Issue 20
October 2015

"The taxpayer — that's someone who works for the federal government but doesn't have to take the civil service examination."

----Ronald Reagan

NOMINAL INDEX

NOTIFICATION

PUNJAB

HARYANA

ARTICLE

NEWS OF YOUR INTEREST

Edited by

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

News From the Courtroom

- In the SLP filed against decision of Punjab and Haryana High Court in CWP No. 21811/14 whereby vires of Section 29(4) extending period of limitation vide amendment dated 15/11/2013 were upheld, the Hon'ble Supreme Court in SLP No. 26731 of 2015 has passed the following order on 21/9/2015

Petition(s) for Special Leave to Appeal (C) **No(s). 26731/2015**

AMRIT BANASPATI CO. LTD. **Petitioner(s)**

VERSUS

STATE OF PUNJAB AND ANR. **Respondent(s)**

Date: 21/09/2015 This petition was called on for hearing today.

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE AMITAVA ROY

UPON hearing the counsel the Court made the following

O R D E R

Notice.

No stay.

- In the matters pending before Hon'ble Supreme Court regarding vires of S 62(5) of PVAT Act regarding predeposit of 25% , matter was listed on 12/10/15 and has been adjourned to 26/11/2015.

- The matters regarding levy of Entry tax on sugar were listed before Hon'ble Punjab and Haryana High Court on 12/10/15. The Hon'ble High Court in CWP-15286-2015 and connected petitions has passed the following order.

CWP-15286-2015

Luxmi Trading Company vs. State of Punjab

ORDER

"Counsel for the petitioners pray for time to file rejoinder.

Adjourned to 16.11.2015.

In case the impugned notification is affirmed, the petitioners would be required to pay entry tax. In order to prevent any further dispute, the petitioners shall file a complete details of the quality and value of sugar imported into the State of Punjab with the competent authority.

Photostat copy of the order be placed on the files of other connected cases."

(RAJIVE BHALLA) **(REKHA MITTAL)**

JUDGE **JUDGE**

Issue 20
October 2015

SUBJECT INDEX

PUNJAB & HARYANA HIGH COURT

VATAP NO. 32 OF 2009

Go to Index Page

PEPSICO INDIA HOLDINGS PVT. LTD.
Vs
STATE OF PUNJAB AND OTHERS

ASHUTOSH MOHUNTA AND MEHINDER SINGH SULLAR, JJ.

18th May, 2010

HF ▶ Appellant

Potato chips are to be taxed @ 4% under Schedule B entry 88 for the period before amendment dated 31.10.2007.

ENTRIES IN SCHEDULE – POTATO CHIPS – PROCESSED VEGETABLES – MANUFACTURING OF POTATO CHIPS AND PROCESSED COMMODITIES- TAX PAID @ 4% FROM 1.4.2005 TO 31.10.2007 CONSIDERING THE ITEM TO BE FALLING UNDER SCHEDULE B- ASSESSING AUTHORITY CHARGED TAX @ 12.5 % HOLDING IT AS FALLING UNDER SCHEDULE F – APPEAL BEFORE TRIBUNAL DISMISSED HOLDING SUCH ITEM TO BE BEYOND ENTRY 88 OF SCHEDULE B IN VIEW OF AMENDMENT DATED 31.10.2007 – ON APPEAL BEFORE HIGH COURT, HELD THAT POTATO CHIPS INCLUDED IN SCHEDULE B PRIOR TO SAID AMENDMENT – EXCLUDED FROM SCHEDULE B POST AMENDMENT – COMMODITY TO BE TAXED UNDER SCHEDULE B @ 4% FOR THE PERIOD BEFORE AMENDMENT – APPEAL ACCEPTED- *SCHEDULE B, ENTRY 88 OF PVAT ACT*

WORDS AND PHRASES – MEANING OF 'I.E.' AND 'INCLUDED' – HELD BY HIGH COURT THAT WORDS 'INCLUDING' AND 'I.E.' ARE TWO DIFFERENT TERMS WITH DIFFERENT MEANINGS – FINDING OF TRIBUNAL THAT THE USE OF WORD 'I.E.' WAS CLARIFICATORY AND INTENDED TO RESTRICT THE SCOPE OF ENTRY TO THE COMMODITIES SPECIFICALLY MENTIONED THEREIN IS WHOLLY ERRONEOUS AND CONTRARY TO WELL SETTLED LEGAL PRINCIPLES.

Facts

The appellant is engaged in manufacture and sale of processed vegetables such as potato chips and other processed commodities. Under the belief that the said commodity fell under Schedule B, entry 88, 4% tax was paid for the period from 5.5.2005 to 31.10.2007. However, the assessing authority classified it under residuary Schedule F. An appeal is filed against the order of Tribunal whereby it was held that "potato chips' would not be covered by Entry 88 of Schedule 'B" of the Punjab Vat act, 2005 thereby making appellant liable to pay 12.5.% tax on it.

Held

Entry 88 of schedule B was amended w.e.f. 31.10.2007. Before amendment it covered not only the items listed therein but also other processed foods and vegetables such as potato chips, frozen peas, frozen mushrooms etc. However, after amendment, only few items were included like jelly, jams etc. Thus the government decided to treat only those items as processed

vegetables and excluded the rest. Prior to amendment potato chips were covered by Entry 88 of the Schedule. In this view , potato chips has to be classified under entry 88 of Schedule B of the PVAT Act, 2005 and would not fall under residuary entry. The liability to pay tax is amounting to 4%. Setting aside the order of Tribunal, the appeal is thus allowed.

Case followed:

- *Pepsico India Holdings Pvt. Ltd. v/s State of Assam (2009) 25 VST 41 (Gauhati)*
- *Pepsico India Holding Pvt. Ltd. v/s Commissioner of Commercial Taxes, Chennai and others (Writ Appeal No. 551 of 2009) (Madras High Court)*

Editorial Note:

This is for the information of our readers that this judgment has not been published in any of the Journals or websites.

Present: Mr. C.S. Lodha, Sr. Advocate with
Mr. Rohit Khanna, Advocate for the appellant.
Mr. O.P. Dabla, DAG, Punjab.

******

ASHUTOSH MOHUNTA, J.

1. M/s Pepsico India Holdings Pvt. Ltd. has filed the present appeal under Section 68 of the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the 'Punjab VAT Act, 2005') impugning the order and judgment dated 7.3.2008 (Annexure P-1) passed by the Punjab VAT Tribunal, Chandigarh vide which it has been held that 'Potato Chips' would not be covered by Entry 88 of Schedule 'B' of the Punjab VAT Act, 2005 and, hence the appellant would be liable to pay duty at the rate of 12-1/2%.

2. Briefly the facts of the case are that the appellant is a dealer registered under the provisions of the VAT Act and is engaged in the manufacture and sale of processed vegetables such as Potato chips and other processed vegetable commodities. During the tax period i.e. from 5.5.2005 to 31.5.2005 the appellant collected and paid tax @ 4% on the sale of Potato chips as according to the appellant the same fall under Entry 88 of Schedule `B' of the Punjab VAT Act, 2005. According to the appellant, Potato chips had to be classified under "processed vegetables". However, the Assessing Officer vide assessment order dated 29.8.2005 held that Potato chips do not fall within the scope and ambit of Entry 88 and classified the same under the residuary schedule 'F of the Act according to which the appellant was liable to pay tax @12.5%.

3. Aggrieved by the order passed by the Assessing Officer, the appellant filed an appeal before the Deputy Excise & Taxation Commissioner (Appeals), Jalandhar Division, who also dismissed the appeal vide order dated 19.10.2007 and confirmed the levy of tax on Potato chips @ 12.5% under the residuary schedule 'F' of the Act.

4. The appellant challenged the order passed by the Deputy Excise & Taxation Commissioner (Appeals) before the Punjab VAT Tribunal who vide the impugned order dated 7.3.2008 affirmed the order passed by the Assessing Officer as well as by the first Appellate Authority.

5. The core issue that arises in the present case is whether potato chips merit classification under a specific heading "processed fruits, vegetables including fruit jams, jelly, pickle, fruit squash, paste, fruit drink and fruit juice (whether in sealed container or otherwise)."

6. The State of Punjab enacted the Punjab VAT Act, 2005 and brought the same into force with effect from 1.4.2005. Section 8(1) prescribes the rates of Value Added Tax applicable. Section 8(1) is reproduced as under:-

> *"Section 8(l)-Subject to the provisions of this Act, there shall be levied on the taxable turnover of a person other than a registered person, VAT at such rate, as specified in Schedules but not exceeding thirty paise in a rupee:*
>
> *PROVIDED THAT the rate of tax applicable on purchase or sale of declared goods, shall not exceed four percent, or such rate, as specified in clause (a) of Section 15 of the Central Sales Tax Act, 1956."*

7. Schedule 'B' enlist those commodities which are taxable at the rate of 4% whereas Schedule 'F' is the residuary entry which prescribes 12.5% as rate of tax applicable to those goods not mentioned in any of the Schedules.

8. Entry 88 of Schedule 'B' of the Act, List of Goods Taxable @4% during the period in question i.e. From 1.4.2005 to 31.10.2007, reads as under:-

> *"Processed fruits, vegetables including fruit jams, jelly pickle, fruit squash, paste, fruit drink and fruit juice (whether in sealed containers or otherwise) "*

9. The appellant collected and paid VAT in respect of Potato chips sold by it @4%, classifying it under Entry 88 of Schedule 'B' of the Act.

10. It is pertinent to mention that the appellant company are manufacturing `Potato Chips' and it is their claim that as Potato chips is a processed vegetable hence it would be covered by Entry 88 of Schedule `B' and would be liable to pay VAT @4%.

11. Mr. C.S. Lodha, Sr. Advocate has submitted that the controversy involved in the present case was also the subject matter of decision in **Pepsico India Holdings Pvt. Ltd. v. State of Assam** and others wherein a Division Bench of the Assam High Court held that Potato chips manufactured and sold by the petitioner company would fall under Entry 80 of Part 'A' of the Second Schedule of the Assam Value Added Tax Act, 2003 and would not fall under the residuary item contained in Sr. No.l of the Fifth Schedule as claimed by the revenue and, hence, the petitioner would be liable to pay VAT tax @ 4%. Entry 80 of Part 'A' of the Second Schedule of the Assam Value Added Tax Act is reproduced as under:-

> *"80. Processed or preserved vegetables & fruits including fruit jam, jelly, pickle, fruit squash, paste, fruit drink and fruit juice. "*

12. Counsel for the appellant has also placed reliable on the Division Bench judgment of the Madras High Court in Writ Appeal No. 551 of 2009 decided on 10.11.2009 (**Pepsico India Holdings Pvt. Ltd. v. Commissioner of Commercial Taxes, Chapauk, Chennai and others**) wherein the judgment of the Guwahati High Court was followed and it was held that the Potato chips would be covered by Entry 107 of Part 'B' of Schedule-1 to the Tamil Nadu Value Added Tax Act, 2006. Entry 107 Part 'B' of Schedule-I reads as under:-

> *"107. Processed fruits and vegetables including fruit jam, jelly, (******) fruit squash, paste, fruit drink and fruit juice (whether in sealed containers or otherwise), other than those specified in the Fourth Schedule."*

13. Learned counsel submits that Entry 80 of the Assam VAT Act and Entry 107 of the Tamil Nadu VAT Act are similar to Entry 88 of the Punjab VAT Act, 2005.

14. On the other hand, counsel for the State submits that Entry 88 of Schedule `B' of the Punjab VAT Act, 2005 was amended with effect from 31.10.2007 and the same reads as under:-

> *"Processed fruits and vegetables i.e. Fruit jams, jelly, pickle, fruit squash, paste, fruit drink and fruit juice (whether in sealed container or otherwise). "*

15. It is contended that as Entry No.88 which was introduced on 5.5.2005 has further been clarified vide notification dated 31.10.2007, therefore, Potato chips would not fall under Entry 88, as processed vegetable and the department is right in charging tax @12.5% on the manufactured items.

16. We have heard the counsel for the parties at length.

17. In the present case the finding of the Tribunal that the use of the term "i.e." in the amended Entry 88 was clarificatory and was always intended to restrict the scope of entry to the commodities specifically mentioned therein is wholly erroneous and contrary to the well settled legal principles. The terms "including" and "i.e." are entirely two different terms with different meanings. Prior to its amendment, Entry 88 covered not only the items listed therein but also all other processed foods and vegetables such as potato chips, frozen peas, frozen mushrooms, dehydrated onions, dehydrated garlic in addition to the other items mentioned therein. However, after the amendment the Government chose to specify a few specified items which it thought should be covered as processed foods and vegetables which are "fruit jams, jelly, pickle, fruit squash, paste, fruit drink and fruit juice." Thus, the Government decided to treat only these goods as "processed foods and vegetables" and excluded the rest. However, prior to the amendment, potato chips were also covered by Entry 88 of the Schedule.

18. In the instant case it is the admitted position that Potato which is a vegetable is processed in order to manufacture potato chips. It is also the admitted position that there is a specific entry for 'processed vegetables'. In order to manufacture Potato chips, the potato is sliced, fried, sprinkled with spicy and flavoring substances and the resultant product includes all the essential characteristics of potato and, thus, chips are potatoes in a processed form i.e. a processed vegetable. Therefore, the Potato chips has to be classified under Entry 88 of Schedule 'B' of the Punjab VAT Act, 2005 and would not fall under the residuary entry. The judgment of the Guwahati High Court in **Pepsico India Holding Pvt. Ltd. (supra)** and the judgment of the Madras High Court referred to above squarely cover the case of the appellant, as similar questions were involved in those cases also.

19. In view of the above, this appeal is allowed and the order (Annexure P1) dated 7.3.2008 passed by the Punjab VAT Tribunal is set aside and it is held that the 'Potato chips' manufactured and sold by the appellant company would fall under Entry 88 of Schedule `B' of the Punjab VAT Act, 2005 and the said entry will not fall under the residuary item.

———

PUNJAB & HARYANA HIGH COURT

CWP NOS. 16308, 16409, 17083 & 18045 OF 2015

Go to Index Page

AMAR NATH AGGARWAL INVESTMENTS (P) LTD
Vs
STATE OF HARYANA AND OTHERS

RAJIVE BHALLA AND REKHA MITTAL, JJ.

06th October, 2015

HF ▶ Petitioner

Revisional assessment order is set aside and remanded back to raise objections before Revisional Authority.

REVISION – ORDER PASSED – WRIT FILED – IMPUGNED ORDERS ARE SET ASIDE AND MATTER REMANDED TO THE DETC FOR ADJUDICATION CONSIDERING OBJECTIONS RAISED – REVISIONAL AUTHORITY TO RECORD OPINION ON THE QUESTION OF LEGALITY OF ORDER- WRIT DISPOSED OF – *S. 34 OF HVAT ACT, 2005.*

Facts

A writ has been filed against the Revisional order. The department has submitted that impugned orders be set aside so as to enable the petitioner to raise objections, if any, before Revisional Authority.

Held

Allowing the writ, the impugned orders are set aside and matter is restored to the Deputy Excise and Taxation Commissioner – cum – Revisional Authority for adjudication after considering the objections raised. Since legality of power is one of the questions raised before the Court, the Revisional Authority shall record its opinion regarding it while deciding the matter.

Present: Mr. Sandeep Goyal, Advocate for the petitioner
(CWP No. 16308 and 16409 of 2015)

Mr. Rajiv Agnihotri, Advocate for the petitioner
(CWP No. 17083 and 18045 of 2015)

Ms. Tanisha Peshawaria, DAG, Haryana

******

RAJIVE BHALLA, J

1. By way of this order, we shall dispose of above mentioned four writ petitions as they involve adjudication and answer to the same facts and questions of law.

2. For the sake of convenience, the facts are being taken from CWP No.16308 of 2015.

3. The petitioner herein challenges order dated 30.04.2015, revising assessment orders by exercising power, under Section 34 of the Haryana Value Added Tax Act, 2003.

4. Counsel for the State of Haryana submits that she has instructions to state that the impugned order may be set aside so as to enable the petitioner to raise objections, if any, before the Revisional Authority.

5. In view of the statement made by counsel for the State of Haryana, the writ petitions are allowed, the impugned orders are set aside and the matter is restored to the Deputy Excise and Taxation Commissioner-cum-Revisional Authority, Panchkula/Faridabad, for adjudication afresh and in accordance with law, after considering the objections, if any, raised by the petitioner. As one of the questions raised before us is the legality of power conferred upon the Revisional Authority, the Authority shall while deciding the matter consider the objection if raised and record its opinion thereon.

6. Parties are directed to appear before the Revisional Authority on 30.10.2015.

———

PUNJAB & HARYANA HIGH COURT

CWP NO .21305 OF 2015

Go to Index Page

RUKHMINI POLYTUBES P. LTD.
Vs
STATE OF HARYANA AND OTHERS

A.K. MITTAL AND RAMENDRA MITTAL, JJ.

06th October, 2015

HF ▶ Petitioner

Respondent is directed to take decision on the submission made by petitioner asking for refund.

REFUND – LACK OF ACTION ON PART OF DEPARTMENT – AMOUNT DEPOSITED BY PETITIONER AS DEMANDED ON ASSESSMENT – APPEAL FILED BEFORE TRIBUNAL ALLOWED – WRITTEN SUBMISSION SENT TO RESPONDENT FOR REFUND OF THE AMOUNT SO DEPOSITED – NO RESPONSE GIVEN – WRIT FILED – RESPONDENT DIRECTED TO TAKE A DECISION ON THE SUBMISSION WITHIN THE PERIOD SPECIFIED AND GRANT REFUND IF PETITIONER FOUND ENTITLED TO IT – WRIT DISPOSED OF – *S. 20 OF HVAT ACT, 2002*

Facts

On demand being raised for the year 2007-08, the petitioner deposited the amount. On filing of appeal before Tribunal, the appeal was allowed. Thereafter, the petitioner made a written submission for refund of the amount deposited but no response has been received. A writ is filed in this regard.

Held

The respondent is directed to take a decision on the submission of petitioner within a period of one month from date of receipt of order. If entitled to refund, the amount should be refunded within next two weeks. The writ is disposed of.

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

******

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of Mandamus directing the respondents to refund the amount became due vide order dated 15.5.2014 (Annexure P-3) for the assessment year 2007-08 along with interest from the date of order till payment.

2. The petitioner is engaged in the business of manufacturing and trading of PVC, Plumping, Irrigation Pipes etc. The said goods were sold in the State of Haryana and in the course of inter-state trade and commerce. The assessing authority vide order dated 13.1.2011

(Annexure P-1) framed the assessment for the year 2007-08 by creating additional demand of Rs. 4,35,926/-. The petitioner deposited the said amount. Feeling aggrieved, the petitioner filed an appeal before the Joint Excise and Taxation Commissioner (Appeals) who vide order dated 9.4.2013 (Annexure P-2) upheld the order of the assessing authority and dismissed the appeal. Still dissatisfied, the petitioner filed an appeal before the Haryana Tax Tribunal (in short "the Tribunal"). The Tribunal vide order dated 15.5.2014 (Annexure P-3) allowed the appeal. Thereafter, the petitioner made written submission dated 13.7.2015 (Annexure P-4) before respondent No.3 for refund of the amount deposited, 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 has made submission dated 13.7.2015 (Annexure P-4) to respondent No.3, 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 respondent No.4 to take a decision on the submission dated 13.7.2015 (Annexure P-4), 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, the same be paid to it within next two weeks, in accordance with law.

———

PUNJAB & HARYANA HIGH COURT

CWP NO. 14078 OF 2015

Go to Index Page

M.K. INTERNATIONAL
Vs
STATE OF PUNJAB AND OTHERS

A.K. MITTAL AND RAMENDRA MITTAL, JJ.

9th September, 2015

HF ▶ Revenue

Goods vehicle is to be released on furnishing of bank guarantee which would not be encashed till pendency of question of vires of the ordinance levying entry tax.

PENALTY – ATTEMPT TO EVADE TAX – CHECK POST / ROAD SIDE CHECKING – ENTRY TAX – GOODS VEHICLE – DETENTION OF – GOODS VEHICLE DETAINED – PENALTY IMPOSED U/S 51(7) OF THE ACT – ALONG WITH LEVY OF ENTRY TAX UNDER THE ORDINANCE OF 2015 – WRIT FILED FOR RELEASE OF GOODS – PETITIONER DIRECTED TO FURNISH BANK GUARANTEE FOR RELEASE OF GOODS WHICH WOULD NOT BE ENCASHED TILL THE QUESTION OF VIRES OF ORDINANCE 2015 IS ADJUDICATED UPON – WRIT DISPOSED OF – *S.51(7)(c)PVAT ACT; S. 7 OF PUNJAB DEVELOPMENT OF TRADE AND COMMERCE AND INDUSTRIAL ORDINANCE 2015*

Facts

The goods vehicle was detained and penalty u/s 51(7)© was imposed as well as Entry tax u/s 7 of Punjab Development Trade and Commerce Ordinance 2015 was levied. The department issued a notice in this regard. A writ is filed for quashing of the notice and for release of vehicle alongwith goods.

Held

The goods vehicle shall be released by the respondents on furnishing of Bank Guarantee equivalent to amount of penalty and Entry Tax by the petitioner. However, bank guarantee would not be encashed till the question of vires of the Ordinance is decided by the court. The petitioner is at liberty to challenge the penalty order before appropriate authority.

Present: Mr. J.S. Bedi, Advocate for the petitioner.
Mr. Jagmohan Bansal, Addl. AG, Punjab.

******

AJAY KUMAR MITTAL, J.

1. The petitioner has approached this Court under Articles 226/227 of the Constitution of India, seeking quashing of impugned detention notice dated 9th July, 2015 (Annexure P-1) issued by respondent No.4. A further payer has also been made for issuance of a writ in the

nature of *Mandamus* directing the respondents to release the Truck bearing No. PB02-BD-9648 along with the goods.

