the matter, the limitation to frame the assessment for the year 2009-10 is to expire after 6 years whereas the assessment was framed within few days beyond 3 years. Consequently, the argument stands repelled.

4. Faced with the situation, the counsel for the appellant has stated that a connected appeal No. 546 of 2014 was accepted and remitted back by the Tribunal, the appellant had deposited a sum of Rs. One lac on account of the additional demand in that case. Since, that appeal has been accepted, therefore, the said amount of Rs. 1,00,000/- may be adjusted towards 25% of the additional demand for entertaining the appeal. Having heard the contentions, this fact is to be decided by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana.

5. Resultantly, this appeal is dismissed, however, if the appellant deposits 25% of the additional demand within two months from today then his appeal would be entertained. However, the Deputy Excise and Taxation Commissioner may consider feasibility of adjustment the tax already deposited in this case or refund if any admissible to the appellant qua the Appeal No. 546 of 2014. The appellant is directed to appeal before the Deputy Excise and Taxation Commissioner on 14.9.2015.

6. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 697 OF 2013

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HIM TECHNOFORGE LTD.
Vs
STATE OF PUNJAB

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

9th January, 2015

HF ▶ Dealer

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

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

Facts:

In this case the goods were in transit from Himachal Pradesh to Punjab and were sent vide invoice no. 3541 dated 8.12.09. The goods were also sent to Delhi vide invoice no.3542 dated 8.12.09 from H.P. in a different vehicle by the appellant. The vehicle was stopped at the ICC Mullanpur. The driver produced invoice no.3541 issued by appellant in favour of the buyer in Punjab. On search another invoice no.3485 of an earlier date was recovered from the vehicle. Suspecting the documents to be ingenuine, the goods were detained u/s 51(6) of the Act. The officer questioned regarding invoice no 3542 as to how the goods were sent to two different

places against the same invoice. Moreover this invoice was not produced voluntarily by the driver. It was also suspected that the goods relating to invoice no 3542 were unloaded at Punjab. He further observed that since there was no information furnished regarding invoice 3485 at the check post of HP.,there was an intention to evade tax. Penalty was thus imposed. The first appeal was dismissed. An appeal was filed before Tribunal,

Held:

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

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

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

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

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

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

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

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

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

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

Detaining Officer forwarded the proceedings to the Excise and Taxation Commissioner, ICC, Mullanpur.

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

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

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

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

11. Pronounced in the open court.**-----**

PUNJAB VAT TRIBUNAL

APPEAL NO. 545 OF 2013

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MALWA INDUSTRIES LTD.
Vs
STATE OF PUNJAB

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

4th May, 2015

HF ▶ Revenue

Rectification order passed under wrongly invoked section is not void.

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

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

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

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

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

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

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

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

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

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

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

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

6. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 69 OF 2014

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SABER PAPER BOARD PVT. LTD.
Vs
STATE OF PUNJAB

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

14th July, 2015

HF ▶ Revenue

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

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

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

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

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

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

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

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

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

4. Arguments heard. Record perused.

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

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

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

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

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

PUNJAB VAT TRIBUNAL

APPEAL NO. 490 OF 2013

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RELIANCE RETAIL LTD.
Vs
STATE OF PUNJAB

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

6th July, 2015

HF ▶ Revenue

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

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

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

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

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

Facts:

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

Held:

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

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

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

Cases referred:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Arguments heard Record perused.

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

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

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

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

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

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

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

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

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

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

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

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

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

Penalty for evasion of tax

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

(a) _____

(b) _____

(c) _____

(d) _____

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

(f) _____

(g) _____

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

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

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

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

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

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

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

22. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 546 OF 2014

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

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

14th July, 2015

HF ▶ Assessee-appellant

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

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

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

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

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

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

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

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

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

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

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

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

5. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 700 OF 2013

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SHRIRAM TRANSPORT FINANCE CO. LTD.
Vs
STATE OF PUNJAB

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

4th May, 2015

HF ▶ Appellant company

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

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

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

Present: Mr. Maninder Singh, Advocate for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

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

1. This appeal is directed against the order dated 9.7.2013 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala dismissing the appeal of the appellant against the order dated 13.2.2013 passed by the Assistant Excise and Taxation Commissioner, Information Collection Centre, shambu (Import), Mahmadpur.

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

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

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

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

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

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

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

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

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

10. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 88 OF 2015

Go to Index Page

RAIL FAB
Vs
STATE OF PUNJAB

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

16th July, 2015

HF ▶ Dealer

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

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

Facts:

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

Held :

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

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

Cases referred:

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

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

Present: Mr. J.S. Bedi, Advocate counsel for the appellant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PUNJAB VAT TRIBUNAL

APPEAL NO. 258 OF 2011

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KAARTIKE GOLD ENTERPRISES
Vs
STATE OF PUNJAB

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

18th May, 2015

HF ▶ Revenue

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

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

Facts:

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

Held:

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

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

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

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

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

Case referred:

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

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

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

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

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

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

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

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

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

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

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

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

8. Arguments heard. Record perused.

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

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

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

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

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

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

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

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

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

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

(b) the date of issue;

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

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

(e) full description of the goods;

(f) the quantity of the goods;

(g) the value of the goods per unit;

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

(i) the total value;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 540 OF 2013

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CACHET PHARMACEUTICAL PVT. LTD.
Vs
STATE OF PUNJAB

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

14th July, 2015

HF ▶ Appellant

Appellant has to lead evidence that a company having two different TIN numbers (in the same state) could enjoy the rights of stock transfer amongst its branches.

SALE – BRANCH TRANSFER – TAXABLE PERSON – REGISTERED DEALER – NATURE OF TRANSACTION BETWEEN BRANCH OFFICES WITH TWO DIFFERENT TIN NUMBERS IN SAME STATE – TWO BRANCHES OWNED BY APPELLANT FIRM IN CITY A AND B RESPECTIVELY IN PUNJAB – BRANCHES REGISTERED UNDER DIFFERENT TIN NUMBERS– GOODS SENT ON BRANCH TRANSFER BASIS FROM A TO B – TAX DEPOSITED BY B – ALLEGED BY DEPARTMENT THAT THE TRANSACTION AMOUNTED TO SALE BY A AS TWO DIFFERENT TIN NUMBERS RENDERS THE BRANCHES AS SEPARATE ENTITIES LIABLE TO PAY TAX – BEING A TAXABLE PERSON A OUGHT TO HAVE COLLECTED TAX FROM ANOTHER TAXABLE PERSON B AND THE LATTER TO BE RESPONSIBLE FOR PAYING TAX ON VALUE ADDITION- APPEAL BEFORE TRIBUNAL – HELD NO EVIDENCE TO SHOW WHETHER DUAL TIN NUMBERS ISSUED BY CONSENT OF GOVERNMENT – LACK OF PROOF REGARDING THE BRANCHES WORKING UNDER SAME CONSTITUTION – NO ACCOUNT PRODUCED SHOWING ITC NOT CLAIMED TWICE BY APPELLANT – APPELLANT GRANTED AN OPPORTUNITY TO ESTABLISH WHETHER COMPANY REGISTERED UNDER TWO TIN NUMBERS ELIGIBLE TO ENJOY STOCK TRANSFER RIGHTS – MATTER REMITTED FOR FRESH HEARING – APPEAL ACCEPTED – *S. 21, S. 2(zn) OF PVAT ACT*

Facts:

The appellant had its branch offices at Jalandhar and Zirakpur in the state of Punjab registered under two different TIN numbers. Both the branches are owned by the appellant firm and working under same title and have same constitution. The goods were sent from Zirakpur branch to the Jalandhar branch on stock transfer basis. The department contended that the branch at Jalandhar was a separate entity as it had a different TIN number and hence the taxable person at Zirakpur had to charge VAT from other taxable person at Jalandhar. Though the branch at Jalandhar had deposited the tax, yet it was required to deposit it on value addition only by claiming ITC for the amount of tax to be charged by the taxable person at Zirakpur who had separate TIN number and separate identity. Consequently the transfer of

goods from in this case amounted to sale and not branch transfer and the tax ought to have been deposited by the Zirakpur company. An appeal was filed before Tribunal.

Held:

That there is no evidence regarding the issue of dual TIN numbers to the company, as per rules or as per the consent of the government. Also, it is not proved whether both offices worked under the same constitution. The appellant has to produce account books to show it has not claimed ITC twice. As the appellant is ready to furnish evidence to establish nature of transaction and lead with evidence as to whether the company has the right to enjoy stock transfer rights while possessing two different TIN numbers, the appeal is accepted and case is remitted back to the AETC to decide after providing opportunity of hearing to the appellant to lead evidence in his favour.

Present: Mr. Aveneesh Jhingan, Advocate counsel for the appellant.

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

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

1. This appeal is directed against the order dated 23.7.2013 passed by the Deputy Excise and taxation Commissioner (A), Patiala Division, Patiala dismissing the appeal against the order dated 10.10.2012 passed by the Assistant Excise and Taxation Commissioner-cum-Senior Auditor, S.A.S. Nagar, Moahli, creating an additional demand of Rs. 9,13,541/- while framing the assessment for the year 2008-09.

2. The appellant is a unit having its head office in Mumbai and Branches at various places including that in Punjab at Jalandhar and Zirakpur. The firm is dealing in Pharmaceutical Products. It would be significant to mention that the firm has two Tin numbers in the State of Punjab, one at Zirakpur and other at Jalandhar. According to the Counsel for the appellant while applying for sales tax registration number at Zirakpur, the fact regarding the allotment of the earlier Tin number at Jalandhar was brought to the notice of the Registering Authority and it was disclosed that the firm had Tin No. 03131048600 at Jalandhar. However, both the branches are owned by the appellant firm and working under the same title and having common constitution. The goods worth Rs. 14,38,855/- taxable @ 12.5% percent were sent to its branch at Jalandhar. Similarly, the goods worth Rs. 40,34,602/- were sent for sale on consignment basis to M/s Krishna Agencies, Jalandhar which were taxable @ 4%. The total value of the goods returned from branch and commission agent taxable @4% and 12 ½ % have been shown worth Rs. 4,71,488/- and Rs. 38,408/- respectively. Thus after deducting stock return, the net value of stock transfer as well as goods went for sale on consignment basis comes to Rs. 24,76,367.73/-. The Assistant Excise and Taxation Commissioner-cum-Senior Auditor, Mohali accepted the contention of the appellant regarding the consignment to M/s Krishna Agencies on consignment basis. On the basis of the judgment passed by the Hon'ble Delhi High Court, however, it rejected the appeal of the appellant regarding the branch transfer from Zirakpur to Jalandhar. On the ground that since the branch at Jalandhar had a separate TIN Number and as such the branch at Jalandhar has to be treated as separate entity, therefore, taxable person at Zirakpur had to charge VAT from other taxable person at Jalandhar, who were duly registered and is a taxable person as defined u/s 2 (zn) of Act of 2005. It was further observed that though the tax was deposited by the branch at Jalandhar, yet it was required to be deposited on value addition only by claiming ITC for the amount of tax to be charged by a taxable person at Zirakpur who had independent Tin number and had separate identify as a taxable person in accordance with Section 21(5) of the Punjab Value Added Tax Act, 2005. Thus, it cannot be treated as branch transfer but a sale to a different taxable person.

3. Consequently, the authority declined the claim of stock transfer to branch at Jalandhar. The appeal filed by the appellant was dismissed.

4. In nutshell argument of the counsel for the appellant is that there is not much difference between the transfer by consignment and branch transfer. In the former case, the goods are transferred to the agent who sells the same on behalf of the company and deposits the tax. But the agent certainly has an independent entity having a different Tin Number, whereas in case of branch transfer the company transfers the goods/products to its different branches established at different places with the prior information to the Sales Tax Department and the said branch after selling the goods deposits the tax.

5. In the present case, there is not much dispute that the tax was deposited by the Jalandhar Branch of the appellant company. But the department disputes that since the branch at Jalandhar had an independent Tin number, therefore, it has independent entity. Consequently, the transfer of the goods from the office of the company at Zirakpur who had registered Tin number to the company at Jalandhar amounts to sale and not branch transfer, therefore, the appellant's company office at Jalandhar would have deposited value addition tax and the tax should have been deposited by the company at Zirakpur, therefore, there was evasion of tax by misuse of the two different Tin Numbers.

6. Arguments heard. Record perused.

7. The case involves two types of transfers, one by way of branch transfer to the company having same constitution at Zirakpur to the company at Jalandhar. Second case is of transfer by consignment. The goods were sent to the consignee agent at Delhi for sale. The consignee agent sold the goods of the appellant in the terms of the written agreement which provided that he will sell the goods on behalf of the appellant and would deposit tax. The VAT Officer, however, have rejected the branch transfer, but accepted the consignment transfer. While relying upon the judgments as delivered by the Hon'ble Supreme Court of India as well as the judgment delivered by the Allahabad High Court in the case of Hindustan Metal Works vs. Commissioner of Sales Tax reported as 27 STC 555, the Madras High Court judgment delivered in case of Mahendra Kumar Ishwarlals & Co. Vs State of Madras (1968) 21 STC 72 and the Delhi High Court judgment delivered in the case of Havell's India Ltd. vs. Commissioner of Vlaue Added Tax and Another (2010) 37 PHT 551 (Del) and observed that the goods sent by a taxable person to its consignment agent in pursuance of a contract for sale to M/s Krishana Agency, Jalandhar does not amount to sale. As such the sale was deducted out of its GTO and regarding to the stock transfer by the Jalandhar does not amount to sale. As such the sale was deducted out of its GTO and regarding to the stock transfer by the company at Zirakpur to the company at Jalandhar, the Assistant Excise and Taxation Commissioner has disallowed the ITC only on the ground that since both companies had different Tin numbers, therefore, the taxable person at Zirakpur are required to charge used that the Branch Officer at Jalandhar has not availed any input tax against the product. Both the offices i.e. at Zirakpur and Jalandhar are working under the same constitution. It was also urged that had Zirapur branch charged tax on the said transactions, then the said branch was liable to pay tax. The Jalandhar Branch would avail input tax credit as they have sold the goods. Had Zirapur branch deposited the tax and Jalandhar branch had deposited the VAT then additional revenue had accrued to the State exchequer.

8. As a matter of fact, sufficient evidence is missing in the case. There is no evidence on the record that whether the Tin number was issued twice to the company as per rules as well as the consent of the Government, there is also nothing to show that both offices were working under the same constitution. The appellant has not placed on record, the account books in order to show that ITC has not been claimed twice. The nature of transaction could be established by producing the invoice/delivery challan, the G.R. and other documents. To meet with this

requirement, the counsel for the appellant has offered to lead evidence if an opportunity is granted to him for this purpose.

9. In these circumstances ends of justice would meet if opportunity, as required by the appellant, is granted to lead sufficient evidence in order to establish that even if there are two Tin numbers of a company and the company having distinct Tin numbers could enjoy the right to stock transfer. The appellant has further sought time to produce time to establish, by documents, as to whether transaction in question is a stock transfer or a sale itself. The opportunity if granted would impart substantial justice to the appellant otherwise, the damage suffered by him would be huge. The necessary documents sought to be produced can't be manipulated, however, respondents would be at liberty to rebut those documents.

10. Resultantly, this appeal is accepted, impugned order is set-aside and the case is remitted back to the Assistant Excise and Taxation Commissioner, Patiala to decide the case afresh after providing opportunity to the appellant to lead evidence in his favour.

11. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 225 OF 2012

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IDASA INDIA LTD.
Vs
STATE OF PUNJAB

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

16th July, 2015

HF ▶ Assessee

Assessment in remand has to be made by the same officer whose order has been challenged in appeal.

JURISDICTION – ASSESSMENT - TERRITORIAL JURISDICTION OF DESIGNATED OFFICER TO FRAME ASSESSMENT – ADDITIONAL DEMAND RAISED BY DESIGNATED OFFICER OF DISTRICT A – WRIT FILED – ORDER SET ASIDE FOR FRESH ASSESSMENT BY AUTHORITY OUTSIDE DISTRICT 'A' – CASE TRANSFERRED TO DISTRICT B AS A RESULT THEREOF– DEMAND RAISED ONCE AGAIN BY OFFICER OF DISTRICT 'B'– APPEAL FILED – MATTER REMITTED BACK – CONSEQUENTLY ASSESSMENT FRAMED BY DESIGNATED OFFICER OF DISTRICT 'A' RAISING ADDITIONAL DEMAND - APPEAL BEFORE TRIBUNAL QUESTIONING JURISDICTION OF OFFICER OF DISTRICT 'A' WHEN ALREADY CASE SENT OUTSIDE THE SAID DISTRICT FOR DECISION – NO NOTIFICATION SHOWN BY RESPONDENT CONFERRING POWER UPON THE OFFICER OF DISTRICT 'A' TO TAKE COGNIZANCE OF THE CASE AND FRAME ASSESSMENT – MATTER REMITTED TO OFFICER OF DISTRICT 'B' FOR FRESH ASSESSMENT AS AGREED BY BOTH PARTIES - APPEAL ACCEPTED- *S. 29 OF PVAT ACT*

Facts:

For the year 2005-06 assessment was framed by the Excise and Taxation officer – cum-Designated officer, Sangrur creating an additional demand. A writ was filed which led to setting aside of demand.The court directed that the assessment be framed by a different Assessing Authority of a District outside District Sangrur. The same was transferred to Mansa officer. On demand again being raised, an appeal was filed which was accepted and the case was remitted back. Consequently, the Designated Officer, Sangrur framed the assessment raising an additional demand. On dismissal of appeal against this order, an appeal is filed before the Tribunal. The appellant has contended that when the case was never entrusted to ETO Sangrur; rather the case was sent outside Sangrur for decision, the Officer at Sangrur had no jurisdiction to frame the assessment. It could either be decided by same officer entrusted by Commissioner or one having territorial jurisdiction.

Held:

No notification has been shown which confers power on the ETO, Sangrur to take cognizance of the case and to exercise the jurisdiction to frame the assessment over the case. Therefore, as agreed between the parties, the orders are set aside and sent back to the ETO, Mansa for fresh assessment after hearing the appellant. The appeal is accepted.

Present: Mr. S.P. Garg, Advocate Counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

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

1. This appeal is directed against the order dated 12.9.2012 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala dismissing the appeal against the order dated 2.4.2012 passed by the Excise and Taxation officer-cum-Designated Officer, Sangrur creating an additional demand of Rs. 2,30,75,184/- while framing the assessment for the years 2005-06.

2. The provisional assessment was framed by the Designated Officer vide order dated 27.8.2006 which was challenged by way of writ petition before the Punjab and Haryana High Court, whereupon, the Hon'ble High Court set-aside the demand and it further directed that the assessment be framed by a different Assessing Authority of a District outside district Sangrur. Accordingly, the same was transferred to the Designated Officer, Mansa. Whereupon, the Designated Officer, Mansa, vide order dated 25.8.2009, created an additional demand of Rs. 1,61,07,305/-. Being dis-satisfied the appellant field an appeal which was accepted on 29.4.2011 and the case was again remitted back. Consequently, the Designated Officer, Sangrur framed the assessment in question on 2.4.2012 creating an additional demand of Rs. 2,30,75,184/-. The appeal filed by the appellant against the said order dated 12.9.2012 was also dismissed.

3. The argument raised by the counsel for the appellant in the case is that when the case was never entrusted to Excise and Taxation Officer, Sangrur. Rather, on the directions o the Hon'ble High Court, had sent the case outside Sangrur District for decision, then authority at Sangrur had no jurisdiction to frame the assessment. The case could be decided either by the officer to whom, it was entrusted by the Excise and Taxation Commissioner or by the officer having territorial jurisdiction over the area. The Counsel for the respondents have given the following reply to the aforesaid query in its written submissions which reads as under:-

> "*During the assessment proceedings for the assessment year 2006-07 it came to the notice of designated officer that the case relating assessment order for the year 2005-06 has been remanded by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala, back to the designated officer. Therefore, a copy of the remand order of the Deputy Excise and Taxation Commissioner (A) was obtained by personal efforts. On going through the remand order, it was noticed that the Hon'ble Deputy Excise and Taxation Commissioner (A) had directed to the designated officer to frame the assessment within two months whereas, Six months had already lapsed and nobody had taken up the case for framing the reassessment. Therefore, in the interest of Govt. revenue, Designated Officer having posted in the Sangrur District and having jurisdiction over the whole of the District initiated the reassessment proceedings immediately and issued a notice dated 11.11.2011 for 28.11.2011. The dealer was directed to appear before the Designated Officer along with complete account books, purchase and sale bill books. However, Sh. Avtar Bansal, GM of the company appeared before the Designated officer and*

the case was adjourned to 22.12.2011 on the plea that his counsel was away to VAT Tribunal Chandigarh. Sh. Avtar Bansal, GM of the company along with Sh. K.C. Syngal Counsel of the dealer appeared before the Designated Officer on various occasions. During the assessment proceedings, the dealer was confronted with the fact that as the dealer had sold skimmed milk weighing 1,20,54,085 Kg having 0.5% fat to M/s Nestle, Moga and Smalkha (Haryana), therefore, the dealer was liable to pay purchase tax on the amount of fresh milk purchased for manufacturing desi ghee, skimmed milk powder (which are taxable under the Act ibid) and the amount of skimmed milk of the said quantity. However, Appellant denied having extracted fat out of the said milk, rather he claimed to have purchased skimmed milk as such from the dairies and milk vendors from within the state of Punjab, concentrated the same and sold as such to M/s Nestle, Moga and Smalkha (Haryana) which is tax free under the Punjab VAT Act 2005. The appellant was directed to supply complete addresses of all the milk vendors and milk dairies from which he has purchased the skimmed milk. It is due to the fact that either of the two i.e. the appellant itself or the milk vendors/dairies, has to pay purchase tax on the whole amount of fresh milk, purchased from within the State of Punjab for manufacturing taxable goods such a design ghee and skimmed milk powder. However, despite of several opportunities afforded to the dealer, the appellant failed to supply the requisite information except only the names of the milk vendors/dairies without any address. Rather, the appellant bluntly denied having the addresses of any of the said milk supplying vendors, although the payment has been made through cheques and might be purchasing milk from them, these days."

4. From the written submissions, it transpires that the Designated Officer claimed that he had territorial jurisdiction over whole of the Sangrur District and thus was competent to frame the failed to point out any such notification which may confer powers upon the Excise and Taxation Officer, Sangrur to take cognizance of the case and to exercise the jurisdiction to frame assessments over the cases pending in the District Sangrur. The adjudication of the assessment in this manner, without having power over that area, would create a chaos and resultantly, the system would end in failure both ways, either the favourites would be put in advantageous position or the persons having no cordial relations would be put to loss. As such the order passed by the Excise and Taxation Officer, Sangrur in the case, which was not within the territorial jurisdiction of the Excise and Taxation Officer, Malerkotla was quite illegal. Mrs Sudeepti Sharma, Deputy Advocate General has failed to point out as to how the Excise and Taxation Officer, Sangrur had territorial jurisdiction to try the case of the appellant. However, she has pointed out that a case relating to the assessment year 2005-06 was dealt with by the High Court and on the basis of the order passed by the High Court, the Excise and Taxation Commissioner had directed to the Excise and Taxation Officer, Mansa to try the case. Therefore, the case could be sent or tried by the Excise and Taxation Officer, Mansa or Malerkotla. In this case, it has also been pointed out that even inspite of the directions of the Excise and Taxation Commissioner for trial of the case by the Excise and Taxation Commissioner, Mansa. The excise and Taxation Officer, Sangurur has also framed the assessment for the year 2006-07 which is also completely in violation of the orders passed by the Excise and Taxation Commissioner, Patiala.

5. After hearing both the parties, in order to give a peaceful end of the controversy and in order to remove the fear of the appellant that he would thereby be seriously prejudiced, if the orders passed by the Designated Officer are allowed to stay, both the parties agree that the orders of the authorities be set-aside and the case be sent back to the Excise and Taxation

Officer, Mansa for framing the assessment afresh after hearing the appellant and considering the documents as may be produced by him.

6. In the wake of the aforesaid discussion, I accept the appeal, set-aside the impugned orders and send the case to the Excise and Taxation Officer, Mansa for framing the assessment afresh after providing an opportunity to the appellant of being heard and leading evidence. The appellant is directed to appear before the Excise and Taxation Officer, Mansa on 4.8.2015.

7. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 47 OF 2015

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KANNAN INTERNATIONAL
Vs
STATE OF PUNJAB

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

30th July, 2015

HF ▶ Revenue

Compliance of condition of predeposit for entertainment of appeal cannot be done away with as assessment order is neither void nor passed without jurisdiction.

APPEAL - PREDEPOSIT – ENTERTAINMENT OF – ADDITIONAL DEMAND RAISED ON ACCOUNT OF WRONGLY CLAIMED INPUT TAX CREDIT – DISMISSAL OF FIRST APPEAL DUE TO FAILURE OF PREDEPOSIT - APPEAL FILED BEFORE TRIBUNAL FOR WAIVER OF CONDITION OF PREDEPOSIT ON THE BASIS THAT THE ASSESSMENT ORDER IS ILLEGAL AND WITHOUT JURISDICTION- ORDER NOT FOUND VOID – MERITS OF THE CASE TO BE SEEN DURING ARGUMENTS – APPELLANT OUGHT TO COMPLY WITH THE PROVISION OF S. 62 LEST THE REVENUE MAY SUFFER HUGE LOSS – APPELLANT GIVEN TIME TO DEPOSIT THE AMOUNT – APPEAL DISMISSED – *S. 62(5) OF PVAT ACT*

Facts:
It was detected that the dealer claimed Input Tax Credit without any purchase invoices. A demand was raised amount to Rs 19,75,557/- on account of non production of the invoices. An appeal was filed before the DETC which was rejected due to failure to deposit 25% of the additional demand raised. An appeal was filed before Tribunal contending that the demand was illegal and hence, the appellant was not bound to comply with the provision of S. 62 of the Act.

Held:
That the order is neither void nor without jurisdiction. The merits of the case would be seen during arguments. The amount deposited is subject to refund in case the appellant succeeds.

Due to non fulfillment of the condition u/s 62(5) the revenue may suffer huge loss. The public money if stays at the hands of the appellant, the development would be stalled and state is likely to suffer more loss. The appellant has a huge turnover and is not unable to deposit the amount. However, more time is granted to the appellant to deposit the amount. The appeal is dismissed.

Present: Mr. J.S. Bedi, Advocate counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate general for the State.

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

1. The case for the assessment year 2012-13 was scrutinized after issuing notice u/s 29(2) of the Punjab Value Added Tax Act, 2005 by the Excise and Taxation Officer. On scrutiny, it was detected that the dealer has been claiming ITC without purchase invoices; he failed to produce the purchase invoices showing the tax @ 8.5%. Therefore, the Designated officer vide order dated 27.12.2013 created additional demand of Rs. 19.75,557/-. The appellant preferred the appeal before the Deputy Excise and Taxation Commissioner, Jalandhar Division, Jalandhar which was dismissed on 2.9.2014 for non compliance of Section 62(5) of the Punjab Value Added Tax Act. Hence, this second appeal.

2. Argument heard. Record perused.

3. The case of the appellant mainly is that demand created is illegal, therefore he is not bound to deposit 25% of the additional demand in compliance with the provisions of Section 62(5) of the Act.

4. To the contrary, the Counsel for the respondents has stated that no appeal could be entertained without deposit of 25% of the total amount of additional demand, penalty and interest.

5. Before pursing to decide the case, I need to reproduce Section 62(5) of the Act which reads as under:-

> ***Section 62(5):-*** *No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of additional demand, penalty and interest, if any.*
>
> *EXPLANATION:- For the purposes of this sub-Section "additional demand" means any tax imposed as a result of any order passed under any of the provisions of this Act or the rules made thereunder or under the Central Sales Tax Act, 1956 (Act No. 74 of 1956)."*

6. This provision was amended w.e.f. 17.8.2011 by way of Notification in the Government Gazette. The present assessment is for the year 2012-13. Therefore, the amended provisions of Section 62(5) of the Act would apply in the facts of the present case.

7. Having perused the order passed by the Designated Officer, the same is neither void nor without jurisdiction, so as to call for any relaxation/s 62(5) of the Act. The merits of the case would be examined after the appeal is heard on merits. If the appeal is decided in favour of the appellant then the amount so deposited would be refunded/adjusted. The taxing statues introduced such provisions in order to create a check over the institution of false and frivolous cases with an intention to put off the responsibility and to gain time with intention not to deposit the tax. The money loss is no irreparable loss. However, for non fulfilment of the condition under section 62(5) of the Act the revenue may suffer huge loss. The public money if stays at the hands of the appellant, the development would be stalled as such the state is likely to suffer more loss. Thus, the appellant was justified in not entraining the appeal without compliance of the said provisions. The appellant is a taxable person and has huge turn over of Rs. 46,18,91,994/- therefore, he can't be said to be a poor person unable to deposit 25% of the additional demand. However, it would be expedient in the interest of justice if the appellant is still granted more time to deposit 25% of the additional demand.

