Issue 15

1 August 2016

"The wisdom of man never yet contrived a system of taxation that would operate with perfect equality."

– Andrew Jackson

NOMINAL INDEX

PUBLIC NOTICE AND NOTIFICATION

NEWS OF YOUR INTEREST

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News From Court Rooms

KARNATAKA HC : Karnataka VAT : Petitioner represented his mother's business known as 'J' in capacity of power of attorney holder. Assessing Authority on failure of 'J' to pay tax dues directed bank of petitioner to attach account of petitioner and transfer balance of amount lying in his account to department and bank did so, as per Contract Act, capacity of petitioner was as that of agent and principal was his mother and for act of agent, principal may be held responsible, but for liability of principal, agent cannot be made responsible. ***(M.S. Jagadeesh Kumar – June 21, 2016)***.

CESTAT, HYDERABAD: CENVAT Credit : Works contract services availed for Modernisation, Renovation or Repairs of Factory/Premises are eligible for CENVAT credit. However, said services meant for construction of building or laying foundation for capital goods, are ineligible for credit. ***(Mahindra & Mahindra Ltd – May 25, 2016)***.

MADRAS HC : TN VAT : Demand of VAT on higher turnover shown in the Income Tax Return is not valid as the morality and intention of an assessee does not enter into the field of adjudication in taxing law and that if an assessee can, by a process, which is acceptable in law, avoid or evade taxation, he can do so. ***(Sai Petro Products – June 14, 2016)***.

DELHI HC: Delhi High Court in its latest judgment has quashed default assessment notice and directed refund with interest to be credited in the account of the dealer by 12 August. It has been further directed that i) VATO to show cause as to why interest be not deducted from his salary ii) why remarks in his ACR be not made and he be not entrusted with such responsibility in future iiii) Commissioner VAT also to file compliance affidavit iv) Cost of Rs. 20000 also imposed on the Department ***(Viown Mettube P. Ltd.) W.P. (C)1282/2016***.

CESTAT, CHENNAI : Service Tax : Excess tax paid in a month/quarter can be adjusted against any of the subsequent months/quarters (i.e., even beyond next month/quarter) and for this purpose, word 'month/quarter' in Rule 6(4A) of Service Tax Rules, 1994 would include 'months/quarters'. ***(Schwing Stetter India (P.) Ltd. – June 3, 2016)***.

GUJARAT HC - The buying dealer should not be punished for believing upon the certificate issued by Government. If the registrations of selling dealers are cancelled retrospectively the buying dealer should not be punished for that. Also the copies of documents & affidavits obtained by the department need to be supplied to dealer for cross examination & opportunity to rebut the same should be given to the dealer. ***(State of Gujarat Vs. Modi Oil Industries - STR No.2/2001 Dt:-01/07/2016)***

MADRAS HC: TN VAT : The Registration Certificates of the suppliers of the assessee have been cancelled with retrospective effect. The respondent has demanded for reversal of ITC on purchases made from such suppliers. Even though the assessee produced invoices and payment proofs, the impugned orders have been passed in violation of principles of natural justice as the respondent has proceeded to complete the assessment on totally different grounds than what was mentioned in the pre-revision notice. Demand set aside. ***(S.S. Bullion – July 1, 2016)***.

CALCUTTA HC: Service Tax : Since Rule 5A(2) of Service Tax Rules, 1994 empowering demand of documents is declared ultra vires by Hon'ble Delhi High Court in Mega Cabs (P.) Ltd. v. Union of India, gaining access to any premises under Rule 5A(1) may not serve any purpose and further, Rule 5A(1) is prima facie ultra vires Section 82; therefore, department was restrained from taking recourse to Rule 5A(1) or 5A(2), with liberty to proceed

under section 82. ***(Magma HDI General Insurance Company Ltd. – July 14, 2016)***.

CESTAT, HYDERABAD : Central Excise : In case of clearance of paints under "Composite Supply and Apply Contracts of manufacturing paint and applying painting at customer's site", paint must be valued at 'Contract Price less labour charges' under Rule 11 and not at 110 per cent of cost under Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. ***(Coromandel Paints Ltd. – May 18, 2016.)***

SC : Service Tax : While appealing against Tribunal order declining condonation of delay (CoD), assessee must enclose a copy of 'CoD application filed before Tribunal' in appeal papers before High Court. if that is not done, then, High Court may dismiss assessee's appeal for failure to file vital documents. ***(North Star Shipping Services P Ltd. – July 1, 2016)***.

T AND AP HC : Telangana VAT : Blocking TIN of the petitioner-company from accessing the facility of the website for way-bills, etc., by the respondents-authorities, even if any tax is due from the petitioner is not the proper way to recover the tax***. (Kumar's Metallurgical Corporation Ltd. – March 4, 2016)***.

CESTAT, HYDERABAD: Service Tax : The Show Cause Notice issued beyond the period of one year from the date of acquiring knowledge is barred by limitation. As there is no allegation in the SCN that appellant caused delay in furnishing information or did not co-operate with the investigation/inquiry, the findings of the Commissioner(Appeals) that the details furnished was insufficient to compute liability is based on mere assumptions. Demand set aside. ***(Marva Treads – June 16, 2016)***.

CESTAT, BANGALORE : Service Tax : Where assessee paid excess amount of service tax on account of applying higher rate of taxation and subsequently it adjusted this excess payment during later payments of service tax, in view of provisions of Rule 6 of Service Tax Rules, 1994 adjustment of excess payment of service tax was admissible to assessee. ***(Dell India P Ltd. – December 1, 2015)***.

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SUBJECT INDEX

SERVICE TAX – PRE-DEPOSIT – DEMAND RAISED BY REVENUE – TRIBUNAL DIRECTED A DEPOSIT OF RS. 1.50 CRORE AS PRE-CONDITION FOR HEARING THE APPEAL ASSESSEE CLAIMED TO HAVE DEPOSITED AMOUNT – TRIBUNAL FOUND THAT APPELLANT WAS UNABLE TO LINK THE RECEIPTS PRODUCED SHOWING DEPOSIT OF AMOUNT WITH THE AMOUNT CLAIMED TO HAVE BEEN PAID – IN THE TOTALITY OF THE FACTS AND CIRCUMSTANCES, THE ADDITIONAL DEPOSIT OF RS. 25 LACS ORDERED FOR ENTERTAINMENT OF APPEAL ON MERITS – PERIOD OF SIX WEEKS GRANTED – APPEAL DISPOSED OF. - AHLUWALIA CONTRACTS(L) LTD. VS COMMISSIONER OF CENTRAL EXCISE 17

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 8656 OF 2015

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STATE OF MADHYA PRADESH
Vs
MARICO INDUSTRIES LTD.

DIPAK MISRA AND PRAFULLA C. PANT, JJ.

22nd July, 2016

HF ▶ Assessee

'Mediker' being a drug and not a Shampoo and 'Revive Instant Starch' not being a chemical, are not liable for Entry Tax.

ENTRIES IN SCHEDULE – MEDIKER – WHETHER SHAMPOO OR A DRUG – ENTRY TAX LEVIED ON SHAMPOO – MEDIKER IS USED FOR THE TREATMENT OF LICE – SHAMPOOING IS ONLY A METHOD OF APPLICATION – ITEM BEING SOLD UNDER A LICENCE GRANTED BY DRUG AUTHORITY – HAS MEDICINAL EFFECT - NOT A SHAMPOO BUT A MEDICINE – ENTRY TAX NOT LEVIABLE.

ENTRIES IN SCHEDULE – REVIVE INSTANT STARCH – CHEMICALS – ENTRY TAX LEVIABLE ON CHEMICALS – STARCH MANUFACTURED BY USING TAPIOCA ROOTS – STARCH USED FOR WASHING THE CLOTHES – COMMON PARLANCE TEST TO BE APPLIED – NO EVIDENCE LED BY REVENUE TO ESTABLISH THAT STARCH IS A CHEMICAL – HELD NOT TO BE CHEMICAL – ENTRY TAX NOT LEVIABLE.

Facts
The petitioner is a manufacturer of inter-aliatwo products, viz. Mediker and Revive Instant Starch. Entry Tax is leviable under the Act on, amongst others, shampoos and chemicals. Department imposed the tax on the said items by putting them in the aforesaid categories respectively. Writ Petition was filed to challenge the aforesaid order passed by Addl. Commissioner and the High Court came to a conclusion that Mediker is basically a medicinal product and starch being not meant for sale but used in production of other articles, could not have been made amenable to Entry Tax. It was also held that starch is not a chemical. Assailing this order, the Revenue filed appeal before the Supreme Court.

Held:
Mediker is being sold under a Drug Licence under the Drugs and Cosmetics Act, 1940 and is used for the treatment of lice. The period of treatment is 4 weeks and shampooing is only a method to apply the medicine. Mediker is used for anti-lice treatment and is a drug because of

its medicinal affect. Once it is a drug, it cannot be a shampoo. As a natural corollary, it will not invite the liability of levy of Entry Tax.

Insofar as Revive Instant Starch is concerned, the same is used as a washing material and the Revenue has treated the same in the category of Chemicals' without even bringing any evidence in this regard on record. Burden of proof is on the taxing authorities to show that particular goods or item in question is taxable in the manner claimed by them. In the common parlance, the item in question is not regarded as a chemical or a bleaching powder. If the very substance of product would have a chemical composition, then only it would become a chemical within the meaning of Entry 55. If the Revenue wanted to establish the item as a chemical, it was obligatory on its part to adduce the evidence. Since no evidence has been brought on record by the Revenue, it can be safely concluded that it is not a chemical.

Appeals being devoid of merit, are accordingly. Dismissed.

Cases referred:

- *Deputy Commissioner v. G.S. Pai (1980) 1 SCC 142*
- *United Offset Process Pvt. Ltd. v. Asst. Collector of Customs, Bombay & Ors (1989) Supp. 1 SCC 131.*
- *Sunny Industries Pvt. Ltd. v. Collector of Central Excise, Calcutta (2003) 4 SCC 280*
- *Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited (2009) 12 SCC 419*
- *Shree Baidyanath Ayurved Bhavan Ltd. v. CCE (1996) 9 SCC 402*
- *Puma Ayurvedic Herbal (P) Ltd. v. CCE (2006) 3 SCC 266*
- *CCE v. Richardson Hindustan Ltd. (2004) 9 SCC 156*
- *Collector of Central Excise v. Pharmasia (P) Ltd. 1990 (47) E.L.T. 658 (Tribunal)*
- *Collector of Central Excise, Hyderabad v. M/s Pharmsia Pvt. Ltd. 1996 (83) ELTA 178 (SC)*
- *Sujanil Chemo Industries v. Commissioner of C. Ex. & Cus., Pune 2005(181) ELT 206 (SC)*
- *Commissioner of Central Excise v. Wockhardt Life Sciences Limited (2012) 5 SCC 585*
- *Union of India v. Garware Nylons Ltd. (1996) 10 SCC 413*

Present: For Appellant(s) Mr. C. D. Singh, Advocate
Ms. Sakshi Kakkar, Advocate
For Respondent(s) Mr. S. K. Bagaria, Sr. Advocate
Mr. Mahesh Agarwal, Advocate
Mr. Abhinav Agrawal, Advocate
Ms. Devika Mohan, Advocate
For Mr. E. C. Agrawala, Advocate

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DIPAK MISRA, J.

1. In this appeal, by special leave, the State of Madhya Pradesh and its functionaries have called in question the legal acceptability of the judgment and order dated 19.08.2013 passed by the Division Bench of High Court of Madhya Pradesh, Indore Bench in W.P. No. 1198 of 2004 whereby the order dated 05.01.2004 passed by the Additional Commissioner, Commercial Tax in Review case No.80/03/Ind/Entry Tax imposing entry tax on the products, namely, Mediker and Starch (Revive) after declining to entertain the stance of the assessee that "Mediker" being a drug Starch (Revive) being not a chemical, are not liable to levy of entry tax under the Madhya Pradesh Entry Tax Act, 1976, (for short "the E.T. Act"), has been dislodged and both the products have been held not to be within the ambit of entry tax.

2. The facts giving rise to the present appeal are the respondent is a manufacturer of hair oil, edible oil, Mediker and Starch (Revive) and other products and is a registered dealer under the Madhya Pradesh Commercial Tax Act, 1994, as well as a dealer under the E.T. Act.

The Assistant Commissioner, Commissioner Tax Division II, Indore vide order dated 28.04.2003 imposed entry tax on Mediker treating it as a hair shampoo and "Revive Instant Starch" as a chemical; and as the tax was not paid, interest and penalty were also levied. Being grieved by the aforesaid order the respondent-company preferred Review case No. 80/2003 before the Additional Commissioner, Commercial Tax, Indore. It was contended before the said authority that the entry tax imposed on the assessee on Mediker, which is meant for anti-lice treatment, was illegal being not permissible under any of the entries mentioned in Schedule II of the E.T. Act and there was no material on record to treat starch as a chemical. It was also urged that Mediker is a medicine and hence, it did not attract entry tax. The said submissions were repelled and tax was imposed and on that basis penalty and interest were also levied. Aggrieved by the order passed by the Additional Commissioner, Commercial Tax, Indore, the assessee approached the High Court in Writ Petition No. 1198 of 2004 and the Division Bench referring to the charging Section and the Entries, came to hold that Mediker is basically a medicinal product and starch being not meant for sale but used in production of other articles, could not have been made amenable to entry tax, more so, in the absence of its mention in the Schedule. It was also held that starch is not a chemical.

3. Criticising the order passed by the High Court, Mr. C.D. Singh, learned counsel appearing for the State would contend that Mediker, in common parlance, is considered as shampoo and not as a medicine because it is nowhere mentioned in the label of the product that after removal of the lice, it cannot be used again or cannot be used as other shampoos for hair wash. Relying on the decision in ***Deputy Commissioner v. G.S. Pai (1980) 1 SCC 142*** learned counsel for the State would contend that while interpreting entries in sales tax legislation, it is to be borne in mind that the words used in the entries must not be construed in any technical sense nor from a scientific point of view. They should be understood in their popular sense and in the sense which the people conversant with the subject matter with which the statute is dealing, would attribute to it. For the said purpose, learned counsel has also drawn inspiration from ***United Offset Process Pvt. Ltd. v. Asst. Collector of Customs, Bombay & Ors (1989) Supp. 1 SCC 131.*** Submission of Mr. Singh is that just because the product contains D-Phenothrin EP and is used for treating lice, it cannot be termed as medicament in view of the principles stated in ***Sunny Industries Pvt. Ltd. v. Collector of Central Excise, Calcutta (2003) 4 SCC 280***. According to the learned counsel for the State, Mediker is a kind of shampoo and hence, it is covered under Schedule II of the E.T. Act which incorporates the heading "shampoo of all variant and forms". As far as the Revive starch is concerned, it is urged by Mr. Singh that it is a chemical covered by Entry 55 of Schedule II and consequently it is chargeable to entry tax.

4. Mr. Bagaria, learned senior counsel appearing for the assessee, in his turn, would argue that Mediker is a product meant for curing hair lice infection in hairs and the product is marketed as "Mediker anti-lice treatment". It is urged by him that Mediker anti-lice treatment is manufactured after obtaining the drug licence under the Drugs and Cosmetics Act, 1940 (for short, "the 1940 Act") wherein it has been classified as a drug falling under Section 3(b) of the 1940 Act. It is contended by him that that "Mediker anti-lice treatment" satisfies the definition of the drug and after due scrutiny, the drug control authorities have granted licence for the said product as a drug. Mr. Bagaria would submit that period of treatment is four weeks and shampooing is only a method to apply the medicine. In essence, the submission of learned senior counsel is that the medium cannot determine the nature of the product. He has commended us to certain authorities of this Court as well as CESTAT which have been approved by this Court to bolster his stand, and we shall refer to them at the appropriate stage. It is canvassed by him that it is the admitted position that drugs are not covered under the E.T. Act and do not find any mention either in the Schedule I or Schedule II and are not liable to levy of entry tax. Incrementing the submission learned senior counsel would contend that the

revenue has charged entry tax under Entry 32 of Schedule II which really relates to different cosmetics, depilatories, etc. and hair shampoo is one of such items, but "Mediker anti-lice treatment" is not a hair shampoo but is a medicine/drug. As far as the Revive instant starch is concerned, learned senior counsel has propounded that starch is manufactured by using the Tapioca roots and even on the packets, it is clearly mentioned Revive instant starch and, therefore, by no stretch of imagination it can be treated as a chemical to be covered under Schedule II of the Act. He has also addressed us with regard to the burden of proof which rests on the revenue when it intends to classify a product differently than that as claimed by the assessee and according to him, it has not been discharged in the case at hand.