2. Learned State counsel has filed the reply by way of affidavit of Sh. Rajesh Bhandari, AETC, Amritsar-II, on behalf of respondents No.1 to 4 in Court today and the same is taken on record. It has been stated by the learned State counsel that a penalty order under Section 7 of the Punjab Development of Trade and Commerce and Industry Ordinance 2015 (in short 'the Ordinance 2015') read with Section 51(7)(c) of the Punjab Value Added Tax Act, 2005 (for brevity 'Act of 2005'), imposing, a liability of Rs.1,41,697/- (inclusive of Penalty and Entry Tax) upon the petitioner has been passed on 22nd July, 2015. A photocopy of the penalty order has been produced in Court, which is also taken on record, subject to all just exceptions.

3. Learned State counsel submitted that the prayer made in the writ petition for release of Truck bearing No. PB02-BD-9648 along with the goods can only be accepted by the respondents, if the petitioner furnishes Bank Guarantee equivalent to the amount of Penalty and Entry Tax i.e. Rs.1,41,697/-, which shall not be encashed by the respondents till the question of vires of the Ordinance 2015 is decided by this Court in the other matters pending for final adjudication. It was also pointed out that the petitioner can file an appeal against the aforesaid order dated 22nd July, 2015.

4. In view of the above, while disposing of the present writ petition, it is observed that on furnishing the Bank Guarantee equivalent to the amount of Penalty and Entry Tax i.e. Rs.1,41,697/- by the petitioner, the Truck bearing No. PB02-BD-9648 along with the goods shall be released by the respondents. However, the said Bank Guarantee shall not be encashed by the respondents till the question of vires of the Ordinance 2015 is decided by this Court in the other matters pending for final adjudication. It shall, however, be open to the petitioner to challenge the order dated 22nd July, 2015, before the appropriate authority, in accordance with law.

———

PUNJAB & HARYANA HIGH COURT

VATAP NO. 255 OF 2014

Go to Index Page

EASTMAN INTERNATIONAL
Vs
STATE OF PUNJAB AND ANOTHER

A.K. MITTAL AND RAMENDRA JAIN, JJ.

18th August, 2015

HF ▶ Revenue

Penalty is upheld on account of documents showing rejection of goods which were being used for subsequent sale of same goods.

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – INGENUINE BILL – GOODS IN TRANSIT SOLD TO FIRM B, JALANDHAR -BILL NO. 705 PRODUCED SHOWING GOODS AS 'REJECTED AND RETURNED – GOODS DETAINED – EXPLANATION TENDERED THAT THE GOODS WERE ORIGINALLY SUPPLIED TO FIRM A IN HAMBRAN VIDE BILL NO 704 OF THE SAME DATE WHICH WERE REJECTED BY BUYER – RELOADED FOR SALE TO FIRM B FROM PREMISES OF FIRM A ALONGWITH BILL 705 – SAID NOTE ON BILL PURPORTED TO HAVE BEEN MENTIONED WRONGLY ON BILL 705 DUE TO FAULT OF EMPLOYEE OF REJECTING FIRM – PENALTY IMPOSED AS SALE BILL FILE REFLECTED PLACE OF LOADING AS LUDHIANA – FIRST APPELLATE AUTHORITY OBSERVED SUBSTANTIAL DIFFERENCE OF WEIGHT IN BOTH CONSIGNMENTS AND PLEA OF OVERSIGHT BY EMPLOYEE NOT CONVINCING – PENALTY UPHELD BY HIGH COURT AS FINDINGS OF AUTHORITIES BELOW NOT PERVERSE – APPEAL DISMISSED – *S. 51(7)(C) OF PVAT ACT.*

Facts

In this case the appellant had sold goods to firm B in Jalandhar vide Bill no. 705 dated 20.10.2009 for Rs 7,67,520/-. During transit the documents were produced before the checking officer. The bill had a note mentioned "Goods rejected and returned back". Due to this goods were detained. It was explained by appellant that the goods were originally supplied to firm A in Hambran vide Bill no 704 of the same date for Rs 7,86,240/-which were rejected by buyer. The store manager of firm A was directed to make a note of return of goods on the bill. In the meanwhile, as another order of supply of similar quantity and quality was received, they were reloaded in another vehicle and sent to firm B vide Bill No. 705, thereby saving incidental charges. Before reloading, the said note was mistakenly recorded on bill no. 705 by store manager. Penalty was, however, imposed by the officer u/s 51(7)(b) of the Act. On dismissal of appeal, an appeal is filed before High court.

Held

The observations of the authorities below have been taken into account. They all have concurrent findings that an attempt to evade tax was made. The penalizing officer has recorded

that nowhere it was mentioned in sale bill file that the goods were reloaded from Hambran. They are stated to have been loaded from Ludhiana in both the dispatches. An attempt to evade tax was observed on account of using rejected documents for transporting goods.

The Tribunal had also affirmed the findings of DETC that weight of both the consignments differed by 90 kgs though the quantity mentioned in both bills were same. Also, the logic of store keeper having recorded the note under misconception does not sound well.

Therefore, the findings of authorities below are not illegal or perverse. The appeal is dismissed.

Present: Mr. K.S.Dhillon, Advocate for the appellant-assessee.

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

******

AJAY KUMAR MITTAL, J.

CM No.13884-CII of 2015

1. The documents Annexures A.4 to A.10 are allowed to be taken on record. CM stands disposed of.

VATAP No.255 of 2014

2.The assessee has preferred this appeal under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") against the orders dated 29.10.2009, 26.11.2012 and 25.11.2013, Annexures A.1 to A.3 respectively passed by the authorities, claiming following substantial questions of law:-

"i) Whether penalty is justified where the documents covering the goods are proper and genuine and intention is bonafide?

ii) Whether mere minor discrepancy is enough to impose penalty where all the provisions were properly followed?

iii) Whether the rejected goods were properly accounted for in the books of account as per the provisions of law?

iv) Whether mere saving/avoiding of unnecessary expenses of transportation and incidental charges in this recession is an offence and liable for imposition of penalty?

v) Whether it was compulsory upon the appellant to firstly reload rejected goods from M/s Dolphin Rubber Ludhiana and bring it to appellant's premises and thereafter again reload said goods from appellant's premises for sending it to Oswal Enterprises Jalandhar?

vi) Whether the impugned orders of courts below are perverse, contrary to evidence and based upon misreading/misinterpretation of evidence/law and thus liable to be set aside?"

3. A few facts relevant for the decision of the controversy as narrated in the appeal may be noticed. The appellant is a registered dealer. It is engaged in the business of general order suppliers. During the course of business, the appellant sold goods i.e. raw rubber vide bill No.EVAT 91705 for Rs. 7,38,000/- plus VAT Rs. 29520/- totalling Rs. 767520 to M/s Oswal Enterprises, Jalandhar. The bill was covered with GR No.7741 dated 20.10.2009 of M/s Shitla Road Lines, Transport Nagar, Ludhiana. The goods were being transported in Vehicle No. PB-08U-9793 and the documents covering the goods were proper and genuine as required under Section 51(2) of the PVAT Act. While the goods in question were being transported, the same were checked by Excise and Taxation Officer, Ludhiana and detained on the ground that a note was given on bill No. EVAT 91705 dated 20.10.2009 to the following effect:-

"Goods rejected and returned back."

The goods in question were originally supplied and delivered to M/s Dolphin Rubber Limited, Hambran, Ludhiana vide bill No.EVAT 91704 dated 20.10.2009 for Rs. 756000/- plus VAT Rs. 30240/- totalling Rs. 786240/-. The said bill was covered with GR No.7429 dated 20.10.2009 of D.D. Khosla Transport Pvt. Limited. The goods were transported in vehicle No.PB 10 CH 1416 on the same date i.e. 20.10.2009. Later on, when the Managing Director of M/s Dolphin Rubber Limited checked the goods, he asked the concerned person that since the same were not as per their specification, they be rejected and convey the message to the selling dealer. Moreover, he further ordered that while returning the goods, a note must be mentioned on bill No. EVAT 91704 and issue a debit note for accounts purposes. When the appellant was making arrangement to bring the goods back, another order of supply of similar quality and quantity was received by the appellant from M/s Oswal Enterprises, Basti Bawa Khel, Jalandhar. On receipt of order, the appellant decided that the goods as earlier rejected by M/s Dolphin Rubber Limited against bill No.EVAT 91704 and lying at its premises be supplied to M/s Oswal Enterprises, Basti Bawa Khel, Jalandhar. A new vehicle was hired and goods in question were got uploaded/reloaded from the premises of M/s Dolphin Rubber Limited, Ludhiana. Bill No.EVAT 91705 already issued by the appellant was handed over to the person incharge/driver of the vehicle. The bill was also covered with GR No.7741 of M/s Shitla Road Lines, Ludhiana. The appellant in order to avoid incidental charges got reloaded the goods from the premises of M/s Dolphin Rubber Limited, Hambran, Ludhiana and the same were being transported to the premises of M/s Oswal Enterprises, Basti Bawa Khel, Jalandhar. Before the goods in question were transported from the business premises of M/s Dolphin Rubber Limited, Hambran, the Store Incharge recorded a note on bill No.EVAT 91705 dated 20.10.2009 inadvertently and under misconception. The entire position was explained to the Detaining Officer, enquiry officer and the appellate authority but in vain. The Assistant Excise and Taxation Commissioner imposed penalty vide order dated 29.10.2009, Annexure A.1 under Section 51(7)(b) of the Act of Rs. 2,30,256/-. The appeal filed by the assessee was dismissed by the Deputy Excise and Taxation Commissioner (Appeals) Ludhiana vide order dated 26.11.2012, Annexure A.2. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 25.11.2013, Annexure A.3, the Tribunal dismissed the appeal. Hence the instant appeal by the assessee.

4.We have heard learned counsel for the parties.

5. Learned counsel for the appellant submitted that the goods which were rejected by M/s Dolphin Rubber Limited, Hambran, Ludhiana and lying at its premises were sold and transported to M/s Oswal Enterprises, Basti Bawa Khel, Jalandhar. It was contended that in such circumstances, there was no attempt to evade tax.

6. Learned counsel for the respondents on the other hand supported the impugned orders.

7. A perusal of the orders passed by the authorities below shows that after considering the entire material on record and the documents, it has been recorded that the documents accompanying the goods were not genuine. The goods which were intercepted by the detaining officer were meant for trade. The dealer had made an attempt to evade the payment of tax by transporting the goods by ingenuine documents. On EVAT No.91704 dated 20.10.2009 issued by the appellant in favour of M/s Dolphin Rubber Limited for Rs. 7,56,000/-, there was a mention that the goods were rejected. Invoice EVAT No.91705 of the same date used by the appellant favouring M/s Oswal Enterprises, Jalandhar also had a similar note that the goods rejected and return back. Though the quantity in both the bills was the same but the rates and amounts varied. It was concurrently concluded by all the authorities that the transaction was an attempt to evade tax on the part of the appellant. The Tribunal while affirming the findings

recorded by the Assistant Excise and Taxation Commissioner and Deputy Excise and Taxation Commissioner (Appeals) recorded as under:-

> *"As per the note recorded by M/s Dolphin Rubber Limited on invoice No. EVAT dated 20.10.2009 purportedly issued by M/s Eastman International, Ludhiana in favour of M/s Dolphin Rubber Limited, Hambran for Rs. 7,56,000/- the goods were rejected. On invoice No. EVAT 91705 dated 20.10.2009 used by M/s Eastman International, Ludhiana in favour of M/s Oswal Enterprises, Jalandhar also a note has been recorded that the goods rejected and return back". However, the quantity in both the bills is the same but the rates and amounts differ. According to the appellant-dealer, there is difference of 90 kg. in weight. To my mind, difference in weight to such an extent would have not occurred, even if the goods were weighed on two different weighing machines. It does not stand to the logic that the Store Incharge namely Uday Partap of M/s Dolphin Rubber Limited, Ludhiana had inadvertently or under some misconception recorded the note regarding rejection of goods. Uday Partap being an employee, it was not difficult for the appellant to procure his affidavit. It does not sound well that the store keeper of M/s DRL, Hambran, Ludhiana had recorded the note of rejection on Bill No.91705 due to oversight. The AETC, Mobile Wing, Ludhiana in his order dated 29.10.2009 has observed as under:-*
>
> > *'On scrutiny of documents i.e. sale bill file, it is noticed that in the column description of goods, the firm described the place from where the goods were dispatched, it is either direct or the place from where the goods are loaded. In this case, both the bills from Ludhiana to Hambran and from Ludhiana to Jalandhar i.e. Bill No.704 and 705 are for the same date and loaded in two different vehicles. In Bill No.705, nowhere, it is mentioned that the goods will be/are loaded from Hambran rather it has been shown that the goods are dispatched direct from Ludhiana. Bill No.705 is only a covering document. The documents accompanying the goods are ingenuine. The goods are meant for trade. The dealer has made an attempt to evade the payment of tax by transporting the goods by documents which are already rejected. In the light of above penalty under Section 51(7)(b) of Punjab VAT Act, 2005 for Rs. 2,30,256/- has been imposed.'.*
>
> *In my view, no exception can be taken to the above observations. Consequently, the penalty imposed by the Penalizing officer is affirmed and this appeal being devoid of any merit is dismissed."*

8. The only attempt on the part of the learned counsel for the appellant is to reappraise the evidence. We do not find that the findings of fact recorded by the authorities below are illegal or perverse in any manner. The view taken by them is a plausible view which cannot be faulted. No substantial question of law arises. Consequently, finding no merit in the appeal, the same is hereby dismissed.

———

PUNJAB & HARYANA HIGH COURT

CWP 7303 OF 2015

Go to Index Page

SWETA ESTATES PVT. LTD.
Vs
STATE OF HARYANA AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

2nd September, 2015

HF ▶ Petitioner

Computation of tax regarding sale of immovable property is to be made in terms of judgement passed in the case of CHD Developers Ltd, Karnal Vs State of Haryana.

WORKS CONTRACT - DEVELOPER/BUILDER – ASSESSMENT – FLATS/ APARTMENTS / UNITS – SALE OF – ASSESSEE DEVELOPER OF FLATS/APARTMENTS - TAX CHARGED INCLUDING VALUE OF LAND – NOTICE SERVED ON APPELLANT AS ALLEGED BY DEPARTMENT - WRIT FILED CONTENDING IMPOSITION OF TAX NOT VALID THERE BEING NO MECHANISM FOR COMPUTATION OF TAX AND IT BEING SALE OF IMMOVABLE PROPERTY – QUESTION OF LIMITATION REGARDING PROCEEDINGS TAKEN UP – HELD: IN VIEW OF AN EARLIER JUDGMENT WHERE THE SAME ISSUE IS ALREADY ADJUDICATED THE MATTER SENT TO ASSESSING AUTHORITY- PETITIONER AT LIBERTY TO AGITATE POINT OF LIMITATION ALSO 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 engaged in the business of development and sale of flats/ apartments/units. A circular dated 7/5/2013 was issued stating that the developers entering in to agreements for sale of constructed apartments or flats prior to or during construction were chargeable to VAT. Later this circular was varied thereby including value of land chargeable to VAT. A demand was thus raised for the year 2011-12 and a notice was issued dated 18/2/2015 which is alleged to have been never received by the petitioner. A writ is filed contending that since there is no mechanism provided in the Act for computation of tax , tax so imposed is unconstitutional and beyond provisions of the Act. Also, the notice served is contended to be barred by limitation.

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 also before the assessing authority who shall adjudicate the same and pass a speaking order.

Editorial Note:
Please find the detailed judgement of CHD Developers Ltd. at page no. 175 along with catch notes and head notes in our composite newsletter [Issue 7 to issue 12].

Present: Mr. Sandeep Goyal, Advocate and
Mr. Amar Pratap Singh, Advocate and
Mr. Amrinder Singh, Advocate for the petitioners.
Ms. Mamta Singla Tawar, DAG, Haryana.

******

AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of writ petitions bearing CWP Nos. 7303, 7659 and 9001 of 2015 as according to learned counsel for the parties, the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 7303 of 2015.

2. 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 mandamus declaring Explanation (i) to Section 2(1)(zg) of the Haryana Value Added Tax Act, 2003 (in short "the Act") and Rule 25 (2) of the Haryana Value Added Tax Rules, 2003 (hereinafter referred to as "the Rules") (Annexure P-1 Colly) in particular and other related provisions in so far as they include the value of land for charging Value Added Tax (for brevity "VAT") on 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 quashing the assessment order dated 30.3.2015 (Annexure P-3) issued by respondent No.3 and tax demand notice issued in pursuance to the orders (Annexure P-4 Colly) for charging tax on sale of flats/apartments/units and to make assessments of VAT; for quashing the circulars 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 Act and for issuance of a writ of mandamus directing respondent No. 4 not to charge and to refund the tax already paid in so far as it related to the value of materials sought to be charged to VAT.

3. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner is a builder engaged in the business of development and sale of apartments/flats/ units and got itself registered with the Department of Sales Tax vide TIN 06621832235. 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. Respondent No.3 vide order dated 25.3.2015 (Annexure P-3) for the assessment year 2011-12, raised a demand of Rs.39,35,42,152/- from the petitioner. The Assessing Authority had issued notice dated 18.2.2015 which according to the petitioner has not ever been served upon it. 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 petitions.

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

5. 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.

6. Accordingly, while disposing of the present writ petitions 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(s) to agitate the question of limitation and any other plea before the assessing authority who shall adjudicate the same also after hearing the petitioner(s) or its representative and by passing a speaking order in accordance with law.

———

PUNJAB & HARYANA HIGH COURT

CWP NO. 21155 OF 2015

Go to Index Page

RISHAB FARMS & INDUSTRIES PVT. LTD.
Vs
STATE OF HARYANA AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

5th October, 2015

HF ▶ Directions given

Respondent directed to take a decision on the letters sent by petitioner company regarding issuance of amended eligibility certificate.

EXEMPTED UNIT - EXEMPTION CERTIFICATE – AMALGAMATION – AMALGAMATION OF TWO EXISTING EXEMPTED UNITS AS PER AMALGAMATION SCHEME – LETTER SENT BY PETITIONER TO TRANSFER BENEFITS OF THE OTHER COMPANY TO ITS COMPANY U/R 28B OF HGST RULES IN VIEW OF AMALGAMATION – NO RESPONSE RECEIVED – WRIT FILED – RESPONDENT DIRECTED TO TAKE A DECISION ON THE LETTERS SENT BY THE PETITIONER REGARDING ISSUANCE OF AMENDED ELIGIBILITY CERTIFICATE WITHIN THE PERIOD SO SPECIFIED – WRIT DISPOSED OF - *RULE 28B (10-C) OF HGST RULES, 1975*

Facts

There were two companies A and B which were granted exemption certificates for the period from 1997 to 2006 and 1999 to 2008 respectively. The two companies were sanctioned amalgamation by Delhi High court. The petitioner vide letter dated 28.1.2010 requested respondent to take on record the sanctioned scheme of amalgamation and issue appropriate orders under Sub Rule 10-C of Rule 28B of the HGST Rules for transfer of benefits of the other company but to no effect. Further letter were also sent but no response given. A writ is filed in this behalf.

Held

The respondent is directed to take a decision on the letters sent by the petitioner regarding issuance of amended eligibility certificate and pass a speaking order within a period of three months from the date of receipt of this order.

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

******

AJAY KUMAR MITTAL, J.

1. By way of 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 the respondents to adjudicate upon the letters dated 20.6.2007, 30.7.2007 (Annexure P-3 Colly),

28.12.2010 (Annexure P-4), 30.6.2014 and 7.8.2015 (Annexure P-5 Colly) for issuance of amended eligibility certificate in view of declaration of merger of two companies vide judgment and order dated 30.4.2007 (Annexure P-2) passed by the Delhi High Court.

2. As per the averments made in the petition, both the companies were given eligibility certificates and consequential exemption certificates on 19.11.1999 (Annexure P-1 Colly) for the period from 7.9.1997 to 6.9.2006 (9 years) and 1.3.1999 to 29.2.2008, respectively. Delhi High Court vide order dated 30.4.2007 (Annexure P-2) passed in Company Petition No. 204 of 2006 sanctioned scheme of amalgamation of M/s Patlawati Industries Pvt. Ltd. with M/s Rishab Farms & Industries P. Ltd. M/s Patlawati Industries Pvt. Ltd. vide letters dated 20.6.2007 and 30.7.2007 (Annexure P-3 Colly) informed the Industries Department through respondent No.3 about the sanctioned scheme of amalgamation by the Delhi High Court. The petitioner vide letter dated 28.12.2010 (Annexure P-4) requested respondent No.2 for taking on record the sanctioned scheme of amalgamation and for issuance of appropriate orders in terms of sub-Rule 10-C of Rule 28B of the Haryana General Sales Tax Rules, 1973 for transfer of benefits of Patlawati Industries Pvt. Ltd. to it, but to no effect. Thereafter, the petitioner vide letters dated 30.6.2014 and 7.8.2015 (Annexure P-5 Colly) requested respondent No.2 for amendment and transfer of benefit and for passing the appropriate order, 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 has sent letters dated 20.6.2007, 30.7.2007 (Annexure P-3 Colly), 28.12.2010 (Annexure P-4), 30.6.2014 and 7.8.2015 (Annexure P-5 Colly) to respondents No.2 and 3 for issuance of amended eligibility certificate to the petitioner, 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 respondent No.3 to take a decision on the letters dated 20.6.2007, 30.7.2007 (Annexure P-3 Colly), 28.12.2010 (Annexure P-4), 30.6.2014 and 7.8.2015 (Annexure P-5 colly), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of three months from the date of receipt of certified copy of the order.

———

PUNJAB & HARYANA HIGH COURT

CEA NO. 31 OF 2015

Go to Index Page

COMMISSIONER, CENTRAL EXCISE COMMISSIONERATE, CHANDIGARH
Vs
DHIMAN INDUSTRIES

A.K. MITTAL AND RAMENDRA JAIN, JJ.

14th September, 2015

HF ▶ Assessee – Respondent

No penalty imposable under a Rule which has been declared ultravires.