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

PUNJAB VAT TRIBUNAL

APPEAL NO. 172 OF 2014

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JAI BHOLE BRICKS INDUSTRIES
Vs
STATE OF PUNJAB

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

3rd August, 2015

HF ▶ Assessee

Fresh assessment to be framed due to violation of rules of natural justice before passing assessment order and non speaking order being passed on appeal against it.

ASSESSMENT – NATURAL JUSTICE – NOTICE – ASSESSMENT YEAR 2009-10 – DEMAND RAISED ON ACCOUNT OF DISPARITY BETWEEN LARGELY PURCHASED RAW MATERIAL AS COMPARED TO LOW EXTENT OF PRODUCTION AND SALE – GROSS TURNOVER AND TAX ASSESSED UPHELD ON APPEAL – INTEREST QUASHED – APPEAL BEFORE TRIBUNAL – ASSESSMENT ORDER PASSED IN ABSENCE OF ASSESSEE – NO PROPER SERVICE OF NOTICE PRIOR THERETO – ASSESSEE NOT CONFRONTED WITH THE DOCUMENTS WHICH WERE MADE BASIS OF ASSESSMENT – ASSESSMENT ORDER LACKING DETAILS OF SUCH DOCUMENTS – ORDER PASSED BY FIRST APPELLATE AUTHORITY NOT REASONED – APPEAL ACCEPTED – MATTER REMITTED TO DESIGNATED OFFICER TO DECIDE AFRESH- *S. 29 OF PVAT ACT.*

The appellant was engaged in manufacturing and sale of bricks. A demand was raised by the designated officer on account of purchases of raw material shown to a large extent whereas production and sale was on lower side. On filing of appeal, the interest levied was quashed but the assessment of GTO and tax was upheld. On further appeal before Tribunal, it is held that though the assessment order mentioned that notices were issued to the appellant before framing of assessment yet no date of notices and to whom it was issued is mentioned. Also, the case was decided in the absence of the appellant which cannot be said to be a proper notice. The documents relied upon for framing of assessment were never confronted to the appellant. No detail is revealed by the order regarding documents relied upon by the designated officer. The order passed by the appellate authority lacks reasons. Accepting the appeal, the case is remitted back to the Designated officer to decide afresh.

Case referred:
M/s Steel Authority of India Ltd 32 PHT 122

Present: Mr. J.S. Bedi, Advocate counsel for the appellant

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

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

1. This appeal is directed against the order dated 28.2.2014 passed by the Deputy Excise and Taxation Commissioner (A), Jalandhar Division, Jalandhar (herein referred as Ist appellate authority) whereby, he while rejecting the appal, observed that the Designated Officer rightly determined the GTO for the assessment year 2009-10 and tax assessed accordingly and no interest is leviable. Therefore, the interest levied was quashed.

2. The facts of the case are that the appellants are registered as taxable persons under the Punjab Value Added Tax Act and running brick klin and engaged in the sale of bricks. The Designated Officer while finalizing the assessment noticed that the taxable person has shown purchases of raw material to a large extent and shown the product and sale of bricks on lower side. The Designated Officer after examining the case and applying the industrial norms of BKO Industry, created additional demand to the tune of Rs. 2,37,097/-.

3. In order to assail the finding of both the authorities, the appellant preferred the appeal which was also dismissed on 28.2.2014.

4. While assailing the impugned orders, the appellant has urged that the notice issued by the Designated Officer was not in accordance with the provisions of the Act and the Rules. He has passed bald and cryptic order and has tried to settle things in a philosophical manner. The order has been passed without referring to any provision of law. The orders are non speaking and passed without application of mind. No norm has been cited on the basis of which the production of particular quantity of bricks could be made on the consumption of one ton of coal. The Designated Officer has fixed the turn over by making over vogue observations, without quoting any specific rules, and only on the basis of coal consumed without appreciating the following circumstances:

1. Quality of the coal;
2. Weather conditions prevalent in the area where B.K.O. is located.
3. Quality of the soil.
4. Expenses over the employees and other labour working over the BKO.
5. Percentage of production of brocks against one ton of coal.

5. The Designated Officer has wrongly followed the norms fixed by Civil Supplies Department and has also not taken care of the basis on which assessment was made quo the other taxable persons in the similar trade. It was further urged that vide notification framed u/s 3 of the Act, the Excise and Taxation Officer was not conferred with the powers to levy interest u/s 32 of the Punjab Value Added Tax Act, 2005.

6. To the contrary, the Counsel for the respondents has supported the judgment by urging that the same is well founded and will respond. The appellant did not appear before the Designated Officer despite service.

7. Having considered the rival contentions, the case relates to the assessment year 2009-10. The Annual statement was filed on time. The order framing the assessment was passed on 11.10.2013. Though, it is mentioned in the order that notices were issued to the appellant before framing the assessment yet no date of notices, when issued, has been mentioned. Record reveals the issuance of two notices, but it is not clear as to when and upon whom these notices were served. From 30.9.2013, the case was adjourned to 11.10.2013. On that day, it was not mentioned, in the said order, that the appellant was served for 30.9.2013, but on 11.10.13 itself, the case was decided in the absence of the appellant which can not be said to be a proper service. Though the order reveals that some accepted formula and industrial norms of BKO industry were made the basis of the assessment yet the appellant was not

confronted with those documents. The order does not reveal the details of the documents relied upon by the Designated Officer. The order appears to be non speaking. The counsel has relied upon the judgment M/s Steel Authority of India Ltd. reported in 31 PHT page/122, wherein it was observed as under:-

> *"Reason is the heart beat of the every conclusion. It introduces clarity in any order and without the same it becomes life less. Giving the reason is one of the fundamentals of the good administration."*

The settled cannons of law also make it crystal clear that the adverse party must be confronted with the material used against him, which is made the basis of the order passed against him. The order passed by the appellate authority lack reasons. The order is bad in as much as the appellant was not properly served by the Designated Officer before passing the order dated 11.10.2013. The 1st appellate authority has also not assigned any reasons for his decision. Only four lines order was passed which is not sufficient and hardly meets with the requirement of law requiring passing of a reasoned order.

8. Resultantly, this appeal is accepted, impugned orders are set-aside and the case is remitted back to the Designated Officer to decide the same afresh. The appellant is directed to appear before the Designated Officer on 18.8.2015.

9. Pronounce din the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 75 & 76 OF 2014

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AARTI INTERNATIONAL LTD.
Vs
STATE OF PUNJAB

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

3rd August, 2015

HF ▶ Assesee – dealer

ITC cannot be denied on purchase of cotton merely because entire sales are routed from an exempted unit of cotton yarn (not cotton) and the latter has shown entire sales as exempted sales.

INPUT TAX CREDIT – EXEMPTED UNIT – COTTON PURCHASED FROM FIRM B AFTER PAYMENT OF TAX – ITC ALREADY REFUNDED ORDERED TO BE RECOVERED IN VIEW OF NOTIFICATION ON THE BASIS THAT FIRM B HAD IN TURN PURCHASED IT FROM AN EXEMPTED UNIT A – UNIT A SHOWED ITS ENTIRE SALES AS EXEMPTED SALES – APPEAL BEFORE TRIBUNAL -HELD THAT EXEMPTED UNIT NOT EXEMPTED FOR COTTON BUT COTTON YARN – THEREFORE, FIRM B CANNOT BE SAID TO HAVE PURCHASED COTTON FROM EXEMPTED UNIT - APPELLANT PURCHASED COTTON FROM FIRM B AS PER RECORD AFTER PAYING TAX – REFUND OF ITC AROSE ON ACCOUNT OF ACTUAL INPUT TAX CREDIT AND NOT NOTIONAL TAX CREDIT – RECOVERY COULD BE MADE FROM THE EXEMPTED UNIT – REFUND RIGHTLY GIVEN TO APPELLANT – APPEAL ACCEPTED – *S. 13, 92(3)(a) OF PVAT ACT AND CONDITIONS DATED 6/4/05 FOR DEFERMENT & EXEMPTION.*

The appellant was a manufacturer of cotton yarn and related goods. It had purchased cotton from firm B after payment of tax which in turn had purchased it from firm A, an exempted unit. The ITC had been claimed by the appellant on the basis of payment of tax to its selling dealer B. The amount so granted was ordered for recovery on the ground that the entire purchase was routed from an exempted unit and that the exempted unit has shown his entire sales as exempted sales, therefore, the appellant was not eligible for ITC. An appeal was filed before the First Appellate authority who dismissed it. However, the Tribunal accepted the appeal and remitted the matter to the AETC for passing a fresh speaking order. The Tribunal had held in the first instance that firm A, an exempted unit, was exempted for manufacturing of cotton yarn and not cotton. The appellant had purchased cotton routed from the exempted unit and through firm B. So it cannot be said that firm B had purchased cotton from an exempted unit. Firm A, not being an exempted unit for cotton, the refund if any, is not to arise on account of notional input tax rather actual tax credit. Moreover, the appellant cannot be asked to produce the returns of the exempted unit.

The relief was again declined to the appellant in remand proceedings. The First Appellate Authority remanded the matter on appeal in view of directions and findings of the Tribunal. An appeal is filed before Tribunal against the remand order.

The Tribunal has held that it is established on record that the appellant had purchased cotton after paying purchase tax to firm B and was entitled to refund of ITC as it had been routed from the unit not exempted for other goods. The recovery if at all should be made from firm A. Therefore, in the light of the findings given earlier, the AETC was supposed to implement the same rather taking another view on the issue. The ld. DETC ought to have directed the AETC to implement the order of Tribunal rather than remitting the same. The appeal is accepted and refund granted on account of purchase from firm B is correct.

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

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

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

1. This order of mine shall dispose of two connected appeal Nos. 75 and 76 of 2014 against the order dated 16.12.2013 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissing the appeals against the order dated 30.8.2013 passed by the Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Ludhiana Division, Ludhiana in Appeal No. 75 of 2014 creating an additional demand of Rs. 12,89,988/- while framing the assessment for the year 2006-07 and in Appeal No. 76 of 2014, creating additional demand of Rs. 21,28,349/- under the Punjab Value Added Tax Act, 2005 while framing the assessment for the year 2007-08.

2. The case has a chequered history, the appellant is a dealer duly registered under the provisions of the Punjab Value Added Tax Act, 2005 as well as under the provisions of the Central Sales Tax Act, 1956. He is engaged in the manufacturing of cotton yarn and related goods and for this purpose, he has established two units. The appellant purchased raw cotton from M/s Roshan Lal Girdhari Lal Killanwali, as well as Jai Ram Budh Ram taxable persons under the valid tax invoices in the different years. The appellant had paid due tax and claimed the ITC in his return filed in Form VAT-20 for the years 2006-07 and 2007-2008 respectively. The appellant claimed Input Tax Credit, obtained and enchashed Rs. 28,37,799/- in the year 2007-08 on the ground of its paying tax to the selling dealer which is leviable on the sale made by the selling dealer. The appellant was never made aware of the origin of goods by the said selling dealer as per the normal trade practice. Subsequently, on scrutiny of the assessment proceedings, the Assessing Authority observed that the entire purchase was being routed from M/s Roshan Cotspin (exempted Unit) and hence, the appellant was not entitled to the ITC. A notice was issued to the appellant regarding reassessment. Ultimately, the claim of the appellant was rejected in view of the Notification dated 6.4.2005 as amended w.e.f. 26.7.2006. Pursuant to the order of withdrawal of the refund, recovery was ordered. The appellant filed the appeal against the order of the Assessing Authority whereupon, the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissed the appeal and observed that the appellant firm was not entitled to the Input Tax Credit.

3. Feeling aggrieved, the appellant preferred the appeal before the VAT Tribunal, Punjab on 18.11.2011, who vide its order accepted the appeal, set-aside the orders passed by the authorities below and remitted the case back to the Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Ludhiana for passing a speaking order afresh. However, the

Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Ludhiana without making compliance of the order of VAT Tribunal, Punjab again declined relief to the appellant.

4. Feeling aggrieved, the appellant again preferred the appeal. Wherein, the First Appellate Authority vide its order dated 16.12.2013, accepted the fact that Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Ludhiana had not passed the correct order, keeping in view of the findings of the VAT Tribunal and remitted the case back to the Designated Officer to pass afresh order in view of the directions and findings returned by the Tribunal order dated 8.10.2012. However, being aggrieved against the order of remand, appellant has preferred this second appeal.

5. Arguments heard. Record perused.

6. The present case has been snow balling in the hands of the authorities who are playing a blind game which has seriously affected the appellant who is under going the risk of withdrawal of the order of the refund. The exemption certificate reveals that M/s Roshan Cotspin was eligible for availing exemption from sale or purchase tax on cotton yarn. Cotton is liable to purchase tax and yarn is liable to sales tax. The appellant had purchased the cotton which is liable to purchase tax. The unit (Roshan Cotspin) was not exempted for cotton yarn and not 'cotton' Regarding the payment of tax by the First seller, the VAT Tribunal observed as under:-

> "*The submission regarding charging of VAT by the first seller does not prove anything as an exempted unit can also charge vat on its invoices as the exemption granted is exemption from payment of tax and moreover, the Punjab D&E rules do not debar charging of tax by the exempted unit. Moreover, in the hindsight, even if the exempted unit has charged VAT from the seller of the appellant, then the same turnover must have been reflected in its return as taxable sales by the exempted unit whereas, the appellant has submitted the entitlement certificate of the exempted unit, but again does not produce returns of exempted unit, which anyhow were verified by the designated officer, while framing assessment from the data available on department's computer, which clearly reflected that first seller i.e. exempted unit has shown its entire sale as exempted sale only."*

7. However regarding the entitlement of the refund, the VAT Tribunal vide his order dated 8 Oct., 2012 observed as under:-

> *"I have well considered the rival contentions. It is an admitted fact that M/s Jai Ram Budh Ram, Abohar had purchased cotton from M/s Roshan Cotspin. The case of the department is that M/s Roshan Cotspin has shown his entire sales as exempted sales and no sales have been shown as net sales subject to VAT i.e. Column (I) (j) show of returns and that if M/s Roshan Cotspin has conducted any trading activity, then such sales necessarily would have been shown in the said column of returns. The AETC has relied upon the notification dated 6.4.2005 as amended w.e.f. 28.7.2006. As per Entitlement Certificate No. 43/1998-99 purportedly issued by the AETC, Muktsar, M/s Roshan Cotspin Ltd, Killiawnwali is entitled to the deferment of exemption from payment of tax for the manufacture of 'cotton yarn' and not cotton. In view of this fact, it cannot be said that the cotton has been purchased by M/s Jai ram Budh Ram, Abohar from an exempted unit. As per condition 2(5)(8) laid down in the notification dated 6.4.2005 amend e.f. 28.7.2006 being relied upon by the Department "(8) A taxable person purchasing goods from an exempted unit and all subsequent taxable persons to whom these goods are sold, shall not be entitled to any refund arising <u>on account of the notional input tax credit in the hands of the first taxable person."</u> Herein this case, M/s Roshan Cotspin being not an exempted unit for 'cotton', the refund, if any, is not to arise on account of notional input tax credit rather actual input tax credit. It has been argued on behalf of the State that the appellant has submitted the Entitlement Certificate of the exempted unit, but again, it has not produced the returns of the*

exempted unit. Strangely enough, the appellant is being asked to produce the returns of the other Firm i.e. M/s Shan Cotspin Ltd., Killianwali, which too would have filed the returns with the Department.

In view of the above discussion, this matter requires reconsideration by the AETC-cum-Senior Auditor, Ludhiana-II. Consequently, the impugned orders are set-aside and this case is remanded back to the AETC-cum-Senior Auditor, Ludhiana-II for passing a fresh speaking order in accordance with law within two months from the date of receipt of the certified copy of this order after examining the matter in the light of the fact that M/s Roshan Cotspin Ltd. Killianwali is an exempted unit for the manufacture of cotton yarn only and not cotton. Accordingly, this appeal is disposed off.

8. In his order dated 8th Oct, 2012, the VAT Tribunal, Punjab specifically observed that M/s Roshan Cotspin Ltd., Killanwali, from whom the appellant had purchased the cotton, is an exempted unit for the manufacture of 'cotton yarn' only and not 'cotton'. It is also established on the record that M/s Roshan Cotspin Ltd. had sold the cotton to M/s Jai Ram Budh Ram, Abohar who in turn sold the same to the appellants after taking the purchase tax. Since, M/s Roshan Cotspin Ltd., Killianwali was exempted from tax for manufacturing the cotton yarn, therefore the other goods which it had sold were subject to payment of tax and the appellant having paid the tax to M/s Jai Ram Budh Ram, Abohar were entitled to claim the ITC on the said purchase. The findings of the Tribunal to the effect that M/s Roshan Cotspin Ltd., Killianwali was an exempted unit for manufacture of cotton yarn only and not cotton having become final between the parties are biding upon them. Therefore, in the light of the aforesaid findings, the Assistant Excise and Taxation Commissioner was bound to implement and give effect to the same instead taking another view on the issue against the observations made by the VAT Tribunal, Punjab. The Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Ludhiana what to talk implementing the order passed by the VAT Tribunal Punjab, did not mention a word about passing the order by the VAT Tribunal.

9. Since M/s Roshan Cotspin Ltd was not exempted from payment of tax on the sale of cotton, therefore, M/s Jai Ram Budh Ram must have purchased the cotton from M/s Roshan Cotspin on payment of tax, therefore, the recovery of the tax could be made from M/s Roshan Cotspin selling dealer. So the appellants could not be refused the ITC as claimed by them. Having gone through, the order passed by the Deputy excise and Taxation Commissioner, while remitting the case back, has not made any justification of remitting the same when the order passed by the tribunal was as clear as water. Therefore, he should have directed the Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Ludhiana to implement or give effect to the order passed by the VAT Tribunal, Punjab, then to direct him to reconsider.

10. Resultantly, I accept the appeal, set-aside the impugned orders and the refund granted to the appellant on account of purchase of cotton from M/s Jai Ram Budh Ram is correct. Consequently, the order of penalty and interest imposed upon him are quashed. However, the department would be at liberty to issue process to claim recovery relating to said tax from the selling (defaulter) dealer.

11. in the Appeal No. 76 relating to the assessment year 2007-08, the appellants had purchased the cotton from M/s Roshan Lal Girdhari Lal (Selling Dealer), therefore, the process for claiming recovery against the said selling dealer or the first selling dealer whoseoever may be the defaulter. (The respondents may claim protection u/s 72 of the Act, on the point of limitation, as the question of liability has been determined by me vide this judgment).

12. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 146 OF 2014

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WELSPUN PROJECTS LTD.
Vs
STATE OF PUNJAB

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

27th April, 2015

HF ▶ Dealer- appellant

Absence of enquiry report indicating non existence of firm at the address given in the invoice cannot be the basis to conclude ingenuineness of documents.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – OPPORTUNITY OF BEING HEARD – GOODS IN TRANSIT REACHED ICC– INVOICE IN FAVOUR OF JALANDHAR FIRM – GOODS SUSPECTEDLY MEANT FOR UNLOADING IN BHATHINDA – PENALTY IMPOSED U/S 51(7) ON BASIS OF CONSIGNEE FIRM NOT FUNCTIONING AT GIVEN ADDRESS AND NO ACCOUNT BOOKS PRODUCED BY APPELLANT – APPEAL BEFORE TRIBUNAL – NO SERVICE OF NOTICE UPON APPELLANT BY DETAINING OFFICER – NOTICE ISSUED BY DESIGNATED OFFICER ON EMPLOYEE OF FIRM - NO PROOF OF RECEIPT OF SUCH NOTICE – ABSENCE OF ENQUIRY REPORT INDICATING NON EXISTENCE OF BUSINESS PREMISES AT GIVEN ADDRESS – APPEAL ACCEPTED ON BASIS OF IMPROPER SERVICE OF NOTICE AND LACK OF REASONABLE OPPORTUNITY OF HEARING – MATTER REMITTED BACK TO FOR HEARING OF APPELLANT BEFORE PASSING A SPEAKING ORDER- *S. 51(7) OF PVAT ACT*

Facts

The goods were carried from outside state to Talwandi Sabo, District Bhatinda. On reaching the ICC, the documents were produced. It was suspected that the goods were to be unloaded at Bhatinda whereas the firm was registered in Jalandhar. Penalty u/s 51(7) of PVAT Act was imposed on the basis that the consignee firm was not functioning at the given address and that the appellant did not produce any account books to prove the genuineness of the transaction. Aggrieved by the orders passed by the authorities below, an appeal is filed before Tribunal.

Held:

On perusal of the order passed by the detaining officer, it is held that no notice was served upon the appellant. The case was transferred to the Designated officer who is stated to have issued notice on the employee of the firm, though there is no evidence regarding receipt of that notice. No enquiry report has been submitted regarding functioning of the firm. In absence of the enquiry report, it cannot be concluded that appellant was not functioning and has no TIN number. Therefore, neither proper notice nor opportunity of being heard is given to appellant before imposing penalty. Accepting the appeal, the Designated officer is directed to pass a speaking order after hearing the appellant.

Present: Mr. Amit Bajaj, Advocate counsel for the appellant.

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

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

1. The Excise and Taxation officer-cum-Designated officer ICC Dhabi Gujjran, District Patiala vide order dated 25-11-2010 imposed a penalty of Rs. 1,12,172/- u/s 51(7)(b) of the PVAT Act, 2005. The appeal filed by the appellant was dismissed on 28-11-2013.

2. On 9-11-2010, a driver along with vehicle bearing registered number HR-56-9402 while carrying parts of the structural steel from Hinjewadi Pune to Vilalge Phulokheri Talwandi Sabo, reached ICC Dhabi Guijran, the driver produced the following documents before the Excise and Taxation Inspector:-

3. Invoice No. 2966 dated 31-10-2010 of M/s Tata Blue Scope Steel Ltd. Hinjewadi Taluki Mulshi Pune issued in favour of M/s M.S.K. Products (India) Jalandhar Ltd for Rs. 3,73,905/-.

4. Consignment Note No. 3244 dated 31-10-2010 of M/s Apogee Logistics (India) (PVT) Ltd. Pune

3. On scrutiny of the documents, the checking officer came to know that the goods were to be unloaded at Talwandi Sabo District Bahtinda whereas the firm was registered at Jalandhar. Suspecting that the goods were not accompanying the genuine documents imposed a penalty of Rs. 1,12,172/- on the following grounds:-

1. The consignment was in favour of M/s M.S.K. projects (India) Limited but on inquiry it was found that the said firm was not functioning at the given address.

2. The appellant had not provided any account books and other documentary proof to prove the genuineness of the covering documents.

4. Counsel for the appellant has argued that the appellant had not concealed anything. He is a dealer and imports the goods from outside the state of Punjab and pays the advance tax. The driver had not left the ICC without depositing the entry tax. The vehicle was detained on 9-11-2010 and he had deposited his tax on his return on 10-11-2011. He had not left the ICC before, paying the tax. He has further argued that it is not a case of search and seizure. An examination of returns /VAT 20 of the appellant reveals that all the entries regarding consignment are clearly shown. There is no way in which attempt to keep the transaction out of account books could be made. The appellant had no intention to evade tax. He has further argued that the order passed by the authorities are non speaking and unreasoned.

5. To the contrary the state counsel has countered the arguments while saying that penalty order is quite valid.

6. Having perused the order passed by the Detaining Officer, it appears that the same is ex-parte having been passed only after issuing one day notice that too on the driver of the vehicle. No notice was served upon the appellant. The case was transferred to the Designated Officer on 12-11-2011. Notice as issued by the designated officer for 16-11-2011 and thereafter for 25-11-2011. Notice is stated to have been received by Bhiku Bhai an employee of the firm. But there is no evidence if the appellant/or his employee actually received the notice.

7. Though it is stated in the order that on enquiry, it was found that the appellant had no business premises at the given address. No enquiry report regarding the functioning the firm has been produced before me. In the absence of such enquiry report, it can not be said that

appellant was not functioning and has no TIN number. Thus it appears that the Designated Officer did not properly serve notice and provided reasonable opportunity to the appellant before imposing an order of penalty. The order of penalty appears to have been passed without application of mind.

8. Resultantly this appeal is accepted impugned orders are set aside and the case is remitted back to the Designated Officer with a direction that he would pass a speaking order after hearing the appellant. The appellant is directed to appear before the Designated Officer on 7-7-2015. The officer would decide the case within 3 months from the date of receipt of the order.

PUNJAB VAT TRIBUNAL

APPEAL NO. 27 OF 2015

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GOEL RICE & GEN MILLS
Vs
STATE OF PUNJAB

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

30th June, 2015

HF ▶ Assessee

Assessment framed for the year 2005-06 after a period of three years from the date of filing of returns is time barred in view of S. 29(4-A) of the Act.

LIMITATION – ASSESSMENT – ASSESSMENT YEAR 2005-06 – ASSESSMENT ORDER PASSED IN YEAR 2011- APPEAL BEFORE TRIBUNAL – ASSESSMENT FOR THE YEAR 2005-06 OUGHT TO HAVE BEEN FRAMED WITHIN A PERIOD OF THREE YEARS FROM THE DATE OF FILING OF RETURNS AS PER S.29(4-A) OF THE ACT – S. 29(4-A) IS A NON OBSTANTE CLAUSE AND OVERRIDES OTHER SECTIONS – THEREFORE, ASSESSMENT FRAMED BEYOND THE LIMITATION PERIOD I.E. 2009 IS HELD TO BE TIME BARRED – APPEAL ACCEPTED – *S. 29(4-A) OF THE PVAT ACT*

Facts:
In the present case, a demand was raised for the assessment year 2005-06. The assessment order was passed in the year 2011. It was contended by the appellant that the order was barred by limitation being passed beyond the prescribed period of three years as per section 29(4-A) of the Act.

Held:
That section 29(4-A) was exclusively framed for the year 2005-06 and that it has not been omitted even after the amendment of subsection (4)of section 29 which came into effect from 15/11/2013. Thus the year 2005-06 which is in question is to be governed by section 29(4-A) as it is free from the impact of Amendment. As per section 29(4-A) of the Act, the assessment can be framed only within a period of three years from the date of filing of annual returns. It is a non obstante clause and overrides other provisions. Therefore, the assessment was to be framed by 2009 in this case and not beyond. The appeal is accepted resultantly.

Cases relied upon:
State of Punjab and another vs. M/s Des Raj Him Sen (2012) 43 PHT page/1
State of Punjab and Other vs. Bhagwanpura Sugar Mills, VSTI (2014), B-842
Commissioner of Income Tax Vs. Escorts Farm Pvt. Ltd (1989) 180 ITR page/280

Present: Mr. Vivek Goyal, Chartered Accountant Counsel for the appellant.
Mr. Sudeepti Sharma, Deputy Advocate general for the State.

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

1. This appeal is directed against the order dated 5.8.2014 passed by the Deputy Excise and Taxation Commissioner (A), Faridkot Divsion, Headquarter, Bathinda dismissing the appeal against the order dated 29.7.2011 passed by the Designated Officer-cum-Assistant Excise and Taxation Commissioner, Faridkot creating an additional demand of Rs. 4,88,373/- under PIDF Act.

2. The assessment in this case was framed by the Designated Officer-cum-Assistant Excise and Taxation Commissioner, Faridkot Division, Headquarter Bathinda for the year 2005-06 on 29.07.2011. The Counsel has urged that the ld. Designated Officer has created superfluous demand of Rs. 4,88,373/-. No purchase tax is leviable on paddy consumed in export of rice as per Section 15(a) of the Central Sales Tax Act, 1956. Paddy and rice are the same thing for the purposes of Section and 5 of the Central Sales Tax Act. It was also argued that PIDF is leviable at the first stage and in circumstances as mentioned in the Punjab Value Added Tax Act. Since no purchase tax is leviable on the paddy consumed in the export of rice, therefore, PIDF is not leviable in respect of the paddy consumed in export of rice. The counsel has also submitted that the order of the assessment having been passed on 29.7.2011 is barred by limitation in view of Section 29(4-A) of the Act of 2005. The issue was also raised before the Deputy Excise and Taxation Commissioner (A), Faridkot Division, Headquarter, Bathinda, but he ignored the arguments without mentioning the same in the judgment.

3. In the present case, no demand was raised under the Punjab Value Added Tax Act as well as Central Sales Tax Act. The amount raised in the assessment year 2005-06 relates to PIDF Act. The provisions of Punjab Value Added Tax Act, 2005 apply at the time of assessment/reassessment etc.

4. The plain argument as advanced by the counsel for the appellant is that the assessment for the year 2005-06 could be framed by 20.11.2009 but it having been framed after five years i.e. 29.7.2011 is clearly time barred. As such the said assessment can be dubbed as void.