5. Section 3 of the E.T. Act deals with incidence of taxation. Section 3(1)(a) reads as follows:-

> *"There shall be levied an entry tax:*
>
> *(a) on the entry in the course of business of a dealer of goods specified in Schedule II, into each local area for consumption, use or sale therein; and*
>
> *(b) ……."*

6. In the case at hand, we are concerned with certain entries in Schedule II. Entry 32 which has been sought to be used to justify the imposition of entry tax on Mediker, reads as follows:-

> *"Scents, perfumes, hair tonics, hair cream, hair shampoo, depilatories and cosmetics including face creams, snows, lipstics, rougue and nail polish"*

7. As noted earlier, submission of Mr. Singh, learned counsel for the revenue is that the Mediker is nothing but a hair shampoo and, therefore, it squarely falls under Entry 32. Learned counsel appearing for the assessee has controverted the same on many an aspect. The High Court, as the impugned order would show, has returned certain findings which are to the effect that Mediker contains active Permethrin which is used to paralyse the insect lice, thereby killing it; that Mediker is basically a medicinal product, since the skin (cuticulam) of the louse is similar to the structure of human nail it has first to be made porous so that the active ingredient can penetrate and enter the louse and paralyse it; that for the purpose of treatment a wetting agent is needed and this wetting agent is the surface active agent used in Mediker; that the surface agent is nothing but a medium to convey the active ingredient on to the louse; and that the period of treatment is four weeks and the product is not used generally for washing the hair.

8. We shall presently consider the authorities cited at the Bar to appreciate the actual background. In ***G.S. Pai*** (supra), the Court was considering what meaning is to be placed on "Bullion and Specie" in the light of the provisions of the Kerala General Sales Tax Act, 1963. In that context, the Court observed that:-

> *"... Now there is one cardinal rule of interpretation which has always to be borne in mind while interpreting entries in sales tax legislation and it is that the words used in the entries must be construed not in any technical sense nor from the scientific point of view but as understood in common parlance. We must give the words used by the legislature their popular- sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". The word "bullion" must, therefore, be interpreted according to ordinary parlance and must be given a meaning which people conversant with this commodity would ascribe to it. Now it is obvious that "bullion" in its popular sense cannot include ornaments or other articles of gold. "Bullion" according to its plain ordinary meaning means gold or silver in*

> *the mass. It connotes gold or silver regarded as raw material and it may be either in the form of raw gold or silver or ingots or bars of gold or silver. ..."*

Learned counsel for the State has heavily relied on the said passage. It is well settled in law that ratio of a judgment is to be appreciated in the factual backdrop of the case. In the said case, as we find, the factual background was absolutely different and, therefore, we have no hesitation in holding that the said authority remotely does not assist the revenue for buttressing the contention that Mediker is a shampoo.

9. In ***Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited (2009) 12 SCC 419 [Shree Baidyanath Ayurved Bhavan Limited-II]*** the issue pertained to classification of "Dant Manjan Lal" (DML) manufactured by M/s Baidyanath Ayurved Bhavan Limited. The Court took note of the earlier decision in ***Shree Baidyanath Ayurved Bhavan Ltd. v. CCE (1996) 9 SCC 402 [Shree Baidyanath Ayurved Bhavan Ltd.-I]*** wherein it had been held that DML was not known as an ayurvedic medicine and the finding of the tribunal that DML was toilet requisite was upheld. During the pendency of the appeals before this Court, the Central Excise Tariff Act, 1985 was enacted which replaced the Schedule to the Central Excise and Salt Act, 1944. The 1985 Act, as the Court noticed, dealt with pharmaceutical products and there was a Sub- Heading 3003.30 which provided for no excise duty leviable on medicaments, including those used in ayurvedic, unani, siddha, homeopathic or bio-chemic system. The Court also noticed that in 1987 the First Schedule to the 1940 Act was amended and the book Ayurveda Sara Samgraha was included therein. On 25.09.1991, the Central Board of Excise and Customs issued a circular in respect of DML and advised its classification as an ayurvedic medicine. But the said circular was withdrawn after the decision in ***Shree Baidyanath Ayurved Bhavan Ltd.-I (supra)***. The assessee approached the Board regard being had to the amendment to decide the classification of the product. Thereafter the dispute arose with regard to the classification. Mr. Singh has drawn our attention to paragraph 46 of the decision in ***Shree Baidyanath Ayurved Bhavan Limited-II (supra)*** to emphasise on the common parlance test. We think it appropriate to reproduce the entire paragraph:-

> *"As a matter of fact, this Court has consistently applied common parlance test as one of the well-recognised tests to find out whether the product falls under Chapter 30 or Chapter 33. In a recent decision in Puma Ayurvedic Herbal (P) Ltd. v. CCE (2006) 3 SCC 266 this Court observed that in order to determine whether a product is a cosmetic or medicament, a twin test (common parlance test being one of them) has found favour with the courts. This is what this Court observed: (SCC pp. 269-70, para 2)*
>
> *"2. ... In order to determine whether a product is a cosmetic or a medicament a twin test has found favour with the courts. The test has approval of this Court also vide CCE v. Richardson Hindustan Ltd. (2004) 9 SCC 156 There is no dispute about this as even the Revenue accepts that the test is determinative for the issue involved. The tests are:*
>
> *I. Whether the item is commonly understood as a medicament which is called the common parlance test. For this test it will have to be seen whether in common parlance the item is accepted as a medicament. If a product falls in the category of medicament it will not be an item of common use. A user will use it only for treating a particular ailment and will stop its use after the ailment is cured. The approach of the consumer towards the product is very material. One may buy any of the ordinary soaps available in the market. But if one has a skin problem, he may have to buy a medicated soap. Such a soap will not be an ordinary cosmetic. It will be medicament falling in Chapter 30 of the Tariff Act.*

II. Are the ingredients used in the product mentioned in the authoritative textbooks on ayurveda?"

The two-Judge Bench agreed with the view taken in ***Puma Ayurvedic Herbal (P) Ltd. (supra)*** and applied the common parlance test and accepted the submissions of the revenue.

10. There can be no dispute over the proposition of law laid down in the aforesaid authority. The thrust of the matter is how the courts have treated a particular product for the purpose of classification under the excise law and what status is to be given. The issue of anti-lice treatment arose in ***Collector of Central Excise v. Pharmasia (P) Ltd. 1990 (47) E.L.T. 658 (Tribunal)***. The tribunal reproduced the label appearing on every bottle of Mediker. The label is reproduced below:-

"Mediker

ANTI-LICE TREATMENT

DIRECTION FOR USE

Shampoo hair with one capful of Mediker, Massage scalp for 3 minutes Rinse, Repeat. This usually eliminates Lice. For best results repeat shampooing 2 days later.

WARNING

The product is toxic if swallowed. Store far from food and drinking water. Keep away from children and pets. If it gets into the eyes wash affected area immediately with clean water

COMPOSITION

D-Phenothrin EP 0.23% W/V

Triclosan E.P. 0.05% W/V base q.s.

MEDIKER is the registered trade mark of Richardson - Vicks Inc.

Manufactured by

PROCTER & GAMBLE INDIA LIMITED BOMBAY 400011

Licenced Users of the Trademark

Contents 45ml Mfg. Lic No. 526/A/AP

Retail price not to exceed Rs. 9.60

(Local Tax extra)

FOR EXTERNAL USE ONLY

MADE IN INDIA

Expiry date 2 years from the date of Mfg. Batch No. 8969 Date of Mfg. 12/88."

11. The tribunal, as the judgment would show, analysed many an aspect and opined that:-

"17. Considering the arguments advanced before us, we are convinced that a person infested with lice does not get relief by merely washing his or her hair with water or various types of shampoo which are available in the market. The life and habits of the louse seem to call for more drastic steps in orders to get rid of the lice. On the label it is claimed that if the hair is shampooed with Mediker and left for 3 minutes and the process is repeated, lice are eliminated.

> *The label also shows that Madiker consists of D-Phenothrin and other ingredients. The penetrating power of D- Phenothrin whereby it paralyses the lice was established before us during the course of hearing. The label itself immediately after the name of the product (Mediker) mentions "anti-lice treatment". These show that "Mediker" is a special product made for the treatment of lice. The submissions made by the learned Advocate that the anti-lice treatment is not subsidiary to the cosmetic function but is in the main function is borne out by the details given in the label and the explanations placed before us."*

12. The tribunal posed a question: Can Mediker cure and prevent a disease? On the basis of material on record, the tribunal came to hold thus:-

> *"20. ... Our perusal of these documents shows that the infestation of lice on the head causes several diseases and a product which is to treat such diseases has to be considered to be a medicament. Merck Index of Chemicals and Drugs, Biological, Tenth Edition describes D-phenothrin, its various isomers and its use as insecticides. Extra pharmacopea (Martindale) also mentions phenothrin as being used in drugs as insecticides. In this connection we find that the certificate from the Drug Control Administration, Government of Andhra Pradesh dated 22-6-1987 is relevant. The following extract supports the case of the respondents :*
>
> > *"As D-phenothrin is used on human body for topical use and has medicinal properties on scalp for antilice treatment as per the Notification from Drugs Controller, India bearing No. 15-95/80-DC, dated 2-1-1982 D- phenothrin is to be considered as a drug under the Drug and Cosmetic Act, 1940."*
>
> *21. A disease may affect the outside or inside of a person's body. Causes for diseases may vary; these can be micro-macro organism, insects, worms, bacteria, etc. Any preparation containing active ingredients to remove the root causes, whether they are used for internal consumption or external application has to be considered as a medicament. Therefore, we conclude that Mediker is a medicament. We further observe that the medicinal use of the product is not its subsidiary function but is the only function."*

Be it noted, the order passed by the tribunal was assailed in Civil Appeal No. 3220 of 1990 and this Court had dismissed the Civil Appeal in ***Collector of Central Excise, Hyderabad v. M/s Pharmsia Pvt. Ltd. 1996 (83) ELTA 178 (SC)]***

13. In ***Sujanil Chemo Industries v. Commissioner of C. Ex. & Cus., Pune 2005(181) ELT 206 (SC)*** a three-Judge Bench of this Court approved the decision of the tribunal by holding thus:-

> *"6. In this case it has fairly not been denied that the only use of the product is for killing lice in human hair. We are unable to accept the submission that killing lice does not amount to a therapeutic or prophylactic use. Any medicine or substance which treats disease or is a palliative or curative is therapeutic. Licel cures the infection or infestation of lice in human hair. It is thus therapeutic. It is also prophylactic inasmuch as it prevents disease which will follow from infestation of lice. Thus, this is a product which is used for therapeutic and prophylactic purposes. It would thus be a Medicament within the meaning of the term "Medicament" in Note 2 of Chapter 30. It therefore gets excluded from Chapter 38.*

> *7. This view has also been taken by us in the case of ICPA Health Products (P) Ltd. v. Commissioner of C. Ex., Vadodara reported in 2004 (167) ELT 20. We are also in agreement with the opinion expressed by the Tribunal in Pharmasia's case (supra) wherein in respect of an identical product it has been set out that such product would fall under Chapter 30 under Tariff Heading 30.03."*

14. In ***Puma Ayurvedic Herbal (P) Ltd.*** (supra) the distinction between "medicament" and "cosmetic" was highlighted in the following words:-

> *"It will be seen from the above definition of "cosmetic" that the cosmetic products are meant to improve appearance of a person, that is, they enhance beauty, whereas a medicinal product or a medicament is meant to treat some medical condition. It may happen that while treating a particular medical problem, after the problem is cured, the appearance of the person concerned may improve. What is to be seen is the primary use of the product. To illustrate, a particular Ayurvedic product may be used for treating baldness. Baldness is a medical problem. By use of the product if a person is able to grow hair on his head, his ailment of baldness is cured and the person's appearance may improve. The product used for the purpose cannot be described as cosmetic simply because it has ultimately led to improvement in the appearance of the person. The primary role of the product was to grow hair on his head and cure his baldness."*

15. In ***Commissioner of Central Excise v. Wockhardt Life Sciences Limited (2012) 5 SCC 585*** the Court treated the two products, namely, povidone iodine cleansing solution USP and wokadine surgical scrub as medicaments after appreciating the facts that the products are used by the surgeons for the purpose of cleaning or degerming their hands and scrubbing the surface of the skin of the patient before that portion is operated upon. Thereafter the Court observed thus:-

> *"The purpose is to prevent the infection or disease. Therefore, the product in question can be safely classified as a "medicament" which would fall under Chapter Sub-Heading 3003 which is a specific entry and not under Chapter Sub-Heading 3402.90 which is a residuary entry."*

16. The aforesaid analysis makes it absolutely clear that Mediker which is used for anti-lice treatment is a drug because of its medicinal affect. This position has been accepted by this Court. Once it is a drug, it cannot be a shampoo. As a natural corollary, it will not invite the liability of levy of entry tax.

17. The second product is Revive instant starch. The revenue claimed it to be a chemical. An endeavour has been made to put it under Entry 55 Schedule II. Entry 55 Schedule II reads as follows:-

> *"55. All kinds of chemicals and acids, sulpher and bleaching power."*

18. The stand of the assessee before the authorities was that it is not a chemical. It is not sold or used for that purpose. It is a starch manufactured by using Tapioca roots. The revenue, per contra, without any material brought on record, put it in the category of a chemical. In ***Union of India v. Garware Nylons Ltd. (1996) 10 SCC 413*** it has been held that the burden of proof is on the taxing authorities to show that the particular case or item in question is taxable in the manner claimed by them. Elucidating further, the Court has held that there should be material to enter appropriate finding in that regard and the material may be either oral or documents and it is for the taxing authority to lay evidence in that behalf even before the first adjudicating authority. Revive instant starch is used while washing the clothes. In common

parlance it is not regarded and treated as a chemical or a bleaching powder. If the very substance or product would have a chemical composition, then only it would make the said substance a chemical within the meaning of Entry 55. Needless to say, the purpose and use are to be taken note of. Common parlance test has to be applied. If the revenue desired to establish it as a chemical, it was obligatory on its part to adduce the evidence. As is manifest, no evidence has been brought on record by the revenue that it is a chemical. Therefore, it can safely be concluded that it is not a chemical.

19. In view of the aforesaid analysis, the inevitable conclusion is that the appeal is devoid of any substance and deserves to be dismissed and, accordingly, we so direct. However, in the facts and circumstances of the case, there shall be no order as to costs.

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PUNJAB & HARYANA HIGH COURT

STA NO. 36 OF 2015

AHLUWALIA CONTRACTS(L) LTD.
Vs
COMMISSIONER OF CENTRAL EXCISE

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

25th July, 2016

HF ▶ None

Assessee directed to deposit a further sum of Rs. 25.00 lacs as a pre-condition for hearing of appeal.

SERVICE TAX – PRE-DEPOSIT – DEMAND RAISED BY REVENUE – TRIBUNAL DIRECTED A DEPOSIT OF RS. 1.50 CRORE AS PRE-CONDITION FOR HEARING THE APPEAL ASSESSEE CLAIMED TO HAVE DEPOSITED AMOUNT – TRIBUNAL FOUND THAT APPELLANT WAS UNABLE TO LINK THE RECEIPTS PRODUCED SHOWING DEPOSIT OF AMOUNT WITH THE AMOUNT CLAIMED TO HAVE BEEN PAID – IN THE TOTALITY OF THE FACTS AND CIRCUMSTANCES, THE ADDITIONAL DEPOSIT OF RS. 25 LACS ORDERED FOR ENTERTAINMENT OF APPEAL ON MERITS – PERIOD OF SIX WEEKS GRANTED – APPEAL DISPOSED OF.

