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16th February 2016

" There is no worse tyranny than to force a man to pay for what he does not want merely because you think it would be good for him."

--- Robert Heinlein

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News From Court Rooms

Petition(s) for Special Leave to Appeal (C) CC No(s). 2369-2370/2016

(Arising out of impugned final judgment and order dated 17/01/2014 in CWP No. 21948/2012 and order dated 26/08/2015 in RA No. 280/2014 in CWP No. 21948/2012 passed by the High Court of Punjab & Haryana at Chandigarh)

ALL HARYANA PETROLEUM DEALERS ASSOCIATION **Petitioner(s)**

VERSUS

STATE OF HARYANA AND ORS **Respondent(s)**

(With appln. (s) for c/delay in filing SLP and office report)

Date: 12/02/2016 These petitions were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE R.K. AGRAWAL

For Petitioner(s): Mr. Prashant Bhushan, Adv.

Mr. Pawanshree Agrawal,Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

ORDER

Issue notice returnable in four weeks on the special leave petitions as well as on the application for condonation of delay in filing the SLPs.

Dasti, in addition, is permitted.

(Meenakshi Kohli) Court Master

(Jaswinder Kaur) Court Master

CESTAT ALLAHABAD: Service Tax : Provision of services in relation to filing drawback claims filing application for DEPB EPCG licences etc., does not fall under Business Auxiliary Services (BAS) as they are not regarded as promotion or marketing of goods or services. ***(Jak Traders P Ltd. – December 16, 2015)***.

GUJARAT HC : Service Tax : Attachment and seizure by the Service Tax Department for substantial service tax dues not paid is not valid as there is no final assessment of the assessee's tax and penalty liabilities. Attachments to be releases subject to specific conditions imposed**.** ***(RS Electricals - January 7, 2016).***

GUJARAT HC: Cenvat Credit : Requirement of registration is procedural. Cenvat Credit cannot be denied to input service distributor even if it is unregistered, provided assessee has maintained all records for verification by revenue. ***(Dashion Ltd. – January 8, 2016).***

CESTAT, NEW DELHI: Crate rentals recovered by 'Coca Cola' is liable to VAT and not service tax.

Service Tax : Crate rentals recovered by beverage-manufacturers is 'deemed sale' as there is transfer of right to use with effective control and possession of crates; hence, same is liable to VAT/CST and cannot be charged to service tax. ***(Hindustan Coca Cola Beverages P Ltd. – August 13,2015).***

MADRAS HC: Service Tax: Repair and maintenance of roads is exempt and not liable to service tax during period prior to 1-7-2012 and even on or after said date, ***(K O Periyakaruppan – December 16, 2015).***

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SUPREME COURT OF INDIA

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CIVIL APPEAL NO. 4285 OF 2007

STATE OF JHARKHAND & ORS
Vs
TATA STEEL LTD. & ORS.

DIPAK MISRA AMD N.V. RAMANA, JJ.

12th February, 2016

HF ▶ Revenue

Deferred amount of tax is required to be paid within thirteen years from start of eligibility even if assessee had converted to deferment from exemption on a later date.

DEFERMENT OF TAX – EXEMPTION / DEFERMENT -INDUSTRIAL UNITS – UNIT GRANTED EXEMPTION FOR A PERIOD OF 8 YEARS FROM 1/8/2000 – JVAT ACT WITHDREW EXEMPTIONS BUT ALLOWED DEFERMENT FOR REMAINING PERIOD W.E.F.1/4/2006 – ASSESSEE APPLIED FOR DEFERMENT PROTESTING WITHDRAWL OF EXEMPTION – APPLICATION REJECTED – HIGH COURT ALLOWED THE DEFERMENT UPHOLDING THE WITHDRAWL OF EXEMPTION – ON APPEAL BY REVENUE BEFORE SUPREME COURT HELD: ENTIRE AMOUNT FOR DEFERMENT STOOD PAID DURING PENDENCY OF CASE BEFORE SUPREME COURT – ONLY ISSUE OF INTEREST REMAINS ALIVE – ON INTERPRETATION OF NOTIFICATIONS THE PERIOD OF 13 YEARS HAS TO BE CALCULATED FROM THE INITIAL DATE OF GRANT OF EXEMPTION AND NOT FROM DATE OF COMMENCEMENT OF DEFERMENT UNDER JVAT ACT – SUCH AN INTERPRETATION WOULD LEAD TO ABSURDITY – ASSESSEE HELD LIABLE TO PAY THE ENTIRE DEFERRED AMOUNT UPTO 31.8.2013 IN EQUAL SIX MONTHLY INSTALMENTS – ON PECULIAR FACTS NO PENALTY IS TO BE IMPOSED – INTEREST IS TO BE LEVIED @12 % PER ANNUM INSTEAD OF 2.5.% PER MONTH – *S. 23A OF BIHAR FINANCE ACT, 1981; S. 95(3) OF JHARKHAND VAT ACT, 2005; S. 96(3) OF JVAT ACT, 2005; RULE 64 OF JHARKHAND VAT RULES, 2006*

State of Bihar formulated an industrial policy for tax exemption and/or deferment to industrial units which started production between 1995 and 31.08.2000 u/s 23A of Bihar Finance Act 1981. The respondent set up a cold rolling mill by investing nearly Rs 2000 crores and commenced commercial production from 1.8.2000.

Jharkhand state was carved out of state of Bihar on 15.11.2000 through Bihar Reorganisation Act,2000. The successor state issued an exemption certificate as contemplated in earlier notification on 21/12/2000 exempting the units including the unit of assessee- respondent from the purchase tax as well as sales tax on purchase and sales made in regard to the cold rolling mill. The said approval was withdrawn by Commissioner of Commercial taxes in a suo moto

revision. The matter reached upto Supreme court and the exemption was restored to the respondent .

On 1/4/2006 Jharkhand VAT Act, 2005 came into force. Prior to that notifications granting the exemption were withdrawn and an option was given to the exempted units to convert the facility of exemption into the facility of deferment of payment of tax for the unexpired period or percentage of value of fixed asset as determined. Rule of Jharkhand VAT rules, 2006 had provided for the procedural details.

The respondent submitted an application on 15/4/2006 for registration under deferment for payment of tax by protesting the withdrawl of exemption. The said application for deferment of tax was rejected vide order dated 5/5/2006.

The respondent challenged the constitutional validity of S 95(3)(ii) and Sec. 96(3) of JVAT Act alongwith the withdrawl of notification. The high court repelled the challenge to constitutional validity of provisions of the Act but quashed the notification rejecting claim for deferment of tax and allowed the writ petitions directing the state to allow the benefit of deferment of tax to the petitioners for the remaining period. SLP was filed against the aforesaid order by respondent assessee but the same has been disposed of without any relief.

However, on appeal by Revenue before Supreme Court

Held:

The exemption was granted to respondent from 1/8/2000 to 31/7/2008. The respondent had applied for conversion from exemption of tax to deferment of tax for the remaining period i.e. 1/4/2006 to 31/7/2008.During pendency of SLP the entire amount of deferment stood paid by the respondent . The grievance in the present appeal is confined to the period within which the said amount was liable to be paid.

As per clause 5 of notification dated 22.12.1995 granting the deferment of tax amount by industrial units it has been provided that repayment of total deferred amount shall have to be mode in ten equal six- monthly instalments in such a manner so as to be completed within 13 years from the date of start of deferment. The respondent –assessed, however, insisted that since deferment in its case has started from 2006, the period of 13 years has to be calculated from 2006 and not from the year 2000 when exemption has been granted.

The language employed in the notification has to be appreciated in the manner it has been used. The words "from the date of start of deferment" have to have nexus with the policy stated in the beginning. The assessed has already availed exemption for a period of six years and it is entitled to deferment of tax for the rest of period which commenced in 2006.

After the JVAT Act came in to force, the deferment was granted in lieu of exemption but the period remained intact, that is, 8 years. The repayment has to be done in equal six monthly instalments and that period is 5 years. The language employed in the notification is that the grant of certificate has to be such that after expiration of eligibility period the amount has to be paid back within a span of 5 years but the gap cannot exceed 13 years for the date of start of deferment. In case the claim of assessee is to be accepted that period of 13 years would commence in 2006, such an interpretation not only clauses serious violence to the language employed in the notification but if its allowed to be understood in such a manner it would lead to an absurd situation. Words" from the date of start of deferment" cannot be conferred a meaning in the manner suggested by the assessee. It is a well known principle of statutory interpretation that if an interpretation leads to absurdity, the same is to be avoided.

Thus, analysed, the irresistible conclusion is that the repayment schedule has to end on 31.8.2013 within a span of 5 years from the expiration of the eligibility period.

R.66 of the Rules provides for payment for breach of the Rules. Levy of penalty envisaged under the Rules should not be made applicable to the case at hands as the present case projects special features. Regard being had to the special features of the case and taking note of the fact that the assessed had already deposited the amount in pursuance of order of this court and regard being had to the nature of litigation, the court directed that the assessed shall pay 12% interest per annum instead of 2.5% interest per month as per sub Para 2 of Para 5 of the notification within 3 months. The appeal stands disposed of.

Cases referred:

- *Telangana Steel Industries v. State of A.P.* 1994 Supp.
- *Tata Iron & Steel Co. Ltd. v. State of Jharkhand and others,* SCC 259
- *Hansraj Gordhandas v. H.H. Dave, Assistant Collector of Central Excise & Customs, Surat and Two ors.,* (1969) 2 SCR 252
- *Maunsell v. Olins,* (1975) 1 All ER 16, 21, 18
- *Utkal Contractors and Joinery Pvt. Ltd. and others v. State of Orissa and others,* (1987) 3 SCC 279
- *M/s Doypack Systems Pvt. Ltd. v. Union of India & others,* (1988) 2 SCC 299
- *Chandavarkar S.R. Rao v. Ashalata,* (1986) 4 SCC 447, 476
- *Nokes v. Doncaster Amalgamated Collieries Limited,* 1940 AC 1014, 1022
- *Keshavji Ravji and Co. and others vs. Commissioner of Income Tax,* (1990) 2 SCC 231
- *Mahadeo Prasad Bais (Dead) vs. Income- Tax Officer 'A' Ward, Gorakhpur and another,* (1991) 4 SCC 560
- *Oxford University Press v. Commissioner of Income Tax,* (2001) 3 SCC 359
- *State of T.N. v. Kodaikanal Motor Union (P) Ltd.,* (1986) 3 SCC 91
- *K.P. Varghese v. ITO,* (1981) 4 SCC 173
- *Luke v. IRC,* (1964) 54 ITR 692 : 1963 AC 557 (HL)

Present: For Appellant(s): Mr. Ajit Kumar Sinha, Sr. Adv.
Mr. Krishnanand Pandeya, Adv.
Mr. Jayesh Gaurav, Adv.
Mr. Shashank Singh, Adv.

For Respondent(s): Mrs Manik Karanjawala, Adv.
Mr. Vishwajit Singh, Adv.
Mr. Sanjay Jain, Adv.
Ms. Nidhi, Adv.
Mr. Devashish Bharuka, Adv.

******

DIPAK MISRA, J.

1. M/s. Tata Steel Limited, the 1st respondent herein, had established a manufacturing unit for production of HRP, rounds, structural and other iron and steel products in Dhanbad situated in erstwhile Bihar. The State of Bihar had on 22.12.1995 formulated an industrial policy for tax exemption and/or deferment to such industrial units which started production between 01.09.1995 and 31.08.2000. The said policy was issued in exercise of power conferred by Section 23A of the Bihar Finance Act, 1981 (for short, "the 1981 Act") and the purpose of framing the policy was industrial growth of the State. The policy stipulated that such industrial units should have the registration certificate indicating that the unit was eligible to have the benefits of the policy. The policy was issued with a view to create an atmosphere conducive for growth of industries and optimum utilisation of the natural resources available in the designated/stipulated area. As is evident, by the said policy, the Government intended to attract investors from various parts of the country to invest in the identified areas. The major incentive under the policy, apart from others, included eight years sales tax exemption on sale and purchase of material from the date of commencement of production as stipulated in the policy. Keeping in view the purpose incorporated in the policy, exemption notification under the 1981

Act was issued. The appellant expressed its willingness to install a cold rolling mill in Jamshedpur by investing Rs. 2000 crores. After a final decision was taken upon due deliberation, the 1st respondent sought a confirmation from the State of Bihar to assure the commitment to grant sales tax exemption as stated in the policy as an incentive. Number of meetings took place between the authorities of the State of Bihar and the 1st respondent and in pursuance of the discussion, certain amendments in the policy took place, as a consequence of which a communication was made to the 1st respondent for setting up a cold rolling mill with production capacity of 1.02 million tonnes requiring investment of Rs. 1874.04 crores on the project. Regard being had to the discussion and the communication, the 1st respondent invested nearly Rs. 2000 crores on its own and the commercial production commenced from 01.08.2000.

2. When the matter stood thus, the Bihar Reorganisation Act, 2000 came into existence on 15.11.2000 as a result of which Jamshedpur became part of a newly carved out State, namely, Jharkhand. After coming into force of the new State, on 15.12.2000, the Governor of Jharkhand by notification ordered that the 1981 Act, the Central Sales Tax (Bihar) Rules, 1956 and the notifications made thereunder, etc. amongst other Acts, Rules and Regulations, shall be deemed to be in force in the entire State of Jharkhand w.e.f. 15.11.2000. On 21.12.2000, the successor State issued an exemption certificate as contemplated in earlier notification issued by the Bihar State Finance and Commercial Taxes Department exempting the new units which also included the unit established by the 1st respondent, from the purchase tax as well as the sales tax on purchase and sales made in regard to the cold rolling mill. Be it stated that the said certificate was issued after holding proper enquiry by the concerned Joint Commissioner. After due enquiry, he had opined that though the raw materials for the manufacture of CR product is HR product, the CR product is totally different, both in its metallurgical components and the end-use, and the two products were commercially recognised as different products. Hence, the cold-rolled products manufactured by the new unit being different from the hot-rolled product manufactured by the old unit, the appellants were entitled to exemption of sales tax as provided under the industrial policy. On that score, he had approved issuance of the certificate. However, the Commissioner of Commercial Taxes, Jharkhand initiated a suo motu revision under Section 46(4) of the 1981 Act and placing reliance on ***Telangana Steel Industries v. State of A.P.*** 1994 Supp. held that the two products must be treated as the same commodity and the products not being different commodities, the benefit of exemption was not available.

3. Being aggrieved by the order passed by the Commissioner, the 1st respondent filed a writ petition before the High Court of Jharkhand which ultimately remanded the matter to the competent authority to examine whether HR product and CR product manufactured by the two units of the company are one and the same or two different products.

4. The aforesaid order came to be assailed before this Court in ***Tata Iron & Steel Co. Ltd. v. State of Jharkhand and others,*** SCC 259. The Court, taking note of various aspects and the submissions raised at the bar, held as follows:-

> *"20. We are unable to accept this argument either. First of all, as noticed above, it is not the case of the State that the product manufactured by the appellant in its new unit is not CRM. It is not the case of the State that the existing unit either by its machinery or by its process is capable of making HRM and not CRM or is capable of manufacturing both. Of course, if such an issue were to be raised the burden would have been on the appellant to establish the same. When such an issue is not raised it is not necessary for the appellant to establish that fact by any such intrinsic evidence. The material produced before the Joint Commissioner was in our opinion sufficient to decide whether the product manufactured by the appellant is CRM or not and the said Joint*

Commissioner having given a positive finding and that finding having not been interfered with by the Commissioner, we think the High Court erred in remanding the matter for fresh inquiry.

21. It is true that normally as against an order of remand this Court hesitates to interfere since there is always another opportunity for an aggrieved party to establish its case. But in this case we should notice that the decision to establish an industrial unit was initiated by the appellant as far back as in the year 1997. Based on a promise made in the industrial policy of the State of Bihar, at every stage the appellants tried to verify and confirm whether they are entitled to the benefit of exemption or not and they were assured of that exemption. It is based on these assurances that the appellant invested a huge sum of money which according to the appellant is to the tune of Rs 2000 crores but the State says it may be to the tune of Rs 1400 crores. Whatever may be the figure, the fact still remains that the appellants have invested huge sums of money in installing its new industrial unit. At every stage of the construction, progress and installation of the machineries, the Government/authorities concerned were informed and at no point of time it was suspected that the new unit was going to manufacture HRM. The process of manufacturing HRM and CRM as could be seen from the experts' opinion is totally different and the material on record also shows that the plant design for a new unit is for the purpose of manufacturing CRM. These factors coupled with the fact that at no stage of the proceedings which culminated in the judgment of the High Court, the respondent State had questioned this fact except for the technical ground taken by the Commissioner which is found to be erroneous, we find the ends of justice would not be served by remanding the matter for further inquiry."

5. After so stating, this Court allowed the appeal and set aside the order of the High Court and restored the proposal made by the Joint Commissioner for grant of exemption certificate to the company and also the exemption certificate granted subsequently.

6. In pursuance of the aforesaid judgment, the 1st respondent company availed the benefit of exemption. As the facts would unveil, on 01.04.2006, Jharkhand Value Added Tax Act, 2005 (for brevity, "JVAT Act") came into force. Prior to that, through a notification SO no. 202 dated 30.03.2006 issued under Section 7(3) of the 1981 Act, the State of Jharkhand had withdrawn notification nos. 478 and 479 dated 22.01.1995 and SO nos. 57 and 58 dated 02.03.2000 with immediate effect, as a result of which the facility of exemption from payment of sales tax on the purchase of raw materials and also facility of exemption of sales tax on its finished products was withdrawn. On 30.03.2006, a notification bearing SO no. 202 under Section 8(5)(a) of the Central Sales Tax Act, 1956 was issued withdrawing notification no. 481 dated 22.12.1995.

