Issue 9
1st May 2017

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

— Robert A. Heinlein

NOMINAL INDEX

PUBLIC NOTICE AND NOTIFICATION

PUNJAB

HARYANA

NEWS OF YOUR INTEREST

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News From Court Rooms

CESTAT, NEW DELHI : Central Excise : As regards shortages, the same are in respect of yarn and polywool which are to the tune of small fractional percentage of the total stock. It stands held in number of decisions that shortages in the raw material itself cannot lead to inevitable conclusion of clandestine removal of the final product, in the absence of any further evidence on record. Impugned order confirming demand of duty cannot be upheld. ***(Uniworth Textiles Ltd. – November 11th, 2016)***

T AND AP HC : Service Tax : Whether the food supplied by an employer to the workers at a subsidized rate would come within the meaning of the expression service, irrespective of whether the food is supplied within the premises or outside the premises?

Any supply of subsidized food to the workers by the management of a Company, has to be seen as part of the pay package that the workers have negotiated with the employer. The food supplied by an employer to its employees at a subsidized rate forms part of the wages under Section 2(rr) of the Industrial Disputes Act, 1947.

Once the State Authorities have treated the supply of food to the workers of the petitioner as sale it is not open to the respondents to treat the same as service and impose service tax. ***(Bhimas Hotels P Ltd. – March 23, 2017).***

CESTAT, BANGALORE : Central Excise : Assessee is involved in assembling computer parts & components into a working computer system. This does not amount to manufacture & thus do not attract excise duty. Consequently issues of brand name and denial of SSI exemption become immaterial. ***(Novo Computer Shopee – February 7th, 2017)***

MADRAS HC : CST : Where the assessee subsequently produces 'C' Forms from other States invoking the provision that assessee had tried his best, but it was beyond his control, because 'C' Forms were either not readily available or not readily issued in those States, Assessing Officers have to be liberal in reopening the reassessing of such cases. An AO could re-open and consider C-forms without bothering about the onus on the assessee to establish the sufficient cause for filing such form in time. ***(Aachi Masala Foods Ltd. – February 1, 2017)***

CESTAT, HYDERABAD : Service Tax - Assessee engaged in providing Erection, Commissioning or Installation services & did not initially discharge service tax liability or file ST-3 returns. Whether amount received for providing taxable services, disclosed subsequently by assessee be entirely taxable? Department considered entire declared amount to be taxable and did not extend benefit of CUM tax to assessee. Hence, matter remanded for providing said benefit and also for reduction in penalty by 25% which was not offered to assessee earlier. ***(Kantham Constructions – February 9, 2017).***

CESTAT, HYDERABAD: Service Tax - Assessee engaged in Management or Consultancy Services. Assessee had raised funds through IPO which were then invested to get interest by advancing loans to other companies. Raising of funds and lending the same for interest is only for the purpose of investment which in turn used in the business of the assessee. It is not used for banking purposes. Department did not prove that assessee was engaged in banking. Thereby it is rightly observed that the investment cannot be classified as an activity. Department's appeal dismissed. ***(KSK Energy Ventures Ltd. – February 8, 2017).***

KARNATAKA HC: Karnataka VAT: Assessee a manufacturer of cement, would be entitled to claim input tax credit in respect of tax paid by it on cement purchased and used by it for laying foundation and erection of cement manufacturing plant and machinery prior to its commencement of commercial production. ***(JK Cement Works – March 23, 2017).***

KERALA HC : Luxury Tax: Timeshare arrangement i.e. agreement between owners of resorts and members by which members are entitled to accommodation at resorts, charges for which are not collected at time of residence but are included in membership fees, comes within definition of luxury and, hence, is taxable. ***(Mahindra Holidays & Resorts I Ltd. – March 29, 2017).***

PUNJAB AND HARYANA HC : Central Excise : Where assessee had not made payment of duty and interest determined under section 11A(2) and section 11AB respectively, within 30 days of communication of order of adjudicating authority, assessee will not be entitled to benefit of reduced duty. ***(Sunshine Steel Corporation – March 22, 2017).***

CESTAT, NEW DELHI: Service Tax : Appellants got manufactured 60 Railway Wagons and supplied the same to the Railways. Since the right of position and effective control is with the Railways, no service tax liability. ***(Ultratech Cement Ltd. – March 15, 2017).***

CESTAT, NEW DELHI : Service Tax : Club received donation against Building Fund. Since the donation amount does not present any additional facilities or relating to the membership in the club the same has no nexus with the taxable service

provided by the appellant. ***(Jaisal Club Limited – January 13, 2017)***

CESTAT, MUMBAI : Service Tax : Sharing of marketing expense with manufacturer by distributor won't fall under Business Auxiliary Services. ***(SMV Beverages P Ltd. – March 17, 2017).***

BOMBAY HC : Service Tax: The Tribunal has not agreed with the contention of the Revenue that in this case the suppression of facts intended to evade payment of duty was established. That was not held to be established on account of the position in the law, and, secondly, because the assessee did not suppress anything from the revenue. This court found no substantial question of law and devoid of merits. Revenue's appeal dismissed. ***(Seed Infotech Ltd. – April 3, 2017).***

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SUBJECT INDEX

Issue 9
1st May 2017

SUPREME COURT OF INDIA

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CIVIL APPEAL NO. 1219 OF 2015

FUJI FILM INDIA PVT. LTD.
Vs
COMMISSIONER OF CUSTOMS (IMPORT) NHAVA SHEVA

RANJAN GOGOI AND NAVIN SINHA, JJ.

11th April, 2017

HF ▶ Asssessee

The Tribunal should refer the matter to a larger bench in case of disagreement with its earlier decision on a similar issue.

TRIBUNAL – PRECEDENTS – JUDICIAL DISCIPLINE – CLASSIFICATION ISSUE RAISED BEFORE TRIBUNAL – ORDER PASSED DEVIATING FROM ITS EARLIER DECISION GIVEN IN A SIMILAR CASE – IMPUGNED ORDER CHALLENGED BEFORE SUPREME COURT – MATTER OUGHT TO HAVE BEEN REFERRED TO A LARGER BENCH IN SUCH EVENTUALITY – MATTER REMITTED TO TRIBUNAL FOR DECISION DE NOVO – APPEAL ALLOWED - *SECTION 35 B OF CENTRAL EXCISE ACT, 1944.*

Facts

An issue regarding classification of Imaging Plates and IP cassettes was raised before Tribunal whereby the Tribunal, deviating from its own decision passed earlier in a similar case, held that the items were classifiable under Chapter 37 instead of Chapter 90. An Appeal is filed before Supreme Court by the appellant.

Held:

The Tribunal should have sought the view of larger bench before deviating from its earlier decision. This is what judicial discipline demands. Therefore, the matter is remitted for a decision de novo. The Appeal is allowed and impugned order is set aside.

Present:For Appellant(s): Mr. B. Prabhu Patil, Sr. Adv.
Ms. Reena Khair, Adv.
Ms. Praveena Gautam,Adv.
Mr. Rohitaash K. Sinha, Adv.
Mr. Jitesh P. Gupta, Adv.
Ms. Shreya Dahiya, Adv.

For Respondent(s): Mr. K. Radhakrishnan, Sr. Adv.

Mr. Sudhir Walia, Adv.
Mr. B. Krishna Prasad,Adv.

Mr. V.Lakshmikumaran, Adv.
Ms. Nupur Maheshwari, Adv.
Mr. Dhruv Matta, Adv.
Mr. M. P. Devanath,Adv.

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ORDER

1. This appeal arises out of the final order No.A/1653/14/CSTB/C-I dated 29.10.2014 passed by the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Mumbai in Appeal No.C/192/12-MUM.

2. We have heard the learned counsels for the parties.

3. The issue before the learned Tribunal was with regard to classification of Imaging Plates, IP Cassettes and FCR Capsula.

4. There was an order dated 20.02.2013 of the same Tribunal in the case of M/s. Jindal Photo India Pvt. Ltd. vs. Commissioner of Customs (Import), Nahva Shevar [Order No. 12/1237/13/CSTB/C-I in Appeal No.C/415/12-Mum] holding that Imaging Plates and IP Cassettes to be classifiable under Chapter 90 CTH 90189099 and, therefore, entitled to the benefit of notification No.21/2002 dated 01.03.2002. The classification of FCR Capsula was also decided in ***Jindal Photo India Pvt. Ltd.*** (supra) in a manner adverse to the assessee. No issue on the said classification was raised by the assessee in the present case wherein the issue of classification of Imaging Plates, IP Cassettes was alone contested.

5. In the impugned order, the learned Tribunal did not accept the decision of the coordinate Bench in ***Jindal Photo India Pvt. Ltd.*** (supra) and took the view that the two items were more appropriately classifiable under Chapter 37 CTH 370110.

6. As benefit under the notification No.21/2002-Cus dated 01.03.2002 was allowable in respect of Imaging Plates and IP Cassettes even if the same is to be classified under Chapter 37, the learned Tribunal, by the impugned order, held that the said two items will be eligible to the benefit of notification No.21/2002 dated 01.03.2002.

7. Notwithstanding the above, as the appellant-assessee would be liable for payment of additional duty of customs by virtue of the notification under Serial No.357B, the present appeal has been filed.

8. If the learned Tribunal was not in a position to accept the correctness of the decision of a coordinate Bench of ***Jindal Photo India Pvt. Ltd.*** (supra) , the correct course of action would have been to seek the views of a larger Bench. Judicial discipline demanded the quasi judicial authority i.e. the learned Tribunal to act in such a manner. That apart, the learned Tribunal seems to have found a case which was not even urged by any of the parties before it, namely, that Imaging Plates and IP Cassettes merit classification under Chapter 37.

9. In the aforesaid circumstances, we are of the view that the order of the learned Tribunal should be interfered with and the matter be remitted for a decision de novo keeping in mind what has been stated above. We order accordingly.

10. The order dated 29.10.2014 of the learned Tribunal is accordingly set aside and the appeal is allowed in the aforesaid terms.

11. We request the learned Tribunal to decide the matter as expeditiously as possible.

12. Needless to say that all contentions available to the parties are left open.

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PUNJAB & HARYANA HIGH COURT

STA NO 1 OF 2017

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COMMISSIONER SERVICE TAX
Vs
RITES LTD.

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

6th April, 2017

HF ▶ Revenue

Personal cost imposed for non compliance of order of Tribunal set aside as being mere mistake on part of officer.

APPEAL – COSTS – TRIBUNAL - NON COMPLIANCE - PERSONAL COST – ASSESSING OFFICER – REFUND DISALLOWED BY ASSESSING OFFICER WHICH WAS GRANTED BY TRIBUNAL – DESPITE ORDER HAVING ATTAINED FINALITY, REFUND APPLICATION REJECTED BY ASSESSING OFFICER – PERSONAL COST IMPOSED BY TRIBUNAL ON OFFICER FOR NON COMPLIANCE OF ITS ORDER – APPEAL FILED BEFORE HIGH COURT BY OFFICER – COST IMPOSED SET ASIDE AS NO MALAFIDES SEEN – MERE MISTAKE NOT LIABLE FOR PENAL ACTION – APPEAL ALLOWED – *SECTION 11-B OF CENTRAL EXCISE ACT, 1944*

Facts
The Assessing Authority had rejected petitioner's claim for refund against which it filed an appeal. The Tribunal allowed the appeal vide order dated 16.11.2001. The order attained finality. Despite that, the assessing authority rejected the application for refund on the ground of limitation u/s 11-B of Central Excise Act. The Assessing Authority could not have done so. The assessee filed an appeal for refund which was also rejected by Commissioner. The Tribunal allowed the appeal against this order. The tribunal imposed a cost of Rs. 10, 000/- on the Assessing Officer personally for not having complied with the said order of the Appellate Authority dated 16.11.2001 . An appeal is filed by the department in this regard.