PENALTY – CENTRAL EXCISE DUTY – SHORT PAYMENT OF TAX – COMPOUNDED LEVY ON ANNUAL CAPACITY – SHORT PAYMENT OF DUTY AS PER DETERMINED ANNUAL CAPACITY - APEX COURT UPHELD ORDER OF COMMISSIONER – AMOUNT DEPOSITED – DEMAND OF PENALTY RAISED BY DEPARTMENT – PENALTY CONTENDED NOT BEING PAYABLE AS DUTY STOOD PAID IN TERMS OF RULES SPECIFIED – APPEAL BY REVENUE – HELD BY HIGH COURT THAT MATTER STOOD COVERED BY AN EARLIER JUDGEMENT – RULES PRESCRIBING MANDATORY PENALTY WITHOUT MENSREA AND WITHOUT ELEMENT OF DISCRETION ALREADY STRUCK DOWN AS UNCONSTITUTIONAL – APPEAL DISMISSED- *RULES 96 (ZO), (ZP) AND (ZQ) OF CENTRAL EXCISE RULES, 1944*

Facts

The appellant had discharged his duty liability as per the rules of the Act. However, an order was passed by commissioner alleging its failure to discharge the liability according to the determined annual capacity. The Tribunal remanded the case to Commissioner for redetermination of annual capacity of production. After dismissal of the appeal filed by revenue before High court against the order of Tribunal, an appeal was filed by revenue before Apex court. The Apex court restored the order of Commissioner and imposed a cost of Rs 50,000/- upon the appellant .The appellant duly deposited the amount. On demand of penalty, the appellant contended that penalty was not payable as it had paid the duty as per the Rules. Feeling aggrieved, the department filed an appeal before High court.

Held

That the dispute involved stands covered by the decision of this court in the case of Bansal Alloys and Metals Pvt Ltd whereby the vires of the Rules 96ZO(3), 96 ZP and 96 ZQ to the extent of providing for mandatory minimum penalty without mensrea and without any element of discretion were declared ultra vires.

The appeal is thus dismissed.

Case followed:

- *Bansal Alloys & Metals Pvt. Ltd. v. Union of India, 2010(260) ELT 343 (P&H)*

Present: Mr. Sukhdev Sharma, Advocate for the appellant

******

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 21.8.2014 (Annexure A-2) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

i) Whether it was legally correct for the Hon'ble Tribunal to consider the challenge to the vires of Rule 5 of the Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997, in the light of the judgment of the Hon'ble Apex Court in the case of Commissioner of Central Excise, Chandigarh v. PEPSU Steel Rolling Mills reported as 2013(288) ELT 321 (SC), when such a challenge was not laid before the Hon'ble Tribunal or the Hon'ble High Court or even Hon'ble Supreme Court by the said Party and whether on this very ground alone, the order of Hon'ble Tribunal is not liable to be set aside?

ii) Whether it is legally correct, fair and proper in holding that the interest is chargeable on delayed payment of duty as per the provisions of Rule 96ZP(3) of the Central Excise Rules, 1944 from the 11th day of the month succeeding the month in which the annual capacity of production was determined on final basis by the order of the Hon'ble Supreme Court whereas interest should have been charged under Rule 96ZP(3) from the date when the duty was payable as per Final Order dated 12.05.2000?

iii) Whether under the compounded levy scheme the provisions of erstwhile Rule 96ZP of Central Excise Rules, 1944 permitting imposition of penalty equal to the amount of duty for delay in payment of duty, without any discretion and without having regard to extent and circumstances of delay, could be held to be ultra vires of the Central Excise Act, 1944 and the Constitution of India?

iv) Whether mandatory penalty equal to the amount of duty on the assessee in case of violation of the provisions of erstwhile Rule 96ZP of the Central Excise Rules, 1944 could be waived or reduced at the discretion of the adjudicating authority having regard to extent and circumstances of delay in payment of duty?

v) Whether the provisions of Section 38A of the Central Excise Act, 1944 inserted vide Section 131 of the Finance Act, 2001 (Validation of the action taken has been provided by virtue of the Section 132 of the Finance Act, 2001) shall be applicable in respect of obligation and liabilities incurred under Rules 96ZO and 96ZP of the erstwhile Central Excise Rules, 1944 before the same were omitted, notwithstanding the omission of Section 3A w.e.f. 11.05.2001?

2. The assessee was working under the compounded levy scheme during September, 1997 to March 2000 and opted to discharge their duty liability under Rule 96ZP(3) of the Central Excise Rules, 1944 (for brevity "the Rules") read with Section 3A of the Act. They failed to discharge the duty liability according to the determined annual capacity vide order dated 12.5.2000 and filed an appeal before the Tribunal. The Tribunal vide order dated

5.1.2001 set aside the order and remanded the case back to the Commissioner for re-determination of annual capacity of production. The department filed an appeal before this Court against the order dated 5.1.2001 and this Court vide order dated 21.10.2003 dismissed the said appeal. Thereafter, the department filed Special Leave Petition before the Apex Court. The Apex Court vide order dated 6.7.2001 passed in Civil Appeal No. 8345 of 2004 set aside the order of the Tribunal and restored that of the Commissioner dated 12.5.2000 and also imposed a cost of Rs. 50,000/- upon the respondent. Pursuant thereto, the respondent deposited the duty but without interest and the penalty. The Assistant Commissioner vide letter dated 6.1.2012 directed the respondent to deposit the interest. The respondent filed a representation dated 19.1.2012 before the Commissioner for specific provisions of law for determination of the relevant date for the payment of interest who vide order dated 12.4.2012 (Annexure A-1) clarified that the interest is to be paid as per the provisions and the penalty was not payable as the unit had paid the duty which was payable under the third proviso to Rule 96ZP(3) of the Rules. Feeling aggrieved, the department filed an appeal before the Tribunal who vide order dated 21.8.2014 (Annexure A-2) dismissed the appeal in terms of judgment of this Court in *Bansal Alloys & Metals Pvt. Ltd. v. Union of India, 2010(260) ELT 343 (P&H)*. Hence, the present appeal.

3. We have heard learned counsel for the appellant.

4. It is not disputed that the issue raised in this appeal stands concluded by the decision of this Court in *CEA No. 49 of 2012 [M/s Jai Bharat Maruti Ltd. v. Commissioner of Central Excise Delhi-III, Vanijya Nikunj, Udyog Vihar, Phase-Gurgaon (Haryana)]* decided on 12.9.2013 and *CEA No. 39 of 2013 [Commissioner of Central Excise, Chandigarh-II v. M/s Pee Iron & Steel Co. (P) Ltd., Derabassi]* decided on 4.3.2014, where following the earlier decision of this Court in *Bansal Alloys and Metals Pvt. Ltd.'s case (supra)*, the appeal filed by the revenue was dismissed. This Court in *Bansal Alloys & Metals Pvt. Ltd's case (supra)* while deciding the question of vires of Rules 96ZO(3), 96ZP and 96ZQ of the Rules held the said provisions to the extent of providing for mandatory minimum penalty without *mens rea* and without any element of discretion as excessive and unreasonable restriction on fundamental rights being arbitrary and were accordingly declared to be ultra vires the Act and the Constitution. It was recorded as under:-

> *15. Applying the above principles to the present situation, the provision for minimum mandatory penalty equal to the amount of duty even for slightest bonafide delay without any element of discretion is beyond the purpose of legislation. The object of the rule is to safeguard the revenue against loss, if any. The penalty has been provided in addition to interest. Mere fact that without mens rea, an can be punished or a penalty could be imposed is not a blanket power without providing for any justification. In the Indian Constitutional scheme, power of legislature is circumscribed by fundamental rights. Judicial review of legislation is permissible on the ground of excessive restriction as against reasonable restriction which is also described as proportionality test. Conclusion*
>
> *16. For the above reasons, we hold that the impugned provision to the extent of providing for mandatory minimum penalty without any mens rea and without any element of discretion is excessive and unreasonable restriction on fundamental rights and is arbitrary. Moreover, exercise of such power by way of subordinate legislation is not permissible when rule making authority for levying penalty is limited to default "with intent to evade duty".*
>
> *17. The writ petitions of the assessees are allowed and impugned provisions in Rules 96(ZO), (ZP) and (ZQ) permitting minimum penalty for delay in*

payment, without any discretion and without having regard to extent and circumstances for delay are held to be ultravires the Act and the Constitution. In CWP No.8555 of 2010, penalty has been sustained by the Tribunal to the extent of 100% which will stand quashed without prejudice to any fresh order being passed in accordance with law. It is made clear that if penalty has attained finality as in CWP No.18099 of 2009 upto this Court, this order will not affect the finality of such order. The appeals filed by the revenue against the orders of the Tribunal sustaining penalty proportionate to the default will stand dismissed."

5. In view of the above, no substantial question of law arises in this appeal. Consequently, the instant appeal is dismissed.

———

PUNJAB & HARYANA HIGH COURT

CWP No. 20161 OF 2015

Go to Index Page

HPL ADDITIVES LTD.
Vs
STATE OF PUNJAB AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

29th September, 2015

HF ▶ Petitioner

Adjustment of excess input tax credit towards predeposit for entertainment of appeal is permissible.

PREDEPOSIT – APPEAL – ENTERTAINMENT OF – INPUT TAX CREDIT – ADJUSTMENT OF – DEMAND RAISED ON ASSESSMENT – APPEAL FILED ALONGWITH APPLICATION FOR ADJUSTMENT OF EXCESS ITC TOWARDS PAYMENT FOR PREDEPOSIT – TIN NUMBER LOCKED SUBSEQUENTLY – WRIT FILED – FACT OF TIN NUMBER BEING UNLOCKED BY THEN NOT DISPUTED – ADJUSTMENT OF EXCESS ITC TOWARDS PAYMENT FOR PREDEPOSIT IN COMPLIANCE OF S 62(5) OF THE ACT PERMITTED – WRIT DISPOSED OF – *S. 62(5), S 13 OF PVAT ACT*

Facts

As per the assessment framed, a demand was raised against the petitioner- assessee. An appeal was filed before the authority alongwith an application for adjustment of 25% of additional demand from excess ITC. A show cause notice was served as to why the TIN number of petitioner be not locked for non deposit of the 25% of additional demand. Though reply was filed, TIN number was locked by the department. A writ is filed in this regard.

Held

It is submitted that Tin number is unlocked and this fact is not disputed by petitioner. Regarding the adjustment of ITC, it is directed by the Hon'ble Court that ITC to the extent of 25% of additional demand shall not be utilized till the appeal is decided in compliance with the provision of S 62(5) of the Act. The writ is disposed of.

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

Mr. Jagmohan Bansal, Additional Advocate General, Punjab

******

AJAY KUMAR MITTAL, J.

1. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing respondent No.2 to unlock its TIN number. Further, a direction has been sought for declaring provisions of Section 62(5) of the Punjab Value Added Tax Act, 2005 (in short "the Act") as ultra vires qua providing of mandatory deposit of 25% of tax, interest and penalty as a condition precedent for hearing of appeal. A writ of mandamus has also been sought directing respondent No.2 to adjust the excess ITC towards 25% additional demand created for the assessment year 2008-09.

2. The petitioner is engaged in the business of manufacture and trading of chemicals. The petitioner had filed its returns for the year 2008-09 on quarterly basis in Form VAT-15 and annual statement. Respondent No.2 vide order dated 19.11.2014 (Annexure P-1) framed the assessment at Rs. 21,72,082/- under the Act and Rs. 1,57,36,473/- under the Central Sales Tax Act, 1956. Since the assessment was barred and Section 29 of the Act was amended, the petitioner filed CWP No. 1662 of 2015 challenging the vires of the amendment and the assessment order. This Court vide order dated 7.8.2015 (Annexure P-2) dismissed the said writ petition in terms of CWP No. 21811 of 2013. The petitioner filed two appeals on 28.8.2015 (Annexure P-3 Colly) before respondent No.3 against the order dated 19.11.2014 (Annexure P-1). An application dated 28.8.2015 (Annexure P-4) was moved by the petitioner before respondent No.2 for adjustment of 25% of the additional demand from the excess ITC. A notice dated 15.9.2015 (Annexure P-5) was issued to the petitioner to show cause as to why its TIN number be not locked for not depositing 25% of the demand for the assessment year 2008-09. The petitioner filed reply dated 16.9.2015 (Annexure P-6) to the said notice. Respondent No.2 blocked the TIN number of the petitioner on 16.9.2015 and its trucks were stopped at ICC on that account. The petitioner vide application dated 18.9.2015 (Annexure P-8) requested respondent No.2 for unlocking of TIN. Hence, the present writ petition.

3. We have heard learned counsel for the parties.

4. Learned State counsel submitted that the TIN has already been opened and this fact is not disputed by learned counsel for the petitioner.

5. Learned counsel for the petitioner submitted that the ITC to the extent of 25% of the additional demand shall not be utilized till the appeal is decided in compliance with the provisions of Section 62(5) of the Act. This was accepted by the learned State counsel.

6. In view of the above, the present writ petition is disposed of and the parties shall remain bound by their respective statements.

———

PUNJAB VAT TRIBUNAL

APPEAL NO. 37 OF 2014

Go to Index Page

PATIALA AUTO ENTERPRISES
Vs
STATE OF PUNJAB

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

23rd August, 2015

HF ▶ Appellant –dealer

Once ST XXII forms are produced by seller, onus is shifted on department to prove that they are ingenuine.

SALE TO REGISTERED DEALER – BURDEN OF PROOF – DECLARATION FORM ST XXII – DEMAND RAISED AFTER FIVE YEARS OF ASSESSMENT ON BASIS OF INGENUINE ST XXII FORMS – MATTER REMITTED BY TRIBUNAL FOR REASSESSMENT AND DETAILED ENQUIRY BY DEPARTMENT – DEMAND RAISED AGAIN FOR FAILURE TO PRODUCE ACCOUNT BOOKS AND DENIAL BY PURCHASER OR NON APPEARANCE BY THEM –SELLING DEALER CONTENDED TO HAVE FAILED TO DISCHARGE ONUS OF PROOF - SECOND APPEAL BEFORE TRIBUNAL – HELD: ONCE FORMS SUBMITTED ONUS STANDS SHIFTED UPON DEPARTMENT - INABILITY TO PRODUCE BOOKS DUE TO LONG GAP NOT TO BE COUNTED AGAINST APPELLANT – FORMS WITH MERE ABSENCE OF SIGNATURES OF ISSUING AUTHORITY BUT BEARING GOVERNMENT SEAL CONSIDERED LEGAL – DENIAL BY PURCHASERS REGARDING ISSUING OF SAID FORMS IMMATERIAL AS APPELLANT NOT ALLOWED TO CROSS EXAMINE HIM - DEPARTMENT IN POSSESSION OF WHOLE RECORD THEREBY MEANING ONUS SHIFTED ON DEPARTMENT TO PROVE THEIR CASE – APPEAL ACCEPTED ALLOWING DEDUCTIONS AS PER ORIGINAL ASSESSMENT FRAMED – *S.5(2)(a)(ii) OF PVAT ACT.*

Facts

A demand was raised on re-determination of tax liability after five years of framing of original assessment on the basis of ingenuine ST XXII forms under the PGST Act.

On appeal before Tribunal, the matter was remitted back to Assessing Authority to conduct a detailed enquiry into the matter to establish that sales were bogus and form is fabricated. Pursuant to that the appellant was called upon to establish the genuineness of the forms and produce account books. It was recorded that the purchasing dealers either could not be served upon with the notice and those who were summoned denied purchases or issuance of the Forms. Also, the appellant failed to produce account books etc. Based on this the officer repeated the demand considering that onus to prove that the sales were genuine and forms were not bogus was on appellant and he could not shift that onus on department. In this regard second appeal is filed before Tribunal.

Held

- *The forms were duly produced by appellant and were issued and stamped by government. When they were submitted no objections were raised. The assessment was not challenged for five years when abruptly the department initiated the revisional proceedings and disallowed the claim suspecting their genuineness.*
- *The rejection of forms on the basis that they did not bear the seal of assessing authority and not issued by the AETC concerned is not acceptable as they do bear the seal and have been printed by the government press. Regarding the contention that there were no signatures of AETC on the forms , it is observed by Court that there was no such requirement prevailing at that time. To establish that such forms were creation of selling dealer, the department could have called upon the record of the assessing authority.*
- *The fact that the purchasing dealers did not appear cannot be made a cause for holding that the dealers had not issued forms in favour of the appellant. Regarding denial by one purchasing dealer, it is observed that the appellant was not allowed to cross examine him and he made a self serving statement. Relying on the judgement of Rama Nand and Sons, it is observed that the revenue has neither shown that the concerned purchasing dealers were produced nor that there was no requirement in law to do so. The respondents have not lead any evidence to prove that sales were bogus or forms were ingenuine.The purchasing dealers' addresses and names have been mentioned on the forms yet the department has not taken any action against them. The failure to produce account books is of no consequence as the appellant cannot be expected to produce books of a period more than five years prior to the year in which assessment is made, therefore, appellant cannot be compelled to produce books after such a long gap.*
- *However, on producing the ST XXII forms printed by government press bearing the seal, the onus shifts on the department to prove that they are bogus. Moreover, as per amendment of Rule 26(2) on 29/6/1995, the purchasing dealers can't be called upon to prove genuineness which means that once the forms are produced the onus is on the department to prove that they are bogus.*
- *Thus the authorities have wrongly placed onus upon the appellant when the department is in custody of whole record and the purchasing dealers who allegedly issued the forms were under their control. The appellant cannot be disallowed deductions. The original assessment framed is ordered to be maintained. The appeal is accepted.*

Cases relied upon:

- *State of Haryana versus Inalsa Ltd. (2011) 42 VST 192*
- *Rama Nand Vs State of Punjab (2010) 37 PHT 46*

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

Mrs. Sudeepti Sharma, Additional Advocate General for the State.

******

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

1. This order shall dispose of two connected appeal No. 432 and 433 of 2014 for the assessment year 1990-91and 1991-92 filed by the appellant. Since the law point involved in both appeals is the same, therefore, both the appeals are decided together.

2.The facts are taken up from *Appeal No. 432 of 2014 M/s Patiala Auto Enterprises vs. State of Punjab*.

3. This appeal has arisen out of the order dated 18.9.2014 passed by the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala dismissing the appeal (for the assessment year 1990-91) against the order dated 22.1.2013 passed by the Excise and Taxation Officer-cum-Assessing Authority, Patiala.

4. The appellant/assessee was a dealer registered under the provisions of 1948 Act during the years 1989-90 to 1991-92 as well as in subsequent years. The appellant filed the annual statement for the year 1990-91 and 1*991-92 under* the Punjab General Sales Tax Act, 1948. The original assessment under the Act was framed by Shri Samarjit Singh, Assistant Excise and Taxation Commissioner (Inspection), exercising the powers of Assessing Authority on 30.7.1993 creating an additional demand of Rs.2733/-. No appeal or revision was preferred; therefore, the said order became final. However, on suspicion that the appellant had not produced the genuine ST-XXII Forms, the revisional proceedings were initiated against the appellant, where upon the assessing authority framed ex-parte assessment against the appellant vide order dated 20.5.1998 thereby creating additional demand of Rs.3,17,187/-, on the ground that the benefit claimed by the appellant on the basis of ST XXII Forms raised under Section 5(2)(a) (ii) of the Punjab General Sales Tex Act was not valid and as such they had disallowed the sale of scooters amount of Rs.24,02,903/-.

5. Against this order dated 20.5.1998, the appellant preferred the appeals before the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala who vide his order dated 30.8.2005, had dismissed the appeal, whereupon, the appellant filed the appeal before the Tribunal, who dismissed the appeal on 3.4.2008. It is also pertinent to mention that the appellant had also knocked the door of the Hon'ble High Court for challenging the order dated 3.4.2008 on two grounds, viz. the order of the Revisional Authority having been passed upto 3/5 years being beyond the period of limitation was liable to be quashed, the revisional authority having passed the order, 8 years after the assessment was of no consequence; secondly; the Assessing Authority did not inform about the order for 4 years, therefore in view of the judgment of the Supreme Court reported in 9*3* STC 406, presumption would be that the order was not made on the date itself. The Hon'ble High Court while deciding the aforesaid VAT revision Nos. 10 & 11 of 2009 on 17.5.2010 observed as under:-

> *"It is also worth noticing that after the remand of the case, the Assessing Authority re-determined the tax liability of the assesses, vide order dated 26.2.2004. The appellant had also filed the appeal against the said order dated 26.2.004 which was accepted by the Tribunal on 3.4.2008 whereby the second assessment order dated 26.2.2004 were set-aside to the extent that the appellant would give an opportunity to the satisfy the sales against ST-XXII Forms. In compliance with, the orders of the Hon'ble VAT Tribunal, Punjab, the Assessing Authority, Ward No.2, Patiala again reassessed the case vide order dated 26.5.2009 by creating an additional of Rs.2,64,319/-."*

6. Aggrieved by the said orders dated 26.5.2009, the appellant preferred the appeal before the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala who dismissed the same vide order dated 30.7.2010.

7. Aggrieved by the said order passed by the Deputy Excise and Taxation Commissioner, the appellant preferred the appeal before Hon'ble VAT Tribunal, Punjab, Chandigarh who set-aside the orders dated 26.5.2009 passed by the Assessing Authority and order dated 30.7.2010 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala and remitted the case back to the Assessing Authority to conduct a detailed enquiry into the matter in order to establish that either the sales were bogus and form is fabricated. The Assessing Authority-cum-Excise and Taxation Officer, Patiala in compliance with the orders passed by the Hon'ble VAT Tribunal, Punjab called for the appellant and confronted him with the facts of the case and was invited to produce any evidence to prove the genuineness of the sales through the forty ST-XXII Forms. It is recorded in the order dated 30.1.2013 that in order to prove his case, the appellant was unable to produce the account books and documents relating to the mode of payment received, mode of transport, order received and G.R. copies as asked by the Assessing Authority. He was also unable to give complete addresses of the purchasers as he was not known to them; however he gave some addresses about which he knew. On furnishing of the addresses, summons were issued and in response to the summons, Shri Baljit Singh S/o Late Sardar Amrik Singh, Proprietor of M/s Guru Kirpa Auto Agencies, G.T. Road, Jalandhar appeared before the assessing authority. When confronted with STXXII forms, he stated that the forms at Serial No.3709956, 3709957 and 3709958 do not find mention in his returns. The department did not find any evidence in order to prove that the sales were bogus and ST-XXII Forms were fabricated. However, the Excise and Taxation Officer while considering that the onus to prove that sales were bogus and ST XXII Forms were fabricated was upon the appellant but he had failed shift the onus, therefore, she again rejected the claim and framed the assessment by repeating the additional demand of Rs.2,64,3l9/- against the appellant.