7. At this juncture, it is relevant to refer to Section 95(3) (ii) of the JVAT Act which reads as under:-

"95. Transitional Provisions –

(3)(ii) Where a registered dealer was enjoying the facility of exemption for payment of tax extended to him under the provisions of adopted Bihar Finance Act, 1981 for his having established new industrial unit in the State or undertaken expansion, modernization or diversification in such industrial units immediately before the appointed day, may be allowed to convert the facility of exemption from payment of tax under the Act into getting the facility of deferment of payment of tax for the un-expired period or percentage of value of

> *fixed asset as determined, as might have been allowed to such dealer under that Act, by a notification published in Official Gazette by the State Government."*

8. Rule 64 of the Jharkhand Value Added Tax Rules, 2006 (for short "the Rules") deals with deferment. The said rule reads as under:-

> ***"64. Deferment.-****(1) (a) All such Industrial units, which were availing the benefit of deferment of tax under the provisions of the Repealed Act and notifications issued there-under, immediately before the Appointed Day, and who are continued to be so eligible on such Appointed Day under the Act, may be allowed to continue the benefit of such deferment of payment of tax, for the balance un-expired period or un-availed percentage of gross value of fixed assets, provided such Industrial units file an application in Form JVAT 121 for grant of fresh eligibility Certificate, for the balance un-expired period or un-availed percentage of gross value of fixed assets, before the In-charge of the Circle, in which such unit is registered.*
>
> *(b) All the procedure and provisions issued for availing deferment in the Repealed Act shall continue to be in operation and shall be deemed to have been adopted for the purpose of the Act.*
>
> *(c) The In-charge of Circle, on receipt of such application mentioned in sub-rule (a) shall issue a revised eligibility certificate, indicating therein the balance un-expired period or un-availed percentage of gross value of fixed assets.*
>
> *Provided such Industrial Unit shall file an application mentioned in sub-rule (a) within a period of fifteen days from the date, on which the Act comes into operation.*
>
> *Provided further the In-charge of the circle, shall issue a revised eligibility certificate, for the remaining un-expired period within fifteen days, from receipt of such application.*
>
> *(2) All such industrial units, which were availing the benefit of exemption from payment of tax on the sales of their finished products, granted under clause (b) of sub-section (3) of Section 7 of the Repealed Act, and who have not availed of their full entitlement as on Appointed Day, may be allowed to opt for deferment of payment of tax for the balance unexpired period or unveiled percentage of value of fixed assets as determined, whichever is earlier, in accordance with sub-section (3)(ii) of Section 95 of the Act.*
>
> *Provided no dealer eligible for deferment under sub-rule (2), shall be allowed to defer his tax liability under the Act, unless he applies to the concerned Registering Authority of the Circle in Form JVAT 121, and upon receipt of such application, the concerned Registering Authority of the circle shall issue a certificate of eligibility in Form JVAT 408.*
>
> *Provided further such deferment as mentioned in sub-rule (2) shall be allowed in accordance with the notification issued for this purpose by the State Government in accordance with the provisions of sub-section (3)(ii) of Section 95 of the Act.*
>
> *Provided also that, if such notification is issued by the State Government, the Industrial Unit opting to changeover to deferment the tax for the remaining unexpired period or unveiled percentage of value of fixed assets, shall apply within fifteen days of publication of such notification before the In-*

> *charge of the circle in which such unit is registered, and thereafter the In-charge of the Circle shall issue revised eligibility certificate for the balance unexpired period or unveiled percentage of value of fixed assets, after making such enquiry as he may deem fit & proper."*

9. In pursuance of the statutory provision and the rules framed thereunder, the 1st respondent on April 15, 2006 submitted an application for registration under deferment of payment of tax. In the said application it has been stated thus:-

> *"With the enactment of "The Jharkhand Value Added Tax Act, 2005", effective from 01.04.2006, exemptions have been converted to the deferment of payment of tax. We expressed our strong protest for withdrawing the said exemption of Tata Steel and replaced by deferment of payment of Tax provision. We also pray you to review the provision of the said deferment of payment of tax and allow us to continue availing the existing Sales Tax exemption on purchase of raw materials and other goods for production of CR products as well as on selling the CR Products as per the Bihar Industrial Policy, 1995 and the Notification made thereunder till 31st July, 2008.*
>
> *In pursuance to the VAT Act and Rules, we have to file the application by 15th April, 2006 for converting the exemption to deferment and we are applying for the same under protest, as per the enclosed prescribed format JVAT 121."*

The said application seeking deferment of tax was rejected vide order dated 05.05.2006.

10. Though the 1st respondent filed the said application, it moved the High Court in W.P.(T) No. 2664 of 2006 challenging the constitutional validity of Section 95(3)(ii) and Section 96(3) of the JVAT Act. It also challenged the withdrawal of the notification and asserted that the company was entitled to get the benefit of exemption that had already been granted and that there was no justification for withdrawal of the same. The Division Bench of the High Court took up the said petition along with others and came to hold thus:-

> *"55. After holding that the principle of promissory estoppels is enforceable in the present case, the question arises what relief the petitioners were entitled to. As observed by us, even if the impugned notifications had not been issued, the exemption notifications were otherwise to die in view of Section 96(3) of the VAT Act and the petitioners were not entitled to the benefit of exemption thereafter. We have declined to strike down the provisions of VAT Act, including Section 96(3) of the VAT Act. Therefore, we are unable to uphold the exemption benefits to the petitioners on account of the provisions of Section 96(3) of the VAT Act. However, the State cannot justify the issuance of the impugned notifications in view of our findings on various aspects, upholding the enforceability of doctrine of promissory/equitable estoppel when it is intended to even deny legitimate tax deferment benefit under Sec. 95(3) of the VAT Act. We, therefore, quash the impugned notifications S.Os. 201 and 202 both dated 30th March, 2006 as also order dated 5th May, 2006 rejecting claim for deferment of tax under Section 95(3) of VAT Act and as a natural corollary the petitioners will be and are entitled to the benefit of deferment of tax in terms of Section 95(3) of the VAT Act. We, thus, allow these writ petitions and direct the respondent-State to allow the benefit of deferment of tax to the petitioners for the remaining period under 1995 Industrial Policy read with the notifications S.Os. 478,479 and 481 all dated 22nd December, 1995 and S.Os. 57 and 58 both dated 2nd March, 2000, in accordance with the provisions of Section 95(3) of the VAT Act."*

The aforesaid order is the subject matter of assail in this civil appeal by special leave.

11. We have heard Mr. Ajit Kumar Sinha, learned senior counsel for the appellants and Mr. Dushyant A. Dave, learned senior counsel for the 1st respondent.

12. At the very outset, it is necessary to state that the 1st respondent had enjoyed the benefit of exemption from payment of sales tax on cold rolling mills products w.e.f. 01.08.2000 to 31.03.2006. Initially, the exemption was granted from 01.08.2000 to 31.07.2008. It is not in dispute that the 1st respondent had applied for conversion from exemption of tax to deferment of tax for the remaining period i.e. 01.04.2006 to 31.07.2008. The High Court, as is manifest, while quashing the notification nos. 201 and 202 had directed the State to grant deferment of tax to the 1st respondent under Section 95(3) (ii) of the JVAT Act. It is pertinent to mention here as exemption was claimed and not granted, the 1st respondent had preferred an appeal by special leave but the same has already been disposed of. It has been fairly stated at the Bar that the issue that is seminal to the present lis is benefit of deferment and the period of repayment.

13. When the special leave petition was listed on 04.05.2007, the following interim order was passed:-

> *"Till the hearing and final disposal of the matter the assessee will open a separate account and the tax which is being deferred from today will be shown in that account which will be subject to the result of the petition."*

14. It is the admitted position that the assessee had collected the tax from the consumers for the period 01.04.2006 to 31.07.2008 and stopped collecting tax after 31.07.2008. It is pertinent to note here that on 12.07.2013, in IA No. 1 of 2013, the following order came to be passed:-

> *"After hearing learned counsel for the parties to the lis, we are of the opinion that the respondent no.1 herein should be directed to pay a sum of Rs.25 crores each in six monthly instalments till the entire amount of Rs.186.70 crores is paid to the appellant-applicant, excluding the amount of Rs.20 crores already paid to the appellant-applicant. The first instalment of Rs.25 crores shall be paid by 31.8.2013."*

15. We have been appraised at the Bar that the said amount has been paid. We may repeat at the cost of repetition that the issue of exemption is not alive and it has been fairly accepted by Mr. Dave, learned senior counsel for the 1st respondent. The singular issue that arises for consideration is the interpretation of the deferment policy in the context of provisions enumerated under the JVAT Act. Section 95(3) (ii) envisages that a registered dealer who was enjoying the benefit of exemption of tax is allowed to convert the facility of exemption from payment of tax under the JVAT Act into the facility of deferment of payment of tax for the unexpired period. The assessee-company has availed the deferment and paid the amount of tax. The gravamen of the grievance pertains to the period within which the amount was liable to be paid. Submission of Mr. Sinha, learned senior counsel appearing for the State is that the deferment of tax has to be computed in such a manner so that the period of thirteen years as provided in the notification is calculated from the year 2000 ending with the year 2013. In essence, his argument is, as the assessee had failed to make the repayment of deferred tax within the prescribed period, the assessee is obligated to pay the interest for the delayed period.

16. The aforesaid being the fulcrum of cavil, we are obliged to refer to the relevant paragraphs of SO No. 480 dated 22.12.1995. They read as follows:-

> *"S.O. No. 480, dated 22-12-1995:- In exercise of powers conferred by Section 23A of the Bihar Finance Act, 1981(Bihar Act No. 5 of 1981) Part I, the*

Governor of Bihar on being satisfied that it is necessary to do so in the interest of industrial growth, is pleased to permit those new units which started production between 01-09-1995 to 31-08-2000 and which have the registration certificate issued from the prescribed authority and been given eligibility certificate for this purpose, are allowed to defer the payable sales tax on the sale of manufactured finished goods for a prescribed period under the following terms and conditions:

X X X X X

5. Repayment of deferred tax amount by industrial units:-

Repayment of deferred tax amount by industrial units:-

(1) The repayment of deferred tax amount shall have to be done after the completion of eligibility period of deferment or the prescribed percentage limit of fixed capital investment, whichever reaches earlier. Repayment of total deferred amount shall have to be done in ten equal six-monthly instalments in such a manner so as to be completed within 13 years from the date of start of deferment.

(2) In case of non-payment of the deferred amount after the expiry of the prescribed period as stated in part (1), a simple interest at the rate of 2.5 percent per month on repayable amount shall be payable till the month in which payment is made. For the purpose of this part, a part of month will be treated as full month.

(3) If any unit defaults in repayment of the deferred amount within the prescribed period, then for the recovery of due amount alongwith interest as stated in part(2) above, all the suitable provisions of the Bihar Finance Act, 1981 Part I related to recovery of tax, realization of dues and imposition of penalty alongwith prosecution under Section 49 shall be applicable without adversely affecting other actions taken under the Act."

[Emphasis added]

17. Relying on the language employed in the notification, it is submitted by Mr. Sinha, learned senior counsel for the appellant that deferment of tax as contemplated in the said notification has to commence from 31.08.2000 for the purpose of computation of 13 years. The words used in para 5(1) "from the date of start of deferment" are not to be interpreted to convey to be determinative on the foundation of individual case of deferment but they have to be understood that the grant of benefit of deferment is associated with the repayment of deferred tax and in that context it has to be so done that the period of repayment is completed within 13 years, that is, 31.08.2013. 18. Refuting the said submission, it is canvassed by Mr. Dave, learned senior counsel appearing for the assessee that the date of start of deferment has to be the date when deferment commences and the span of 13 years has to be computed from that date. On that basis, it is urged by him that the period of repayment will come to end only after expiry of 13 years from 2006, the year in which the deferment of the tax commenced as per the order of the High Court. Learned senior counsel has emphasised that when the language employed in the notification is absolutely plain and clear, the meaning has to be attributed to the clear words for the words employed therein. For the said purpose, he has placed reliance on the authority in ***Hansraj Gordhandas v. H.H. Dave, Assistant Collector of Central Excise & Customs, Surat and Two ors.,*** (1969) 2 SCR 252.

19. We have already reproduced the relevant paragraphs of the notification. Regard being had to the language employed therein, we have to appreciate what has been laid down in ***Hansraj Gordhandas*** (supra). The passage from which Mr. Dave, learned senior counsel has drawn inspiration reads as follows:-

> *"It was contended on behalf of the respondent that the object of granting exemption was to encourage the formation of cooperative societies which not only produced cotton fabrics but which also consisted of members, not only owning but having actually operated not more than four power-looms during the three years immediately preceding their having joined the society. The policy was that instead of each such member operating his looms on his own, he should combine with others by forming a society which, through the cooperative effort should produce cloth. The intention was that the goods produced for which exemption could be claimed must be goods produced on its own behalf by the society. We are unable to accept the contention put forward on behalf of the respondents as correct. On a true construction of the language of the notifications, dated July 31, 1959 and April 30, 1960 it is clear that all that is required for claiming exemption is that the cotton fabrics must be produced on power-looms owned by the cooperative society. There is no further requirement under the two notifications that the cotton fabrics must be produced by the Co-operative Society on the power-looms "for itself". It is well established that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the tax-payer is within the plain terms of the exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different, but that is not the case here."*
>
> *[Underlining is ours]*

20. Thus, the aforesaid decision makes it quite clear that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. It has also been held by the Constitution Bench, if the tax-payer is within the plain terms of the exemption, it cannot be denied its benefits by calling in aid any supposed intention of the exempting authority. That apart, it has also been stated therein that if different intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different. The larger Bench has not applied the said principle to the case involved therein.

21. In this context, we may recapitulate the words of Lord Reid in ***Maunsell v. Olins,*** (1975) 1 All ER 16, 21, 18 wherein it has been observed as follows:-

> *"Then rules of construction are relied on. They are not rules in the ordinary sense of having some binding force. They are our servants not our masters. They are aids to construction, presumptions or pointers. Not infrequently one 'rule' points in one direction, another in a different direction. In each case we must look at all relevant circumstances and decide as a matter of judgment what weight to attach to any particular 'rule'."*

22. The said passage has been referred with approval by the Court in ***Utkal Contractors and Joinery Pvt. Ltd. and others v. State of Orissa and others,*** (1987) 3 SCC 279

23. In ***M/s Doypack Systems Pvt. Ltd. v. Union of India & others,*** (1988) 2 SCC 299 a two- Judge Bench while emphasising on the concept of interpretation opined thus:-

"58. The words in the statute must, prima facie, be given their ordinary meanings. Where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there are some strong and obvious reasons to the contrary. Nothing has been shown to warrant that literal construction should not be given effect to. See Chandavarkar S.R. Rao v. Ashalata, (1986) 4 SCC 447, 476 *approving 44 Halsbury's Laws of England, 4th Edn., para 856 at page 552, Nokes v. Doncaster Amalgamated Collieries Limited,* 1940 AC 1014, 1022. *It must be emphasised that interpretation must be in consonance with the Directive Principles of State Policy in Article 39 (b) and (c) of the Constitution.*

59. It has to be reiterated that the object of interpretation of a statute is to discover the intention of the Parliament as expressed in the Act. The dominant purpose in construing a statute is to ascertain the intention of the legislature as expressed in the statute, considering it as a whole and in its context. That intention, and therefore the meaning of the statute, is primarily to be sought in the words used in the statute itself, which must, if they are plain and unambiguous, be applied as they stand. ..."

The aforestated principle has been reiterated in ***Keshavji Ravji and Co. and others vs. Commissioner of Income Tax,*** (1990) 2 SCC 231.

24. In this regard, reference to ***Mahadeo Prasad Bais (Dead) vs. Income- Tax Officer 'A' Ward, Gorakhpur and another,*** (1991) 4 SCC 560 would be absolutely seemly. In the said case, it has been held that an interpretation which will result in an anomaly or absurdity should be avoided and where literal construction creates an anomaly, absurdity and discrimination, statute should be liberally construed even slightly straining the language so as to avoid the meaningless anomaly. Emphasis has been laid on the principle that if an interpretation leads to absurdity, it is the duty of the court to avoid the same.

25. In ***Oxford University Press v. Commissioner of Income Tax,*** (2001) 3 SCC 359 Mohapatra, J. has opined that interpretation should serve the intent and purpose of the statutory provision. In that context, the learned Judge has referred to the authority in ***State of T.N. v. Kodaikanal Motor Union (P) Ltd.,*** (1986) 3 SCC 91 wherein this Court after referring to ***K.P. Varghese v. ITO,*** (1981) 4 SCC 173 and ***Luke v. IRC,*** (1964) 54 ITR 692 : 1963 AC 557 (HL) has observed:-

"The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye 'some' violence to language is permissible."