5. To the contrary State has failed to advance any valid argument to controvert this issue.

6. Heard, the main issue which required adjudication is whether the assessment for the year 2005-06 as framed on 29.7.2011 is time barred as per Section 29(4-A) of the Act. The assessments in the normal course of events as per unamended provisions of the Act of 2005, are required to be framed within three years from the date, the last return is filed. Section 29(4) of the Act as it existed prior to the amendment (which was effective from 15th Nov., 2013) reads as under:-

Section 29(4) *"An assessment under sub section (2) or sub-section (3) may be made within three years after the date when the annual statement was filed, whichever is later:*

PROVIDED THAT where circumstances so warrant, the Commissioner may, by an order in writing, allow assessment of a taxable person or a registered person after three years, but not later

> *than six years from the date, when annual statement was filed or due to be filed by such person, whichever is later."*

By the amendment of the aforesaid Section w.e.f. 15.11.2013, the new Section (4) has been substituted by the old Section, which reads as under

> *An assessment under sub section (2) or sub-section (3), may be made within a period of six years after the date when the annual statement was filed or due to be filed, whichever is later.*

However in the light of sub section (4-A) added to the Section 29 of the Act, the assessments for the year 2005-006 were excluded from the impact of the amendment as the sub-section (4-A) has not been omitted even after the amendment of sub section (4) of Section 29 of the Act was brought on the statue book. Section 29 (4-A) prescribes the period limitation within which the assessment for the year of 2005-06, may be framed. Section 29 (4-A) reads as under:-

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

7. On the plain reading of the Section 29(4) and (4-A) of the Act, it transpires that the unamended provisions of the Act are applicable to the present assessment, therefore as per Section 29 (4-A) of the Act, the assessment for the year 2005-06 could be framed within three years w.e.f. the date when the annual statement was filed. In the ordinary course u/s 29(4) of the Act the Commissioner by passing a specific order could extend this period of limitation upto six years. The outer limit to extend the period for framing the assessment under the orders of the Commissioner was six years. The power to extend this period upto six years has been given by statue in cases where there is negligence, willful, neglect on the part of the officer or to condone the circumstances viz. The officer remained so loaded with the work that it was not practically possible for him to decide the return within the time fixed by the officer; by vacation of office or transfer, arrest or suspension of the officer or other unforeseen circumstances. He may also extend such period if the mischief was created by the party who contributed to delay the assessment. The counsel for the appellant has argued that the Commissioner was competent to pass the order of extension after adjudication of the matter by separate individual order, but the counsel has failed to show any provision of law where some formal adjudication was required before passing such order however, the state has imposed a duty upon the Commissioner to record the circumstances which warrant for extension. As such, it would be suffice to observe that the meaning of words "where circumstances so warrant" is subjective satisfaction of the Commissioner while passing such order. Since the State is vested with the powers to extend the time for framing the assessment, the minimum and maximum limit to make such extension was fixed and it was not required for the Commissioner to make a formal adjudication but only requirement appears to be that the Commissioner would issue a notice, call for the objections and then after hearing the parties would record his subjective satisfaction regarding the circumstances which enable him to extend or deny the request for extending time. Without going further deep into this controversy, it would be suffice to say that in the present case, no order of extension was required to be passed by the Commissioner as the present case involves the assessment for the year 2005-06, the period of limitation for framing of which is governed by Section 29(4-A) of the Act. The said section begins with the non obstente clause which excludes other provisions and provides for only 3 years period within which the assessment could be framed.

8. While adding this provision, the legislature was clear in its intentions not to frame the assessments by way issuing notice u/s 29(2) of the Act, after the expiry of three years commencing from 20.11.2006. In the instant case also, the annual statement for the assessment year 2005-06 was filed on 20.11.2006. Therefore, the assessment should have been framed upto 20.11.2009 and not beyond that.

9. I find support to my this view from the judgment delivered in the case of State of Punjab and another versus M/s Des Raj Bhim Sen (2012) 43 PHT page/1, wherein, their lordships while affirming the findings returned by the Tribunal observed that the assessment for the year 2005-06 could not be framed beyond 20.11.2009. Subsequently, in the case of State of Punjab and Other versus Bhagwanpura Sugar Mills, VSTI (2014), B-842, the Hon'ble High Court while relying upon the judgment delivered in case of Des Raj Bhim Sen (Supra) affirmed the view that the assessment for the year 2005-06 without seeking permission to frame the assessment beyond 20.11.2009 from the competent authority, could not be framed after 20.11.2009.

10. In case of Commissioner of Income Tax Versus Escorts Farm Pvt. Ltd (1989) 180 ITR page/280 observed that if the assessment is time barred then any decision taken on merits would be of no consequence and would have to be ignored. No judgment to the contrary has been brought to the notice of the Tribunal to take different view then what was formed by me in the present case.

11. Having examined the order passed by the First Appellate Authority, it may be mentioned that the order, being non speaking is bad in eye of law. As such the same is bound to be set-aside and the order passed by the designated officer being time barred has to be ignored.

12. Resultantly, this appeal is accepted and impugned orders are set-aside. However, the department would be at liberty to take any other step for amendment for the assessment by adopting any other procedure as provided under law.

13. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO.235 OF 2014

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G.N. GENERAL MILLS
Vs
STATE OF PUNJAB

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

27th July, 2015

HF ▶ Revenue

Amended provision of section 62(5) to apply in this case as it came into force before the cause of action (filing of return) arose.

PREDEPOSIT – APPEAL -ENTERTAINMENT OF- ASSESSMENT YEAR 2009-10 – RETURN FILED ON 22.11.2011 – DISMISSAL OF FIRST APPEAL FOR NON COMPLIANCE OF S. 62(5) – APPEAL BEFORE TRIBUNAL – WAIVER OF CONDITION OF PREDEPOSIT REQUESTED ON THE BASIS THAT THE AMENDMENT OF SECTION 62(5) OF THE ACT REQUIRING DEPOSIT OF 25% OF ADDITIONAL DEMAND CAME MUCH LATER THAN THE FILING OF RETURN FOR THE YEAR IN QUESTION – ASSESSMENT ORDER CONTENDED TO BE VOID – HELD AMENDMENT OF S 62(5) CAME MUCH BEFORE THE CAUSE OF ACTION AROSE IN THE PRESENT CASE – AMENDED PROVISIONS TO APPLY IN THE PRESENT CASE -NOTHING ON RECORD TO SHOW ASSESSMENT ORDER AS VOID – APPEAL DISMISSED – OPPORTUNITY GIVEN TO APPELLANT TO FULFILL THE CONDITION OF PREDEPOSIT – *S. 62(5) OF PVAT ACT*

The appellant filed its returns for the year 2009-10 on 22.11.2011 and the assessment thereafter was framed on 1.12.2011 by the Designated officer. The appellant filed an appeal before the first appellate authority which was dismissed on the grounds of non compliance of sec 62(5) of the Act. An appeal is filed before Tribunal contending that the assessment order is void and that the condition of predeposit would not apply in the present case as the cause of action arose when the returns were filed for the year 2010-11 which is much before the amendment of sec 62(5) coming into force.

It is held that there is nothing to show that the assessment order is void. Also, the annual return being filed on 22.11.2011 i.e. after the date of amendment, the amended provisions would apply to the facts of the present case also. The appeal is dismissed and an opportunity is granted to the appellant to fulfill the condition of predeposit for entertainment of appeal before the DETC.

Present: Mr. J.S.Bedi Advocate alongwith Mr. Rohit Gupta,
Advocate Counsel for the appellant.

None for the State

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

1. The appeal of the appellant, against the order dated 1.12.2011 passed by the Designated Officer, S.B.S. Nagar, Nawanshahar was dismissed by the Deputy Excise and Taxation Commissioner (A), Jalandhar Division, Jalandhar, solely on the ground of non compliance of the provisions of 62(5) of the Act.

2. The assessment for the year 2009-10 is in question. On issuance of notice, the appellant filed the reply. Ultimately, the assessment was framed on 1.12.2011 by the Designated officer, District S.B.S. Nagar, Nawanshahar. The appeal filed by the appellant was not entertained for non compliance of Section 62(5) of the Act, 2005.

3. Heard. Section 62(5) of the PVAT Act reads as under:-

Section 62(5):- *No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of additional demand, penalty and interest, if any.*

EXPLANATION:- *For the purposes of this sub-Section "additional demand" means any tax imposed as a result of any order passed under any of the provisions of this Act or the rules made thereunder or under the Central sales Tax Act, 1956(Act No. 74 of 1956)."*

4. This amendment came into force on 17.8.2011 by the way of ordinance to take the shape of notification lateron. As per the notification, the appeal was to be entertained only on the deposit of 25% of the additional demand.

5. The contention of the counsel is that the order passed by the Appellate Authority is non speaking and void abinitio and the cause of action arose on the date when the return for the year 2010-11 was filed, therefore, the amendment is not applicable to the facts of the present case. As such, the appellant can't be compelled to comply the amended provisions.

6. The contention is without any merit. The annual return was filed on 22.11.2011 i.e. after the amendment and there is nothing to show if the assessment is void abinitio, therefore, the amended provisions would apply to the facts of the present case as also to all the pending assessments.

7. Resultantly, this appeal is dismissed and an opportunity is granted to the appellant to deposit the 25% of the additional demand within one month from the date of receipt of the copy by the 1st Appellate Authority or the appellant which may be earlier. In that situation, the Deputy Excise and Taxation Commissioner may entertain the appeal.

8. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 94 OF 2015

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KAMDHENU STEELS
Vs
STATE OF PUNJAB

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

13th August, 2015

HF ▶ Assessee

Matter is remitted back to first appellate authority to enquire if ITC available is on account of purchases from ingenuine dealers and whether adjustable against requirement of predeposit .

PREDEPOSIT – APPEAL – ENTERTAINMENT OF – ADJUSTMENT OF INPUT TAX CREDIT – DEMAND RAISED BY ASSESSING OFFICER - DISMISSAL OF FIRST APPEAL FOR FAILURE TO DEPOSIT 25% OF ADDITIONAL DEMAND – APPEAL BEFORE TRIBUNAL REQUESTING ADJUSTMENT OF THE REVERSED ITC TOWARDS PAYMENT OF PREDEPOSIT – ITC ALLEGED TO HAVE BEEN CLAIMED ON ACCOUNT OF PURCHASES FROM INGENUINE DEALERS AS PER DEPARMENT– HELD,ORDER PASSED BY FIRST APPELLATE AUTHORITY SILENT REGARDING VERIFICATION OF ITC AND ITS ADJUSTMENT TOWARDS PAYMENT OF ADDITIONAL DEMAND – MATTER REMITTED BACK TO DETC TO SPECIFICALLY PASS ORDER AS TO WHETHER REVERSAL OF ITC CLAIMED IS ON ACCOUNT OF PURCHASES FROM INGENUINE DEALERS AND WHETHER IT COULD BE ADJUSTED TOWARDS PAYMENT OF 25% OF THE DEMAND RAISED – APPEAL ACCEPTED – *S.13 AND S. 62(5) OF PVAT ACT*

Facts

An additional demand was raised by the Designated officer under the PVAT Act against which an appeal was filed. The appeal was accepted and the matter was remitted back. The Assessing Authority created the same demand again. On appeal before DETC, the appeal was dismissed for non compliance of section 62(5) of the Act. Aggrieved by the order, an appeal is filed before Tribunal contending that the appellant had reversed the ITC and the said reversal could be adjusted towards payment for predeposit u/s 62 (5) of the Act. The department on the other hand has contended that on earlier appeal before DETC no predeposit was required. But on the latter one, the condition of section 62(5) had to be complied with. Also, the claim of ITC claimed is alleged to be on account of purchases made from ingenuine dealers.

Held

That the order of the Ld. DETC is silent regarding whether the ITC claimed is available to the appellant and whether it could be adjusted against the demand of predeposit. Therefore, the matter is remitted back to the DETC to pass a specific order mentioning if ITC is on account of

purchases from ingenuine dealers and if it could be adjusted against the 25% of the additional demand. The appeal is accepted and impugned order is set aside.

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

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

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

1. This appeal is directed against the order dated 15.4.2014 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissing the appeal of the appellant solely on the ground of non compliance of Section 62(5) of the Punjab Value Added Tax Act, 2005.

2. The Excise and Taxation officer-cum-Designated Officer, Mandi Gobindgarh created additional demand of Rs. 18,36,316/- under the Punjab Value Added Tax Act, 2005 on 28.12.2012. The appellant filed the appeal against the said order which was allowed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana on 21.6.2013 and remitted the case back to the Excise and Taxation Officer-cum-Designated Officer, Mandi Gobidngarh. However, Excise and Taxation Officer/Assessing authority created the same demand. Aggrieved by the said order dated 29.11.2013, the appellant preferred the appeal before the Deputy Excise and Taxation Commissioner(A), Ludhiana Division, Ludhiana which was dismissed for non compliance of Section 62(5) of the Act.

3. The prime contention raised by the appellant is that at the time of filing the appeal before the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana, the appellant had surrendered the reversal of ITC for Rs. 4,56,580/- to meet with the requirement of Section 62(5) of the Act. The appellant has not got adjusted the said reversal against any of the heads therefore the reversal to the tune of Rs 4,56,580/- may be considered towards compliance of Section 62(5) of the Act as the said reversal could be adjusted towards payment of 25% of the additional demand.

4. To the contrary, the counsel for the respondent has urged that the order passed by the Excise and Taxation Officer dated 28.12.2012 was set-aside by the Deputy Excise and Taxation Commissioner(A), Ludhiana Division, Ludhiana on 21.6.2013. Therefore, the case was decided afresh on 15.4.2014. At the time of the filing appeal earlier before the Deputy Excise and Taxation Commissioner no money was deposited to comply with the requirement of the Section 62(5) of the Act. The amount of Rs. 4,56,580/- which was against the reversal of ITC can not be considered to be a deposit and fulfilment of the condition as envisaged under Section 62(5) of the Act. As the seller firm was not genuine no proof regarding the validity of the transaction has been produced. The Appellant had already taken the benefit of the ITC previously and double benefit can not be awarded to him.

5. Having gone through the order dated 29.11.2013 it transpires that the ITC to the tune of Rs. 6,08,786/- was dis-allowed on the ground that the same was not verified. Now the appellant wants the reversal of the amount of Rs. 4,56,580/- qua the ITC claim in the assessment year 2014-15.

6. In the light of the specific contention raised by the respondent that ITC has been claimed on account of the purchase from the ingenuine dealers. The matter requires to be verified. The appellant ahs specifically raised the plea before the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana regarding the adjustment of the reversal of ITC against the 25% of the additional demand. Before the amount is adjusted, the Deputy

Excise and Taxation Commissioner would hold enquiry and report as to whether this amount of ITC was available to the appellants and whether this reversal could be adjusted against the 25% of the additional demand which is a condition precedent for entertaining the appeal?" The impugned order is silent quo these queries. Resultantly, this appeal is allowed, impugned order is set-aside. The case is remitted back to the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana to pass a specific order (after making enquiry) to the effect that "whether this amount of Rs. 4,56,580- reversed earlier was on account of purchase from the ingenuine dealers and whether this reversal could be adjusted against the 25% of the additional demand." the appellant is directed to appear before the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana on 27.8.2015.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 421 OF 2014

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PUNJAB IRON STORE
Vs
STATE OF PUNJAB

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

13th August, 2015

HF ▶ Appellant – dealer

Penalty is to be levied only on the excess quantity of goods in transit and not on the entire value of goods.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – EXCESS GOODS – GOODS(TMT BARS AND PIPES) IN TRANSIT – DOCUMENTS PRODUCED – DISCREPANCY FOUND IN WEIGHMENT SLIP – GOODS FOUND IN EXCESS THAN MENTIONED IN DOCUMENTS – GOODS DETAINED – ADMISSION BY APPELLANT REGARDING EXCESS WEIGHT BEING CARRIED – PENALTY IMPOSED U/S 51(7) OF THE ACT ON THE ENTIRE VALUE OF GOODS AS CARRIED IN TRUCK AND THOSE FOUND IN EXCESS – APPEAL BEFORE TRIBUNAL- ADMISSION REGARDING EXCESS WEIGHT BEING CARRIED NOT PROVED INCORRECT – VAT STOOD PAID ON QUANTITY MENTIONED IN DOCUMENTS – PENALTY TO BE PAID ON THE DIFFERENCE AND NOT THE ENTIRE VALUE OF GOODS – APPEAL ACCEPTED – *S. 51(7) OF PVAT ACT*

The goods (Pipe and TMT bars) were carried from Mandi Gobindgarh to Bhunderi when they were intercepted and the documents were produced by the driver. The discrepancy regarding the weighment slip was pointed out as the goods were found in excess than mentioned in the weighment slip produced before the officer. The statement of the consignee firm admitting that the goods were in excess was recorded and penalty was imposed u/s 517)(b) of the Act on the total value of the goods. On appeal before Tribunal it is held that the admission by the appellant regarding the excess goods is not proved to be incorrect. Tax had to be paid on the excess weight. The contention that the penalty had been imposed on the entire value and not on the difference found in weight is accepted by the Tribunal. Penalty ought to be paid on the difference found in quantity. Accepting the appeal, the matter is remitted back for reconsideration and passing order in the light of observations.

Present: Mr. Rakesh Cajla, Advocate counsel for the appellant.

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

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

1. The Assistant Excise and Taxation Commissioner, Mobile Wing-cum-Deputy Director (Investigation), Patiala (herein referred as the Designated Officer vide order dated 8.5.2008 imposed a penalty of Rs.1,51,236/- under Section 51(7)(b) of the Punjab Value Added Tax Act, 2005.

2. Feeling aggrieved, the appellant preferred the appeal which was also dismissed by the Appellate Authority on 20.1.2014, hence this second appeal.

3. On 28.4.2008, the driver of the vehicle No. HR37A-6247 while carrying Pipe and T.M. T. Bars from Mandi Gobidngarh to Bhunerheri was intercepted whereupon, the driver produced the following documents:-

1. VAT Invoice No. 304 & 305 dated 28.4.2008 issued by M/s Ridhi Sidhi Steel Bhandar, Guru Ki Nagri, Mandi Gobidngarh, in favour of above dealer, for Rs. 3,51,870/- & 57,325/-, respectively.
2. G.R. No. 769 & 770 dated 28.4.08 issued M/s Shri Guru Nanak Devji road carrier, G.T. Road, Mandi Gobindgarh.

4. The Detaining Officer detained the goods for verification. Thereafter, he referred the case to the Designated Officer who issued a notice in response to which Shri Raj Kumar, Partner of the consignee firm, appeared before him. When confronted with the documents and the weighment slip a serious discrepancy was detected.

5. As per weighment slip No. 3799, dated 28.4.2008, duly issued by M/s Satyan Weighing System, weight of goods came to 20.600 M.T. After deducting 7.000 M.T. (tare weight of vehicle) actual weight loaded in the truck came to 13.400 M.T. The two invoices issued at two different TIN numbers in favour of M/s Punjab Iron Store, revealed the weight as 11.235 M.T. Thus after deducting the weight as mentioned in the weight invoices, the net excess weight came to be 2.365. The Designated Officer after calculating the price of the goods at the market rate (i.e. Rs. 40/- per Kg) issued a notice to this effect, the appellant had not shown the excess goods in the VAT invoices worth Rs. 94,600/-. The Detaining Officer had also recorded the statement of Shri Raj Kumar, Prop. of the consignee firm where he had admitted that the goods weighing 2.365 M.T. were in excess. The Designated Officer after completing the enquiry imposed a penalty to the tune of Rs. 1,51,236/- u/s 51(7) (b) of the Punjab Value Added Tax Act, 2005 on the total price of the goods weighing 11.235 M.T. i.e. Rs. 5,04,120/-. The appeal filed by the appellant was also dismissed.

6. Arguments heard. Record perused.

7. The appellant appears to have two firms which are working under the name and style of Punjab iron Store, Devigarh, Distict Patiala and Punjab Iron Store, Main Bazar, Bhunerheri as he was representing both the firms in the present case. He had purchased 95.10 Qtl of T.M.T. Bars for Rs. 3,66,486/- and 15.25 Qtl of Iron pipe for Rs. 60,076/- from M/s Ridhi Sidhu Steel Bhandar, Mandi Gobindgarh. He had loaded the pipe as well as TMT bars in the same truck and when he was on his way to Devigarh he was apprehended. He had admitted in his statement that on weightment of the truck, the goods were found to be in excess by 2.365 M.T. for which he had no answer. The admissions are very good evidence unless proved to be incorrect. He also could not counter these admissions by proving that weightment slip as issued by M/s Satyan Weighing System was not correct. He had also not paid any tax for excess goods weighing 2.365 M.T. worth Rs. 94,600/-. Since, it was a case of excess weight therefore the appellant was bound to pay tax on the said excess weight. The appellant has no material argument to rebut the same.

8. The last contention raised by the counsel for the appellant is that the Department could recover penalty only on the price of goods worth Rs. 94,600/- which were found excess in the truck for which tax was not paid and not on the quantity for which he had already paid the tax. It is an intrastate transfer. The documents reveal that the VAT has already been paid over the goods weighing 11.235 M.T.

9. I have also checked the price of the goods as determined by the respondents. It appears to have been rightly assessed. Therefore, the appellant was liable to pay the penalty only on the goods worth Rs. 94,600/- and not over the whole quantity of the goods for which he had already paid the tax. The Designated Officer has erred in assessing the penalty on the entire quantity of goods. Therefore, the case requires a relook qua the calculations.

10. Resultantly, I accept the appeal, set-aside the impugned order to the extent of the penalty which should have only been over the excess goods and remit the case back to the Designated Officer for reconsideration and passing the order in the light of the aforesaid observations. The parties are directed to appear before the Designated Officer on 4.9.2015.

11. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 368 OF 2014

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SINGAL UDYOG
Vs
STATE OF PUNJAB

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

20th August, 2015

HF ▶ Revenue

Input tax credit, inadmissible on account of fraudulent transactions, could not be adjusted towards payment for predeposit.

PREDEPOSIT – APPEAL – INPUT TAX CREDIT – INADMISSIBILITY OF – APPEAL DISMISSED BY DETC FOR NON COMPLIANCE OF CONDITION OF PREDEPOSIT – APPEAL BEFORE TRIBUNAL CONTENDING THAT APPELLANT READY TO PRODUCE INVOICES IN SUPPORT OF HIS CLAIM FOR ITC WHICH COULD BE ADJUSTED TOWARDS PAYMENT FOR PREDEPOSIT - ETO DIRECTED TO EXAMINE THE DOCUMENTS – REPORT GIVEN AGAINST THE ADMISSIBILITY OF ITC ON ACCOUNT OF FRAUDULENT TRANSACTIONS ON PART OF APPELLANT – APPEAL DISMISSED – *S. 13 AND S. 62(5) OF PVAT ACT*

Facts

The appellant had filed an appeal before the DETC which was dismissed on the grounds of non compliance of S. 62(5) of the Act. An appeal is filed before Tribunal contending that the dealer appellant was ready to produce the VAT invoices required to verify ITC available to him which could be adjusted towards payment of predeposit. The Tribunal, consequently, directed the ETO to examine the VAT invoices and the admissibility of the ITC available to the appellant. Pursuant to the order, the ETO reported that the transactions entered into by the appellant were fraudulent, collusive and in connivance of the selling dealers. Therefore, no such ITC could be made towards calculation of 25% of the additional demand.

Held

Based on the report of the ETO that the Input Tax credit was not available to the appellant, it is held that the DETC could not entertain the appeal without satisfactory proof of predeposit of 25% of the additional demand as required u/s 62(5) of the Act. Dismissing the appeal, appellant is granted one month time to comply with the provision of 62 (5) failing which the order of DETC would remain intact.

Present: None for the appellant.
Mr. N.D.S. Mann, Additional Advocate General for the state.

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

1. This appeal is directed against the order dated 20.8.2014 passed by the Deputy Excise and Taxation Commissioner(A) Ludhiana Division Ludhiana, dismissing the appeal for non-compliance of section 62(5) of the PVAT Act, 2005. The main contention as raised by the appellant earlier was that he had claimed ITC, which was rejected on the ground that he had not produced the VAT invoices. The appellant had contended that he was ready to produce the VAT invoices for verification. In this back ground of the case, this Tribunal had sought verification of the ITC's. The extract of the order dated 9.2.2015 in this regard reproduced as under:

> *"Mr. Kulbir Singh, Advocate counsel for the appellant has stated that the ITC available to the appellant was rejected on the ground that he has not produced the VAT invoices and the appellant has brought the VAT invoices today. If the VAT invoices are perused and considered, then ITC would be available to the appellant which could be adjusted against 25% of the additional demand. The ETO, Ludhiana is directed to examine the VAT invoices and submit his report regarding admissibility of the ITC available to the appellant for the year 2011-12. The appellant would appear before the ETO on 16.2.2015 and the latter would submit his report within two months. Adjourned to 30.3.2015."*

2. Pursuant to the order, Excise and Taxation Officer, Ludhiana-1 made a detailed report. The operative part of the report (Annexure AX) is reproduced as under:

> *Moreover plea of the dealer that RC's of selling dealers from whom this dealer has made purchases worth crores and claimed huge ITC against the same, has been cancelled i.e., later on i.e., after the date of purchases. He has quoted the judgment of the Hon'ble High Court in the case of M/s Gheru Lal Bal Chand vs. State of Haryana and another cited as (2011) 40 PHT 145 (P&H) is in favour of the dealer but the Hon'ble High Court while delivering the present judgement held that "No liability can be fastened on the purchasing registered dealer on account of non payment of tax by the selling registered dealer in the treasury unless fraudulent, or collusion or connivance with the registered selling dealer or its predecessor is established". The Hon'ble court has decided the case in favour of the dealer with conditions mentioned above. The said conditions of fraudulent, collusion or connivance are established in the present case. The entire system was run by the dealers for such a long time. Involving turnover of crores of rupees, with connivance and collusion causing loss to the state exchequer by way of availing in admissible ITC.''*

3. From the perusal of the report, it transpires that the transactions as entered into by the appellant were fraudulent or collusive and in connivance of the selling dealers. Therefore, the said transactions were not accepted to make available the ITC. In view of the matter, no such adjustment of the ITC could be made towards the calculation of 25% of the additional demand. The appeal could not be entertained by the DETC without satisfactory proof of deposit of 25% of the additional demand as required under section 62(5) of the act read with rule 71(3) of the Rules.

4. Resultantly, I do not find any merit in the appeal, the same is dismissed. However, appellant is granted one month more time from the receipt of the copy of the order to comply with section 62(5) of the act. On doing so, the appeal shall be entertained, otherwise the order passed by the DETC would remain intact.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 197 OF 2013

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SAHIB STEEL INDUSTRIES
Vs
STATE OF PUNJAB

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

13th August, 2015

HF ▶ Revenue

Penalty upheld as ingenuine invoice shown reflecting transaction between two sister concerns which otherwise found to be purchased from third party without invoice.

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – INGENUINE INVOICE – GOODS IN TRANSIT – INVOICE PRODUCED ON INTERCEPTION SUSPECTED – STATEMENT OF DRIVER SUBMITTING GOODS BEING LOADED FROM ANOTHER FIRM A – ENQUIRY HELD – ADMISSION BY PARTNER OF FIRM B REGARDING GOODS BEING LOADED FROM ITS PREMISES WITHOUT INVOICE – GOODS DETAINED – INVOICE SHOWING PURCHASE FROM FIRM C PRODUCED DURING PROCEEDINGS BY APPELLANT – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL – INVOICE SHOWN DURING INTERCEPTION REFLECTED GOODS SENT FROM ONE SISTER CONCERN TO ANOTHER IN SAME LOCALITY AND SAME ADDRESS – INVOICE PRODUCED BY APPELLANT LATER APPEARS TO BE MANIPULATED – STATEMENT OF DRIVER HELD TO BE UNTRUE IN THE ABSENCE OF ANY INVOICE SHOWING THE ALLEGED PURCHASE – STATEMENT OF PARTNER OF FIRM C FOUND CORRECT – EVASION OF TAX ATTEMPTED - PENALTY UPHELD– APPEAL DISMISSED – *S. 51(7) OF PVAT ACT*

Facts

The appellant's goods (M.S.Bar) were in transit when they were intercepted. Three invoices were shown. One of them was suspected to be ingenuine it being issued by Sahib Steel Industries (appellant) in favour of Sahib Steel International. On inquiry, the driver disclosed that the goods were loaded from another firm A. The premises of firm A were found in possession of firm B whose partner disclosed that he had sold the goods from his premises without any invoice to the appellant. The goods were detained. During proceedings the appellant submitted that the goods were loaded from firm C and a Bill had been issued for those goods, a copy of which was produced. However, penalty u/s 51 was imposed. On dismissal of first appeal, an appeal was filed before Tribunal.

Held

The invoice shown by the driver on interception was issued by consignor in favour of his own sister concern located in the same locality bearing same address. The statement made by the partner of firm B cannot be disbelieved as he has nothing to gain out of it. The statement of

driver is ingenuine as no invoice was produced to show goods being loaded from firm A as submitted by him. The statement of the appellant regarding goods being bought from firm C is untrue as the invoice appears to be manipulated later. It was never produced on the day of interception or thereafter. Thus, goods were purchased from firm B without issue of invoice to evade tax. The earlier invoice is false showing the transaction between the consignor and consignee who are actually sister concerns. This was meant to evade tax. The appeal is dismissed and penalty upheld.

Present: Mr. Ravi Nandan Arora, Advocate counsel for the Appellant.