Held:
There does not appear to be any malafide on part of officer. A mere incorrect order ought not to have invited penal consequences if made bonafide. The cost against the officer is set aside.

Present: Mr. Sourabh Goel, Advocate for the appellant.
Mr. Udit Seth, Advocate for the respondent.

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S.J. VAZIFDAR, C.J.

1. This is an appeal against the order of the Customs, Excise and Services Tax Appellate Tribunal (for short 'the Tribunal') dated 29.10.2005 (Annexure A-6), setting aside the order of the Appellate Authority, rejecting the petitioner's claim for refund.

2. According to the appellant, following substantial question of law arise:-

i) *Whether the action of adjudicating authority in following the procedure established by law with regard to disbursal of refund amount from govt. exchequer is proper and in accordance with law?*

ii) *Whether the impugned order dated 29.10.2015, is perverse, illegal and untenable in the eyes of law and the same is therefore liable to be set aside?*

iii) *Whether the Ld. Tribunal committed an error in ignoring that the application for refund filed by the respondent/assessee was in fact barred by limitation and therefore the order dated 16.11.2001, Annexure A-2, was nullity in eyes of law?*

iv) *Whether the adjudicating authority was not empowered to consider that the refund claim application was barred by limitation?*

v) *Whether CESTAT is empowered to impose cost on the adjudicating authority?"*

3. The first four questions do not raise substantial questions of law. The Assessing Authority had rejected the respondent's/assessee's application for refund. The petitioner's appeal against the same was allowed by the order of the Appellate Authority dated 16.11.2001. That order has attained finality. The same was not challenged by the appellant/revenue. Despite the same, the Assessing Authority rejected the application for refund on the ground that it was barred by limitation under Section 11-B of the Central Excise Act, 1944 (for short 'the Act'). The Assessing Authority could not have done so in view of the said order of the Appellate Authority. It was bound by and ought to have complied with the same.

4. The respondent, however filed an appeal for refund under Section 11-B of the Act, which was not necessary in view of the order of the Appellate Authority which had attained finality. The Commissioner (Appeals) also by mistake considered the appeal independently and by an order dated 31.3.2009 (Annexure A-5), rejected the appeal. The Tribunal allowed the appeal against this order. The amount, in any event, has already been received by the respondent.

5. This brings us to the last question. The Tribunal has imposed a cost of Rs.10,000/- on the Assessing Officer personally for not having complied with the said order of the Appellate Authority dated 16.11.2001. There do not appear to be any mala fides on the part of the officer. He passed an order which is incorrect. A mere incorrect order ought not to invite penal consequences if made bona fide.

6. In the circumstances, the appeal is admitted in respect of the question(v) and the same is answered in favour of the appellant. The order of cost against the officer is, therefore, set aside.

7. The appeal is accordingly disposed of.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 26425 OF 2016

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ROHAN RAJDEEP TOLLWAYS LTD.
Vs
STATE OF PUNJAB AND OTHERS

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

18th April, 2017

HF ▶ Direction Issued

Refund not granted in writ jurisdiction where pre-deposit has not been made in the demand for another year.

REFUND – REFUND OF RS. 1.65 CRORES ORDERED IN FAVOUR OF PETITIONER FOR ASSESSMENT YEAR 2010-2011- REFUND OF RS 1.20 CRORES GRANTED FOUR MONTHS LATER – INTEREST ON ACCOUNT OF DELAYED PAYMENT AND BALANCE AMOUNT OF RS 45 LACS CLAIMED BY PETITIONER - WRIT FILED IN THIS REGARD – DEMAND OF RS 10 CRORES RAISED FOR PERIOD 2011-12 – NO AMOUNT OF PREDEPOSIT MADE FOR FILING OF APPEAL AGAINST THE SAID DEMAND – HELD: PETITIONER IS ENTITLED FOR ITS CLAIM BUT DUE TO OUTSTANDING AMOUNT OF RS 10 CRORES, RESPONDENT CANNOT BE DIRECTED TO PAY OVER THE BALANCE REFUND AMOUNT IN THIS CASE – RESPONDENT MAY APPLY TO COMMISSIONER FOR SEEKING WITHHOLDING OF THE BALANCE REFUND AMOUNT U/S 41 AND COMMISSIONER TO PASS ORDERS ACCORDINGLY – WRIT DISPOSED OF – *SECTION 62(5) AND 41 OF PVAT ACT, 2005.*

Facts

By an order dated May 18, 2015, the petitioner was held entitled to refund of Rs 1.65 Cr in respect of AY 2010-2011. The petitioner has filed a writ claiming the balance amount of Rs. 45 lacs which still stands unpaid along with interest thereon. Also, the amount of Rs 1.20 Cr was paid in September, 2016 for which interest is claimed as the amount ought to have been paid within sixty days of passing of order.

Held:

On 22nd March, 2017 an assessment order has been passed for the year 2011-2012 under which the petitioners are liable to pay an amount of Rs 10 crores. The petitioners have filed an appeal against the order for which no predeposit has been made. An application has been filed for its exemption.

The Assessing authority is not entitled to retain the amount of refund without prior permission of the ETC u/s 41. Now, that Rs 10 crore is due from petitioner against the refund of only Rs 45 lacs plus interest, the State cannot be directed to pay over the balance amount of refund to petitioner.

However, to meet the ends of justice

1) The State may apply u/s 41 to ETC for approval to withhold refund which would have to be paid in the event of approval not being granted together with interest.

2) The ETC shall pass the order after considering the petitioner's representation . The writ is disposed of.

Present: Dr. Naveen Rattan, Advocate for the petitioner(s).
Mr. Sukhdip Singh Brar, Additional Advocate General Punjab

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S.J. VAZIFDAR, C.J.

1. The petitioners grievance is that the respondents have failed and neglected to pay over the amount of refund adjudicated in their favour. By an order dated 18.5.2015, the petitioners were held entitled to a refund of Rs.1.65 crores in respect of the assessment year 2010-2011. Under Section 40 of the Punjab Value Added Tax Act, 2005 (in short the Act), the amount was to be refunded within sixty days. However, only an amount of Rs.1.20 crores was paid on 22.9.2016. The petitioners accordingly claim to be entitled to interest on the sum of Rs.1.20 crores from the expiry of sixty days from the date of the order of refund i.e. 18.5.2015 till the date of payment i.e. 22.9.2016. The petitioners also contend that they are entitled to the payment of the balance amount of Rs.45 lacs together with interest thereon from the expiry of sixty days from the date of the order of refund i.e. 18.5.2015 till payment and/or realization.

2. The petitioners are undoubtedly entitled to the refund in view of the order dated 18.5.2015 which has attained finality. The respondents, however initially paid an amount of only Rs.1.20 crores on 22.9.2016. They had adjusted the balance amount towards the petitioners, liability for pre-deposit in respect of the appeals filed by them against the assessment orders for the years 2009-2010 and 2012-2013. The petitioners state that the appeals were subsequently allowed. However, the matter was remanded to the assessing authority. Thus as on date, there is no payment due for the years 2009-2010 and 2012-2013. Thus, absent anything else, the petitioners would have been entitled to be paid the balance amount of refund adjudicated by the order dated 18.5.2015. However, on 22.3.2017, an assessment order was passed for the year 2011-2012 under which the petitioners are liable to pay an amount of about Rs.10 crores. The petitioners have filed an appeal against the order. No amount has been deposited as a pre-deposit for the appeal. The petitioners have filed an application for exemption which is yet to be adjudicated upon.

3. Be that as it may, the assessing authority is not entitled to retain the refund amount without the prior permission of the Excise and Taxation Commissioner under Section 41 of the Act. The fact remains that there is an outstanding demand of Rs.10 crores as on date against the refund of only Rs.45 lacs together with interest thereon.

4. In exercise of our extra-ordinary jurisdiction under Article 226 of the Constitution of India, we are not inclined at this stage to direct the respondents simplicitor to pay over the balance refund amount.

5. The ends of justice would be met by the following order:-

(i) The respondents shall, if they so desire, make an application under Section 41 to the Excise and Taxation Commissioner for approval to withhold the refund. In the event of the approval not being granted by the Excise and Taxation Commissioner by 15.6.2017, the balance refund amount shall be paid over to the petitioners together with interest as per

law. This however, is subject to any other right of the respondents to withhold the amount.

(ii) In the event of an application being made by the respondents to the Excise and Taxation Commissioner for approval to withhold the amount under Section 41, the Excise and Taxation Commissioner shall pass the order after considering the petitioners representation against the same.

6. The writ petition is disposed of in terms aforesaid.

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HARYANA TAX TRIBUNAL

STA NO. 456 OF 2015-16

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AMBA FOODS
Vs
STATE OF HARYANA

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

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

15th March, 2017

HF ▶ Assessee

Contradictory order passed by Revisional Authority is set aside.

REVISIONAL AUTHORITY – CONTRADICTORY ORDER – FORM VAT D2 SUBMITTED BY ASSESSEE ORDERED TO BE VERIFIED BY REVISIONAL AUTHORITY – MATTER REMITTED TO ASSESSING AUTHORITY IN THIS REGARD – SIMULTANEOUSLY TAX LEVIED UNDER CST WITH RESPECT TO SAME TRANSACTION WHICH NEEDED VERIFICATION – APPEAL FILED – NO ADDITIONAL TAX IS LEVIABLE BEFORE VERIFICATION OF VAT D2 FORMS IN THIS CASE – APPEAL ALLOWED PARTLY TO THE EXTENT OF LEVY OF TAX ON TRANSACTION IN RESPECT OF WHICH VAT D2 FORMS REQUIRED VERIFICATION – *SECTION 34 OF HVAT ACT, 2003.*

Facts

Revisional Authority observed that VAT D2 form submitted by assessee during Revisional proceedings needed verification. The matter was thus remitted to Assessing Authority. Also, additional tax was imposed under CST on the same transaction qua which VAT D2 from was to be verified. An appeal is filed against this levy of additional tax.

Held:

Without verification of VAT D2 form by assessing authority in remand, additional tax demand could not have been created relating to the same transaction. Appropriate order was to be passed only after verification. Therefore, impugned order is set aside to the extent of levy of tax under CST on the same transaction as covered by the VAT D2 form in question. The appeal is partly allowed.

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

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

1. In this appeal filed by Assessee M/s Amba Foods, Cheeka, Kaithal, challenge is to order dated 17.11.2015 of Revisional Authority, Kaithal, thereby creating additional demand of Rs.2,22,158/- under the Central Sales Tax Act, 1956 (in short, the CST Act).