26. Sabharwal, J. (as His Lordship then was) has observed thus:-

"... It is well-recognised rule of construction that a statutory provision must be so construed, if possible, that absurdity and mischief may be avoided. It was held that construction suggested on behalf of the Revenue would lead to a

> *wholly unreasonable result which could never have been intended by the legislature. It was said that the literalness in the interpretation of Section 52(2) must be eschewed and the court should try to arrive at an interpretation which avoids the absurdity and the mischief and makes the provision rational, sensible, unless of course, the hands of the court are tied and it cannot find any escape from the tyranny of literal interpretation. It is said that it is now well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the legislature, the court may modify the language used by the legislature or even "do some violence" to it, so as to achieve the obvious intention of the legislature and produce a rational construction. In such a case the court may read into the statutory provision a condition which, though not expressed, is implicit in construing the basic assumption underlying the statutory provision. ..."*

27. Keeping in view the aforesaid principle, the language employed in the notification has to be appreciated. Benefit of deferment of tax is granted under certain terms and conditions. One of the terms and conditions pertains to repayment of deferment of tax amount by the industrial unit. The first part of sub-para (1) of para 5 stipulates that the repayment of deferred tax amount shall have to be done after the completion of eligibility period of deferment or the prescribed percentage limit of fixed capital investment, whichever reaches earlier. In the case at hand, the period of exemption has been converted to period of deferment of tax. It is for 8 years. There is no dispute that the assessee had availed the exemption for a period of 6 years and he is entitled to deferment of tax for the rest of the period which commenced in 2006. It is the next part of the said sub-para which requires to be understood. The notification lays a clear postulate that repayment of total deferred amount shall have to be done in ten equal six monthly instalments in such a manner so as to be completed within 13 years from the date of start of deferment. The words "from the date of start of deferment" have to have nexus with the policy stated in the beginning. The policy would apply if the unit has commenced between 01.09.1995 and 31.08.2000; that it has a registration certification from the prescribed authority and that, most importantly, it has been given an eligibility certificate for the said purpose. The policy would come into play only if these conditions are satisfied and then the assessee will be allowed to have the benefit of deferment of sales tax on the sale of manufactured finished goods for a prescribed period. Therefore, the authority has been given the power to lay down the prescribed period for grant of deferment. In the beginning, the 1st respondent was granted exemption. The concept of exemption is distinct from the concept of deferment of tax. After the JVAT Act came into force, under the statutory provisions, there was no exemption and beneficiaries were entitled to convert to the scheme of deferment. The period remains intact, that is, 8 years. The repayment has to be done in equal six monthly instalments and that period is 5 years. The repayment commences after completion of eligibility period of deferment or the prescribed percentage limit of fixed capital investment, whichever is earlier. The prescribed authority can grant an eligibility certificate but he has to keep in view the terms and conditions stipulated in the notification. The said authority cannot travel beyond the stipulations of the notification. The language employed in the notification conveys that the grant of certificate has to be such that after expiration of the eligibility period, the amount has to be paid back within a span of 5 years but the gap cannot exceed 13 years from the date of start of deferment. The postulate enshrined therein has to be appositely appreciated. It does not flow from the notification that if a benefit is granted for 8 years or for a lesser period, the assessee cannot claim that the repayment has to be completed within 13 years from the date of grant. In the case at hand, the claim of the assessee that the repayment schedule has to continue for a period of 13 years from 2006, for the deferment commenced only in 2006. Such an interpretation not only causes serious violence to the language employed

in the notification but if it is allowed to be understood in such a manner, it shall lead to an absurd situation. That apart, the intention can be gathered from the notification that it has to relate back to the date of eligibility with a maximum limit of 13 years. It cannot be construed to mean 13 years from the date of completion of the eligibility period. The repayment schedule is 5 years from the expiry of eligibility period of deferment. The period of 5 years has to be so arranged that it does not go beyond 13 years from the date of deferment. Language employed in para 5(1) has to be understood in this manner to give it an appropriate meaning. Otherwise, the interpretation propounded on behalf of the assessee will lead to an anomalous situation because as regards fixation of schedule of repayment within 5 years from the date of completion of the eligibility period, will become totally otiose and, in a way, irrelevant. Words "from the date of start of deferment" cannot be conferred a meaning in the manner suggested by the learned senior counsel for the assessee. It is a well-known principle of statutory interpretation that if an interpretation leads to absurdity, the same is to be avoided. And we have no hesitation here to say that if the notification is read as a whole, the intention, purpose and working of it is absolutely clear. The ingenious interpretation placed on the words are really beyond the context and, therefore, we are not disposed to accept the same. Thus analysed, the irresistible conclusion is that the repayment schedule has to end on 31.08.2013 within a span of 5 years from the expiration of the eligibility period.

28. Having said that, we may proceed to deal with the imposition of interest and penalty under the JVAT Act. Rule 66 of the Rules provides for payment for breach of the Rules. We may immediately make it clear that the question of levy of penalty as envisaged under Rule 66 of the Rules should not be made applicable to the case at hand. We say so as the present case projects special features. It is submitted by Mr. Sinha, learned senior counsel for the State that the revenue is entitled to 2.5% interest per month as per sub-para 2 of paragraph 5 of the notification. It is argued on behalf of the assessee that it is not a case for levy of interest. Regard being had to the special features of the case and taking note of the fact that the assessee-1st respondent had already deposited the amount in pursuance of the order of this Court and regard being had to the nature of litigation, we direct that the 1st respondent-assessee shall pay 12% interest per annum and the said amount shall be deposited with the competent authority of the revenue within three months hence.

29. Resultantly, the appeal stands disposed of in above terms. There shall be no order as to costs.

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PUNJAB & HARYANA HIGH COURT

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CWP 24765 OF 2015

LAXMI SADAN
Vs
STATE OF HARYANA AND OTHERS

AJAY KUMAR MITTAL AND RAMENDRA JAIN, JJ.

7th December, 2015

HF ▶ Revenue

Constitutional validity of levy of luxury tax on banquet halls is upheld.

LUXURY TAX – BANQUET HALL – CONSTITUTIONAL VALIDITY – INCLUSION OF SERVICE BY BANQUET HALL IN THE DEFINITION OF LUXURY – AMENITIES PROVIDED BY THIRD PERSON IN PREMISES ALSO INCLUDIBLE IN THE CONSIDERATION FOR CALCULATION OF THRESH HOLD TAXABLE LIMIT - STATE COMPETENT TO LEVY LUXURY TAX AND TO PROVIDE FOR MEASURE OF TAX - NEITHER INCOMPETENT NOR VIOLATES ANY PROVISION OF CONSTITUTION – CONSTITUTIONAL VALIDITY UPHELD – PETITION DISMISSED- *SECTION 2 (k) , 2(c) AND 2(j) OF HARYANA TAX ON LUXURIES ACT, 2007; ARTICLE 265 AND ENTRY 63 OF LIST II OF SCHEDULE VII OF CONSTITUTION OF INDIA*

Petitioner who is running a banquet hall is providing only accommodation or space for marriages / receptions. The State of Haryana levied Luxury Tax in terms of S. 2(c) in the manner stated in S. 2(k) of the Haryana Tax on Luxuries Act, 2007on providing of such service if total consideration exceeds Rs 20,000. The challenge was made to the inclusion of such service under the head 'luxury' on the ground that the arrangement of the function in a banquet hall is a necessity and not a luxury. It was further challenged that there is no reason for inclusion of amenities provided by other persons while calculating the taxable limit of 20,000 in terms of explanation to S. 2 (k).According to petitioner the providing of open space for marriages without providing any facilities for a consideration below Rs 20,000 per function would not constitute 'luxury' under the Act. Rejecting the challenge the High court held:

State legislature derives its power under entry 62 of List II of Schedule VII of Constitution of India. The power conferred upon legislature to levy tax must be widely construed. The rule of interpretation requires that an entry in either of the lists in VII Schedule should not be read in a narrow or pedantic sense but it should be allocated fullest meaning and widest amplitude so as to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to

be comprehended in them. The word 'luxury' though not defined in the Constitution of India is defined in S.2(j) of the Act to mean services ministering to enjoyment , comfort or pleasure extraordinary to necessities of life. Explanation to S. 2(k) being clarificatory in nature has simplified the calculation as to be what amount would be included for quantifying Rs 20,000/- It cannot be held to be unreasonable or arbitrary in any manner as it encompasses those cases where the facilities or amenities are provided by the proprietor of the banquet hall or any other person in his behalf when such amenities are provided within the precincts of such banquet hall. It can by no stretch of imagination on taking hypothetical illustration be declared to be ultra vires without showing lack of legislative competence of the state to enact such a provision or there being violation of any constitutional mandate.

The statute enacted by parliament or legislature can only be struck down by courts on two counts which are viz a) lack of legislative competence; (b) violation of any of the fundamental rights granted in the Part III of Constitution of India or any other constitutional provision. A provision, statute or law cannot be declared to be unconstitutional and void solely on the ground of unjust and harsh provisions or it violates some natural , social, political or economic rights of citizen unless it is established that such injustice infact is prohibited or violates the rights guaranted or protected by the Constitution of India. In conclusion the provisions of S. 2(k) of the Act and also the other provisions of the Act to which an attempt has been made to assail as ultra vires, cannot be held to be beyond the legislative competence of Haryana state legislature or that they had exceeded its law making power or contravened any of the provisions of Consitution of India on the basis of which it could e declared to be unconstitutional. The validity of the same is upheld petition same is dismissed.

Present: Mr. Joginder Pal Sharma, Advocate for the petitioner.

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AJAY KUMAR MITTAL, J.

1. Challenge in this petition is to the levy of tax on open space termed as "banquet halls" providing only accommodation or space for marriages/receptions in terms of Section 2(c) in the manner stated under Section 2(k) of the Haryana Tax on Luxuries Act, 2007 (in short, "the Act") as these are not covered under the head 'Luxury' vide entry No.62 of List II of Schedule VII of the Constitution of India. Prayer has also been made for setting aside Explanation to Section 2(k) of the Act which prescribes inclusion of charges for amenities, even if arranged by persons other than the proprietor of the banquet hall. The petitioner has also assailed levy and collection of tax on charges for banquet hall under Section 9 read with Section 11 of the Act to be bad being based on assumption and presumptions.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is engaged in letting out open space for marriage functions. The activity being carried out by the petitioner has been brought under the head "luxury" and subject to tax under the Act inspite of the fact that it does not provide luxury in terms of sections 2(j) and 2(k) of the Act. In terms of Section 2(k) of the Act, the cost of amenities/services provided by the persons other than the petitioner are to be added for the purpose of computing the luxury tax notwithstanding that these are provided by persons other than the proprietor of the banquet hall. The levy and collection of tax is governed by Section 9 of the Act. The petitioner is required to register itself under the Act by virtue of Section 11 of the Act. The petitioner is further required to deposit security on the basis of anticipated tax payment under Section 11(4) of the Act. Under Section 12 of the Act, every proprietor shall declare the normal rate for luxury provided by him in such manner and within such period as

may be prescribed. According to the petitioner, the services provided by the proprietors do not fall under the definition of “luxury”. The premises of the petitioner are no doubt banquet hall in terms of the definition under Section 2(c) of the Act still the same does not provide luxury in terms of Section 2(j) of the Act. The activity of the petitioner does not come under the purview of the Act and the service of letting out the space in any manner does not constitute 'luxury' under the Act. As long as the petitioner is letting out its space for marriages without providing any facility like air conditioning, air cooling, chairs, tables, utensils etc. for a consideration below Rs.20,000/- per function, its subject activity cannot be termed as luxury. As far as provision for amenities is concerned, it is the option of the organizer to arrange of its own. The charges for amenities are bound to vary from function to function depending upon the type of arrangement and cannot be defined on uniform basis. According to the petitioner, in the present times, arranging marriage functions in a banquet hall is no more a luxury. Providing facility of performing a marriage in a marriage hall is a necessity. The services rendered by the petitioner are subject to service tax limited to the value of consideration received. One such Assessment was made for the year 2012¬13 putting the liability as Rs.4,17,96,000/- vide order dated 27.11.2014, Annexure P.2. The petitioner had to approach the appellate authority under Section 31 of the Act. Vide order dated 16.7.2015, the said order was set aside and the case was remanded back to the assessing authority for framing de novo assessment in accordance with law after providing opportunity of hearing to the petitioner. Hence the instant writ petition with the prayer as mentioned above.

3. The primary grievance of the petitioner that arises for consideration in this petition is whether the computation of taxable limit of Rs.20,000/- for levy of luxury tax for “luxury provided in banquet hall” as depicted in Explanation to Section 2(k) of the Act is unconstitutional or not. In other words, whether the services provided by the petitioner in the shape of open space termed as “banquet halls” for marriages/receptions fall under the definition of 'luxury' so as to be liable to levy of tax in terms of Sections 2(j) and 2(k) of the Act.

4. It was urged that the State is not competent to legislate for imposing 'luxury tax' on banquet halls, which simply let out the space for conducting marriages. According to the petitioner, the services provided by it are not liable to levy of tax. Reliance was placed on judgments in ***M/s Sandley Industries vs. Union of India and others***, CWP No.10564 of 2014, decided on 20.8.2015 and ***Bidhannagar (Salt Lake) Welfare Association vs. Central Valuation Board and others***, (2007) 6 SCC 668. Reference in the petition has also been made to judgments in ***Godfrey Phillips India Limited and another vs. State of UP and others***, (2005) 2 SCC 515, ***Govind Saran Ganga Saran vs. Commissioner of Sales Tax and others***, 1985(Supp.) SCC 205 and ***Tamil Nadu Kalyana Mandapam Association vs. Union of India***, AIR 2004 SC 3757.

5. Elaborating his submissions further, learned counsel for the petitioner argued that the letting out of space for the marriage functions in a banquet hall would not constitute 'luxury' under the Act specially when the petitioner has been letting out the open space for marriages without providing any facility like air conditioning, air cooling, chairs, tables, utensils and vessels, shamiana, tent, pavilion, electricity, water, fuel, interior or exterior decoration, music, orchestra, live telecast or other amenities for a consideration below ' 20,000/- per function.

6. It was also contended that so far as the provision for amenities is concerned, it is exclusively the option of function organizer to arrange of his own. The charges for amenities keep on varying depending upon the type of arrangement and there cannot be any uniform basis for assessing it. The petitioner only enters into contract with the function organizer and does not exercise any control over the charges incurred by the other party for the amenities. The actual expenses incurred by the third party cannot be included in the threshold limit of '

20,000/- for calculating luxury tax. As the third party is under no obligation to disclose the expenses incurred to the petitioner, therefore, no tax liability can be fastened on the petitioner for acts and omission of others which is unsustainable.

7. Continuing with his submissions, the Act was also assailed on the ground that the taxable event is when the services are offered and consideration is received. Under the Explanation to Section 2(k) of the Act, the charges incurred by the function organizer for the amenities gathered/arranged by him are to be added in the turnover of the petitioner who has no direct nexus with the same. The liability of luxurious amenities is being fastened on the petitioner for the levy and collection of luxury tax which is self-incriminating and, thus, liable to be set aside.

8. Lastly, it was submitted that the arranging of marriage function in a banquet hall would not constitute 'luxury' in the present day circumstances. It is a necessity and not a luxury, as due to increase in population, holding of such functions in marriage halls cannot be termed as 'luxury'. The activity of the petitioner cannot be said to be akin to entertainment, amusement, betting and gambling as used in Entry No.62 in List II of Seventh Schedule of the Constitution of India. The luxury in hotels would be on different pedestal from renting out land as banquet hall. The State Legislature is infact incompetent to do so as it lacks legislative competence. Further, no machinery for redressal of grievances has been provided under the Act for settlement of disputes. Tax levied on the basis of mere estimates, presumptions and assumptions cannot be held to be valid.

9. We have heard learned counsel for the petitioner and do not find any merit in the contentions raised by him.

10. The State legislature derives its power under Entry 62 of List II of Schedule VII of the Constitution of India to enact law in respect of 'Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling'. With that constitutional sanction, Haryana Tax on Luxuries Act, 2007 was enacted to provide for the levy and collection of tax on luxuries and for matters incidental thereto and connected therewith. The relevant statutory provisions incorporated under the Act needs to be scrutinized. Section 2 of the Act provides definition of various expressions used in the Act which read thus:-

> ***"2 (c) "banquet hall"*** *means any premises or part of premises, garden or part of the garden or farm house or part of farm house where accommodation or space is provided, by way of business for a monetary consideration, for marriage, reception, or matters related therewith, seminar, convention, banquet, kitty- party, meeting, or exhibition cum sale or such other hall as may be specified by the Commissioner, whether functions or events are conducted in such halls regularly or not;*
>
> ***(d) "charges for banquet hall"*** *include charges for air cooling, air conditioning, chairs, tables, utensils and vessels, shamiana, tent, electricity, water, fuel, interior or exterior decoration, music systems, orchestra, live telecast, and the like and any amount received by way of donation or charity or by whatever name called in relation to letting out the banquet hall but do not include any charges for food and drinks;*
>
> *Explanation.- If any question arises whether any charges are charges for banquet hall, such question shall be referred to the State Government and decision of the State Government shall be final;*
>
> ***(j) "luxuries"*** *means services ministering to enjoyment, comfort or pleasure extraordinary to necessities of life ;*

(k) "luxury provided in a banquet hall" *means accommodation or space provided in a banquet hall, the rate of charges for which (including charges for air cooling, air conditioning, chairs, tables, utensils and vessels, shamiana, tent, pavilion, electricity, water, fuel, interior or exterior decoration, music, orchestra, live telecast, or other amenities but do not include any charges for food and drinks) is twenty thousands rupees or more per occasion;*

Explanation.-While computing twenty thousand rupees or more, charges for providing air cooling, air conditioning, chairs, tables, utensils and vessels, shamiana, tent, pavilion, electricity, water, fuel, interior or exterior decoration, music, orchestra, live telecast, or other amenities will be taken in account even if charged separately whether by the proprietor of a banquet hall or on his behalf by any other person providing such amenities in any capacity recognized by law if such amenities are provided within the precincts of such banquet hall;

11. Sections 9, 11 and 12 of the Act which have been referred to in the petition may be noticed. They read thus:-

Levy and collection of tax on charges for banquet hall.

9. (1) *Subject to the provisions of this Act, there shall be levied and collected a tax, on the charges payable on the luxury provided in a banquet hall, at the rate of ten percent or such other rate not exceeding fifteen percent, as the State Government may, by notification in the Official Gazette, direct: Provided that tax levied under sub-section (1) shall be paid only by such proprietor wherein charges for the luxury provided in a banquet hall are twenty thousand rupees or more with in the meaning of clause (k) of section 2.*

(2) The tax levied under sub- section (1) shall be paid by every proprietor in such manner as may be prescribed.

Registration of proprietors.

11. (1) *Every proprietor liable to pay tax shall get himself registered under this Act in such manner and within such period as may be prescribed and shall pay such registration fee as may be prescribed.*

(2) Every proprietor registered under sub-section (1) shall be granted a registration certificate and the same shall be valid until cancelled.

(3) The assessing authority may for good and sufficient reasons, demand from a proprietor liable to pay tax, security for securing payment of tax and on such demand, the proprietor shall furnish security within a period of ten days from the date of receipt of the order demanding security.