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

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

1. The Excise and Taxation Officer, Mobile Wing, Ludhiana on 1.3.2007 detained the driver alongwith vehicle No. PB23E-7996 loaded with M.S. Bar (R.D.) on G.T. Road, Khanna. On demand, the driver of the vehicle produced the following documents:-

1. Invoice No. 2783 dated 1.3.2007 issued by M/s P.V. Industries G.T. Road, Alour in favour of Sahib Steel Industries, Motia Khan, Mandi Gobidngarh for a sum of Rs. 30,744/-.
2. Invoice No. 0096 dated 1.3.2007 issued by M/s Anand Steel Industries Alour in favour of Sahib Steel International, Motia Khan, Mandi Gobidngarh for a sum of Rs. 83,794/-.
3. Invoice No. 488 dated 1.3.2007 issued by M/s Sahib Steel Industries Motia Khan. Mandi Gobidgargh in favour of Sahib Steel International, Motia Khan, Mandi Gobidngarh for a sum of Rs. 3,49,954/-.

   No dispute has been raised regarding the invoices at Sr. No. 1 & 2 however, dispute is regarding invoices at Serial No. 3 above regarding 15,365-MT of M.S. Brar.

2. On inquiry, the driver disclosed that out of these goods 10MT of the goods were loaded by him from M/s A.B. Steel Mills and the remaining goods were loaded from other four different places. However, he could not produce the bill issued by M/s A.B. Steel. Thereafter, the Excise and Taxation officer took the driver to the place of A.B. Steel Mills but the said premises, were in possession of the firm M/s Satpal Mankoo Steel Industries, khanna. The driver had also told that the goods were weighed at Jagdambe Kanda and weighing slip was taken a way by the employee of the Mill. The Excise and Taxation Officer recorded the statement of Shri Gurnek Singh, Partner of M/s Satpal Mankoo Steel Industries who had disclosed that the TMT Bar of 4MM was loaded from the premises of his factory and he had sold the same to the appellant but did not issue any invoice to him.

3. Raising suspicion about the evasion of tax, the Excise and Taxation Officer issued a notice to the owner of the goods for 2.3.2007.

4. On 2.3.2007, none appeared whereupon, the Detaining Officer forwarded the case to the Designated Officer-cum-Assistant Exercise and Taxation Commissioner, Mobile Wing, Ludhiana.

5. Upon notice, the representative of the firm appeared and got the goods released on surety bond. They also submitted that the goods have been actually loaded from M/s R.K. Steel Rolling Mills, G.T. Goad, Khanna and the said firm had issued Bill No. 046 dated 1.3.2007 for a sum of Rs. 3,46,758/- for 15.365 MT of goods. The Statement of the driver was recorded

under pressure. That apart he also produced the copy of VAT Invoice issued by M/s R.K. Steel Rolling Mills, G.T. Road, Khanna.

6. After examing the evidence on the record, the Assistant Excise and Taxation Commissioner, Mobile Wing, Luhdiana observed as under:-

1. Since the appellant had not produced the invoice of M/s R.K. Rolling Mills prior to 9.3.2007 i.e. before the Detaining Officer therefore, the invoice appears to be manipulated later on.
2. The long gap in producing the evidence and detention of goods raise suspicion with regard to preparation of in genuine record.

7. It was also observed that the enquiry rightly revealed that the goods were actually loaded from M/s Satpal Mankoo Steel Industries and the partner of the said firm had not issued any sale bill and the bills were manipulated after the goods were detained therefore, there was attempt to evade tax.

8. Consequently, the Designated Officer vide order dated 14.3.2007 imposed a penalty of Rs. 1,04,986/- U/s 51(7) (b) of the Punjab Value Added Tax Act, 2005. The appellant preferred the appeal against the said order which was dismissed, hence this second appeal.

9. Arguments heard. Record perused.

10. Apparently, the driver had loaded the goods for three firms i.e. M/s Anand Steel Industries Alour, M/s P.V. Industries, GT Road, Alour and Sahib Steel Industries, Motia Khan, Mandi Gobindgarh. The department did not dispute about two invoices but raised suspicion over the third which was purportedly issued by Sahib Steel Industries, Motia Khan, Mandi Gobindgarhin favour of his own sister concern i.e. Sahib Steel International, Motia Khan, Mandi Gobidngahr. The invoice is No. 488, dated 1.3.2007. The Invoice was in favour of his own sister concern located in the same locality as both the firms bear the same address. The statement made by Shri Gurnek Singh of M/s Satpal Mankoo Steel Industries is free from any fear, pressure or blemish. He had nothing to gain out of the said statement rather it could be used against him. Therefore, there is no reason to disbelieve his this statement. The driver had no legs to stand. According to him, the goods were loaded from the premises of A.B. Steel Mills, but no such invoice was produced to authenticate the transaction. The case of the appellant before the Designated Officer is that the goods were purchased by him from M/s R.K. Steel Rolling Mills, G.T. Road, Khanna but the same appears to be manipulated later on as the appellant did not produce any such invoice on 1.3.2007 or thereafter till the case remained pending with the Detaining Officer upto 9.3.2007.

11. In these circumstances, it appears that the goods were actually purchased from M/s Satpal Manku Steel Industries without any invoice, obviously in order to evade the tax. When the truck was apprehended then the owner of the goods manipulated the document regarding the purchase of goods from M/s R.K. Steel Rolling Mills. It may further be observed that the premises of M/s Sahib Steel Industries, Motia Khan, Mandi Gobidngarh i.e. appellant and the consignee firm M/s Sahib Steel International, Motia Khan, Mandi Gobidngarh are at one and the same place. A false invoice has been shown regarding the transaction by sister concern when actually the goods were purchase from M/s Satpal Mankoo Steel Industries without payment of tax and without invoice. Thus, it is a clear cut case of attempt to evade the tax falling within the purview of Section 51(7)(b) of the Punjab Value Added Tax Act, 2005.

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

13. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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MISC. (RECT.) NO. 6 OF 2014

IN APPEAL NO. 269 OF 2010

S.R.M.B. UDYOG
Vs
STATE OF PUNJAB

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

14th August, 2015

HF ▶ Revenue

Absence of Accounting of transaction during seizure of goods and levy of penalty being factually correct, no error found in the facts recorded by Tribunal.

RECTIFICATION OF MISTAKES – TRIBUNAL - PENALTY – CHECK POST – ATTEMPT TO EVADE TAX- TRIBUNAL UPHELD THE LEVY OF PENALTY U/S 51 – RECTIFICATION APPLICATION FILED – CONTENTION RAISED THAT THE ORDER WRONGLY MENTIONED ABSENCE OF ACCOUNTING FOR TRANSACTION- ARGUMENT REGARDING TRANSACTION BEING DULY ACCOUNTED FOR DURING ASSESSMENT WHICH WAS MUCH BEFORE PASSING OF ORDER OF TRIBUNAL REJECTED – HELD, ACCOUNTING OF TRANSACTION IS SHOWN MONTHS LATER DURING ASSESSMENT THAN THE DATE OF SEIZURE AND LEVY OF PENALTY – OBSERVATION OF TRIBUNAL, THEREFORE, NOT TO BE NEGATED – PENALTY WAS UPHELD ON THE BASIS OF OTHER DISCREPANCIES TOO- RECTIFICATION IS BARRED BY LIMITATION BEING FILED AFTER MORE THAN THREE YEARS – APPEAL DISMISSED – *S.66 & 51 OF PUNJAB VAT ACT*

Facts

A rectification application was filed by the appellant before Tribunal against the order passed by it. It was contended that the some facts were wrongly mentioned while examining order of penalty u/s 51 of the Act by the Hon'ble Chairman in as much as it was mentioned that the transaction was not mentioned in the books of accounts. It was argued that order was passed on 29.8.2011 whereas the assessing authority had framed the assessment on 22.6.2011 wherein the appellant had accounted for the transaction. Therefore, the observation regarding account books was incorrect.

Held

1) *That the rectification application has been filed beyond the limitation period.Hence, not maintainable.*

2) *That the seizure was made on 2.1.2007 and the transaction was shown in account books later when the assessment was framed (22.6.2011).Thus, it does not negate the observations made by Tribunal that the transaction was not accounted for in the books.*

3) *Penalty was imposed not only on the ground of non mentioning of transaction in books but also due to appellant not carrying proper and genuine documents at the time of reaching ICC.*

4) *Therefore, the observations made do not require any rectification after more than three years. The appeal is dismissed.*

Present: Mr. J.S. Bedi, Advocate counsel for the appellant.

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

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

1. This order of mine shall dispose off a rectification application of the order dated 29.8.2011 passed by the VAT Tribunal, Punjab.

2. The second appeal was decided by VAT Tribunal Punjab on 28.8.2011. The time period for filing the rectification is only three years, whereas, this application for rectification was not filed by the applicant within time, therefore, the application is not within limitation. While examining the order sought to be rectified, the Tribunal has passed a detailed order of penalty u/s 51 of the PVAT Act. While dismissing the appeal against the order passed by the DETC on 30.7.2009, the Tribunal discussed all the issues. The contention raised by the counsel is that some wrong facts were mentioned in the order passed by the Chairman VAT Tribunal Punjab, in as much as it was wrongly mentioned that the transaction was not mentioned in the account books. In order to buttress the arguments, he counsel has brought to my notice the relevant observations made by the Tribunal which are reproduced as under:-

> *"To cap it all, the absence of entry of this transaction in the ledger account of the appellant in itself its sufficient to presume that the invoice as well as the goods receipt was not in existence on 26.12.2006. In such circumstances, it can be hardly said that this transaction would have been accounted for in the accounts book."*

3. Mr. Bedi has also urged that the impugned order was passed on 29.8.2011, whereas, the assessing authority had framed the assessment on 22.6.2011, wherein, he had accounted for the transaction, therefore, the aforesaid observations made by the Chairman VAT Tribunal Punjab are not correct. Consequently, the rectification application could be accepted.

4. I do not find any merit in the contention. The seizure was made on 2.1.2007. The designated officer imposed penalty on 17.1.2007, therefore, the transaction if shown later on in the account books when the assessment was framed (22.6.2011), that does not negate the observations made by the Tribunal that the transaction was not accounted for in the account books. Even otherwise, the said judgment is not only on the ground that he wanted to keep the goods out of the account books. It is a case of seizure. The penalty was imposed on the ground that the appellant was not carrying the proper and genuine documents at the time he reached the ICC.

5. In these circumstances, the observations made by the Tribunal, do not require any rectification now after more than three years. The application appears to have been filed just to escape the recovery of penalty. Resultantly, I do not find any merit in this application, therefore, the same is dismissed.

6. Pronounced in the open court.

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CLARIFICATION (PUNJAB)

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BEFORE SH. ANURAG VERMA, IAS,
EXCISE & TAXATION COMMISSIONER PUNJAB

Querist: MCCAIN FOODS INDIA PVT. LTD.

30th April, 2015

The products like French fries, smiles, super wedges, potato triangles, alloo tikki and veggie nuggets are frozen ready to eat product taxable @ 14.5% under item 6 of Entry No. 15 of Schedule E.

ENTRIES IN SCHEDULE – CLARIFICATION – SECTION 85 - ALOO TIKKI, FRENCH FRIES, SUPER WEDGES ETC – CLARIFICATION SOUGHT REGARDING RATE OF TAX – CONTENDED TO BE NOTHING BUT PROCESSED VEGETABLES AND TAXABLE UNDER ITEM 8 OF ENTRY 15 OF SCHEDULE E @ 6.25% - HELD TO BE 'FROZEN READY TO EAT PRODUCT' DIFFERENTLY MARKETABLE THAN ITS RAW MATERIALS – RAW MATERIALS USED ARE SEPARATE GOODS – PRODUCT IN QUESTION IS NOT A FROZEN PRODUCT PACKED AND FROZEN TO INCREASE SHELF LIFE(LIKE PEAS) – HENCE, TAXABLE UNDER ITEM 6 OF ENTRY 15 OF SCHEDULE E @ 14.5% PLUS SURCHARGE- *ITEM NO. 6 & 8 OF ENTRY 15 OF SCHEDULE E OF PVAT ACT..*

The applicant has sought clarification regarding the rate of tax on the processed vegetable products sold by it like French fries, smiles, super wedges, potato triangles, aloo tikki and veggie nuggets etc. It was contended that these products being nothing but processed form of vegetables(Processed form of potato and other vegetables like peas and carrots)and were taxable under item no.8 of Entry No. 15 of Schedule E of the Act. The department has held that the raw materials used in manufacturing of these products are separate goods and are differently marketable commodities .The product offered by applicant is not the frozen potatoes like frozen peas which are processed and packed to increase shelf life. The product in question is altogether a new product i.e. frozen ready to eat product. Their nature is different from the raw materials used. Therefore, it is held that the goods in question are taxable under Entry 15 , item no. 6 of schedule E and is hence taxable@ 15.95%(14.5% plus 10 percent subcharge thereon)

Cases relied upon:

State of Madras v. Swasthik Tabacco Factory (1996) (17 S.T.C. p. 316) (SC)
Belimark Tobacco Co. V. Government of madras (1961) (12 S.T.C. p. 126)

Cases referred:

CCE v Agro Odour (P) Ltd, (1986 (26) ELT 460 (T))
Central Excise v Rajasthan State Chemical Works (1991) 55 ELT (444) SC)

Editorial Note

This is for the information of our readers that there is a clerical mistake in the order. The entries 6 & 8 under item 15 in schedule E have been interchanged while reproducing them in the order.

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ORDER

1. M/s McCain Foods India Pvt. Ltd., C-5, SDA Commercial Complex, Hauz Khas, New Delhi has made an application before the undersigned u/s 85 of the PVAT Act, 2005 seeking determination of a question.

2. The applicant is registered under the Punjab VAT Act, 2005 holding TIN-03082160587 and is engaged in the manufacturing and selling of processed vegetable products like French fries, Smiles, Super Wedges, Potato Triangles, Aloo Tikki and Veggie Nuggets etc. In the State of Punjab. These products are used by leading fast foods chains, hotels, restaurants, catering companies and are also used fir in-home consumption.

3. The requisite fee has been deposited by the applicant in the government treasury. He has also certified that no proceedings relating to the issue involved in this question are pending at the level of the Designated Officer or at the appellate level.

4. The applicant has sought determination of the following questions:

> "*a. Under which Schedule i.e. Schedule E or Schedule F and under which entry their product falls?*
>
> *b. Whether their products would be taxable only at the first point of sale or at all stages of sale?''*

5. Ms. Poonam Miglani and Ms. Nimisha Chaudhary, Tax Consultants from BMR and Associates Gurgaon appeared before the undersigned. She submitted that their products are nothing but the processed form of vegetables. She further submitted that their products like Burger Patty and Veggie Nuggets are processed form of potato and other vegetables like peas and carrots etc.

6. She further submitted that in the judgment in the case of CCE v Agro Odour (P) Ltd, (1986 (26) ELT 460 (T)), it has been observed that "Vegetable means class of vegetables which grows in a kitchen garden or in farm and one used for table. It should not be construed in the technical sense or in botanical point of view; it should be understood in common parlance." She referred to the dictionary meaning of "Process". She submitted that according to Oxford Dictionary, "process" is defined as follows:

> *"...a systematic series of mechanized or chemical operations that are performed in order to produce something..."*

She relied on the judgment in the case of Collector of Central Excise v Rajasthan State Chemical Works (1991) 55 ELT (444) SC). The relevant paras relied upon by the applicant are reproduced as under:

> "*11. The nature and extent of processing may vary from one class to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered the original commodity experiences a change. Whenever a commodity goes under a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity...*
>
> ....

13. The natural meaning of the word "process" is a mode of treatment of certain materials in order to produce a good result, a species of activity performed on the subject matter in order to transform or reduce it to certain stage...

...The activity contemplated by the definition is perfectly general requiring only the continuous or quick succession. It is not one of the requisites that the activity should involve some operation on some material in order to its conversion to some particular stage. There is nothing in the natural meaning of the word "process" to exclude its application to handling. There may be a process which consists only in handling and there may be a process which involves no handling or not merely handling but use or also use. It may be process involving the handling of the material and it need not be process involving the use of material. The activity may be subordinate but one in relation to further process of manufacture".

7. As per the applicant's submission, there product is a processed form of vegetables and nothing else. According to their understanding, their product is taxable under Item No. 8 of Entry No. 15 of Schedule E of Punjab Value Added Tax Act, 2005.

8. I have carefully considered the submissions made by the applicant. I am of the view that the products manufactured and sold by the Applicant i.e. French fries, Smiles, Super Wedges, Potato Triangles, Aloo Tikki and Veggie Nuggets etc. are frozen ready to eat products. The products are taxable under Item No. 6 of Entry No. 15 of Schedule E of Punjab Value Added Tax Act, 2005. Any frozen ready to eat product cannot be consumed directly. It has to be either reheated, fried, steamed, pressure cooked or undergo any other form of cooking before the final consumption.

Item No. 8 of Entry No. 15 of Schedule E of Punjab Value Added Tax Act, 2005 reads as follows:

All types of branded and packaged food products i.e. chips wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, breakfast cereals, muesli, corn flacks, pasta, macroni, biscuits, frozen desserts, **frozen ready to eat products,** meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, branded snacks and namkeens, ketchups and spreads	14.5 per cent

Item No. 6 of Entry No. 15 of Schedule E of Punjab Value Added Tax Act, 2005 reads as follows:

Processed fruits and vegetables i.e. Fruit jam, jelly, pickles, fruit squash, paste, fruit drinks and fruit juice (whether in sealed container or otherwise)	6.25%

In Item No. 6 of Entry No. 15 of Schedule E of Punjab Value Added Tax Act, 2005, items to be taxed under 6.25 per cent are clearly specified. **"i.e."** is an abbreviation used for "that is to say" **"i.e."** is used to explain, clarify or rephrase a statement rather than listing options, in which case e.g. should be used. Thus, under Item No. 6 of Entry No. 15 of Schedule E of Punjab Value Added Tax Act, 2005, only the items specified therein i.e. "Fruit jam, jelly, pickles, fruit squash, paste, fruit drinks and fruit juice (whether in sealed container or otherwise)" are taxable.

9. The applicant submitted that their product is only the processed form of vegetables. It is clarified here that raw materials used in the manufacturing of the final product i.e. French fries, Smiles, Super Wedges, Potato Triangles, Aloo Tikki and Veggi Nuggets etc. are separate goods. The product offered by the applicant is not the frozen potatoes like frozen peas which are processed and packed to increase their shelf life. The product offered by the applicant is

altogether a new product i.e. frozen ready to eat product. The nature and characteristics of the final product are totally different from the raw materials used. The raw materials used and final product are different marketable commodities.

10. In the State of Madras v. Swasthik Tabacco Factory (1996) (17 S.T.C. p. 316) (SC) the dealer in tobacco purchased raw tobacco; by processing it in a prescribed manner, converted it into chewing tobacco and sold it as such in small paper packets. The said process has been described by the Supreme Court, relying upon the decision of a Division Bench of the Madras High Court in Belimark Tobacco Co. V. Government of madras (1961) (12 S.T.C. p. 126) thus: "Taking, however, the cumulative effect of various processes to which the assessee subjected the tobacco before he sold it, it is clear that what was eventually sold by the assessee was a manufactured product, manufactured from the tobacco that the assessee had purchased. Soaking in jiggery water is not the only process to be considered. The addition of flavouring essences and shredding of the tobacco should establish that what the assessee sold was a product substantially different from what he had purchased."

11. In light of the above, I am of the considered view that French fries, Smiles, Super Wedges, Potato Triangles, Aloo Tikki and Veggie Nuggets etc. are frozen ready to eat products specified item which falls under Item No. 6 of Entry No. 15 of Schedule E to the Punjab VAT Act, 2005 and is thus taxable @ 15.95% (i.e. 14.5 percent plus 10 percent surcharge thereon).

The question is therefore determined accordingly.

CLARIFICATION (PUNJAB)

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BEFORE SH. ANURAG VERMA, IAS,
Excise & Taxation Commissioner Punjab

GODREJ & BOYCE MFG CO LTD.

17th December, 2014

Universal Drain Hose Pipes are taxable @ 6.05 % as it is included in the Entry 49 of Schedule B of the PVAT Act.

ENTRIES IN SCHEDULE – UNIVERSAL DRAIN HOSE PIPES- CLARIFICATION U/S 85 – PIPES IN QUESTION ARE FLEXIBLE IN NATURE- CONTENDED TO BE DIFFERENT FROM STEEL PIPES- HOSEPIPES HELD SEPARATELY CONTAINED UNDER ENTRY 49 OF SCHEDULE B OF THE ACT – HENCE, THE ITEM IS TAXABLE @ 6.05% INCLUDING SURCHARGE- *S.85 OF PVAT ACT*

The applicant is a manufacturer of home appliances and parts thereof. A clarification u/s 85 is sought regarding rate of tax on 'Universal Drain Hose –Pipe'. It is contended that these are flexible in nature and are different from the steel pipes and cannot be covered under Steel Pipes.

It is clarified that the term hosepipes is contained separately in the schedule and therefore, falls under Entry 49 of Schedule B of PVAT Act, 2005 and is hence taxable @ 6.05% (including surcharge).

******

ORDER

1. M/s Godrej & Boyce Mfg Co Ltd has made an application before the undersigned U/s 85 of the PVAT Act, 2005 seeking determination of a question.
2. The applicant is registered under the Punjab VAT Act, 2005 holding TIN 03972106408 and is in the business of manufacturing of home appliances and parts thereof.
3. The requisite fee has been deposited by the applicant in the government treasury. He has also certified that no proceedings relating to the issue involved in this question are pending at the level of the Designated Officer or at the appellate level.
4. The applicant has sought determination of the following question: **"What is the rate of tax on Universal Drain Hose-pipe?"**
5. Sh. Hemant Kumar Singh manager of the firm appeared before the undersigned and submitted that Hose pipes are a different commodity than the steel pipes as hose pipes

are flexible in nature whereas steel pipes are not, hence cannot be covered under the expression Steel Pipes.

6. The issue raised by him has been examined taking into account the dictionary meaning of the word Hose. The term Hose-Pipe as per the oxford dictionary is defined as;

   "A hose is a flexible hollow tube designed to carry water or fluids from one location to another."

7. Moreover the term Hosepipes is contained separately at Entry No 49 appended to Schedule B of the Punjab VAT Act, 2005. The said Entry reads as;

   "Hose pipes and fittings thereof"

8. In view of the above it is determined that "Hosepipes" fall under Entry No 49 of Schedule B of the Punjab VAT Act, 2005 and is therefore taxable at 6.05% (Including Surcharge).

The question is therefore determined accordingly.

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CLARIFICATION (PUNJAB)

BEFORE SH. ANURAG VERMA, IAS,
EXCISE & TAXATION COMMISSIONER PUNJAB

Querist : JH METALS (Jalandhar)

1st April, 2015

Stainless steel bars and rounds are declared goods covered under sec 14 of CST Act and hence taxable @ 3.8%.

Brass forgings are unlike metal castings and taxable as unspecified item @ 14.30%.

ENTRIES IN SCHEDULE – STAINLESS STEEL BARS AND ROUNDS- AS PER ENTRIES IN CLAUSE IV OF SEC 14 OF CST ACT, STAINLESS STEEL BEING AN ALLOY FORMS A SPECIAL TYPE OF STEEL WHICH FALLS UNDER HEADING ix OF CLAUSE IV OF SEC 14 OF THE ACT – STEEL ROUNDS ARE COVERED UNDER ENTRY iv OF CLAUSE IV OF SEC 14- STAINLESS STEEL BEING A SPECIAL TYPE OF STEEL, THE ROUNDS MADE OF STAINLESS STEEL ALSO FALL UNDER THE SAME HEADING – THEREFORE, STAINLESS STEEL BARS AND ROUNDS FALL UNDER DECLARED GOODS U/S 14 OF CST ACT AND ARE TAXABLE @ 3.85%

ENTRIES IN SCHEDULE – BRASS FORGINGS – CLAIMED TO HAVE SAME OBJECT AS METAL CASTINGS FALLING UNDER ENTRY 70 OF SCHEDULE B OF PVAT ACT – DIFFERENCE FOUND IN TWO COMMODITIES – TAXABLE @ 14.30%.

The applicant has sought clarification regarding the taxability of stainless steel bars and rounds (Black and bright) claiming it to be falling under entry 14 of CST Act. To determine the answer, chemical composition of the item has to be studied. It is an alloy of iron which contains 11% chromium often combined with nickel to resist corrosion. On perusal of entries , it is observed that the stainless steel being an alloy forms a special type of steel which falls under the heading (IX) of clause IV of sec 14 of CST Act, 1956. Steel rounds are observed to be covered under entry no(iv)of clause IV of sec 14 and stainless steel being a special type of steel, the rounds made out of it would fall under the same heading meaning thereby that stainless steel bars and rounds fall under the category of declared goods u/s 14 of CST Act, 1956 and are thus taxable @ 3.85 %

Regarding rate of tax on Brass forgings it was alleged to have the same object as Metal castings which fall under entry 70 of PVAT Act. But the two are formed differently and are distinct commodities. Therefore, it is taxable @ 14.30% including surcharge.

ORDER

1.M/s JH Metals, 105, Industrial Area, Jalandhar has made an application before the undersigned U/s 85 of the PVAT Act, 2005 seeking determination of a question.

2.The applicant is registered under the Punjab VAT Act, 2005 holding TIN 03591136520 and is in the business of trading of Stainless Steel bright bars and rounds, stainless steel rounds.

3.The requisite fee has been deposited by the applicant in the government treasury. He has also certified that no proceedings relating to the issue involved in this question are pending at the level of the Designated Officer or at the appellate level.

4.The applicant has sought determination of the following question:

"What is the rate of tax on Stainless Steel Bars and Rounds (Black and Bright)?

"What is the rate of tax on Rough Brass Forgings (Without machining)?"

5.Sh GR Sethi Advocate and Sh Jatinder Bahri Proprietor of the firm appeared before the undersigned and submitted that they are under the impression that the goods i.e. Stainless Steel Bars and Rounds (Black and Bright) fall in the category of declared goods U/s 14 of the CST Act, 1956 and are thus taxable @ 3.85%.

6.They further submitted that K Chaturvedi in his book on Central Sales Tax Act, 1956 stated that in communication no 4(2) ST/58 dated 12/11/1958 the department of Economics Affairs, Govt of India, clarified that stainless steel comes under the category of tool alloy. Ordinarily tool alloy is that steel, mixed with some other metal from which tools are generally made and that stainless steel is a type of tool alloy steel.

7.They also prayed that the tax on Rough Brass Forgings (without machining) be clarified as Entry No 70 of Schedule B of the Punjab VAT Act, 2005 contains "Metal Castings" only but not forging, however the object of both casting and forging is the same.

8.To determine the tax on Stainless Steel Bars and Rounds the Chemical Composition of Stainless Steel, the provisions of the Punjab VAT Act and the CST Act are to be examined. As per Entry No 21 appended to Schedule E of the Punjab VAT Act, 2005 the Iron and Steel goods (except non-cenvat paid iron and steel scrap) enumerated in the Section 14 of the CST Act, 1956 are taxable at 3.85% (including surcharge). The said entry reads as under;

"Iron and Steel goods as enumerated in Clause-IV of section 14 of Central Sales Tax Act, 1956 except Non-Cenvat paid Iron and Steel Scrap."

9.The goods as enumerated in Clause-IV of Section 14 of the CST Act, 1956 are as under;

"[(IV) Iron and steel, that is to say,-

pig iron (sponge iron) and cast iron including (ingot moulds, bottom plates), iron scrap, cast iron scrap, runner scrap and iron skull scrap;

steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);

skelp bars, tin bars, sheet bars, hoe-bars and sleeper bars;

steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);

steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections);

sheets, hoops, strips and skelp, both black and galvanized, hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in riveted condition ;

Plates both plain and chequered in all qualities

discs, rings, forgings and steel castings ;

tool, alloy and special steels of any of the above categories;

steel melting scrap in all forms including steel skull, turnings and borings;

steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings ;

tin-plates, both hot dipped and electrolytic and tin-free plates;

fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails--- heavy and light crane rails;

wheels, tyres, axles and wheel sets;

wire rods and wires-rolled, drawn, galvanized, aluminized, tinned or coated such as by copper;

defectives, rejects, cuttings or end pieces of any of the above categories;]"

10. Stainless Steel is an alloy of Iron which contains a minimum of 11% Chromium often combined with nickel to resist corrosion. On perusal of the entries it is observed that the stainless steel being an alloy forms a special type of steel which falls under the heading (ix) of Clause IV of Section 14 of the CST Act, 1956.

11. Furthermore, Steel Rounds are covered under the entry no (iv) of Clause IV of Section 14 of the CST Act, 1956 and Stainless Steel being a special type of steel, the rounds made of stainless steel also fall under the same heading meaning thereby that Stainless Steel Bars and Rounds fall under the category of declared goods U/s 14 of the CST Act, 1956 and are thus taxable @ 3.85%

12. To determine the rate of tax on Rough Brass Forgings, the two commodities i.e. Forgings and Castings are to be identified as the same or two different commodities.