A demand was raised against the assessee on the ground that it had recovered a sum of Rs. 1,41,91,440/- towards Service Tax but had deposited a sum of Rs. 71,57,079/- leaving a balance of Rs. 70,34,261/- to be paid. The assessee contended that even said amount had been deposited but Tribunal observed that appellant was unable to link receipts produced showing deposit of the amount with the amount claimed to have been paid. A direction was issued for deposit of Rs. 1.50 crores as pre-condition for hearing the appeal – On appeal before the High court, it was observed that in the totality of facts and circumstances the order of Tribunal be modified to the extent that appeal filed by assessee be entertained on merits on an additional deposit of Rs. 25 lacs. A period of six weeks is granted for doing the needful. Appeal disposed of.

Cases referred:

- *Commissioner of Central Excise and Customs. Kerala vs. M/s Larsen and Toubro Ltd.. 2015(39) STR 913*

Present: Mr. Jagmohan Bansal, Advocate for the appellant.
Mr. Tajender K. Joshi, Advocate for the respondent.

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RAJESH BINDAL, J.

1. The issue raised in the present appeal against the order passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short 'the Tribunal') is regarding pre-deposit

of the amount for the purpose of entertainment of appeal. The Tribunal noticed that the appellant had recovered a sum of Rs.1,41,91,440/- towards service tax but deposited Rs.71,57,079/-, hence an amount of Rs.70,34,361/- remains balance.

2. Direction was issued for depositing Rs.1.50 crore as precondition for hearing the appeal.

3. The case set up by the appellant is that even the aforesaid amount also stood deposited. However, as observed by the Tribunal, the appellant was unable to link the receipts produced showing deposit of the amount with the amount claimed to have been paid. It was observed by the Tribunal with reference to a judgment of Hon'ble the Supreme Court in ***Commissioner of Central Excise and Customs. Kerala vs. M/s Larsen and Toubro Ltd.. 2015(39) STR 913*** that no tax for the period prior to 01.06.2007 was payable.

4. In the facts, in hand, the appeal was filed by the appellant against the order-in-original passed on 27.11.2013 & 15.04.2014, which was taken up for hearing on 06.10.2015. During interregnum, Section 35-F of Central Excise Act, 1944 was amended providing for deposit of 7.5% of the demand of tax raised, as pre-condition for entertainment of appeal.

5. Be that as it may, keeping in view the totality of the facts and circumstances, we are of the opinion that the order passed by the Tribunal deserves to be modified to the extent that the appeal filed by the appellant be entertained on merits on deposit of Rs. 25,00,000/- additionally.

6. Let the aforesaid amount be deposited within six weeks from today and the appeal be heard by the Tribunal thereafter on merits.

7. The appeals stands disposed of accordingly.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 6416 OF 2005

EPIC FOOD PRODUCTS PRIVATE LIMITED
Vs
THE STATE OF PUNJAB AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

22th August, 2016

HF ▶ Assessee

Interest is payable from the date of demand in Revisional proceedings and not from the date of filing of Return.

INTEREST – SECTION 11-D OF THE PGST ACT 1948 – ASSESSEE MADE SALE OF "FROOTI" – RATE OF TAX UP TO 25.1.2000 WAS 8% - RATES REVISED BY AN ORDINANCE DATED 25.1.2000 – ASSESSEE CONTINUED TO CHARGE THE SAME RATE OF TAX EVEN THOUGH THE PRODUCT WAS MADE TAXABLE @ 12% - TAX COLLECTED @ 8% AND DEPOSITED – ASSESSING AUTHORITY ACCEPTED THE RETURNS AND CALCULATED THE TAX @ 8% - REVISIONAL PROCEEDINGS INITIATED ON THE BASIS OF AN AUDIT OBJECTION – REVISIONAL ORDER RESULTED INTO LEVY OF DIFFERENTIAL AMOUNT OF TAX AND INTEREST FOR THE INTERVENING PERIOD – TAX STOOD DEPOSITED BY THE PETITIONER BEING NOT DISPUTED – INTEREST CHALLENGED BEFORE THE TRIBUNAL WHO DISMISSED THE APPEAL – ON WRIT BEFORE HIGH COURT: HELD NO INTEREST CAN BE CHARGED FROM THE ASSESSEE ON ACCOUNT OF DEMAND RAISED ON THE BASIS OF REVISIONAL PROCEEDINGS – INTEREST WOULD BE PAYABLE ONLY FROM THE DATE THE DEMAND IS RAISED AND NOT FROM THE DATE OF FILING OF RETURNS - WRIT PETITION ACCEPTED – DEMAND OF INTEREST SET ASIDE. *SECTION 11-D OF PGST ACT 1948*

The petitioner who is a seller of fruit drink "Frooti" had made the sales and charged tax @ 8%. Vide Ordinance dated 25.1.2000, the item was not covered under any of Schedules and accordingly the tax was leviable @ 12% from the date of Ordinance. The assessee, however, continued to charge tax @ 8% and deposited the same with the Revenue. Assessment order is also passed accepting the Returns and calculating the tax @ 8%. Matter is taken up in Revisional proceedings on audit objection. Demand is raised for the differential tax and interest for the intervening period. Assessee paid the amount of tax to challenge the levy of interest. The Tribunal dismissed the appeal upholding the levy of interest. On a writ petition before the High Court, it was held that assessee cannot foresee the levy of tax in the assessment proceedings and if any additional demand is created subsequently then interest would be payable from the date of assessment order and not from the date of filing of Returns. The Supreme Court in the case of J.K. Synthetics vs Commercial Tax officer, Frick India Ltd. Vs State of Haryana and Maruti Wire Industries Pvt. Ltd. Vs Sales Tax Officer, has held that interest is not payable in such a case. Accordingly, writ petition is allowed and demand of

interest is quashed.

Cases referred:

- *J. K. Synthetics Limited vs Commercial Taxes Officer (1994) 4 Supreme Court Cases 276*
- *Paul Motor Store vs State of Punjab (2007) 10 VST 259 (P&H)*
- *M/s Fazilka Gas Service. Fazilka vs State of Punjab (2004) 24 PHT 265*
- *Frick India Limited vs State of Haryana (1994) 95 STC 188*
- *Maruti Wire Industries Private Limited vs Sales Tax Officer (2001) 122 STC 410*
- *United Riceland Limited vs State of Haryana (1997) 104 STC 362*

Present: Mr. Kashmiri Lal Goyal, Senior Advocate with
Mr. Sandeep Goyal, Advocate, for the petitioner.
Ms. Sudeepti Sharma, Deputy Advocate General, Punjab.

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RAIESH BINDAL, J.

1. This order will dispose of two CWP Nos. 6416 and 9988 of 2005, as common questions of law and facts are involved therein.

2. However, the facts have been extracted from CWP No. 6416 of 2005.

3. Challenge in the present petition is to the orders dated 30.9.2004 (Annexure P-2) passed by the Assistant Excise and Taxation Commissioner and order dated 15.2.2005 (Annexure P-4), passed by Sales Tax Tribunal (for short, 'the Tribunal'). Challenge is limited to charging of interest on the amount of tax assessed.

4. Learned counsel for the petitioner submitted that the petitioner was working as Franchisee of a soft drink known as 'Frooti'. Upto 25.1.2000, the rate of tax on sale thereof was 8%. The rates were provided in terms of notification under Section 5(1) of the Punjab General Sales Tax Act, 1948 (for short, 'the Act'). By issuing Ordinance dated 25.1.2000, the rates of tax were amended. The product, in which the petitioner was dealing, was not specifically mentioned, hence, it fell in residual category, where rate of tax was 12%. The change was neither noticed by the petitioner nor its counsel and the tax was continued to be charged @8% from the buyers and deposited accordingly. The assessment of the petitioner was framed vide order dated 26.8.2003 accepting the rate of tax @ 8%. The revisional proceedings were initiated against the petitioner on audit objection regarding rate of tax. Vide impugned order dated 30.9.2004, the Revisional Authority assessed the differential amount of tax and also levied interest for the intervening period. As there was no dispute about the demand raised on account of differential rate of tax, the amount was deposited by the petitioner, however, demand of interest was challenged before the Tribunal, who vide order dated 15.2.2005, dismissed the appeal.

5. Referring to the judgment of Hon'ble Supreme Court ***in J. K. Synthetics Limited vs Commercial Taxes Officer (1994) 4 Supreme Court Cases 276***, which was followed in ***Paul Motor Store vs State of Punjab (2007) 10 VST 259 (P&H)***, it was submitted that as the amount of tax demanded was paid within the time permitted, there was no question of charging of interest, as the amount of tax found to be due was required to be paid at that time. He further referred to an earlier order passed by the Sales Tax Tribunal-I, Punjab, in ***M/s Fazilka Gas Service. Fazilka vs State of Punjab (2004) 24 PHT 265***, where demand of interest under similar circumstances was set aside by the Tribunal but the decision was not followed in the case in hand.

6. On the other hand, learned counsel for the State, while not disputing the judgments referred to by counsel for the petitioner, submitted that once it is established that the amount of tax as was due in terms of the provisions of the Act and the notification issued thereunder had

not been paid along with the returns, there is nothing wrong in raising the demand of interest for its delayed payment. She could not dispute the fact that even the assessing authority had committed error in accepting the returns and framing assessment while charging rate of tax at 8% for part of the year as against 12%.

7. Heard learned counsel for the parties and perused the paper book.

8. The undisputed facts on record are that the rate of tax for the product dealt with by the petitioner was 8%. The same was changed vide Ordinance dated 25.1.2000. On account of lack of knowledge on the part of the petitioner and its counsel, the tax was charged and deposited @ 8%. The assessing authority also framed assessment on 26.8.2003 accepting the tax @ 8%. The issue was raised by the audit party. Thereafter, the matter was taken up in revision. Demand for difference of tax was raised. In addition, the interest was also levied. The petitioner did not dispute the demand of tax and deposited the same within the time permitted. The issue raised was regarding demand of interest. The order of Revisional Authority was challenged before the Tribunal, who did not accept the plea of the petitioner and rejected the appeal.

9. Similar issue came up before this Court in ***Paul Motor Store's case*** (supra). In that case the tax as assessed initially at the time of assessment was paid, however, in re-assessment proceedings, additional tax was found to be due for which interest and penalty was levied. The demand of interest on that account was quashed by this Court while referring to judgments of Hon'ble the Supreme Court in ***J. K. Synthetics Limited's*** (supra), ***Frick India Limited vs State of Haryana (1994) 95 STC 188, Maruti Wire Industries Private Limited vs Sales Tax Officer (2001) 122 STC 410*** and Full Bench judgment of this Court ***in United Riceland Limited vs State of Haryana (1997) 104 STC 362***. It was on the premise that an assessee cannot foresee the additional demand of tax on account of reassessment or in revision and the interest would become payable only from the date, the demand is raised and not from the date of filing of return.

10. For the reasons mentioned above, the writ petitions are allowed. The demand of interest created against the petitioner is set aside.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 9421 OF 2001

HAPPY FORGINGS PVT. LTD.
Vs
COMMISSIONER OF CENTRAL EXCISE AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

13th July, 2016

HF ▶ Assessee

Modvat Credit is admissible on purchase of tray casting in terms of Circular issued by the Department

CENTRAL EXCISE – MODVAT CREDIT – CAPITAL GOODS - PURCHASE OF TRAY CASTING – MODVAT CREDIT CLAIMED AS PER RULE 57Q – CIRCULAR DATED 21/12/1996 ISSUED ALLOWING THE SAID BENEFIT TO THE ASSESSEES – SHOW CAUSE NOTICE ISSUED DENYING THE MODVAT CREDIT – APPEAL FILED BY ASSESSEE ACCEPTED RELYING UPON THE CIRCULAR – APPEAL FILED BY REVENUE BEFORE CESTAT – APPEAL ALLOWED WITHOUT CONSIDERING THE CIRCULAR – RECTIFICATION APPLICATION FILED ALSO DISMISSED – WRIT PETITION BEFORE HIGH COURT - MATTER SQUARELY COVERED BY THE CIRCULAR DATED 2.12.1996 – CREDIT ALLOWED FOR THE SUBSEQUENT PERIOD BY THE TRIBUNAL – REVENUE DOES NOT DENY THE ADMISSIBILITY OF CREDIT – MODVAT CREDIT CANNOT BE DISALLOWED MERELY ON ACCOUNT OF NON-RELYING UPON CIRCULAR BEFORE THE TRIBUNAL – DUTY OF THE REVENUE TO CITE THE CIRCULAR – TRIBUNAL OUGHT TO HAVE RECTIFIED THE ORDER – WRIT PETITION ALLOWED – ORDER SET ASIDE – ASSESSEE HELD ENTITLED TO MODVAT CREDIT UNDER RULE 57Q. *RULE 57Q OF CENTRAL EXCISE RULES 1944*

Petitioner had claimed Modvat Credit on Tray Casting used in manufacturing of tiny powder. Reliance in this regard was placed upon a Circular No. 276/110/96-TRU dated 2.12.1996. Show Cause Notice was issued proposing to deny the Modvat Credit and subsequently the order was passed confirming the show cause notice. In an appeal filed by assessee, the Commissioner (Appeals) accepted the plea of assessee and allowed the Modvat Credit relying upon the circular dated 2.12.1996. Revenue filed an appeal before the Tribunal but the circular was not produced by any of the parties. Appeal of the Revenue was allowed and credit was denied. Assessee filed rectification application pleading that circular could not be produced inadvertently. Application was dismissed. A writ petition was filed before the High Court. Held:

There is no denial to the fact that assessee is entitled for Modvat Credit on the duty paid on the purchase of Tray Casting in terms of Rule 57Q of the Rules read with Circular No. 276/110/96-TRU dated 2.12.1996. Revenue had initially denied the benefit to the assessee despite existence of circular and thereafter the appeal was filed against the order of Commissioner (Appeals) even though the existence of said circular is not denied by the

Department. Once there is no dispute that petitioner is entitled to the benefit of Modvat Credit, the denial thereof is totally illegal. Even if the petitioner had failed to refer to the circular at the time of hearing of the appeal, the same would not mean that assessee should be denied the benefit of same as it was in fact duty of the Department to have taken care of the Circular and not indulge in unnecessary litigation. Once the matter was brought to the notice of Tribunal, the Tribunal should have made necessary rectification. It is also a matter of fact that even for the subsequent period the petitioner had been allowed the Modvat Credit on the same goods on the basis of circular dated 2.12.1996. Accordingly, the writ petition is allowed and assessee is held entitled to the Modvat Credit under Rule 57Q.

Present: Mr. Deepak Gupta, Advocate for the petitioner.
Mr. Anshuman Chopra, Advocate for the respondents.

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RAIESH BINDAL, J.

1. The grievance of the petitioner is that though it was entitled to benefit of modvat credit on purchase of tray casting used in the process of manufacture of tiny powder, in terms of circular No. 276/110/96-TRU dated 2.12.1996, however, the same was wrongly denied to it.

2. The submission is that in October/November, 1997, the petitioner purchased tray casting as capital goods. In terms of the aforesaid circular, it was entitled to modvat credit as per Rule 57Q of the Central Excise Rules, 1944 (for short, 'the Rules'). The department issued show cause notice on 1.5.1998 proposing to deny the modvat credit. Vide order dated 30.9.1998, Assistant Commissioner, Central Excise, Ludhiana denied modvat credit to the petitioner. However, in appeal, the order passed by the Assistant Commissioner was set aside by the Commissioner (Appeals), Central Excise & Customs, Chandigarh on 23.8.1999, while relying upon an earlier decision of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (for short, 'the Tribunal') on the issue. The department preferred appeal before the Tribunal, which was allowed vide order dated 15.3.2000. The petitioner at that stage could not refer to the circular issued by the department entitling it to the benefit of modvat credit on purchase of tray casting. Immediately, rectification application was filed, which was rejected vide order dated 8.9.2000 by the Tribunal holding that there is no mistake apparent on record. He further submitted that even for the subsequent period, the Tribunal allowed modvat credit on tray casting purchased by the petitioner vide order dated 7.3.2001, while relying upon circular No. 276/110/96-TRU dated 2.12.1996. Once the claim of the petitioner is squarely covered in terms of the circular issued by the department, the petitioner should not be denied the benefit thereof. Merely because he had not been able to cite the circular at the relevant time, when the appeal was heard, though it was the duty of the counsel appearing for the department to have produced the same, the petitioner could not be denied the benefit admissible to it. Rather, the department should not have preferred the appeal against the order passed by the first Appellate Authority once the claim of the petitioner was in consonance with the circular issued by the department.