(4) The amount of security payable under sub-section (3) shall not exceed an amount equivalent to one-fourth of tax anticipated for the year from the proprietor. The assessing authority may demand an additional security, if it has reason to believe that the security furnished already is inadequate.

(5) The security furnished shall be maintained in full until the registration is cancelled.

(6) Where a proprietor has more than one place of business, the registration shall cover all such places of business. The assessing authority shall issue, free of cost, copies of the registration certificates to the proprietor for exhibition at each of his places of business.

(7) A proprietor registered under sub-section (1) shall be entitled to have his registration cancelled if he is able to prove to the satisfaction of the assessing authority that he has discontinued, transferred or otherwise disposed off his business. .

(8) The assessing authority shall have power, for good and sufficient reasons, to cancel, modify or amend any registration certificate issued by it.

(9) A registration certificate shall be personal to the proprietor to whom it is granted and shall not be transferable.

Declaration of charges.

12. Every proprietor liable to pay tax shall declare the normal rate fixed for luxury provided by him in such manner and within such period as may be prescribed."

12. A perusal of the above provisions shows that luxury in a banquet hall means accommodation or space provided for marriage functions etc. therein. The charges for the amenities like tent, air cooling, air conditioning chairs and tables except food and drinks will be Rs.20,000/- or more per occasion. While calculating the said amount, the charges for other amenities shall be taken into account even if charged separately whether by the proprietor of a banquet hall or on his behalf by any other person if the said amenities are provided within the precincts of such banquet hall. As per section 9 of the Act, the tax shall be collected on the charges payable on the luxury at the rate of ten percent or more but not exceeding fifteen percent where the charges are Rs.20,000/- or more. Under Section 11(4) of the Act, the petitioner is required to deposit security on the basis of anticipated tax payment. Under Section 12 of the Act, every proprietor liable to pay tax shall declare the normal rate for luxury provided by him in such manner and within such period as may be prescribed.

13. Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by authority of law. The power to tax is an incident of sovereignty. The power conferred on the legislature to levy tax must be widely construed. The rule of interpretation requires that an entry in either of the lists in 7th Schedule should not be read in a narrow or pedantic sense but it should be allocated fullest meaning and the widest amplitude so as to extend to all ancillary and subsidiary matters which can fairly and reasonably be said to be comprehended in them.

14. The Constitution Bench of the Supreme Court in the case of ***Express Hotels Private Limited vs. State of Gujarat,*** (1989) 74 STC 157 while examining the scope of Entry 62 of List II of Schedule VII of the Constitution of India under similar circumstances held that the concept of tax on "luxury" cannot be limited merely to tax things, tangible and corporeal in their aspect as "luxuries". The relevant observation reads thus:-

"The concept of a tax on 'luxuries' in Entry 62, List II cannot be limited merely to tax things tangible and corporeal in their aspect as 'luxuries'. It is true that while frugal or simple food and medicine may be classified as necessities; articles such as jewellery, perfume, intoxicating-liquor, tobacco, etc., could be called articles of luxury. But the legislative entry cannot be exhausted by these cases, illustrative of the 'concept'. The entry encompasses all the manifestations or emanations, the notion of 'luxuries' can fairly and reasonably be said to comprehend. The element of extravagance or indulgence that differentiates 'luxury' from 'necessity' can not be confined to goods and articles. There can be elements of extravagance or indulgence in the quality of services and activities."

15. In the light of earlier judgment of the Supreme Court in ***Western India Theatres Limited vs. Cantonment Board, Poona Cantonment,*** 1959(2) Supp. SCR 63 which was interpreting Entry 50 in Schedule VII of the Government of India Act, 1935 which was identical i.e. "taxes on luxuries including taxes on entertainments, amusements, betting and gambling", it was observed in ***Express Hotels Private Limited's*** case (supra) as under:-

> *"**In the Western India Theatres Ltd. v. The Cantonment Board, Poona Cantonment,** [1959] 2 Supp. SCR 63, this court was dealing with the scope of the power of the Provincial Legislature under Sec. 100 of the Govt. of India Act, 1935, with respect to Entry 50 in Schedule VII of the said Act, to make laws with respect to "taxes on luxuries including taxes on entertainments, amusements, betting and gambling". The contention of the appellant in that case was that the entry authorised a law imposing taxes on persons who received or enjoyed the luxuries etc. and that no law made with respect to that Entry could impose a tax on persons who provide the luxuries, entertainment or amusements. It was contended that those who provide the luxury-etc., did not themselves receive or enjoy the luxury or entertainment or amusement, but were simply carrying on their profession or trade and were not amenable to be taxed under that Entry. Rejecting the argument it was said:*
>
> > *"In view of this well established rule of interpretation, there can be no reason to construe the words 'taxes on luxuries or entertainments or amusements' in entry 50 as having a restricted meaning so as to confine the operation of the law to be made thereunder only to taxes on persons receiving the luxuries, entertainments, or amusements. The entry contemplates luxuries, entertainments, and amusements as objects on which the tax is to be imposed. If the words are to be so regarded, as we think they must, there can be no reason to differentiate between the giver and the receiver of the luxuries, entertainments, or amusements and both may, with equal propriety, be made amenable to the tax "*
>
> *(Emphasis supplied) The concept of 'luxuries' as a subject of tax was not con-fined to those who received or enjoyed the luxury. It could be on those who provided it."*

16. Further, referring to another Constitution Bench judgment in ***A.B.Abdul Kadir and others vs. State of Kerala***, AIR 1976 SC 182 = (1976) 2 SCR 690, it was noticed that an expenditure on something which is in excess of what is required for economic and personal well being would be expenditure on luxury although the expenditure may be of a nature which is inclined by a large number of people, including those not economically well off. It was recorded thus:¬

> *" .... The word "luxury" in the above context has not been used in the sense of something pertaining to the exclusive preserve of the rich. The fact that the use of an article is popular among the poor sections of the population would not detract from its description or nature of being an article of luxury. The connotation of the word "luxury" is something which conduces enjoyment over and above the necessaries of life. It denotes something which is superfluous and not indispensable and to which we take with a view to enjoy, amuse 'or entertain ourselves. An expenditure on something which is in excess of what is required for economic and personal well-being would be expenditure on luxury although the expenditure may be of a nature which is incurred by a large number of people, including those not economically well-off .... "*

It was also noticed that as to what constitutes article of 'luxury' cannot be static and keeps on changing based on citizens of one country or nationals of another country for precious living in a different climate. The relevant observations read thus:-

> *"There is nothing static about what constitutes an article of luxury. The luxuries of yesterday could well become the necessities of today. Likewise, what constitutes necessity for citizens of one country or for those living in a particular climate may well be looked upon as an items of luxury for the nationals of another country or for those living in a different climate. A number of factors may have to be taken into account in adjudging the commodity as an article of luxury...."*

17. The word "luxury" though not defined in the Constitution of India is defined in Section 2(j) of the Act to mean services ministering to enjoyment, comfort or pleasure extraordinary to necessities of life. As noticed above, the bone of contention in the present case primarily relates to Explanation to Section 2(k) of the Act which provides for computation of value of facilities or amenities to be included as items of luxury in respect of "luxury provided in a banquet hall". According to the explanation for assessing the quantum of Rs.20,000/- as referred in Section 2(k) of the Act, the facilities or amenities enumerated therein provided by the proprietor of the banquet hall or by any other person in any capacity on his behalf when such facilities or amenities are provided within the precincts of the banquet hall shall be taken into consideration. In our opinion, the explanation being clarificatory in nature has simplified the calculation as to what amount would be included for quantifying Rs.20,000/-. It cannot be held to be unreasonable or arbitrary in any manner as it encompasses those cases where the facilities or amenities are provided by the proprietor of the banquet hall or any person on his behalf when such amenities are provided within the precincts of such banquet hall. It can by no stretch of imagination on taking hypothetical illustration be declared to be ultra vires without showing lack of legislative competence of the State to enact such a provision or there being violation of any constitutional mandate.

18. Nothing has been shown by the learned counsel for the petitioner to substantiate that the State legislature was not empowered to define the expression 'luxury in the banquet hall' under Section 2(k) in the statute. The definitions of various expressions under Section 2 of the Act and other substantive provisions of the Act are within the legislative competence and have not been shown to be contrary to any constitutional mandate. The services provided by the petitioner do fall under the said definition so as to be liable to levy of tax. Once there exists legislative competence in the State legislature to enact a provision, in the absence of the learned counsel for the petitioners to demonstrate that the same is arbitrary, discriminatory or violative of Article 14 of the Constitution of India, it cannot be declared to be unconstitutional.

19. It is well settled law that a statute enacted by Parliament or legislature can only be struck down by courts on two counts which are viz; (a) lack of legislative competence; and (b) violation of any of the fundamental rights granted in Part III of the Constitution of India or any other Constitutional provision. It is equally well recognized that no enactment can be struck down by merely saying that it is arbitrary, unreasonable or unjust. It was pronounced by the Apex Court in ***State of Andhra Pradesh vs. McDowell & Co. AIR 1996 SC 1627*** as under:-

> *"No Court in the United Kingdom can strike down an Act made by the Parliament on any ground. As against this, the United States of America has a Federal Constitution where the power of the Congress and the State Legislatures to make laws is limited in two ways, viz., the division of legislative powers between the States and the federal government and the fundamental rights (Bill of Rights) incorporated in the Constitution. In India, the position is similar to the United States of America. The power of the Parliament or for that*

> *matter, the State Legislatures is restricted in two ways. A law made by the Parliament or the Legislature can be struck down by courts on two grounds and two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision. There is no third ground...."*

In other words, a provision, statute or law shall not be declared to be unconstitutional and void solely on the ground of unjust and harsh provisions or it violates some natural, social, political or economic rights of citizen, unless it is established that such injustice infact is prohibited or violates the rights guaranteed or protected by the Constitution of India.

20. As far as the judgments cited by the learned counsel for the petitioner, there is no quarrel with the proposition of law enunciated therein. In ***Bidhannagar's*** case (supra), it was held by the Apex Court that when a substantive unreasonableness is to be found in a statute, it may have to be declared unconstitutional. Although the court may not go into the question of a hardship which may be occasioned to the tax payers but where a fair procedure has not been laid down, the validity thereof cannot be upheld. In ***M/s Sandley Industries'*** case (supra), sub rule 3A of Rule 8 of the Central Excise Rules, 2002 to the extent it contained the words 'without utilizing the CENVAT Credit' was struck down by this Court being arbitrary and unreasonable in view of the facts and circumstances enumerated therein. In the present case, nothing has been shown by the learned counsel for the petitioner that the provisions are arbitrary or unreasonable and, therefore, unconstitutional. We have also examined the judgments referred to in the petition in ***Godfrey Phillips India Limited, Govind Saran Ganga Saran*** and Tamil ***Nadu Kalyans Mandapam Association's*** cases (supra). The propositions of law enunciated in these pronouncements are unexceptionable but in view of the factual matrix herein and the discussion made above, no advantage can be derived by the petitioner therefrom.

21. In conclusion, in our opinion, the provisions of Explanation to Section 2(k) of the Act and also the other provisions of the Act to which an attempt has been made to assail as ultra vires, cannot be held to be beyond the legislative competence of the Haryana State Legislature or that they had exceeded its law making power or contravened any of the provisions of the Constitution of India on the basis of which it could be declared to be unconstitutional. The validity of the same is upheld and the petition is dismissed.

PUNJAB & HARYANA HIGH COURT

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CWP 2357 OF 2016

SAURABH STEELS
Vs
STATE OF HARYANA AND OTHERS

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

5th February, 2016

HF ▶ Directions issued

Department is directed to decide the submissions made by petitioner regarding interest on refund.

INTEREST – LACK OF ACTION ON PART OF DEPARTMENT – REFUND EARLIER DENIED ORDERED TO BE GRANTED BY TRIBUNAL – INTEREST ON REFUND SOUGHT BY PETITIONER SUBSEQUENTLY – WRITTEN SUBMISSIONS MADE IN THIS REGARD – NO RESPONSE RECEIVED – WRIT FILED – RESPONDENT DIRECTED TO DECIDE THE SUBMISSIONS MADE AND PASS A SPEAKING ORDER WITHIN THE TIME SPECIFIED. *SECTION 20 OF HVAT ACT, 2003*

Facts

On appeal the Tribunal allowed the refund of ITC to the petitioner which was denied by the assessing authority on assessment in view of non deposit of tax by the dealer – petitioner. However, the petitioner had made written submission, thereafter, to the respondent for grant of interest on refund but no response was received. Hence a writ is filed.

Held:

The respondent is directed to decide the submissions made by petitioner and pass a speaking order in accordance with law within a period of two months.

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

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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 respondent No. 4 to adjudicate upon the submissions dated 18.8.2014 (Annexure P-6) and dated 12.12.2014 (Annexure P-7) and to allow interest on the amount deposited by the petitioner with the Sales Tax Department.

2. The petitioner is engaged in the trading of Iron and Steel goods. The assessment for the assessment year 2004-05 was framed by respondent No.4 vide order dated 5.2.2008

(Annexure P-1). Thereafter reassessment proceedings were initiated and reassessment was framed vide order dated 5.2.2009 (Annexure P-2) by respondent No.4 creating additional demand against the petitioner, denying input tax benefit alleging that the seller had not deposited the tax with the department. Feeling aggrieved by the order, Annexure P-2, the petitioner filed an appeal before the Joint Excise and Taxation Commissioner (A), Rohtak who vide order dated 17.6.2009 (Annexure P¬3) confirmed the order passed by respondent No.4 and dismissed the appeal. The petitioner assailed the order, Annexure A-3, before the Haryana Tax Tribunal (in short "the Tribunal") by way of an appeal. The Tribunal vide order dated 30.3.2012 (Annexure P-4) following the order of this Court in Gheru Lal Bal Chand v. State of Haryana and others, CWP No. 6573 of 2011 decided on 23.9.2011, remanded the cases to the assessing authority. In pursuance thereto, the assessing authority vide order dated 26.3.2014 (Annexure P-5) decided the case and allowed the refund of Rs.31,602/- to the petitioner. Thereafter, the petitioner made written submissions dated 18.8.2014 (Annexure P-6) and dated 12.12.2014 (Annexure P-7) to respondent No.4 for interest on the refund, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has made submissions dated 18.8.2014 (Annexure P-6) and dated 12.12.2014 (Annexure P-7) to respondent No.4, 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 submissions dated 18.8.2014 (Annexure P-6) and dated 12.12.2014 (Annexure P-7), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two months from the date of receipt of certified copy of the order.

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PUNJAB & HARYANA HIGH COURT

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CRM NO. M-32044 OF 2015

GURMIT SINGH
Vs
STATE OF PUNJAB

JUSTICE TEJINDER SINGH DHINDSA

5th February, 2016

HF ▶ Petitioner

Accused having already joined investigation is granted anticipatory bail as co-accused has already been released on regular bail.

ANTICIPATORY BAIL – FIR – FRAUD -DEALER INVOLVED IN EVADING TAX ON BASIS OF BOGUS PURCHASES – PAN NUMBER OF PETITIONER FOUND ON BILL/BILTIES WHO IS RUNNING A TRANSPORT FIRM - FIR REGISTERED AGAINST THE DUO - REGULAR BAIL GRANTED TO DEALER – ANTICIPATORY BAIL SOUGHT BY PETITIONER – BAIL GRANTED ON INDICATION BY ASI REGARDING THERE BEING NO REQUIREMENT OF CUSTODIAL INTERROGATION OF THE ACCUSED – *S. 177, 201, 420, 465, 467, 468, 471 AND 120-B OF INDIAN PENAL CODE*

Facts:
During the course of investigation it was found that dealer Mr. A had been evading tax on basis of bogus purchases and the PAN number had been found to be that of the petitioner on the bills who is otherwise a transporter. FIR was registered u/s 177,201, 420 of IPC. The dealer has already been granted regular bail. The present petitioner has thus applied for an anticipatory bail.

Held:
It is submitted by the ASI that the petitioner has already joined investigation and is not required for custodial interrogation. Therefore, the writ is allowed.

Present: Mr. Rajesh Kumar, Advocate for Mr. Manoj Kumar, Advocate,
for the petitioner.
Mr. D.S.Virk, AAG, Punjab.

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AJAY KUMAR MITTAL, J.

1. Petitioner seeks concession of pre-arrest bail in case FIR No.21 dated 30.01.2014, under Sections 177, 201, 420, 465, 467, 468, 471 and 120-B of Indian Penal Code, registered at Police Station Division No.5, Ludhiana.

2. FIR was registered on the basis of an application moved by the Assistant Excise and Taxation Commissioner, Ludhiana-II against main accused Ashwani Kumar on the allegations that during scrutiny of returns of M/s Vishu International, it was found that the dealer had been evading tax on the basis of bogus purchases and has as such defrauded the State exchequer.

3. During the course of investigation, the PAN number, printed on certain bilties/bills of M/s Amrit Transport Service was found to be that of the present petitioner who otherwise was running a Transport Firm under the name and style of New Bhadson Roadways.

4. Main accused Ashwani Kumar has already been granted benefit of regular bail.

5. Learned State counsel upon instructions from ASI Malkeet Singh, Police Station Division No.5, Ludhiana would submit that in pursuance to the order dated 21.09.2015, passed by this Court, petitioner has already been joined investigation and as such would not be required for custodial interrogation.

6. Accordingly, the present petition is allowed. Order dated 21.09.2015, passed by this Court, is made absolute.

7. Petition disposed of.

PUNJAB & HARYANA HIGH COURT

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CWP NO. 2151 OF 2016

JAI BAJRANGBALI TUBES PVT. LTD.
Vs
STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

3rd February, 2016

HF ▶ Direction given

Respondent is directed to decide on the letters by dealer for obtaining Registration certificate.