13. Castings are formed when the material is heated above its melting temperature and poured into a mold where it solidifies and Forgings are physically forced into shape while remaining in a solid state – although it is frequently heated. Forgings normally have less surface porosity, finer grain structure, higher tensile strength, better fatigue life/strength, and greater ductility than castings. Castings and Forgings are therefore two distinct commodities. Furthermore, Entry no 70 of Schedule B only contains Metal Castings and not Mouldings.

14. As discussed above I have carefully considered the facts and the submissions made by the applicant and thus the queries raised by the applicant are answered as under:-

Stainless Steel Bars and Stainless Steel Rounds are covered under declared goods U/s 14 of the CST Act, 1956 and are thus taxable @ 3.85%.

15. Brass Forgings are neither covered under the Entry No 70 "Metal Castings" as appended to the schedule B of the Punjab VAT Act, 2005 and nor covered under Section 14(IV) of the CST Act, 1956 and thus taxable @ 14.30% (including surcharge).

16. The question is therefore determined accordingly.

CLARIFICATION (PUNJAB)

BEFORE SH. ANURAG VERMA, IAS,
EXCISE & TAXATION COMMISSIONER PUNJAB

Querist: PVR LIMITED (Ludhiana)

2nd March, 2015

Popcorns sold held to be taxable @ 14.30% being unspecified item.

ENTRIES IN SCHEDULE – POPCORN - CONTENTED TO BE FALLING UNDER ENTRY 123 OF SCHEDULE B TERMING IT AS NAMKEEN – HELD IN COMMON PARLANCE POPCORNS ARE DIFFERENT FROM NAMKEENS AS LATTER ARE PRESERVED UNLIKE POPCORNS WHICH ARE SOLD FRESH – POPCORNS DIFFER FROM NAMKEEN AS THERE ARE DIFFERENT FLAVOURS AVAILABLE UNLIKE NAMKEEN WHICH IS ONLY SALTED – HELD TO BE AN UNSPECIFIED ITEM TAXABLE @ 14.30 %.

Applicant has sought clarification regarding rate of tax applicable on popcorns. It is contended that since popcorns is a salty Indian snack food, it falls under category of namkeen. It is held that no entry speaks of the method of preparation of snacks or namkeen. As per common parlance namkeen and bhujia mean fried sev or dal which is manufactured using preservatives to increase shelf life whereas popcorns are sold freshly popped. Popcorns are not sold in namkeen shops usually. Also namkeen is salted while popcorns are available in different flavours. Therefore, popcorn is an unspecified item taxable @ 14.30%.

Case referred:
Central Excise, Pune- III Vs M/s Frito Lay India
M/s Pepsi Foods Ltd Vs Commissioner of Cus & C Ex Chandigarh – II

Case relied upon:
M/s Porritts & Spencer (Asia) Ltd. A Vs State Of Haryana (1978)-42-STC-433 (SC)

ORDER

1. M/s PVR Limited, #Flamez Mall, 755, Gurdev Nagar, Ferozepur Road, Ludhiana has made an application before the undersigned U/s 85 of the PVAT Act, 2005 seeking determination of a question.

2. The applicant is registered under the Punjab VAT Act, 2005 holding TIN 03492030915 and is in the business of cinema exhibition and retail entertainment.

3. The requisite fee has been deposited by the applicant in the government treasury. He has also certified that no proceedings relating to the issue involved in this question are pending at the level of the Designated Officer or at the appellate level.

4. The applicant has sought determination of the following question:

"What is the rate of tax on Popcorn?"

5. Sh Chetan Jain Advocate of the firm appeared before the undersigned and submitted that the company 'PVR' sells a variety of Popcorns (i.e. popcorns with topping of cheese), caramel popcorn (i.e. popcorns with topping of caramel) etc. Popcorn sold by the company consists of the following ingredients: Puffed Corn (i.e. the corn puffs up when heated in popcorn machines installed at the cinemas of the company), Oil/Butter, salt and other spices.

6. To substantiate his claims that Popcorn falls under the category of Namkeen, he quoted the Judgment of Hon'ble Supreme Court of India in the case of Commissioner of Central Excise, Pune- III Vs M/s Frito Lay India and the Judgment of CEGAT Court in the case of M/s Pepsi Foods Ltd Vs Commissioner of Cus & C Ex Chandigarh – II.

7. He then submitted that as per the dictionary meaning of the word Namkeen, "it is any savory snack also regarded as salty Indian snack food" and Popcorn is defined as "maize kernels when popped, typically eaten as a snack". Hence the company is of the bonafide belief that popcorn falls under the category of Namkeen.

8. Furthermore, he submitted that even as per the common parlance test Popcorn falls in the category of Namkeen.

9. The learned counsel then submitted that as per the VAT Acts of other states popcorn has been classified as Namkeen and supported the same by producing the relevant entries of the said Schedules of other states.

10. Lastly the counsel prayed that considering his submissions and the Judgments quoted by him, Entry No 123 of Schedule B i.e. Namkeen shall be interpreted to include Popcorn as a Namkeen and thus taxable at 6.05%.

11. I have carefully considered the submissions made by the applicant and opine as under:-

> *The judgment of the Hon'ble Supreme Court of India quoted by the learned counsel in the case of Commissioner of Central Excise, Pune- III Vs M/s Frito Lay India deals with the fact that whether Cheetos Masala Balls/ Puffs fall under the heading of prepared foods obtained by swelling or roasting of cereal or cereal products or under the residual heading of Central Excise. In the instant case under the provisions/schedules of the Punjab VAT Act no entry speaks of the method of preparation of snacks or namkeen and only contain a specific entry i.e. Namkeen. Therefore the judgments quoted are irrelevant and do not support the contention of the appellant.*

12. As per the judgment of Hon'ble Supreme Court of India in the case of M/s Porritts & Spencer (Asia) Ltd. A Vs State Of Haryana (1978)-42-STC-433 (SC) it is held that in a taxing statute words of everyday use must be construed not in their scientific or technical sense but as understood in common parlance, meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." Where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature. Applying the principle laid down by the Hon'ble Supreme Court of India, in common parlance Namkeen and Bhujia would mean fried sev or dal which is manufactured using preservatives to increase its shelf life whereas Popcorns are sold freshly popped. Moreover generally Popcorns are not sold on namkeen shops.

13. Also Namkeen & Bhujia is mostly salted whereas Popcorns are not just salted but are available in different flavors like cheese, caramel, tomato etc.

14. Therefore, I am of the considered view that "Popcorn" is an unspecified item and does not fall under Entry No 123 of Schedule B of the Punjab VAT Act, 2005 i.e. "Unbranded Namkeen & Bhujia" and is therefore taxable at 14.30% (Including Surcharge).

15. The question is therefore determined accordingly.

CLARIFICATION (PUNJAB)

BEFORE SH. ANURAG VERMA, IAS,
EXCISE & TAXATION COMMISSIONER PUNJAB

Querist: RICH GRAVISS PRODUCTS PVT LTD (Mohali)

13th April, 2015

Non dairy whip topping cream is considered to be a finished product unlike industrial input and taxable as an unspecified item @14.30% including surcharge

ENTRIES IN SCHEDULE – WHIP TOPPING CREAM – ALLEGED TO BE RAW MATERIAL FALLING UNDER 'INDUSTRIAL INPUTS' OF SCHEDULE B OF PVAT ACT - CONTENTION REJECTED TERMING IT AS FINISHED PRODUCT - HELD TO BE A SEPARATE COMMODITY – FOLLOWING THE JUDGEMENT PASSED BY ALLAHABAD HIGH COURT HELD TAXABLE @ 14.30 % BEING UNSPECIFIED ITEM(INCLUDING SURCHARGE)

The applicant has sought clarification regarding rate of tax applicable on 'whip creram'. It is contended that this item is used as a raw material and should be classified as an industrial input under entry 58 of schedule B of the Act. This contention was rejected in view of the judgement passed in the case [2013] 57 VST 78 by Allahabad High Court. It is held to be a separate commodity and is a combination of several ingredients not a raw material or industrial input. Therefore, it is taxable @ 14.30% including surcharge being unspecified item.

Case followed:
[2013] 57 VST 78(AP)

Case relied upon:
A.P. Products V State of A.P [2007] 8 VST 373; [2007] 6 SCC 365

Case referred:
M/s Rich Graviss Products Pvt Ltd Vs Commissioner, Commercial Tax

ORDER

1. M/s Rich Graviss Products Pvt Ltd Khasra No 53/112, Pandwala, Mubarakpur Road, Derabassi, Mohali has made an application before the undersigned U/s 85 of the PVAT Act, 2005 seeking determination of a question.

2. The applicant is registered under the Punjab VAT Act, 2005 holding TIN 03682159093 and is in the business of manufacturing and sale of bakery products.

3. The requisite fee has been deposited by the applicant in the government treasury. He has also certified that no proceedings relating to the issue involved in this question are pending at the level of the Designated Officer or at the appellate level.

4. The applicant has sought determination of the following questions:

"Whether non-dairy whip topping cream sold by the petitioner company in the State of Punjab as an input to bakery industry is liable to tax under the entry appearing at Sr No 58 of Schedule B appended to the Punjab VAT Act, 2005?"

5. Sh Narendra Sharma Advocate of the firm appeared before the undersigned. On the basis of the test analysis and certificate issued by Dr RP Singh Professor Department of Oil and Paint Technology from Harcourt Butler Technological Institute, Kanpur he submitted that whip topping is prepared from fats and oils which is further used in the bakery and confectionery industry. He also submitted that the test analysis based report of National Agricultural and Food Analysis and Research Institute describes the product i.e. whip topping as:-

"This is to state that Rich's Whip Topping is an edible mixture of vegetable oil and fats, sugar, stabilizing emulsifying agents, flavors in water. Its chief component is oil. This product is not standardized under prevention of Food Adulteration Rules, 1955 and it is categorized as a proprietary food. He also placed reliance upon the judgment of the Hon'ble Commercial Tax Tribunal Uttar Pradesh in the case of M/s Rich Graviss Products Pvt Ltd Vs Commissioner, Commercial Tax in which the product under consideration is ruled to be placed under the Industrial Inputs and thus taxable @ 4% and the same was then upheld by the Hon'ble Allahabad High Court.

6. He further submitted that whip topping is like margarine, an emulsion of oil and water which is edible but not directly consumed by human beings and is used for icing and topping. Therefore whip topping is used as an industrial input and cannot be directly used but for further processing as needed.

7. For better reappraisal of the case, it is expedient to extract entry 58 of Schedule B to the Punjab VAT Act, 2005 which reads as under:

Entry 58 of Schedule B	Industrial Inputs and Packing Materials (as per list appended to the schedule)

List of Industrial Inputs and Packing Materials

Sl. No.	**Heading No.**	**Description of goods**
2	15118.00.10	Animal or vegetable fats boiled, oxidized, dehydrated, sulphurised, blown, polymerized by heat in vacuum or in inert gas or otherwise chemically modified; inedible mixtures or preparations of fats and oils of this chapter

8. As per the applicant's version whip cream is a mere raw material and not a final product. Raw material in general sense would mean "any substance, in its natural unprocessed state that serves as the starting point for a production or manufacturing process".

9. I have carefully considered the submissions made by the applicant and am of the view that Whip Topping is an outcome of the process of emulsification, pasteurization, homogenization, chilling and ageing of the combination of the solution of sugar and hydrogenated vegetable oil. Manufacturing of whip topping involves a series of processes and is a combination of different ingredients, viz., water, edible vegetable fat, sugar emulsifiers etc. In view of the same, Whip Topping cannot be considered industrial input or a raw material rather it is a finished product.

10. Reliance is placed on the judgment of apex court while dealing with a similarly placed matter in A.P. Products v. State of A.P. [2007] 8 VST 373 (SC); [2007] 6 SCC 365. The relevant para is reproduced as:

> *"We have heard the learned counsel for the parties at length and carefully examined various judgments cited by the appellant and the respondents. It is an admitted position that the ingredients which are used in preparation of masala after grinding and mixing lose their own identity and character and a new product separately known to the commercial world comes into existence. According to the ratio in Pyare Lal Malhotra's case [1976] 37 STC 319 (SC); [1976] 1 SCC 834 the sales tax is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. Since separate commercial commodities emerge into existence, they become separately taxable goods or entities for the purpose of sales tax."*

Applying the principle laid by the Hon'ble Supreme Court of India, in the instant case it is clear that Whip Topping is not an industrial input but a separate commodity for the purpose of taxing statue.

11. The applicant in support of his contention has placed reliance on the Judgment of a single bench Judge of Hon'ble Allahabad High Court in case of Commissioner, Commercial Tax Vs M/s Rich Graviss Products Pvt Ltd. However in the similar case of the appellant it is has been held by the Double Bench of The Hon'ble High Court of Andhra Pradesh cited as **[2013] 57 VST 78 (AP)**, that Whip Topping fell under the residuary Schedule V to the Andhra Pradesh VAT Act and is taxable at 12.5%. The Hon'ble Court observed as under:

> *"Held, dismissing the petition that raw material means "any substance, in its natural unprocessed state that serves as the starting point for a production or manufacturing process". The product in question was a combination of different ingredients, viz., water, edible vegetable fat, sugar emulsifiers, and, soy-protein concentrates, stabilizers, acidity regulators, salt and also contained natural and artificial flavor substances. In view thereof, it could not be said that the product was a raw material or industrial input. Individually the ingredients of the product in question may fall under entry 100 of Schedule IV to the Act and to be eligible to be taxed at four percent, but when the ingredients were mixed together, the product in question which emerged and was a combination of the ingredients would not fall under Entry 100 of Schedule IV to the Act liable to be taxed at four per cent."*

12. As the product in question i.e. Whip Topping Cream and the relevant provisions under the Punjab VAT Act and the Andhra Pradesh VAT Act are similar, the observations of the Hon'ble Andhra Pradesh High Court applies on the instant case. Therefore, in light of the above, I am of the considered view that Whip Topping is an unspecified item which does not fall under Entry No. 58 of Schedule B to the Punjab VAT Act, 2005 i.e. Industrial Inputs and is thus taxable @ 14.30% (including surcharge).

The question is therefore determined accordingly.

CLARIFICATION (PUNJAB)

BEFORE SH. ANURAG VERMA, IAS,
EXCISE & TAXATION COMMISSIONER PUNJAB

Querist: SPEED CRAFT INDUSTRIES (H.P.)

1st April, 2015

Entry tax is leviable onV shape cross arm as it falls under the category of steel fabricated material

ENTRY TAX – STEEL FABRICATED MATERIAL – V SHAPE CROSS ARM – SINCE MANUFACTURING V SHAPE ARM INVOLVES ALL THOSE STEPS AS REQUIRED BY STEEL FABRICATED ITEM AND A NEW COMMODITY EMERGES, THEREFORE, ENTRY TAX IS LEVIABLE AS IT FALLS UNDER STEEL 'FABRICATED MATERIAL'.

A clarification is sought regarding levy of Entry tax on V shape cross arm. Since the manufacturing process involves same steps as those required for manufacturing steel fabricated material and a new commodity emerges in the process, therefore, entry tax is leviable as it falls under the category of steel fabricated material.

ORDER

1. M/s Speed Craft Industries, Plot No 37-38, Industrial Area, Tahliwal, District Una, Himachal Pradesh have submitted an application before the undersigned U/s 85 of the PVAT Act, 2005 seeking determination of a question.

2. The applicant is in the business of manufacturing of 'V Shaped Cross Arms' in Himachal Pradesh and are selling the same to Punjab State Power Corporation Limited.

3. The requisite fee has been deposited by the applicant in the government treasury. He has also certified that no proceedings relating to the issue involved in this question are pending at the level of the Designated Officer or at the appellate level.

4. The applicant has sought determination of the following question:

a) *"Whether V Shape Cross Arms is covered under the term Steel Fabricated Material and the same is liable to Entry Tax or Not?'*

b) *"Whether Entry Tax could be charged on the 'V Shape Cross Arms'?*

5. Sh Avneesh Jhingan Advocate of the firm appeared before the undersigned and submitted that the applicant is a manufacturer of V Shape cross arms in the State of Himachal Pradesh and are selling the same to Punjab State Power Corporation Ltd who is the sole purchaser in the State of Punjab.

6. He further stated that as per the clarification given by this office bearing no VAT-7-10/4472-2501 Patiala Dated 06/09/2010, it has been clarified that the entry tax on Steel Fabricated Material has been levied to protect the local transformer industry. The items

specified in the steel fabricated material included V Shape Cross Arms. The same clarification was later withdrawn on 18/03/2011. He also stated that as per the clarification the applicant is not liable to pay entry tax on V Shape Cross Arms as his entire sales are to PSPCL and entry tax is leviable only when the item sold is used for installation of transformers used in transmission lines. As the product under consideration is neither used in installation of transformers nor is used in any way in transmission of electricity and is an independent commodity therefore entry tax is not leviable on 'V Shape Cross Arms'. However relying on the Government of Punjab notification No. S.O. 272/9/2000/S.3-A/2010 dated 18th August, 2010, the Punjab State Power Corporation Limited has been retaining 12.5% on account of entry tax on purchase of V-shaped cross-arms from the payments to be made to the applicant.

7. To determine whether Entry Tax is applicable on the commodity 'V Shaped Cross Arm' it is pertinent to examine that whether the said commodity falls under the category of Steel Fabricated Material or not. 'V Shape Cross arm' is essentially an item that finds its application in electricity and telephone lines. It is used in 33 kV and 11 kV overhead power lines and used to support electric wires and is a vital component in electrical distribution/transmission. V Shape Cross arm is generally made out of MS channel, hot dip galvanization. The V-Shaped Cross Arm is designed to fit for the specified rail & PSC poles. The cross arms are of MS channel/Angle and the cross arms have suitable holes for fixing of pin insulators. The holes of particular size and spacing can also be provided for fixing of pole back clamp to suit the pole. The manufacturing of Cross Arm involves Cutting of angle, punching on Power Press, bending, welding and finishing on grinding machine, drilling holes on drill machine and galvanization.

8. Fabrication as per the Oxford dictionary means, "The action or process of manufacturing or inventing something". In the process of manufacturing of steel fabricated items the raw material i.e. steel, channel, sheet etc are cut, punched, bended, welded, grinded, galvanized etc. These steps amount to manufacturing of a new commodity which falls under the category of Steel fabricated items. Since V Shape Cross Arms undergo all these processes and is a new commodity therefore it falls under the category of Steel Fabricated Item and thus is liable to Entry Tax.

The question is thus answered accordingly.

CLARIFICATION (Haryana)

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CLARIFICATION REGARDING THE RATE OF TAX ON SALE OF FLAVOURED MILK

(issued vide No. 1256 / ST-1, dated 15-6-15)

ORDER OF CLARIFICATIONA MADE BY SHRI ROSHAN LAL, IAS
ADDL. CHIEF SECRETARY TO GOVERNMENT HARYANA,
EXCISE AND TAXATION DEPARTMENT
UNDER SECTION 56(3) OFTHE
HARYANA VALUE ADDED TAX ACT, 2003

QUERIST: PINDORI COPY HOUSE, FARIDABAD

HF ▶ None

As per the clarification given u/s 56(3) of the Act, 'Flavoured Milk' is taxable @ 12.5%.

ENTRIES IN SCHEDULE – FLAVOURED MILK – CLARIFICATION SOUGHT U/S 56(3) REGARDING RATE OF TAX ON FLAVOURED MILK – COMPOSITION OF PRODUCT NOT GIVEN – BUSINESS INTENDED TO BE STARTED IN THIS PRODUCT – ENTRY NOT HELD TO BE COVERED UNDER ANY OF THE SCHEDULES – RATE OF TAX @ 12.5% LEVIABLE AS PER CLARIFICATION – *SEC. 56(3) OF HVAT ACT, 2003.*

The appellant has filed an application seeking clarification u/s 56(3) of the HVAT Act regarding the rate of tax leviable on 'flavoured milk'. This product is not yet sold or purchased. The appellant intends to start his business in this product and has submitted that this should be covered by Entry 25 of Schedule B of the Act.

It is revealed that flavoured milk is not covered by any of the Entries relating to milk and milk products. Following the judgment of Punjab State Co-operative Milk Producers Federation Limited Vs. State of Haryana (2010) 37 PHT 250 it is held that the commodity in question is liable to be taxed @ 12.5%.

M/s Pindori Copy House, Plot No. 19, NIT, Faridabad holding TIN 06801307851 (the applicant) has sought clarification under Section 56(3) of the Haryana Value Added Tax Act, 2003 (the Act) on the following issue:-

(i) What is the rate of tax on sale of" flavoured milk" under the Haryana VAT Act, 2003?

2. As per the statement of facts and information received from the applicant, it is noticed that the applicant is not engaged in manufacture of flavoured milk. The applicant has also not conducted any sale/ purchase of the product but intends to start the business in this product. No composition of the product has been given by the applicant. As per their submission flavoured milk is covered by entry 25 of Schedule 'B' appended to the Act.

3. The following entries in Schedule 'B' and 'C' appended to the Act relate to milk and milk products:-

(i) Entry 17 of Schedule 'B' reads "curd, lassi and butter milk".

(ii) Entry 25 of Schedule 'B' reads "fresh milk, pasteurized milk and separated milk".

(iii) Entry 81 of Schedule 'C' reads "skimmed milk powder, ultra high temperature milk, cottage cheese".

Perusal of these entries reveal that flavoured milk is not covered by either of the above entries. The Haryana Tax Tribunal in the case of Punjab State Co-operative Milk Producers Federation Limited Vs. State of Haryana (2010-37-PHT-250) has held that "sweetened flavoured milk involves process of filtration and standardization, flavour and sugar are added and are finally processed by UHT. Moreover, these are packed in a manner that their shelf life is increased. In this way, a new commodity emerges. It is leviable to tax at 12.5%".

4. In the light of the above, "flavoured milk" is not covered by any of the entries in the schedules appended to the Act and hence liable to be taxed as unclassified goods at the rate of 12.5% as also held by Haryana Tax Tribunal in the case of Punjab State Co-operative Milk Producers Federation Limited Vs. State of Haryana.

The issues stands clarified as above.

Chandigarh
Dated:10.6.2015

(ROSHAN LAL)
Additional Chief Secretary to Government Haryana,
Excise & Taxation Department.

PUBLIC NOTICE (U.T., Chandigarh)

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NOTICE FOR EXTENDING DATE FOR FILING OF RETURNS

EXCISE AND TAXATION DEPARTMENT U.T., CHANDIGARH
(Additional Town Hall Building, Sector 17, Chandigarh)

PUBLIC NOTICE

Kind attention: Dealers/Lawyers/Charter Accountants/Other stakeholders

On account of the recent amendments made in the form VAT -23 and VAT-24 the return module has undergone a change. The date of filing of return for the quarter ending June, 2015 has been extended from 30th July, 2015 to 15th August, 2015. However, there is no extension for deposit of VAT/CST and taxes are to be paid as per provision of the PVAT Act as applicable to U.T. Chandigarh

Sd/-

Asstt. Excise & Taxation Commissioner,

U.T. Chandigarh

Endst. No. 2017 Dated 27/7/15

A copy is forwarded to the following for information and necessary action

pl.

1. The Director, Public relation, U.T. Chandigarh
2. The President, Income Tax and sales Tax Bar Association, Chandigarh with refer to their latter dated 13.7.2015

SGA
LAW OFFICES

NOTIFICATION (U.T., Chandigarh)

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NOTIFICATION REGARDING RATE OF TAX ON DIESEL

CHANDIGARH ADMINISTRATION
EXCISE & TAXATION DEPARTMENT

NOTIFICATION

The 17th July, 2015

No. E&T-ETO(Ref.)-2015/1914 - In exercise of the powers conferred by sub-section (3) of the Section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), as extended to the Union Territory, Chandigarh and all other powers enabling him in this behalf, the Administrator, Union Territory, Chandigarh, hereby makes the following amendment in Schedule „E" appended to the said Act w.e.f. 18.07.2015.

AMENDMENT

In the said Schedule "E", at Serial No. 8 and the entries relating thereto, the following rate of tax shall be substituted, namely;

"8.	Diesel	-	16.40 %"

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

SGA
LAW OFFICES

NOTIFICATION (U.T. Chandigarh)

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AMENDMENT REGARDING SCHEDULE E

CHANDIGARH ADMINISTRATION
EXCISE & TAXATION DEPARTMENT

Notification

14th August, 2015

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

AMENDMENT

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

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

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

NOTIFICATION (U.T. Chandigarh)

AMENDMENT IN RULE 7 OF CENTRAL SALES TAX (PUNJAB) RULES, 1957

CHANDIGARH ADMINISTRATION
EXCISE & TAXATION DEPARTMENT

Date: 28.08.2015

NOTIFICATION

No. 2576 - In exercise of the powers conferred by sub-section (3) and (4)(b) of Section 13 of the Central Sales Tax Act, 1956 (Act No. 74 of 1956), the Administrator, Union Territory, Chandigarh is pleased to make the following rules, further to amend the Central Sales Tax (Punjab) Rules, 1957, namely:-

1. **(i) Short title and commencement** - (1) These rules may be called the Central Sales Tax (Punjab (First Amendment) Rules, 2015 as applicable to Union Territory, Chandigarh.

(ii) They shall come into force with immediate effect.

2. In the Central Sales Tax (Punjab) Rules, 1957, in Rule 7, the following shall be substituted namely:-

"7. MANNER OF OBTAINING, THE USE AND SUBMISSION OF DECLARATION FORMS 'C' AND 'F' AND CERTIFICATES IN FORMS 'E-1', 'E-2', 'H' AND 'I', PRESCRIBED UNDER THE CENTRAL SALES TAX (REGISTRATION AND TURNOVER) RULES, 1957, AND KEEPING ACCOUNT THEREOF:

(1) The e-forms shall be provided online in conjunction with the prevailing system for the generation of the statutory declaration forms. A dealer registered under the Punjab Value Added Tax Act, 2005 as extended to U.T., Chandigarh & Central Sales Tax Act, 1956 and assigned with a Tin shall log on to the portal of the Department etdut.gov.in by using his userid and password. He/She shall click on the e-Forms link on the portal and proceed to submit the requisition for issuing of e-forms by entering the details of consignment of goods to be covered in the e-Forms (Form-C, Form-E1, Form-EII, Form-F, Form-H, Form-I) following the instructions and procedures contained in the said website. After entering the details, the dealer will send request for approval. The dealer cannot make any change in the details of the e-forms while the request for approval is pending.

(2) The approval of the E-forms shall be intimated by sending a message on the registered mail and mobile number. After approval, the dealer can download the e-form, print and use the same after signing at the proper place.

(3) The counterfoil of declaration in Form "C, H, F, E-1, E-2 and I" shall be maintained by the registered dealer for a period of six years after the closing of the year to which the said Form pertains.

(4) The dealer to whom the declarations in Form "C, H, F, E-1, E-2 and I" have been issued, shall be responsible for their proper custody and use.

(5) If a dealer closes down his business or his registration certificate under this Act is cancelled for any reasons, he shall forthwith file the final/last return to obtain the balance declaration forms.

(6) The dealer shall maintain an account of declaration, in the following format:-

Serial Number	Serial Number of the declaration	Particulars of the goods purchased.	Value of the goods	Invoice number and date	Number and date of Railway receipt/Goods receipt along with name of the Transport company	Name, Address and Registration Certificate of the selling dealer

Such register shall be maintained separately for all types of statutory forms.

(7) If these e stator Forms are lost in transit or destroyed due to any reason or damaged, the concerned dealer shall send a public notice in the National Press and file First Information Report in the nearest Police Station regarding loss, destruction or damage of these Forms and such intimation along with copy of First Information Report and a cutting of newspaper shall be sent to the Excise and Taxation officer of area concerned.

(8) The Excise and Taxation Commissioner may by Notification in the Official Gazette declare the particular declarations prescribed under the Central Sales Tax (Registration and Turnover) Rules, 1957, as obsolete and invalid with effect from such date as may be specified in the Notification.

(9) When a Notification declaring particular declaration as obsolete and invalid is published under sub-rule (9), registered dealer shall surrender the counterfoils available with him to the Excise and Taxation Officer of area concerned and in exchange may obtain such new Form, as may be substituted for the Forms declared obsolete and invalid:

(10) The Form issued in lieu of lost Form declared obsolete and invalid shall carry the words at the top right hand corner of all the foils of such Forms in red ink "DUPLICATE IN LIEU OF FORM Serial Number ....."