8. The appellant preferred the appeal before the Deputy Excise and Taxation Commissioner who also dismissed it with the observations that the appellant had failed to prove the genuineness of the forty ST-XXII Forms, the Assessing Authority had sent the summons to the concerned purchasing dealers on the basis of the material produced by the appellant, but most of the notices were received back, unserved and a few concerned purchasing dealers who appealed in response to the summons denied via affidavits that they ever issued the concerned ST-XXII Forms to the appellant dealer. No other concerned purchasing dealers have confirmed purchases or the issuance of ST-XXII Forms despite summons sent to them. He further observed that in these circumstances, ST-XXII Forms could not be accepted for allowing deductions U/s 5(2) (a) (ii) of the Punjab General Sales Tax Act, 1948. Ultimately, he dismissed the appeal.

9. Feeling aggrieved, by the impugned order dated 18.9.2014, the appellant had preferred this second appeal.

10. The Counsel for the appellant has urged that the orders passed by the authorities below do not stand to the reason and have been passed in non compliance of the order passed by the Hon'ble VAT Tribunal, Punjab, Chandigarh. The appellant was obliged to produce the ST-XXII Forms, which he had furnished before the department at due time in the year 1990-91. The said documents were approved by the then Assessing Authority. Consequently, the assessment was framed by the Assessing Authority on 31.5.1993. It was abruptly on account of revival of assessment that the Assessing Authority raised suspicion on ST-XXII Forms and disallowed the claim of the appellant on the basis of the said ST-XXII Forms. The department had alleged that the sales were bogus or that ST XXII Forms were fabricated. Therefore, it was the department who was lead to evidence to falsify the documents. The dealers were registered with the respondents and they could bring them to dock to fetch the necessary information or they could say that the forms were not issued by the different Assessing Authorities. The counsel has also urged that the department have not alleged that they did not issue the forms of

or that the forms do not bear the stamp of the department. When the forms complete in all respects were issued by the department then presumption would be that these forms were issued complete in all respects, then the onus would be shifted to departmental prove that the forms did not belong to department and were not issued and the same were misused and actually no sales were made by the appellant.

11. It has also been argued that at the time of the enquiry by the Assessing Authority, the appellant made a request to confront the purchasing dealer with the documents. However, the said cross examination was denied and the purchasing dealers were not tendered in the witness box, for cross examination. Consequently, the appellants were denied natural justice and fair play. The Assessing Authority also did not govern itself according to the principles of judicial decisions in as much as they did not produce any evidence in a proper manner and place any evidence for proving the genuineness and validity of the STXXII forms. He has also urged that the assessment was framed in the year 1991-92 and was finalized on 30.7.1993, therefore, in accordance with proviso to Section 14, the appellant was not presumed to maintain the record for more than five years from the date when the assessment was made, therefore, now the appellant could neither produce any evidence including the account books or documents after lapse of 10 years in order to establish genuineness of the said documents nor the department could compel for producing the record after the expiry of the stipulated time. He has cited Section 14(1) of the Punjab General Sales Tax Act, 1948 which is reproduced as under:-

> *PRODUCTION AND INSPECTION OF BOOKS, DOCUMENTS AND ACCOUNTS:*
>
> *(1) The Commissioner or any person appointed to assist him under sub-section (1) of section 3 not below the rank of an Excise and Taxation Officer may for the purposes of this Act, require any dealer referred to in section 10 to produce before him any book, document, or account relating to his business and may inspect, examine or copy the same and make such enquiries from such dealer relating to his business, as may be necessary; Provided that books, documents and accounts of a period more than five years prior to the year in which assessment made shall not be so required.*
>
> *It was also urged that Rule 26 as it existed prior the amendment on 29.6.1995, had placed onus upon the selling dealer to prove to the satisfaction of the Assessing Authority, the genuineness of his claim by producing the said declaration in respect of sale of such goods at the time of assessment or when called upon to do so, by notice, by a competent authority under the Act, yet this Rule was substituted by Notification vide G.S.R. 33/P.A.46/48 /S.27/Amd(97)/95, dated 29.6.1995 whereby Rule 26(2) in original was deleted and it was substituted by a new provision which does not put any onus upon the appellant. The Counsel for the appellant has also further urged that even Rule 26(2) does not go to place the onus upon the dealer to lead evidence but it only obliges the dealer to produce the declaration, which the appellant produced before the assessing authority. The STXXTI forms genuinely issued by the department could be used like currency notes however it was the department who was to prove that the STXXII forms were fabricated The as such, in these circumstances, onus shifted upon the department and it was to prove by leading evidence that the ST-XXII Forms sc produced were fabricated and the sales were bogus.*

12. In the end, the appellant has urged that the appellant was entitled to protections U/s 5(2) (a) (ii) of the Act, on production of the ST-XXII Forms which have been produced at the appropriate stage.

13. To the contrary, the Counsel for the respondent has urged that no doubt, the department had accepted the ST-XXII Forms at the initial stage but at the time of revision of the assessment appellant failed to prove their genuineness, therefore, the department had raised the demand. It was the duty of the appellant to prove that the documents were neither forged nor fabricated but he had failed to do so. He has also referred me to the provisions of Rule 26, the affidavit of Shri Baljit Singh S/o Late Sardar Amrik Singh, the affidavit of Rajesh Kumar who stated that they had not issued the ST-XXII Forms.

14. Arguments heard. Record perused.

15. There are three prime issues before me for adjudication of the present case viz. whether the authorities below have complied with the orders passed by Hon'ble VAT Tribunal, Punjab, Chandigarh dated 7.3.2011. The relevant extract of the order reads as under:-

> *"I have heard the Counsel for the appellant and Counsel for the State and gone through the orders passed by the Hon'ble Punjab and Haryana High Court in the case of M/s Rama Hand & Sons V/s State of Punjab. In this case the ST-XXII Forms submitted by the appellant were duly printed and issued by the State Govt. The ST-XXI) Forms were issued to the purchasing dealer of the appellant by the department to the Assistant Excise and Taxation Commissioner Incharge of the District of the purchasing dealer. Mo inquiry seems to have been made further by the Assessing Authority of the appellant to establish whether the sales were bogus or the ST-XXII Forms submitted were fake or fabricated by the appellant. No cross examination of any witness has been done. In the light of the facts of the case I deem fit to remand the case to the Assessing Authority for conducting a detailed inquiry to establish that either the sales were bogus or ST-XXII Forms were fabricated or fake before creating an additional demand against the appellant"*

16. The onus to prove whether the ST XXII Forms were fabricated and the sales were bogus? is upon the respondents.

17. Secondly "whether the purchasing dealers were under the control of the appellant to depose before the authorities? Thirdly, "whether the appellant was in a position produce required evidence even after 10 years of the framing of the assessment?

18. In order to resolve the aforesaid three issues I need to observe that it is not denied in this case that the appellant had submitted ST-XXII Forms. These forms were duly printed end issued by the State Government. These ST-XXII Forms are being issued by the Assistant Excise and Taxation Commissioner Incharge of the District for supply of the same to the purchasing dealers. The appellant has submitted time and again that ST XXII forms duly stamped bearing the name, address of purchaser and given by the purchaser to him at the time of purchase of scooters were submitted by the appellant to the department and at that time the Assessing Authority did not raise any objection to the submissions of ST-XXII Forms, and rather after approving the same, had given him the deductions U/s 5(2) (a) (ii) of the Act. It is also observed that the assessment was not challenged by the' respondents for five years. However, abruptly the department initiated the revisional proceedings in the year 1998 and passed an ex parte order within 14 days of issuing the process and dis-allowed the claim of the appellant quo the sales to the tune of Rs.26,78,364/-.

19. Having gone through, the order, it transpires that the Additional Excise and Taxation Commissioner disallowed the ST-XXII Forms mainly on the ground that there is neither seal of

any Assessing Authority on any ST-XXII Forms nor these forms have been issued by the Assistant Excise and Taxation Commissioner concerned. The Assistant Excise and Taxation Commissioner did not state that these forms were not printed by the Government press and were not supplied to the different authorities in the State of Punjab. It may further be observed that all these ST-XXII Forms bear the seal of the Government as per procedure as laid down in the rules. It is something different that the purchasing dealers did not appear before the Assessing Authority at the time of enquiry but for that, there may be 100 reasons viz the firms may have been dosed, the persons might have left the place or dead or they may not be interested to appear before the authorities. They may not have appeared as the records might have been destroyed. But the non appearance of the purchasing dealers before the enquiring authority cannot be made a cause for holding that the dealers had not issued the forms in favour of the appellant. The purchasing dealers are not and can't be within the control of the appellant. However on production of ST XXII Forms by the appellant which are duly printed from the Govt. press and issued by the department, the onus shifts upon the respondents to prove that they are bogus fake and forged documents.

20. Now coming to the evidence that Shri Baljit Singh S/o Late Sardar Amrik Singh, appeared and denied having issued two forms whereas he admitted having issued three other forms. In this regard, it would be sufficient to say that Shri Baljit Singh never stated in the affidavit that he was not dealing with the firm and had not been furnishing the ST XXII forms to the selling dealer, at the relevant time. He was not allowed to be cross examined by the appellant therefore, his evidence is of no consequence. Similarly, the other two persons who filed the affidavits that had not stated, if they had been working dealers at the relevant time. They have also not produced any record to prove that the firms were existing at the time and they were not issued the ST-XXIT forms by the authorities and they did not supply the same to the appellant. They were not brought into the witness box to depose against the appellant. The respondents have also not leaded any evidence in order to establish that the sale bogus and the ST-XXII forms are fabricated.

21. The assessing authority has turned down the contention of the appellant on the ground that, the appellant had failed to produce the account books, documents relating to mode of payment received, mode of transport orders received, GR copies or any other evidence in support of this case. In this regard, it is observed that no doubt, these documents could be produced but the department in its wisdom, to remove fear of the dealers, and also not to over burden them for maintenance of the un-necessary records, created a specific provision by way of introducing of Section 14(1) of the Act, according to which the department could not ask the appellant to produce the books, documents and account books of a period more than five years prior to the year in which the assessment is made, therefore, the appellant could not be compelled to prove the GRs, Accounts books, mode of transport to prove the genuineness of the document even after 20 years of framing of the assessment.

22. Much stress was given by the state in its order as well as by Mrs. Sudeepti Sharma. Dy. Advocate General that onus to prove about genuineness of the ST-XXII forms was upon the appellant but having pondered over the arguments, I do not find myself in agreement to it as I have referred rule 26 (2) of the Punjab General Sales Tax Act. As it existed prior to the amendment in year 1995 which placed an obligation upon the dealer to prove the genuineness of the claim by producing the said declaration i.e. ST-XXII forms in respect of sale of goods at the time of assessment or when called upon to do so by notice by a competent authority under the Act. The rule was not extended further to prove the genuineness by way of calling the purchasing dealers or their account books or other records, meaning thereby that on the production of the declaration, the onus would be shifted upon the department to find out as to whether the declarations were not genuine. The enquiring authority has no where stated that the signatures of the dealers were fake and the department did not produce any evidence to prove

that those were not issued by the purchasing dealer. Therefore, onus can't be said to be shifted. In any case rule 26 (2) was replaced by the legislative amendment as referred to above on 29.6.1995. Therefore fact remains that on production ST-XXII Forms by the selling dealer, the onus has to be shifted upon the department to establish that these were fake.

23. As regards the signatures of the Assistant Excise and Taxation Commissioner on the ST-XXII forms, the rules do not call for any such requirement which may be prevailing at that time. The department, if desired, could call for the record of the assessing authority in order to establish that such forms are the creation of the selling dealer and were never issued by the competent authority. The Division Bench of the High Court in case State of Haryana versus Inalsa Ltd. (2011) 42 VST 192 has gone to the extent that, it is a satisfaction of the selling dealer that the forms were genuine and if the department had not taken action against the purchasing dealer then deduction was to be allowed. In this case sales were claimed have been made by the selling dealer to the purchaser who were not existent dealer, so not a dealer under the act and the forms were alleged to have been stolen from the office of the department and furnished to the selling registered dealer. In that situation also the Division Bench of the high Court in Inalsa, case supra observed as under:-

> *"It is difficult to imagine as to how did the so called stolen forms carry the seal and signatures of the issuing authority. The format of the form requires that full address and registration of the firm to whom these forms are issued will be filled in and authenticated by the signatures and seal of issuing authority. The seal on these forms is exactly similar to the seal on accepted forms. The ink is also similar and therefore any person with ordinary prudence cannot be held guilty if he believes that forms are genuine and issued in ordinary course of business. In the absence of presumption of knowledge by a public notice, the guilt cannot be passed on to the dealer who accepted the forms.*
>
> *Therefore, only ground left is whether it is the responsibility of the present dealer who accepted the forms to ensure that the presenter of forms is a dealer entitled to present the forms by going behind the forms to enquire whether the presenter had a title to present the forms or not. No ruling or law has been cited in this connection either by the revisional authority or before me.*
>
> *3. We have heard learned counsel for the State.*
>
> *4. Contention raised an behalf of the State is that the forms being stolen forms, the respondent dealer could not have got the benefit of sale to registered dealer on the strength of furnishing prescribed declaration. Reliance has been place on judgments of the honorable Supreme Court in State of Madras V. Radio and Electricals Ltd. (1996) 3.8 STC 222 (SC) and Chunni Lal Parshadi Lal v. Commissioner of Sales Tax, U.P. Lucknow (1986) 62 STC 112 (SC).*
>
> *5. We are unable to accept the submission. The judgment relied upon do not advance the submission on behalf of the State. Only requirement is that the selling dealer has to satisfy himself that the purchasing dealer was genuine. Once the purchasing dealer has furnished genuine declarations duly issued by the Department, it could not be held that the selling dealer acted negligently or did not satisfy himself about the genuineness of the purchasing dealer. Finding recorded by the Tribunal referred to above dearly shows that the forms carried the seal of die issuing office and initials of the issuing authority. They also carried the name and address of the purchasing dealer and its alleged registration number. The Department did not take any action against the purchasing dealer. It is not a case where the Department was not satisfied about: genuineness of the stand of the assessee dealer that he had satisfied*

> *himself about the genuineness of the forms and the purchasing dealer. In such circumstances, deduction allowed by the assessing authority as upheld by the Tribunal could not be held to be illegal. Accordingly, we answer the question proposed against the State and in favour of the respondent. The reference is disposed of accordingly."*

24. In the present case a also, on examination of the forms, it is seen that they carry the seal of issuing office name and address of the purchasing dealers, their registration number. The department did not take any action against the purchasing dealers or produce the purchasing dealers, though they were registered and their registration has not been challenged by the department It has been admitted that it is not the mandatory requirement that all the ST-XXII Forms issued to the dealers must bear the initials of the issuing authority.

25. While examining the case from another angle assuming for the sake of arguments that one Shri Baljit Singh has denied having issued two forms and others have not appeared then in that situation whether all the sales could be said to be bogus. The answer could be negative. Shri Baljit Singh appeared, his statement cannot be believed for two reasons, firstly that he had made a self serving statement, secondly he was not allowed to be cross examined by the appellant and as regards, the two other persons they have not appeared to say anything. Mrs. Sudeepti Sharma has failed to refer to any evidence that the 40 persons who had been issued summons had appeared or that the requirement of law to examine them could be condoned for their non appearance. I find support of my this view from the judgment delivered in the case of Rama Nand Vs State of Punjab (2010) 37 PHT page/46 observed as under

> *8. "Learned counsel for the petitioner submitted that the finding that the sales were not genuine or the documents furnished by the purchasing dealers were not genuine was vitiated by denial of opportunity. In the circumstances, mere denial by the said purchasing dealers was self-serving and could not be held against the petitioner. If declaration furnished by the purchasers was found to be defective, the said dealers would be liable to pay the tax.*
>
> *9. Learned counsel for the revenue is unable to show either that the concerned dealers, who were sought to be summoned, were produced or that there was no requirement in law to do so. In such situation, the finding to the effect that the petitioner failed to discharge burden of sales being genuine, cannot be sustained in law. The questions of law have to be answered in favour of the petitioner dealer and against the revenue."*

26. Thus in nutshell, the outcome of the aforesaid observations and discussions is that neither the authorities below have sensitized the spirit of the findings returned by the Hon'ble VAT Tribunal, Punjab on 7.3.2011 nor have proceeded to collect evidence in that regard. They wrongly placed the onus upon the appellant to prove the genuineness of the sales when the department is in custody of the whole record and the purchasing dealers who allegedly issued the forms were under their control. Consequently, it would have to be observed that the appellant can't be denied the deductions as claimed by him U/s 5(2) (a) (ii) of the Act on the basis of the 40 ST-XXII Forms. Therefore, this appeal is accepted and the orders dated 22.1.2013 passed by the Assessing Authority as well as the order dated 18.9.2014 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala are set-aside. Consequently, the original assessments framed on the basis of ST-XXII Forms are ordered to be maintained.

27. Pronounced in the open court.

___

PUNJAB VAT TRIBUNAL

APPEAL NO. 537 OF 2014

Go to Index Page

SATPAL SURINDER KUMAR
Vs
STATE OF PUNJAB

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

6th August, 2015

HF ▶ Revenue

Long delay in filing of appeal on the medical grounds is not condonable in absence of evidence.

APPEAL – CONDONATION OF DELAY – ILLNESS OF APPELLANT - DISMISSAL OF FIRST APPEAL ON 31/5/2011 – FILING OF APPEAL AFTER MORE THAN THREE YEARS – CONDONATION SOUGHT ON BASIS OF ALLEGED INJURY AND HEALTH PROBLEM OF APPELLANT IN THE PAST FIVE YEARS – HELD NO SUPPORTING DOCUMENT PRODUCED TO SHOW ALLEGED ILLNESS – CASUAL APPROACH ON PART OF APPELLANT – EXPLANATION TENDERED IS NOT REASONABLE AND GENUINE – APPEAL DISMISSED – *S.64 OF PVAT ACT*

Facts

After the dismissal of appeal by first appellate authority vide order dated 31/5/2011 on the grounds of non compliance of S. 62(5) of the PVAT Act, the appellant has filed an appeal before Tribunal after a delay of 3yrs, 6months and 26 days. An application for condonation of delay is accompanied along with it. It is submitted that the appellant had met with an accident and suffered head injury. He remained in hospital for five years. He had lost his memory and had also undergone bypass surgery on 10.2.2014. He remained in the hospital till October 2014.

Held

The appellant has not explained as to why he could not file appeal in the period between 31/5/2011 and 10/2/2014. Nothing has been placed on record to show that he shut down his business. If he could run his business after the alleged accident, he could also file an appeal by taking help.

The application is not accompanied with any supporting documents or affidavit. The explanation tendered is vague. The delay of four years cannot be condoned in a casual manner while putting the other party into disadvantageous position. Even after passing of orders by DETC he did not make any efforts to issue direction to his counsel regarding filing of appeal. The explanation tendered does not seem genuine and reasonable and is unsupported by affidavit or documents. The appeal is, therefore, dismissed.

Cases referred:

- *Hon'ble Apex Court Vs. R.B. Bhavaneshwari 2009 (1) RCR (Civil) 892*
- *Oriental Aroma Chemical Industries Ltd, versus Gujarat Industrial Development Corporation and another (2010) 5 SCC 459*

Present: Mr. Kulbir Singh, Advocate Counsel for the appellant.

Mr. N.D.S.Mann, Addl. Advocate General for the State.

******

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

1. The Excise and Taxation Officer-cum-Designated Officer, Ludhiana- II vide order dated 15.10.2008 framed assessment for the year 2006-2007 against the appellant by creating additional demand of Rs.67,76,753/-. On appeal, the First Appellate Authority dismissed the same vide order dated 31.5.2011 for non compliance of Section 62 (5) of the Punjab Value Added Tax Act, 2005.

2. Aggrieved against the said order, the appellant has filed this second appeal on 26.12.2014 i.e. after a delay 3 years, 6 months and 26 days.

3. Since, the appeal was time barred by 1239 days, therefore, the appellant moved an application for condonation of delay. Wherein, it has been submitted that the, appellant is a trader of vegetable, ghee and sugar business. The Excise and Taxation Department imposed tax amounting to Rs.33,88,378/- for the assessment year 2006-07. The appeal preferred by him was dismissed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana on 31.5.2011. The appellant met with an accident and suffered head injury. He remained admitted in the hospital for five years. Consequently, he had lost his memory. He had also undergone bypass surgery, in the Hero DMC Heart Institute, Ludhiana on 10.2.2014. As such, he remained admitted in the hospital from 22nd September, 2014 to 8th Oct.,2014 at DMC and thereafter from 9th Oct., 2014 to 13th October, 2014. He was operated upon for the said disease by way of angioplasty from the Institute of the Medical Science and Research, New Delhi. Thus, he has prayed for condoning the delay of 1239 days. The State has filed the reply denying the allegations.