REGISTRATION CERTIFICATE – LACK OF ACTION ON PART OF DEPARTMENT – REGISTRATION CERTIFICATE APPLIED FOR IS REJECTED – ON APPEAL MATTER REMANDED FOR DECIDING AFRESH – TWO BANK GUARANTEES FURNISHED SUBSEQUENTLY WITHIN FEW DAYS ALONG WITH COVERING LETTER – NO RESPONSE GIVEN BY DEPARTMENT – REMINDER SENT TO NO EFFECT – WRIT FILED – RESPONDENT DIRECTED TO DECIDE ON THE LETTER SENT AND PASS A SPEAKING ORDER WITHIN ONE MONTH- *S. 21 OF PUNJAB VAT ACT, 2005*

Facts

The petitioner had moved an application for a Registration Certificate as it had begun trading of cement etc. However, the application was rejected. On assailing the order, matter was remanded to respondent to decide afresh. The petitioner subsequently furnished two bank guarantees. Nothing was done by the department in this regard. A reminder was also sent by petitioner but to no effect. Hence, writ is filed.

Held:

The respondent is directed to take a decision on the letter sent as well as the reminder sent later in accordance with law by passing a speaking order within a period of one month.

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

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AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Article 226 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of Mandamus directing respondent No.3 to grant the Registration Certificate to it.

2. The petitioner has started trading of cement, hardware and building material at Chullar Kalan and moved an application dated 15.7.2015 along with the required documents to respondent No.2 for grant of Registration Certificate. Inspection of the business premises was

conducted by the local staff. When nothing was done in the matter, the petitioner sent a reminder dated 3.8.2015 (Annexure P-1) to respondent No.2. A notice dated 11.8.2015 was received from the Excise and Taxation Officer, Sangrur raising the objections regarding the size of the business premises and that the surety has withdrawn his surety. The petitioner submitted the reply dated 19.8.2015 (Annexure P¬3) to the said notice. Respondent No.2 vide order dated 24.8.2015 (Annexure P-4) rejected the application of the petitioner. The petitioner assailed the order, Annexure P-4, before the Deputy Excise and Taxation Commissioner who vide order dated 23.10.2015 (Annexure P-5) remanded the matter to respondent No.2 for deciding the issue afresh. Thereafter, the petitioner submitted two bank guarantees of ' 50,000/- each vide covering letter dated 29.12.2015 (Annexure P-6). However, nothing was done. The petitioner sent a reminder dated 9.1.2016 (Annexure P-7) to respondent No.2, but to no effect. Thereafter, the petitioner submitted a reply dated 19.1.2016 (Annexure P-8), 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 a letter dated 29.12.2015 (Annexure P-6) followed by a reminder dated 9.1.2016 (Annexure P-7) and the reply dated 19.1.2016 (Annexure P-8) 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.3 to take a decision on the letter dated 29.12.2015 (Annexure P-6) followed by a reminder dated 9.1.2016 (Annexure P-7) and the reply dated 19.1.2016 (Annexure P-8), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 332 OF 2015

ATMA RAM & SONS
Vs
STATE OF PUNJAB

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

22nd December, 2015

HF ▶ Dealer

Order of penalty passed without granting proper opportunity of hearing is liable to be set aside.

PENALTY – CHECK POST/ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – NATURAL JUSTICE – OPPORTUNITY OF BEING HEARD – GOODS IN TRANSIT – DETENTION ON SUSPECTING INGENUINE TRANSACTION – PENALTY IMPOSED ON THE DATE OF DETENTION CONCLUDING INGENUINENESS OF INVOICE AND GR – CASE ADJOURNED FOR HEARING APPELLANT BUT FACTUALLY PENALTY IMPOSED BEFORE OPPORTUNITY OF HEARING PROVIDED – APPEAL BEFORE TRIBUNAL – INVOICE AND GR FOUND IN ORDER – LACK OF OPPORTUNITY TO THE APPELLANT TO PRODUCE EVIDENCE – ORDER PASSED BY DETC BASED ON MERE SUSPICION -MATTER REMITTED TO DESIGNATED OFFICER TO PASS FRESH ORDERS AFTER HEARING APPELLANT – APPEAL ACCEPTED- *S.51(7) OF PVAT ACT, 2005*

Facts

The goods (sarson) in transit were detained suspecting ingenuineness of the transaction. The detaining officer imposed penalty u/s 51 on the same very day of detention and forwarded the case to the designated officer concluding that the bill and GR are not genuine. The appellant has not been given any opportunity to present his case. On dismissal of first appeal an appeal is filed before Tribunal.

Held:

Had the appellant been given time, it could have produced account books, GR and CPU to show genuineness of his documents. Though the officer had adjourned the case calling the appellant to produce books, but did not wait for the said date.

Regarding allegations that no telephone number and address have been mentioned on GR, it is stated that GR does not require mentioning of the same. Also, complete address is mentioned on the invoice alongwith VAT, surcharge TIN number and price of goods.

The order passed by DETC is based on mere suspicion that people are indulging in smuggling of sarson into Punjab. The order has been passed on conjectures and surmises. Therefore, the

appeal is accepted and matter is remitted back for fresh order after providing an opportunity of being heard to the appellant.

Present: Mr. M.L.Garg, Advocate alongwith Mr. Hitesh Garg, Advocate counsel for the appellant.
Mr. Manjit Singh Naryal, Addl. Advocate General for the State.

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

1. This appeal has arisen out of the order dated 3.3.2015 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala (herein referred as the First Appellate Authority) dismissing the appeal of the appellant against the order dated 12.9.2011 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala imposing a penalty of Rs. 1,19,016/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

2. On 12.9.2011 the driver, while loading Sarson seed i.e. (mustard) in the vehicle bearing NO.HR57-5206 when reached the ICC Killanwali, presented the following documents:-

1. *Invoice No.233, dated 11.9.2011 issued by the M/s Atma Ram & Sons in favour of Gori Oil Mills Cheema, Anaj Mandi Cheema (Intrastate sale) for a sum of Rs.4,14,176/-.*
2. *GR alongwith a duplicate copy bearing No. 1291 issued by Vishawkarma Roadlins, Mandi killanwali, Cheema for a sum of Rs. 5320/-.*

3. The Detaining Officer, while suspecting that the goods were not covered by the genuine documents, detained the goods and forwarded the case to the Designated Officer who passed the following order:-

Vehicle No.HR-57-5206: Date of detention 12.9.2011 present Shri Prince Kumar owner taxable goods, for trade Rs.3,96,720/-. No account books produced, No CPU, GR book produced. Unable to prove genuineness of bill and GR, Violation Rule 54 (4) read with 58 (1) (6), 67 (2) (3) and Section 87 of Punjab Vat Act. A bill is not genuine when its record is not stable and secure in CPU and GR book. Had it not been detained, it would have been destroyed. Thus bill and GR are not genuine (Violation U/s 51 (6) (a) of the VAT Act).

Attempt to evade tax is found. A penalty of Rs. 1,19,016/- is imposed U/s 51 (7) (b) VAT recover it. The appeal filed by the appellant was dismissed.

4. The aforesaid order symbolizes the height of the poised mind of the officer who was ready to send the appellant/owner of the goods to the gallows without application of mind, without evidence and without passing a non speaking order.

5. The goods were loaded on 11.9.2011 and were detained on 12.9.2011. Notice No.1282 was issued to the appellant for 13.9.2011. The detaining officer did not wait for 13.9.2011, on which date he could be shown the record relating to the genuineness of the transaction and sent the case on that very day i.e. on 12.9.2011 to the Designated Officer who though had issued notice to the appellant for 19.9.2011. But still he was in such a hurry to impose the penalty on that very day i.e. 12.9.2011.

6. The allegations leveled against the appellant by the Detaining Officer for detaining the vehicle are as under:-

> *"No address and phone number has been mentioned on the GR. The bill has been issued by computer, thus it is suspicious that it can be deleted after the delivery of the goods. Both documents and computer have to be verified as required U/s 51 (2) of the Punjab VAT Act."*

7. The officer has mentioned that the appellant did not produce the account books, CPU and GR book, but it is fallacious to say so because the appellant was not provided any time to do so and he was not supposed to carry the C.P.U. and the computer every time The vehicle was apprehended on 12.9.2011 and the penalty was also imposed on that very day. Had the Officer provided some time to the appellant to bring the relevant record then such account books, CPU and GR as required could be produced. As such the order appears has been passed in a hurried manner and without following the procedure as required under law. Though, the Officer had adjourned the case for 19.9.2011 calling upon the appellant to produce the account books, but did not wait for the said date.

8. As regards, the allegation that no telephone number and address have been mentioned in the G.R, it may be stated that the law does not require recording of the telephone number over the G.R. As regards, the complete address of the purchaser, it may be mentioned that the invoice bears the complete address of the purchaser alongwith his Tin number, the price of the goods, the vat and the surcharge paid upon the price of the goods. The officer has concealed regarding the payment of full VAT and the surcharge over the price of the goods. The vat invoice bears the signatures of the authorized signatory of the appellant and it was intrastate sale.

9. In any case if the Designated Officer had any suspicion about the in genuineness of the documents i.e. Vat invoice and GR then he would have held an enquiry by giving the appellant some reasonable time instead of hanging him without hearing. I have also examined the order passed by the First Appellate Authority, the same is based on mere suspicion that the people of the area are indulging in smuggling of the sarson into Punjab. Instead of setting his own house in order by accusing his own Officers for not keeping a vizel and check such activities on the border itself, has tried to settle the scores to camaflouge an intrastate purchase into inter state smuggling which is not proper. Thus, the order having been passed on mere conjunctures and surmises can not be sustained in the eye of law.

10. Resultantly, this appeal is accepted, impugned order is set-aside and the case is remitted back to the Designated Officer to pass a fresh speaking order after providing an opportunity to the appellant to produce evidence in his favour. The appellant is directed to appear before the Designated Officer on 29.1.2016

11. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 180 OF 2013

CHAUDHARY ENTERPRISES
Vs
STATE OF PUNJAB

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

7th January, 2016

HF ▶ Revenue

Assessment framed for the year 2006-07 within the extended period six years is justified in view of retrospective amendment of S. 29 of the PVAT Act

LIMITATION – ASSESSMENT – EFFECT OF RETROSPECTIVE AMENDMENT – ASSESSMENT YEAR 2006-07 – FRAMING OF ASSESSMENT ON 31.12.2010 – APPEAL FILED PLEADING TIME BARRING OF ASSESSMENT AS IT OUGHT TO HAVE BEEN FRAMED BY 20.11.2010 – PLEA REJECTED OBSERVING PERIOD FOR FRAMING ASSESSMENT ALREADY STOOD EXTENDED BY COMMISSIONER FOR TWO YEARS – APPEAL BEFORE TRIBUNAL – AS PER RETROSPECTIVE AMENDMENT OF S. 29 OF THE ACT ASSESSMENT COULD BE FRAMED SIX YEARS FOR THE YEAR IN QUESTION – APPEAL DISMISSED AS ASSESSMENT HELD TO BE WITHIN TIME– *S. 29 OF PVAT ACT*

Facts:
While framing assessment for the year 2006-07 additional demand was created. It was pleaded before the first appellate authority that the assessment ought to have been framed by 20.11.2010 whereas it was framed on 31.12.2010 i.e. it is time barred. The first appeal was dismissed holding that the period of framing of assessment was extended for two years by the Commissioner. Therefore, in this plea was rejected. An appeal is filed before Tribunal.

Held:
That even otherwise in view of amended S. 29 of the Act vide notification dated 15.12.2013 ,the period of framing assessment was extended from three years to six years and this amendment has been held to be retrospective as per judgment passed in case of Amrit Banaspati Company. Therefore, in light of observations made in the judgment, the appellant cannot raise this plea of limitation. The appeal is dismissed as assessment framed was within time.

Cases applied:

- *Amrit Banaspati Comapany V/s State of Punjab and others (2015) 52 PHT 46 (P&H)*

Present: Mr. Avneesh Jhingan, Advocate Counsel for the appellant.
Mr. Sukhdip Singh Brar, Addl. Advocate General for the State.

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

1. This appeal has arisen out of the order dated 13.2.2013 passed by the Deputy Excise and Taxation Commissioner(A) Faridkot Division, head Office Bathinda (herein referred as First Appellate Authority) dismissing the appeal against the order dated 31.12.2010 passed by the Assistant Excise and Taxation Commissioner-cum-designated officer Bathinda.

2. This case relates to the assessment year 2006-07, the assessing authority Bathinda vide order dated 31.12.2010 while framing the assessment for the said year created additional demand of Rs.1,65, 229/-.

3. While assailing the assessment, the appellant had raised the solitary plea of limitation before the Tribunal. The assessment for the year 2006-07, at the maximum, should have been decided by 20.11.2010 whereas, in the present case, the assessing authority framed the assessment on 31.12.2010 which is time barred. The Deputy Excise and Taxation Commissioner dismissed this plea with regard to the question of limitation while observing that the period for framing the assessment was extended by the Excise and Taxation Commissioner for two years. The proviso to Section 29 (4) empowers the Excise and Taxation Commissioner to extend the period of limitation upto 3 years, therefore, the pleas raised by the counsel for the appellant that the assessment was not framed within time is turned down in the light of the orders passed by the Excise and Taxation Commissioner, Punjab. Even otherwise the legislature by way of notification dated 15.12.2013 made an amendment in the Section 29 extending the period for framing the assessment from 3 years to 6 years. The said amendment was challenged before the Hon'ble Punjab and Haryana High Court in case of Amrit Banspat Company Vs ' State of Punjab. One of the plea raised by the petitioners in the Hon'ble High Court in case of Amrit Banaspati Company Ltd. and others V/s State of Punjab and others (2015) 52 PHT 46 (P & H) was that such amendment should have prospective effect but the Hon'ble High Court while turning down this plea held that the intention of legislature for bringing this amendment was to make it retrorespective in effect. Thus in the light of the observations made by the Hon'ble High Court in the above referred case conclusion is that the amendment has retrorespective effect. As such the appellant now cannot raise this plea that amendment has prospective effect. No other issue has been raised by the counsel for the appellant.

4. As an up short of the aforesaid discussion, the Tribunal holds that the assessment framed by the assessing authority was within time.

5. Resultantly, finding no merits in the appeal, the same is dismissed.

6. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 367 OF 2015

AGGARWAL INDUSTRIES
Vs
STATE OF PUNJAB

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

22nd December, 2015

HF ▶ Revenue

Compliance of condition of predeposit for entertainment of appeal is mandatory.

PREDEPOSIT – APPEAL – ENTERTAINMENT OF – DEMAND RAISED ON ACCOUNT OF WRONGLY CLAIMED INPUT TAX CREDIT SHOWING BOGUS PURCHASES AS ALLEGED – APPEAL FILED BEFORE TRIBUNAL CONTENDING ORDER TO BE VOID – WAIVER OF PREDEPOSIT PRAYED FOR – FINANCIAL HARDSHIP OF APPELLANT PLEADED – CONDITION OF PREDEPOSIT HELD TO BE MANDATORY – HUGE TURNOVER INDICATIVE OF CAPACITY TO PAY THE AMOUNT – APPEAL DISMISSED – *S. 62(5) OF THE PVAT ACT, 2005*

Facts

In the present case demand was raised due to wrong claim of input tax credit alleging that the purchases made by the appellant were bogus. First appeal was dismissed on account of failure of predeposit. An appeal is thus filed before Tribunal praying for waiver of predeposit contending that the assessment order is void and that the appellant is a poor person unable to pay the required amount.

Held:

The order cannot be said to be void or without jurisdiction. The provision of predeposit is mandatory. The appellant has a huge turnover and it can not be said that it cannot pay the tax. Thus, the appeal is dismissed.

Present: Mr. M.L. Garg, Advocate alongwith Mr. Hitesh Garg, Advocate counsel for the appellant.
Mrs. Sudeepti Sharma, Dy. Advocate General for the State.

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

1. This appeal is directed against the order dated 29.12.2014 passed by the First Appellate Authority, Patiala Division, Patiala dismissing the appeal for non compliance of Section 62 (5) of the Punjab Value Added Tax Act, 2005.

2. The case relates to the assessment year 2011-12. The annual statement was filed on time. When the case was taken up for scrutiny it was observed that as per computer data relating the assessment year 2011-12. The appellant has shown purchases from M/s AGM & Company, M/s Shree Kuber Industries and M/s Shree Bala Ji Rice Industries, but when it was compared with the data maintained by the aforesaid companies it came out that the purchases made from these companies were found to be false and as such the ITC claimed by the appellant was rejected and the demand to the tune of Rs. 19,10,433/- was created on 31.3.2014. The appeal against the said order was dismissed on 29.12.2014 U/s 62 (5) of the Act.

3. The main contention raised by the counsel for the appellant is that since order is null and void, therefore, relaxation with regard to deposit of the 25% of the additional demand could be made in his favour.

4. Having given my thoughtful consideration to the aforesaid contentions, it is observed that the provisions of Section 62 (5) of the PVAT Act are mandatory in nature and impose a condition upon the appellant to deposit the 25% of the additional demand if he wanted his appeal to be entertained and decided on merits. The order passed by the Assessing Officer, in the aforesaid cases, is neither void nor without jurisdiction so as to call for any relaxation, however, the legality of the order has to be seen later on, but the appellant has to make compliance of Section 62 (5) of the PVAT Act and rule 71 sub Rule (3) of the rules framed thereunder before the appeal is entertained.

5. Admittedly, in the aforesaid case the appellant has not deposited the amount in accordance with Section 62 (5) and Rule 71 (3) of the rules. Section 62 (5) of the Act reads as under:-

Section 62 (5) *No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of additional demand, penalty and interest, if any.*

EXPLANATION:- For the purposes of this sub-Section "additional demand" means any tax imposed as a result of any order passed under any of the provisions of this Act or the rules made thereunder or under the Central Sales Tax Act, 1956(Act No. 74 of 1956)."