(11) The register in respect of Form E-1 or E2 shall be maintained in the following format:-

Serial Number	Serial Number of the declaration	Name and address of the purchasing dealer to whom issued	Number and date of declaration in Form C issued by the purchasing dealer with the name of State	Description goods in respect of which issued	Value of the goods	Invoice number and date	Railway receipt Number/Goods Receipt Number and date	Name, of Transport Company
1	2	3	4	5	6	7	8	9

Sarvjit Singh, I.A.S.
Secretary, Excise and Taxation
Union Territory, Chandigarh

SGA
LAW OFFICES

NOTIFICATION (U.T. CHANDIGARH)

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NOTIFICATION REGARDING EXTENTION OF PUNJAB VAT (THIRD AMENDMENT) ACT, 2011 TO U.T. CHANDIGARH

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 28th July, 2015

G.S.R. 594(E).—In exercise of the powers conferred by section 87 of the Punjab Reorganization Act, 1966 (31 of 1966), the Central Government hereby extends to the Union territory of Chandigarh, the Punjab Value Added Tax (Third Amendment) Act, 2011 (Punjab Act No.26 of 2011), as in force in the State of Punjab on the date of publication of this notification, subject to the following modifications, namely:—

MODIFICATIONS

1. In sub-section (1) of section 1, after the words, brackets and figures "the Punjab Value Added Tax (Third Amendment) Act, 2011, the words "as extended to the Union territory of Chandigarh" shall be inserted.
2. Section 2 shall be omitted.
3. Section 4 shall be omitted.
4. Section 6 shall be omitted.

ANNEXURE
THE PUNJAB VALUE ADDED TAX (THIRD AMENDMENT) ACT, 2011
(Punjab Act No.26 of 2011)

1. ***Short title and commencement.***— (1) This Act may be called the Punjab Value Added Tax (Third Amendment) Act, 2011.

   (2) It shall come into force at once.

2. **Amendment of section 6 of Punjab Act 8 of 2005.**—In the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the principal Act), in section 6, after sub-section (6), the following sub-sections shall be added, namely:-

   "(7) Notwithstanding anything contained in sub-section (1) to sub-section(6), the State Government shall charge the tax in advance on the import of goods to be notified in such manner, as may be prescribed, and at such rates, as may be

notified, but not exceeding the rates applicable on such goods under the Act: Provided that such goods are meant for sale or use in manufacturing or processing of any goods for sale;

Provided further that such tax collected in advance, shall be counted towards final liability of the taxable person at the end of each tax period.

(8) The tax collected under the Punjab Tax on Entry of Goods into Local Areas Act, 2000 (Punjab Act No.9 of 2000), shall be deemed to have been collected under the provisions of sub-section (7)."

3. Amendment of section 8 of Punjab Act 8 of 2005.—In the principal Act, in section 8, in sub-section (1), in the proviso, the words "four per cent or" shall be omitted.

4. Amendment of section 13 of Punjab Act 8 of 2005.—In the principal Act, in section 13, after sub-section (1), the following sub-section shall be inserted, namely:-

"(1-A) The tax collected in advance under sub-section (7) of section 6, shall be treated as input tax credit."

5. Amendment of section 62 of Punjab Act 8 of 2005.—In the principal Act, in section 62, for sub-section (5), the following sub-section shall be substituted, namely:-

"(5) No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of additional demand, penalty and interest, if any.

Explanation- For the purposes of this sub-section "additional demand" means any tax imposed as a result of any order passed under any of the provisions of this Act or the rules made there under or under the Central Sales Tax Act, 1956 (Act No.74 of 1956)".

6. Repeal and saving.—(1) The Punjab Value Added Tax (Third Amendment) Ordinance, 2011 (Punjab Ordinance No.9 of 2011) and the Punjab Value Added Tax (Fourth Amendment) Ordinance, 2011 (Punjab Ordinance No.10 of 2011), are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal act, as amended by the Ordinances referred to in sub-section (1), shall be deemed to have been done or taken under the principal Act, as amended by this Act.

[F. No. U-11020/5/2014-UTL]
RAKESH SINGH, Jt. Secy.

NOTIFICATION (U.T. CHANDIGARH)

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NOTIFICATION REGARDING EXTENTION OF PUNJAB VAT (FOURTH AMENDMENT) ACT, 2011 TO U.T. CHANDIGARH

NOTIFICATION

New Delhi, the 28th July, 2015

G.S.R. 595(E).—In exercise of the powers conferred by section 87 of the Punjab Reorganization Act, 1966 (31 of 1966), the Central Government hereby extends to the Union territory of Chandigarh, the Punjab Value Added Tax (Fourth Amendment) Act, 2011, (Punjab Act No.27 of 2011), as in force in the State of Punjab on the date of publication of this notification, subject to the following modifications, namely:-

MODIFICATIONS

1. In sub-section (1) of Section1, after the words, brackets and figures "the Punjab Value Added Tax (Fourth Amendment) Act, 2011", the words "as extended to the Union territory of Chandigarh" shall be inserted.
2. Section 3 shall be omitted.

ANNEXURE

THE PUNJAB VALUE ADDED TAX (Fourth AMENDMENT) ACT, 2011

(Punjab Act No.27 of 2011)

1 **Short title and commencement.—(**1) This Act may be called the Punjab Value Added Tax Fourth Amendment) Act, 2011.

(2) It shall come into force at once.

2. **Amendment of section 17 of Punjab Act 8 of 2005.**—In the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the principal Act), the existing provision of section 17 shall be numbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:-

"(2) Where any taxable goods are sold to a unit within the Special Economic Zone or to a developer or where any inter-unit transaction of goods within the Special Economic Zone is made, such sales shall be zero-rated. On such sale, no output tax is payable by any person:

Provided that a taxable person making zero-rated sale shall be eligible for input tax credit in relation to such sale:

Provided further that the sale made to aforesaid unit or to a developer or an inter-unit transaction shall be zero-rated subject to production of certificate in such form as may be prescribed.

(3) Where any unit referred to in sub-section (2) makes sales directly to a customer, the provisions of zero-rated sales specified in sub-section (2) shall not be applicable.

Explanation.- (i) The expressions "unit" and "Special Economic Zone" shall have the same meaning as has been assigned to these expressions in the Punjab Special Economic Zone Act, 2009 (Punjab Act No. 17 of 2009);

(ii) "developer" means a person or a body of persons, including a company, a firm or a Government undertaking, which establishes, constructs, installs, operates, maintains or manages a part or whole of the infrastructure and other amenities in the Special Economic Zone."

3. **Amendment of section 27 of Punjab Act 8 of 2005.**—In the principal Act, in section 27, for the words "four per cent", wherever occurring the words "five per cent" shall be substituted.

[F. No. U-11020/5/2014-UTL]

RAKESH SINGH, Jt. Secy.

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NOTIFICATION (U.T. CHANDIGARH)

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NOTIFICATION REGARDING PUNJAB VAT (AMENDMENT) ACT, 2013

NOTIFICATION

New Delhi, the 28th July, 2015

G.S.R. 596(E).—In exercise of the powers conferred by section 87 of the Punjab Reorganization Act, 1966 (31 of 1966), the Central Government hereby extends to the Union territory of Chandigarh, the Punjab Value Added Tax (Amendment) Act, 2013, (Punjab Act No.28 of 2013), as in force in the State of Punjab on the date of publication of this notification, subject to the following modifications, namely:-

MODIFICATIONS

1. In sub-section (1) of section 1, after the words, figures and brackets "the Punjab Value Added Tax (Amendment) Act, 2013", the words "as extended to the Union territory of Chandigarh" shall be inserted.
2. In the new section 3-A as inserted by section 3, for the words "State Government", the word "Administrator" shall be substituted.

ANNEXURE
THE PUNJAB VALUE ADDED TAX (AMENDMENT) ACT, 2013
(Punjab Act No. 28 of 2013)

1. **Short title and commencement.**—(1) This Act may be called the Punjab Value Added Tax (Amendment) Act, 2013.

   (2) It shall come into force at once.

2. **Amendment of section 2 of Punjab Act 8 of 2005.**—In the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the principal Act), in section 2, after clause (j), the following clause shall be inserted, namely:-

   "(jj) "electronic governance" means for use of electronic medium for.-

   (i) filing of any form, return, application, declaration or any other document;

   (ii) creation retention or preservation of records;

(iii) issue or grant of any form including statutory forms, orders and certificates; and

(iv) receipt of tax, interest, penalty or any other payment or refund of the same through Government treasury or authorized banks."

3. **Insertion of new section 3-A in Punjab Act 8 of 2005.**—In the principal Act, after section 3, the following section shall be inserted, namely:-

"3-A. Implementation of electronic governance.— Notwithstanding anything contained in this Act or the rules made thereunder the commissioner may by an order with the approval of the State Government implement electronic governance for carrying out the various provisions of the Act and the rules made there under."

4. Amendment of section 8 of Punjab Act 8 of 2005.—In the principal Act, in section 8, in sub-section (I), for the words "thirty two paise", the words "fifty five paise" shall be substituted.

5. Amendment of section 27 of Punjab Act 8 of 2005.—In the principal Act, in section 27, for the words

"five per cent" wherever occurring, the words "six per cent" shall be substituted.

6. Amendment of section 51 of Punjab Act 8 of 2005.—In the principal Act, in section 51.-

(a) in sub-section (1), after the words, "place or places", the words "or in such manner" shall be inserted;

(b) in sub-section (2).-

(i) after the words "The owner or person Incharge of", the words "the goods or" shall be inserted.

(ii) after the words "as are being carried in the goods vehicle", the words "or by any other means" shall be inserted, and

(iii) in the first proviso, after the words "outside the State in the course of", the words "intrastate or", shall be inserted.

(c) in sub-section (3), after the words "the driver or any other person Incharge of the goods", the words "and goods" shall be inserted;

(d) in sub-section (4), excepting the provision.-

(i) after the words "The owner or person Incharge of", the words "the goods and" shall be inserted; and

(ii) after the words "the declaration duly verified by him to the owner or person Incharge of", the words "the goods and" shall be inserted;

(e) in sub-section (5), after the words "the driver or the owner of", the words "the goods and" shall be inserted.

[F. No. U-11020/5/2014-UTL]
RAKESH SINGH, Jt. Secy.

CLARIFICATION (PUNJAB)

LIST OF TRANSFERS AND POSTINGS OF ETOs

PUNJAB GOVERNMENT
EXCISE & TAXATION DEPARTMENT
(EXCISE & TAXATION -1 BRANCH)

ORDER

Keeping in view the public interest and administrative grounds the following transfers and postings of Excise & Taxation officers are made :-

Sr.No.	Name of Officer Sarvshri/Smt	From	To	Remarks
1	Maninder Pal Singh	ETO (VAT) Ludhiana-1	ETO Mobile Wing, Patiala	In place of Sh Anish Sharma
2	Naresh Pathak	Available for posting	ETO ICC Shambhu Export	In place of Sh Vinod Kumar Shah
3	Sandeep Sharma	Available for posting	ETO (VAT) Jalandhar-2	In place of Sh Balwinder Singh
4	S.S.Ruby	ETO (VAT) Nawan Shahr	ETO (VAT) Kapurthala	Against vacant post
5	Supnandandeep Uppal	ETO (VAT) Gurdaspur	ETO (VAT) Amritsar-1	In place of Sh Madhur Bhatia
6	Joti Saroop Kang	Available for posting	ETO, Main Distilleries Distt.Patiala	In place of Sh Rajbir Singh Sidhu.
7	Jagdeep Singh Sandhu	ETO (VAT) Moga	ETO, Om Sons Market (P) Ltd Bathinda	Against vacant post
8	Ravinandan Sharma	ETO (VAT) Fazilka	ETO ICC Doomawali	In place of Sh Hitesveer Gupta
9	Jaspal Singh	ETO Mobile Wing, Jalandhar	ETO (Excise) Hoshiarpur)	In place of Sh Avtar Singh Kang
10	Sushil Sharma	ETO (VAT) Ferozepur	ETO (VAT) Amritsar-2	Against vacant post
11	Rohit Garg	ETO E.I.U. Head Office, Patiala	ETO (VAT) Sangrur	Against vacant post
12	Sukhjit Singh Chahil	ETO ICC Attari Border	ETO (VAT) Amritsar-1	Against vacant post
13	A.S.Kang	ETO (Excise) Hoshiarpur	ETO (Excise) Ludhiana-1	In place of Sh Parminder Singh
14	Rajeev Sharma	Available for posting	ETO ICC Lalru	In place of Sh Harpreet Singh
15	Malkiat Singh	ETO (Excise) Amritar-1	ETO (Excise) Gurdaspur	Against vacant post
16	Inder Singh	ETO (VAT) Shree Muktsar Sahib	ETO ICC Talwandi Sabo	In place of Sh Yash Gill
17	Hukam Chand Bansal	Available for posting	ETO (VAT) Mohali	Against vacant post
18	Surinderpal Bansal	ETO (VAT) Barnala	ETO (VAT) Bathinda	Against Sh Malvinder Singh Dhillon
19	Hiteshveer Gupta	ETO ICC Doomawali	ETO ICC Dhabi Gujjra & Addl Charge ICC Kaithal Road, Khanori	On taking additional charge from Rajvir Singh Sidhu and Raghbir Singh.
20	Vishwdeep Bhangu	ETO (VAT) Fatehgarh Sahib	ETO (VAT) Head Office, Patiala	
21	Randhir Singh	ETO ICC Chak Sadhu	ETO Mobile Wing Amritsar	Against vacant post
22	Chand Rani	Available for posting	ETO Piccaddaly Sugar & Allied Industries, Patra	Against vacant post
23	Manohar Singh	ETO E.I.U. Head Office, Patiala	ETO (VAT) Patiala	In place of Sh Jasvinder Singh
24	Narinder Kaur	ETO (VAT) Sangrur	ETO (VAT) Ludhiana-3	Against vacant post
25	Manjit Singh	ETO (VAT) Jalandhar	ETO (VAT) Amritsar-2	Against vacant post
26	Kulvinder Verma	ETO Mobile Wing, Bathinda	ETO (VAT) Bathinda	Against vacant post
27	Akashdeep Singh	ETO Mobile Wing , Bathinda	ETO (VAT) Bathinda	Against vacant post
28	Sat Pal Singh	ETO Mobile Wing Jalandhar	ETO (VAT) Jalandhar-1	In place of Sh Pawan
29	Navjit Singh	ETO Mobile Wing Ludhiana	ETO (VAT) Ludhiana	Against vacant post
30	Manmohan Singh	ETO Mobile Wing Ludhiana	ETO (VAT) Ludhiana	Against vacant post
31	Pritpal Singh	ETO Mobile Wing, Patiala	ETO (VAT) Ludhiaa	Against vacant post
32	Anish Sharma	ETO Mobile Wing, Patiala	ETO (VAT) Sangrur	In place of Narinder Kaur
33	Vikram Dev Thakur	ETO Mobile Wing, Patiala	ETO (VAT) Ferozepur and additional charge of Mobile Wing Fazilka	In place of Sh Ravinandan Sharma
34	Abhishek Duggal	ETO Mobile Wing, Chandigarh	ETO (Excise) Ludhiana01	In place of Sh Maninder Singh
35	Simrandeep Brar	ETO Mobile Wing Chandigarh	ETO (VAT) Mohali	Against vacant post
36	Gurjit Singh	ETO Mobile Wing, Amritsar	ETO (VAT) Amritsar-1	Against vacant post
37	Varun Nagpal	ETO ICC Kallarkhera & additional charge Mobile Wing, Fazilka	ETO (VAT) Fazilka	Against vacant post
38	Jasvinder Singh Waraich	ETO ICC Sambhu Import	ETO (VAT) Fatehgarh Sahib	In place of Sh Vishvdeep Singh Bhangu
39	Satish Kumar	ETO ICC Shambhu Import	ETO (VAT) Fatehgarh Sahib	In place of Sh Amardeep Nanda
40	Rajinder Pal	ETO ICC Sambhu Export	ETO (VAT) Ludhiana-1	Against vacant post
41`	Vinod Kumar	ETO ICC Sambhgu Export	ETO (VAT) Ropar	Againt vacant post
42	Ashwani Arora	ETO ICC Zirakpur	ETO (VAT) Mohali	Against vacant post
43	Varinderjit Singh	ETO ICC Dohni	ETO ICC Sambhu Export	In place of Sh Rajinderpal
44	Bhupinder Singh Saini	ETO ICC Nangal	ETO (VAT) Ludhiana	Against vacant post
45	Rajbir Singh	ETO Man Distillery Patiala & additional charge ETO ICC Dhabi Gujra	ETO (VAT) Mohali	Against vacant post
46	Manmohan Kumar	ETO ICC Dalhousie Road & additional charge ICC Kathlor	ETO Mobile Wing Jalandhar	In place of Sh Jaspal Singh
47	Amar Nath	ETO ICC Chullat Kalan	ETO Mobile Wing, Ludhiana	Against vacant post
48	Yash Gill	ETO ICC Talwandi Sabo	ETO Mobile Wing, Bathinda	In place of Sh Kulwinder Verma
49	Salinder Singh	ETO ICC Dhandari Kalan	ETO (VAT) Ludhiana-2	Against vacant post
50	Jaswinder Singh	ETO (Excise) Kapurthala	ETO Mobile Wing Jalandhar	In place of Sh Satpal Singh
51	Maninder Singh	ETO (Excise) Ludhiana-3	ETO Mobile Wingh Ludhiana	In place of Sh Navjit Singh

52	Balwant Rai	ETO (Excise) Moga	ETO (Excise) Ferozepur	In place of Sh H.S.Brar
53	H.S.Brar	ETO (Excise) Ferozepur	ETO (Excise) Shree Muktsar Sahib	In place of Balwinder Singh
54	Balwinder Singh	ETO (Excise) Shree Muktsar Sahib	ETO (Excise) Moga	In place of Sh Balwant Rai
55	Barinder Singh	ETO Hamira Distillery	ETO Mobile Wing, Amritsar	In place of Sh Gurjit Singh
56	Parmod Singla	ETO E.I.U. Head Office Patiala & additional charge ETO Mobile Wing Ludhiana	ETO Mobile Wing Patiala & additional charge ETO I.C.U. Head Office, Patiala	In place of Sh Pritpal Singh
57	Joti Walia	ETO E.I.U. Head Office, Patiala	ETO (VAT) Patiala	Against vacant post
58	Harinder Rawat	Available for posting	ETO E.I.U. Head Office	In place of Sh Narinder Kumar
59	Rishi Kumar	ETO (VAT) Sangrur	ETO ICC Ram Nagar	In place of Sh Inderjit Nagpal
60	Madhu Soodan	ETO ICC Chakki Bridge & additional charge Mobile Wing (VAT) Pathankot	ETO (VAT) Jalandhar02	Against vacant post
61	Inderjit Singh Napal	ETO ICC Ramnagar	ETO ICC Chullaru Kalan	In place of Sh Amar Nath
62	Vinod Pahuja	ETO Newway, Organic Natures India Ltd & addl.charge ETO Bottling Plants Mohali	ETO Bottling Plants, Dera Bassi, Distt.Mohali	On doing additional charge into full time charge
63	Anil Gupta	ETO Legal Cell & additional charge Bottling Plants, Dera Bassi, Mohali	ETO Legal Cell & additional charge Organic Natures Idia Ltd & additional charge Bottling PLlants, Dera Bassi	In place of Sh Vinod Pahuja
64	Ram Singh	ETO E.I.U. Head Office Patiala	ETO ICC Sambhu Export	Against vacant post
65	Sanjeev Madan	ETO (VAT) Mohali	ETO ICC Sambhu Import	In place of Sh Jasvinder Waraich
66	Amardeep Nanda	ETO (VAT) Fatehgarh Sahib	ETO ICC Sambhu Import	Against vacant post
67	Harpreet Singh	ETO ICC Lalru & additional charge Mobile Wing Chandigarh	ETO Mobile Wing Chandigarh and additional charge ICC Zirakpur	In place of Sh Ashwani Arora
68	Lavjinder Singh	Available for posting	ETO ICC Madhopur	In place of Sh Sukhchain Singh
69	Satvinder Singh	Available for posting	ETO ICC Sambhu Import	Against vacant post
70	Suresh Tandon	Available for posting	ETO ICC Kallar Khera	In place of Sh Varun Nagpal
71	Piara Singh	Available for posting	ETO (VAT) Mansa	Against vacant post
72	Malwinder Singh Dhillon	ETO (VAT) Bathinda	ETO Mobile Wing Bathida & additioal charge of ETO ICC Boha	In place of Sh Akashdeep Singh & Sh Inderjit Singh
73	Jaswinder Singh	ETO (VAT) Patiala	ETO E.I.U. Head Office Patiala and additional chargeof Mobile Wing Patiala	In place of Sh Ram Singh
74	Sukhchain Singh	ETO ICC Madhopur	ETO (Excise) Amritsar-1	In place of Sh Malkiat Singh
75	Ashok Kumar	ETO (VAT) Jalandhar-1	ETO Hamira Distillaries	In place of Sh Barinder Singh
76	Lakhbir Singh	ETO Rana Sugars Distillaries	ETO Khasa Distillaries	Against vacant post
77	Pawan	ETO VAT Jalandhar-1	ETO Dasuha Distillaries	On taking back additional charge from Sh Avtar Singh Kang
78	Balwinder Singh	ETO (VAT) Jalandhar-2	ETO A.B.Grain Distillaries	Against vacant post
79	Madhur Bhatia	ETO (VAT) Amritsar-1	ETO Rana Sugars Distillaries	In place of Sh Lakhbir Singh
80	Tirath Chand	ETO (VAT) Kapurthala	ETO Chadha Sugar & Distillary Kiri Afgana (Gurdaspur)	Against vacant post
81	Inderjit Singh	ETO ICC Boha	ETO BCL Infrastructure & Distillary Ltd Bathinda	On taking back additional charge from Kapil Jindal
82	Ramesh Kumar	Available for posting	ETO ICC Nangal	In place of Sh Bhupinder Singh
83	Sunil Gupta	-do-	ETO (Vat) Jalandhar-1	In place of Sh As Kumar
84	Mukti Gupta	-do-	ETO (Vat) Ludhiana-1	In place of Sh Maninderpal Singh
85	Anita Sodhi	-do-	ETO (Vat) Head Office Patiala	Against vacant post
86	Gagan Sharma	-do-	ETO (Vat) Amritsar-2	In place of Sh Gurmit Singh
87	Gurmit Singh	ETO (Vat) Amritsar-2	ETO Mobile Wing Amritsar	Against vacant post
88	Shakuntla Devi	Available for posting	ETO (Vat) Barnala	In place of Sh Surinderpal Bansal
89	Baljit Kaur	-do-	ETO (Vat) Kapurthala	In place of Sh Tirath Chand
90	Parminder Kaur	-do-	ETO (Vat) Amritsar-1	Against vacant post
91	Sunita Rani	-do-	ETO (Vat) Jalandhar-2	Against vacant post
92	Gagandeep Singh	-do-	ETO ICC Ghanaulli & additional charge ICC Kathlor	On taking back additional charge from Bhupinder Singh & in place of Sh Barinderjit Singh
93	Santokh Raj	-do-	ETO ICC Dalhousie Road & additional charge ICC Kathlor	In place of Sh Manmohan Kumar
94	Harpreet Singh	-do-	ETO ICC Chakki Brij	In place of Sh Madhu Soodan
95	Poonam Preet	ETO (Vat) Patiala	ETO (Vat) Head Office Patiala	Against vacant post
96	Upinderjit Singh Sodhi	ETO (Vat) Sangrur	ETO (Vat) Patiala	Against vacant post
97	Sandeep Kaur	ETO (Vat) Mohali	ETO (Vat) Fatehgarh Sahib	Against vacant post
98	Raghbir Singh	ETO ICC Kaithal Road Khanori	ETO Mobile Wing Patiala	In place of Sh Vikram Dev Thakur
99	Navreet Kaur	ETO (Vat) Patiala	ETO (Vat) Amritsar-1	
100	Romesh Kumar	ETO (Vat) Amritsar-1	ETO ICC Attari	In place of Sh Sukhjit Singh Chahil
101	Harminderbir Singh	ETO (Vat) Jalandhar-2	ETO (Vat) Amritsar-1	Against vacant post
102	Narinder Kumar	ETO E.I.U. Head Office	ETO Mobile Wing Ludhiana	In place of Sh Manmohan Singh
103	Amardeep Singh	ETO (Vat) Ludhiana-2	ETO ICC Dhandari Kalan	In place of Sh Salinder Singh
104	Sunil Kumar	ETO (Vat) Gurdaspur)	ETO (Vat) Gurdaspur and additional charge ICC Chak Sadhu	In place of Sh Ranbir Singh
105	Dharam Pal Singh	ETO (Vat) Patiala and additional charge of I.E.U. Head Office	ETO Mobile Wing Patiala and additional charge E.I.U. Head Office	Against vacant post
106	Jaswinder Pal	ETO ICC Talwara & additional charge ICC Moguwal	ETO (Vat) Hoshiarpur	In place of Sh Brij Mohan
107	Brij Mohan	ETO (Vat) Hoshiarpur	ETO ICC Talwara and additional charge ICC Moguwal	In place of Jaswinder Pal
108	Bhupinderpal Bhatia	ETO (Vat) Mohali	ETO (Vat) Mohali & additional charge ICC Mullanpur	Against vacant post
109	Sandeep Gupta	ETO (Vat) Jalandhar-2	ETO (Vat) Amritsar-2	Against vacant post
110	Parminder Singh	ETO (Excise) Ludhiana-1	ETO (Excise) Sangrur	In place of Sh Chander Mehta
111	Chander Mehta	ETO (Excise) Sangrur	ETO (Excise) Head Office Patiala	

These orders shall take effect immediately

Chandigarh, Dated
30.06.2015

D.P.Reddy
Financial Commissioner (Taxation) Punjab
Excise & Taxation Department

Endtt.No.1/7/2015-AC-1(1)/10827-32 Dated Chandigarh : 30/6/2015

A copy is forwarded to the following for information & necessary action :-

1 Principal Secretary/Deputy Chief Minister, Punjab, Chandigarh
2 Chief Parliamentary Secretary Excise & Taxation
3 Excise & Taxation Commissioner, Punjab, Patiala with the request that this order be served upon the concerned officers.
4 Accountant General (A&E) Punjab, Chandigarh
5 All Additional / Joint / Deputy / Assistant Excise & Taxation Commissioners
6 Concerned officer

Sd/-
Superintendent Grade I

NOTIFICATION (PUNJAB)

NOTIFICATION REGARDING AMENDMENT IN RULE 52-B

PUNJAB GOVT. GAZ. (EXTRA), MAY 26, 2015
(JYST 5, 1937 SAKA)

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

NOTIFICATION

The 25TH May, 2015

No. G.S.R.29/P.A.8/2005/S.70/Amd.(56)/2015.- In exercise of the powers conferred by sub section (1) of section 70 of the Punjab Value Added Tax Act, 2005, (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to made the following rules further to amend the Punjab Value Added Tax Rules, 2005, namely:-

RULES

1. (1) These rules may be called the Punjab Value Added Tax (Third Amendment) Rules, 2015.
   (2) They shall come into force on and with effect from the date of their publication in the Official Gazette.

2. In the Punjab Value Added Tax Rules, 2005 in rule 52-B in sub-rule (i), for PART-II, and the entries relating there to, the following shall be substituted, namely:-

"PART-II

Points obtained by the business entity	Rating	Number of days within which refund is to be made	Penalty, if wrongly claimed by the business entity
10-20	2	45	75 percent
23-30	3	30	100 percent
30-40	4	25	125 percent
40 and above	5	15	150 percent"

ANURAG VERMA
Secretary to Government of Punjab,
Department of Excise and Taxation

SGA
LAW OFFICES

NOTIFICATIONS

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LEVY OF TAX UNDER PUNJAB DEVELOPMENT OF TRADE, COMMERCE AND INDUSTRIES ORDINANCE, 2015

PUNJAB GOVT. GAZ. (EXTRA), MAY 29, 2015
(JYST 8, 1937 SAKA)

PART II

"SCHEDULE"

(See section 2 (1)(k))

LIST OF GOODS ON WHICH TAX UNDER THE PUNJAB DEVELOPMENT OF TRADE, COMMERCE AND INDUSTRIES ORDINANCE, 2015, shall be levied is as under :–

Serial No.	Name of the goods	Rate of tax on entry of goods
1. Sugar		

ANIRUDH TEWARI,
Principal Secretary,
Department of Industries and Commerce.

SGA
LAW OFFICES

NOTIFICATIONS

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AMENDMENT IN SCHEDULE A

PUNJAB GOVT. GAZ. (EXTRA), FEBRUARY 27, 2015
(PHGN 8, 1936 SAKA)

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)
NOTIFICATION
The 27th February, 2015

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

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

AMENDMENT

In the said Schedule 'A',-

(i) Serial No. 21 and the entries relating thereto shall be omitted;

(ii) In Serial No. 34, for the words and signs "Meat, fish, prawn", the words and signs "Fresh vegetables, fruits, meat (i.e. raw meat, chicken or fish), whether cured or frozen or preserved or not, till their nature or function is not changed by these processes," shall be substituted;

(iii) In Serial No. 87,-

(a) In Note-I, for the words, figures and letters "in retail packing of up to 10kg" and "in the packing of 10kg", the words, figures, letters and sign "in retail packing of any unit such as 1kg/litre, 2kg/litre and so on upto 10kg/litre, as the case may be," and "in the packing of 10kg/litre" shall, respectively, be substituted; and

(b) in Note-II, for the words, figures and letters "in retail packing of upto 1kg" and "in the packing of 1kg", the words, figures, letters and sign"in retail packing of any unit such as 100g/ml, 200g/ml and so on upto 1kg/litre, as the case may be," and "in the packing of 1kg/litre" shall, respectively, be substituted.