3. On the other hand, learned counsel for the respondents did not dispute the fact that the petitioner is entitled to benefit of modvat credit in terms of circular No. 276/110/96-TRU dated 2.12.1996, however, he submitted that the circular having not been brought to the notice of the Tribunal at the time of hearing of the appeal, the benefit was not admissible to the petitioner.

4. Heard learned counsel for the parties and perused the paper book.

5. The basic facts, which are not in dispute are that the petitioner purchased tray casting. It is entitled to modvat credit on the duty paid on purchase thereof in terms of Rule 57Q of the Rules read with circular No. 276/110/96-TRU dated 2.12.1996. Initially, the department issued

show cause notice dated 1.5.1998 to the petitioner proposing to deny the modvat credit. By passing the order, the Assistant Commissioner, Central Excise, Ludhiana, denied that benefit to the petitioner. This was despite the fact that the department had already issued the circular clarifying the position that modvat credit was available on tray casting. Though the Commissioner (Appeals), Central Excise & Customs accepted the contention of the petitioner, but again despite existence of the circular of the department, the order was impugned by the department before the Tribunal, who accepted the appeal filed by the department. Once it is not in dispute that the petitioner is entitled to the benefit of the modvat credit on the eligible capital goods, namely, tray casting in the present case, as was clarified even by the department by issuing circular No. 276/110/96-TRU dated 2.12.1996, the denial thereof to the petitioner is totally illegal. Even if the petitioner had failed to refer to the circular at the time of hearing of the appeal before the Tribunal, in fact, it was the duty of the department itself to have taken care of the circular and not indulge any party in unnecessary litigation, as even the facts suggest that very initiation of the proceedings against the petitioner to deny the benefit of modvat credit was after the circular had already been issued, which entitled the petitioner to the benefit of modvat credit. Even if that was so, still when the matter was again brought to the notice of the Tribunal by the petitioner by filing rectification application, necessary rectification should have been made by the Tribunal in the facts and circumstances of the case. It is also a fact that even for the subsequent period, the petitioner was allowed modvat credit on the same goods on the basis of the clarification issued vide circular No. 276/110/96- TRU dated 2.12.1996.

6. For the aforesaid reasons, the writ petition is allowed. The orders passed by the Tribunal are set aside. The petitioner is held entitled to benefit of modvat credit on tray casting.

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PUNJAB & HARYANA HIGH COURT

CEA NO. 61 OF 2013

COMMISSIONER CENTRAL EXCISE COMMISSIONERATE, PANCHKULA
Vs
INDIAN OIL CORPORATION, AMBALA

RAJESH BINDAL AND LISA GILL, JJ.

21st July, 2016

HF ▶ Assessee

Appeal against an order of CESTAT regarding valuation of goods is not maintainable before the High Court.

CENTRAL EXCISE – APPEAL BEFORE HIGH COURT – TRIBUNAL DECIDING THE DISPUTE REGARDING VALUATION OF EXCISABLE GOODS – APPEAL NOT MAINTAINABLE BEFORE HIGH COURT AS PER SECTION 35G – APPEAL IN SUCH A CASE CAN BE FILED BEFORE SUPREME COURT – APPEAL DISMISSED. *SECTION 35G AND SECTION 35L OF CENTRAL EXCISE ACT, 1944*

The Revenue filed an appeal before the High Court under Section 35G of Central Excise Act. The appeal was directed against the order of CESTAT who relied upon Section 4(1) of Central Excise Act which deals with valuation of excisable goods. The Revenue contended that dispute before the High Court is not relating to valuation of goods but is regarding quantum and volume of goods. Rejecting the contention, High Court held that issue has been dealt by the Tribunal under section 4 of the Act, which deals with the valuation of excisable goods. Accordingly, the appeal before the High Court is not maintainable and the same is, therefore, dismissed. However, the Revenue if so advised may avail appropriate remedy before the Supreme Court.

Present: Mr. Amit Goyal, Advocate for the appellant.
Mr. Jagmohan Bansal, Advocate for the respondent.

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RAJESH BINDAL, J.

1. The present appeal filed by the Revenue was admitted for consideration of the following substantial question of law:-

i) *Whether the Central Excise Duty paid on transaction value arrived at on the quantity of petroleum products at normal temperature room temperature converted to the notional temperature of 15 degree temperature amounts to short payment of duty, and the method adopted for payment of duty, is in accordance with the provisions of the Central Excise Law?*

2. At the very outset, learned counsel for the Assessee raised preliminary objection regarding maintainability of the appeal before this Court. Referring to Section 35G and 35L of the Central Excise Act, 1944 (for short 'the Act'), he stated that as the dispute is regarding valuation of the excisable goods, the appeal before this Court is not maintainable. He further submitted that in the impugned order the Tribunal referred to the provisions of Section 4(1) of the Act, which provides for valuation of excisable goods for the purpose of charging of duty of excise.

3. On the other hand, learned counsel for the appellant submitted that the issue raised in the present appeal is not regarding valuation. The issue is regarding quantum and volume of the goods.

4. We have heard learned counsel for the parties and gone through the file.

5. The Tribunal considered the issue and recorded observations in para 8 and 9 thereof, which are extracted hereinbelow:-

> *"8. In order to find answer to the above question, it would be useful to have a look on Section 4(1) of the Central Excise Act, which is reproduced thus:-*
>
> ***4. VALUATION OF EXCISABLE GOODS FOR PURPOSES OF CHARGING OF DUTY OF EXCISE. –***
>
> *(1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to their value, then, on each removal of the goods, such value shall –*
>
> *(a) in a case where the goods are sold by the assessee, for delivery at the time and place of the removal, the assessee and the buyer of the goods are not related and the price is the sole consideration for the sale, be the transaction value;*
>
> *(b) in any other case, including the case where the goods are not sold, be the value determined in such manner as may be prescribed.*
>
> *[**Explanation.** - For the removal of doubts, it is hereby declared that the price-cum-duty of the excisable goods sold by the assessee shall be the price actually paid to him for the goods sold and the money value of the additional consideration, if any, flowing directly or indirectly from the buyer to the assessee in connection with the sale of such goods, and such price-cum-duty, excluding sales tax and other taxes, if any, actually paid, shall be deemed to include the duty payable on such goods.]*
>
> *9. On plain reading of the above, it is clear that for the purpose of calculating the excise duty chargeable, the price charged if it is sole consideration for the sale, would be the transaction value. Admittedly, in the instant appeals, the goods have been cleared on payment of excise duty as per the price declared in the invoices. It is not the case of the department that other manufacturing companies to whom the oil was supplied at the rate based on the volume at 15C are the related parties. It is also not the case of the Revenue that invoice price was not the sole consideration for sale or the appellant/assessee has received any other additional consideration apart from the declared sale price. Thus, in our considered view, the appellant has rightly paid the excise duty as per transaction value in terms of Section 4 of the Central Excise Act and there is no*

justification for allegation of under-valuation of the goods with a view to evade excise duty."

6. A perusal of the aforesaid paragraphs recorded by the Tribunal shows that the issue was considered in the light of provisions of Section 4 of the Act, which deals with valuation of excisable goods.

7. Considering the aforesaid facts, in our view, the issue being of valuation of the excisable goods, the appeal before this Court is not maintainable. Accordingly, the appeal is dismissed as not maintainable. However, the appellant, if so, advised, may avail of appropriate remedy before Hon'ble the Supreme Court.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 16774 OF 2004

J. K. TRADING COMPANY
Vs
STATE OF HARYANA AND OTHERS

RAJESH BINDAL AND HARI PAL VERMA, JJ.

15th July, 2016

HF ▶ Assessee

Goods which are purchased from an exempted unit and are resold in the course of inter-state trade and commerce are also exempted vide Notification issued under Section 8(5) of CST Act 1956.

EXEMPTION – CST ACT – NOTIFICATION U/S 8(5) – GOODS PURCHASED FROM EXEMPTED UNIT – FURTHER SOLD ON INTER-STATE SALE – EXEMPTION HAS BEEN GRANTED TO THE GOODS BY NOTIFICATION DATED 4.9.1995 – GOODS SOLD BY PETITIONER ALSO EXEMPTED – MATTER COVERED BY SUPREME COURT JUDGMENT – WRIT PETITION ALLOWED – IMPUGNED ORDER SET ASIDE. *SECTION 8(5) OF CST ACT, RULE 28A OF HGST RULES 1975*

Petitioner disputed the taxability of inter-state sales made by it qua the goods purchased from exempted units who have been granted exemption under Section 28A of HGST Rules, 1975. The petitioner content that Notification dated 4.9.2005 issued by State Govt. under Section 8(5) of CST Act grants exemption to goods manufactured by exempted units and not only to the units who are exempt under Rule 28A. The issue has already been settled by Hon'ble Supreme Court in the case of Casio India Company Pvt. Ltd. Vs State of Haryana. Writ Petition is also allowed. Impugned orders are quashed.

Cases referred:

- *CASIO India Co. Pvt. Ltd. vs State of Haryana, Civil Appeal No. 1410 of 2007 decided on 29.3.2016*
- *Siemens Telecom Limited, Gurgaon vs The State of Haryana, STA No. 146 of 1997-98*
- *Beetel Teletech Limited vs State of Haryana, GSTR No. 35 of 2006*

Present: None for the petitioner.
Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana.

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RAJESH BINDAL, J.

1. This order will dispose of two writ petitions bearing CWP Nos. 16774 of 2004 and 3203 of 2005, as common questions of law and facts are involved.

2. In CWP No. 16774 of 2004 challenge has been made to the orders dated 21.3.2003 (Annexure P-7), 10.12.2003 (Annexure P-8) and 21.9.2004 (Annexure P-9), whereas in CWP

No. 3203 of 2005, challenge has been made to orders dated 14.11.2002 (Annexure P-7), 27.11.2002 (Annexure P-8) and 9.11.2004 (Annexures P-9 and P-10).

3. The issue raised is regarding taxability of the products manufactured by the exempted units with reference to Rule 28A (4) (c) of the Haryana General Sales Tax Rules, 1975 and notification dated 4.9.2005.

4. At the very outset, learned counsel for the State fairly conceded that the legal issue raised in the present petitions is squarely covered by judgment of Hon'ble the Supreme Court in ***Civil Appeal No. 1410 of 2007 M/s CASIO India Co. Pvt. Ltd. vs State of Haryana, decided on 29.3.2016***. She further submitted that earlier order passed by the Tribunal in the case of ***STA No. 146 of 1997-98 M/s Siemens Telecom Limited, Gurgaon vs The State of Haryana*** was relied upon by the department before the Tribunal. The same was subject matter of ***GSTR No. 35 of 2006 M/s Beetel Teletech Limited vs State of Haryana*** before this Court and the question referred was answered in favour of the assessee vide judgment dated 8.7.2016 relying upon the judgment of Hon'ble the Supreme Court in ***M/s CASIO India Co. Pvt. Ltd.'s case*** (supra).

5. After hearing learned counsel for the State and considering her submissions, the writ petitions deserve to be allowed.

6. Hon'ble the Supreme Court in ***M/s CASIO India Co. Pvt. Ltd.'s*** case (supra), while dealing with the similar proposition, opined as under:-

> *"19. We have reproduced the exemption notification above and referred to the language employed. At this juncture, it is absolutely necessary to understand the language employed in the proviso to the notification. If there was no proviso to the notification there would have been no difficulty whatsoever in holding that the exemption is qua the goods manufactured and was not curtailed or restricted to the sales made by the manufacturer dealer and would not apply to the second or subsequent sales made by a trader, who buys the goods from the manufacturer-dealer and sells the same in the course of inter-state trade or commerce. It is pertinent to note that, clause (ii) of sub-rule (n) refers to sale of finished products in the course of inter-state trade or commerce where the finished products are manufactured by eligible industrial unit. There is no stipulation that only the first sale or the sale by the eligible industrial unit in Inter State or Trade would be exempt. The confusion arises, as it seems to us, in the proviso to the notification which states that the manufacturer-dealer should not have charged tax. It needs no special emphasis to mention that provisos can serve various purpose. The normal function is to qualify something enacted therein but for the said proviso would fall within the purview of the enactment. It is in the nature of exception. (See : Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Officer) Hidayatullah, J. (as his Lordship then was) in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v.Subhash Chandra Yograj Sinha had observed that a proviso is generally added to an enactment to qualify or create an exception to what is in the enactment, and the proviso is not interpreted as stating a general rule. Further, except for instances dealt with in the proviso, the same should not be used for interpreting the main provision/enactment, so as to exclude something by implication. It is by nature of an addendum or dealing with a subject matter which is foreign to the main enactment. (See : CIT, Mysore etc. v Indo Mercantile Bank Ltd). Proviso should not be normally construed as nullifying the enactment or as taking away completely a right conferred.*
>
> *20. Read in this manner, we do not think the proviso should be given a greater or more significant role in interpretation of the main part of the notification,*

except as carving out an exception. It means and implies that the requirement of the proviso should be satisfied i.e. manufacturing dealer should not have charged the tax. The proviso would not scuttle or negate the main provision by holding that the first transaction by the eligible manufacturing dealer in the course by way of inter-state sale would be exempt but if the inter-state sale is made by trader/purchaser, the same would not be exempt. That will not be the correct understanding of the privies. Giving over due and extended implied interpretation to the proviso in the notification will nullify and unreasonably restrict the general and plain words of the main notification. Such construction is not warranted.

21. Quite apart from the above, Rule 28A(4) (c) supports the interpretation and does not counter it. The said rule exempts all intra-state sales including subsequent sales. The reason for enacting this clause is obvious. The intention is to exempt all subsequent stages in the State of Haryana and the eligible product can be sold a number of times, without payment of tax. Intrastate sales refer to sale between two parties within the State of Haryana. Inter-state transaction results in movement of goods from State of Haryana to another State. Thus, clause (ii) of sub-rule 2 (4) refers to interstate trade or commerce and the notification does not refer to subsequent sales as in case of Rule 28A (4) (c). Whether or not tax should be paid on subsequent sales/purchase in the other State cannot be made subject matter of Rule 28A or the notification. Inter-State sale from the State of Haryana will be only once or not a repeated one. Therefore, there is no requirement of reference to subsequent sale. In this context, it is rightly submitted by the assessee that there is only one interstate sale from the State of Haryana and the interpretation as suggested by the revenue would tantamount to making the exempted goods chargeable to tax, and the said goods would cease to enjoy the competitive edge given to the manufacturer in the State of Haryana. It will be counter-productive.

22. In view of aforesaid analysis, we allow the appeals and set aside all the impugned orders and hold that the assesses shall reap the benefit of the notification dated 4.9.1995 as interpreted by us. There shall be no order as to costs."

7. For the reasons mentioned above, the writ petitions are allowed. The impugned orders passed by the authorities are set aside.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 2733 OF 1998

MAHABIR SOLVENTS
Vs
STATE OF HARYANA AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

4th July, 2016

HF ▶ Revenue

High Court refused to examine the matter on merits for grant of exemption where the unit was closed down during the period of eligibility.

EXEMPTION – EXEMPTED UNIT – APPLICATION FOR GRANT OF EXEMPTION MADE UNDER RULE 28A OF HGST RULES, 1975 – APPLICATION REJECTED BY SCREENING COMMITTEE – APPEAL FILED BEFORE HLSC ALSO DISMISSED HOLDING THE UNIT TO BE IN NEGATIVE LIST – WRIT PETITION FILED BEFORE THE HIGH COURT – UNIT CLOSED DOWN THE INTERVENING PERIOD DURING CURRENCY OF PERIOD OF ELIGIBILITY – NO NEED TO EXAMINE THE MATTER ON MERITS AS THE UNIT HAS CLOSED DOWN – WRIT PETITION DISMISSED

The petitioner set up a unit and applied for grant of exemption under Rule 28A of HGST Rules 1975. The application for grant of exemption was dismissed by LLSC and the appeal filed before the HLSC was also dismissed holding that unit of the petitioner falls in the negative list. Writ petition is filed before the High Court pleading that unit does not fall in the negative list. Unit closed down operations in the year 1997-98 during the period of eligibility. Since the Eligibility Certificate granted to an industrial unit could be withdrawn at any time during its currency if it closes down for a continuous period exceeding six months, the merits of present writ petition need not be considered as the unit itself had closed down and the property was sold. Petition is dismissed.