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

3. Revisional Authority observed that VAT D-2 for submitted by the assessee during revisional proceedings is required to be verified by the Assessing Authority. Accordingly, the matter was remitted to the Assessing Authority. However, at the same time, the Revisional Authority also imposed additional tax under the CST Act, on the same transaction for which VAT D-2 form was required to be verified by the Assessing Authority.

4. Counsel for the appellant rightly contended that without verification of VAT-D-2 form by the Assessing Authority, additional tax demand under the CST Act relating to the same transaction could not have been created by the Revisional Authority. There is considerable force in the contention. Appropriate order on the basis of VAT-D-2 form submitted by the assessee in the revisional proceedings has to be passed by the Assessing Authority after verifying the genuineness thereof. Prior to it; levy of tax under the CST Act by the Revisional Authority relating to the same transaction cannot be sustained being contradictory to the direction regarding verification of the genuineness of the VAT-D-2 form by the Assessing Authority. Consequently, the impugned order to the extent of levying tax under the CST Act on the same transaction as covered by the VAT D-2 form in question is liable to the set aside.

5. The appeal is accordingly allowed partly and impugned order is set aside to the extent indicated in the preceding paragraph.

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HARYANA TAX TRIBUNAL

STA NO. 353 OF 2013-14

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ANAND ELECTRNIC
Vs
STATE OF HARYANA

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

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

20th March, 2017

HF ▶ Revenue

Appellate Authority has powers to dismiss an appeal in default under HVAT Act and Rules.

APPEAL – DISMISSAL IN DEFAULT – APPEAL FILED BEFORE TRIBUNAL CONTENDING THAT FIRST APPEAL DECIDED BY AUTHORITIES OUGHT TO HAVE BEEN DECIDED ON MERITS RATHER THAN DISMISSAL IN DEFAULT – 13 OPPORTUNITIES PROVIDED TO APPELLANT PRIOR TO PASSING OF IMPUGNED ORDER - NO GROUND TAKEN IN APPEAL EXPLAINING ABSENCE DURING DATE OF HEARING – RULES OR ACT DO NOT BAR DISMISSAL IN DEFAULT – FURTHER BENEVOLENCE IN SUCH CASES WOULD RENDER 'DISMISSAL IN DEFAULT' IN OTHER CASES DIFFICULT – VAT C-4 FORMS NOT TO BE ENTERTAINED AT THIS STAGE AS ORDERS OF FIRST APPELLATE AUTHORITY ARE UPHELD – APPEAL DISMISSED – *SECTION 33 OF HVAT ACT, 2003*

Facts

The first appeal filed by appellant was dismissed in default. It is contended that it should have been heard on merits. Therefore, an appeal is filed in this regard.

Held:

Despite 13 opportunities being given to the appellant, none appeared before first appellate authority. No ground is mentioned in appeal as to why none appeared on the date of hearing.

Though the appellate authority had adopted a liberal approach and gave ample opportunity, the appellant ought to have been present. The claim that the appellant is now in possession of VAT C -4 forms which could not be produced earlier cannot be entertained as the order of first appellate authority is being upheld. The appeal is dismissed. If further benevolence is shown in such a case, no case can ever be dismissed in default or decided ex parte. HVAT rules or provisions do not bar dismissal of an appeal in default.

Present: Mr. Avneesh Jhingan, Advocate Counsel for the appellant.
Sh. M.L. Sharma, District Attorney for the State.

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

1. This is second appeal by assessee M/s Anand Electronic, Hisar.

2. First appeal filed by the assessee was dismissed in default because none appeared for appellant on any date of hearing despite thirteen opportunities.

3. We have heard Counsel for the appellant and District Attorney for the State and perused the case file.

4. Counsel for the appellant relying of judgment of Hon'ble High Court of Punjab and Haryana High Court in (1971) 28 STC 291 Messrs Wood Workers and Packing Case Works, Moga Vs. The State of Punjab and another contended that the first appeal could not be dismissed in default and should have been decided on merit even if none appeared for the appellant before the first Appellate Authority. The contention cannot be accepted. In the aforesaid case, rule-59 (2) of the Punjab General Sales Tax Rules, 1949 authorizing dismissal of appeals for default was held to be inconsistent with and repugnant to section 20 (6) of the Punjab General Sales Tax Act, 1948. However, counsel for the appellant could not refer to similar/identical provisions of the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act) and the Haryana Value Added Tax Rules, 2005 (in short, the HVAT Rules). Even otherwise we find that the first Appellate Authority rightly dismissed the first appeal in default because none appeared for the appellant despite thirteen opportunities. Rule-65 of the HVAT Rules or section 33 of the HVAT Act does not bar the dismissal of an appeal in default.

5. It is significant to notice that in the grounds of present appeal, not even a word has been whispered as to why none appeared before the first Appellate Authority on any date of hearing despite thirteen opportunities. Counsel for the appellant submitted that there was fault of counsel for the appellant for which the appellant should not be made to suffer. The contention is not tenable because no such plea has even been taken in the grounds of present appeal. Even otherwise, the Appellate Authority was left with no option but to dismiss the first appeal in default after granting thirteen opportunities and giving notices and still none appeared for the appellant on any date of hearing. Courts are liberal in such matters and always effort is to decide a case on merits instead dismissing it in default or to decide it ex-parte. However, there has to be some limit to such liberal approach also. In the instant case, the first Appellate Authority adopted a very liberal approach and gave notices for as many as thirteen dates of hearing, but none appeared for the been far exceeded in the instant case. If further benevolence is shown in such a case, then no case can ever be dismissed in default or decided ex-parte.

6. Counsel for the appellant submitted that the appellant is now in possession of two VAT-C 4 certificates which were not produced before the Assessing Authority. However, this claim on merits of the case cannot be entertained because the first appeal was dismissed in default and we are up-holding the said order.

7. Before parting with the order, we have to express our anguish that District Attorney for the State has been of no assistance. On the other hand, he rather wasted time by giving files of two other cases when we asked for the file of first Appellate Authority relating to this case.

8. For the reasons aforesaid, we find no merit in this appeal which is accordingly dismissed.

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HARYANA TAX TRIBUNAL

STA NO. 774 OF 2014-15

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STATE OF HARYANA
Vs
ASHIKA COMMERCIAL (P) LTD.

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

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

8th March, 2017

HF ▶ Revenue

Appellate Authority should have remanded the matter where there is violation of Principles of Natural Justice instead of accepting the appeal.

PENALTY - NATURAL JUSTICE – OPPORTUNITY OF BEING HEARD – PENALTY IMPOSED BY CHECKING OFFICER U/S 31 FOR FAILURE TO PRODUCE REQUISITE DOCUMENTS – APPEAL ACCEPTED BY FIRST APPELLATE AUTHORITY – APPEAL FILED BEFORE TRIBUNAL BY DEPARTMENT – NO ENQUIRY HELD BY OFFICER U/S 31 – DOCUMENTS PRODUCED BY DEALER NOT CONSIDERED BEFORE IMPOSING PENALTY – NO OPPORTUNITY OF BEING HEARD GIVEN – MATTER REMANDED TO CHECKING OFFICER TO DECIDE AFRESH ALONGWITH OPPORTUNITY OF BEING HEARD – APPEAL ALLOWED – *SECTION 31(8) OF HVAT ACT, 2003.*

Facts
The checking officer had intercepted a vehicle. Penalty was imposed on grounds of producing VAT D-3 form which was tampered with. An appeal filed by the dealer was accepted by first appellate authority. Aggrieved by the order an appeal is filed by the department before the Tribunal.

Held:
From the record it appears that no proceedings were held by checking officer. The dealer has contended that no opportunity of being heard was given to it. Certain other documents produced by dealer were not entertained by the officer.

Thus, the matter should have been remanded by first appellate authority to the checking officer for fresh decision after giving opportunity of being heard to dealer.

Therefore, the appeal is accepted and the matter is remanded to the checking officer alongwith the direction to consider all the documents produced before first appellate authority.

Present: Sh. N.K. Gupta, J.D. (L) for the State-appellant.
Sh. D.K. Tyagi, Advocate Counsel for the respondent.

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

1. This This is appeal by State of Haryana challenging order dated 06- 01-2014 of first Appellate Authority, Faridabad thereby allowing first appeal filed by assessee respondent M/s Ashika Commercial P. Ltd., Kishangarh (Raj) against order dated 08-10-2013 of Assistant Excise and Taxation Officer (Enforcement)-cum-Taxing Authority, Gurgaon (West) (in short, the Checking Officer) whereby penalty of Rs.3,95,400/- was imposed on the assessee under section 9(2) of the Central Sales Tax Act, 1956 read with section 31(8) of the Haryana Value added Tax Act, 2003 (in short, the HVAT Act), besides advance tax and surcharge.

2. We have heard State Representative for appellant-state and Counsel for the assessee-respondent and perused the case file.

3. The Checking Officer intercepted the vehicle carrying goods on 01-09-2013 and detained the goods because VAT-D-3 form accompanying the goods had been tampered with. Show Cause Notice was issued by the Checking Officer for 16.09.2013. However, from the record, it appears that no proceedings were held by the Checking Officer on 16-09-2013. The Checking Officer passed order on 08-10-2013. It was grouse of the assessee in first appeal that no opportunity of hearing was given to it by the Checking Officer nor mandatory inquiry required by Section 31 of the HVAT Act was held by the Checking Officer. Certain additional documents were also produced by the assessee before the first Appellate Authority with allegation that the Checking Officer refused to entertain the same.

4. In view of the aforesaid circumstances, we are of the considered opinion that the first Appellate Authority should have remanded the case to the Checking Officer for fresh decision after giving opportunity of hearing to the assessee. Even before us, both sides have no objection if the matter is remanded to the Checking Officer.

5. Resultantly this appeal is allowed. Impugned order of the first Appellate Authority is set-aside alongwith order dated 08.10.2013 of the Checking Officer. The matter is remanded to the Checking Officer for fresh decision in accordance with law after giving reasonable opportunity of hearing and producing documents to the assessee. The documents produced by the assessee before the first Appellate Authority shall also be transmitted by it to the Checking Officer. The matter shall be decided by the Checking Officer within four months from the receipt of copy of this order.

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HARYANA TAX TRIBUNAL

STA NO. 1057 OF 2014-15

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ITNL ENSO RAIL SYSTEM LTD.
Vs
STATE OF HARYANA

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

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

28th March, 2017

HF ▶ Assessee

No surcharge is leviable on a works contractor if he is a lump sum dealer.

WORKS CONTRACT – SURCHARGE – WORKS CONTRACT EXECUTED BY ASSESSEE - SURCHARGE LEVIED ON WORKS CONTRACTOR - CONTENTION RAISED THAT NO SURCHARGE IS LEVIABLE U/S 7A ON A LUMP SUM DEALER AS ASSESSEE – IN VIEW OF AN EARLIER JUDGMENT PASSED BY THE HIGH COURT NO SURCHARGE IS LEVIABLE ON LUMP SUM DEALER – APPEAL ALLOWED – *SECTION 7A OF HVAT ACT, 2003.*

Facts
The assessee is a works contractor and a lump sum dealer u/s 9 of the Act. The contractee deducted tax @4.20% from the amount to be paid to assessee and deposited it in treasury. This amount was inclusive of 5% surcharge u/s 7A. The appeal is filed against the levy of 5% surcharge.