D.P. REDDY,
Financial Commissioner Taxation and
Secretary to Government of Punjab,

Department of Excise and Taxation.

NOTIFICATIONS

PARAMETERS FOR ASSESSMENT (PUNJAB)

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Type of case selected for assessment on the basis of 13-14 data.

1	All cases with GTO greater than Rs. 5 crores in corporation towns and GTO greater than Rs.3 crores in other areas. Cases with GTO >3cr and GTO <5 cr in corporation towns and GTO >1 cr and GTO<3 cr in other areas to be selected on the basis of following parameters:
2	Tax to import ratio is less than 3% (GTO >1cr and import should be minimum 25 Lakh
3	Tax to GTO ratio is less than 2% (GTO>1cr) (except bullion)
4	Where tax paid is showing increase less than 5% over previous year
5	Tax paid to output tax ratio is less than 2%.
6	Where ITC carried forward at the end of the year is more than 5% of the GTO
7	Export of 14.3% items of more than Rs.1 crore. (VAT-18)
8	Import of Schedule 'H' items of more than 1 crore. (VAT-19)
9	All dealers with exports/Interstate sales > Rs. 1 crores
10	Mismatch with ICC data of more than 10 % of the imports / exports/Interstate sales
11	All cases where exemptions from advance tax/entry tax have been claimed
12	All rice shellers engaged in self purchasing more than 10 lakh
13	Apportionment of ITC for manufacturing tax free goods has been made.
14	Apportionment of ITC for branch transfer has been made.
15	ITC retention on goods sent for job work has been made.
16	ITC reversal on interstate sales of Schedule H goods and products manufactured there from has been made.
17	Negative stock & positive stock more than 25 % of the GTO.
18	Cases involving refunds more than Rs. 5.00 lacs/ all cases of provisional refunds
19	All Solvexes.
20	All Paper Mills
21	All Refining Units.
22	All Milk Plants
23	All Spinning & Ginning Mills.
24	All Marble dealers.
25	All works contract
26	All automobile dealers
27	All distilleries, bottling plants and L-1s
28	All Furnaces and Rolling Mills.
29	All cases of inspections/ provisional assessment.
30	3% cases to be picked up at random basis on TIN
31	BKO not paying lump sum tax.
32	First stage ITC mismatch of more than Rs. 10% of ITC
33	Cases falling under provisions of section 29 (2) of PVAT Act, 2005.

NOTIFICATIONS

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AMENDMENT OF SEC. 25 - PUNJAB INFRASTRUCTURE (DEVELOPMENT AND REGULATION) AMENDMENT ORDINANCE, 2015

PUNJAB GOVT. GAZ. (EXTRA), JUNE 15, 2015

(JYST 25, 1937 SAKA)

PART II

GOVERNMENT OF PUNJAB

DEPARTMENT OF LEGAL AND LEGISLATIVE AFFAIRS, PUNJAB

NOTIFICATION

The 15th June, 2015

No. 27-Leg./2015.-The following Ordinance of the Governor of Punjab Promulgated under clause (1) of article 213 of the Constitution of India on the 9th Day of June, 2015, is hereby published for general information:-

THE PUNJAB INFRASTRUCTURE (DEVELOPMENT AND REGULATION) AMENDMENT ORDINANCE, 2015
(Punjab Ordinance No. 2 of 2015)

AN

ORDINANCE

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

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

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

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the constitution of India, the Governor of Punjab is pleased to promulgate the following Ordinance, namely:-

Short title and commencement.

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

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

Substitution of section 25 of Punjab Act 8 of 2002.

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

Levy of fee.

"25. (1) With effect from the date of coming into force of this Act, and subject to the provisions of this Chapter, every person shall be liable to pay a fee levied under this Act on the sale or purchase of the goods specified in Schedule III, on the value of consumption of electricity being supplied by the Punjab State Power Corporation Limited and purchase of immovable properties, within the State of Punjab at a rate, not exceeding six rupees for every one hundred rupees of the value of goods, electricity consumed and purchase of immovable property as the State Government may, by notification, direct.

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

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

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

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

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

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

(2) In respect of levy of Infrastructure Development fee on the value of consumption of electricity, the exemptions granted in respect of levy of

electricity duty shall mutatis mutandis apply to the levy of Infrastructure Development fee on electricity consumed.".

PROF. KAPTAN SINGH SOLANKI,
Governor of Punjab.

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

NOTIFICATIONS

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TRANSFERS AND POSTING IN THE CADRE OF AETC

PUNJAB GOVERNMENT

EXCISE & TAXATION DEPARTMENT

(EXCISE & TAXATION -1 BRANCH)

ORDER

Keeping in view the public interest and administrative grounds the following transfers and postings are made in the cadre of Assistant Excise & Taxation Commissioners :-

Sr.No	Name of Officer Sarvshri / Smt	From	To	Reasons
1	Paramjit Singh	AETC cum Senior Auditor, Jalandhar Division.	AETC Kapurthala	In place of Sh Sukhvinder Singh
2	Sukhwinder Singh	AETC Kapurthala	Senior Auditor, Jalandhar Division	In place of Sh Paramjit Singh
3	Inder Mohan Singh	Available for posting	AETC Muktsar	In place of Sh S.S.Sodhi
4	B.K.Virdi	AETC Gurdaspur	AETC Jalandhar-2	In place of Sh Rajpal Singh
5	Rajpal Singh	AETC Jalandhar 2	AETC Ludhiana-1	In place of Sh Tejbir Singh
6	Tejbir Singh	AETC Ludhiana 1	AETC Ludhiana 3	Against vacant post
7	Shalin Walia	AETC cum Senior Auditor Patiala	AETC Nawan Shahar	In place of Sh Magnesh Sethi
8	Magnesh Sethi	AETC Nawan Shahr	AETC Ropar	Against vacant post
9	Rajvinder Kaur Bajwa	AETC ICC Madhopur	AETC Gurdaspur	In place of Sh B.K.Virdi
10	Harvinder Singh	AETC cum Senior Auditor Ludhiana Division	AETC ICC Madhopur	In place of Smt Rajvinder Kaur Bajwa
11	Darbara Singh	AETC Sangrur	AETC Bathinda	In place of Sh D.S.Sidhu
12	Joginder Singla	Available for posting	AETC Sangrur	In place of Sh Darbara Singh
13	Pavinder Kumar	AETC Mobile Wing Amritsar	AETC Tarn Taran	Against the vacancy caused by going on long leave of Sh Harinder Singh
14	D.S.Sidhu	AETC Bathinda	AETC Mobile Wingh, Amritsar	In place of Sh Pavinder Kumar
15	Sunita Sahi	Available for posting	AETC cum Senior Auditor Ludhiana Division	In place of Sh Harvinder Singh
16	Ominder Singh	Available for posting	AETC Mobile Wing, Jalandhar	In place of Miss Hardeep Kaur Bhanwra
17	Hardeep Kaur Bhanwra	AETC Mobile Wingh, Jalandhar	AETC cum Senior Auditor Amritsar Division	In place of Sh Sudev Vikas
18	Harjit Kaur	AETC Legal Cell Chandigarh	AETC Vigilance Bureau Punjab Chandigarh	Against a vacant post
19	Sharanjit Singh	Available for posting	AETC Barnala	In place of Sh S.P.S.Grewal
20	S.P.S.Grewal	AETC Barnala	AETC cum Senior Auditor Patiala Division	In place of Sh Shalin Walia
21	P.K.Malhotra	AETC cum Senior Auditor Faridkot Division	AETC cum Senior Auditor Amritsar Division	The pay of this officer shall be drawn against the post of Senior Auditor, Faridkot Division

Chandigarh, Dated
30.06.2015

D.P.Reddy
Financial Commissioner (Taxation) Punjab
Excise & Taxation Department

Endtt.No.1/7/2015-ET-10852-56 Dated Chandigarh : 30/6/2015

A copy is forwarded to the following for information & necessary action :-

7 Principal Secretary/Deputy Chief Minister, Punjab, Chandigarh
8 Excise & Taxation Commissioner, Punjab, Patiala with the request that this order be served upon the concerned officers.
9 Accountant General (A&E) Punjab, Chandigarh
10 All Additional / Joint / Deputy / Assistant Excise & Taxation Commissioners
11 Concerned officer

Superintendent Grade I

Copy to :

1 Personal Secretary / Chief Parliamentary Secretary, Excise & Taxation
2 Personal Secretary / Financial Commissioner Taxation.

NOTIFICATIONS

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NOTIFICATION REGARDING LUMPSUM TAX FOR RE-ROLLING MILL IN THE STATE OF PUNJAB

PUNJAB GOVT. GAZ. (EXTRA), JUNE 25, 2015
(ASAR 4, 1937 SAKA)

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)
NOTIFICATION
The 24th June, 2015

No. S.O.26/P.A. 8/2005/S.8-A/2015 - Whereas the Governor of Punjab is satisfied that it is expedient so to do in the public interest;

Now, therefore, in exercise of the powers conferred by section 8-A of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to direct that a re-rolling mill in the State of Punjab, may, at its option, pay lump sum tax in lieu of tax payable under the aforesaid Act, subject to the conditions hereinafter specified, namely:-

I. Eligibility Criteria

All the re-rolling mills using re-rollable scrap other than ingots and semi finished products like billets, blooms etc. are eligible for the benefits of the scheme.

II. Determination of Liability

1. The liability of the rolling mill opting for this scheme shall be fixed at Rs. 2.82 per unit of electricity consumed by the mill during the month.
2. The rolling mill opting for this scheme shall discharge this tax liability in the following manner:-
   (i) It shall pay 50 paise per electricity unit consumed.
   (ii) It shall pay remaining Rs. 2.32 by the way of advance tax on the imports made by it directly on its own name or by the way of VAT on the purchases made through the first traders.
   (iii) If the Re-rolling has any credit of VAT paid on the purchases of consumables from within the State, the said mail shall be allowed such credit. Out of Rs. 2.32 mentioned in (ii) above, liability up to 32 paise may be discharged by way of VAT paid bills of consumables.

3. At the end of every month, the re-rolling mill opting for this scheme shall submit a statement of consumption of electricity units on its letter head to the Designated officer in the following format:-

Meter reading at the beginning of the month	Meter reading at the end of the month	No. of electricity units consumed during the month	Production in tons	Tax @50 paise per unit

Declaration: I _____, owner of M/s _____ hereby declare that the particulars furnished by me in the above mentioned table are true and correct to best of my knowledge.

Signature of Authorised Signatory

III. Conditions for import/purchase of raw material:

1. If the re-rolling mills opting for this scheme want to import raw material from outside the State through traders then such traders shall get separate TIN. Such TIN shall be used exclusively for the import of goods fro the said mills opting for this scheme and further selling the imported goods to such mills. If there is a default on the part of the trader, he shall be liable to pay the penalty @ 50% of the value of the goods.
2. The trader importing the goods for the re-rolling mills (on the special TIN as mentioned above) opting for this scheme shall import the goods from outside the State on payment of advance tax @ 2%.
3. The trader with special TIN shall make sale to the re-rolling mills under this scheme by charging 2% VAT. This VAT may be used by these mills to discharge their tax liability as mentioned above. If a trader with a special TIN is left with some material which he is unable to sell to the mills under this scheme, he shall be able to transfer that material to his other regular Tin on payment of normal rate of VAT on such material. He shall get credit on 2% advance tax paid at the barrier. He shall be required to deposit the differential amount to the treasury with his next return.

IV. Manner of discharging the liability:

1. At the end of every quarter, the re-rolling mill opting for this scheme shall submit a statement in the following format:

Particulars	No. of units	Amount of tax
No. of electricity units consumed during the Quarter		
First Month of the Quarter		
Second Month of the Quarter		
Third Month of the Quarter		
Liability @ 2.82 paise per unit of electricity consumed		
Less liability already discharged @50 paise per unit of electricity		
First Month of the Quarter		
Second Month of the Quarter		
Less advance tax @ 2% paid on the imports made directly by the mill		
Less tax paid @ 2% by the traders through whom imports have been made by the unit		
Less credit of tax paid on consumables		
Balance Tax liability Due		
Less tax @ 50 paise per unit of electricity consumed in the third month		
Balance Due to be deposited in the Treasury		

2. The Re-rolling mill opting for this scheme shall get the credit of advance tax paid by it on the direct imports and on the imports through the traders only if it produces the original receipts of advance tax deposited on such imports.
3. If the Re-rolling mill is not able to produce the receipts and the invoices, no credit of advance tax shall be allowed.
4. After discharging the liability by the way of 50 paise per electricity unit consumed and by the way of advance tax @ 2% on the imports made by it directly or through importers, and after allowing credit of VAT paid on the purchase of consumables, if any balance is due, the Re-rolling mill shall deposit such balance tax due in the Treasury.
5. The re-rolling mill opting for this scheme who has purchased consumables used as inputs for the manufacture of finished goods from within the State on payment of VAT, wherever applicable, shall get the credit of the same.
6. The input tax credit shall be allowed to the extent of goods used in the manufacture of the finished goods.

V. Manner of making Application

A re-rolling mill may at any time exercise his option, to pay lump sum tax in lieu of tax payable under the VAT Act, 2005, in the following Form:-

Application Form for payment of lump-sum tax

I .....(name), aged ..... (years), son of Shri ..... resident of Village/Town ..... District ..... Proprietor/Partner/manager/Managing Director of M/s ..... holding TIN ..... as Owner/authorized representative of a Re-rolling Mill situated at ..... (Place), District ..... do hereby opt to pay lump sum tax in lieu of tax payable under the VAT Act, 2005, with effect from the beginning of the quarter starting from .....

Place.....

Signature

Date..... (Owner/authorized representative of Re-rolling Mill)

And hand over the same to the Designated Officer. The option exercised in this manner, subject to the correctness of the information furnished, shall be accepted and the lump sum Tax shall be payable for the whole of the month in which the application is made.

VI. Other Conditions

1. The Re-rolling Mill opting for this scheme shall issue only a retail invoice in respect of the sales made by him and a taxable person purchasing goods from him shall not be entitled to any input tax credit.
2. The Re-rolling Mill opting for this scheme may make inter-State sales or may make sales in the course of inter-State trade or commerce but the rate of lumpsum tax would remain the same.
3. The Re-rolling Mill opting for this scheme shall intimate the design of the marka to the Assistant Excise and Taxation Commissioner of the district concerned and imbibe such marka on its finished products.
4. The Re-rolling Mill opting for this scheme shall not be allowed any captive power generation for production of finished products.
5. A Re-rolling Mill opting for this scheme shall not be entitled to engage in any trading activity on the special TIN.
6. (a) In case a re-rolling mill covered under this scheme is intended to be closed for the next whole year beginning 1st April, the owner thereof who is liable to pay lump sum tax shall inform the Designated Officer in writing at least ten days before the closure but not after 1st April.

   (b) In case of failure to furnish information about closure of a re-rolling mill in the manner provided in clause (a), it shall be presumed that the mill has been functioning normally.
7. Any yearly increase in lumpsum tax payable in lieu of tax payable under VAT Act, 2005, shall be notified by the State Government.
8. Notwithstanding the operation of a re-rolling mill for a part of the year, the owner thereof shall be liable to make payment of lump sum tax for the whole year except the owner who opts for payment of lump sum tax for the first time, shall be liable to pay lump sum tax from the beginning of the month in which he exercises his option and for the period before exercising the option for the first time, he shall be liable to pay tax under the usual provisions of the Punjab Value Added Tax Act, 2005.
9. The Re-rolling Mill who has opted for this scheme shall be at liberty to cancel his option by making an application to the designated officer subject to the condition that he can do so only with effect from the beginning of the next financial year.
10. The Re-rolling Mills shall make the payment of lump sum tax on the 30th day of the every month except February. In February, it shall be on 29th or 29th day of the moth, as the case may be, if the amount is paid in cash. If the amount is paid through crossed cheque or bank draft, then it shall be the 20th day of every month.
11. If there shall be any default on the part of Re-rolling mills opting for this scheme, withdrawal of the scheme shall follow and the said Mill shall be proceeded according to the provisions of the Punjab Value Added Tax Act, 2005

D.P. REDDY,
Financial Commissioner Taxation and
Secretary to Government of Punjab,
Department of Excise and Taxation.

NOTIFICATION (PUNJAB)

DRAFT RULES REGARDING VERIFICATION OF CERTIFICATE & PLACE OF PRACTICE

BAR COUNCIL OF INDIA

NOTIFICATION

New Delhi, the l2th January, 20l5

Extracts of' the minutes of the meeting of' General Council of Bar Council of India held on 29th/30th November, 2014.

Item No. 330/2014

The Council considered the Draft Rules with regard to verification of Certificate and Place of Practice of Advocates and to repeal the Bar Council of India Certificate of Practice and Renewal Rules, 20l4 and passed the following resolution:

Resolution No. 216/2014

(e) The Council resolves to modify the Resolution No. 169 of 20l4(Item No. 276/20l4) dated l7th October, 20l4. The Council further resolves that Draft Rules with regard to Verification of` Certificate and Place of Practice submitted by the sub-Committee be and is hereby approved. These new Rules shall be named as Bar Council of India Certificate and place of Practice (Verification) Rules 2015 depending on the year of its publication in the Gazette of India) and it shall come into force from the date of its publication in the Gazette of India. The Council further resolves to repeal Bar Council of` India Certificate of Practice and Renewal Rules, 20l4, accordingly the Bar Council of India Certificate of Practice Renewal Rules, 2014 stand repealed.

(f`) Bar Council of India Certificate and Place of Practice (Verification) Rules have been framed in exercise of powers conferred on Bar Council of India by section 49(l)(ag), 49(ah) and 49(i) of` the Advocates Act, l96l and in exercise of powers under Part-V Chapter l, Rule l(l) & 2 and Rule 2 of Bar Council of India Rules, Chapter III sub Rule 3, 4 and Part-IX Rule l7, l8(h), 20,22,24 of Bar Council of India Rules.

Bar Council of India Certificate and Place of Practice (Verification) Rules, 2015.

Statement of objects and reasons: (*Relevant extract*)

The Bar Council of India has also come to know that a number of fake (farzi) persons (without any Law Degree or enrolment certificate) are indulged in Legal practice and are cheating the Litigants, courts and other stake-holders; and neither-the Bar Associations nor the concerned State Bar Councils have any control over such fake persons. Shockingly, it has come to the notice of the Council that at some places, the office-bearers of Bar Associations or some vote-seekers knowingly make such people members and voters of their Associations with a motive to get their votes in the elections of Bar Associations or Bar Councils. Similarly, many persons, after getting enrolled as Advocates in any State Bar Council, get involve in Property-Dealings, contract or switch over to some other business, profession or job and have no more concern with the Legal profession. Such- "non-practicing, Advocates" are sometimes being used by some of the office-bearers/candidates for elections of Bar Associations or Bar Councils (only for their votes). But in fact, the Council has realized that such practice is degrading the standard of Legal profession, and this mal-practice has to be stopped.

Few of the office-bearers representatives of some of the Ban Associations had raised unnecessary objections and protests to these reformative steps. Such protests were/are only to serve their vested interests. Bar

Council of India has to maintain the dignity and standard of Legal profession, we shall have to oust fake people from the court-campus and we shall have to identify the “non-practicing Advocates", (who are involved: in other job, business or profession). We are to ensure that such Advocates do not involve in deciding the fate of our Associations and the Bar Councils; And such Advocates are not allowed to get any benefit of welfare schemes or to practice Legal profession so long they are in any other-business, job or profession.

It is due to these reasons, the Council has decided to make provisions for identification of such fake persons and non-practicing Advocates. And the Council has also felt it necessary to discourage those Advocates who raise unnecessary protests with an intent to keep and protect the fake and/or non-Practicing Advocates with an object to get their votes. Therefore, the Council has resolved to make suitable provisions in these Rules so that if any Advocate is found to be indulged in making deliberate effort to

(i) Protect fake people practicing legal profession illegally
(ii) to create any, hurdle, in identification of “non-Practicing Advocates and
(iii) create any objection in verification of the certificate of practice, credentials, place of Practice and details of Advocates, such Advocates would be debarred from contesting any election of Bar Association or Bar Council for a period of three years from the date of order to this effect.

Under the circumstances and for the above mentioned reasons, the Council has resolved to repeal the “Bar Council of India Certificate of Practice and Renewal Rules 2014” and has made and passed the new “ Bar Council of India Certificate and place of Practice (Verification) Rules 2015”, and has decided to implement)

For detail see the website of Bar Council of India.

SGA
LAW OFFICES

NOTIFICATION (Punjab)

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NOTIFICATION REGARDING AMENDMENT IN SCHEDULE "E" - DIESEL

PUNJAB GOVT. GAZ. (EXTRA), JULY 15, 2015
(ASAR 24, 1937 SAKA)

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

NOTIFICATION

The 15th July, 2015

No. S.O. 30/P.A.8/2005/S.8/2015.-Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest ;

Now, therefore, in exercise of the powers conferred by sub-section (3) of Section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act, No.8 of 2005), and all other powers enabling him in this behalf; the Governor of Punjab is pleased to make the following amendment in Schedules "E" appended to the said Act, with effect from 16-07-2015 by dispensing with the condition of previous notice, namely:-

AMENDMENT

In the said Schedule, for serial number 1 and entries relating thereto, the following serial number and entries relating thereto, shall be substituted, namely :-

"1 Diesel other than premium diesel 13.4 per cent.".

D.P. REDDY,
Financial Commissioner Taxation and
Secretary to Government of Punjab,
Department of Excise and Taxation.

PUBLIC NOTICE (Punjab)

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NOTICE FOR EXTENDING DATE FOR FILING OF VAT-15

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION

PUBLIC NOTICE

Kind Attention: Dealers/Chartered Accountants/Lawyers/Other Stakeholders

This is to inform all the concerned that the last date of e-filing of VAT-15 for the 1st Quarter of 2015-16 has been extended till 4th August, 2015.

Dated: 30th July, 2015

Excise & Taxation Commissioner, Punjab

SGA
LAW OFFICES

CIRCULAR (Punjab)

CANCELLATION OF NON-FUNCTIONAL DEALERS AND VALIDATING PAN OF ALL FUNCTIONAL DEALERS

NO. ETTSA 6587 **dated 06/08/15**

To

All Deputy Excise & Taxation Commissioners,

Incharges of the divisions of Punjab

Subject: Cancellation of non-functional dealers and validating PAN of all functional dealers.

Memo:

As you know we are about to migrate from VAT to GST Regime. For timely and smooth migration, it is necessary to validate PAN of every functional registered dealer in the State. The PAN validation process of the functional dealers, e-filing the returns, is under process at our level. To complete the process, it is necessary to weed out non-functional dealers.

As cited in the subject, you were directed to cancel non-functional dealers. For help, you were provided with 3 lists send through e-mail, List 1 of return defaulters for last three quarters and List 2 of dealers filing Nil returns for last three years and List 3 of dealers filing manual returns. So your task is to make sure the dealers from List 1 & 2 may be cancelled on priority, after verification and adopting proper procedure. Daily progress report in this regard, is required to be send through mail daily by 4:00 PM in following format:

S.No.	Name of the district	Total no. of non-functional dealers (list 1 + 2)	No. of dealers verified as functional	No. of dealers cancelled today on date_____	Total no. of dealers cancelled till date	Pending No. of non-functional dealers

Dealers filing manual returns or not liable to file returns e.g. commission agents, lump-sum tax payers etc. i.e. dealers verified as functional, should be taken care off by the concerned AETC/ETO. The PAN data of such dealers, by collecting manually, be made available to my e-mail ID by Aug 14th 2015 in following Format:

Sr.No.	Name of the District	Name of the Firm	Tin	PAN of firm	Name of Prop./Partner/Director etc.

Mr. Parminder Pal Singh, ETI is appointed Nodal Officer for the purpose. You are supposed to submit daily progress report on e-mail: etiettsa@gmail.com. Daily before 4:00 PM.

Please take the matter seriously and take actions on top priority.

Sd/-
Additional Excise & Taxation Commissioner-1,
Punjab-cum-Chief Executive Officer, ETTSA.

ENDT. No.: ETISA 6589 Dated 06/08/15

NOTIFICATION (HARYANA)

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NOTIFICATION REGARDING AMENDMENT IN SCHEDULE E

HARYANA GOVERNMENT

EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 7th September, 2015

No.22/ST-1/H.A. 6/2003/S.59/2015.- Whereas the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 59 read with the proviso to said sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following amendment in Schedule E appended to the said Act, with effect from the date of publication of this notification in the Official Gazette, by dispensing with the condition of previous notice, namely:-

Amendment

In the Haryana Value Added Tax Act, 2003 (Act 6 of 2003), for existing Schedule E, the following Schedule shall be substituted, namely:-

"Schedule E
[See sub-section (1) of section 8]

Serial number	Description of goods	Circumstances and restrictions	Extent of admissibility of input tax
1	2	3	4
1	Petroleum products and natural gas	(i) when used as fuel; (ii) when exported out of State.	Nil
2	Capital goods	(i) when intended to be used mainly in the manufacture of exempted goods or in the telecommunications network or mining or the generation and distribution of electric energy or other form of power; or (ii) when forming part of gross block on the date of cancellation of the	Nil

		registration certificate.	
3(a)	All goods except those mentioned at serial numbers 1 and 2	(i) when used in the telecommunications network, in mining, or in the generation and distribution of electricity or other form of power; (ii) when exported out of state or disposed of otherwise than by sale; (iii) when used in the manufacture or packing of exempted goods except when such goods are sold in the course of export of goods out of the territory of India; (iv) when used in the manufacture or packing of taxable goods which are exported out of State or disposed of otherwise than by sale; (v) when left in stock, whether in the form purchased or in manufactured or processed form, on the date of cancellation of the registration certificate; (vi) when sold by Canteen Store Department.	Nil
3(b)	All goods including those mentioned at serial number 1 and 2.	(i) when the goods are sold as such in the course of inter-state trade or commerce; or (ii) when the goods are used in the manufacture of goods and the manufactured goods are sold in the course of inter-state trade or commerce (iii) when sold at a sale price lower than the purchase price.	Input Tax to the extent of the amount of tax actually paid on the purchase of such goods in the State under the Act or tax payable on sale of such goods under the Central Sales Tax Act, 1956, whichever is lower. To the extent of output tax liability, if any, on the sale of such goods.
4	Liquor as defined in the Punjab Excise Act, 1914 (1 of 1914)	when sold in the State by Bar licensees (Licenses L-4/L-5/L-12C/L-12G/L-10E).	Nil

Note 1 - In this Schedule the expression " the date of cancellation of the registration certificate" means the date of effect of the cancellation of the registration certificate.".

ROSHAN LAL,
Additional Chief Secretary to Government, Haryana,
Excise and Taxation Department.

PUBLIC NOTICE (HARYANA)

ORDER REGARDING EXTENTION OF PERIOD TO FILE ONLINE RETURN

Consequent upon implementation of electronic governance under section 54-A(1) of the HVAT Act, 2003 vide order dated 05.08.2015, I am satisfied that circumstances exist for extension of period prescribed for furnishing of online quarterly returns. Therefore, in exercise of powers conferred upon me under section 54-A(3) of the Haryana Value Added Tax (Second Amendment) Ordinance, 2015 and in pursuance of approval of the Government conveyed vide memo No. 5213-ET-4-2015/15507, dated 02/03.09.2015 I, Shyamal Misra, IAS, Excise & Taxation Commissioner, Haryana, do hereby extend the period for filing online quarterly returns for the quarter ending 30.06.2015, upto 15.09.2015.

Panchkula, dated
03.09.2015

(SHYAMAL MISRA)
Excise & Taxation Commissioner,
Haryana, Panchkula.

PUBLIC NOTICE (HARYANA)

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PERMISSION FOR FRAMING OF ASSESSMENT U/S 15(2) OF HVAT ACT

FROM

Excise & Taxation Commissioner,
Haryana, Chandigarh

To

Dy. Excise & Taxation Commissioner (ST),
Ambala.

Memo No. 2064 / ST-6,
Panchkula, dated the /0-9-2015

Subject: **Permission for framing of assessment u/s 15(2) of HVAT Act, 2003 read with Rule 27 of HVAT Rules in the case of M/s D.S. Marketing for the assessment year 2013-14 and 2014-15.**

Reference: Your office letter No. 4722, dated 26.08.2015.

Memo

On the captioned subject under reference, worthy Excise & Taxation Commissioner, Haryana has accorded permission to take up the case of M/s D.S. Marketing in scrutiny assessment under Rule 27(4) of Haryana Value Added Tax Act Rules, 2003. The case is selected for scrutiny assessment u/r 27(1)(ix) of the HVAT Rules. The case has been uploaded on the official website.

Addl. Excise & Taxation Commissioner (T),
for Excise & Taxation Commissioner, Haryana

NOTIFICATION (Haryana)

AMENDMENT IN LUMP SUM VAT RATE IN RESPECT OF BKOS AND PLYBOARD

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 19th August, 2015

No. 20/ST-1/H.A.6/2003/S.60/2015. - Whereas, the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 60 read with the proviso to said sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following rules further to amend the Haryana Value Added Tax Rules, 2003 by dispensing with the condition of previous notice, namely:-

1. (1) These rules may be called the Haryana Value Added Tax (Second Amendment) Rules, 2015.