Rule 71 reads as under:-

***Rule 71**:* *An appeal against every original order referred to in Section 62, Shall contain the following particulars and information namely:-*

(i) ______________________________

(ii) ______________________________

(iii) *Receipt for statutory payment of 25% of the amount, shall also be submitted with the memorandum of appeal.*

6. It may also be added that non compliance of section 62(5) of the Act would entail refusal to entertain the appeal. Similarly, on non compliance of rule 71 (3) of the Rules, the rule 72 would come into force which reads as under:-

1) If memorandum of appeal is not filed as per provisions of rule 71, the appeal shall not be entertained.

As such in the light of the aforesaid mandatory provisions of law the First Appellate Authority was justified in refusing to entertain the appeal for non compliance of the aforesaid provisions of law.

7. The other contention raised by the appellant in the appeal is that the provisions of Section 62 (5) of the Act and Rule 71 (3) of the Rules should not be read with mathematical precision and could be relaxed in an appropriate case. The appellant being poor person is unable to deposit such a huge amount, therefore the said provisions could be relaxed in his case. To the contrary, the State Counsel has opposed the arguments tooth and nail while contending that the appellant has a huge turn over and the appeal has been filed just to put off the tax liability.

8. The demand has been created after comparing the data as recorded in the returns with the data as taken up from the computer cardex, therefore, they can't be said to be void or without jurisdiction.

9. While examining the cases regarding inability to pay the tax, it comes out that the appellant has huge turn over therefore, they can't be said to be poor person unable to pay the tax.

10. Resultantly, without interfering into the orders passed by the First Appellate Authority, the appeal is dismissed, however, the appellant is provided two months time to deposit 25% of the additional demand. On doing so, the appeal shall be entertained and decided on merits.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 547 OF 2013

AMBIKA INDUSTRIES

Vs

STATE OF PUNJAB

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

7th December, 2015

HF ▶ Revenue

Admission by appellant and absence of GR and payment of CST concluded to be indicative of attempt to evade tax.

PENALTY – CHECK POST / ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – FICTITIOUS BILL – GOODS IN TRANSIT FROM H.P. TO PUNJAB REPORTED AT ICC – NO GR PRODUCED – INVOICE SHOWING CST CHARGED @4% - CONSIGNEE UNREGISTERED IN PUNJAB – BILL SUSPECTED TO BE FICTITIOUS – GOODS DETAINED – APPEARANCE PUT UP BY CONSIGNOR-APPELLANT INSTEAD OF CONSIGNEE ON ISSUE OF NOTICE – DISCREPANCY OF BILL ADMITTED - PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL – NON PRODUCTION OF GR – APPEARANCE BY CONSIGNOR INSTEAD OF CONSIGNEE -VAT PAID AT RATE PAYABLE IN H.P. BUT NO CST – ALL FACTORS INDICATIVE OF FICTITIOUS BILL AND CONSEQUENT ATTEMPT TO EVADE TAX - PENALTY UPHELD – *S. 51 OF PVAT ACT, 2005*

Facts
The vehicle carrying spanners were sent by appellant - consignor from Himachal Pradesh to Punjab. Three bills were produced but no GR was shown at the ICC. It was observed that in respect of one bill, CST @4% was charged as the respective buyer in Sunam had no TIN number under the PVAT Act as well as CST Act. Goods were detained suspecting the bill to be fictitious. The manger of the appellant firm voluntarily made a statement admitting the mistake and agreed to pay the penalty. Penalty was thus imposed u/s 51 of the Act. An appeal is filed before Tribunal.

Held:
Notice was issued to the consignee firm but the appellant appeared on its behalf during proceedings and admitted the guilt thereby creating suspicion regarding bill being fictitious. No CST was paid and only VAT at the rate payable in H.P. was charged. The Punjab consignee is admittedly unregistered. It is unlikely that a new dealer would purchase and import such huge sets of spanners. Also, no GR was produced. Thus a clear intention to evade tax is made out as per given circumstances. The appeal is thus dismissed.

Present: Mr. J.S. Bedi, Advocate counsel for the appellant.
Mr. Sukhdeep Singh Brar, Additional Advocate General for the State.

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

1. Assailed in this second appeal is the order dated 18.10.2012 passed by the First Appellate Authority, Jalandhar Division, Jalandhar dismissing the .appeal against the order dated 3.6.2011 passed by the Excise and Taxation Officer, Information Collection Centre, Nangal imposing a penalty of Rs.64,600/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.The appellant firm has been dealing in sale of hand tools in the State of Punjab.

2. On 2.6.2011 at about 4.00 P.M., the driver alongwith the goods vehicle No. PB-08Y-0678 loaded with hand tools (spanners) from Village Bathu, District Una (H), when reached ICC, Nangal (Ropar) presented the following documents:-

1. *Bill No.81, dated 31.5.2011 issued by M/s Ambika Industries, Village Bathu, District Una (H.P.) in favour of M/s Durga Hardware and Mill store, Lu Ihiana for Rs. 1,99,797/-.*
2. *Bill No.83, dated 2.6.2011 issued by M/s Ambikt: Industries, Village Bathu, District Una (H.P.) in favour of M/s House of tools, G.T. Road, Bathinda for Rs.71,196.90/-.*
3. *Bill No.84, dated 2.6.2011 issued by M/s Ambika Industries, Village Bathu, District Una (H.P.) in favour of M/s Faquir Chand and Sons, New Bazar, Sunam for Rs. 1,74,970.50/-*

3. On scrutiny, the driver failed to produce any GR inrespect of any transaction. During further examination, it came to light that the consigner party i.e. appellant had charged 1% CST in respect of transactions relating to bill NO. 81 and 83, whereas he had charged CST @ 4% from Sunam Dealer regarding the transaction bill No. 84, dated 2.6.2011, as the Sunam Dealer was unregistered dealer and had no Tin Number under the Punjab VAT Act as well as Central Sales Tax Act.

4. Suspecting the genuineness of the transaction qua bill No. 84 dated 2.6.2011, the goods were detained. When confronted qua the said bill and also GR relating the vehicle the appellant failed to explain the said discrepancies. However, Mr. Surinder Sharma, Manager of the appellant Firm voluntarily made a statement that he admits the mistake and was ready to face the penalty. The case was forwarded to designated officer who issued notice to the Sunam dealer i.e. Faquir Chand and Sons. The said notice was received by one Parveen Kumar, representative of the appellant firm, but Sh. Surinder Sharma appeared on behalf of the Sunam dealer also an admitted his guilt whereupon, the Excise and Taxation Officer-cum-Designated Officer vide his order dated 3.6.2011 imposed a penalty to the tune of Rs.64,600/- U/s 51 (7) (b) of the Act.

5. The appeal filed by the appellant was dismissed.

6. The counsel for the appellant has raised marathon arguments in order to assail the finding returned by the authorities below. While urging that the appellant is not at fault as he had sold the goods to three dealers out of whom two dealers were registered under the Central Sales Tax Act, therefore, on disclosure of the tin number, he charged tax @ 1% as admissible to the goods under the Central Sales Tax Act being the interstate transaction. M/s Faquir Chand and Sons, Sunam to whom the goods were sold under bill No.84, dated 2.6.2011 was an unregistered dealer, therefore, he charged full tax i.e. @ 4% therefore no liability could be held against the appellant.

7. To the contrary, Mr. Sukhdip Singh Brar, Addl. Advocate General, Punjab has submitted that the appellant has not come with dean hands. Had he been true to his version

then he having parted with the goods would not have come forward to get back the goods and in that case Faquir Chand and Sons would have been the aggrieved person. The appellant appears to have prepared a fictitious bill in the name of the said firm with intention to evade the tax. The appellant has also failed to produce the GR as such it can not be said that the goods were covered by the genuine documents.

8. Arguments heard. Record perused.

9. Admittedly the driver had presented three bills bearing numbers 81, 83 and 84 for sale and delivery of the goods from Village Bathu, District Una to State of Punjab. The state has not disputed the bill No. 81 and 83. However, a serious dispute has been raised qua bill No.84 dated 2.6.2011 consigned in favour of Sunam Dealer. The goods were 5330 sets of spanners. Though notice was issued against M/s Faquir Chand and Sons, Sunam, yet Mr. Surinder Sharma representing the appellant consigner did not allow Faquir Chand and Sons to appear and make clean breast of facts. Having perused the notice issued to the Sunam Firm the same, was received by the driver Parveen Kumar, but Surinder Sharma appeared on 3.6.2011 and admitted the guilt while making the categorical statement. The English translation of the statement of Sh. Surider Sharma reads as under:-

Sh. Surinder Sharma, Bathu, Sunam

> *"We were taking the goods from Bathu to Sunam under bill No. 84 dated 2.6.2011 against the purchase order. We did not mention the VAT Number of the Punjab Party on the bill because we had charged VAT @ 4% as prevalent in the Himachal Pradesh. Against the notice issued to Faquir Chand and sons, Sunam, the firm has not appeared. We had sold the goods therefore we want to get them released. As the bill is defective, we are ready to pay the penalty and on receipt of the penalty, our vehicle be released. I have heard the statement and signing the same.*
>
> *Sd/-*
> *Surinder Sharma*
> *3.6.2011"*

10. From the aforesaid statement of Sh. Surinder Sharma, it appears that actually he screened the said firm Faquir Chand and Sons by accenting the mistake. Other questions which creates suspicion is that whether the goods were being taken away on the basis of the fictitious bill for sale and whether such firm exists or not. However, from his statement it appears that though it was an interstate transaction, no CST was paid and only the VAT Es the rate payable in Himachal was charged. The Punjab consignee is admittedly unregistered and he has not bothered to appear to own the alleged transaction. The huge amount of spanners were being imported by unregistered person at Sunam. It is highly unlikely that a new dealer would purchase and import such huge sets of spanners, no GR has been produced which was also an essential document to be produced U/s 51 (1) of the Act. Thus a clear intention to evade the tax is made out in the given facts and circumstances of the case.

11. Resultantly, finding no merit in the appeal, the same is hereby dismissed.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 703 OF 2013

R.R. ENGINEERS
Vs
STATE OF PUNJAB

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

15th January, 2016

HF ▶ Dealer

Mere wrong disclosure of TIN cannot form the basis of penalty when the dealer has applied for it within a period of one month after the liability arose.

PENALTY – CHECK POST – ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – REGISTRATION CERTIFICATE - GOODS IN TRANSIT – INVOICE AND GR PRODUCED SHOWING WRONG TIN –REGISTRATION CERTIFICATE STOOD CANCELLED THREE YEARS AGO – GOODS DETAINED – R.C APPLIED FOR WITHIN A PERIOD OF ONE MONTH THEREAFTER - PENALTY LEVIED U/S 51- APPEAL BEFORE TRIBUNAL – R.C APPLIED FOR WITHIN THE TIME SPECIFIED AND OBTAINED WITHOUT ANY OBJECTION BEING RAISED REGARDING MISUSE OF TIN NUMBER – MENTIONING OF TIN WRONGLY APPEARED TO BE DUE TO BONAFIDE MISTAKE – THUS, MERE WRONGLY MENTIONED TIN NUMBER NOT TO FORM BASIS OF PENALTY – APPEAL ACCEPTED – *S. 51(7) AND S. 21 OF PVAT ACT, 2005*

Facts

The goods were in transit vide Invoice and GR dated for the year 2013. However, it was noticed that the R.C. of the appellant was cancelled in 2010 and that it had misused its TIN number for the current transaction. Though it was noticed that after detention of goods on 17.7.2013, R.C. was applied for by the appellant and duly granted by the department without any objection on 25.7.2013, penalty was imposed u/s 51. An appeal is filed before Tribunal.

Held:

Though the dealer had disclosed wrong TIN number, yet he applied for the R.C. u/s 21 of the Act within one month from the date the liability to pay tax arose against him. Mere non disclosure does not negate his right to apply for registration certificate within one month of arising of liability.

The department also did not raise any objection regarding misuse of TIN number or fake identity and granted the R.C. Under these circumstances the appellant having completed all formalities and having received TIN number, no penalty could be imposed for disclosure of wrong fact on invoice. It appears that the selling dealer mentioned the cancelled Tin number of appellant under bonafide mistake and without knowledge of appellant firm being unregistered. Therefore, penalty imposed is deleted. The appeal is accepted

Case relied upon:

- *M/s Shree Bhairav Hosiery Mills V. State of Punjab, decided on December 16, 2013*
- *M/s Chandra Industries v. The Punjab State and Others (XXIX) Sales Tax Cases at page 558*
- *M/s Orbit Traders Pvt. Ltd., Jalandhar v State of Punjab (2013) 45 PHT 511 (PVT)*

Present: Mr. Avneesh Jhingan, Advocate Counsel for the appellant.
Mrs. Sudeepti Sharma, Dy. Advocate General for the State.

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

1. The case relates to detention of the Tape Edge Machine being transported from the Delhi to Bathinda. The order imposing the penalty to the tune of Rs.76,500/- dated 1.8.2013 passed by the Designated Officer Sardulewala, District Mansa and was upheld by the First Appellate Authority, Ferozepur and Faridkot Division, Bathinda on 23.9.2013.

2. Brief facts of the case are that on 17/7/2013, the driver while transporting tape-edge machine in the vehicle No. FIR39A-1640 reached Information Collection Centre, Sardulewala and presented the following documents-

1. Invoice No. R-227, dated 16.7.2013 issued by M/s Senior Sewing Machine Co., New Delhi (Consignor) in favour of M/s R.R. Engineers, Power House Road, Bathinda (consignee) bearing TIN 03211003839 (for Rs.2,55,000/-).
2. G.R.No.1463, dated 16.7.2013 of Transport Co. M/s Haryana Roadways Corporation, Ghaziabad (UP).

3. On scrutiny of the documents, it was detected that the invoice was bearing Tin No. of the consignee firm as 03211003839 but the appellant was not allotted this Tin number, however, this Tin number was allotted to another firm having different partners run in the same name and style i.e. R.R.Engineers, Bathinda and the said R.C. was cancelled voluntarily on 28.2.2010. Finding that the-appellant had misused its cancelled number. Notice U/s 51 (6) (a) of the Punjab Value Added Tax Act, 2005 was issued by the Detaining Officer and the case was forwarded to the Designated Officer who also issued notice to the appellant, in response to which, Sh. Sandeep Kumar, Manager of firm appeared before the Designated officer and admitted that the goods were meant for trade and Tin number on the invoice was not correct. He failed to produce the account books of the firm or any other documents relating to the transaction. He also admitted that the firm is not registered under the Punjab VAT Act or CST Act, 1956. It was also noticed that the firm applied for new RC on 25.7.2013 which was allowed and Tin number was issued to the appellant firm. Taking note of the aforesaid circumstances and the fact that the appellant firm was operating on the basis of fake identity under the mendacious TIN number, the designated officer vide order dated 1.8.2013 imposed penalty to the tune of Rs.76,500/- upon the appellant.

4. It would be pertinent to mention here that the goods were detained on 17.7.2013, the appellant firm had applied for new Registration number on 25.7.2013 and he was granted registration certificate and was allotted new Tin number within time. It is also not in dispute that the Tin number earlier cancelled on 28.2.2010, though it was in the name of same firm name i.e. R.R. Engineers, Bathinda, but it had different partners meaning thereby, the firm was different. The Department did not raise any objection regarding misuse of the Tin number by the appellant at the time granting the new Tin number to the said Firm (appellant).

5. Notwithstanding the fact that the appellant had disclosed a wrong fact yet he applied for the registration certificate U/s 21 of the Act within one month from the date, the liability to

pay tax arose 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 disclosure of wrong Tin number may be due to the result of misunderstanding on the part of either of the ‘parties but that was not made the basis to deny the Tin number to the appellant. Even if it is treated that he had not applied for registration certificate till he was apprehended on 17.7.2013 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 For VAT-1 alongwith the receipt, in Form VAT-2, on a fee of rupees five hundred (Rs. Two thousand fee were substituted vide notification No.G.S.R.31/PA.8/2005/S.70.AMD(10/2007 w.e.f. July 26, 2007).*

6. 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.

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

8. 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."*

9. 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 sub-section (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 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."*

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

11. 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.

12. In case of M/s Orbit Traders Pvt. Ltd., Jalandhar v State of Punjab (2013) 45 PHT 511 (PVT) as under:-

> *"A meticulous perusal of Invoice No.2012005963, dated 27.6.2011 would reveal that the Central Sales Tax @ 2% has been charged in it and the 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 provision 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."*

13. Though the appellant firm was not registered in the Punjab at the time of detention of the goods 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 did not raise any such objection that since the Appellant was guilty of misuse of the Tin number and he was operating the business of fake identity and mendacious Tin number, therefore, can't be granted the Registration Certificate.

14. Under these circumstances, the appellant having completed all the formalities and having received Registration Number within time, no penalty could be imposed upon him for the reason that he had disclosed the wrong fact on the invoice. It appears that the Delhi, dealer wrongly mentioned the Tin number of the firm under the bonafide mistaken and without knowledge of the appellant firm being unregistered. Consequently, the penalty so imposed qua the same transaction which has already been accepted cannot be maintained.

15. Resultantly, the orders passed by the authorities below cannot stand to the scrutiny of law, as such, the same are liable to be quashed.

16. Eventually, I accept the appeal, set-aside the impugned order and quash the penalty order passed against him.

17. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

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REVISION NO. 4 OF 2015

DHRUV CHEMICALS & PHARMACEUTICALS
Vs
STATE OF PUNJAB

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

19th January,2016

HF ▶ Assessee

Revision of non-est assessment order cannot be made.