Held:
The issue is covered by an earlier judgment passed by the Hon'ble High court of Punjab and Haryana wherein it was held that no surcharge is to be levied u/s 7A on any lump sum dealer. The appeal is allowed.

Present: Mr. Madhav Sharma, Advocate, counsel for the appellant
Sh. S.K. Saini, J.D. (L) for the State.

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

1. This is second appeal by assessee M/s ITNL Enso Rail System Ltd., Gurgaon, now as IL & FS Rail Ltd.

2. The assessee is a works contractor and is a lump sum dealer under section 9 of the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act). The appellant executed works

contract during the assessment year 2010-11. The contractee deducted tax @4.20% from the contract amount of the assessee appellant and deposited the same with the department. The said amount @4.20% included tax @4% and additional tax/surcharge under section 7A of the HVAT Act on the tax amount. Grievance of the assessee-appellant in the present appeal is regarding the levy of additional tax/surcharge on the assessee under section 7A of the HVAT Act by the Authorities below.

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

4. The issue raised in this case is covered in favour of the assessee-appellant by judgment of Hon'ble High Court of Punjab and Haryana in (2016) 3 NTR 270 (P&H) M/s Mahashiv Promoters Pvt. Ltd. Vs. State of Haryana and another, wherein it has been held that additional tax or surcharge under section 7A of the HVAT Act is not leviable on any lump sum dealer.

5. Resultantly, this appeal is allowed and impugned orders of both the Authorities below are set-aside to the extent of levying additional tax/surcharge on the assessee under section 7A of the HVAT Act.

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HARYANA TAX TRIBUNAL

STA NO. 383 OF 2014-15

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MAHASHAKTI WOOD PRODUCTS
Vs
STATE OF HARYANA

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

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

21st March, 2017

HF ▶ Partly Revenue and partly Assessee

Penalty imposed for non production of documents qua goods being sent for interstate sale.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – NATURAL JUSTICE – VALUATION OF GOODS - GOODS VEHICLE CHECKED – NO DOCUMENTS PRODUCED – PENALTY IMPOSED FOR NON PRODUCTION OF DOCUMENTS – GOODS CONCLUDED TO BE UNDERVALUED AS MENTIONED IN PHOTOCOPIED BILL – PENALTY AND ADVANCE TAX IMPOSED THEREON – APPEAL BEFORE TRIBUNAL – PERUSAL OF RECORD REFLECTS NO DOCUMENTS PRODUCED FOR MAKING INTERSTATE SALE – PHOTOCOPIED BILL AND GR PRODUCED AFTER 9 DAYS OF CHECKING – ATTEMPT TO EVADE TAX ESTABLISHED – PENALTY RIGHTLY IMPOSED – ADVANCE TAX AND PENALTY FOR UNDERVALUATION IMPOSED WITHOUT CONFRONTING MATERIAL REGARDING HIGHER MARKET VALUE BEFORE ASSESSEE – VIOLATION OF NATURLAL JUSTICE - MATTER REMANDED TO CHECKING OFFICER TO THE EXTENT OF DETERMINATION OF HIGHER MARKET VALUE OF GOODS – APPEAL ALLOWED PARTLY – *SECTION 31(8) OF HVAT ACT, 2003.*

Facts

The Goods Vehicle was checked by the officer while it was stationary. The driver could not produce documents. Goods were detained. Penalty was imposed for making interstate sale without documents. It was also concluded that goods were undervalued in the photocopied bill produced. Penalty was imposed thereon and advance tax was levied, too. It is against the order of first appellate authority that an appeal is filed before Tribunal.

Held:

It is manifest from the record that the driver had no documents when the truck was checked. Even photocopied bills and GR were produced 9 days later although the appellant had appeared before the officer twice but did not submit them. Thus, it is an after thought to have produced the copied bill and GR. Therefore, goods were being carried without documents with intent to evade tax and penalty was rightly imposed.

However, regarding quantum of penalty and advance tax, matter is remanded to checking officer because the material regarding higher market value was not put to assessee and therefore, determination of said higher market value and imposition of penalty and advance tax on said basis is in violation of natural justice.

The appeal is allowed partly.

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

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

1. This is second appeal by assessee M/s Mahashakti Wood Products, Jagadhri.

2. On the night between 2/3.06.2012 at about 4.20 am, Assistant Excise and Taxation Officer (Enforcement), Jagadhri (in short, the Checking Officer) checked a stationary truck No. HR-58-C-5661 carrying plywood and board etc., near Jagadhri filling station, Dusani, Saharanpur Road, Yamuna Nagar. Mohinder Mishra, driver-cum-incharge of the goods, on being asked to produce the documents of the goods stated that he had no documents whatsoever pertaining to the goods. He also stated that he had loaded the goods from the premises of present appellant which is about 14-15 kms. from the checking spot. The driver stated that the factory owner had directed him to proceed to Saharanpur and that he would send the documents through Munshi at Dusani, but the Munshi, who came there some time ago assured that he would hand over the documents very soon. The driver signed his statement recorded by the Checking Officer, but refused to sign the notice regarding detention of goods.

3. On 4.6.2012 at about 4.00 pm, Ashwani Garg claiming to be owner of the goods appeared before the Checking Officer and accepted the show cause notice and further detailed notice. He again appeared on 06.06.2012 with his Attorney (Tax Practitioner). They submitted written reply. On 12.06.2012, another written reply was submitted afongwith photostat copies of bill no.57 dated 02.06.2012, a goods receipt (GR), treasury receipt of lump sum payment of tax and form 38 of U.P, VAT Act.

4. The Checking Office vide order dated 17.06.2012 found that there was attempt to evade the tax as the goods were being carried by Inter-State sale (ISS) without any documents. Besides it, photostat copy of the bill produced by the assessee was for Rs.2,14,468/-. However, the Checking Officer after verification from local market concluded that value of the goods was Rs.6,10,510/-. Accordingly the Checking Officer imposed penalty of Rs.1,83,153/- under section 9(2) of the Central Sales Tax Act, 1956 (in short, the CST Act) read with section 31(8) of the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act), besides advance tax of Rs.76924/- on the basis of value of the goods as Rs. 6,10,510/- as determined by the Checking Officer.

5. First appeal against the order of the Checking Officer filed by the assessee has been dismissed by first Appellate Authority, Ambala vide order dated 17.04.2014. Hence this second appeal by the assessee.

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

7. Counsel for the appellant raised two-fold argument. Firstly, it was contended that the driver had the requisite documents i.e. bill and GR and produced the said original documents before the Checking Officer on being told by the assessee. Secondly, it was contended that there was no material before the Checking Officer to enhance the value of the goods from the

billed amount of Rs.214468/- to Rs. 610510/- and such material, if any, was not confronted to the appellant.

8. State Representative contended that original documents were never produced at any stage by the driver or the assessee before the Checking Officer and only photostat copies of the documents were produced by the assessee on 12.06.2012 i.e. 9 days after the checking of the vehicle. State Representative submitted that in order of the first Appellate Authority it has been wrongly mentioned that the goods were accompanied by invoice (bill) No.57 and GR being No.57 and infact only photostat copies of the said documents were produced for the first time before the Checking Officer on 12.06.2012 by the owner. It was contended that the assessee-appellant as lump-sum dealer had a ceiling of amount for interstate sates and thus by making ISS of the goods in question without documents, the assessee was attempting to evade the tax and, therefore, penalty has been rightly imposed on the assessee. As regards value of the goods and consequent quantum of penalty and advance tax, State Representative submitted that there is enough material on record regarding market value of the goods as determined by the Checking Officer. However, State Representative fairly conceded that the assessee was not confronted with the said material.

9. We have carefully considered the matter. It is manifest from the record that the driver was not having any documents when his stationary truck with the goods was checked by the Checking Officer. The original documents have not seen the light of the day even till today. Original bill and GR are not there in the record of the Checking Officer also as submitted by State Representative after perusing the said record. It is thus manifest that the goods were being transported from Jagadhri to Saharanpur by way of ISS without requisite documents and, therefore, there was clear attempt to evade the payment of tax, inviting penalty under section 9(2) of the CST Act read with section 31(8) of the HVAT Act, Even photostat copies of the bill and GR in question were produced by the assessee on 12.06.2012 i.e. 9 days after the checking although in the meanwhile also, the assessee had appeared before the Checking Officer on 04.06.2012 and 06.06.2012 but did not submit the said documents on those dates, Production of photostat copies of the documents after 9 days of the checking has been rightly held to be an after-thought. Such documents could be easily created within a few hours of the checking whereas in this case, even photostat copies of the documents were produced after 9 days of the checking. Consequently we find no fault with the impugned orders of the Authorities below in so far as the finding that the goods were being carried without documents with Intent to evade the payment of tax and that penalty was, therefore, required to be imposed under section 9(2) of the CST Act read with section 31(8) of the HVAT Act, is concerned.

10. As regards quantum of penalty and advance tax, the matter has to be remanded to the Checking Officer because the material regarding higher market value of the goods was not put to the assessee and, therefore, determination of the said higher market value of Rs.6,10,510/- and Imposition of penalty and advance tax on its basis is in violation of the principles of natural justice.

11. Accordingly the instant appeal is allowed partly. While upholding the impugned orders of the Authorities below that the assessee was liable to be imposed with penalty and advance tax, we set- aside the impugned orders of the Authorities below to the extent of determining the market value of the goods to be Rs. 6,10,510/- and the consequent amount of penalty and advance tax. For this limited purpose only, the matter is remanded to the Checking Officer for fresh adjudication in accordance with law.

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HARYANA TAX TRIBUNAL

STA NO. 548 OF 2012-13

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NIPA CHEMICALS LTD.
Vs
STATE OF HARYANA

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

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

9th March, 2017

HF ▶ Assessee

Opportunity to produce more VAT D-1 forms given to the appellant after passing of assessment order.

STATUTORY FORMS – PRODUCTION THEREOF – OPPORTUNITY TO PRODUCE FORMS – ASSESSMENT ORDER PASSED CREATING ADDITIONAL DEMAND ON ACCOUNT OF NON PRODUCTION OF VAT D-1 FORMS BY SELLING DEALER – SOME VAT D-1 FORMS PRODUCED BEFORE FIRST APPELLATE AUTHORITY AND MATTER REMITTED TO ASSESSING AUTHORITY TO ENTERTAIN THEM – SECOND APPEAL IS FILED BEFORE TRIBUNAL PRAYING FOR ANOTHER OPPORTUNITY TO PRODUCE MORE VAT D-1 FORMS BEFORE ASSESSING AUTHORITY – APPEAL ALLOWED HOLDING THAT SELLING DEALER SHOULD NOT SUFFER FOR DELAY CAUSED BY PURCHASING DEALERS – ASSESSING AUTHORITY DIRECTED TO ENTERTAIN THE SAME – *SECTION 7 & 33 OF HVAT ACT, 2003.*

Facts

Assessment order was passed creating additional demand as the selling dealer / appellant had not produced VAT D-I forms required for availing concession. The first Appellate Authority allowed the appellant to produce the forms before assessing authority. However, after passing of the order by first appellate authority, the appellant has filed an appeal before Tribunal praying for another opportunity to produce more forms which are in his possession now.