4. Arguments heard. Record perused.

5. An application for condonation of delay is not accompanied by an affidavit of the applicant or the other relevant record in support of the allegations. The Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana had decided the appeal on 31.5.2011, whereas the present appeal was filed on 24.12.2014 and was received in the office on 26.12.2014. The application does not indicate as to why he did not file the appeal prior to 26.12. 2014. He has not disclosed in his application as to when he suffered the accident. He has mentioned that he was admitted in DMC Heart Institute on 10/2/2014 but he could file the appeal during period from 2011 to 2014. He has not disclosed as to what prevented him to file the appeal from 31.5.2011 (the date when the Deputy Excise and Taxation Commissioner passed the order) till 10.2.2014 (when he was operated for angioplasty). The case appears to have been dealt with by the appellant very casually and evasively. The appellant must have been under the care of his attendants and if he wanted to file the appeal, then he could issue such directions to his attendants or the counsel who had dealt with the case before the Deputy Excise and Taxation Commissioner. There was no difficulty for him to file the appeal through his counsel with the assistance of his attendants before the Tribunal. He has not placed on record, the documents that he had closed down his business. If, he could run the business even after the alleged accident then what prevented him to file the appeal, taking help of those very

persons. The delay, of course, could be condoned on showing the reasonable and sufficient grounds which prevented him to file the appeal and such reasons were beyond his control. The counsel has cited the judgment delivered in case of *Oriental Aroma Chemical Industries Ltd, versus Gujarat Industrial Development Corporation and another (2010) 5 SCC 459* which lays down the broad principles for adjudicating the issue of condonation of delay. The Apex Court in para 14 & 15 observed as under:-

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

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

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

7. It was also recorded that:-

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

8. After going through the judgment, the court is convinced that in each and every case, the question of delay involves different facts and circumstances. However, the court while examining the issue of delay has to be guided by the following principles:-

(i) *"Whether the petitioner acted the reasonable diligence in prosecution of his appeal."*

(ii) *"Whether the appellant has properly explained the grounds as set up by him to condone the delay and has produced prima facie evidence to prove such grounds?" and*

(iii) *"Whether, the appellant was actually prevented by sufficient cause from filing the appeal within time?*

9. Now while examining the present case by taking into consideration the totality of the events which had taken place loading to the causing of delay, it may be noticed that the appellant has levelled vague and unfounded allegations, unsupported by any documents. This delay of nearly four years cannot be condoned in a casual manner while putting the other party into disadvantageous petition. The Supreme Court of India in case of Oriental Aroma Chemical Industries (Supra) while issuing other guidelines has also observed that liberal approach should be adopted while condoning the short delay whereas the courts should adopt stricter approach in case of long delay.

10. In the present case, it is not one day or month's delay, but it is of nearly four years delay that too without any evidence for condoning the same. The appellant appears to be making misuse of the process of law. If he was really interested to contest assessment, he could file the appeal after compliance of Section 62 (5) of the Act which he did not to do so. Even after passing of the order by the Deputy Excise and Taxation Commissioner he did not make any efforts by way of issuing such directions to his counsel regarding the filing of the appeal. He has stated that he is still under the treatment of the doctors but that allegation also stands unsupported by any document.

11. In these circumstances, the explanation furnished by the appellant does not appeal to the mind of the court as genuine and reasonable and the same is also un-supported by his affidavit and other documents. As such, huge delay of 1239 days can't be condoned.

12. Resultantly, I do not find any merit in the appeal, therefore, the same is hereby dismissed (copy of the order be sent to all concerned for information).

13. Pronounced in the open court.

_____

PUNJAB VAT TRIBUNAL

APPEAL NO. 190 OF 2014

Go to Index Page

BHAWANI INDUSTRIES LTD
Vs
STATE OF PUNJAB

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

14 August, 2015

HF ▶ Revenue

Lack of effort on part of appellant despite being aware of Illness of counsel is not sufficient cause for condoning delay.

APPEAL – CONDONATION OF DELAY – ILLNESS OF ADVOCATE – GOODS IN TRANSIT APPREHENDED –PENALTY IMPOSED BY AETC– DISMISSAL OF APPEAL FOR DELAYED FILING – APPEAL BEFORE TRIBUNAL – CONTENTION RAISED THAT DELAY OCCURRED DUE TO SERIOUS ILLNESS OF APPELLANT'S ADVOCATE FOLLOWED BY HIS DEATH – HELD APPELLANT ALWAYS FOUND GUILTY OF WILFUL NEGLECT – ENTRY TAX NOT PAID - NON APPEARANCE BEFORE PENALIZING OFFICER DESPITE REPEATED NOTICES OBSERVED – NON PRODUCTION OF BOOKS OF ACCOUNTS – NO EFFORT MADE TO FILE APPEAL INSPITE OF THE KNOWING FULLY ABOUT ILLNESS OF ADVOCATE – APPEAL FILED TWO MONTHS POST EXPIRY OF COUNSEL - CASUAL APPROACH TAKEN TO GAIN TIME – ADMISSION REGARDING NOT INFORMING AT ICC TAKEN INTO ACCOUNT – DELAY NOT CONDONED -APPEAL DISMISSED – *S.64 OF PVAT ACT*

Facts

The goods in transit were apprehended by the Mobile Wing. As the driver failed to produce the requisite documents, goods were detained. The appellant got the goods released after payment of entry tax at the ICC .Penalty u/s 51(7)(c) was imposed .The copy of the order passed by AETC was served on 31.1.2013. On appeal before the first appellate authority, it was dismissed on ground of delay. An appeal is filed before Tribunal against the order of DETC contending that the copy of order was received on 14.5.2013 and appeal was filed on 17.10.2013 as the advocate to whom the copy was handed over for filing the appeal was undergoing treatment of liver transplant in Chennai Chennai on 25.5.2013 and ultimately expired on 7.8.2013. Thus the delay is prayed to be condoned as it was unintentional.

Held

- *The appellant has always been guilty of willful neglect. Despite repeated notices, he did not appear before the AETC upto 31.1.2013. Neither the E-ICC form was produced at ICC not books of accounts produced to establish that he had accounted for the goods in his books.*

- *Since the appellant was in full knowledge that his advocate was ill, he should not have handed over the copy of the order to him. Even after his death he kept mum for two months instead of filing appeal. No affidavit has been produced to show that he was prevented by sufficient cause. The circumstances reveal that his approach was very casual. It indicated that grounds are falsely concocted and appeal was filed late to gain time.*
- *Also, there has been admission by the appellant in grounds of appeal that he had not deposited the entry tax and information was not given at ICC.*

The order passed by Assessing Authority is held to be correct and the appeal is thus dismissed.

Present: Mr. Ashok Kumar Gera, Advocate counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State.

******

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

1. The Deputy Excise and Taxation Commissioner(A), Ludhiana Division, Ludhiana vide order dated 10.3.2014 dismissed the appeal of the appellant against the order dated 31.3.2015 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana imposing the penalty to the tune of Rs.6,39,436/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005. Therefore, this second appeal has been preferred.

2. The, appellant is a manufacturer of Steel Ingots/Billets for which he used to procure Heavy Melting Scrap by way of purchase from in or outside the country.

3. On 20.12.2012, the appellant was bringing two trucks bearing Nos. PB-23J-9934 and PB-23J-5734 loaded with Heavy Melting Scrap from Sahnewal Port, Dhandari Kalan. The said trucks were checked by Shri K.S. Dhaliwal, Excise and Taxation Officer, Mobile Wing, Ludhiana near Gurudwara Kotan near Khanna. The drivers failed to produce any receipt of entry tax, e-trip or VAT-36 i.e. declaration regarding information relating to bringing of the goods from outside the State. The appellant also did not produce any exemption certificate regarding payment of entry tax issued by the department. However, the drivers produced G.Rs Nos. 46558 and 46555, dated 20.12.2012 of M/s Gurdev Impex Pvt, Ltd, Ludhiana.

4. Leteron, Shri Narender Singh, Factory Manager-cum-Authorized Signatory of the appellant appeared on 22.12.2012 and got the aforesaid two consignments released after making payment of Rs.1,21,904/- and Rs.1,18,093/- on account of entry tax at the Information Collection Centre, Dhandari Kalan. The appellant was directed to appear before the Designated Officer, but despite due service, he failed to appear before him. Ultimately, the Designated Officer vide his order dated 31.1.2013 imposed a penalty of Rs.6,39,436/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005.

5. The copy of the order was duly conveyed to the appellant, however, the appellants preferred the appeal before the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana on 17.10.2013 i.e. after five month of the passing of the order. The Deputy Excise and Taxation Commissioner (herein referred as the First Appellate Authority) dismissed the appeal on the ground of delay.

6. The plea set up by the appellant is that the order was passed on 31.1.2013 by the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana which was received by the appellant on 14.5.2013. The appellant was supposed to file the appeal by 14.6.2013 but the same was filed on 17.10.2013 for the reason that after receiving the copy of the order, he handed over the same to Shri Subhash Chander Satija, Advocate. At that time, the said

Advocate was under going the treatment of Liver transplant at Chennai. Shri Satija left for Chennai on 24.5.2013 and got operated on 30.7.2013 and ultimately, he expired on 7.8.2013. Therefore, the delay was unintentional and the same could be condoned. Thus, it is submitted that the Deputy Excise and Taxation Commissioner has erred in dismissing the appeal on ground of delay.

7. Before I proceed to sit over the observations made by the Deputy Excise and Taxation Commissioner on the ground of delay, I need to observe that the appellant has always been guilty of willful negligence. He, despite repeated notices issued to him since 20.12.2012, did not appear before the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana upto 31.1.2013. After the penalty was imposed on 31.1.2013, he received the copy of the order on 14.5.2013.

8. The appellant has admitted that he had got released the vehicles after making the payment of entry tax at the ICC Dhandari Kalan. It is also a fact that he did not issue e-ICC or furnished VAT 36 before taking the goods into the State of Punjab. The appellant also did not produce any books of account in order to establish that he had accounted for the goods in the account books.

9. Now coming to the question of limitation, it may be mentioned that after receiving the copy of the order on 14.5.2013, he knowing fully well that Shri Subhash Chander Satija, Advocate was suffering from a serious disease relating to the Liver transplant, he handed over the copy in his office and continued waiting for his recovery from illness. Even after the death of Shri Subhash Chander Satija, Advocate on 17.8.2013 he kept mum for two months and 10 days and did not prefer the appeal. If he could not get the copy of the order from the family members of the Advocate, then he could get the same from the office of the Designated Officer. Even otherwise, the appellant has not filed an affidavit or supporting documents in order to prove that he was prevented by sufficient cause for not filing the appeal in time. The circumstances reveal that the appellant was very casual in his approach for filing the appeal. Sufficient cause could be traced out from the anxiety and actual will of the appellant and the manner in which he took the steps to file the appeal. The fact, that the appellant left the copy of the order knowing fully well that the counsel through whom he wanted to file the appeal is not likely to recover at any early date and still to wait for two months after the death of counsel, indicates that the grounds were falsely concocted and he woke up from the long slumber to file the appeal. The appeal must have been filed to gain time. The appellant has more or less admitted in the grounds of the appeal that he had deposited entry tax and information was not given at the ICC. In any case, while going through findings returned by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana, this court observes that the view taken by the Assessing Authority is correct and does not call for any interference at my end.

10. Resultantly, this appeal being devoid of any merit is dismissed.

11. Pronounced in the open court.

_____

PUNJAB VAT TRIBUNAL

APPEAL NO. 329 OF 2013

Go to Index Page

AASRA PROJECTS PVT. LTD.
Vs
STATE OF PUNJAB

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

13th August, 2015

HF ▶ Dealer

No penalty u/s 51(7) can be imposed in a case of voluntary reporting by unregistered dealer even if there is some wrong submission regarding application for registration.

PENALTY – CHECK POST/ ROAD SIDE CHECKING -ATTEMPT TO EVADE TAX – UNREGISTERED DEALER – GOODS IN TRANSIT REACHED ICC – DOCUMENTS PRODUCED- APPELLANT FOUND TO BE UNREGISTERED IN PUNJAB – CONSIGNMENT MENTIONED THAT REGISTRATION ALREADY APPLIED FOR – GOODS DETAINED – FACTUALLY, REGISTRATION CERTIFICATE APPLIED AND RECEIVED FEW DAYS LATER AFTER DETENTION BUT BEFORE ONE MONTH FROM THE DATE OF ARISING OF TAX LIABILITY – PENALTY IMPOSED FOR MISREPRESENTATION OF FACT REGARDING REGISTRATION BEING APPLIED FOR BEFORE DETENTION – APPEAL BEFORE TRIBUNAL – MERE DISCLOSURE OF WRONG FACT DOES NOT NEGATE HIS RIGHT TO APPLY FOR REGISTRATION WITHIN ONE MONTH FROM THE DATE THE LIABILITY AROSE- VOLUNTARY REPORTING – DOCUMENTS FOUND TO BE CORRECT – TRANSACTION DULY STOOD ACCOUNTED FOR IN RETURNS – FORMALITIES COMPLETED BY APPELLANT - PENALTY DELETED – APPEAL ACCEPTED – *S.51(7)(b) AND S.21 OF PVAT ACT*.

Facts

The goods in transit reached the ICC on 9/2/2008 and the documents were produced. It was detected that the appellant was not registered in Punjab but he had stated in the consignment that he had applied for the same. The goods were detained. During the proceedings it transpired that it had applied for registration u/s 21 on 12/2/2008 i.e. after the goods were detained and was registered as a licencee on 19/2/2008.Penalty u/s 51 was imposed for attempt to evade tax on the grounds that he had misrepresented to the authorities that he had applied for registration prior to 8/2/2008. An appeal is filed before Tribunal.

Held

The documents were found to be correct. There was voluntarily reporting at the ICC. Return was duly furnished whereby the goods in question had been accounted for. The appellant applied for registration within one month from the date the date the liability to pay tax arose against him as required u/s 21. Mere disclosure of wrong fact does not negate his right to apply for registration within one month from the date the liability arose. There is no mensrea as the

goods reached alongwith proper documents and the exception to the statute says that if the taxable person is taking goods with proper documents, he may apply for registration within one month from the date the tax liability arises. He having completed all formalities and having received registration number within time, no penalty could be imposed upon him for the reason that he had disclosed the transaction in the return and informed about the registration certificate issued to him. The appeal is accepted.

Cases approved:

- *M/s Orbit Tradex Pvt. Ltd, JaJandhar versus State of Punjab (2013) 45 PHT 511 (PVT)*
- *Shree Bhairav Hosiery Mills v. State of Punjab decided on December 16,2013*
- *M/s Chandra Industries v. The Punjab State and Others 29 STC 558*

Present: Mr. Naveen Sehgal, Advocate counsel for the appellant.

Mr. N.D.S. Mann, Addl. Advocate General for the State.

******

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

1. Assailed in this appeal is the order dated 29.10.2012 passed by the Deputy Excise and Taxation Commissioner-cum- Joint Director (Invg.), Jalandhar (herein referred as the First appellate Authority) dismissing the appeal of the appellant against the order dated 19.2.2008 passed by the Assistant Excise and Taxation Commissioner, Information Collection Centre Shambu (import), district Patiala imposing a penalty of Rs.1,55,035/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

2. On 9.2.2008 the driver Shri Nirmal Singh while driving vehicle bearing Number DL-1GB-0S88 loaded with Ply and Timber reached the Information Collection Centre, Shambu (Import), District Patiala and presented the following documents:-

1) *Invoice No.297 dated the 8.2.2008 issued by M/s Shree Parasnath Traders, Timber Market, Loni Road, Shahdara, Delhi in favour of the above dealer for Rs. 4,55,985/- and*

2) *GR No. 095 dated 8.2.2008 issued by M/s Meerut Trauck Transport: Service, Delhi for the transportation of goods from Delhi to Amritsar.*

3. It was detected by the Detaining Officer that the appellant was not registered in Punjab but he had mentioned in the consignment that he had applied for the same. The goods were detained for verification and a notice was issued for producing the documents and other relevant evidence. In response to the notice, on 12.2.2008, Shri Sanjay Kumar an employee of the consigner appeared before the detaining officer. When confronted with the allegations, he submitted that he had entered into an agreement for construction of a School therefore, he had brought the goods under the said contract. At this, he was asked to place on record the necessary documents.

4. On 18.2.2008 the appellant appeared through the counsel. Thereafter, it transpired that the dealer had applied for registration on 12.2.2008 and was registered as licensee on 19.2.2008. However, he misrepresented to the authority that he had applied for registration and issuance of the Tin Number prior to 8.2.2008. Consequently the appellant was found to be guilty of attempt to evade tax, as such penalty to the tune of Rs.1,55,035 U/s 51 (7) (b) of the Act was imposed upon him.

5. Feeling aggrieved, the appellant preferred the appeal which was dismissed on 29.10.2012, hence this second appeal.

6. I have heard the counsel for the appellant and Mr. N.D.S. Mann, AAG for the State and they have also produced the record of the case. The goods were being carried by the driver accompanied by a valid invoice and GR. The respondents also have nothing to say if the documents were not correct. It is also in evidence that the driver did not run away and voluntarily reported the goods at the Information Collector Centre, Shambu. The driver had started the journey on 8.2.2008 alongwith the invoice and GR and goods were detained on 9.2.2008 only on the ground that the appellant was not a taxable person and he had given wrong information that the appellant had applied for registration. It is also a fact that the appellant had moved application for issuing registration certificate on 12.2.2008 U/s 21 of the Punjab Value Added Tax Act which was allowed on 19.2.2008 and the appellant had furnished the return, wherein he accounted for the goods in the said return. It is also in evidence that pursuant to the notice he had appeared before the Assistant Excise and Taxation Commissioner, ICC Shambu and had informed about issuance of the Tin Number to him but he did not give any weight to the registration number issued U/s 21 of the Punjab Value Added Tax Act within time as provided under the aforesaid Section.

7. Notwithstanding the fact that the appellant had disclosed a wrong fact but he applied for the registration certificate U/s 21 of the Act within one month from the date, the liability to pay tax arises against him. Mere disclosure of the wrong fact does not negate his right to apply for registration certificate within one month from the date tax liability arises. The wrong disclosure made by the driver of the vehicle may be due to result of misunderstanding or confusion. In any case, even if it is treated that he had not applied for registration certificate till he was apprehended on 9.2.2008 yet he had taken steps in compliance of Section 21 (2) of the Act within the time prescribed under the Act. Section 21 of the Act of 2005 reads as under: -

(2) "Every person required to be registered under sub-section (1), shall make an application for registration within a period of thirty days from the date when such person becomes liable to pay under this Act, in the prescribed manner to the Designated Officer."

Sub-rule (2) of Rule 3:- an application for registration shall be made in Form VAT-1 alongwith the receipt, in Form VAT-2, of a fee of rupees five hundred (Rs. Two thousand fee were substituted wide notification No. G.S.R. 31/PA.8/2005/S.70.AMD. (10/2007 w.e.f. July 26.2007).

Sub-rule (1 & 2) of Rule 5 (1) reveals that when the Designated officer, after making such enquiry, as he deems appropriate, is satisfied that the particulars contained in the application are correct and complete and the specified fee has been paid, it shall register the person and issue him a registration certificate in Form VAT-4 for principal place of business with a copy for every additional place of business within the State, free of cost. The registration certificate and its copies shall be issued within thirty days of submission application, complete in all respects, indicating the name of the additional place or places of business. The registration certificate shall be valid from the date of receipt of application for registration or from, the date of commencement of the liability to pay-tax whichever is later.

(2) The Designated Officer shall issue a fresh certificate in form VAT-4, in place of the registration certificate, already issued under the replealed Act.

7. That mere non registration is not a valid ground to impose the penalty u/s 51 (7) of the PVAT Act, 2005 and it has also been observed by Hon'ble VAT Tribunal, Punjab in the case M/s Shree Bhairav Hosiery Mills v. State of Punjab decided on December 16,2013, as under:-

'Mere non registration in itself would not constitute violation of provisions of section 51 of the Punjab Value Added Tax Act, 2005 as the goods under transaction were accompanying the documents as prescribed under this section.'

8. Hon'ble Punjab and Haryana High Court also took the similar view in the case of M/s Chandra Industries v. The Punjab State and Others (XXIX) Sales Tax Cases at page 558 while observing as under:-

"Under the Act and the Rules, a reciprocal imperative duty has been imposed on the prescribed authority to register an applicant as a dealer if
(a) his application for registration is in order,
(b) the prescribed fee has been paid; and
(c) the authority is satisfied that the applicant is a bonafide dealer and the information given by him is correct. If such a dealer honestly and diligently does all that he is required to do by subsection (2) and (3) of section 7 and Rule 5, he cannot be penalized u/s 23 (1) read with section 7 (1).

It is a cardinal principle of interpretation that statues which impose, pecuniary burden or penalties, have to be construed strictly, and if on a certain point such a statue is silent or its language is ambiguous, the doubt is to be resolved by adopting the construction which is beneficial to the tax payer and which avoids inconsistency and repugnance among its various provisions or to any constitutional provision."

9. The Tribunal also observed that the dealer's duty to make application to make himself register starts with his liability to pay tax.

10. As regards the evasion of tax, law is well settled that 'Mens Rea' to do so is also necessary to be proved Again the issue of 'Mens Rea' can be proved from the facts and circumstances in which the goods were moving. The attempt to evade the tax is proved, if the appellant reached the Information Collection Centre without proper genuine documents and he had no registration certificate. However, an exception was created by the statue that if the taxable person is taking the goods accompanied by the genuine and proper documents then he could apply for registration number within one month from the date he becomes liable to pay tax.

11. In. case of *M/s Orbit Tradex Pvt. Ltd, JaJandhar versus State of Punjab (2013) 45 PHT 511 (PVT)* as under:-

"A meticulous perusal of Invoice No. 2012005963, dated 27.6.2011would reveal that the Central Sales Tax @ 2% has been charged in it and this transaction is against Form "C". The goods were voluntarily reported at the ICC, Kallerkhera. In such circumstances the goods under transaction, in no manner, could be kept out of books of account. The goods had moved from Gujarat. These were purchased by M/s Orbit Tradex Pvt. Ltd., New Delhi, who further sent the same to M/s Orbit Tradex Pvt. Ltd., Jalandhar holding CST No.03872552240. Of course, M/s Orbit Tradex Pvt. Ltd., Jalandhar i.e. the appellant dealer is not registered in Punjab under the Punjab Value Added Tax Act, 2005, but the fact remains that the goods under transaction were accompanying the documents as prescribed u/s 51 of the Punjab Value Added Tax Act, 2005. Form - 402 relating to declaration under the Gujarat Value Added Tax Act, 2005 was also with the driver of the vehicle. Section 21 (4) of the Act, 2005 lays down that "where a person has contravened the provisions of sub-section (1), the Designated Officer shall, subject to action under Section-52 or Section-60, as the case may be, register such person and grant him a registration and such registration shall take effect as if it had been granted under Sub- Section (3) on the application

made by the person." These legal provisions speak volumes of the fact that it is only the Designated Officer of the area of the unregistered dealer, who can take action against the unregistered dealer. The Punjab Value Added Tax Act, 2005 or the rules framed thereunder, nowhere authorise the officers exercising the powers under Section 51 ibid to initiate any action thereunder against an unregistered dealer, if the documents carried alongwith the goods, are proper and genuine. They can impose penalty only when there is infringement of these provisions of law. They can not assume the role of the Designated officer under the garb of Section 51 of the Act, 2005. If they do so, it will amount to entrenching upon the jurisdiction of the Assessing Authority."