Present: Mr. Anil Kshetarpal, Senior Advocate with
Mr. Piyush Aggarwal, Advocate, for the petitioner.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

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RAJESH BINDAL, J.

1. The petitioner has approached this Court impugning the order dated 22.8.1997 passed by the Lower Level Screening Committee as constituted under Rule 28 (A) of the Haryana General Sales Tax Rules, 1975 (for short 'the Rules') and the order passed by the Higher Level Screening Committee, vide which the appeal filed by the petitioner against the order of the Lower Level Screening Committee, was rejected.

2. The claim of the petitioner was for grant of benefit of deferment of payment of sales tax on the amount invested for expansion of existing unit. The application for the purpose was filed on 26.7.1995 after the expanded capacity came in production on 2.6.1995. The petitioner had set up additional capacity by installing oil expellers. The case was rejected by the Lower Level Screening Committee as upheld by the Higher Level Screening Committee on the ground that the unit was in negative list.

3. The contention raised by learned counsel for the petitioner was that he had not set up merely oil expellers, but had set up integrated seed processing unit, hence, was not in the negative list, though he did not dispute the fact that oil expellers are in the negative list. He also pleaded discrimination as another unit manufacturing same product was granted benefit under Rule 28 (A) of the Rules vide order passed by the Secretary to the Government, Industries Department in an appeal against the order rejecting its case by the Higher Level Screening Committee.

4. Learned counsel for the State contested the claim made by the petitioner and stated that as per the product mentioned in the application filed by the petitioner, it was clear that the unit was in negative list, hence, not entitled for benefit of deferment of payment of sales tax. Still while referring to the communication dated 4.3.2014 from the Joint Director, Industries, Kurukshetra, it was stated that the petitioner did not comply with the interim order passed by the Court at the time of admission of the writ petition on 13.11.1998. In terms of the aforesaid order the petitioner was required to furnish bank guarantee to secure payment of sales tax and interest thereon in case of dismissal of the writ petition. It was further submitted that the unit was closed in the year 1997-98 and was subsequently sold to ***M/s Khurana Agro***, where a rice seller was set up in the year 2005 and the earlier promoter shifted to Ruderpur, Uttranchal. A letter from M/s Khurana Agro was also referred to state these facts.

5. As per the Rule 28A(8)(a) of the Rules, eligibility certificate granted to an industrial unit can be withdrawn at any time during its currency, inter alia, on the ground that the unit is closed for a continuous period exceeding six months. Meaning thereby, as per the Rules once the unit was closed during the currency of eligibility certificate for the period exceeding six months, the same could be withdrawn by the Lower Level Screening Committee.

6. Considering the aforesaid aspects especially the information furnished by counsel for the State, we do not find any reason to examine the matter on merit, as the unit itself was closed in the year 1997-98 and the property was sold.

7. The petition stands dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 7109 OF 2016

PARSVNATH DEVELOPERS LIMITED
Vs
THE STATE OF HARYANA AND OTHERS

RAKESJ BINDAL AND HARINDER SINGH SIDHU, JJ.

8th July, 2016

HF ▶ Assessee

The Revisional Authority is directed to hear the revisions on merits where there was small delay in depositing the amount of pre-deposit.

APPEAL – RESTORATION – PRE DEPOSIT - ENTERTAINMENT DUTY – APPLICATIONS FOR REVISION FILED – DIRECTION ISSUED FOR DEPOSIT OF RS. 2 LACS AS CONDITION FOR HEARING BEFORE 3.9.2015 – DEMAND DRAFT GOT PREPARED ON 3.9.2015 - ADJOURNMENT SLIP SENT ON THE SAID DATE – AMOUNT DEPOSITED ON 14.9.2015 – APPLICATION FOR RESTORATION FILED – DISMISSED BEING NOT MAINTAINABLE – ON WRIT BEFORE HIGH COURT – PETITIONER PREPARED DRAFT OF RS. 2 LACS AND ADJOURNMENT SLIP FILED BY THE COUNSEL BEFORE THE REVISIONAL AUTHORITY – AMOUNT ALSO DEPOSITED ON 14.9.2015 WITH SMALL DELAY – REVISIONS FILED BY PETITIONER SHOULD HAVE BEEN CONSIDERED ON MERITS AS THERE IS NOT MUCH DELAY IN DEPOSIT OF THE AMOUNT WITH THE STATE – ORDER SET ASIDE – COMMISSIONER DIRECTED TO HEAR THE REVISIONS ON MERITS.

The petitioner approached the High Court impugning the order of Revisional Authority who dismissed the revisions as well as restoration application filed by assessee. In the revision petition filed before the ETC, the Revisional authority had directed the appellant a payment of Rs. 2.00 lacs by 3.9.2015 as a condition for hearing the revision. The demand draft was got prepared on 3.9.2015 but an adjournment was sent by the counsel to the Revisional Authority. The Revisional authority dismissed the appeal for non-compliance of the order. The amount was deposited on 14.9.2015 and application for restoration was filed before the Revisional Authority which was dismissed as non-maintainable. On a writ petition before the High Court, it was held that there was small delay in depositing the amount and therefore the revision petition should have been heard on merits. Order of Revisional authority set aside and it was directed to hear the appeals on merits.

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.
Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana.

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RAJESH BINDAL, J.

1. The petitioner has approached this Court impugning the order dated 3.9.2015 (Annexure P-5) vide which Entertainment Duty Revision Nos. 19 to 22 of 2014-15 were dismissed in default. Challenge has also been made to order dated 17.2.2016 vide which the application filed for restoration of the revisions was dismissed.

2. The contention of learned counsel for the petitioner is that on the date fixed i.e. 3.9.2015, the petitioner prepared a demand draft bearing no. 210755 drawn on State Bank of India of Rs. 2 lacs in favour of the Assessing Authority, Faridabad, however, the representative of the company could not appear before the Revisional Authority as he was appearing before some other Court. Adjournment application was sent, however, rejecting the same, the revisions were dismissed. The amount was deposited with the State on 14.9.2015. Thereafter, the application for restoration was filed, which was dismissed on 17.2.2016 as being not maintainable.

3. In the case in hand, the assessment of the petitioner was framed under the Punjab Entertainment Duty Act, 1955, for the assessment years 1999-2000 to 2002-2003 by the Entertainment Tax Officer-cum-Assessing Authority, Faridabad (East), on 29.5.2009 and a demand of Rs. 12,00,000/- was raised. The petitioner failed in appeal before the Joint Excise & Taxation Commissioner (Appeals), Faridabad. Against the orders passed by the Appellate Authority, the petitioner preferred revisions before the Excise and Taxation Commissioner-cum-Revisional Authority, Haryana, who vide order dated 13.8.2015 directed to deposit Rs.2 lacs as precondition. On the next date of hearing i.e. 3.9.2015, the revisions were dismissed in default on non-deposit of Rs. 2 lacs. The application for restoration was also dismissed though prior thereto the amount was already deposited by the petitioner.

4. The stand of learned counsel for the State is that the revisions were rightly dismissed as the order directing deposit of Rs. 2 lacs was not complied with within the time granted.

5. After hearing learned counsel for the parties, in our opinion, the impugned orders deserve to be set aside. No doubt direction was to deposit Rs. 2 lacs, as a precondition for entertainment of revisions. The petitioner got prepared demand draft of Rs. 2 lacs on 3.9.2015, however, adjournment slip was filed by counsel for the petitioner before the Revisional Authority. Thereafter, the petitioner even deposited the amount with the State Treasury on 14.9.2015, though late. The revisions filed by the petitioner should have been considered on merits as there was not much delay in deposit of the amount with the State.

6. Considering the fact that the amount as directed by the Commissioner has already been paid, let the revisions be heard on merits. Accordingly, the impugned orders dated 3.9.2015 and 17.2.2016 are set aside. The petitioner is directed to appear before the Excise and Taxation Commissioner-cum-Revisional Authority, Haryana, on 5.9.2016 for hearing of the revisions on merits.

7. Disposed of.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 18988 OF 1998

THE PUNJAB DAIRY DEVELOPMENT CORPORATION LIMITED
Vs
THE STATE OF PUNJAB AND OTHERS

RAJESH BINDAL AND HARI PAL VERMA, JJ.

15th July, 2016

HF ▶ Assessee

Revisional Notice issued after 13 years is beyond the period of limitation and deserves to be set aside.

REVISION – LIMITATION – NOTICE ISSUED AFTER 13 YEARS FROM THE DATE OF ASSESSMENT ORDER – INORDINATE DELAY – 5 YEARS PERIOD HAS BEEN HELD TO BE FINAL LIMIT BY SUPREME COURT IN ABSENCE OF ANY PRESCRIPTION OF PERIOD – NOTICE DESERVES TO BE SET ASIDE – WRIT PETITION ALLOWED. SECTION 21(1) OF THE PGST ACT 1948

Assessment of the petitioner for year 1978-79 was framed vide assessment order dated 18.12.1985. A Notice for revision was issued on 12.11.1998 after the expiry of almost 13 years of the date of assessment order. As per Supreme Court, the period of 5 years would be treated as the outer limit for issuance of Revisional notice in absence of any statutory period. In terms of the judgment of Supreme Court, the notice issued for revision of assessment after 13 years deserves to be set aside on account of delay. Writ petition allowed.

Case referred:

- *State of Punjab and others vs Bhatinda District Coop. Milk P. Union Limited (2007) 10 VST 180*

Present: Mr. Shiv Kumar Goyal, Advocate for
Mr. G. R. Sethi, Advocate, for the petitioner.
Ms. Sudeepti Sharma, Deputy Advocate General, Punjab.

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RAJESH BINDAL, J.

1. Aggrieved against the notice dated 12.11.1998 (Annexure P-5) issued under Section 21 (1) of the Punjab General Sales Tax Act, 1948 (for short, 'the Act'), for suo moto revision of the assessment order dated 18.12.1985 for the assessment year 1978-79, the petitioner has filed the present petition.

2. Legal issue raised is that the notice dated 12.11.1998 was issued for revision after about 13 years of the order of assessment, which is beyond maximum period prescribed under the Act for any action.

3. The identical issue was considered by Hon'ble the Supreme Court in ***State of Punjab and others vs Bhatinda District Coop. Milk P. Union Limited (2007) 10 VST 180***. It was observed that even if no period of limitation is provided under the Act for exercise of revisional jurisdiction that does not mean that the power can be exercised at any time. Five years period was held to be the final limit. Notice issued in that case after a period of five and a half years was set aside. The issue regarding maintainability of the writ petition against the show cause notice was also considered and it was opined that the revisional authority could not have gone into the issue sought to be raised in the writ petition being creature of statute. Relevant paras of the judgment are extracted below:-

> *"17. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo moto power can be exercised at any time.*
>
> *18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.*
>
> *19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years.*
>
> *xx xx xx*
>
> *23. The question as to what would be the reasonable period did not fall for consideration therein. The binding precedent of this Court, some of which had been referred to us heretobefore, had not been considered. The counsel appearing for the parties were remiss in bringing the same to the notice of this Court. Furthermore, from a perusal of the impugned notice dated 4.9.2006, it is apparent that the Revisional Authority did not assign any reason as to why such a notice was being issued after a period of $5^1/_2$ years.*
>
> *24. Question of limitation being a jurisdictional question, the writ petition was maintainable.*
>
> *25. We are, however, not oblivious of the fact that ordinarily the writ court would not entertain the writ application questioning validity of a notice only, particularly, when the writ petitioner would have an effective remedy under the Act itself. This case, however, poses a different question. The Revisional Authority, being a creature of the statute, while exercising its revisional jurisdiction, would not be able to determine as to what would be the reasonable period for exercising the revisional jurisdiction in terms of Section 21 (1) of the Act. The High Court, furthermore in its judgment, has referred to some binding precedents which have been operating in the field. The High Court, therefore, cannot be said to have committed any jurisdictional error in passing the impugned judgment."*

4. If read in the light of the aforesaid judgment of Hon'ble the Supreme Court, the notice issued for revising the assessment issued after about 13 years certainly deserves to be set aside on account of delay.

5. For the reasons mentioned above, the writ petition is allowed. The impugned notice, Annexure P-5, is set aside.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 10620 OF 2001

SINGLA ELECTRIC STORE
Vs
THE STATE OF PUNJAB AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

12th July, 2016

HF ▶ Assessee

Notice for revision issued after more than 20 years is beyond the reasonable time and hence, barred by limitation

REVISION – LIMITATION – NOTICE ISSUED AFTER MORE THAN 20 YEARS FOR REVISION – EXERCISE OF POWERS UNDER PGST ACT, 1948 – NO PERIOD OF LIMITATION PRESCRIBED – SUPREME COURT CONSIDERED PERIOD OF 5 YEARS AS FINAL LIMIT – NOTICE ISSUED AFTER 20 YEARS OF ASSESSMENT DESERVES TO BE SET ASIDE – WRIT PETITION ALLOWED. *SECTION 21 OF PGST ACT 1948.*

Petitioner had filed a writ petition challenging the notice dated 27.06.2001 issued under Section 21(1) of PGST Act 1948 for suo motu revision of assessment for the assessment year 1976-77. The legal issue involved in the matter is as to whether the issuance of Notice after more than 20 years of passing of assessment order is beyond the maximum period prescribed under the Act. Identical issue has been decided by Supreme Court in the case of State of Punjab and others vs Bhatinda District cooperative Milk Producers Union, (2007) 10 VST 180, holding that in absence of any limitation prescribed under the Act, the power can be exercised only within 5 years being the final limit. In the light of aforesaid judgment, the notice issued for revision after 20 years deserves to be set aside. Writ petition allowed.

Case referred:

- *State of Punjab and others vs Bhatinda District Coop. Milk P. Union Limited (2007) 10 VST 180*

Present: None for the petitioner.
Ms. Sudeepti Sharma, Deputy Advocate General, Punjab.

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RAJESH BINDAL, J.

1. Aggrieved against the notice dated 27.6.2001 (Annexure P-3) issued under Section 21 (1) of the Punjab General Sales Tax Act, 1948 (for short, 'the Act'), for suo moto revision of the assessment for the assessment year 1976-77, the petitioner has filed the present petition.

2. Legal issue raised is that the notice dated 27.6.2001 was issued for revision more than 20 years after passing of the order of assessment, which is beyond maximum period prescribed under the Act for any action.

3. The identical issue was considered by Hon'ble the Supreme Court in State of Punjab and others vs Bhatinda District Coop. Milk P. Union Limited (2007) 10 VST 180. It was observed that even if no period of limitation is provided under the Act for exercise of revisional jurisdiction that does not mean that the power can be exercised at any time. Five years period was held to be the final limit. Notice issued in that case after a period of five and a half years was set aside. The issue regarding maintainability of the writ petition against the show cause notice was also considered and it was opined that the revisional authority could not have gone into the issue sought to be raised in the writ petition being creature of statute. Relevant paras of the judgment are extracted below:-

> *"17. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo moto power can be exercised at any time.*
>
> *18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.*
>
> *19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years.*
>
> *xx xx xx*
>
> *23. The question as to what would be the reasonable period did not fall for consideration therein. The binding precedent of this Court, some of which had been referred to us heretobefore, had not been considered. The counsel appearing for the parties were remiss in bringing the same to the notice of this Court. Furthermore, from a perusal of the impugned notice dated 4.9.2006, it is apparent that the Revisional Authority did not assign any reason as to why such a notice was being issued after a period of $5^1/_2$ years.*
>
> *24. Question of limitation being a jurisdictional question, the writ petition was maintainable.*
>
> *25. We are, however, not oblivious of the fact that ordinarily the writ court would not entertain the writ application questioning validity of a notice only, particularly, when the writ petitioner would have an effective remedy under the Act itself. This case, however, poses a different question. The Revisional Authority, being a creature of the statute, while exercising its revisional jurisdiction, would not be able to determine as to what would be the reasonable period for exercising the revisional jurisdiction in terms of Section 21 (1) of the Act. The High Court, furthermore in its judgment, has referred to some binding precedents which have been operating in the field. The High Court, therefore,*

cannot be said to have committed any jurisdictional error in passing the impugned judgment."