Held:

The selling dealer should not be made to suffer for the delay caused by purchasing dealers in giving the forms. The assessing authority is directed to accept the same and the appeal is thus allowed.

Present: Sh. Avneesh Jhingan, Advocate Counsel for the appellant.
Sh. M.L. Sharma, District Attorney, for the State.

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

1. This is second appeal by assessee M/s Nipa Chemicals Ltd., Faridabad.

2. Assessing Authority, Faridabad (West) passed assessment order dated 29.2.2012. Additional demand was created because VAT D-1 forms for certain sales made by the assessee were not produced and, therefore, concessional rate of tax for the same was not allowed. First appeal filed by the assessee against the said order dated 20.11.2012. Prayer of the assessee to produce some more VAT D-1 forms was allowed and the matter was remanded to the Assessing Authority to entertain the said forms.

3. Prayer of the assessee appellant in this appeal is that the appellant is now in possession of some more VAT D-1 forms and opportunity be given to produce the same before the Assessing Authority.

4. We have heard counsel for the appellant and District Attorney for the State and perused the case file.

5. Counsel for the appellant reiterated the prayer for grant of one more opportunity to produce more VAT-D-I forms before the Assessing Authority. District Attorney for the State defended the impugned orders.

6. We have carefully considered the matter. Prayer of the appellant for grant of one more opportunity to produce more VAT D-1 forms is genuine and deserves to be accepted because sometimes purchaser dealers commit default/ delay in giving VAT D-I forms for which Seller Dealer should not be made to suffer. Even the first Appellate Authority allowed similar opportunity to the assessee. However, after order of the first Appellate Authority, the assessee-appellant has been able to procure same more VAT-D-I forms for which opportunity should be given to the assessee to produce the same before the Assessing Authority.

7. Resultantly, this appeal is allowed. The assessee appellant is permitted to produce more VAT D-I forms before the Assessing Authority within two months from today. If any such forms are so produced, the Assessing Authority shall entertain the same and pass appropriate order after considering the same. The case is remanded to Assessing Authority, Faridabad (West) for this limited purpose only.

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HARYANA TAX TRIBUNAL

STA NO. 988 OF 2014-15

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PARAMOUNT IRON & STEEL WORKS PVT. LTD.
Vs
STATE OF HARYANA

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

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

8th March, 2017

HF ▶ Revenue

Air Bubble Sheets/Cellular Polyethylene Sheets are not covered under Entry 102 of Schedule C of HVAT Act and are taxable as residual goods.

CLASSIFICATION – ENTRIES IN SCHEDULE - PACKING MATERIAL - AIR BUBBLE SHEET/ CELLULAR POLYETHYLENE SHEETS - CLARIFICATION GIVEN FOR THE PRODUCTS MANUFACTURED AND SOLD HOLDING THAT THE SAID ITEMS ARE NOT INCLUDED IN SCHEDULE C UNDER ENTRY 102 - APPEAL FILED - HELD: PERUSAL OF ENTRY 102 MAKES IT CLEAR THAT NOT ALL PACKING MATERIALS OR INDUSTRIAL INPUTS ARE COVERED HERE – SUB-ENTRIES SIGNIFIES THAT ONLY ITEMS COVERED BY THEM ARE COVERED UNDER ENTRY 102 – TERM 'THAT IS TO SAY' PRECEDING SUB-ENTRIES FURTHER CLARIFIES THAT ONLY ITEM LISTED THEREIN ARE COVERED - ENTRY 133 AND 134 ALSO DO NOT COVER THE SAID ITEMS AS THEY COVER ONLY PRIMARY FORMS OF LLDPE ETC AND NOT SHEETS AND ARTICLES MANUFACTURED – RESORT TO LIBERAL CONSTRUCTION OF TAXING STATUTE NOT POSSIBLE IN THIS CASE TO BRING THE SAID ITEMS UNDER SUB-ENTRIES 133 AND 134 – SAID ITEMS NOT COVERED UNDER SCHEDULE C ENTRY 102 - APPEAL DISMISSED. – *ENTRY 102, 133 & 134 OF SCHEDULE C, HVAT ACT, 2003.*

Facts

The dealer is a manufacturer and seller of products like Air Bubble Sheet, Expanded Cellular Polyethylene Sheets, their respective articles, etc. A clarification was sought from the Government wherein it was held that the said items were not classifiable under schedule C in Entry 102 and hence liable to be taxed as residual goods. An Appeal is thus filed before Tribunal contending that the same are classifiable under Sub-Entries 133 and 134 of Entry 102 as they are used as packing materials and also as industrial inputs for other end products.

Held:

1) *A perusal of Sub-Entries in question make it clear that all Industrial Inputs and Packing Materials are not covered by main Entry 102 in question. The fact that Sub-Entries have been made makes it clear that only items included therein and not all industrial inputs*

and packing materials would be covered in entry 102.further, 'that is to say' used in main entry makes it evident that only the items listed are covered therein.

2) Also, subentries 133 and 134 relate to LLDPE, LDPE and HDPE. These relate to only primary form of the said items i.e. granules. The products of the appellant are not granules but are in form of sheets and articles. Therefore, these sub entries do not cover the appellant products.

3) Even liberal construction of the entry in a taxing statute, if made, does not come to rescue of appellant in this case.

Therefore, the goods in question are not covered by any subentry of Entry 102 of Schedule C and are not liable to concessional rate of tax.

Thus, the appeal is dismissed.

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

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

1. This is appeal by assessee dealer M/s Paramount Iron and Steel Works (P) Ltd. Sonepat impugning order dated 05.11.2014 issued by State Government under section 56(3) of the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act).

2. The dealer appellant sought clarification from the Government under section 56(3) of the HVAT Act regarding rate of tax applicable on the sale of following goods being manufactured and marketed by the appellant :-

1. Expanded Cellular Polyethylene Sheets.
2. Air Bubble Sheets.
3. Air Bubble Sheets Articles.
4. Expanded Cellular Polyethylene Sheets Articles.
5. Air Bubble Sheets Reflective Insulation.
6. Expanded Cellular Polyethylene Hoses/Pipes/Roads.

The State Government by impugned order dated 05.11.2014 clarified as under:

"4. Therefore, in the light of the above, it is clarified that:-

a) The goods falling in any of the Schedules appended to the Haryana VAT Act, 2003 are liable to rate of tax specified for that Schedule;

b) The goods not falling in any of the Schedules appended to the Haryana VAT Act, 2003 are unclassified and non-scheduled goods and liable to rate of tax notified for unclassified and non-scheduled goods;

c) As the goods in question do not fall in Entry 102 of the Schedule C of the Act and hence not liable to tax @ 4%."

3. The appellant manufacturers and sells the above mentioned goods. Case of the appellant is that the aforesaid goods fall under Entry No.102 of Schedule C to the HVAT Act and are, therefore, chargeable at concessional rate of 4% tax under section 7(l)(a)(iii) of the HVAT Act. The Government in the impugned order clarified that the aforesaid goods do not fall in entry 102 of schedule C to the HVAT Act and hence not liable to tax @4%.

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

5. Counsel for the appellant contended that the goods in question are covered by sub-entries 133 and 134 of Entry 102 of Schedule C to the HVAT Act because the same are used as packing materials and also as Industrial inputs for other end products. Reliance has been placed on judgment of Hon'ble High Court of ***Punjab and Haryana In Lakshmi Polyfab V/s Union Territory of Chandigarh and another (2008) 31 PHT 74 (P&H)***. It was also contended that a specific entry in a schedule to a taxing statute overrides a general entry and resort to residuary entry has to be had only when a liberal construction of a specific heading cannot cover the goods in question, as held by Hon'ble Supreme Court in State of Maharashtra Vs Bradma of India Ltd. (2005) 140 STC 17 (SC). Relying on judgment of Hon'ble Supreme Court in ***AIR 1990 Supreme Court 1893 Collector of Central Excise V/s Eastend Paper Industries Ltd. and another***, it was contended that broad and liberal interpretation should be given to an entry. In that case, 'wrapping paper' was deemed to be included in the entry of 'paper'. Counsel for the appellant also submitted that in view of section 7(2) and (4)(a) of the HVAT Act read with rule 18 of the Haryana Value Added Tax Rules, 2003 (in short, the HVAT Rules) also, the rate of tax on the sale of goods in question against form VAT D-I shall be 4%.

6. State Representative submitted that if Registration Certificate of the purchasing dealer covers the goods in question, then sale of the goods to such dealer against VAT D-I form shall attract lesser rate of tax and there is no dispute about it. State Representative, however, contented that the goods in question are not covered by any sub entry of Entry 102 and, therefore, the impugned order is legal and valid. It was argued that all industrial inputs and packing materials are not covered by Entry 102 and only the goods specified in sub entries thereof are covered by the said entry, but the goods of the appellant do not fall in any sub entry of Entry 102. It was emphasised that the 'expression that is to say- used in Entry 102, preceding all the sub entries, would mean that only the goods covered by the sub entries and not ail industrial inputs and packing materials, are covered by Entry 102. It was argued that the goods in question are not covered by sub entries 133 and 134 of Entry 102 because the said sub entries refer to tariff items 3901:10:00 and 3901:20:00 which relate to LLDPE, LDPE and HDPE in primary form i.e. in the form of granules only and, therefore, these sub entries do not cover the goods in question which are in the form of sheets and articles etc. It was submitted that the goods in question are not covered even by sub entries 149, 155, 157 and 161 of entry 102. It was also argued that case of ***Lakshmi Polyfab*** (supra) has no applicability to the present case because in that case, there was different entry of Punjab Value Added Tax Act, 2005 (in short, the Punjab Act) and also because in that case, the dispute was whether the product of that assessee was tax free being textile or was packing material taxable at the rate of 4%. The decision was in favour of revenue that the material was not textile but was packing material taxable at 4%.

7. We have carefully considered the matter. At the outset, it may be mentioned that even the State Representative did not dispute that if conditions of section 7(2) and 4(a) of the HVAT Act read with rule 18 of the HVAT Rules are fulfilled, then the goods will attract concessional rate of tax.

8. To decide the core question as to whether the goods in question are covered by sub entries 133 and 134 of Entry 102 of Schedule C to the HVAT Act or not, it would be appropriate to reproduce the said sub entries as under the said sub entries as under:-

"102 Industrial inputs and packing materials, that is to say-

Sr.No.	Description of Goods	Tariff item under which goods specified in column 2 are covered

1	2	3

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(133)	Linear Low Density Polyethylene (LLDPE) and Low Density Polyethylene (LDPE).	3901:10:00
(134)	High Density Polyethylene (HDPE)	3901:20:00

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9. A perusal of the aforesaid entry including the sub-entries in question makes it abundantly clear that all industrial inputs and packing materials are not covered by main entry 102 in question. Had it been so, there would have been no need of making 187 sub entries under the main entry 102 in question. The very fact that the said sub entries have been made makes it manifest that only the items covered by the said sub entries and not all industrial inputs and packing materials are covered by main entry 102 in question. This becomes further evident from the expression 'that is to say-' used in the main entry, preceding the sub entries. Thus read as a whole, the main entry 102 in question is restricted and confined to the items specified in the sub entries only.