12. Though the appellant was not registered in Punjab, yet while exercising his right U/s 21 of the Act moved an application for registration certificate, deposited the necessary fee, filed the necessary returns by disclosing all the transactions and after due verification of the documents, he was allowed the Tin number. The department also accepted the returns without objection.

13. Under these circumstances, he having completed all the formalities and having received a registration number within time, no penalty could be imposed upon him for the reason that he had disclosed the transaction in the return and informed about the registration certificate issued to him.

14. Resultantly, this appeal is accepted and impugned orders are set-aside.

———

PUNJAB VAT TRIBUNAL

APPEAL NO. 78 OF 2015

Go to Index Page

J.K. IRON STORE
Vs
STATE OF PUNJAB

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

27th August, 2015

HF ▶ Revenue

Amendment of S. 62(5) makes it clear that amount of predeposit is to be calculated as 25% of the additional demand raised.

PREDEPOSIT – APPEAL – ENTERTAINMENT OF – DEMAND RAISED -DISMISSAL OF APPEAL BY FIRST APPELLATE AUTHORITY FOR NON COMPLIANCE OF CONDITION OF PREDEPOSIT – APPEAL BEFORE TRIBUNAL – STATUTE STANDS CLARIFIED POST AMENDMENT REGARDING AMOUNT OF PREDEPOSIT AS TO BE 25% OF THE ADDITIONAL DEMAND – NO EXPLANATION TENDERED BY APPELLANT AS TO WHY APPEAL SHOULD BE ENTERTAINED WITHOUT PREDEPOSIT – APPEAL DISMISSED GRANTING FURTHER TIME TO APPELLANT TO DEPOSIT THE AMOUNT FAILING WHICH ORDERS PASSED BY DETC TO REMAIN INTACT – *S. 62(5) OF PVAT ACT.*

Facts

The appellant had filed an appeal against the assessment order passed before the first appellate authority which was dismissed for non compliance of the condition of predeposit. It was observed that the Hon'ble High court has held that after the amendment of S.62(5) the statute has become clear regarding amount of predeposit being 25% of the additional demand. An appeal is filed before Tribunal against the order of DETC.

Held

There is no ambiguity in the statue after the amendment as the position has been further clarified by the High Court in the judgement of Bhagwanpura Sugar Mills Vs State of Punjab. The appellant has not explained as to under what circumstances his appeal should be entertained without predeposit of 25% of the additional demand. The appeal is dismissed and the appellant is granted two months time to deposit the required amount failing which orders of the First appellate authority would remain intact.

Present: None for the appellant

Mr. N.D.S. Mann, Addl. Advocate General for the state.

******

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

1. The case relates to the assessment year 2011-12. The assessing authority vide order dated 26.8.2013, had framed the assessment to the tune of Rs. 1,77,94,596/-. The appellant filed an appeal against the order. However, However, the 1st appellate authority did not entertain the appeal for non-compliance of section 62(5) of the Act and dismissed the same on 8.8.2014 with the following observations:-

> *"The Hon'ble High Court while deciding this very issue in the case of M/s Bhagwanpura Sugar Mills vs State of Punjab has very clearly observed that there is no merit in the argument raised by the appellant" and has further observed. "After the order was passed by this court on 29.7.2010, the Act has been amended so as to clarify 25% of the amount of tax penalty and interest which is required to be deposited is of the amount of additional demand i.e. the difference between the tax already deposited and the additional demand by the assessing authority. The ambiguity in the statute has been clarified by virtue of the amendment. Therefore we do not find any error in the order passed by the Tribunal."*

2. In the light of the above observations of the Hon'ble High Court the position is very clear that only the ambiguity in the statute has been clarified by virtue of the amendment. Thus there is no issue of a different provision being applicable prior to this amendment and the matter has been clarified by the Hon'ble High Court in this respect.

3. On filing of the second appeal, this Tribunal, vide order dated 20.2.2015, had called for the appellant to explain as to under what circumstances, the appeal could be entertained without depositing 25% of the additional demand. Till today, the appellant has failed to explain as to how his appeal could be entertained without deposit. Having perused the impugned order, the same is will reasoned and well founded.

4. As such, it does not call for any interference at my end. However, in the interest of justice, I provide him two month more time to deposit 25% of the additional demand. On doing so, the 1st appellate authority shall entertain the appeal and decide the same on merits, otherwise, the orders passed by the First Appellate Authority shall remain intact.

5. Pronounce din the open court.

———

PUNJAB VAT TRIBUNAL

APPEAL NO 36 OF 2015

Go to Index Page

P.D. AGGARWAL INFRASTRUCTURE LTD.
Vs
STATE OF PUNJAB

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

21st August, 2015

HF ▶ Assessee

Mere opinion on audit of party that penalty ought to have been levied cannot form the basis of reassessment in the absence of new material or information as required u/s 29(7) of the Act.

LIMITATION – REASSESSMENT – ASSESSMENT YEAR 2006-07 – DEMAND RAISED INCLUDING INTEREST - ASSESSMENT ORDER FINALIZED ON 18/11/2010 – OBJECTION RAISED ON AUDIT REGARDING PENALTY NOT BEING LEVIED– REASSESSMENT FRAMED VIDE ORDER DATED 18/3/2014 THEREBY IMPOSING PENALTY U/S 56 – APPEAL BEFORE TRIBUNAL – REASSESSMENT OUGHT TO BE FRAMED WITHIN A PERIOD OF THREE YEARS I.E. BY 18/11/2013 – EXPIRY OF LIMITATION AS ORDER FRAMED ON 18/11/2014 – APPEAL ACCEPTED SETTING ASIDE REASSESSMENT ORDER – *S. 29(7), S. 56 OF PVAT ACT.*

PENALTY – POWER OF OFFICER TO REASSESS - ASSESSMENT YEAR 2006-07 – DEMAND RAISED INCLUDING INTEREST - ASSESSMENT ORDER FINALIZED ON 18/11/2010 – OBJECTION RAISED ON AUDIT REGARDING PENALTY NOT BEING LEVIED– REASSESSMENT FRAMED U/S 29(7) OF THE ACT VIDE ORDER DATED 18/3/2014 THEREBY IMPOSING PENALTY U/S 56 – APPEAL BEFORE TRIBUNAL – ABSENCE OF FRESH MATERIAL OR INFORMATION TO CONSTITUTE UNDER ASSESSMENT OF TAX – NO WILLFUL NEGLECT OR FRAUD OR MISREPRESENTATION OF FACTS ON PART OF ASSESSEE – PENALTY LEVIED ONLY ON BASIS OF CHANGE OF OPINION NOT VALID – PROVISIONS OF S.29(7) NOT ATTRACTED – APPEAL ACCEPTED SETTING ASIDE REASSESSMENT ORDER – *S. 29(7) , S. 56 OF PVAT ACT*

Facts

Returns were filed for the assessment year 2006-07 within time. On scrutiny, an additional demand was raised including interest. The said assessment became final between parties on 18.11.2010. However, on audit, an objection was raised that no penalty was imposed on appellant. Thus, notice for reassessment on the grounds of short levy of tax and liability to pay penalty was issued. The AETC waived off the objection regarding short levy of tax but held that penalty ought to have been imposed u/s 53, thereby creating a demand vide order dated 18/3/2014. The appellant has filed an appeal before Tribunal contending that the reassessment ought to have been done within the period of three years i.e. by 2013 but it has been done after expiry of limitation period.

Held

- *There was no fresh material or information found on the basis of which reassessment could be framed. It is not a case of under assessment of tax. The tax was assessed at the same rate and to the same amount at which the authority passing the reassessment assessed. There has been no wilful neglect or misrepresentation of facts. Therefore, provisions of s 29(7) are not attracted. In such circumstances, assessing authority had no power to reassess the case. The only remedy was to revise u/s 65(2) of the Act within reasonable time.*
- *Penalty was sought to be imposed only on the basis of 'change of opinion' which is not a ground for reassessment and could have been imposed at the time of original assessment as it was within the power and discretion of assessing officer. There has been no fresh material to constitute discovery of under assessment of tax.*
- *Also, the order of reassessment has been passed on 18/3/2014. Thus it is time barred as period of three years stood expired on 18/3/2013.The impugned order having been framed after expiry of limitation as prescribed u/s 29(7) of the Act is time barred. The reassessment order is set aside and original order dated 18/11/2010 is restored.*

Cases Relied upon:

- *State of Punjab and another versus M/s Punjab Power Products (2011) 39 PHT 22 (P&H)*
- *M/s Bharat Petroleum Corporation Ltd. Patiala and another versus State of Punjab and another (2010) 35 PHT 547 (P&H)*
- *Shreyans Industries ltd., Ahmedgarh versus State of Punjab and others, (2008) 32 PHT 485 (P&H)*
- *M/s Supreme Traders, Panipat versus State of Haryana, (2012) 41 PHT 474 (HTT) FB*
- *Ammonia Supply Company versus Additional Commissioner, Grade-I, Trade Tax, Varanssi Zone and another, (2011)38 PHT 11 (All.)*

Present: Mr. Naresh Kumar Chawla, Advocate counsel for the appellant.
Mrs. Sudeepti Sharma, Dy. Advocate General for the State.

******

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

1. This appeal has arisen out of the order dated 28.10.2014 passed by the Deputy Excise and Taxation Commissioner, Jalandhar Division, Jalandhar dismissing the appeal against the order dated 18.3.2014 passed by the Assistant Excise and Taxation Commissioner, Hoshiarpur creating an additional demand on account of penalty to the tune of Rs.35,16,000/- under Section 56 of the Punjab Value Added Tax Act, 2005.

2. The appellant is a works contractor. He filed the return for the assessment year 2006-07 on time (i.e. 20.11.2007). The said return was scrutinized whereupon the then Assistant Excise and Taxation Commissioner, Hoshiarpur, vide order dated 18.11.2010 created an additional demand of Rs.14,39,780/-. The said assessment was including interest. The said assessment order became final between the parties on 18.11.2010. The power to reassess or amend the assessment as conferred by the Section 29(7) of the Act within three years i.e. upto 18.11.2013, but the respondents on the basis of an audit objection to the effect that no penalty was imposed the Assistant Excise and Taxation Commissioner after seeking permission from the Excise and Taxation Commissioner, Punjab on 6.8.2012 again issued the notice for reassessment under Section 29(7) of the Punjab Value Added Tax Act, 2005 to the appellant on two grounds i.e. first variation of ICC data which resulted in to short levy of tax for Rs.1,17,85,885/-. Secondly, the earlier assessment did not include the penalty which was liable to be imposed upon the appellant. After hearing the parties, the Assistant Excise and Taxation Commissioner, Hoshiarpur while exercising the powers u/s 29(7) of the Punjab Value Added Tax Act vide his order dated 18.3.2014, waived of the first audit objection by observing that the appellant had made purchases of bitumen to the tune of Rs.2,03,383/-, but by mistake an

amount of Rs.20,33,33,383/- was entered. As regards, the second objection with regard to the penalty, the Assistant Excise and Taxation Commissioner observed that the officer, who had framed the assessment, should have imposed the penalty U/s 53 of the Punjab Value Added Tax Act, 2005, therefore, he imposed the penalty and created an additional demand to the tune of Rs.35,16,000/- after making certain adjustments of the ITC for the year 2008-09.

3. The appeal preferred by the appellant was dismissed by the Deputy Excise and Taxation Commissioner (A), Jalandhar Division, Jalandhar 28.10.2014, hence this second appeal.

4. The admitted facts prevailing over the case are that the assessment for the 2006-07 was filed on time by the appellant and the final assessment was framed by the Assistant Excise and Taxation Commissioner on 18.11.2010. The original assessment order dated 18.11.2010 passed by the Assistant Excise and Taxation Commissioner reveals that he had framed the assessment by including interest, however, neither any notice of penalty was issued nor any such penalty was imposed. The appellant has agitated the issue with regard to the framing of the reassessment order u/s 29(7) of the Act on 18.3.2014, primarily on the ground of limitation. It has been urged that Section 29(7) of the Act provides three years period of limitation for passing the order. Having heard the contention in this regard I find merit in the same, Section 29(7) of the Act provides three years period of limitation for passing the order. Having heard the contention in this regard I find merit in the Same. Section 29(7) is reproduced as under:-

> *"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), if he discovers under assessment of tax, payable by a person for the reasons that:-*
> *(a) Such a person has committed fraud or willful neglect; or*
> *(b) Such a person has misrepresented facts; or*
> *(c) A part of the turnover has escaped assessment.*

5. If examined in the background of the case then it would be noticed that the dealer had executed a BOT project, the said project was subject matter of litigation. The dispute was with regard to taxability over the BOT Project Income. The matter was pending adjudication before the Commissioner u/s 85 of the Punjab Value Added Tax Act in the case of M/s Chetak Enterprises. The matter was ultimately decided against the said company. Therefore, pursuant to the order passed by the Excise and Taxation Commissioner against the said firm, the appellant deposited the due tax. However, later on, the assessing officer ordered to frame assessment while imposing interest. At that time, neither the penalty was imposed by the Assistant Excise and Taxation Commissioner nor such issue with regard to the deposit of penalty was raised by the department. However, on account of the audit objection raised at later stage, the Assistant Excise and Taxation Commissioner, Hoshiarpur imposed a penalty on 18.3.2014.

6. Now the question arises, whether the Assessing Authority had the power to make the reassessment, if so, whether the Assessing Authority after the stipulated period of three years could make the reassessment and whether the facts and circumstances of the case attracted the penal provisions.

7. Firstly, I shall sit to deal with the first issue with regard to the exercise of the power Section 29(7) of the Act, Section 29(7) does not confer the Designated officer with absolute powers to make reassessment. As per this Section, the Designated officer, within three years, from the date of the assessment order, amend an assessment made under sub-section (20 of Section 29 of the Act if he discovers under assessment of tax payable by a person for the reason

that the person has committed fraud or willful neglect or has mis-represented the fats of that a part of the turnover has escaped assessment.

8. On critical analysis of the facts, it transpires that it is not a case of under assessment of tax. The tax was assessed at the same rate and to the same amount at which the authority passing the reassessment assessed. The reassessment was made only qua penalty when the audit raised such objection. Otherwise, the Assessing Authority never raised the issue of penalty nor there was any dispute raised regarding under assessment. It is also not a case where the appellant committed willful neglect or mis-represented the facts. The penalty was no imposed for any fault or misrepresentation on the part of the appellant, but the assessing authority did not impose the penalty in its discretion obviously considering that it was not a fit case of penalty. The appellant had paid the due tax alongwith interest which was considered and accepted. In these circumstances, the Assessing Authority had no power to reassess. Rather if the wrong order was passed by the assessing authority, then the Revisional Authority was competent to revise the assessment under Section 65(2) of the Act within reasonable time.

9. It may further observed that from the bare reading or Section 29 (7) of the Act, the reassessment could be made only if there was any fresh material or information leading to the order of the reassessment. Since the tax assessed at both the times was the same, therefore, it would be deemed that the Assessing Authority had no fresh material on the basis of which the amendment could be made. It was only change of opinion that on the basis of the audit report, he included the penalty which he never intended at the time of passing the original assessment. The similar view was taken by the Haryana Tax Tribunal at Chandigarh in case of *M/s Supreme Traders, Panipat versus State of Haryana, (2012) 41 PHT 474 (HTT) FB,* wherein, it was observed as under:-

> *"The scope of reassessment under Section 31 would extend to cases where on information coming into possession of the assessing authority subsequent to primary assessment, there is either a case of turn over having escaped assessment which means certain turn over which was not before the assessing authority at the time of primary assessment but came on record or discovered as a result of information coming in to his possession subsequent to the primary assessment or that certain turnover has been under assessed which means it was exempted from tax or not assessed to tax because it was allowed as an admissible deduction at the time of primary assessment on the basis of certain documents produced before him but later on, on the basis of information coming into his possession, the turnover is found by the assessing authority to have been wrongly deducted or exempted from tax because the supporting documents or the claim was found to be not genuine or correct."*

10. The Allahabad High Court also took the same view in case of *Ammonia Supply Company versus Additional Commissioner, Grade-I, Trade Tax, Varanssi Zone and another, (2011)38 PHT 11 (All.)* wherein it has observed that the Assessing Authority, if has reasons to believe that there is a easy assessment can after he forms the opinion to reopen the assessment, would reopen, it. Consequently they observed as under:-

> *"In the instant case the Assessing Authority applied its mind in taxing ammonia at 10% of the turn over as observed perniciously though without referring to the two Notifications. Therefore, it is manifest that it treated ammonia as a chemical on due application of mind which cannot be said to be unmindful of the Notification dated January 29, 2001. Accordingly, we find substance in the submission of learned counsel for the petitioners that sanction for reassessment is on account of "change of opinion" and not for the bonafide reason upon any new material which may have escaped notice of the assessing authority at the*

time of initial assessment or on the ground of new material. In the present case also, "the words if he discovers as mentioned in sub Section (7) of 29 of the Act direct the Designated Officer to form an opinion that there is a under assessment of tax."

11. The present case is not of under the assessment of tax, it is only for non imposition of penalty which was within the power and discretion of the assessing authority who had framed the original assessment. Therefore, the provisions of Section 29(7), in the absence of any fresh material, would not be attracted for framing the reassessment. Hon'ble Punjab and Haryana High Court in case of *M/s Shreyans Industries Ltd. Ahmedgarh, District Sangrur versus State of Punjab and others (2008)32 PHT 485 (P&H)* observed that "the provisions of Section 11-A of the Act are akin to the provisions of Section 147 of Income Tax Act, 1961 and Section 31 of Haryana General Sales Tax Act, 1973. Therefore, pre-requisite for opening the reassessment completed earlier are only if some new information comes to his possession after passing of original assessment order. The information on the law point given in the audit that the rate of tax charged at 1% was not correct as the Notification under which it was charged not applicable to the case and the tax should have been charged @4% does not constitute the information as contemplated under Section 11(A) of the Act". Similarly, the information as supplied to the assessing authority by audit party regarding non imposition of the penalty does not amount a fresh material which may be sufficient to constitute discovery of under assessment of tax.

12. As a matter of fact, if the Assistant Excise and Taxation Commissioner while framing the original assessment declined to impose penalty or did not impose penalty as to his wisdom, the case can't be said to fall under any of the clauses of Section 53 of the Act. At the same time, in the absence of discovery of under assessment of tax by the assessing authority only remedy with the department was revised the assessment under Section 65(2) of the Act.

13. Is any case, while taking the case from another angle, the original assessment was framed on 18.11.2010 three years limitation was fixed for making reassessment, therefore, the Designated Officer could frame the assessment only within three years from the date of the original assessment i.e. by 18.11.2013. The mandatory clause of seeking permission from the commissioner as envisaged under sub Section (7) of Section 29 of the Act does not provide the concession of expiry time to be added in to the period of 3 years as prescribed under sub Section 7 of the said Section. Though, the commissioner accorded Sanction to amend the original assessment on 6.2.2012, yet the amendment of the assessment could be made within 3 years from the original assessment by all means in the absence of any order of extension accorded by the competent authority to frame the reassessment. Thus the order of reassessment passed in case on 18.3.2014 is certainly time barred as 3 years period stood expired on 18,11,2013. Similar view taken by the Division Bench of this High Court in the case of *State of Punjab and another versus M/s Punjab Power Products (2011) 39 PHT 22 (P&H), M/s Bharat Petroleum Corporation Ltd. Patiala and another versus State of Punjab and another (2010) 35 PHT 547 (P&H), State of Punjab and another vs. M/s Punjab Power Products, (2011) 39 PHT 22 (P&H) and Shreyans Industries ltd., Ahmedgarh versus State of Punjab and others, (2008) 32 PHT 485 (P&H).* As such the present order of assessment having been framed after the expiry of period of limitation as prescribed under Section 29(7) of the act has become time barred.

14. Resultantly, having gone through the impugned orders, the authorities have not properly appreciated the questions of law involved in the present case, therefore, the judgment passed by authorities below to be set aside. Resultantly this appeal is accepted, impugned orders are set aside and the original order of assessment dated 18.11.2010 is ordered to be maintained.

PUNJAB VAT TRIBUNAL

APPEAL NOS. 82, 84, 85 of 2015

Go to Index Page

FRIENDS HI-TECH INDUSTRIES
Vs
STATE OF PUNJAB

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

25th August, 2015

HF ▶ Assessee

Matter remitted back for faming assessment of dealer alongwith selling dealer where ITC was rejected due to non payment of tax by selling dealer.

PREDEPOSIT – APPEAL – ENTERTAINMENT OF – INPUT TAX CREDIT – SELLING DEALER – ITC OF ASSESSEE- APPELLANT REJECTED AS TAX NOT DEPOSITED BY SELLING DEALERS - DISMISSAL OF FIRST APPEAL FOR NON COMPLIANCE OF S. 62(5) OF THE ACT – APPEAL BEFORE TRIBUNAL PRAYING WAIVER OF PREDEPOSIT – HELD, DENIAL OF ITC FOR NON DEPOSIT OF TAX BY SELLING DEALER WOULD AMOUNT TO DOUBLE TAXATION ON APPELLANT – ASSESSMENT CASE OF THE APPELLANT TO BE DECIDED ALONG WITH THE ASSESSMENT OF HIS SELLING DEALERS – MATTER REMITTED BACK TO ASSESSING AUTHORITY – DEPARTMENT TO PROCEED AGAINST THE SELLING DEALERS, IF FOUND LIABLE – APPEAL ACCEPTED – *S. 62(5) AND S. 13*

Facts

The first appellate authority dismissed the appeal for non compliance of S 62(5) of the Act. An appeal is filed before Tribunal contending that the demand was created against him only for the reason that the ITC claimed by him was rejected on the ground that his selling dealers did not deposit the tax so collected from the appellant in the Govt. treasury and therefore, the need to deposit 25% should be waived off.