4. If read in the light of the aforesaid judgment of Hon'ble the Supreme Court, the notice issued for revising the assessment after more than 20 years certainly deserves to be set aside on account of delay.

5. For the reasons mentioned above, the writ petition is allowed. The impugned notice, Annexure P-3, is set aside.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 13 OF 2016

THE BATALA CO-OPERATIVE SUGAR MILL LTD.
Vs
STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL AND MRS. RAJ RAHUL GARG, JJ.

24th April, 2016

HF ▶ Revenue

Purchase tax on sugarcane is payable even if tax is being paid under the Punjab (Sugarcane Regulation of Purchase and Supply) Act, 1953

PURCHASE TAX – SUGARCANE – PURCHASE OF SUGARCANE BY SUGAR MILL – TAX ALSO BEING PAID UNDER THE PUNJAB (SUGARCANE REGULATION OF PURCHASE AND SUPPLY) ACT, 1953 – CONTENTION THAT SPECIAL ACT WOULD PREVAIL UPON GENERAL ACT – HENCE NO PURCHASE TAX LEVIABLE ON SUGARCANE – MATTER STANDS COVERED BY SUPREME COURT JUDGMENT IN THE CASE OF JAGATJIT SUGAR MILLS UNDER THE PUNJAB GENERAL SALES TAX ACT 1948 – NO BENEFIT CAN BE DERIVED FROM JUDGMENT OF GOBIND SUGAR MILLS UNDER BIHAR ENACTMENT – PURCHASE TAX HELD TO BE PAYABLE. *SECTION 4 OF PUNJAB GENERAL SALES TAX ACT, 1948*

The appellant, a sugar mill, made purchases of sugarcane for the year 2012-13 and did not pay the purchase tax on the purchase of sugarcane on the ground that it is already paying the tax under the Special enactment namely Punjab (Sugarcane Regulation of Purchase and Supply) Act, 1953. Reliance was placed upon a judgment of Supreme Court in the case of Gobind Sugar Mills vs State of Bihar and others, (1999)115 STC 358 (SC). Rejecting the contention, it was held that matter with regard to purchase tax on sugarcane has been already decided against the assessees in the case of Jagatjit Sugar Mill vs State of Punjab and another, 1995(1) SCC 67. Accordingly, following the decision of Punjab and Haryana High Court in the case of appellant itself for a different year, the appeal was dismissed holding that the purchase tax on sugarcane is payable.

Case referred:

- *AB Sugars Ltd. v. State of Punjab and another VATAP No. 176 of 2013 decided on 15.7.2015*

Present: **None.**

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AJAY KUMAR MITTAL J.

1. This order shall dispose of two appeals bearing VATAP Nos. 13 and 14 of 2016 as the issue involved in both the appeals is identical. For brevity, the facts are being extracted from VATAP No. 13 of 2016.

2. An application bearing CM No. 4239-CII of 2016 has been filed under Section 149 of the Code of Civil Procedure for condonation of delay in payment of shortfall in the court fee. A perusal of the application shows that the deficiency in court fee has been made good. Accordingly, the application is allowed and the delay, if any, in making good the deficiency in court fee, is condoned.

3. VATAP No. 13 of 2016 has been filed by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 8.10.2015 (Annexure A-3) passed by the Value Added Tax Tribunal, Punjab , Chandigarh (hereinafter referred to as "the Tribunal") in Appeal No. 32 of 2015, for the assessment year 2012-13 claiming the following substantial questions of law:-

(i) Whether in the facts and in the circumstances of the case the orders (Annexure A-1), (Annexure A-2) and (Annexure A-3) are legally sustainable in law?

(ii) Whether in the facts and in the circumstances of the case, the VAT Tribunal Punjab Chandigarh has grossly erred in upholding the order of the Notified Authority Cum Excise and Taxation Officer as upheld by the Deputy Excise and Taxation Commissioner (Appeals) Amritsar more so by following the judgment which is still a matter under challenge before the Hon'ble Supreme Court of India?

(iii) Whether in the facts and in the circumstances of the case the VAT Tribunal Punjab Chandigarh has grossly erred in upholding the order of the Notified Authority Cum Excise and Taxation Officer as upheld by the Deputy Excise and Taxation Commissioner (Appeals) Amritsar has grossly erred in denying the input tax credit on the purchase tax assessed/paid by the appellant as per order of assessment (Annexure A-1)?

4. Put shortly, the relevant facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant is running a sugar mill and is engaged in the business of purchasing of sugarcane from its members who are farmers and tillers of land. It is having TIN No. 03371068450. It filed its quarterly returns and also the annual return in VAT-20 for the year under consideration. The case of the appellant was taken up for scrutiny under Section 29(2) of the Act by issuing a notice. The Assessing Authority-respondent No.4 completed the assessment vide order dated 10.7.2014 (Annexure A-1) and levied purchase tax at the rate of 3.3% of the value of purchase price at Rs.28,98,93,570/- which comprised of purchase price of Rs.19,97,09,540/- being the Statutory Minimum Price fixed by the Government of India for the year under consideration and Rs.9,01,84,031/- paid by the appellant on the directions of the State of Punjab. Thus, respondent No.4 had added Rs.9,01,84,031/- which was paid on the direction of the State Government for calculating the purchase tax liability of the appellant. Further, the gross purchases as declared by the appellant amounted to Rs.23,55,58,750/- out of which Rs.1,81,10,238/- were inter-state purchases and Rs. 1,49,28,511/- were purchases of tax free goods. Besides this, the Assessing Authority had admitted availability of Input Tax Credit (ITC) at Rs. 1,05,59,403/- yet allowed the ITC at Rs.9,53,516/-. The Assessing Officer had created an additional demand of Rs.38,67,222/- while completing the assessment. Feeling aggrieved by the order, Annexure A-1, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), who vide order dated 30.9.2014 (Annexure A- 2) rejected the appeal. Against the order, Annexure A-2, the appellant filed an appeal before the Tribunal. The Tribunal vide order dated 8.10.2015 (Annexure A-3) upheld the orders, Annexure A-1 and A-2 and dismissed the appeal following

the judgment of this Court in ***VATAP No. 176 of 2013 (M/s AB Sugars Ltd. v. State of Punjab and another) decided on 15.7.2015***. Hence, the present appeals.

5. After examining the record, we find that the matter is no longer res integra. The issue involved in these appeals stands concluded against the appellant by this Court in M/s AB Sugars Ltd's case (supra). The following substantial questions of law were considered by this Court therein:-

> *"i) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in ignoring the judgment of M/s Gobind Sugar Mills and following the judgment of M/s Jagatjit Sugar Mills case despite the fact that the issue and facts in Govind Sugar Mills case are almost identical to the issues and facts of the present case?*
>
> *ii) Whether in the facts and circumstances of the case, the appellant is liable to pay tax on the purchase of sugarcane under the provisions of Punjab General Sales Tax Act, 1948, when the Punjab Sugarcane (Regulation of Purchase & Supply) Act, 1953 is in force which is a special Act?"*

6. Answering the said substantial questions against the assessee, it was held as under:-

> *"10. We, therefore, cannot take a view different from the one taken by the Supreme Court in M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab (supra) on the ground that the Supreme Court did not consider the provisions of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. Nor we are entitled to ignore this judgment on the basis of the judgment of the Supreme Court in Gobind Sugar Mills Ltd. v. State of Bihar (supra) as in M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab (supra) the Supreme Court considered the very provisions that fall for our consideration. In Gobind Sugar Mills Ltd. v. State of Bihar (supra) different enactments fell for the consideration of the Supreme Court.*
>
> *11. This is not even a case where the enactments considered in Gobind Sugar Mills Ltd. v. State of Bihar (supra) were identical to the Punjab General Sales Tax Act and the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 or that there were no difference between the two enactments. Section 49(8) of the Sugarcane Act which fell for consideration in Gobind Sugar Mills Ltd. v. State of Bihar (supra) expressly provides that a part of the amount of purchase tax collected under subsection (3) is to be utilized for the purpose of the Board and the Council as grant but did not indicate that the entirety of this collection was solely earmarked for the purpose of expenditure of the Board or the Council. Such a provision is absent in the enactments before us. Infact, the statement of object and reasons of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 expressly state as under:-*
>
> > *"Statement of Objects and Reasons- "With the promulgation of the Industries (Development and Regulation) Act, 1951, with effect from the 8th May, 1952, this regulation of sugarcane industry has become exclusively a Central subject. The State Government are now only concerned with the supply of sugarcane to sugar factories: moreover in view of lean financial position of the State, the State Government are not in a position to provide adequate funds for extensive Cane Development work in the areas supplying cane to sugar factories with the result that the factories are not getting cane of good quality. The*

> *Bill is being introduced in order to provide for a rational distribution of sugarcane to factories for its development on organized scientific lines making adequate funds available after imposing a tax on sugarcane purchases by factories, to protect the interests of cane growers and of the Industry and to put the new Act permanently on the Statute Books" (vide Punjab Government Gazette Extraordinary, dated the 9th October, 1953, p. 1630)."*

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

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

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

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

6. In view of the above, the present appeals are dismissed in terms of the order passed in ***M/s AB Sugars Ltd's case (supra)***.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 334 OF 2013

AZAD ENGINEERING WORKS
Vs
THE STATE OF PUNJAB

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

8th July, 2016

HF ▶ Revenue

The officer at checkpost has the jurisdiction to chase the vehicle if it escaped the ICC without informing and impose penalty thereon.

JURISDICTION – CHECKING OFFICER – PENALTY – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT – VEHICLE CHASED AND GOT BACK FROM A DISTANCE OF 3 KM FROM ICC – FAILURE TO PRODUCE DOCUMENTS – ADMISSION ON PART OF DRIVER REGARDING ITS FAULT – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL – HELD: CHECKING OFFICER COMPETENT TO DECIDE THE CASE AS PER NOTIFICATION ISSUED IN 2007 AND 2009 – WILFUL ESCAPE CANNOT DIVEST THE OFFICER TO TAKE ACTION AGAINST THE OFFENDER – ADMISSION ON PART OF DRIVER AND FAILURE TO PRODUCE DOCUMENTS TAKEN INTO ACCOUNT – APPEAL DISMISSED – *S. 51 OF PVAT ACT*

Facts

The goods were in transit from Punjab to Haryana on 18.7.2012. The ICC staff brought the vehicle back (pick up jeep) when the vehicle had crossed 3 KMS distance from ICC without informing at ICC. The goods were detained. The driver appeared before the authorities when the owner was called upon. It is alleged that no documents were produced. Penalty was imposed. On dismissal of first appeal, an appeal has been filed before Tribunal questioning the jurisdiction of the officer to impose penalty.

Held:

Regarding the contention raised that the officer did not have jurisdiction to deal with the matter once the vehicle had crossed the ICC, it is held that after notification dated 27.2.2007 the taxation inspector posted at the ICC was fully competent to perform all the duties u/s 51 of the Act. Wilful escape or wrongful act of the driver cannot divest the officer having jurisdiction to take action against the offender. Also, after issuance of notification dated 20.1.2009, it is concluded that the officers have the power to conduct checking u/s 51 within 5 Kms of the ICC. The driver himself admitted his guilt and failed to produce any documents before the officer. He acknowledged the receipt of notice and got the goods released. Therefore, he signed the entire proceedings which indicated that the owners had nothing to say beyond what the driver of the vehicle had to say. The appeal is dismissed.

Cases referred:

- *P.S. Steel industries, G.T. Road Bhadla Road, Khanna Vs State of Punjab (2011) 39 PHT 203*
- *Mahavir lain Trading Company Raman, District Bathinda (2005) 26 PHT 234 (STD Pb.)*
- *Pooja Agencies opposite Mata Vaishnu Mandir, near water works, Killianwali, Bathinda vs State of Punjab (2011) 38 PHT 479 (PVT)*
- *Azad Engineering works Bathinda Vs State of Punjab (2014) 48 PHT 444 decided on 9.12.2013*

Present: Mr. Sandeep Goyal, Advocate alongwith
Mr. Rishab Singla, Advocate, Counsel for the appellant.
Mr. B.S. Chahal, Dy. Advocate General for the State.

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

1. On 18.7.2012, the driver Gurtej Singh while carrying the diesel engines as well as alternators jumped the ICC Talwandi Sabo. The Officer Incharge of the Information Collection Center (tax Inspector) with the assistance of the staff posted at the ICC brought him back and detained the goods. The Detaining Officer/ the Officer incharge of the ICC then detected that pickup jeep bearing No.PB-03W-4691 was driven by Gurtej Singh S/o Mohinder Singh and he was taking the goods from Bathinda (Punjab) to Fatehabad (Haryana) for trade purposes. When confronted with the documents covering the goods, he failed to produce any invoice/bill/delivery challan and goods receipt in respect of the goods. The driver, in his statement, admitted his fault that he had crossed the ICC without providing the required information at the ICC as per directions of the owner of the goods. The Officer Incharge of the ICC, after recording the statement of the driver detained the goods and issued - notice to the owner of the goods for 19.7.2012 and forwarded the case to the Designated Officer.

2. On 19.7.2012, again Gurtej Singh appeared on behalf of the owners and made the statement admitting his guilt and offered his willingness to deposit the requisite penalty if imposed.: However, the owner was again called for 23.7.2012 in response to which again Gurtej Singh appeared an failed to make any plausible explanation regarding non reporting of the goods at the ICC and jumping the ICC despite the signal given to him. Therefore, vide order dated 23.7.2012, the appellant was imposed penalty to the tune of Rs.42,700/-. The appeal filed by the appellant against this order was dismissed on 23.4.2013

3. Feeling aggrieved, the appellant has preferred this second appeal.

4. The crucial questions raised before me by the counsel for the appellant are as under:-

(1) Even if the driver, after jumping the ICC, had covered 3Kms of distance, from where he was brought back, whether, in that case, the Excise and Taxation Officer-cum-Designated Officer, Talwandi Sabo, Distt. Bathinda had the territorial, jurisdiction to impose penalty upon him?

(2) Whether the detention of the goods made by Taxation Inspector was beyond his competence and jurisdiction.

5. The counsel for the appellant has vehemently contended that the driver had produced the invoices amounting to Rs. 41,616/- and sale was against -C forms, but the same were not noticed by Detaining Officer. It was further contended that in view of the judgment passed by the Punjab AT Tribunal reported in case of ***P.S. Steel Industries Vs. State of Punjab 39 PHT 203***, neither the staff nor the Taxation Inspector were empowered to stop the vehicle at any place other than the ICC. AT the time of detention of the goods, certain blank papers were got signed from the driver of the vehicle and lateron the penalty was imposed on that basis. The order has been passed to the absence of the owner of the goods and also without application of

mind. The Detaining Officer had got signed some papers from the driver which were misused by the Enquiry Officer. Since it was pickup jeep and not regular vehicle therefore, GR could not be produced. While taking shelter of the judgment delivered in case of Raghav Steels Industries, it was argued that the goods receipt is a document indicating the mode of giving details of goods to be transported by the transporter. But it does not mean that the absence of GR is a proof of an intention to evade the tax.

6. To the contrary, the State Counsel has urged that it was Gurtej Singh, Driver who was incharge of the goods at the time of detention; he appeared during all the proceedings including that he took the goods on security and even after the dealer was summoned, he put in appearance before the Designated Officer; signed all the proceedings voluntarily and deposited the penalty therefore, now the appellant can't come to contend the he was not called and given hearing at the time of passing the order of penalty by the Designated Officer. The appellant did not raise any objection before the Designated Officer that Gurtej Singh was compelled to sign blank papers. The appellant did not file any affidavit of Gurtej Singh before the Deputy Excise and Taxation Commissioner as well as the Tribunal explaining that Gurtej Singh did not make any statement on his behalf and he acted against his wishes. He has further urged that the plea regarding sale against "C" forms can't be accepted as no such documents of sale have been produced by the appellant at the time of checking. However, the invoices so prepared and produced are after thought and have been manipulated in order to save himself from the penalty. The appellant has raised contradictory pleas. On one side, he states that the goods were not meant for sale and on the other hand, he states that goods were sold against "C" Forms. The allegations regarding competency of the Taxation Inspector to detain the goods and the jurisdiction of the Designated Officer to pass the order have also been seriously countered.