(2) These rules shall come into force with immediate effect from the date of publication of this notification in the Official Gazette.

2. In the Haryana Value Added Tax Rules, 2003 (hereinafter called the said rules), in rule 47, in sub-rule (1), for existing table, the following table shall be substituted, namely:-

"Table Serial Number	**Capacity of Kiln**	**Category**	**Lump sum amount payable in lieu of tax**
1.	Brick kiln of capacity of more than 33 number of Ghori	+ A	Rs.4,01,856/-plus Rs. 13,995/- per additional Ghori above 33 Ghori
2.	Brick kiln of capacity of 28 to 33 number of Ghori	A	Rs. 4,01,856/-
3.	Brick kiln of capacity of 22 to 27 number of Ghori	B	Rs. 3,13,950/-
4.	Brick kiln of capacity of below 22 number of Ghori	C	Rs. 2,50,900/-
5.	Brick kiln not fired during the year ending 30th September in which stock in and outside the kiln as on 1st October of last year, did not exceed five lakh bricks of all categories.	D	Rs. 62,700/-

Note :- If a kiln is designed to be fired at two places, the rate of lump sum payable by the owner of such kiln shall be double of the aforesaid rates.".

1. In the said rules, in rule 51, for sub-rule (1), the following sub-rule shall be substituted, namely:-

"(1) Subject to the other provisions of this rule, a ply-board manufacturer may, by exercising option in the manner given in sub-rule (6), at any time offer to make payment of lump sum in lieu of tax payable by him under the Act on sale of ply-board manufactured by him and waste products arising therefrom, at the rate(s) mentioned below

Table

Serial Number	Press size	Rate of lump sum per press per annum
1	8' x 4' x 10	Rs. 11,70,000/-
2.	8' x 4' x 7	Rs. 8,19,000/-
3	6' x 4' x 10	Rs. 8,78,000/-
4	6' x 4' x 7	Rs. 6,15,000/-
5	4' x 4' x 10	Rs. 4,17,000/-
6	4' x 4' x 7	Rs. 2,93,000/-

Where an 8'x4'x10 press is designed to make 10 number ply-boards each measuring 8 feet by 4 feet i.e. 320 square feet ply-board in single operation and presses other sizes are designed to make ply-board in the same proportion:

Provided that annual rate of lump sum in respect of press of any other size not tabulated above shall, if the press is designed to make ply-boards of size not exceeding 4'x4' i.e. 16 square feet per piece be computed @ Rs.2611.61 per square feet else @Rs.3656.25 per square feet, rounded off to nearest thousand in each case:

Provided further that lump sum for any additional press of the same or lower size shall be computed at one-half of the full rate tabulated above.".

ROSHAN LAL,
Additional Chief Secretary to Government, Haryana,
Excise and Taxation Department.

NOTIFICATION (Haryana)

AMENDMENT IN DIESEL NOTIFICATION NO.18/ST-1/H.A.6/2003/S.59/2015, DATED 15-07-2015

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

Notification

The 28th August, 2015

No.21/ST-1/H.A. 6/2003/S.59/2015. - Whereas, the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 59 read with proviso to said sub-section of the Haryana Value Added Tax Act, 2003(6 of 2003), the Governor of Haryana hereby makes the following amendment in the Haryana Government, Excise and Taxation Department, notification No.18/ST- 1/H.A.6/2003/ S.59/2015, dated the 15th July, 2015, namely:-

AMENDMENT

In the Haryana Government, Excise and Taxation Department, notification No.18/ST-1/H.A.6/2003/ S.59/2015, dated the 15th July, 2015 in the second para, for the words "with immediate effect", the words and figures "with effect from the midnight of 15th and 16th July, 2015" shall be substituted.

ROSHAN LAL,
Additional Chief Secretary to Government, Haryana,
Excise and Taxation Department.

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NOTIFICATION (Haryana)

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

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

PART II
HARYANA GOVERNMENT
LEGISLATIVE DEPARTMENT

Notification

The 3rd August, 2015

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

HARYANA ORDINANCE NO. 3 OF 2015

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. In section 16 of the principal Act,-

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

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

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

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

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

"Chapter-XA

Electronic governance

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

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

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

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

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

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

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

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

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

PROF. KAPTAN SINGH SOLANKI,
GOVERNOR OF HARYANA

KULDIP JAIN
Secretary to Government Haryana
Legislative Department

NOTICE (Haryana)

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PUBLIC NOTICE REGARDING FURNISHING OF PAN

EXCISE & TAXATION DEPARTMENT,

HARYANA

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

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

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

Excise & Taxation Commissioner,

Haryana, Panchkula

SGA
LAW OFFICES

NOTIFICATION (Haryana)

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NOTIFICATION REGARDING AMENDMENT IN RULE 25 OF HVAT RULES

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 23rd July, 2015

No.19/ST-1/H.A.6/2003/S.60/2015.—Whereas, the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 60 read with the proviso to said Sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following rules further to amend the Haryana Value Added Tax Rules, 2003 by dispensing with the condition of previous notice, namely:-

1. (1) These rules may be called the Haryana Value Added Tax (Amendment) Rules, 2015.

   (2) These rules shall be deemed to have come into force with effect from 17th May, 2010.

2. In the Haryana Value Added Tax Rules, 2003, in rule 25;-

   (a) for sub-rule (2), the following sub-rules shall be substituted, namely:-

   "(2) In case of turnover arising from the execution of a works contract or job work, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract and shall exclude –

   (i) the charges towards labour, services and other like charges; and
   (ii) the charges towards cost of land, other charges relatable to land, if any, paid to the Government or its agency, subject to the dealer maintaining proper records such as invoice, voucher, challan or any other document evidencing payment of above referred charges to the satisfaction of the Taxing Authority.'';

   (3) For the purpose of clause (i) of sub-rule (2), the charges towards labour, services and other like charges shall include:-

   (i) labour charges for execution of works;

   (ii) charges for planning and architect's fees;

   (iii) cost of consumables such as water, electricity, fuel etc. used in the execution of the works contract in which the property in goods is not transferred in the course of execution of the works contract;

(iv) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
(v) other similar expenses relatable to supply of labour and services;
(vi) profit earned by the contractor to the extent it is relatable to supply of labour and services subject to furnishing of a profit and loss account of the works sites:

Provided that where the amount of charges towards labour, services and other like charges are not ascertainable from the books of accounts of the dealer or the dealer fails to produce documentary evidence in support of such charges, the amount of such charges shall be calculated at the percentages of valuable consideration specified in the Table given below:-

TABLE
PERCENTAGES FOR WORKS CONTRACTS OR JOB WORKS

Sr.No.	Type of Contract	Labour, service and other like charges as percentage of valuable consideration
1	Fabrication and installation of plant and machinery.	Twenty five percent
2	Fabrication and erection of structural works of iron and steel including fabrication, supply and erection of iron trusses, purloins and the like.	Fifteen percent
3	Fabrication and installation of cranes and hoists.	Fifteen percent
4	Fabrication and installation of elevators (lifts) and escalators.	Fifteen percent
5	Fabrication and installation of rolling shutters and collapsible gates.	Fifteen percent
6	Civil works like construction of buildings, bridges, roads, dams, barrages, canals and diversions.	Twenty five percent*
7	Installation of doors, doorframes, windows, frames and grills.	Fifteen percent
8	Supply and fixing of tiles, slabs, stones and sheets.	Twenty percent
9	Supply and installation of air conditioners and air coolers.	Fifteen percent
10	Supply and installation of air conditioning equipment including deep freezers, cold storage plants, humidification plants and de-humidors.	Fifteen percent
11	Supply and fitting of electrical goods, supply and installation of electrical equipments including transformers.	Fifteen percent
12	Supply and fixing of furniture and fixtures, partitions including contracts for interior decoration and false ceiling.	Fifteen percent
13	Manufacturing/fabrication of Railway coaches and wagons on under carriages supplied by Railway.	Twenty percent
14	Fabrication or mounting of bodies of motor vehicle and trailers.	Twenty percent
15	Sanitary fitting for plumbing and drainage or sewerage.	Thirty percent
16	Laying underground surface pipelines, cables or conduits.	Thirty percent
17	Dyeing and printing of textiles.	Thirty percent
18	Supply and erection of weighing machines and weighbridges.	Fifteen percent
19	Painting, polishing and white washing.	Thirty percent

20	Tyre retreading	Forty percent
21	Photography and Printing Contracts	Thirty percent
22	Electroplating, Electro Galvanizing and Anodizing and the like	Forty percent
23	All other contracts not specified from serial number 1 to 22 above.	Twenty percent

* In case of the works contract mentioned at serial number 6 where land is also transferred alongwith other property in goods, the deduction of twenty five percent shall be allowed after excluding the cost of transferred land as determined under this rule:

Provided further that where the dealer claims deduction on account of labour, services and other like charges exceeding the percentages of valuable consideration specified in the above Table, the assessing authority, after examining the claims, may allow the claim of the dealer and shall record reasons in writing for accepting the claim of the dealer.

(4) In case the works contract mentioned in sub-rule (2) is of the nature wherein the agreement executed between the land owner and the contractor or similar other agreement is of the nature of collaboration or joint development where the contractor constructs the building/units, and consideration for the construction is given by the land owner in the form of share in the land with or without additional money exchange, the value of works contract carried out by the contractor for the land owner shall be the highest of the following amounts,-

(i) Actual value of construction, including profit, transferred by the contractor to the land-owner in accordance with the books of accounts maintained by the contractor.

(ii) Where proportionate land is transferred by the land-owner to the contractor by executing a separate conveyance/sale deed, the value stated in the deed for the purpose of payment of stamp duty as reduced by consideration paid by the contractor to the land owner through any mode of payment.

(iii) On the basis of circle rate of proportionate area of land transferred by the land-owner to the contractor prevailing at the time of execution of agreement between them, as reduced by the consideration paid by contractor to the land-owner through any mode of payment:

Provided that where separate circle rates for land and construction have not been notified in respect of certain buildings or properties, then circle rate for land and construction prevailing in that locality for other buildings or properties, in respect of which separate circle rates have been notified, shall be taken into consideration for the purpose of determination of value under this sub-rule:

Provided further that the value of works contract under this sub-rule shall not be less than the circle rate of construction applicable on the date on which agreement between the land-owner and the contractor for the construction of property was executed.

Explanation.- The taxable turnover in relation to contractor's share of construction for activity carried on by him for the intended purchaser shall be calculated separately as per provisions of this rule.

(5) For the purpose of clause (ii) of sub-rule (2), the cost of land in a works contract carried on by the developer for the intended purchaser shall be the highest of following:-

(i) Where separate conveyance/sale deed of the land has been executed between the developer and the intended purchaser, the consideration amount of land stated in that deed; or

(ii) Where separate conveyance/sale deed of the land has not been executed for transfer of land between the developer and the intended purchaser and transfer of land is mentioned in the conveyance deed of the constructed unit, then the value of land in the value of composite works contract shall be determined on the basis of notified circle rates of land prevailing at the time of execution of agreement between the developer and the intended purchaser:

Provided that where separate circle rates for land and construction have not been notified in respect of certain properties, then circle rate for land and construction prevailing in that locality for other properties in respect of which separate circle rates have been notified, shall be taken for the purpose of determination of value under this sub-rule:

Provided further that where land has been valued at circle rate and the value of conveyance/sale deed of the constructed unit with the intended purchaser exceeds the circle rate, then the difference between the two shall be proportionately divided between the value of land and the works contract (comprising material and services).

For example, in case of composite works contract, circle rate of land is Rs. 2 crore and circle rate of construction is Rs. 1 crore, and the consolidated value of sale deed (inclusive of land and cost of construction) is Rs. 3.60 crore. Difference of Rs. 0.60 crore shall be divided in the ratio of 2:1; and thus, value of land for the purpose of this sub-rule shall be Rs. 2.40 crore.

Explanation:- (a) The term ―intended purchaser‖ for the purpose of this sub-rule means the person who agrees to buy the property before completion of construction and pays the consideration, in full or part, before such completion.

(b) For the purpose of this sub-rule, construction shall be deemed to be complete at the time of issuance of completion certificate by the competent authority, or at the time and in the manner notified by the State Government for this purpose;

(iii) in the case of works contract where the payment of charges towards the cost of land is not ascertainable in accordance with the preceding clauses of this sub-rule, the amount of such charges shall be calculated @ 25% of the total value of the contract, except in the case of construction of commercial buildings/complexes where it shall be calculated @ 40% of the total value of the contract; or

(iv) in the case of works contract, where only a part of the total area to be constructed is being transferred, the charges towards the cost of land shall be calculated on a pro-rata basis through the following formula.

Proportionate super area multiplied by Value of land as determined in this sub-rule
divided by
Total plot area multiplied by Floor Area Ratio

Explanations:

(a) Proportionate super area for the purpose of this clause means the covered area booked for transfer and the proportionate common area to be constructed, attributable to it.

(b) Floor Area Ratio = Total constructed area divided by Total Plot Area.

(6) In the case of works contract where only a part of total constructed area is being transferred, the deduction towards labour, services and other like charges mentioned in sub-rule (3) and input tax credit under section 8 of the Act shall be calculated on a pro-rata basis.

(7) (i) Where an agreement is executed by the developer with the intended purchaser after commencement but before completion of construction, the taxable turnover of sale shall be the total value of agreement, as reduced by cost of land and pro-rata amount of labour, services and like charges, determined in accordance with this rule.

(ii) Tax shall be payable at the time of an amount receivable or actually received, whichever is earlier, in whatever form or manner, from the intended purchaser in relation to (i) above.

(iii) The developer shall be eligible to deduct labour, services, other like charges in relation to (i) above in the tax period when output tax becomes payable.‖.

ROSHAN LAL,
Additional Chief Secretary to Government Haryana,
Excise and Taxation Department.

PUBLIC NOTICE (Haryana)

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NOTICE REGARDING GSTIN

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION

PUBLIC NOTICE

Kind Attention: Dealers/Chartered Accountants/Lawyers/Other Stakeholders

1. As you are aware that Goods and Services Tax (GST) is likely to be implemented with effect from April 1, 2016.

2. In GST regime, every dealer will be given a unique GSTIN.

3. This GSTIN will be linked with the Permanent Account Number (PAN in income tax) of the dealer.

4. Those dealers whose Tax Identification Number (TIN in VAT regime) is already linked with the valid PAN are likely to be issued a GSTIN with bare minimum additional formalities.

5. In light of this, Government of India has asked all the States to request their dealers to provide information regarding their PANs.

6. In order to facilitate you to provide your information regarding PAN, a pop will appear in your login. You are requested to submit you PAN details.

7. Providing the information regarding PAN will facilitate your smooth transition from VAT regime to GST Regime.

Dated: 23-July-2015 Excise & Taxation Commissioner

It is brought to the notice of all the Dealers registered under the Haryana Value Added Tax Act, 2003 (HVAT, 2003) that the Excise & Taxation Department, Haryana is undertaking a comprehensive computerization of all its activities. Under this initiative, the Dealers will be able to get online Registration, Payment of Tax, Filing of Returns, Forms, and Refunds etc. They will not have to come to the Department for their various work. To enable the online process for each Dealer, the Department has to provide a User ID and a Password. Therefore, it is requested that the Dealers may provide their e-mail, Mobile No. and Proprietor/Firm/Company copy of PAN No. to their respective wards in the Department before 12th March, 2015 in the prescribed format below, so that their User ID and Password could be sent on their emails.

TIN _____
Name of the Firm _____
E-mail ID _____
Mobile Number _____
PAN of the Proprietor/Firm/Company
(As applicable) _____
Signature and Stamp of Authorized Person _____

The Dealers whose above said information is not provided, shall not be able to use the online facilities provided by the Department and the Dealers who have already provided the said information to the Department, need not give it again.

NOTIFICATION (Haryana)

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NOTIFICATION REGARDING AMENDMENT IN SCHEDULE A AND D OF HVAT ACT

EXCISE & TAXATION COMMISSIONER, HARYANA, PANCHKULA
HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 15th July, 2015

No. 18/ST-1/H.A. 6/2003/S.59/2015. - Whereas, the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 59 read with proviso to said Sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following amendment in Schedule A and D appended to the said Act, with immediate effect, by dispensing with the condition of previous notice, namely:-

AMENDMENT

In the Haryana Value Added Tax Act, 2003 (Act 6 of 2003),-

(i) in Schedule A, against serial number 4, under column 3, for the figures and signs "11.5%", the figures and signs "16.4%" shall be substituted; and

(ii) in Schedule D, against serial number 3, under column 3, for the figures and signs "11.5%", the figures and signs "16.4%" shall be substituted.

ROSHAN LAL,
Additional Chief Secretary to Government Haryana,
Excise and Taxation Department.

PUBLIC NOTICE (HARYANA)

PUBLIC NOTICE
EXCISE AND TAXATION DEPARTMENT, HARYANA

REVISED PROCESS FOR REGISTRATION OF APPLICANTS

1.Applicant will fill the form online. Now, all Documents including photographs are non-mandatory in the system. The applicant will submit the hard copies of the documents alongwith one recent passport size coloured photograph to the AETO of the concerned district along with identity proof, which contains photograph of the applicant.

2. AETO will receive the hard copy of the documents and the photograph. AETO will approve the application in system based on hard copy submitted by applicant.

3. On Approval, System will generate confirmation receipt, AETO will print two copies of the confirmation receipt, one will be handed over to the applicant and second copy will be kept in records along with the documents submitted. The photo of the applicant should be affixed on the second copy of the confirmation receipt by the AETO.

Note: AETO will neither upload nor download any document.

Collector-cum-AETC (HQ)
for Excise and Taxation Commissioner,
Haryana, Panchkula.

NOTIFICATION (HARYANA)

NOTIFICATION REGARDING AMENDMENT IN SCHEDULE A

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 31st March, 2015

No.4/ST-1/H.A.6/2003/S.59/2015. – Whereas, the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 59 read with the proviso to said sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following amendment in Schedule A appended to the said Act, by dispensing with the condition of previous notice, namely:-

Amendment

In the Haryana Value Added Tax Act, 2003 (Act 6 of 2003), in Schedule A, against serial number 10, under column 3, for the figure, sign and words "**4% inclusive of surcharge, if any**" the figure and signs "**8%**" shall be substituted with effect from 1st day of April, 2015.

Roshan Lal,
Additional Chief Secretary to Government,
Haryana, Excise and Taxation Department.

SGA
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NOTIFICATIONS

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NOTIFICATION REGARDING REDUCING RATE OF TAX ON BIO-FERTILIZER, LED LIGHTS, PIPE FITTINGS AND PRE-ENGINEERED STEEL BUILDING & STEEL COMPONENTS THEREOF INCLUDING PUFF PENALS

HARYANA GOVT. GAZ., (EXTRA.), JUNE 15, 2015

(JYST. 25, 1937 SAKA)

HARYANA GOVERNMENT

EXCISE AND TAXATION DEPARTMENT

Notification

The 15th June, 2015

No. 15/ST-1/H.A. 6/2003/S.59/2015.- Whereas, the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 59 read with the proviso to said Sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following amendment in the Schedules B and C appended to the said Act, with effect from 1st April, 2015, by dispensing with the condition of previous notice, namely:-

Amendment

In the Haryana Value Added Tax Act, 2003 (Act 6 of 2003),-

(1) in Schedule B, under columns 1 and 2, for serial number 12 and entry thereagainst, the following serial number and entry thereagainst shall be substituted, namely:-

1	2
"12	Chemical fertilizer**,** bio-fertilizer and gypsum**."**

(2) in Schedule C,

(i) under columns 1 and 2, for serial number 21A and entries thereagainst, the following serial number and entries thereagainst shall be substituted, namely:-

1	2
"21A	Compact fluorescent lamps, tubes and bulbs and chokes of T-5, 28W energy efficient, electronic tube lights with electronic ballast and LED lights";

(ii) under columns 1 and 2, for serial number 60 and entries thereagainst, the following serial number and entries thereagainst shall be substituted, namely:-

1	2

"60 Pipes and pipe fittings of all varieties including Galvanized Iron pipes, Cast Iron pipes, ductile pipes, Poly Vinyl Chloride pipes and conduit pipes";

(iii) under columns 1 and 2, for serial number 63 and entries thereagainst, the following serial number and entries thereagainst shall be substituted, namely:-

1 2

"63 Plant growth promoters and plant nutrients."

(iv) under columns 1 and 2, after serial number 68 and entries thereagainst, the following serial numbers and entries thereagainst shall be inserted, namely:-

1 2

"68A "Pre-engineered steel building and steel components thereof including puff panels.".

ROSHAN LAL,
Additional Chief Secretary to Government Haryana,
Excise and Taxation Department.

NOTIFICATIONS

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AMENDMENT IN RULE 7 OF CST HARYANA RULES 1957, ONLINE ISSUE OF 'C' FORMS

HARYANA GOVT. GAZ., (EXTRA.), JUNE 18, 2015
(JYST. 28, 1937 SAKA)

HARYANA GOVERNMENT

EXCISE AND TAXATION DEPARTMENT

Notification

The 18th June, 2015

No. 16/ST-2/C.A.74/1956/S.13/2015.- In exercise of the powers conferred by Sub-sections (3) and (4) of Section 13 of the Central Sales Tax Act, 1956 (Act 74 of 1956), the Governor of Haryana hereby makes the following rules further to amend the Central Sales Tax (Punjab) Haryana Rules, 1957, namely:-

1. These rules may be called the Central Sales Tax (Punjab) Haryana Amendment Rules, 2015.

2. In the Central Sales Tax (Punjab) Haryana Rules, 1957, in rule 7, for sub-rules (1) and (2), the following sub-rules shall be substituted and shall be deemed to have been substituted with effect from 1st June, 2015, namely:-

"(1) Any dealer registered under the Act shall apply to the authority, to whom he made his application for registration, for the grant of declaration in Forms C, F, H and I prescribed under the Central Sales Tax (Registration and Turnover) Rules, 1957, stating his demand and details of such declaration forms already in hand and also the date on which and the number in which he was last issued the declaration forms.

(2) If the officer referred to in sub-rule (1) is satisfied that the requisition of the dealer is genuine and reasonable he may issue him as many declaration forms as he deems fit on prior payment of charges @ Rs.120.00 per book of 100 declaration Forms, either in cash or into the Government Treasury and on furnishing the bank or treasury receipt in token of the said amount having been paid. However, in case the declaration form is applied for by a dealer online and are issued online by the competent authority then no such charges shall be payable by the dealer. In case the officer has reason to suspect that the declaration forms are likely to be misused by the dealer, he may, for reasons to be recorded in writing, call upon the dealer to furnish such security / surety, as he may think reasonable to guard against the misuse of the same.".

ROSHAN LAL,
Additional Chief Secretary to Government Haryana,
Excise and Taxation Department.

NOTIFICATIONS

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AMENDMENT IN SECTION 59 & 60 OF HVAT ACT 2003

HARYANA GOVT. GAZ. (EXTRA.), APR. 30, 2015 21

(VYSK. 10, 1937 SAKA)

HARYANA GOVERNMENT

LAW AND LEGISLATIVE DEPARTMENT

Notification

The 30th April, 2015

No. Leg. 4/2015. – The following Act of the Legislature of the State of Haryana received the assent of the Governor of Haryana on the 3rd April, 2015, and is hereby published for general information :–

(HARYANA ACT NO. 4 OF 2015)

THE HARYANA VALUE ADDED TAX (AMENDMENT) ACT, 2015

AN

ACT

further to amend the Haryana Value Added Tax Act, 2003.

Be it enacted by the Legislature of the State of Haryana in the Sixty-sixth Year of the Republic of India as follows:-

Short title

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

Amendment of section 59 of Haryana Act 6 of 2003.

2. In section 59 of the Haryana Value Added Tax Act, 2003 (hereinafter called the principal Act),—

(i) in sub-section (1), for the sign "." existing at the end, the sign ":" shall be substituted; and

(ii) after sub-section (1), the following proviso shall be added, namely:—

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

Amendment of section 60 of Haryana Act 6 of 2003.

3. In section 60 of the principal Act,—

(i) in sub-section (1), in the proviso, for the sign "." existing at the end, the sign ":" shall be substituted; and

(ii) after the proviso, the following proviso shall be added, namely:—

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

Repeal and savings.

4. (1) The Haryana Value Added Tax (Third Amendment) Ordinance, 2014(Haryana Ordinance No. 8 of 2014) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under this Act.

———————

PARAMVIR NIJJAR,
Special Secretary to Government, Haryana,
Law and Legislative Department.

SGA
LAW OFFICES

CIRCULAR

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CRITERIA REGARDING SELECTION OF CASES FOR SCRUTINY ASSESSMENT FOR THE YEAR 2013-14

From

Excise and Taxation Commissioner,
Haryana.

To

1. All the Joint Excise and Taxation Commissioners (Range).
2. All the Deputy Excise and T axation Commissioners (ST).

Memo No. 1092/ST-6.
Panchkula, dated the 29/05/15

Subject: Criteria regarding selection of cases for scrutiny assessment under the HVAT Act, 2003 and the CST Act, 1956 for the assessment year 2013-14

Memo

The criteria for the selection of cases for scrutiny assessment for the year 2013-14 has been approved by the State Government. Under rule 27(2) of the Haryana Value Added Tax Rules, 2003 the following cases will be selected for scrutiny assessment under the new criteria as under:

1. U/r 27(1)(i), cases having GTO exceeding Rs.10 crores in a year
2. U/r 27(1)(ii), cases having claim of ITC exceeding Rs. 25 lacs.
3. U/r 27(1)(iii), cases for claim of refund of more than Rs.5 lacs in a year
4. U/r 27(1)(iv), cases where inter state trade and commerce or in he course of export of goods out of the territory of India or in the course of import of goods into territory of India or goods exported out of the State cumulatively or individually exceeding Rs. 2 crores in a year.
5. U/r 27(1)(vii), all cases of industrial units availing any tax concession under clause (d) of sub-section (2) of Section 61 till such units are subject to relevant provisions in the 1975 Rules.
6. U/r 27(1)(vii), where is a mismatch of sale, purchase or consignment with the accounts of the other dealers to the transactions.
7. U/r 27(1)(ix), cases based on definite intelligence about evasion of tax where on definite information it is discovered that there is evasion or avoidance of tax by such dealers. Such cases shall be taken up for scrutiny assessment with the prior approval of the DETC(ST) incharge of the district.
8. U/r 27(1)(x), 1% cases of toll registered dealers in the State shall be selected randomly for scrutiny assessment through computer at the Head Office.

9. U/r 27(1)(xi), the following cases of different trade/trades shall be taken up for scrutiny assessment under this criteria:-
   a) Mines and quarry contractors and stone crushers, whose turnover is more than Rs.50 lacs;
   b) All builders and developers in the State;
   c) Works contractors having turnover more than Rs.5 crores;
   d) All cotton ginning mills;
   e) All processing units of dyeing, printing and embroidery;
   f) All hot mix plants;
   g) All Ready Mix Concrete (RMC) dealers;
   h) All Rice shllers having annual turnover exceeding Rs. One crore;
   i) The traders selling goods at concessional rate of tax under the CST Act after purchasing goods from within the State leviable to tax at general rate or higher rate;
   j) Dealers exclusively dealing in biri and cigarette;
   k) All automobile dealers;
   l) All liquor dealers liable to pay tax including L-4/L-5 licensees.
   m) All e-commerce dealers

2. Each Assessing Authority shall select five cases of his/her choice from any category including categories covered above if he/she feels that the assessment of such cases will result into creation of additional demand not less than Rs. Five lacs or it will result in detention of evasion of tax, but the final selection of such cases will be decided by a Committee comprising the DETC(ST) of the district and two senior most ETOs.

3. Petrol pump dealers whose total purchase and sales are within the State of Haryana shall not be taken up for scrutiny assessment.

4. While selecting the cases under the above criteria, a scrutiny case, which has been selected under one criteria, would not fall under any other criteria.

5. The above criteria be circulated among all the ward officers working under your jurisdiction for compliance.

Sd/-
Addl. Excise and Taxation Commissioner (T),
For Excise and Taxation Commissioner, Haryana

Endst. No. 1093/ST-6. Panchkula, dated the 29/05/2015

A copy is forwarded to the Addl. Chief Secretary to Government Haryana, Excise and Taxation Department for information.

Sd/-
Addl. Excise and Taxation Commissioner (T),
For Excise and Taxation Commissioner, Haryana

A copy is forwarded to the following in the Head Office for information:-

1. All Addl. Excise & Taxation Commissioner,
2. All Joint Excise & Taxation Commissioners,
3. All Deputy Ecise & Taxation Commissioners,
4. Joint Directors (Legal)
5. ST-2 with directions to include in the circular for the year 2015-16.

Sd/-
Addl. Excise and Taxation Commissioner (T),
For Excise and Taxation Commissioner, Haryana

U.O.No. 1094/ST-6, Panchkula, dated the 29/05/2015