Held

In view of judgement in the case of Gheru Lal Bal Chand, it is observed that if the selling dealers are held liable for the said sales, then rejection of ITC of the appellant would amount to double taxation.

It has been submitted that the assessments of the selling dealers of the appellant are pending adjudication. The appeal is accepted and the case is remitted back to the assessing authority to frame assessment of the appellant along with the assessment of his selling dealers. If the tax is found unpaid by selling dealers, the authority would proceed against the selling dealers.

Cases Relied upon:

- *M/s M. Aggarwal & Company Vs. The State of Punjab In CWP no, 14451 of 2015*
- *Gheru Lal Bal Chand Vs. State of Haryana and another (2011) 45 VST 195 (P&H)*

Present: Dr. Naveen Rattan, Advocate counsel for the appellant.

Mrs. Sudeepti Sharma, Dy. Advocate General for the State.

******

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

1. This order of mine shall dispose off three connected appeal Nos. 82, 84 and 85 of 2015 titled as M/s. Friends Hi-tech Industries, Mehta Road, Amritsar-I, V/s The State of Punjab and Friends Machinery Corporation, 90-C, Focal Point,1 Amritsar-I.

2. This appeal is directed against the order dated 26.11.2014 passed by the 1st Appellate authority DETC (A) Amritsar Division, Amritsar, dismissing the appeal for non compliance of Section 62(5) of the Act 2005.

3. The claim of the appellant is that the demand was created against him only for the reasons that the ITC claimed by him was rejected on the ground that his selling dealers did not deposit the tax so collected from the appellant in the Govt. treasury.

4. Mrs. Sudeepti Sharma, Dy. Advocate General for the State has argued that she is not in agreement with the fact that the case can be clubbed with the appeal filed by the selling dealers before the DETC i.e. M/s Satkar Overseas, M.R. Enterprises and M/s United Automobiles (all the appellants) who had to actually pay the tax. The counsel has also urged that this excuse is being made for the only reason that the appellant does not want to deposit 25% of the additional demand and is putting of the responsibility. It was further urged that the appeals of the selling dealers are pending before the DETC regarding cancellation of registration and not on merits, DETC has dismissed the appeal for the reason that 25% of the additional demand has not been deposited, therefore, the order passed by the DETC is sustainable and the appeal is liable to be dismissed.

5. I have heard the learned counsel for the parties and have perused the record of the case. The counsel for the appellant admits that the appellant had purchased the goods from M/s Satkar Overseas, M/s M.R. Enterprises and M/s United Automobiles. The cases regarding their assessments are pending before the assessing authority. The order passed by the ETO -cum-Designated Officer dated 17.7.2013 reveals that as per the computer data relating to the year 2011-12, M/s Friends Hitech Industries (Appellant) holding VRN 03712080846 has shown the purchases from M/s Mahavir Enterprises holding VRIM 03972039769, M/s Varun International holding VRN 03632040247 and M/s Saggar International holding VRN 03601144129. Similarly, M/s Mahavir Enterprises holding VRN 03972039769 for the year 2011-12 has shown purchases from. M/s Satkar Overseas VRN 03632059259, M/s M.R. Enterprises holding VRN 03502Q48903, M/s United Automobiles holding VRN 03241144327 etc. during the year 2011-12. Similarly, computer data shows that each firm to whom M/s Mahavir Enterprises holding VRN 03972039769 has shown sale during the year 2011-12 reveals the fact that it had made purchases from the same firms.

6. The 1st Appellate authority while referring the case of M/s Mahalaxmi Cotton ginning pressing and oil Industries Kolhapur vs. The State of Maharashtra and the other appeal No. 33 of 2012 decided on 11.5.2012, rejected the ITC on the ground that if the tax has not been deposited by the selling dealer in the Govt, treasury then the ITC cannot be allowed. However, the Division Bench of Hon'ble High Court in case of *M/s M. Aggarwal & Company Vs. The*

State of Punjab In CWP no, 14451 of 2015 decided on 21.7.2015 observed that the judgments passed by the Division Bench of *Hon'ble High Court in Gheru Lal Bal Chand Vs. State of Haryana and another (2011) 45 VST 195 (P&H)* is binding and has precedence over the judgment delivered in case of Mahalaxmi Cotton ginning Pressing and oil Industries (Supra) the relevant observations are reproduced as under:-

> *"Mr. Goyal submitted that the assessing authority ought to follow the judgment 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 judgment 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 judgment 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)"*

7. The counsel for the appellant has stated that the appellants are the bonafide purchasers from the selling dealers and the goods had been accounted for by the selling dealers in their assessments, which are pending adjudication before the assessing authority. The appellant has further undertaken that they would accept and account regarding the sales made by the selling dealers to the appellants before the assessing authority.

8. In these circumstances, in the light of the judgment delivered by the Division Bench of Hon'ble High Court in Gheru Lal Bal Chand (Supra)'s case, if the selling dealers are held liable for the said sales, then the rejection of the ITC of the appellants would amount to double taxation.

9. It has also been brought to my notice that since the appeals of the selling dealers before the 1st Appellate authority relate to the cancellation of their registration, therefore present appeals can't be clubbed with the cases pending before him, however, the cases could be sent back to the assessing authority (deciding the assessments of the selling dealers) in order to make out if these are the bogus sales, there is connivance or collusion between the appellant and the purchasing dealers in order to avoid tax liability and also to recover the tax from the persons actually liable to pay the same. The assessment case of the appellant needs to be decided alongwith the assessment of his selling dealers. If the selling dealers do not deposit the tax, then it. is certainly to be recovered from the appellants.

10. In these circumstances, without expressing any opinion over the merits of the appeal, it would be appropriate if the case of the appellant is heard, decided and the assessment is framed against him alongwith the case regarding framing of the assessment against the selling dealers.

11. Resultantly, this appeal is accepted, impugned orders are set aside and the case is remitted back to the assessing authority to frame the assessment alongwith the cases of assessment of the selling dealers. In view of the undertaking made by Shri Naveen Rattan, Advocate, who is also the counsel for the selling dealers, the assessing authority would examine, if the due tax has not been deposited, by the selling dealers then it would proceed against the selling dealers accordingly. The appellant would appear before the assessing authority on 17.9.2015.

12. Pronounced in the open court.

———

PUNJAB VAT TRIBUNAL

APPEAL NO. 440 OF 2014

Go to Index Page

JAI BHAGWATI RICE MILLS
Vs
STATE OF PUNJAB

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

3rd September, 2015

HF ▶ Revenue

Assessment can be framed in a period of six years in view of amended section 29(4) of PVAT Act.

ASSESSMENT – LIMITATION – ASSESSMENT YEAR 2007-08 – FRAMING OF IN YEAR 2012 – APPEAL FILED CONTENDING ASSESSMENT TO BE TIME BARRED BEING FRAMED AFTER THREE YEARS – ASSESSMENT SO FRAMED IS HELD TO BE WITHIN THE SPECIFIED TIME PERIOD – AMENDMENT OF S 29(4), HAVING RETROSPECTIVE EFFECT, PERMITS FRAMING OF ASSESSMENT WITHIN A PERIOD OF SIX YEARS – APPEAL DISMISSED- *S.29 OF PVAT ACT;*

Facts

The assessment for the year 2007-08 has been finalized on 5/12/2012. It is contended by the appellant that it should have been completed on 20/11/2011. The department on the other hand has argued that the amendment u/s 29(4) of the Act made w.e.f. 15/11/2013 has retrospective effect, therefore the assessment was well within six years of the finalizing of the annual statement and is, thus, within time.

Held

As interpreted by the division bench of Hon'ble High court in case of M/s Amrit Bansapati Company Ltd V State of Punjab that the amendment of S 29(4) is quite retrospective, it is observed that the assessment in question is quite within time. The appeal is dismissed.

Case relied upon

- *M/s Amrit Banaspati Company Limited Vs. State of Punjab [Northern Tax Reporter 2015 page/209 (P&H)]*

Present: Mr. Avneesh Jhingan, Advocate counsel for the appellant.
Mr. N.D.S, Mann, Additional Advocate General for the State.

******

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

1.This appeal is directed against the order dated 26.12.2013 passed by the Deputy Excise and Taxation Commissioner(A), Patiala Division, Patiala dismissing the appeal against

the order dated 5.12.2012 passed by the Excise and Taxation Officer-cum-Designated Officer, Patiala framing the assessment to the tune of Rs.67,382/- for the year 2007-08.

2. The main argument has raised by the Counsel for the appellant in the case is that the assessment for the year 2007-08 ought to have been completed on 20.11.2011, whereas it was finalized on 5.12.2012, therefore, it is time barred.

3. To the contrary, Shri N.D.S. Mann, AAG of the State has urged that the amendment under Section 29(4) made w.e.f. 15/11/2013 has retrospective effect, therefore, the assessment was well within six years of the finalizing of the annual statement, therefore, it is within in time.

4. Arguments heard. Record perused.

5. The original Section 29(4) provided that the assessment could be made within three years and it could be extended into six years. However, the said section was amended w.e.f. 15.11.2013 which read as under:-

Before amendment on 15.11.2013 Section 29(4)	**After 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.	An assessment under sub-section (2) or sub-section (3), may be made within (six) 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.	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 the November, 2014. E**XPLANATIONS**: (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 expired. (2) It is clarified that period 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(10-A)** 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.

This Section was interpreted by the Division Bench of Hon'ble High Court in case of *M/s Amrit Banaspati Company Limited Vs. State of Punjab Northern Tax Reporter 2015 page/209 (P&H)* wherein, it was held that the amendment made under Section 29 (4) are quite valid and retrospective in nature. Consequently, I observe that the assessment framed for the year 2007-08 was quite within time.

6. Resultantly, this appeal being devoid of any merit is dismissed.

7. Pronounced in the open court.

_____

SGA
LAW OFFICES

NOTIFICATION (Punjab)

Go to Index Page

PUNJAB INFRASTRUCTURE (DEVELOPMENT & REGULATION) AMENDMENT BILL, 2015

PUNJAB VIDHAN SABHA SECRETARIAT

NOTIFICATION

The 21st September, 2015

No. 19-PLA-2015/199.-The Punjab Infrastructure (Development and Regulation) Amendment Bill, 2015 is hereby published for general information under the proviso to rule 121 of the Rules of Procedure and Conduct of Business in the Punjab Vidhan Sabha (Punjab Legislative Assembly):-

Bill No. 19-PLA-2015

THE PUNJAB INFRASTRUCTURE (DEVELOPMENT AND REGULATION) AMENDMENT BILL, 2015

A

BILL

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

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

Short title and commencement

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

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

Substitution of section 25 of Punjab Act 8 of 2002

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

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

Levy of fee

(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 Infrasture Development fee on purchase of immovable properties.

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

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

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

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

Repeal and savings

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

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

STATEMENT OF OBJECTS AND REASONS

As the Punjab Private Universities Policy - 2010 has been formulated to provide greater access and to ensure quality in higher education, the Government of Punjab wishes to allow the establishment of self financed private universities to supplement the efforts of the State Universities. The object of the RIMT University is to impart comprehensive education at all levels to achieve excellence and to promote research and teaching in areas of Education, Engineering and Technology, Languages, Laws, Life Sciences and other courses under the general heads of the Arts and Humanities, Social Sciences etc.

2. As the establishment of such private self financed universities requires a broadly uniform set of guidelines for ensuring academic standards, prevention of commercialization and mismanagement etc., it deemed, therefore, expedient to provide for promulgation of 'The RIMT University Bill - 2015'.

SURJIT SINGH RAKHRA,
Minister for Higher Education, Punjab.

FINANCIAL MEMORANDUM

In terms of the powers vested with the State Government on the promulgation of the Punjab Infrastructure (Development and Regulation) Amendment Ordinance, 2015, ID Fee has been levied @ Rs. 5 for every one hundred rupees of the value of electricity consumed (exclusive of other levies/ duties) being supplied by Punjab State Power Corporation Ltd. within the State of Punjab. Similarly, ID Fee has been levied @ rupee one for every hundred rupees of the value of purchase of immovable property within the State of Punjab. The Punjab Infrastructure (Development and Regulation) Amendment Bill, 2015 is being introduced for confirming the provisions of the Punjab Infrastructure (Development and Regulation) Amendment Ordinance, 2015 whereby, additional revenue streams in the form of the ID Fee as levied above shall continue to flow into the Punjab Infrastructure Development Fund. This fund is being/shall be utilized for the creation/development of much needed infrastructure facilities in the rural and urban sector in the State of Punjab.

———

Chandigarh:
The 21st September, 2015

SHASHI LAKHANPAL MISHRA,
Secretary.

Editorial Note: *The statement of objects and reasons published do not appear to be of the concerned amendment but this has been printed officially.*

SGA
LAW OFFICES

NOTIFICATION (Haryana)

Go to Index Page

DISCUSSION FORUM ON GST FOR ALL SHAKEHOLDERS

REPORT OF THE JOINT COMMITTEE ON BUSINESS PROCESSES FOR GST
ON
REFUND PROCESSES IN GST REGIME

INTRODUCTION:

1.0 During the Empowered Committee meeting held on 10th March, 2014, it was decided that a Joint Committee under the co-convenership of the Additional Secretary (Revenue), Government of India and the Member Secretary, Empowered Committee should be constituted to look into the Report of the Sub-Group-I on Business Processes for GST and make suitable recommendations for Registration and Return to the Empowered Committee. It was also decided that the Joint Committee should also give its recommendations on Refund Processes in GST regime. Accordingly, a Joint Committee, in consultation with the Government of India, was constituted on 7th April, 2014 (Annexure-I).

1.1 In the second meeting of the Joint Committee on Business Processes for GST held on 12th November, 2014, it was decided to constitute a Sub-Committee on GST Refund Processes. Pursuant to that decision, a Sub-Committee under the Co-convenership of Shri Manoj Ahuja, Commissioner, Commercial Tax, Odisha and Shri Upender Gupta, Additional Commissioner, GST, CBEC, Government of India was constituted on 14th November, 2014 (Annexure-II). Shri Sanjeev Khirwar, Commissioner, Trade Taxes, Delhi was co-opted as a member of the Sub-Committee.

1.2 The Sub-Committee examined the present practices prevalent in the Central and the State VAT laws and also noted the proposed structure for verifications, etc. envisaged under the IGST Model. The Sub-Committee submitted its Report on 28th January, 2015. The Report of the Sub-Committee was considered by the Joint Committee on Business Processes for GST in its meeting held on 2nd February, 2015 and 3rd February, 2015. The list of the participants of the last meeting of the Joint Committee on Business Processes is … *For more detail see*

http://www.dor.gov.in/sites/upload_files/revenue/files/Report_on_GST_RefundProcess.pdf

SGA
LAW OFFICES

NOTIFICATION (Haryana)

Go to Index Page

REPORT OF THE JOINT COMMITTEE ON BUSINESS PROCESSES FOR GST
ON
REGISTRATION PROCESSES IN GST REGIME

1.0 INTRODUCTION

During the Empowered Committee meeting held on 10th March, 2014, it was decided that a Joint Committee under the co-convenership of the Additional Secretary (Revenue), Government of India and the Member Secretary, Empowered Committee should be constituted to look into the Report of the Sub-Group-I on Business Processes for GST and make suitable recommendations for Registration and Return to the Empowered Committee. It was also decided that the Joint Committee should also keep in view the Registration and Return requirements necessary for IGST Model. Accordingly, a Joint Committee, in consultation with the Government of India, was constituted on 7th April, 2014 (Annexure-I).

1.1. The Committee held its deliberations on 28th October, 2014, 12th November, 2014, 25th November, 2014, 22nd December, 2014, 2nd and 3rd February, 2015, 19th and 20th February, 2015, 16th and 17th April, 2015 and 7th and 8th July, 2015. The Report of the Joint Committee on Business Processes on Registration was accordingly circulated to all the States. However, this Report was further discussed in the meeting of the Joint Committee on Business Processes held on 22nd and 23rd July, 2015. Some changes were made as per the discussions in the meeting of the Joint Committee on Business Processes held on 22nd and 23rd July, 2015. The report of the Joint Committee on Business Processes on Registration was accordingly finalized. The list of the participants of the meeting of the Joint Committee on Business Processes held on 22nd and 23rd July, 2015 is appended at Annexure-II.

1.2. Registration of a business with the tax authorities implies obtaining a unique identification code from the concerned tax authorities so that all the operations of and data relating to the business can be agglomerated and correlated. In any tax system this is the most fundamental requirement for identification of the business for tax purposes or for having any compliance verification program. Registration under Goods and Service Tax (GST) regime will confer following advantages to the business:

- Legally recognized as supplier of goods or services.
- Proper accounting of taxes paid on the input goods or services which can be utilized for payment of GST due on supply of goods or services or both by the business.
- Pass on the credit of the taxes paid on the goods or services supplied to purchasers or recipients. *For more detail see….*

http://www.dor.gov.in/sites/upload_files/revenue/files/Report_on_GST_Registration.pdf

SGA
LAW OFFICES

NOTIFICATION (Haryana)

Go to Index Page

REPORT OF THE JOINT COMMITTEE ON BUSINESS PROCESSES
FOR
GST- PAYMENT

INTRODUCTION

During the Empowered Committee meeting held on 10th March, 2014, it was decided that a Joint Committee under the co-convenership of the Additional Secretary (Revenue), Government of India and the Member Secretary, Empowered Committee should be constituted to look into the Report of the Sub-Group-I on Business Processes for GST and make suitable recommendations for Payment and Return to the Empowered Committee. Accordingly, a Joint Committee, in consultation with the Government of India, was constituted on 7th April, 2014 (Annexure-I). The Committee held its deliberations on 28th October, 2014, 12th November, 2014, 25th November, 2014, 22nd December, 2014, 2nd and 3rd February, 2015, 19th and 20th February, 2015 and 16th and 17th April, 2015.

2. The Joint Committee on Business Processes for GST held on 2nd February, 2015, it was decided to constitute a sub-committee on GST Payment Process. Pursuant to that decision, the Member Secretary, Empowered Committee constituted the Sub-Committee vide his memorandum letter dated 3rd February, 2015 (Annexure-II). Shri V Rajendaran, DG (Government Accounts), CAG, Mrs. Krishna Tyagi, CCA, CBEC, Government of India, Shri Madan Mohan, Jt. CGA, Government of India and Shri G Sreekumar, CGM, RBI were co-opted as members of the Sub-Committee. Shri Ravneet S. Khurana, Deputy Commissioner GST Cell, CBEC also participated in the deliberations of the Sub-Committee. The Sub-Committee met in Bengaluru on 14th and 15th February, 2015 and on 06th and 7th April, 2015. The Sub-Committee also exchanged drafts on emails during the interregnum period. The Sub-Committee submitted its final report on 10th April, 2015.

3. The report of the Sub-Committee was discussed in the meeting of the Joint Committee of Business Processes held in Delhi on 16th and 17th April 2015 and was accepted with certain modifications. The meeting of the Joint Committee was attended by the officers as listed in Annexure III.