10. The next question that arises for determination is whether the goods of the appellant are covered by sub entries 133 & 134 in question as reproduced above. Answer to this question has to be in the negative i.e. against the assessee. Sub entries 133 & 134 in question relate to LLDPE, LDPE and HDPE corresponding to tariff items 3901:10:00 and 3901:20:00. The said tariff items relate to only primary form of LLDPE, LDPE and HDPE i.e. granules thereof only. However, the products of the appellant are not granules or in primary form but are in the form of sheets and articles etc. The same are, therefore, not covered by the sub entries 133 & 134 in question.

11. Judgments cited by counsel for the appellant do not help the appellant in any manner. The case of ***Lakshmi Polyfab*** (supra) is completely distinguishable and inapplicable because the entry of the Punjab Act interpreted In that case is not even similar much less identical with the entry/sub entries in question in the case in hand. Moreover, in that case, the dispute was not regarding concessional rate of tax on the goods of the assessee appellant of that case. On the other hand, the assessee in that case claimed its material to be textile fabrics and, therefore, tax free whereas the State/Revenue claimed that it was packing material and, therefore, taxable at the concessional rate of 4%. The decision in that case was in favour of the revenue upholding its aforesaid plea. The said case, therefore has no applicability to the instant case.

12. It is correct, as held in the case of ***Bradma of India Ltd.*** (supra), that specific entry in a schedule to a taxing statute overrides a general entry and also that resort to residuary entry has to be had only when a liberal construction of the specific heading cannot cover the goods in question. However, this proposition of law does not come to the rescue of the appellant in the

present case. Even on liberal construction of sub entries 133 & 134 of entry 102 in question, the goods of the appellant are not covered thereunder. For the same reason, judgment in the case of ***Eastend Paper Industries Ltd.*** (supra) laying down that liberal construction of entry in a taxing statute should be made, does not help the appellant in the case in hand.

13. State Representative also rightly pointed out that goods of the appellant are not covered even by sub entries 149, 155, 157 and 161 of main entry 102 in question.

14. It thus emerges that goods of the appellant are not covered by any sub entry of entry 102 of Schedule C to the HVAT Act and, therefore, the same are not taxable at concessional rate of 4%. Clarification given by the State Government in the impugned order, therefore, does not suffer from any infirmity much less illegality warranting out interference in exercise of appellant jurisdiction. The appeal is, therefore, dismissed being bereft of any merit.

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HARYANA TAX TRIBUNAL

STA NO. 293 OF 2015-16

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BALAJI MOTORS
Vs
STATE OF HARYANA

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

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

3rd February, 2017

HF ▶ Partly Assessee and Partly Revenue

Amount received on account of replacement of spare parts during warrant period is liable to be taxed but interest can be levied only from the date of order passed by Revisional Authority.

SALE - TURNOVER – INCOME FROM REPAIR OF ACCIDENTAL TRUCKS – NO CONSUMABLES OR SPARE PARTS USED IN REPAIR – ONLY DENTING OF ACCIDENTAL TRUCKS TOOK PLACE WITHOUT TRANSFER OF MATERIAL – NO TAX TO BE LEVIED ON SAID AMOUNT SINCE THERE IS NO TRANSFER OF ANY MATERIAL – ORDER TO THAT EXTENT SET ASIDE. – *SECTION 2 (1)(ze) OF HVAT ACT, 2003*

TURNOVER – WARRANTY – REPLACEMENT OF SPARE PARTS – WARRANTY PERIOD – AMOUNT RECEIVED FROM MANUFACTURER FOR FREE REPLACEMENT MADE DURING WARRANTY PERIOD – MATTER COVERED BY SUPREME COURT JUDGMENT IN THE CASE OF MOHD EKRAM KHAN – CONTRARY VIEW BY RAJASTHAN HIGH COURT HAS NO BEARING ON THE MATTER – SUPREME COURT JUDGMENT BINDING IN VIEW OF ARTICLE 141 – ISSUE DECIDED AGAINST THE ASSESSEE AND IN FAVOUR OF REVENUE - *SECTION 2(1)(ze) & 6 OF HVAT ACT 2003.*

REVISION – INTEREST – DEMAND CREATED FOR THE FIRST TIME – INTEREST LEVIABLE FROM THE DATE OF ORDER OF REVISIONAL AUTHORITY – NOT FROM THE DATE OF FILING OF RETURN – ORDER OF REVISIONAL AUTHORITY MODIFIED TO THAT EXTENT – APPEAL PARTLY ALLOWED. – *SECTION 14(6) & 34 OF HVAT ACT, 2003*

Assessment of the dealer was framed by Assessing Authority which was reopened under Section 34 of HVAT Act by Revisional Authority creating additional demand of Rs. 3,23,359/- including interest u/s 14(6). Demand was raised on account of addition of an income received by assessee from repair of accidental trucks which involved no transfer of material. In addition, the amount received from principal manufacturer for replacement of parts by assessee during warranty period were also taxed treating the same as to be sale. Interest was levied on the additional demand u/s 14(6).

On appeal before Tribunal, it is HELD:

(a) No tax to be imposed on the income received from sale of repair of accidental trucks as no material has been used in denting of those trucks. This does not amount to sale.

(b) Amount received from principal manufacturer against parts replaced during warranty period is liable to be taxed in view of Supreme Court judgment in the case of Mohd Ekram Khan vs Commissioner of Trade Tax, (2004)136 STC 515. The judgment to the contrary given by Rajasthan High Court is of no significance as order of Supreme Court is binding under Article 141 on the Tribunal.

(c) Interest can be levied only from the date of order passed by Revisional Authority and not from the date of filing of Returns as demand has been created by Revisional Authority for the first time. Appeals are accordingly allowed partly.

Cases referred:

- *Mohd. Ekram Khan & Sons Vs. Commissioner of Trade Tax, UP (2004) 136 STC 515*
- *Commercial Tax Officer (Anti-Evasion), Jodhpur Vs. Marudhara Motors (2010) 29 VST 114 (Rajasthan)*

Present: Mr. R.C. Singla, Advocate counsel for the appellant.
Sh. S.K. Saini, Joint Director for the State.

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

1. This is appeal by assessee M/s Balajit Motors, Hissar assailing order dated 30.10.2015 passed by Revisional Authority, Hisar, thereby creating additional demand of tax worth Rs.3,23,359/- with further direction to the Assessing Authority to charge/calculate interest under Section 14(6) of the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act).

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

3. Revisional Authority by impugned order has levied tax of Rs.27,143/- on the income of Rs.2,06,807/- shown by the dealer- appellant to have been received from the manufacturer for repair of accidental trucks. In this regard, counsel for the appellant submitted that no consumables or spare parts were used in the repair which included only denting of accidental trucks without involving any transfer of material and, therefore, tax could not be levied thereon. There is considerable merit in the contention. Revisional Authority in the impugned order has also observed that the dealer firm has not shown any sale of parts consumed in the accidental vehicles. This observation in the impugned order supports the contention of the appellant. It has been rightly pointed out by counsel for the appellant that the account books of the appellant in this regard have not been disbelieved, discarded or rejected by the Revisional Authority. In the grounds of present appeal also, the appellant has specifically pleaded that the amount of Rs.2,06,807/- received from M/s Asia Motor Works (manufacturer) was on account of repair charges i.e. denting of accidental trucks without involving any transfer of material. Consequently levying of tax on the said amount by the Revisional Authority is completely illegal and unsustainable. Impugned order of the Revisional Authority is, therefore, quashed to that extent.

4. The appellant is a dealer of motor vehicles received from manufacturer M/s Asia Motor Works. During the warranty period, the dealer replaced parts of vehicles of customers and received Rs.22,56,885/- from the manufacturer. By the impugned order, Revisional Authority has levied tax of Rs.2,96,216/- on the said amount. Learned counsel for the appellant contended that the replacement of parts during warranty period did not amount to sale and, therefore, tax could not be levied thereon. On the other hand, State Representative relying on

judgment of Hon'ble Supreme Court in the case of ***Mohd. Ekram Khan & Sons Vs. Commissioner of Trade Tax, UP (2004) 136 STC 515***", contended that this issue is covered in favour of the revenue by the said judgment. Counsel for the appellant, however, pointed out that Hon'ble High Court of Rajasthan in the case of "***Commercial Tax Officer (Anti-Evasion), Jodhpur Vs. Marudhara Motors (2010) 29 VST 114 (Rajasthan)***", while distinguishing the case of ***Mohd. Ekram Khan & Sons*** (supra) held that tax cannot be levied on the amount of parts replaced during warranty period.

5. We have carefully considered the matter. The issue is covered in favour of the State (Revenue) by the judgment of Hon'ble Supreme Court in the case of ***Mohd. Ekram Khan & Sons*** (supra) judgment of Hon'ble Rajasthan High Court in the case of ***Marudhara Motors*** (supra) is distinguishable on facts. However, even if it be impugned for the sake of argument only that the case of ***Marudhara Motors*** (supra) is in favour of the assessee, even then the same cannot be followed in view of judgment of Hon'ble Supreme Court in the case of ***Mohd. Ekram Khan & Sons*** (supra), judgment of Hon'ble Supreme Court is law of the land and is binding on all Courts, Tribunals and Authorities in the country in view of Article 141 of the Constitution of India. Consequently, judgment of Rajasthan High Court cannot be followed in preference to judgment of Hon'ble Supreme Court. Resultantly, this issue is answered in favour of the Revenue.

6. Counsel for the appellant next contended that additional demand was created by the Revisional Authority for the first time and, therefore, interest thereon could not charged. It was pointed out that pursuant to impugned order of the Revisional Authority, the Assessing Authority vide order dated 23.12.2015 has since calculated interest on the additional demand created by the Revisional Authority. State Representative contended that interest on the additional demand of tax is also leviable. We have carefully considered the matter. Since by Revisional Authority was created for the first time, interest thereon is leviable from the date of order of the Revisional Authority and not from the date of filing of return. Impugned order of the Revisional Authority is liable to be and is accordingly modified to that extent. The Assessing Authority shall recalculate the interest accordingly on the additional demand as modified by this order.

7. The appeal is allowed party by modifying impugned order dated 30.10.2015 of the Revisional Authority to the extent indicated hereinabove.