7. Arguments heard. Record perused.

8. The factual situation is not disputed, the occurrence had taken place on 18.7.2012 when the pickup jeep No. PB-03W-4691 while carrying the diesel engines, came from Bathinda side and was leading towards Fatehabad (Haryana). The driver, after jumping over the ICC tried to escape whereupon, he was chased and brought back by the Tax Inspector with the help of the staff at the ICC Talwandi Sabo. It is duly established on the record that the driver was not carrying any GR or the invoice relating to the goods at that time. However, four Invoices were manipulated lateron and were produced which can be termed as manipulation of documents in order to escape the liability to pay the penalty.

9. The counsel for the appellant has laid much stress on the two issues; firstly, Taxation Inspector was not competent to intercept the vehicle and secondly if the driver once crosses the barrier, then the Detaining Officer posted at ICC would loose his jurisdiction to detain the goods and designated officer would loose the jurisdiction to by the case. In this regard, the counsel has placed much reliance on the judgment delivered in case of ***P.S. Steel industries, G.T. Road Bhadla Road, Khanna Vs State of Punjab (2011) 39 PHT 203*** wherein the Tribunal agreed with the findings given in the case of ***Mahavir Jain Trading Company Raman, District Bathinda (2005) 26 PHT 234 (STD Pb.)***, whereby it was observed that the Excise and Taxation Officer at Information Collection Center could not deal with the matter regarding imposition of penalty and he was to refer the case to the Assistant Excise & Taxation Commissioner of the area concerned and his jurisdiction was confined only to the ICC.

10. Having heard the rival contentions, I stand to distinguish with the judgments cited by the counsel for the appellant for the multiple reasons; firstly the State has relied upon the Notification No. S.0.11/PA.8/2005/S.3/2007, dated 27.2.2007 which reads as under:-

> *"In supersession of the Punjab Government Excise and Taxation Department Notification No. S.O. 35/P.A/46.48.S.3/74 dated the 5th July, 1974 and in exercise of the Powers conferred by sub Section -1 of Section 3 of the Punjab*

> *Value Added Tax Act (Punjab Act No.8 of 2005), the Governor of Punjab is pleased to appoint the Excise and Taxation Inspectors and Taxation Inspectors to assist the Commissioner, from time to time and direct that the Excise and Taxation Inspectors and Taxation Inspectors posted at the check post or the Information Collection Center set-up U/s 51 of the said Act shall exercise all the powers and perform all duties of the Officer Incharge of the check post or the Information Collection Centre as may be required by or under the Act, with immediate effect"*

11. The aforesaid notification does not leave any iota of doubt in the mind of the Tribunal to form an opinion that the Taxation Inspector posted at check post was fully competent to perform all the duties of the officer incharge of the check post or the Information Collection Center as the case may be U/s 51 of the Punjab Value Added Tax Act.

12. Now coming to the jurisdiction of the Excise and Taxation Officer-cum-Designated Officer, ICC Talwandi Sabo, District Bathinda to take cognjgence of the case and decide the same. The contention raised by the counsel is that since the driver had jumped over the ICC and taken away the goods at distance of 3 kms, then in that situation, even in accordance with the notification dated 20.10.2009 the Designated officer, ICC, Talwandi Sabo had no jurisdiction to try the case, in this regard, it is observed that the goods had started from Bathinda. The ICC, Talwandi Sabo is located on the border of State of Punjab and Haryana and the goods after crossing the ICC were to enter the State of Haryana and then the same were to be reported at the check post located in Haryana and make a necessary declaration regarding the transportation of the goods which had been brought from Punjab. The driver did not stop the vehicle despite signal given to him and he was brought back after giving a chase then in that situation neither the officer posted at check post can be said to have lost jurisdiction over the vehicle, nor on account of that wrongful act of the driver, the Designated Officer, ICC, Talwandi Sabo looses jurisdiction to try the case. If such a Rule direction or instruction is issued then every driver, after crossing the border while violating the law of the land, in one way or the other, would say good bye to the laws of the State and render the officers sitting at the ICCs gazing helplessly and it would be a serious challenge to their jurisdiction. No Rule of law confers such a free hand to the drivers. The jurisdiction of the officer sitting over the check post or the ICC would come into play as soon as he crosses the said ICC on the check post by hood winking the officers, as the case may be. Even otherwise willful escape or other wrongful act on the part of the driver would not divest the officer otherwise having jurisdiction over the area to take action against such offender. Even otherwise, in order to bestow powers to the Designated Officers over the area of check post, the Excise and Taxation Commissioner Punjab vide order dated 20.10.2009 issued following instructions:-

> *"Exercising the powers conferred upon me U/s 51 of the Punjab VAT Act, 2005, I A. Venu Prasad, IAS, Excise and Taxation Commissioner, Punjab, do hereby authorize, Excise and Taxation Officer posted at various Information Collection Centres in Punjab to conduct checking U/s 51 of the Punjab VAT the radius of 5 kms of respective ICC. The cases after detection will be disposed off by the Assistant Excise and Taxation Commissioner, Incharge of that area where the detection is made."*

13. On perusal of the aforesaid order, the inference can be drawn that all the Excise and Taxation Officers were given the powers to conduct checking U/s 51 of the Punjab VAT Act, 2005 within 5 kms of the respective ICCs and the Assistant Excise and Taxation Commissioner, incharge of that area were vested with the powers to try such cases. This notification is not in any way in supersession of all the powers enjoyed by the Designated Officer vide earlier notification dated 27.2.2007. If this argument of the appellant is accepted,

then the vehicles, who once jump the ICC and enter the State of Haryana or area of Punjab beyond the ICC, then those goods would go unexamined and the offenders would go unpunished.

14. As regards, the judgment delivered in case of ***P.S. Steel Industries, G.T. Road Bhadla Road, Khanna Vs State of Punjab decided on 25.2.2011***. The same is not applicable to the facts of the present case. In that case, the Tribunal relied upon the judgment delivered in case of ***M/s Mahavir Jain Trading Company Raman, District Bathinda (2005) 26 PHT 234 (STD Pb)*** I have examined the said basic judgment delivered by Sales Tax Tribunal, Punjab. In case of M/s Mahavir Rice Mills Vs. State of Punjab decided on 19.7.2005. In that case, the vehicle was detained by the inspector of the department at a distance of 18 kms from the barrier within the area of Punjab but in the present case the driver mischievously jumped the ICC whereupon, the vehicle was chased, brought back from a distance of 03 kms from the ICC when the driver tried to enter the State of Haryana. Secondly, the case of M/s Mahavir jain Company was decided in 2005 by the Sales Tax Tribunal and the said case was governed by the provisions of Punjab General Sales Tax Act and the Judgment was passed prior to the coming into force the aforesaid two notifications dated 27.2.2007 and dated 28.10.2009. In that situation the Sales Tax Tribunal Punjab took the view that as the goods were detained by the Excise and Taxation Officer at a distance of 18kms from the barrier and the State Counsel had admitted that fact, as such the Excise and Taxation Officer had no jurisdiction to entertain the case. In the P.S. Steel Industries (Supra) the Tribunal was mainly moved by the fact' that the goods had come from Lehragaga side and information was to be given at Chullar ICC where as the driver was apprehended by the authorities at Talwara Phatak. The department had failed to show as to where vehicle was intercepted by the inspector. Thus, while doubting that the detention was not even made by the inspector and that the goods were covered by genuine documents the Tribunal quashed the penalty. Similarly, the judgment passed in the case of ***Pooja Agencies opposite Mata Vaishnu Mandir, near water works, Killianwali, Bathinda vs State of Punjab (2011) 38 PHT 479 (PVT)*** is also not applicable as in that case the Designated Officer had not specifically mentioned in the order that vehicle had jumped the barrier without furnishing the required information and it is also not disclosed as to from which place the vehicle was brought back to the ICC. The judgment in case, of ***Azad Engineering works Bathinda Vs State of Punjab (2014) 48 PHT 444 decided on 9.12.2013*** delivered by the Tribunal is also not applicable. As in that case, though the driver had jumped the ICC but when confronted he had produced the invoice regarding the goods which were sale tax paid whereas in the present case it is definite case of department is that the appellant while carrying the diesel engines had jumped the ICC without generating a declaration there for and he could not produce any documents relating to sale of these goods. The Detaining Officer alongwith the help of staff chased the vehicle and apprehended it at a distance of 3 kms from the brought back at the ICC and then it was brought back at the ICC. The goods were detained by the officer competent do so. The notice was issued to the driver apprising him of all the allegations to which Mr. Gurtej Singh did not dispute, he failed to produce any document and further told that he did not report the information at the ICC as per directions of the owner of the goods. The goods were meant for trade. He also acknowledged the receipt of the notice and about the guilt in his statement dated 18.7.2012. Despite the notice issued to the owner, he did not appear to say any thing in his favour. He himself got released the goods. While appearing before the Designated Officer, he again made the statement admitting his guilt and offered to deposit the penalty if any. The plea that some blank papers were got signed by the authorities which were misused, is not acceptable, because not only on 18.7.2012 he received the notice and made the statement under his signatures but he also received the detention order and thereafter, he signed the statement before the Designated officer and also signed the entire proceedings, therefore, the inference could be drawn that the owners had nothing to say beyond what has been stated by the driver Gurtej Singh.

15. No other argument has been raised.

16. Having perused the impugned orders passed by the authorities below, the same appear to be well founded and well reasoned and the same do not call for any interference at my end.

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

18. Pronounced the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 104 OF 2015

ALMAHA FOODS INTERNATIONAL PVT. LTD.
Vs
THE STATE OF PUNJAB

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

2nd June, 2016

HF ▶ Revenue

Penalty upheld on account of non production of documents to prove goods in transit were meant for job work.

PENALTY – CHECK POST /ROAD SIDE CHECKING - ATTEMPT TO EVADE TAX – GOODS IN TRANSIT FROM HARYANA TO PUNJAB INTERCEPTED – NO DOCUMENTS PRODUCED – GOODS ALLEGED TO HAVE BEEN TRANSPORTED FOR JOB WORK FROM ONE BRANCH OFFICE TO ANOTHER TO BE FINALLY EXPORTED – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL – HELD: NO DOCUMENTS OR EXPORT ORDER PRODUCED TO SUPPORT THE CONTENTION RAISED BY APPELLANT – NON REPORTING AT ICC TAKEN INTO ACCOUNT - APPEAL DISMISSED – *S. 51 OF PVAT ACT*

Facts
The goods were intercepted as the information was not generated at ICC and details of consignee were not given. Concluding intention to evade the tax penalty was imposed. It was alleged by the appellant that it had its branch office in Haryana from where it had been sending paddy for job work to their branch at Faridkot. On dismissal of first appeal, an appeal is filed before Tribunal.

Held:
The documents required at the time of detention were not produced. The contention that the goods were meant for export and were being sent from one branch office to another for milling is not supported by any document. No export order has been produced. Moreover, goods were not reported at ICC. Thus, a clear intention of tax evasion is made out. The appeal is dismissed.

Present: Mr. Avneesh Jhingan, Advocate Counsel for the appellant.
Mr. N.K.Verma, Sr. Dy., Advocate General for the State.

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

1. This appeal has arisen out of the order dated 27.11.2014 passed by the First Appellate Authority, Faridkot Division, Head Quarter at Bathinda vide which the First Appellate

Authority had dismissed the appeal of the appellant against the order dated 16.1.2012 passed by the Designated Officer Faridkot imposing a penalty to the tune of Rs. 3,58,548/- U/s51 (7) (c) of the Punjab Value Added Tax Act, 2005.

2. M/s Almaha Foods International Pvt. Ltd. had its branch office at Kaithal (Haryana) from where it had been sending the paddy for job work to their branch office located in the name and style of M/s Shri Krishana Industries, Sadiq Road, Faridkot under an agreement.

3. On 1.1.2012, when the drivers alongwith vehicles No. HR- 38J07551 and HR-55-7952 carrying paddy from Kaithal in Haryana, reached Faridkot, then both the trucks were intercepted by the Excise and Taxation Officer Faridkot. On demand, the drivers produced the following documents:-

1. Stock transfer challan No. 21709 and 21710, dated 31.12.2011. Bilty No. 753, 754 dated 31.12.2011
2. From VAT D3

4. The Detaining Officer detained the goods. On verification, no account books were produced, therefore, the case was forwarded to the Designated Officer who issued notices showing cause as to why owner of the goods has not given the information at the nearest ICC while entering the State of Punjab and proper details of the consignee were not given. On completion 0f the enquiry, the Designated Officer Faridkot vide, order dated 16.1.2012, observed that the appellant had not generated the goods at the ICC and he had no branch office at Faridkot. The agreement so produced did not confer any right to the appellant to transfer the goods to the consignee, therefore, the intention was clear that the paddy was being transported for trade and there was an attempt to evade the payment of tax. Consequently, the Designated Officer imposed penalty to the tune of Rs.3,58,548/-.

5. The appeal filed by the appellant was dismissed on 27.11.2014.

6. Much stress was given by the counsel for the appellant that the appellant is Pvt Ltd. Company dealing in export of rice after purchasing paddy from Haryana and Punjab. Since the company has no rice mill and paddy purchased is got milled from other rice Mills. Accordingly, a similar agreement was entered into between the appellant and Shri Krishana Industries Sadiq Road Faridkot for milling the paddy and the rice so produced by the Mills was exported out of India through the appellant company. The entire goods are purchased on the basis of the existing orders, therefore, the question of any evasion of tax does not arise. The appellant had produced the complete documents regarding the goods loaded in both the trucks, but the Designated Officer missed to consider the said documents. Lastly it has been contended that this being a case of stock transfer no tax under the Punjab Value Added Tax Act is involved. Eventually, it was urged that the orders passed by the authorities below need to be reversed.

7. Having heard the rival contentions and having gone through the records of the case, it transpires that the appellant has failed to produced proper and genuine documents covering the goods at the time of detention. The goods were transported by M/s Almaha Foods International Pvt. Ltd. Head Office Amritsar through its branch office at Kaithal for milling such goods by M/s Shri Krishana Industries Faridkot under an agreement. The goods were to be exported out of India, however, the appellant has failed to establish any of the aforesaid pleas setup by the appellant. Nothing has been placed on record in order to establish that the appellant was a exporter of rice/ paddy from the State of Punjab to the foreign countries. No export order has been placed or record in support of the plea taken by him. Secondly, no such agreement has been put forth and no such memorandum and articles of Association have been placed on record in order to make out that M/s Almaha Foods International Pvt. Ltd., Kaithal could send the paddy to Faridkot for milling under an agreement. Assuming for the sake of arguments that the goods were got milled by the appellants from M/s Shri Krishana Industries Faridkot under

an agreement dated 31.12.2011, even then the said agreement, copy of which has been placed before me, does not support the cause of the appellant. The agreement so produced is dated 31.12.2011 which has been made effective from 2.1.2012 (clause 25 of the agreement is relevant). Whereas the goods were detained at Faridkot on 11.1.2012 meaning thereby that there was no agreement between the parties on the date of detention for doing the job work. As such the plea raised by the appellant that the goods were sent by the appellant to M/s Shri Krishana Industries Faridkot for job work, from their branch at Faridkot, under an agreement is in correct. The goods were also not generated at any ICC, therefore, the appellant certainly must have intention to keep the goods out of the account books. It was the boundness duty of the appellant to generate the goods at nearest ICC while entering into the State of Punjab. This violation of the provision of the law makes out a clear cut case of attempt to evade tax under Section 51(7)(c) of the Act, 2005.

8. Having examined the orders passed by the authorities below, the same appear to be well founded and well reasoned and do not call for any interference at my end, therefore, finding no merit in the appeal, the same is hereby dismissed.