REVISION – ASSESSMENT – LIMITATION – ASSESSMENT YEAR 2005-06 – FRAMING OF ASSESSMENT IN YEAR 2011 – TAX LIABILITY DISCHARGED AS PER ORDER FRAMED WITHOUT CHALLENGING THE ORDER ON GROUNDS OF LIMITATION – REVISION OF THE SAID ORDER TAKEN UP – CONSEQUENTLY DEMAND RAISED AS PER REVISIONAL ORDER – APPEAL BEFORE TRIBUNAL- HELD: ORIGINAL ASSESSMENT ORDER WAS TIME BARRED IN VIEW OF S. 29(4-A) OF THE ACT – ASSESSMENT OUGHT TO HAVE BEEN FRAMED WITHIN A PERIOD OF THREE YEARS FOR THE PERIOD 2005-06 – REVISIONAL ORDER CANNOT VALIDATE A NON-EST ORDER- APPEAL ACCEPTED QUASHING THE REVISIONAL ORDER – *S. 29(4-A) AND S. 65 OF PVAT ACT, 2005*

Facts

Assessment for the year 2005-06 was framed vide order dated 2.8.2011. However, the appellant assessee did not challenge it as the demand was negligible. The Revisional authority issued a notice for revision of the assessment order in the year 2012. The appellant replied contending that the order could not be revised as no impropriety or illegality had been pointed out. The Revisional Authority revised it raising a demand. An appeal is thus filed before Tribunal contending that the original assessment order was time barred and thus could not be validated by passing revisional order.

Held:

As per S. 29(4-A) of the Act, assessment for the year 2005-06 could be framed within a period of three years, commencing from the 20th day of November, 2006.Despite amendment of S. 29(4) which extends the period of limitation upto six years, S. 29(4-A) overrides all provisions. In the absence of any extension of time, it could not be framed beyond 20.11.2009.Therefore, the order being non-est in the eyes of law, could not be revised by subsequent order. The appeal is accepted and revisional order is quashed.

Cases referred:

- *Bathinda Cooperative Milk Producers' Federation Vs State of Punjab*

- *Amrit Banaspati Limited Vs. State of Punjab & Others (2015) 52 PHT 46*
- *Excise & Taxation Commissioner Vs. K.K.K.Mills Ltd. Punjab VAT Revision No. 2 of 2011*

Present: Mr. K. L. Goyal, Sr. Advocate alongwith Mr. Navdeep Monga, Advocate Counsel for the revisionist.
Mr. Manjit Singh Naryal, Additional Advocate General for the State

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

1. The order sought to be revised is dated 23.4 2013 revising the assessment for the year 2005-06 regarding which the original assessment was framed on 2.8,2011 by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, Roopnagar, The challenge made by the petitioner in this case is that neither the assessment for the year 2005-06 could be framed beyond 20.11,2009 nor this time barred order dated 2.8.2011, framing the assessment being nonest, could be revised by the Assistant Excise and Taxation Commissioner, Roopnagar.

2. Brief facts of the case are that the petitioner is engaged in the trading of chemicals which are procured solely From Punjab Alkalies and Chemicals Ltd, (PACL) located at Nangal. The said unit was exempted from payment of tax during the assessment year 2005-06. As per notified conditions dated 6.4.2005, the purchases made from an exempted unit are eligible for Notional Input Tax Credit @ 4% and the said amount is adjustable towards the output tax liability of the taxable person who purchases the same. The Notional Input Tax Credit is available on the purchase value of the goods for which no refund has been provided under the Act.

3. The dealer had filed its returns for the year 2005-06 showing a gross turnover of Rs.10, 12,40,126/-, After adjusting the sale returns of Rs.47,26,450/- against the said amount, the out put tax liability came out to be Rs.40,49,845/- which had been discharged by way of the Input Tax Credit to the tune of Rs.38,83,434/- and cash payment of Rs. 1,67,842/-, The said returns tiled by the petitioner were accepted and an assessment order dated 2.8,2011 was passed by the Excise and Taxation Officer-cum-Designated Officer, Since there was negligible demand, the petitioner did not deem it appropriate to challenge the same.

4. The aforesaid case of the petitioner was taken up for revision by the Assistant Excise and Taxation Commissioner, Ropar who issued a notice dated 28.7.2012 U/s 65 in response to which it was replied that the impropriety and illegality in the notice issued by the Assistant Excise and Taxation Commissioner was in the following words:-

> *"Taxable turnover has not been rightly assessed for assessment of out put tax."*

5. The said notice issued after the expiry the period of 5 years was in valid in the light of the judgment of Hon'ble Supreme Court in the case of Bathinda Cooperative Milk Producers' Federation Vs State of Punjab.

6. The petitioner also submitted that there was no short payment of tax in any manner. The petitioner also pointed out that the show cause notice issued in this regard is bereft of any proper reasoning as no specific reason has been assigned pointing out the illegality or impropriety in the order which is sme-qua non for the Initiation of revisional proceedings.

7. During the revisional proceedings, the petitioner was informed by the Ld. Assistant Excise and Taxation Commissioner that the purchases made by the firm are to the tune of Rs. 10,59,05,457/- whereas the gross sales are to the tune of Rs. 10,59,72,567/- and after deducting the trade value is lesser then the purchase value, thus the petitioner had earned a gross profit of Rs,40,08,515/- as per Trading Account and that needs to he explained. Accordingly, the

Revisional Authority framed the revised the assessment to the tune of Rs.4,22,830/-.

8. While assailing the impugned order the counsel for the petitioner, while referring to Section 29 (4-A) of the Act, has raised preliminary issue of limitation while urging as under:-

(i) According to the proviso (4-A) of Section 29 of the Punjab VAT Act, the assessment for the year 2005-06 could not be framed beyond 20.11.2009 irrespective of the amendment dated 15.11.2013, as such, this order passed on 2.8.2011 was clearly time barred.

(ii) The time barred order dated 2.8.2011 being nonest could not be validated by passing the Revisional order dated 23.4.2013.

9. To the contrary, the respondent has taken the plea that in the light of the amendment dated 15.11,2013. The assessment could be finalized upto 20.11.2012. Thus, the assessment having been framed on 2.8.2011 is within the limitation. The said amendment has been upheld by the Hon'ble Punjab and Haryana High Court in the case of M/s Amrit Banaspati Limited Vs. State of Punjab & Others (2015) 52 PHT 46, decided on 7.8.2015.

10. Having heard the rival contentions and having gone through the provisions of law, I find merit in the contentions raised by the Counsel for the appellant The case relates to the assessment year 2005-06 initially, the time limit for framing the assessment as provided U/s 29 (4) of the Act was within three years from the date, when the annual statement is filed. However, the said time of three years could be extended upto six years. Thereafter, Section 29 (4) of the Act was amended w.e.f. 15.11.2013 whereby, the period of three years limitation for framing the assessment was extended to six years, However, Sub Section (4-A) which was inserted by the Punjab VAT Act (Third Amendment) Ordinance of 2010 (Punjab Ordinance No. 5 of 2010) as published vide Department of Legal and Legislature Affairs Notification dated 11.6.2010 was allowed to remain on the statue book which provides that the time limit for framing the assessment for the year 2005-06 would continue to be three years, therefore, irrespective of the change of limitation period for other assessment years, the limitation for the assessment year 2005-06 remained three years. Sub Section (4-A) of 29 reads as under

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

11. The said provision regarding framing of the assessment for the year 2005-06 still exists on the statue book, therefore, it over rides ail other provisions of Section 29 (4) of the Act regarding framing of the assessment. This provision became subject of discussion before the Hon'ble Punjab & Haryana High Court in number of cases and the same was up held. As such the assessment for the year 2005-06, in the absence of any extension of time by the Competent Authority, could not be framed beyond 20.11.2009, therefore, the order dated 2.8.2011 framing the assessment becomes nonest in the eye of law, therefore, the same could not be revised by the subsequent order dated 23.4,2013. Similar observations were made in case of the Excise & Taxation Commissioner Vs. K.K.K.Mills Ltd. Punjab VAT Revision No. 2 of 2011 wherein, it was observed as under:-

5. "According to Section 11 (3) of the PGST Act, the Assessing of three years from the last date prescribed for furnishing the last return in respect of any period. In the facts of the present case the last date for filing of return for the assessment year 2001-02 was 30.4.2002 and the assessment could be framed upto 30.4.2005, It is not disputed that the assessing authority framed the assessment on 9.4.2007 which was beyond the period of limitation. Once that was so, the assessment order

> *was void and without jurisdiction. The recourse to revisional proceedings by the Excise and Taxation Commissioner after the expiry of more than five years, which were initiated on 8.9.2008, was thus, bad in law. The decision of the Tribunal is in consonance with the provisions of the statute."*

12. Resultantly, the impugned order is bound to be quashed on this short ground.

13. Consequently, this appeal is accepted, impugned order dated 23.4,2013 stands quashed.

14. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

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MISC. (REC.) NO. 118, 119-120 OF 2002-03

NAKODAR COOPERATIVE SUGAR MILLS LTD

Vs

STATE OF PUNJAB

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

15th January, 2016

HF ▶ Revenue

No rectification or reference application admissible where issues stand settled by the courts.

RECTIFICATION – PURCHASE TAX – SUGARCANE – PACKING MATERIAL – GUNNY BAGS – ASSESSMENT -LIMITATION – DEALER HELD LIABLE TO PAY PURCHASE TAX ON SUGARCANE AND TAX ON SALE OF GUNNY BAGS – ORDER UPHELD BY TRIBUNAL – RECTIFICATION APPLICATION FILED – ISSUES STAND SETTLED BY SUPREME COURT JUDGMENT – SPECIFIC ENTRY FOR SALE OF PACKING MATERIAL IN SCHEDULE 'A' – ASSESSMENT ORDER PASSED WITHIN LIMITATION – NO RECTIFICATION REQUIRED – *S. 4(1), S. 11(3) , S.4-B , ITEM NO VII CATEGORY IV OF SCHEDULE A OF PGST ACT, 1948*

REFERENCE – QUESTIONS OF LAW – ASSESSEE HELD LIABLE TO PAY PURCHASE TAX ON SUGARCANE PURCHASED FROM FARMERS – ALSO HELD LIABLE TO PAY TAX ON GUNNY BAGS SOLD WITH SUGAR – ASSESSMENT HELD TO BE FRAMED WITHIN LIMITATION – QUESTIONS OF LAW RAISED ALREADY STAND SETTLED – NO QUESTION OF LAW ARISES – REFERENCE REJECTED – *SECTION 22 OF PGST ACT, 1948*

The appellant, a cooperative sugar mill, purchased sugarcane from farmers during the relevant years. The purchase tax was deposited in respect of sugarcane on the amount fixed by Central government without paying tax on the element of price which was paid under directions of state government. Tax was also paid on the value of gunny bags used for packing of sugar. Assessment was framed for the years 1995-96 , 1996-97 & 1997-98 on 19/3/2001 .

Appeals were filed against the assessment order which were dismissed holding that assessment was within limitation. On further appeal before Tribunal, assessments were held to be within limitation but the assessment orders were modified in view of the judgment of state of Tamil Nadu and others v/s Kothari Sugar Mills and Chemical Ltd. (1996) 101 STC 197.

The assessee moved applications for rectification on the ground that no tax was payable on the value of gunny bags as sugar was exempted from sales tax. It was further pleaded that the issue of limitation has not been dealt with by tribunal and therefore order needs rectification.

Simultaneously, application for reference were also filed for referring certain questions of law to the High court.

Since the main dispute with regard to payment of purchase tax on sugarcane has been settled by Supreme court, the rectification applications are of no consequence. So it's also settled that the value of sugarcane would be determined on the full price of sugarcane which is reflected in the balance sheet including the price as fixed by state government in addition to price fixed by Central government. Further, order dated 18/7/2002 was challenged by the petitioner alongwith other petitions before the High court and the High Court had held that state government is entitled to recover purchase tax on the purchase of sugarcane from farmers. Order of Tribunal is just and proper on the facts and therefore no rectification was required. Further, there is no agreement that sugar included price of bags. Moreover, packing material is specifically taxable as per item No VII category IV of schedule A appended to PGST Act and therefore, it would amount to sale of bardana with sugar especially when 'C' forms have also been used for purchase of gunny bags.

Further, the assessment orders were passed after undergoing the long process, therefore, the same cannot be said to be beyond limitation.

Since no rectification is required, consequently, no question of law arises out of the order. The question of law raised by assessee already stands settled and thus reference applications are liable to be dismissed.

Cases referred:

- *State of Tamil Nadu and others Vs Kothari Sugars & Chemicals Ltd. (1996) 101-STC-197*
- *Budhewal Co-Op. Sugar Mills Ltd. Vs. State of Punjab (2001) 15-PHT-337*
- *The Doaba Co-Op. Sugar Mills Ltd. Vs. State of Punjab(2001) 17-PHT-221*
- *Jagatjit Distilling and Allied Industries Ltd. Vs. Punjab State (1978) 42-STC-233*
- *Ram Dass Rice & General Mills Vs. State of Punjab (1995) Recent Tax Cases-404*
- *P.S. Jain Motor Co. Vs. State of Punjab (1992) 84-STC-177*
- *Hero Cycle Ltd. Vs. State of Punjab (1993) 99-STC-611*
- *Nakodar Cooperative Sugar Mills Vs State of Punjab CWP No.1587 of 2003*
- *Jagatjit Sugar Mills Ltd., Vs State of Punjab and another 1995 (1) SCC-67*
- *Commissioner, Trade Tax, U.P., Lakhnow versus Sarshadi Lal Enterprises (P) Ltd. (2006) 148 STC 78 (Allahabad).*
- *State of Punjab and another versus M/s Shree Ram Panels (2012) 42 PHT 326 (P & H).*
- *Punjab Breweries Ltd., Ludhiana versus State of Punjab (1998) 12 PHT 351 (P & H).*

Present: Mr. G.R.Sethi, Advocate and Mr. Varun Chadha, Advocate counsel for the appellant.
Mr. Amit Chaudhary, Addl. Advocate General for the State.

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

1.This order of mine shall dispose off six connected appeals No. of 2002-03 and (Ref.) No. 108,109,110 of 2002-03 filed by Nakodar Cooperative Sugar Mills Ltd., Mehatpur Road, Nakodar, Jalandhar. Three Misc. rectification applications as well as three Misc. references were filed qua the order dated 18 July, 2002 passed by he Presiding Officer, Sales Tax Tribunal in appeal Nos 166 to 168 of 2001-02.

2. The factual back ground which lead to the filing of applications is as under :-

Misc. (Rect.) No. 118, 119 and 120 of 2002-03

3. The appellant being a Cooperative Society has been engaged in the manufacturing of Sugar by purchasing the sugarcane from the farmers during the assessment year 1995-96, 1996-97 and 1997-98. The quarterly returns were filed through which the appellant had

deposited the purchase tax in respect of the sugarcane on the entire taxable amount (including the amount) paid under the directions of the State Govt, and also on statutory price of sugarcane fixed by the Central Government under the Sugarcane Control Order. It has been alleged by the petitioner that actually the statutory price was fixed by the Central Government under the Sugarcane Control Order over which the purchase tax could be recovered and no purchase tax could be recovered on the amount paid by the State Government.

4. The petitioner also deposited the sale tax on the value of the gunny bags used for packing of sugar whereas no sale of gunny bags was made and no consideration was charged for the gunny bags, therefore no sale tax could be recovered. On 19.3.2001, it was further alleged that the assessment was framed U/s 11 (3) of the Act which was beyond jurisdiction being without limitation.

5. The assessment was framed against which the appeal filed by the appellant was also dismissed by the First Appellate Authority on 21.9.2001 while holding that the assessment was within limitation.

6. On filing of the second appeal, the Tribunal vide order dated 18.7.2002 upheld the orders passed by the authorities and observed that the assessment was within limitation, however, the Tribunal modified the orders in the light of the judgments delivered in case of State of Tamil Nadu and others Vs Kothari Sugars & Chemicals Ltd. (1996) 101-STC-197 which was followed by the Hon'ble Sales Tax Tribunal in case of Budhewal Co-Op. Sugar Mills Ltd. Vs. State of Punjab (2001) 15-PHT-337 and The Doaba Co-Op. Sugar Mills Ltd. Vs. State of Punjab(2001) 17-PHT-221.

7. The petitioner now has applied for rectification of the judgment passed by the Tribunal on the following grounds:-

> *The order requires modification of the order to the effect that the order passed by the First Appellate Authority is against the following judgment of the Hon'ble Supreme Court of India and High Court of the State of Punjab and Haryana:-*
>
> i. *Jagatjit Distilling and Allied Industries Ltd. Vs. Punjab State (1978) 42-STC-233*
> ii. *Ram Dass Rice & General Mills Vs. State of Punjab (1995) Recent Tax Cases-404*
> iii. *P.S. Jain Motor Co. Vs. State of Punjab (1992) 84-STC-177*
> iv. *Hero Cycle Ltd. Vs. State of Punjab (1993) 99-STC-611*

8. It was also contended that since the appellant was selling the gunny bags therefore no sale tax was exigible on the established value of gunny bags and no sale tax could be recovered on the gunny bags as the sugar was exempted from the sale tax. Thirdly, the issue regarding limitation was not dealt with by Hon'ble Tribunal, therefore, it is a mistake apparent on the record.

Misc. (Ref.) No.108, 109 & 110 of 2002-03

9. The following questions of law have been raised for making reference of the same to the Hon'ble High Court for disposal:-

(i) *Whether the sales tax appellant Tribunal is competent to go into the matters, not raised in appeal and could suo-moto modify and reverse a part of the order passed by the appellate authority in favour of the assessee when there was no cross appeal by the Revenue Department?*

(ii) In case the answer to the above question (i) is in affirmative then on the facts and circumstances of the case, whether amount advanced/paid to

the farmers under the orders of the State Government formed part of the consideration and purchase turnover so as to impose purchase tax in respect of sugarcane?

(iv) *Whether on the facts and in the circumstances of the case, the assessing authority was competent to pass the assessment order on 19.3.2001 for the year 1995-96/1996-97 under section 11 of the Act and the assessment order was not barred by time limitation and thus without jurisdiction?*

(v) *On the facts and in the circumstances of the case, whether sales tax is leviable on the estimated value of Gunny bags when sugar a tax free item was sold duly bagged in conformity with the standers prescribed for sugar packing?*

(vi) *Whether the Tribunal was bound to adjudicate all the objections raised in the grounds of appeal?*

Arguments heard. Record perused.