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HARYANA TAX TRIBUNAL

STA NO. 96-97 OF 2013-14

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MITTAL PROCESSORS
Vs
STATE OF HARYANA

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

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

17th March, 2017

HF ▶ Revenue

Entire Quantity of Dyes and Chemicals used in job work of dyeing and printing of textiles is liable to be taxed without any reduction

WORKS CONTRACT – JOB WORK – DYEING AND PRINTING OF TEXTILES – USE OF DYES AND CHEMICALS – ENTIRE PROPERTY IN THE SAID MATERIAL IS TRANSFERRED TO THE FABRIC – LEFT OVER RESIDUE/SOLUTION IS A WASTE HAVING NO VALUE – PROPERTY IN CHEMICALS GETS TRANSFERRED TO THE FABRIC – DYES/COLOUR ALSO GET ABSORBED IN THE TEXTILE BECAUSE OF TRANSFER OF CHEMICAL PROPERTY OF THE CHEMICALS – ENTIRE QUANTITY OF DYES AND CHEMICALS USED IN THE PROCESS LIABLE TO BE TAXED – APPEALS DISMISSED ON THIS ISSUE – ORDER TO OPERATE PROSPECTIVELY – NO REVISION ETC TO BE MADE ON THE BASIS OF TRIBUNAL ORDER TO THE DISADVANTAGE OF THE ASSESSEES. – *SECTION 2(1)(zg) OF HVAT ACT, 2003*

APPEAL – POWERS OF ENHANCEMENT – ASSESSING AUTHORITY LEVIED TAX ON A PARTICULAR TAXABLE TURNOVER – ON APPEAL FILED BY ASSESSEE, 1ST APPELLATE AUTHORITY REMANDED THE CASES TO ASSESSING AUTHORITY FOR ENHANCING THE TAXABLE TURNOVER – NOT PERMISSIBLE – ORDER OF 1ST APPELLATE AUTHORITY TO THIS EXTENT SET ASIDE - *SECTION 33 OF HVAT ACT, 2003.*

The Appellants herein are engaged in the job work/works contract of dyeing cloth/fabric and some of them are engaged in job work of dyeing as well as printing the cloth/fabric. The tax was levied on the entire quantity of dyes and chemicals used in the process treating the same as to be taxable as works contract. Appeals were filed by the assess on the following grounds:

(i) The process of dyeing and printing on job work amounts to manufacturing of textile and since textile is tax-free, no tax is payable.

(ii) If at all, the process is taxable, the value of chemicals and dyes which are used for washing etc. and are wasted, cannot be held to be taxable as no property in the goods is transferred to the contractee.

(iii) 1st appellate authority cannot order enhancement of turnover in the appeal filed by assessee.

The Tribunal HELD:

(i) The question regarding the process being taxable has already been decided by Tribunal in earlier case of Northern India Textile Processors Association vs State of Haryana, (2009)34 PHT 632 (HTT). It has been held in that case that material used in the job work process is taxable which is transferred in the process of trading/finishing the textile into fabric. Accordingly, there is no justification to hold that dyes and chemicals used in the process of dyeing/printing in a job work are not taxable.

(ii) In the process of dyeing/printing, the property of entire material gets transferred and the washed out material is only a waste/residue which was otherwise of no value or use. In fact, the property in chemicals used in the job work also gets transferred to the fabric and it is on account of said chemical property that the cloth becomes ready for the actual process of dying. Dyes/colours also get absorbed in the textile because of transfer of chemical property of the chemicals to the fabric. Thus, it cannot be said that there is no transfer of property in the chemicals to the fabric. Therefore, it has to be held that material used in treating the textile i.e. chemical apart from the other materials, i.e. dyes and colours used in actual process of dyeing/printing, is also to be held as taxable.

(iii) The appellate authority cannot direct the Assessing Authority to enhance the turnover in the appeal filed by assessee and, therefore, orders passed by appellate authorities to that extent are set aside.

It is expressly made clear that principle of law laid down in the present case shall operate prospectively only and the orders already passed by authorities below by levying tax on lesser quantity of chemicals, dyes and colours or by levying no tax at all on chemicals which are in favour of assessees in the present cases or in any other cases to that extent, shall not be reopened by revision or otherwise to the disadvantage of the assessee. Accordingly, appeals are dismissed subject to directions/observations in the preceding paragraphs.

Cases referred:

- *Northern India Textile Processors Association, Faridabad V/s State of Haryana (2009) 34 PHT 632 (HTT)*
- *Commissioner of Sales Tax V/s Matushree Textiles Limited (2003) 132 STC 539(Bombay)*
- *Gannon Dunkerley and Co. and others V/s State of Rajasthan and others (1993) 88 STC 204 (SC)*
- *Mahim Patram Private Ltd. V/s Union of India and others (2007) 6 VST 248(SC)*
- *Sri Krishna Spinning and Weaving Mills Pvt. Ltd, V/s Authority for Clarification and Advance Rulings, Bangalore, (2010) 27 VST 194 (Karnataka)*
- *Sreenivas and Co. V/s State of Tamilnadu (2010) 33 VST 172 (Madras)*
- *Super Fine Processors Pvt. Ltd. V/s State of U.P. and others (2013) 58 VST 99 (Allahabad)*
- *Commissioner of Sales Tax, Maharashtra State, Bombay V/s R.M.D.C. Press Pvt. Ltd. (1999) 112 STC 307(Bombay)*
- *Dainik Janambhumi V/s State of Assam and Others (2013) 58 VST 519 (Gauhati)*
- *Pest Control India Ltd. V/s union of India and others (1989)75 STC 188 (Patna)*
- *Commissioner of Income Tax V/s Abhishek Industries Ltd. (2006) 286 ITR 1 (P&H)*
- *State of Maharashtra V/s Sarvodaya Printing Press Fine Art Printer (1999) 114 STC 242 (SC)*
- *State of Tamil Nadu V/s Vijayakumar Mills Limited (1996) 100 STC 213 (Madras)*
- *Microtrol Sterilization Services Pvt. Ltd. V/s State of Kerala (2009) 26 VST 213 (Kerala)*
- *Dynamic I&C Services (P) Ltd. v/s State of Kerala (1994) SCC OnLine Kerala 379*
- *State of Jharkhand and Others V/s Voltas Ltd. (2007) 7 VST 317 (SC)*
- *Larsen & Toubro Limited V/s State of Bihar and Others (2004) 134 STC 354 (Patna)*

- *Larsen and Turbo Ltd. V/s State of Orissa and Others (2008) 12 VST 31 (Orissa)*
- *Ujagar Prints V/s Union of India (1989) 74 STC 401 (SC)*
- *Birla Co Ltd. V/s Commissioner of Central Excise 2005 (186) ELT 266 (SC)*
- *Commissioner of Central Excise, Hyderabad Vs. Novapan Industries Ltd. 2007 (2009) ELT 161 (SC)*
- *Punjab and Haryana In Lakshmi Polyfab V/s Union Territory of Chandigarh and another (2008) 31 PHT 74 (P&H)*
- *Collector of Central Excise V/s Eastend Paper Industries Ltd. and another, AIR 1990 Supreme Court 1893*

Present: Mr. Sandeep Goyal, Advocate Counsel for appellants in appeals at Sr. Nos. 1 to 13

Mr. Avneesh Jhinghan, Advocate Counsel for appellants in appeals at Sr. Nos. 14 to 17

Mr. V.K. Gupta, Advocate Counsel for appellants in appeals at Sr. Nos. 18 to 26

None for appellants in appeals at Sr. Nos. 27 to 38

Mr. Rajiv Agnihotri, Advocate Counsel for appellants in appeals at Sr. Nos. 39 to 59.

None for appellants in appeals at Sr. Nos. 60 to 62.

Mr. S.K. Saini, J.D. (L) for the State- respondent.

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

1. By this common order, we are disposing of above mentioned are appeals because common issues are involved in these appeals filed by different assesses.

2. The appellants are engaged in job work (works contract) of dyeing cloth/fabrics and some of them are engaged in job work of dyeing as well as printing the cloth/fabrics. Their plea was that no tax under the State Act i.e. The Haryana Value Added Tax Act, 2003 (in short, the HAVT Act) / The Haryana General Sales Tax Act, 1973 (in short, the HGST Act) as well as under the Central Act i.e. the Central Sales Tax Act, 1956 (in short, the CST Act) was payable on the job work done by them because additional excise duty is levied on cloth. Another plea was that the appellants were manufacturers and not works contractors/job workers. Both these pleas have been rejected by the lower Authorities. Both these issues are covered against the assessees/appellants by full member decision of this Tribunal in ***Northern India Textile Processors Association, Faridabad V/s State of Haryana (2009) 34 PHT 632 (HTT)***, as conceded by counsel for the appellants during the course of hearing. It was an appeal against an order issued by the State Government under section 56(3) of the HVAT Act on application filed by that appellant for clarification. Counsel for the appellants submitted that appeal VAT Appeal No. 18 of 2013 against the said decision of the Tribunal is pending in Hon'ble High Court of Punjab and Haryana and is fixed for hearing on 18.04.2017 and, therefore, the present appeals be adjourned to await decision of Hon'ble High Court in the said appeal. Oral request made in this behalf during the course of hearing was declined orally and, therefore, arguments were heard on merits.

3. Counsel for the appellants contended that the only issue that remains to be determined in these appeals is as to the quantum of chemicals, dyes and colours used in the process of job work of dyeing and printing which is taxable.

4. Mr. S.K. Sarwal, Advocate counsel for the appellants in appeals at Sr. nos. 27 to 38 sent written arguments with prayer that the appeals be decided on the basis thereof without any further opportunity. Accordingly none appeared for the said appellants for oral hearing on 7.3.2017. We have perused the said written arguments. Similarly Mr. J.D. Bhtheja, Advocate counsel for appellants in appeals at Sr. nos. 60 to 62 sent written application for deciding the said appeals alongwith other connected appeals without necessity of oral hearing. Accordingly none either appeared for the said appellants for oral hearing on 7.3.2017. We have heard counsel for the appellants in the remaining appeals. Mr. V.K. Gupta, Advocate counsel for appellants in appeals at Sr. nos. 18 to 26 opened the arguments and advanced main arguments. Adopting the same, Mr. Sandeep Goyal, Advocate counsel for appellants in appeals at Sr. nos. 1 to 13 further supplemented the same. Mr. Avneesh Jhinghan counsel for appellants in appeals at Sr. nos. 14 to 17 and Mr. Rajiv Agnihotri, advocate counsel for appellants in appeals at Sr. Nos. 39 to 59 adopted the same arguments. Mr. Agnihotri.also advanced some additional arguments. We have also heard State Representative and perused the case files.