9. Pronounced in the open court.

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PUBLIC NOTICE (Chandigarh)

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EXTENSION IN THE PERIOD FOR FILING RETURNS FOR THE 1ST QUARTER, 2016-17

EXCISE & TAXATION DEPARTMENT
ADDITIONAL TOWN HALL BUILDING, 1ST FLOOR,
SEC 17 C, CHANDIGARH, (CONTACT NO. 0172-2702928)

PUBLIC NOTICE

ATTN.:- All Taxable Persons, Advocates, C.A.s and stakeholders.

Extension in the period for filing returns for the 1st Quarter, 2016-17

Whereas in view of the representations from the Tax bar association and various other trade organizations requesting association and various other trade organizations requesting that the last date for filing the returns for the 1st Quarter, 2016-17 be extended, the stakeholders are informed through this Public Notice that:-

1. That last date for filing the returns has been extended from 30.07.2016 to 10.08.2016 in public interest.

2. That the last date for the payment of tax shall remain unchanged i.e. 30.07.2016.

29.07.2016

Excise and Taxation Commissioner,
U.T., Chandigarh.

PUBLIC NOTICE (Punjab)

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EXTENSION IN THE PERIOD FOR e-FILING OF VAT-15 FOR THE 1ST QUARTER OF 2016-17

GOVERNEMTN OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION

PUBLIC NOTICE

KIND ATTENTION.:- **DEALERS / CHARTERED ACCOUNTANTS / LAWYERS / OTHER STAKEHOLDERS**

This is inform all the concerned that the last date of e-filing of VAT-15 for the 1st Quarter of 2016-17 has been extended till 5th August, 2016.

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

CORRIGENDUM (Punjab)

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AMENDMENT IN NOTIFICATION NO. S.O. 13/PA8/2005/S.3/2016 DATED 20/2/2016

PART IV

GOVERNEMTN OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION

CORRIGENDUM

The 18th July, 2016

In the Government of Punjab, Department of Excise and Taxation. Notification No. S.O. 13/P.A. 8/2005/S.3/2016 dated the 20th February, 2016, in the Table, in Serial No. 3 and 5, in column 3 *titled* as 'Extent of the powers conferred upon him', FOR '47', READ '47, 62', respectively.

D.P. REDDY,
Additional Chief Secretary to Govt. of Punjab,
Department of Excise & Taxation

NOTIFICATION (Haryana)

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DRAFT AMENDMENT- EXEMPTION FROM LEVY OF VAT ON "MEHANDI LEAVES AND ITS POWDER"

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 2nd August, 2016

No. Web. 17/H.A. 6/2003/S.59/2016. – The following draft of amendment which the Governor of Haryana proposes to make in exercise of the powers conferred by sub-section (1) of section 59 of the Haryana Value Added Tax Act, 2003 (6 of 2003), in Schedule, B and C appended to said Act, is published below for the information of persons likely to be affected thereby.

Notice is hereby given that the draft of amendment shall be taken into consideration by the Government on or after the expiry of a period of ten days from the date of uploading of this notification on the official web site www.haryanatax.gov.in together with objections and suggestions, if any, which may be received by the Principal Secretary to Government, Haryana Excise and Taxation Department, Chandigarh from any person with respect to the draft of amendment before the expiry of the period so specified and shall take effect with effect from date of final notification:-

DRAFT AMENDMENT

In the Haryana Value Added Tax Act, 2003 (6 of 2003),-

1. in Schedule B, under columns 1 and 2, after serial number 35 and entry thereagainst, the following serial number and entries thereagainst shall be inserted, namely:-
   "35A Mehandi leaves and its powder";
2. in Schedule C, under columns 1 and 2, serial number 100A and entry thereagainst shall be omitted.

ANURAG RASTOGI,
Principal Secretary to Government, Haryana,
Excise and Taxation Department.

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GST BILL: MOS FINANCE HOPEFUL INDIRECT TAX REFORM WILL CLEAR RAJYA SABHA IN AUGUST

Meghwal said when Congress drafted the GST Bill, it did not cap the GST rate in Constitutional amendment bill and their demand now is only an after thought.

Banking on support from regional parties for passage of the GST Bill, the government on July 20 expressed hope that the Rajya Sabha will clear the indirect tax reform in the first week of August.

Minister of State for Finance Arjun Ram Meghwal said the Congress' demand for capping the GST rate in Constitution is "not very practical", but the government is making a lot of effort to build consensus on the Goods and Services Tax (GST).

"Government is making a lot of effort to build consensus on GST Bill. There are many Chief Minister – UP, Odisha, West Bengal, Bihar – they all want GST to come fast… We hope that Rajya Sabha will be able to pass the GST Bill in the third week of (monsoon session of) Parliament," Meghwal said on the sidelines of an Assocham event.

Courtesy: The Indian Express
20th July, 2016

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'GST CAN LOWER COST OF LOGISTICS INDUSTRY BY 20 PER CENT'

Logistics industry is projected to grow at a compounded annual growth rate of 15-20 per cent between 2015-16 and 2019-20 that will get a further boost if GST is rolled out from this year, which can trim costs by 20 per cent, says a report.

The much-delayed GST rollout can help boost the GDP by 100-200 bps as this will help faster and cheaper movement of goods across the country with a uniform taxation structure, said a report by Care Ratings.

Growth

"Logistics industry is likely to clip at CAGR of 15-20 per cent during 2015-16 to 2019-20 and if GST is rolled out this year this can bring down the logistic costs by up to 20 per cent from the present levels," it said.

Cost can also come down drastically as a one-nation-one- tax GST structure can massively reduce the long and winding queues at border check-points and other entry points within and between the states.

Warehouse revamp

Another reason for lower logistics cost is that operators will be able to rationalize and restructure their warehouses and other logistical infrastructure.

Due to trade barriers such as the entry tax, local body tax, octroi and other hurdles, trucks idle for 30-40 per cent of the day, leading to huge man-hour and fuel losses, says the report. Since GST will be levied on goods transportation and full credit will be available on interstate transactions, logistic cost is expected to come down by 1.5-2 per cent of sales due to warehouse optimistion and lower inventory cost.

E-commerce

A higher growth of the logistics industry will be driven by e-commerce, GST rollout, the new national integrated logistics policy, and 100 per cent FDI in warehouses etc. But in spite of the large potential, it remains entangled in complexities such as higher costs, a myriad of complex tax structures.

Courtesy: The Hindu
17 July, 2016

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RS150 CR VAT NOT PAID, 15 FIRMS BOOKED

FATEHGARH SAHIB: On the complaint of Assistant Excise and Taxation Commissioner (AETC), the police have registered a case against 15 firms, mostly from Mandi Gobindgarh, for not paying Value Added Tax (VAT) and penalty to the tune of Rs 150 Crore.

AETC Magnesh Sethi had written a letter to SSP Harcharan Singh Bhullar for registering a case against 17 owners and shareholders of 15 industrial units of the industrial township.

A case has been registered against PSR Steels (Rs 1.46 cr) Sivansu Steel Industry, Satguru Hargobind Industry (Rs 10.26 cr), Champion Ispal Udyog, RK Steel Industry, AR Steel Ispal, Maa Chintpurni Alloys, Himalaya Steel Rolling Mills, Shri Naina Alloys (12.56 cr), Chandigarh Steel Corporation, Shri Kuber Industries, Surance Industries (12.56 cr), Rohal Machine Tools, GR Castings and Globe Touch Steel (Rs 6.26 cr), Anap Overseas, Shri Naina Multimetals Pvt Ltd., SN Steel (Rs 31.40 cr), RS Industry, Upkar Trading Company, Saira Steel (Rs 32.47 cr), Triveni Puri Ji Steel Rolling Mills, KS Machine Tools, Anil Agro Industries (Rs 15.89 cr), Prakash and Hemand Sons (Rs 6.32 cr), Hemant Steel Corporation (Rs 6.32 cr), Yoshika Impecs (Rs 5.05 cr) besides some truck body builders for evading the VAT.

Sethi said that 15 firms have cheated the government by not paying the VAT. He said earlier DDR's were registered against these firms but even then they did not deposit the amount. He said he took up the matter with SSP and the cases were registered.

Courtesy: The Tribune

26th July, 2016

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TAX DEPT, POLICE NOT COOPERATING IN VAT SCAM, ED TELLS HC

CHANDIGARH: The Enforcement Directorate (ED) has informed the Punjab and Haryana High Court that the Excise and Taxation Department and the police are not cooperating in investigation against offenders of the alleged VAT scam under the Prevention of Money Laundering Act (PMLA).

In its reply to a petition seeking investigation by the CBI and the ED into Rs 10,618 crore alleged VAT scam unearthed by an SIT constituted by the Lokayukta, the ED said despite repeated reminders and personal visits, the police as well as the Excise and Taxation Department was not providing copies of the FIRs lodged against the violators.

The ED said the FIR was a precondition for registering an enforcement case investigation report (ECIR) under the PMLA.

The ED said that after issuance of the notice by the High Court, specific queries were raised by its Chandigarh Zonal office with the office of the Excise and Taxation Commissioner (ETC), Haryana, on May 10 asking him to provide copies of the FIRs registered against the VAT dealers who had cheated the state exchequer.

"On receiving no response, Enforcement Officer (EO) Mahesh Kumar visited the office of Rameshwar Mehra, Additional ETC, thrice on May 18, 20 and 25, requesting him to provide copies of the FIR, but they did not provide any copy," the reply said.

It further said even after reminders dated May 26 and June 30, response from the ETC Department was still awaited.

The ED said that letters dated June 13 were sent to the Haryana DGP and the Additional Chief Secretary (Home) for getting copies of the FIR.

"On receiving no response, EO Mahesh Kumar visited the office of ADGP Mohd Akil on June 29 and the ED sent a reminder to the DGP and the ACS (Home) on June 30, but their replies were still awaited.

The ED said that in the absence of the FIRs, no action could be initiated under the provisions of the PMLA against any person, including VAT dealers, who allegedly cheated the state exchequer.

Courtesy: The Tribune
17the July, 2016

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VAT SCAM: NO FIRS DESPITE COMPLAINTS

CHANDIGARH: Notwithstanding admission by the Haryana Excise and Taxation Department that wrongful loss has been caused to it by some unscrupulous dealers through fake input tax credit (VAT refund), criminal proceedings are yet to start against anyone in the state.

In some cases where the department has lodged police complaint, but no FIRs.

Recently, the Enforcement Directorate (ED) had told the Punjab and Haryana High Court that the Excise and Taxation Department and the Haryana police were not cooperating in initiating investigation against offenders of the 'VAT scam' under the Prevention of Money Laundering Act (PMLA) and were not supplying copies of the FIRs.

In a letter written to all Deputy Excise and Taxation Controllers (DETCs) posted in districts on April 19, the Excise and Taxation Commissioner (copy with The Tribune), had admitted that while examining input tax credit claims of VAT dealers, the authorities had come across cases where false and fabricated evidence had been knowingly submitted to the department.

"The issue has been considered at length. It has been decided to proceed against such dealers under the IPC as well," the letter stated.

On April 19 and then again on May 26, the ETC had told the DETCs to lodge FIRs against all such dealers. However, no FIR has so far been registered.

In Sirsa, where maximum number of fake VAT refund has been claimed by dealers in the past, police is yet to register FIR, two months after the Excise and Taxation Department gave written complaints for fake refund of VAT running in several crores.

Sources in the Excise and Taxation Department said it had submitted written complaints against 24 firms in May this year and requested the police to register cases against them.

Courtesy: The Tribune
18th July, 2016

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CABINET CLEARS GST CHANGES

Drops 1% manufacturing tax, okays five-year revenue security for states

NEW DELHI: The Union Cabinet today cleared changes in the GST Constitutional Amendment Bill, dropping 1 per cent manufacturing tax and providing guarantee to compensate states for any revenue loss in the first five years of rollout of the proposed indirect tax regime.

The Cabinet, headed by Prime Minister Narendra Modi, decided to include in the Constitutional Amendment Bill that any dispute between states and the Centre will be adjudicated by the GST Council, which will have representation from both the Centre and states.

With states on board and the Cabinet approving the amendments, the government is hopeful of passage of the long-pending Goods and Services Tax (GST) Bill in the ongoing monsoon session of Parliament, which ends on August 12.

The GST Bill, with the changes approved by the Cabinet, could come up in the Rajya Sabha as early as this week, but certainly by next week. The changes approved by the Cabinet are to the Constitutional Amendment Bill that was approved by the Lok Sabha in May last year. Once the Rajya Sabha approves the legislation, the amended Bill will have to go back to the Lok Sabha again for approval.

The amendments were taken up by the Cabinet after Finance Minister Arun Jaitley's assurance to state finance ministers to include in the Bill the mechanism of compensating states for all the loss of revenue for five years.

The Bill, in its present form, provides that the Centre will give 100 per cent compensation to states for the first three years, 75 per cent and 50 per cent for the next two years.

However, the Select Committee of Rajya Sabha had recommended 100 per cent compensation for probable loss of revenue for five years. — PTI

Courtesy: The Tribune
27th July, 2016

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AFTER TALKS, SOME HEADWAY ON GST BILL

NEW DELHI: Making some headway on the GST Bill, Union Finance Minister Arun Jaitley and the empowered group of state Finance Ministers today agreed on the principle that the tax rate would be lower than the current levels. The broad consensus was that the rate should not be part of the statute.

The Finance Ministers sought a statutory framework for compensation to the states for any loss of revenue during the first five years of the Goods and Service Tax (GST) subsuming all indirect levies, including VAT.

The states sought that the word “may” be changed to “shall”, to make sure the states were fully compensated.The Finance Minister said since the terminology needed to be vetted legally, it would be examined if it was legally possible.

There was a broad agreement on the issue of keeping small businesses and traders with a turnover of Rs 1.5 crore or less under the ambit of a single state government and not dual control as this would cause problems to small traders.

After the meeting, West Bengal Finance Minister and panel chairman Amit Mitra said the meeting arrived at the principle that the ordinary businessman and the common tax man would benefit from GST by way of lower tax rates while the states would not face any loss of revenue. Also, there was "consensus to keep the GST rate out of the Constitutional Amendment Bill," he claimed.

Many states do not favour a cap on the GST rate under the Bill. They argue that this will hurt their autonomy as they will have to approach Parliament to change the rates.

The meeting decided to set up a committee to work out a compensation mechanism. It will submit a report in 10 days.The states also sought sharing of IGST revenue for inter-state transactions. Mitra said, "The broad consensus put together is satisfactory to all political parties and all states,"adding that a "foolproof" wording for compensation to states had been worked out.

There are indications that the government may now bring the GST Bill in the Rajya Sabha next week instead of this week as planned earlier.

Courtesy: The Tribune
26th July, 2016

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ALL SET FOR GST

Govt, Opposition may push the 'landmark' reform through

LAST week saw some rare government-Opposition cooperation in hammering out differences over the goods and service tax (GST) Bill, which is expected to be tabled sometime this week. The government is keen that the Bill gets passed before the current monsoon session of Parliament is over. The Rajya Sabha's business advisory committee has allocated five hours for a discussion on the Bill, which will be followed by a vote since the proposed legislation entails a Constitution amendment. Even though the Lok Sabha had cleared the Bill in May 2015, the Lower House will reconsider it after it passes through the Rajya Sabha with agreed changes. At least half the states are required to give their approval for the Bill to become a law.

From media reports it appears the Congress has softened its opposition to the Bill after the government accepted its demand for dropping the additional 1 per cent inter-state levy meant to compensate manufacturing states such as Maharashtra and Gujarat. The second Congress demand for putting a cap at 17-18 per cent GST rate in the Constitution has been partially met. The party appears willing to buy into the government assurance that the GST rate will be capped through subordinate legislation.

Most states were worried about a possible loss of revenue with the GST rollout and they seem satisfied with the government's guarantee to compensate them for any revenue loss in the first five years. Besides, states will get exclusive rights to levy GST on businesses with a turnover of Rs 1.5 crore or less. Manufacturing states like Tamil Nadu do stand to lose revenue since the GST law shifts the point of tax levy from the origin to where the good or service is utilised. It was difficult to satisfy the interests of every state. Yet Arun Jaitley and the state finance ministers have managed to considerably narrow down the differences over this landmark tax reform. Despite sending out positive signals, the Congress has still not unequivocally offered its support for the GST Bill. Only the final vote will show who stands where.

Courtesy: The Tribune
1st August, 2016