4. In modern day taxation regime, every transaction of the tax payer with the tax administration should be transparent, responsive and simple. It has been experience of tax administrations that more the system and procedures are made electronic more is the efficiency of tax administration and greater is the satisfaction of taxpayer. In this context, payment system of GST should also be based on Information Technology which can handle both the receipt and payment processes. *For more detail see….*

http://www.dor.gov.in/sites/upload_files/revenue/files/Report_on_GST_PaymentProcess.pdf

SGA
LAW OFFICES

ARTICLE

Go to Index Page

DOCUMENTS REQUIRED FOR PUNJAB VAT REGISTRATION

To apply for new registration for VAT/CST in Punjab the below documents are needed to submit in concerned district office front window by dealer who is applying for new Registration:-

1. If applying under Constitution of Business 'Co-operative Society' the following documents will be needed:-

a) VAT-1
b) Annexure 1 with Photograph
c) Annexure 2
d) Annexure 3(Non Mandatory)
e) Surety Bond
f) Memorandum of Association
g) Articles of Association
h) Copy of resolution for Authorized Signatory
i) Treasury Receipt (TR/DD/PO/RAO)
j) Proof of principle place of Business
k) Evidence of eligibility for registration under VAT/TOT
l) Statement of Stock(Required for change from TOT to VAT)(Non Mandatory)
m) PAN
n) Authorized person photograph
o) CST-Form A(Non Mandatory)
p) Any other Document(Non Mandatory)

2. If applying under Constitution of Business 'Government (Central/State)' the following documents will be needed:-

a) VAT-1
b) Annexure 1 with Photograph
c) Annexure 2
d) Annexure 3(Non Mandatory)
e) Surety Bond
f) Copy of resolution for Authorized Signatory
g) Treasury Receipt (TR/DD/PO/RAO)
h) Proof of principle place of Business
i) Evidence of eligibility for registration under VAT/TOT
j) Statement of Stock(Required for change from TOT to VAT)(Non Mandatory)
k) PAN
l) Authorized person photograph
m) CST-Form A(Non Mandatory)

3. If applying under Constitution of Business 'Government Company or Government Cooperation' the following documents will be needed:-

a) VAT-1
b) Annexure 1 with Photograph
c) Annexure 2

d) Annexure 3(Non Mandatory)
e) Surety Bond
f) Memorandum of Association
g) Articles of Association
h) Copy of resolution for Authorized Signatory
i) Treasury Receipt (TR/DD/PO/RAO)
j) Proof of principle place of Business
k) Evidence of eligibility for registration under VAT/TOT
l) Statement of Stock(Required for change from TOT to VAT)(Non Mandatory)
m) PAN
n) Authorized person photograph
o) CST-Form A(Non Mandatory)
p) Any other Document(Non Mandatory)

4. If applying under Constitution of Business 'Government Company or Government Cooperation' the following documents will be needed:-

a) VAT-1
b) Annexure 1 with Photograph
c) Annexure 2
d) Annexure 3(Non Mandatory)
e) Surety Bond
f) Memorandum of Association
g) Articles of Association
h) Copy of resolution for Authorized Signatory
i) Treasury Receipt (TR/DD/PO/RAO)
j) Proof of principle place of Business
k) Evidence of eligibility for registration under VAT/TOT
l) Statement of Stock(Required for change from TOT to VAT)(Non Mandatory)
m) PAN
n) Authorized person photograph
o) CST-Form A(Non Mandatory)
p) Any other Document(Non Mandatory)

5. If applying under Constitution of Business 'HUF Hindu Undivided Family' the following documents will be needed:-

a) VAT-1
b) Annexure 1 with Photograph
c) Annexure 2
d) Annexure 3(Non Mandatory)
e) Surety Bond
f) Treasury Receipt (TR/DD/PO/RAO)
g) Proof of Residence
h) Proof of principle place of Business
i) Evidence of eligibility for registration under VAT/TOT
j) Statement of Stock(Required for change from TOT to VAT)(Non Mandatory)
k) PAN
l) Karta Photograph
m) CST-Form A(Non Mandatory)
n) Any other Document(Non Mandatory)

6. If applying under Constitution of Business 'Partnership Firm' the following documents will be needed:-

a) VAT-1
b) Annexure 1 with Photograph
c) Annexure 2
d) Annexure 3(Non Mandatory)
e) Surety Bond
f) Partnership deed
g) Treasury Receipt (TR/DD/PO/RAO)
h) Proof of Residence

i) Proof of principle place of Business
j) Evidence of eligibility for registration under VAT/TOT
k) Statement of Stock(Required for change from TOT to VAT)(Non Mandatory)
l) PAN
m) Partner Photograph
n) CST-Form A(Non Mandatory)
o) Any other Document(Non Mandatory)

7. If applying under Constitution of Business 'Private Ltd Company' the following documents will be needed:-

a) VAT-1
b) Annexure 1 with Photograph
c) Annexure 2
d) Annexure 3(Non Mandatory)
e) Surety Bond
f) Memorandum of Association
g) Articles of Association
h) Copy of resolution for Authorized Signatory
i) Treasury Receipt (TR/DD/PO/RAO)
j) Proof of principle place of Business
k) Evidence of eligibility for registration under VAT/TOT
l) Statement of Stock(Required for change from TOT to VAT)(Non Mandatory)
m) PAN
n) Authorized person photograph
o) CST-Form A(Non Mandatory)
p) Any other Document(Non Mandatory)

8. If applying under Constitution of Business 'Proprietorship' the following documents will be needed:-

a) VAT-1
b) Annexure 1 with Photograph
c) Annexure 2
d) Annexure 3(Non Mandatory)
e) Surety Bond
f) Proof of Residence
g) Treasury Receipt (TR/DD/PO/RAO)
h) Proof of principle place of Business
i) Evidence of eligibility for registration under VAT/TOT
j) Statement of Stock(Required for change from TOT to VAT)(Non Mandatory)
k) PAN
l) Proprietor photograph
m) CST-Form A(Non Mandatory)
n) Any other Document(Non Mandatory)

9. If applying under Constitution of Business 'Public Ltd Company' the following documents will be needed:-

a) VAT-1
b) Annexure 1 with Photograph
c) Annexure 2
d) Annexure 3(Non Mandatory)
e) Surety Bond
f) Memorandum of Association
g) Articles of Association
h) Copy of resolution for Authorized Signatory
i) Treasury Receipt (TR/DD/PO/RAO)
j) Proof of principle place of Business
k) Evidence of eligibility for registration under VAT/TOT
l) Statement of Stock (Required for change from TOT to VAT)(Non Mandatory)
m) PAN
n) Authorized person photograph

o) CST-Form A (Non Mandatory)
p) Any other Document (Non Mandatory)

10. If applying under Constitution of Business 'Trust' the following documents will be needed:-

a) VAT-1
b) Annexure 1 with Photograph
c) Annexure 2
d) Annexure 3(Non Mandatory)
e) Surety Bond
f) Trust Deed
g) Copy of resolution for Authorized Signatory
h) Treasury Receipt (TR/DD/PO/RAO)
i) Proof of principle place of Business
j) Evidence of eligibility for registration under VAT/TOT
k) Statement of Stock(Required for change from TOT to VAT)(Non Mandatory)
l) PAN
m) Authorized person photograph
n) CST-Form A(Non Mandatory)
o) Any other Document(Non Mandatory)

Department has to process/Reject the application within 30 days from date of application Receipt (As per VAT Act).

Source: Advocate Amit Bajaj

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

BASMATI UNLIKELY TO FETCH BETTER PRICE

Rice mill owners have criticised the government's decision to impose 7 per cent tax on them. Already incurring losses, rice millers fear with the arrival of aromatic fine 1121 variety of basmati in the grain market in a few days the crisis may deepen.

"The imposition of tax is likely to affect the equilibrium price of the market driven 1121 variety of paddy as the buying cost will increase. On the other hand, due to geo-political reasons, the prices of basmati rice slashed to 40 per cent last year," said Ashok Grover, President, Punjab Basmati Rice Millers' Association.

The rice millers purchased paddy on a higher rate and sold rice on lower prices last year, resulting in huge losses to the tune of hundreds of crores of rupees. The imposition of tax has further worsened the situation in the border belt, which is largely dependent on the basmati trade.

The 1121 variety is purchased at a higher rate than the minimum support price of Rs 1,450 per quintal. The private traders are the bulk buyers of the variety. "The farmers are at receiving end. The traders are not going to offer higher rates to the farmers as they will have to shell out 7 per cent extra to the government," said Navdeep Singh, a farmer in Banwala village.

The Punjab Government had waived off market fees and rural development fund two years ago to encourage the diversification to basmati paddy, which consumes less water as compared to parmal that need flood irrigation.

The farmers have pleaded that 7 per cent tax is higher as compared to neighbouring state of Haryana, which is geographically in an advantageous position being nearer to Delhi.

In Haryana, the traders have to pay only 4 per cent market fees and less transportation expenses to send the material to the national capital and for further sending to gulf countries. The farmers and traders have demanded abrogation of tax to save the economy.

Courtesy by: The Tribune

12nd October, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

CENTRE CIRCULATES MODEL GST LAWS AMONG STATES

NEW DELHI: The Centre and states have completed the drafting of model Goods and Services Tax law as well as an integrated-GST or iGST law, which will be put up in public domain by early November.

According to a government official, the Empowered Committee of state finance ministers is likely to meet this month to discuss the legislations -- CGST, SGST and iGST.

"The model GST law and iGST law has been circulated among the states. The Empowered Committee would meet soon to discuss them," a senior official said.

The Central GST (CGST) will be framed based on the model GST law. Also the states will draft their own State GST (SGST) based on the draft model law with minor variation incorporating state based exemption.

"Trade and Industry should also be a part of the law because ultimately they would pay the tax. Hence their views are essential. The drafts will be put up on website by first week of November," the official added.

The drafts of the proposed legislations are based on three principles -- definitional clarity, certainty in assessment and promoting ease of doing business, the official said.

The model GST law and iGST law have been drafted by the officials of both Centre and States, the official added, Although the government had planned to roll out the GST, which is touted as the most comprehensive indirect tax reform since Independence, from April 1, 2016, it seems difficult in view as the Constitution Amendment Bill is stuck in the Rajya Sabha where the ruling NDA does not have a majority.

The government, however, is going ahead with the preparatory work necessary for smooth implementation of the GST, which will subsume various levies like excise, service tax, sales tax, octroi, etc, and will ensure a single indirect tax regime for the entire country.

The government has already put up three reports of empowered committee on GST on refunds, payment process and registration for public comments by October 31.

The date for next meeting of the empowered committee has not been finalised yet. It was scheduled to meet last month but the meeting was deferred.

Courtesy by: The Times of India

12 October 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

GST WILL HELP CHECK COUNTERFEITING: EXPERTS

High tax rates, varying from state to state, tend to exacerbate illicit markets and generate greater demand for cheap and counterfeit substitutes. To overcome this problem, which is causing revenue loss, early implementation of Goods and Service Tax (GST) ensuring uniform tax regime was imperative, said and former Chairman, Central Board of Excise and Customs P C Jha, who is also Advisor FICCI CASCADE (Committee Against Smuggling and Counterfeiting Activities Destroying the Economy).

Talking to the Tribune, Jha said streamlining the complex tax structure by implementing GST would put a tab on counterfeiting activities and smuggling of alcohol, tobacco and other items from low tax state to high tax state.

Besides increasing cooperation amongst stakeholders (international and domestic regulatory agencies), there is a need to facilitate effective enforcement of standard quality parameters, stringent governance practices and implementation of existing laws, experts maintained.

Due to illicit markets, the losses in alcoholic beverages and mobile phones have risen by 151 per cent and 111 per cent, respectively, over the years. The maximum revenue loss to the government (about 23 per cent) in 2014 was caused by tobacco followed by mobile phones (17 per cent) and alcoholic beverages (16 per cent), they observed.

The ADGP (Law and Order) Sanjay Kundu said that the inclination towards buying cheap product needed to be changed. He said that liquor vends at the inter-state borders were a common sight and a large number of people could be seen on the liquor vend where the tax were low.

The experts further stated that Himachal being a tourist state attracting a significant number of foreign tourists, there was great demand for international cigarettes. Smugglers had flooded the market with international contraband cigarettes, which were pushed by the retailers because of high margins on them on account of evasion of Customs Duties and State Taxes.

The report released by FICCI CASCADE –"Illicit market: A threat to national Interest," stated that the illicit markets eat into the share of genuine entrepreneurs whose sales are affected and profits are reduced.

Courtesy by: The Tribune

1st October, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

MISSING EXCISE & TAXATION FILES: INFO PANEL TELLS VIGILANCE TO INTERVENE

Taking note of the six missing files of the Excise and Taxation (ET) Department of the district, the State Information Commission (SIC), Punjab, has asked the vigilance (mobile) wing of the department to intervene in the matter. The files pertain to irregularities in the department.

The SIC has also directed the ET officials to bring all the records with them during the next hearing of the case which is scheduled for November 6.

The SIC has sent copies of this order to the Chief Secretary, Government of Punjab; Financial Commissioner, Taxation, Punjab; and Excise and Taxation Commissioner, Punjab, Patiala, for necessary action with the directions that they must intervene in this matter if they wish to curb corruption allegedly prevailing in the Department of Excise and Taxation.

The order reads: "Baldeep Kaur, Assistant Excise and Taxation Commissioner, Mohali; Simrandeep Singh Brar, Excise and Taxation Officer (ETO), Mohali; and Kulwinder Singh Chahal, Assistant Excise and Taxation Commissioner (Mobile Wing); are directed to appear before the commission along with the relevant record on the next date of hearing and also with the documents, which would support the claims made by them in their respective submissions, made before the commission in today's hearing. They are also directed to bring written replies to the queries raised by H S Hundal, the counsel for the complainant in hearing, if they desire so, on the next date of hearing."

Hundal told Chandigarh Newsline that senior functionaries of the excise and taxation of the ET department were making lame excuses to deny information with the sole motive to "cover up" the blatant and heavy evasion of Value Added Tax (VAT) by a section of traders with the active patronage of some officials of the Excise and Taxation Department in the district.

One of the officers of the Excise and Taxation Department, Amrik Singh, had sought information under the Right to Information Act regarding the six missing files.

The files are said to contain information about some people who were evading VAT in connivance with some officials. The department was not providing the information to him following which he went in appeal to the State Information Commission .

Courtesy by: The INDIAN ExPRESS

9th October, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

PM MODI HOPEFUL OF GST ROLLOUT IN 2016, SAYS NO MORE RETRO TAX

Prime Minister Narendra Modi said on Tuesday the government is hopeful of rolling out a landmark goods and services tax bill by next year and will not to resort to retrospective taxation, in a bid to woo foreign investors to Asia's third-largest economy.

Modi listed a slew of measures his government has undertaken to improve ease of doing business in the country — including work on a new bankruptcy code — as he pitched India as the ultimate investment destination at an Indo-German summit in Bengaluru.

"We have introduced the GST bill in Parliament; we are hopeful of rolling it out in 2016. We want to make sure our tax regime is transparent and predictable. We are also keen to see genuine investors and honest tax payers get quick and fair decisions on tax matters," he said. "At a time of global slowdown, India represents a bright spot for investments."

The Nasscom event was the concluding part of a three-day visit by German Chancellor Angela Merkel and the two leaders earlier visited German engineering giant Bosch's headquarters in the city.

Modi said India was committed to protecting the intellectual property rights of innovators and entrepreneurs, and a comprehensive national policy was being finalised that would be progressive and forward-looking.

"I can say never before was India so well prepared to absorb talent, technology and investment from outside," he said.

The GST bill — which aims to replace a string of central and local levies such as excise and octroi with a single tax — is a key constituent of the government's reform agenda that has run into rough weather in Parliament.

The government has already pushed the tax bill through Lok Sabha but faces an uphill battle in Rajya Sabha, where it is in a minority, with a belligerent Opposition in no mood to give in. Once it passes Parliament, the bill will need approval from at least half of the state legislatures.

Since the NDA government came to power 15 months ago, India's credibility in the eyes of global investors has been successfully restored, Modi said, a day after signing agreements to fast-track German investments.

Modi wants to attract foreign capital pulling out of China, where a slowdown has sent shockwaves through the financial world, to back his flagship initiatives to create skilled jobs for millions of Indians.

"As a result of our initiatives, the sentiments for private investment and inflow of foreign investment have turned positive. The growth rate of our GDP is above 7%. FDI inflows have gone up 40% compared to the previous year's corresponding period," Modi said.

Modi has repeatedly vowed to make the country more investor-friendly and rectify bureaucratic sloth and processes that have kept India almost at the bottom — ranked 142 — of the World Bank's 'ease of doing business' index.

But niggling concerns remain, especially aggressive past government attempts to retrospectively tax companies, most famously telecom giant Vodafone in 2007, which dragged the then UPA government to court and won earlier this year.

The NDA regime chose to not appeal against the order to boost investor confidence. It also waived retrospective imposition of a minimum alternative tax affecting foreign funds, to resolve a dispute that shook investor confidence.

Courtesy by: The Hindustan Times
7th October, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

PM MODI HOPES FOR GST ROLL OUT IN 2016

BENGALURU: Prime Minister Narendra Modi said on Tuesday that he was hopeful of rolling out the GST (goods and services tax) Bill in 2016, which seeks to integrate several Central and state taxes that will eventually help create a common national market.

There has been much scepticism about GST taking off next year, especially after Parliament failed to pass the necessary legislation in its last session. But, speaking at the Indo-German Summit hosted by IT industry body Nasscom in presence of German Chancellor Angela Merkel here, Modi said, "We have introduced the GST Bill in Parliament; we are hopeful of rolling it out in 2016."

Courtesy by: The Times of India

6th October, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

THREE TAXATION DEPT OFFICIALS SUSPENDED

A scam pertaining to the 'bogus' refund of value added tax (VAT) by the Excise and Taxation Department to a construction company and a few other firms has come to light in Moga district.

After preliminary inquiries, the state government has suspended Assistant Excise and Taxation Commissioner (AETC) Tejvir Singh (currently posted at Ludhiana), Excise and Taxation Officer (ETO) of Moga Jagtar Singh and Excise and Taxation Inspector Rajni Devgan from service and initiated departmental inquiries against them.

It has been learnt that DM Construction Company, Baghapurana, "connived" with the suspended officials to get VAT refunds of about Rs 90 lakh pertaining to the last two financial years. The exact amount of refund made to this company in the past couple of years is still under assessment. A fresh assessment of the taxes was also underway.

Although, the then AETC of Moga, Tejvir Singh, did not have the financial powers to refund such a huge amount, which was received from the company as advance tax, after final calculations, but he reportedly divided this amount into few installments of Rs 19 lakh each to refund the money.

The excise department has now ordered a random checking of all VAT refunds given in the past five years in the Moga district to various companies.

The present AETC posted at Moga, Tarsem Sehgal, confirmed that a checking of VAT refunds made in the past few years was underway.

In reply to a question, he said DM Construction Company had returned Rs 2.35 crore to the department along with penalty. "We have recovered the financial losses suffered by the state exchequer from the company and further scrutiny of the accounts of this company is in progress," he said.

Another senior officer of the department claimed that a powerful lobby of the excise and taxation officers in connivance with industrialists, traders and builders/developers has caused a huge loss to the state exchequer.

Notably, more than Rs-25 crore evasion of tax by auto dealers and few other firms had also come to light in the district in the last couple of years.

Courtesy by: The Tribune

12th October, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

'UNCLEAR' POLICY ON VAT REFUND FORCES COTTON GINNERS TO SHUT SHOP

Cotton ginners have alleged the state government's unclear policy on refund of value added tax (VAT) was forcing most of their members to close their business this year.

Speaking to mediapersons at a press conference organised today, the cotton ginners thanked the state government for reducing market fees on cotton from 2 per cent to 0.8 per cent, but said no clarity on refund of VAT was making business difficult for them.

"Our members pay 4.20 per cent VAT while purchasing raw cotton against D-1 form, but when they sell it out of state; we receive merely 2.2 percent of it.

However, the Excise and Taxation Department refuses to refund 2 per cent extra VAT paid by them," said Sushil Mittal, president of the Haryana Cotton Ginners Association.

Mittal said earlier the department used to refund the extra VAT paid by them, but it has been stopped from this year.

He said the cotton industry was already under crisis with the availability of cotton for only 20 lakh bales against capacity of 40 lakh bales and if the government failed to refund their VAT they would have no option but to close their units.

When contacted, IS Godara, Deputy Excise and Taxation Commissioner (DETC), Sirsa, said after incidents of frauds in refund of VAT against fake bills of cigarettes and cement the state government has amended the Haryana VAT Act.

"The amendment in Schedule E of the Haryana VAT Act does not have any refund of VAT other then what the ginners get while selling their product against C-Form," Godara said.

Courtesy by: The Tribune

12th October, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

BJP WORKERS PROTEST, ACCUSE ETO OF DRINKING IN OFFICIAL CAR

Up in arms, demand action against him

BJP workers today held a protest outside the AETC office near Congress Bhawan alleging that Excise and Taxation Officer (ETO) was found drinking alcohol outside the excise mobile wing office. They were demanding action against the ETO for resorting to illegal practice in a public place.

They had filed a complaint with the Excise and Taxation Commissioner of Punjab, Anurag Aggarwal, and sought action against the Excise and Taxation Officer.

Incident occurred late night when the ETO stopped a mini truck loaded with filing papers and asked the trader, Navneet, to produce original bills. Failing to produce original bills of stock, the Excise and Taxation Officer refused to release the stock.

Trader later called BJP workers Kishan Lal and Ashok Sareen at the spot. BJP workers, finding the ETO drinking in a public place, and that too in his official blue beacon car, raised hue and cry and started demanded action against the ETO.

However, ETO Jaswinder Singh said he consumed alcohol only after relieving from office at 9 pm and that too not in his official car. He said filing paper stock had come from Ludhiana and so he had to confirm from Ludhiana if tax was paid or not.

Sareen said today when they went to submit memorandum to AETC Sukhwinder Singh, he refused to accept memorandum. “Only when we informed the ETC, Punjab, the AETC accepted the memorandum. We have requested the ETC to take action against the ETO and the AETC,” said Sareen.

Sareen said later the trader had also produced the original bills of the stock.

Courtesy by : The Tribune

8th October, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

BASMATI FREE FALL: 7% TAX RE-IMPOSED ON MILLERS

Concerned over the escalating agrarian crisis after successive failure of crops over the past one year, the government today re-imposed 7 per cent tax on the basmati rice shell owners after they failed to offer higher rates to growers of PB 1509 variety.

Basmati varieties, both PB 1509 and PUSA 1121, have been selling at much lower prices as compared to last year's. While PB 1509 was selling at Rs1,100 per quintal – much below the MSP of Rs1,450 per quintal for non-basmati varieties, PUSA 1121 that has started trickling in the mandis has been selling at Rs2,000 per quintal.

Though the prices of PB 1509 have shown a marginal increase after the Centre agreed to buy it at the MSP, the state is concerned over the price manipulation by rice traders and exporters. Though the rice shelling units in Punjab were exempt from the taxes last year, they will now have to pay 2 per cent each as market fee and rural development fund and 3 per cent Punjab Infrastructure Development Fund for the basmati paddy they procure for shelling.

Traders from outside the state who come here to buy basmati paddy too will have to pay the tax. With the re-imposition of these three taxes, the state is expected to earn Rs448 crore. This year, 32 lakh tonnes of basmati is expected to be produced in the state.

Official sources said a meeting with representatives of major rice mills was convened today. The meeting was presided over by Food Minister Adaish Pratap Kairon, after the Chief Minister reportedly fell sick.

The rationale given for re-imposing the taxes was that while exporters will get a refund if they export the entire basmati bought by them, imposition of tax will ensure that all rice mills in Punjab (the ones that shell for export and those shelling for domestic consumption) get a level playing field.

Sources said the Agriculture Department had not been too happy with the tax exemption last year as the Punjab Mandi Board had suffered huge losses. The re-imposition of taxes has not gone down well with the traders. Ashok Sethi, director, Punjab Rice Millers and Exporters Association, said the decision was a retrograde step. "Haryana imposes just 4 per cent tax on buying basmati paddy while Rajasthan and Madhya Pradesh have not imposed any tax. When we were asking the state government not to encourage PB 1509 last year as it had high brokerage and little aroma, they did not change the policy saying it was important to turn to basmati for crop diversification. Since it is not liked by the consumer, there is less demand. High production and less demand have led to fall in its price," he rued.

Courtesy by: The Tribune

1st October, 2015