10. Since all the three references No. 108,109, and 110 of 2002-03, and the three rectification applications involve the similar facts and arise out of the common order dated 18.7.2002 passed by the Sales Tax Tribunal, Punjab in appeal No. 166 to 168 of the 2001-02. As decided by the Sale Tax Tribunal, Punjab on 18.7.2002, therefore, these are decided together.

11. As regards the rectification applications, three issues were raised by the appellant but at the very out set, counsel for the appellant has stated that he does not press the first two points in the light of the settled law of land in case of Jagatjit Sugar Mills (Supra). However, he now presses for the other two points. Having examined the matter, actually these rectification applications are of no consequence because the main dispute as alleged in para No. 6 of the order passed by the Tribunal was regarding the admissibility of purchase tax which has been settled by the Supreme Court and through judgments passed by the Hon'ble High Court regarding the price over which the purchase tax could be imposed. It is well settled by now that the value of the sugarcane would be determined on the full price of sugarcane which is reflected in their balance sheet. Actually the price as fixed by the State Government in addition to the price as fixed by the Central Government would be treated as the purchase price over which the purchase tax could be imposed. Further more, the order dated 18.7.2002 was passed by the Sales Tax Tribunal, Punjab against the petitioner which was challenged by 52 petitioners including the present petitioners by way of filing a civil writ petition No.9019 of 2005 decided on 20.1.2010 before the Hon'ble High Court. The name of writ petitioner also figures in the list appended to CWP No.1587 of 2003 (M/s Nakodar Cooperative Sugar Mills Vs State of Punjab). In this writ petition the similar issues were raised and the case was decided on the basis of the judgment delivered in case of Jagatjit Sugar Mills Ltd., Vs State of Punjab and another 1995 (1) SCC-67 by holding that state of Punjab was authorized to recover the purchase tax on the purchase price of the sugarcane from the farmers. Regarding the purchase price, it has been held that it would include the price as fixed by Central Govt, as well as the extra amount whatever is paid by the State Govt, if any, over and above, the price as fixed by the Central Govt. Since the hot issue before the Tribunal at the time of passing the judgment on 18.7.2002 stood decided by the Supreme Court, therefore the Tribunal decided the case on the basis of the said judgment. Since the Tribunal has passed just and proper order on the facts and circumstances of the case therefore no further rectification was required.

12. Now coming to the other question of charging Sale Tax on Bardana, the petitioner has placed reliance on the following judgments:-

1. *Commissioner, Trade Tax, U.P., Lakhnow versus Sarshadi Lal Enterprises (P) Ltd. (2006) 148 STC 78 (Allahabad).*
2. *State of Punjab and another versus M/s Shree Ram Panels (2012) 42 THT 326 (P & H).*
3. *Punjab Breweries Ltd., Ludhiana versus State of Punjab (1998) 12 THT 351 (P & H).*

13. Having gone through the judgments same are not applicable to the facts of present of case. In this case, the case of the appellant was that he was recovering the price of the bag along with the sugar, he never charged the price of the bag and the sugar includes the price of the bag. The case of Shree Ram Panels is under Section 51(7) (c) of the Punjab Value Added Tax Act, 2005 and it has nothing to do with the payment of tax on the Bardana. In the case of Punjab Breweries Ltd. (supra) the agreement with the petitioners and licensee involved sale of bottled beer in sealed bottles. This means that bottles were sold alongwith beer. In these circumstances, it was held that there can be no justification to charge tax on the bottles at a rate higher then what is charged on the goods packed. In the present case, there is no dispute with regard to the tax and there is no such agreement that the sugar includes the price of the bags. The act specifically provides for the charging of the Sale Tax on Bardana. The Schedule 'A', Category-IV, Item No. VII appended to the Punjab General Sales Tax Act is reproduced as under:-

7. *"Packing materials i.e. gunny bags, HDPE bags and packs, corruguated and wooden boxes, plastic and tin containers including barrels, cardboards boxes, thermocoal packs used for packing only".*

14. The goods were for resale as having been purchased on the basis of the "C" Forms. "C". Forms also disclose that the goods were for resale. It is not disputed that there was no further manufacture or processing of these, commodities as such Bardana supplied with sugar, its price being reflected in the price of sugar tantamount to the sale of Bardana. Further Bardana is taxable at first stage in view of the notification No. SO 27, dated 27.6.1987. Since the appellant was the first seller of Bardana in the State of Punjab and this Bardana was not to go under taxation at some later stage. Certainly, it is exigible to tax even though it was supplied alongwith sugar reflecting the price of the Bardana in the price of the sugar.

15. In these circumstances, the Bardana was rightly taxed by the respondents. Now coming to the question of limitation, the counsel for the appellant, at the very outset, has not disputed that the assessment orders were passed after undergoing the long process, therefore, the same can't be said to beyond limitation.

16. Since no rectification was required, consequently, no question of law arises out of the order. In any case having gone through the questions of law as raised by the appellant in the applications, it may be observed that the said questions stand already settled and the Tribunal was competent to pass any just and an appropriate order as per arguments raised by the appellant and the State respectively and also in the light of the law settled by the Apex Court. The relief, which has been ignored would be treated as not granted. All the arguments were not required to be mentioned at the second appellate stage, consequently, all the reference applications also have no merit.

17. Resultantly, all the three misc. rectification applications as well as the reference applications are dismissed.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 239 OF 2011

HCL INFO-SYSTEMS LTD.
Vs
STATE OF PUNJAB

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

26th November, 2015

HF ▶ Partly revenue and partly assessee

Tax liability of the dealer is accepted in modified form on the basis of report of designated officer.

ASSESSMENT – SALE TAX LIABILITY – LACK OF EVIDENCE – MERGER OF SISTER CONCERN WITH OWN FIRM – NIL RETURNS FILED WITH RESPECT TO SISTER CONCERN – ICC DATA REFLECTED TRANSACTIONS BY SISTER CONCERN EVEN AFTER MERGER CONTRARILY – DEMAND RAISED AS NO PROOF SHOWN BY APPELLANT TO AVAIL BENEFIT BASED ON ICC TRANSACTIONS – APPEAL FILED BEFORE TRIBUNAL - OFFICER DIRECTED TO PRODUCE REPORT AFTER VERIFYING MATERIAL SUPPLIED BY APPELLANT – SUBSEQUENTLY, APPELLANT WILLING TO PAY OUTSTANDING TAX AS PER REPORT – TAX LIABILITY BEING UNDISPUTED BY EITHER PARTIES, APPEAL IS ACCEPTED – *SECTION 29 OF PVAT ACT, 2005*

Facts
The appellant merged its sister concern into its own firm. A demand was raised on assessment for the year 2007-08 on account of nil returns being filed even though the ICC data showed transaction by the sister concern even after merger. There was no proof shown by appellant to avail benefit on the basis of ICC transactions. On appeal, the designated officer was directed to frame assessment afresh. However, on demand still being raised an appeal is filed before Tribunal.

Held:
A report showing fresh demand has been produced prepared by the Designated Officer on the direction of Tribunal after verifying the material supplied by the appellant. The appellant has raised no objection against the report. In fact he is willing to pay the tax as outstanding against him as per the report. Thus, tax liability being assessed and undisputed by either parties, this appeal is partly accepted and appellant is directed to pay the tax as per the report.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith Mr. Navdeep Monga, Advocate Counsel for the appellant.
Mr. N.D.S. Mann, Addl. Advocate General for the State.

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

1. This order of mine shall dispose off appeal No. 239 of 201 /against the order dated 18.7.2011 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala (herein referred as First Appellate Authority) dismissing the appeal against the order dated 29.10.2010 passed by the Excise and Taxation Officer-cum-Designated Officer, Mohali creating additional demand to the tune of Rs.25,40,412/-under the Punjab Value Added Tax Act, 2005.

2. The factual matrix of the case is that the original assessment U/s 29 of the Act ibid was framed by the Excise and Taxation Officer-cum- Designated Officer, Mohali for the assessment year 2007-08 on 18.8.2009 by creating an additional demand of Rs.1,12,38,993/-. The appellant filed the appeal, whereupon,the First Appellate Authority, vide order dated 27.1.2010, while setting side the order, directed the Designated Officer to frame assessment afresh.

3. The factual background of the case is that the appellant deals in trading of Mobile hand sets and its accessories. The appellant has another sister concern namely M/s HCL Info-Systems Ltd. M/s HCL Infinet Ltd. was merged in M/s HCL Info System Ltd. However, even after the merger, M/s HCL Infinet Ltd. continued to conduct the business. The appellant filed the annual statement in form VAT 20 but as per ICC data the dealer was still conducting his business even after merger of firm w.e.f.20.3.2007. As such figures of the sales have been taken for the purpose of assessment as reflected in ICC data and on remand of the case, assessment was framed while creating additional demand of Rs.25,40,412/-.

4. Aggrieved against this order, the appellant filed the appeal before the First Appellate Authority. First Appellate Authority observed as under:-

> *"Accordingly net amount of Rs.7,24,88,173/- out of total gross turnover was settled by accepting the plea of the appellant and further deducted from the gross turnover. But the dealer has failed to convince the Designated Officer regarding exports made by the dealer amounting to Rs. 1,77,82,127/- and a turnover of Rs.2,11,70,097/-. The turnover of Rs.2,11,70,097/- contains the entries of Rs.66,43,808/- which pertain to the value of material received by distributors for replacement, Rs. 97,12,363/- material received for promotional schemes and Rs.48,13,656/-on account of import. In respect of import, the appellant argued that out of this, an import amounting to Rs. 11,78,659/- relates to M/s HCL Info-Systems Ltd. In respect of all these three elements containing the figures of Rs.66,43,808/-, Rs.97,12,363/- and Rs.48,13,656/-, the appellant had failed to produce the documentary evidence before the Designated Officer. As such there is no alternative except to disallow these figures after confronting the dealer as no supportive documents were produced."*

5. On request of the Ld. Counsel for the appellant that he was ready to supply the material documents to prove the discrepancies as shown In the turnover. My predecessor had directed the Excise and Taxation Officer-cum- Designated Officer, Mohali to submit the necessary report after verifying from the material supplied by the appellant.

6. In the light of the directions issued by the VAT Tribunal, Punjab, Shinee Singh, Excise and Taxation Commissioner, Mohali has submitted the report. No objection, has been filed against the report by the counsel for the appellant rather he has stated at bar that the appellant would comply with the report and pay the tax as out standing against him as per the report. The conclusions drawn in the report submitted by the Shinee Singh are detailed as under:-

Appeal No.	Year	Total amount of sale	Amount verified	Amount not verified	Tentative tax @ 4%	Tentative penalty u/s 9(2) read alongwith Section 56	Total due
239/2011	2007-08	8,88,44,614	8,88,32,130	12,484	500	1000	1500

Since the aforesaid reports are not in dispute and the state has also agreed to accept the tax liability as per report made by Shinee Singh therefore the tax liability of the appellant for the year 2007-08 is assessed at Rs. 1500/- only.

Resultantly, this appeal is partly accepted, the impugned orders are set-aside and the appellant is directed to pay the tax as per the report given by the Shinee Singh for the year 2007-08.

Pronounced in the open court.

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TAX COLLECTION POINT TO BE SHIFTED

CHANDIGARH: Aiming to reduce traffic congestion, the tax collection point on the Zirakpur-Chandigarh road will be shifted. A statement to this effect was made before the Punjab and Haryana High Court today by the Punjab Government.

Additional Advocate-General, Punjab, Rajender Goyal submitted an affidavit stating that the state government has initiated the process of acquiring three kanals of land on the rear side of the existing tax collection point.

The highway will be free from long queues of trucks after the shifting of tax collection point. The affidavit came in connection with a case involving traffic congestion. The development is significant as tax collection point on the main highway in near the entry to Chandigarh.

The affidavit was submitted before a special Bench headed by Justice Rajive Bhalla. The additional advocate-general also told the High Court that Punjab government has closed around 20 illegal access points on the highway.

Courtesy: The Tribune
5th February, 2016

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TAX EVASION DETECTED, RS 35 LAKH RECOVERED

PANCHKULA: The Excise and Taxation Department, Panchkula, conducted a raid on the premises of M/s Recorder and Medicare Systems Private Limited. The company has been evading taxes for the last two years on the grounds of being a sick unit. However, during inspection it was found that the company was involved in regular business and various irregularities were also detected by the inspecting team. Certain documents were also taken in possession by the officials for further investigations.

The company paid cheques worth Rs 35 lakhs to the Excise and Taxation Department towards the payment of the taxes evaded by it.

In the recent past, the department has also conducted inspections at M/s New Light and Electrical, Sector 15, Panchkula and M/S Karigarz. Cheques worth Rs 12 lakh and 15.5 lakh, respectively, were taken in lieu of tax evaded.

RK Chaudhary said, “The department is keeping vigilant eye on the tax evaders and it is likely that more inspections will be conducted.”

Courtesy: The Tribune
5th February, 2016

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MC PROPOSES ENTRY TAX ON OUTSTATION VEHICLES

CHANDIGARH: UT Adviser Vijay Kumar Dev asked the Chandigarh Municipal Corporation in the recently held coordination meeting to explore revenue generation sources, the Municipal Corporation today proposed to impose entry tax on the entry of outstation four-wheelers on the pattern of Delhi.

The issue was discussed in the meeting of Finance and Contract Committee (F&CC) of the Chandigarh Municipal Corporation today.

Giving details about the proposal, Mayor Arun Sood said in the meeting it was decided to conduct a study to impose entry tax on the entry of four wheelers in the city. The MC officials will prepare a report stating entry fee and expected revenue generation. Soon the report will be compiled and the same will be placed before the MC General House for final approval, he said.

Mayor said the amount collected from the entry tax, will be used for construction of more cycle tracks and to maintain the greenery of city beautiful.

Mayor said there was need to impose such taxes as it will not only increase revenue but also help the UT Administration and the Municipal Corporation to keep the environment clean.

Recently, Chandigarh was left behind in the race of Smart Cities because the city's revenue generation was not at par with the parameters of a smart city. The new move will not burden the city residents.

Being the capital of Punjab and Haryana, large number of vehicles enter city daily. Governments of Punjab and Haryana functions from Chandigarh as all major departments of both the governments are here.

Courtesy: The Tribune
5th February, 2016

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MYSTERY LETTER 'EXPOSES' TAX EVASION RACKET

LUDHIANA: A mystery letter claiming the involvement of excise and taxation officers and businessmen in a tax evasion racket running in crores has surfaced in the excise and taxation department. Though the department hasn't launched an investigation over the charges levied in the letter, it has rattled officers posted at Sardulgarh, Rama Mandi and Dabwali border. The letter says the scam is in full swing in these areas.

The letter, which surfaced last month, was forwarded to TOI by a department insider. He claimed that prima facie, it seemed to have been written by an officer of the department as it carried in-depth details like names and TIN numbers of firms allegedly involved in the scam. It also mentions items whose billing is done by the firms to evade tax.

But it doesn't mention names of officers involved. Though senior officers of the department are tightlipped on the issue, they said no inquiry is going on. The letter claimed that some traders have set up offices near state borders. They purchase huge quantities of refined oil, sugar, pulses and mustard oil from other states but pay no taxes as they are hand in glove with officers posted on the department's barriers.

Copies of the letter have been sent by the anonymous sender to the chief minister, deputy chief minister, financial commissioner taxation (FCT), excise and taxation commissioner (ETC) and others.

Amrit Lal Jain, president of Punjab Pradesh Beopar Mandal, to whom the letter was also sent, said, "I was shocked to receive the letter at my home address. It came by registered post and in the sender details, name and wrong particulars of an excise and taxation officer were mentioned."

Courtesy: The Times of India
6th February, 2016

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TRUCKERS HARASSED AT BALONGI BARRIER

MOHALI: Truck and tempo drivers transporting products out of the state were a harassed lot at the Balongi sales tax barrier here today.

Drivers and cleaners of the vehicles, about 30 in number, had to wait for more than 12 hours to cross the barrier as the server was said to be down at the barrier.

All requests to the staff at the counter about making manual entries of the vehicles fell on deaf ears. Miffed over the long wait and the alleged 'improper' behaviour of the staff, the drivers blocked the traffic on the highway. Following this, the staff started recording entries on a register.

Aman, who was transporting products from Ludhiana, said he reached the counter at around 7.45 am. "Around 12 hours have passed but they are not allowing us to go. They are also not listening to our requests of completing the formality manually," he said. — TNS

Courtesy: The Tribune
9th February, 2016

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PUNJAB DECLARES RETIRED ETO PERSONA NON GRATA

CHANDIGARH: Irked over the conduct of a recently retired excise and taxation officer (ETO), the Punjab government has declared the officer as persona non grata (a person who is not welcome in a particular place because of something he has said or done).

The green signal to the decision, the first of its kind in government circles. was formally given by deputy chief minister Sukhbir Singh Badal. also the minister for excise and taxation. The department infamous for facilitating tax leakages and rampant corruption at different levels. Government sources say Naresh Chander Sharma. even after retiring in July last year, was a frequent visitor to excise and taxation offices across the state.

However, prompt action was initiated against the ETO after the matter was brought to the notice of then

financial commissioner taxation, Anurag Agarwal, who in January last week was posted as principal secretary, social security and development of women and children.

“It has come to the notice of the government that Naresh Chander Sharma. excise and taxation officer (retd), has been influencing the work of the department. He is declared persona non grata in the department.” reads the Punjab government letter marked to the excise and taxation commissioner (ETC), all additional/joint/ deputy/assistant ETOs and ETOs posted across the state.

Besides, the government has directed all top-, middle and lower-rung officials of the department that they “should not entertain' Sharma. “In case he comes to their office, the matter should be immediately reported to the higher authority,” the communique said.

The letter issued last month under the signature and seal of the special secretary, excise and taxation, directed the officers “also to upload (the order) on the website of the department” specifically pointing out that the order was being issued “as per the directions of the competent authority”.

Sources say the ETO had been slapped a chargesheet in a separate case.

Courtesy: The Hindustan Times
10th February, 2016