5. Counsel for the appellants at the outset very fairly submitted that judgment of Hon'ble Bombay High Court in ***Commissioner of Sales Tax V/s Matushree Textiles Limited (2003) 132 STC 539(Bombay)*** is against the assessees on the issue of taxability of the chemicals, dyes and colours used in the process of dyeing and printing and also on the quantum of taxability thereof. However, counsel for the appellants submitted that as per various reports of different experts including the report of Government Quality Marketing Centre for Textile Goods (GQMCTG), Panipat, the process of dyeing of cloth is preceded by the processes of stitching, de-sizing, mercerizing and scouring. In the said processes, all the chemicals used therein are completely washed out and there remains no trace of the chemicals in the cloth after the said processes. It was, therefore, contended that there is no transfer of property in the said chemicals to the contractees whose fabrics are dyed and printed and, therefore, the said chemicals do not fall within the definition of 'sale' as defined in section 2(l)(ze) of the HVAT Act. It was also contended that even in the process of dyeing the fabric, only about 21% of the dyes used in the process of dyeing pass on to the fabric as per report of GQMCTG, Panipat. According to some other reports cited on behalf of the appellants, 50% to 80% of dyes/colours used in the process of dyeing/printing is transferred and chemical is not transferred at all. Counsel for the appellants cited judgment of Hon'ble Supreme Court in ***Gannon Dunkerley and Co. and others V/s State of Rajasthan and others (1993) 88 STC 204 (SC)*** wherein it was held that the value of the goods involved in the execution of a works contract has to be determined by taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would inter-alia cover cost of consumables such as water, electricity, fuel, etc., used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract. The said judgment was followed by Hon'ble Supreme Court in ***Mahim Patram Private Ltd. V/s Union of India and others (2007) 6 VST 248(SC)***. On the basis of said judgements, Haryana Government also issued notification dated 17.05.2010 amending the Haryana Value Added Tax Rules, 2003 (in short, the HVAT Rules) thereby inter-alia incorporating the provision for exclusion of charges towards labour and services including those mentioned by Hon'ble Supreme Court in the above judgments. It was contended on its basis that since chemicals used in the process of dyeing the fabric are not transferred to the fabric, value of the said chemicals has to be excluded for computing the taxable turnover (TTO). It was pointed out that water is also used in the process of dyeing but since water is also not transferred to the dyed fabric, the same is not taxed. On the same analogy, chemicals used in the process of dyeing should also not be taxed because the same are also not transferred to the dyed fabric. It was submitted that chemicals are used in the process of dyeing just like fuel and, therefore, value of chemicals has to be excluded from TTO in the same manner as that of fuel as per aforesaid judgments of Hon'ble Supreme Court as well as according to the HVAT Rules as amended vide notification dated 17.05.2010. Counsel for the

appellants also placed reliance on judgement of Karnataka high court in ***Sri Krishna Spinning and Weaving Mills Pvt. Ltd, V/s Authority for Clarification and Advance Rulings, Bangalore, (2010) 27 VST 194 (Karnataka)***, wherein the matter to determine the quantum of chemicals, dyes and colours getting washed out in the process of dyeing and printing of fabrics was remitted to the Assessing Authority. Similarly, in ***Sreenivas and Co. V/s State of Tamilnadu (2010) 33 VST 172 (Madras)***, the mater was remanded to the Assessing Authority for fresh consideration regarding transfer of property involved in the process. Reliance has also been placed on judgement of Allahabad High Court in ***Super Fine Processors Pvt. Ltd. V/s State of U.P. and others (2013) 58 VST 99 (Allahabad)***. In that case, the concerned State Government had already .decided representation made by the Northern India Textile Processors Association and concluded that the dyes, colours, chemicals etc. used in bleaching, colouring and dyeing, etc. on gray cloth are consumed in the process and are not transferred and, therefore, the same do not come within the definition of 'sale'. The said clarification of the State Government was held by Hon'ble High Court to be binding on the assessing authorities. Counsel for the appellants also relied on judgement of Bombay High Court in ***Commissioner of Sales Tax, Maharashtra State, Bombay V/s R.M.D.C. Press Pvt. Ltd. (1999) 112 STC 307(Bombay)*** which was followed by Gauhati High Court in ***Dainik Janambhumi V/s State of Assam and Others (2013) 58 VST 519 (Gauhati)*** laying down that in job work of printing on paper, there is no transfer of property in ink whether as ink or in any other form and, therefore, the same is not taxable. However, counsel for the appellants very fairly conceded that judgement in the case of ***R.M.D.C. Press Pvt. Ltd.*** (supra) was held to be per incuriam and, therefore, not followed in the case of ***Matushree Textile Limited*** (supra). Reliance was also placed on judgment of Patna High Court in ***Pest Control India Ltd. V/s Union of India and others (1989)75 STC 188 (Patna)***. It was held therein that there can be no transfer of property in goods unless the goods themselves exist and, therefore, no sales tax is, exigible if the goods themselves do not exist. In ***Commissioner of Income Tax V/s Abhishek Industries Ltd. (2006) 286 ITR 1 (P&H)***, Hon'ble High Court held that the Income Tax Appellate Tribunal must examine the material on record before rendering a decision on any issue raised by the parties and the Tribunal being the last fact finding authority, a higher responsibility is cast on it to decide the cases by recording complete facts and assigning cogent reasons. It was submitted that similar higher responsibility rests on this Tribunal being the last fact finding authority. Reference was also made to order dated 4.7.2006 of first Appellant Authority, Faridabad in appeal nos. FDE/85/STA and 86/CST dated 28.06.2005 M/s R.K. Textile Industries, Faridabad V/s ETO-cum-Assessing Authority, Faridabad (East) wherein it was held that there is no transfer of property in chemicals used in the process of dyeing the fabric and, therefore, there is no deemed sale of the chemicals. The matter was remitted to the Assessing Authority to determine the quantity of dyes, colours and fixer which are passed on to the dyed fabric, keeping in view the Government Lab Report that dye/colour is transferred to the extent of 50% to 80%.

6. Mr. Sandeep Goyal also relied on some other judgments i.e. ***State of Maharashtra V/s Sarvodaya Printing Press Fine Art Printer (1999) 114 STC 242 (SC)***, ***State of Tamil Nadu V/s Vijayakumar Mills Limited (1996) 100 STC 213 (Madras)***, ***Microtrol Sterilization Services Pvt. Ltd. V/s State of Kerala (2009) 26 VST 213 (Kerala)***, ***Dynamic I&C Services (P) Ltd. v/s State of Kerala (1994) SCC On Line Kerala 379***, Allahabad High Court judgment dated 18.05.16 in Civil Misc Writ Petition No. 273 of 2014 M/s ***Chandok Textiles Enterprises Pvt. Ltd. V/s State of U.P. and Others, State of Jharkhand and Others V/s Voltas Ltd. (2007) 7 VST 317 (SC), Larsen & Toubro Limited V/s State of Bihar and Others (2004) 134 STC 354 (Patna), and Larsen and Turbo Ltd. V/s State of Orissa and Others (2008) 12 VST 31 (Orissa)***.

7. Referring to STA Nos. 629 to 634 of 2012-13 at Sr. no. 18 above filled by M/s Frisco Fab Dyeing & Printing P. Ltd.,Faridabad, counsel for the appellants submitted that opportunity be given to the, appellant to submit VAT D-l forms to claim concessional rate of tax under section 7(3) (a) of the HVAT Act.

8. Counsel of the appellant contended that before starting the actual process of dyeing, test is conducted to ensure that the fabric, after going through pre-dyeing processes, is completely free from all chemicals used in those processes because if some chemicals are left in the fabric, the same will be harmful for the user of the cloth. Reference was also made to clause (ii) of the definition of 'sale' in section 2(l)(ze) of the HVAT Act according to which the 'sale' includes the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. On its basis, it was contended that there is no transfer of property in the chemicals used in the pre-dyeing processes and, therefore, the said chemicals do not fall within the definition of 'sale'. In the same context, reference was also made to explanation (i) to section 2(l)(zg) of the HVAT Act defining 'sale price'. It was also argued that in the case of ***Matushree Textile Limited*** (supra), the issue was whether works contract is taxable or not and not as to what part or how much thereof is taxable i.e. not about the quantity of material to be taxed. Mr. Goyal conceded that that part of the material used in the job work which is actually transferred to the fabric is taxable but the question to be adjudicated is as how to much thereof is taxable. Mr. Goyal relying on judgment dated 30.1.2017 of Punjab and Haryana High Court in CWP No. 20788 of 2015 Dhingra Jardine Infrastructure Pvt. Ltd. V/s State of Haryana and Others contended that rules for computation of TTO in the case of works contract were framed with effect from 17.5.2010 only and, therefore, recovery of tax for the period upto 16.05.2010 cannot be enforced.

9. Mr. Goyal also submitted that in some first appeals of the assessees, first Appellate Authority enhanced the TTO and remanded the cases to the Assessing Authority, to the disadvantage of the assessees which could not be done. It was also submitted that the Authorities below are passing inconsistent orders in as much as in some cases, tax has been levied on 100% value of chemicals and dyes used in the job work whereas in some other cases, value of chemicals has not been taxed at all whereas in some other cases, 70% value of chemicals and dyes has been taxed and in some cases, value of 20% dyes and 10% chemicals has been taxed.

10. Counsel for the appellants also submitted that the Authorities below, although not technically sound themselves, have ignored the reports of experts regarding the extent of transfer of dyes/colours and complete non-transfer of chemicals used in the job work. Mr. Agnihotri also submitted that appeals at Sr. Nos. 41 & 56 above relate to job work of embroidery on cloth.

11. Mr. S.K. Sarwal, Advocate in his written arguments has relied on judgement of Hon'ble Supreme Court in ***(1989) 74 STC 401 (SC) Ujagar Prints V/s Union of India*** to contend that the process of dyeing results in a commercially different commodity and, therefore, in that sense, it is 'manufacture' and, therefore, the manufactured commodity i.e. dyed cloth /textile being tax-free on account of additional excise duty, no tax under the Local Act or Central Act could be levied. It is also contended that chemicals do not pass at all and dyes pass between 50% to 80% only and, therefore, no tax is leviable on chemicals and tax on dyes is leviable only to the extent the same pass on to the dyed fabric. Reliance has been placed on test reports of various laboratories as well as order dated 06.06.2006 of First Appellate Authority, Faridabad in appeals No.FDE/287/STA And 288/CST/27.01.2006 M/s Tirupati Textiles, Faridabad V/s ETO-cum Assessing Authority, Faridabad (East), holding that 50% to 80% of dye/colour is transferred and chemical is not transferred at all. The said decision has been accepted by the department and so no variation from this decision is permissible at the instance

of department. In ***Birla Co Ltd. V/s Commissioner of Central Excise 2005 (186) ELT 266 (SC)*** and ***Commissioner of Central Excise, Hyderabad Vs. Novapan Industries Ltd. 2007 (2009) ELT 161 (SC)***, it was held that in view of judicial discipline, Department/Revenue having accepted the principle of law laid down in an earlier case cannot be permitted to take a different or contrary stand in subsequent cases. Reference has also been made to the case of ***Srikrishna Spinning and Weaving Mills Pvt. Ltd.***(supra).

12. On the other hand, State Representative contended that the case of ***Northern India Textile Processors Association, Faridabad*** (supra) decided by this Tribunal also covers the issue raised in these appeals. It was submitted that according to the clarificatory order issued by the State Government which was under challenge in that case and also according to division of the Tribunal, all dyes and chemicals used in treating and finishing the cloth in the job work of dyeing/printing are taxable. Emphatic reliance was also placed on the case of ***Matushree Textile Limited*** (supra). It was submitted that entire property in the chemicals and dyes/colours used in the job work of dyeing and printing the fabric passes on to the fabric because the solution left behind is wastage and is off no use or value and, therefore, the value of all the chemicals and dyes used in the job work is taxable. The case of ***Dhingra Jardine Infrastructure Pvt. Ltd.*** (supra) related to builders/developers and is, therefore, not applicable to the instant cases of job work /works contracts of dyeing and printing the fabric. It was also pointed out that the case of ***Gannon Dunkerley & Co.,*** (supra) was also considered in the case of ***Matushree Textile Limited*** (supra). Moreover, electricity, fuel, water and labour charges etc. used in the job work of the appellants are not being taxed as per judgment in the case of ***Gannon Dunkerley and Co.*** (supra). It was also argued that Input Tax Credit (ITC) has been allowed for the entire material i.e. chemicals, dyes and colours used in the job work and, therefore, value of the said entire material is taxable.

13. We have carefully considered that matter. The issue whether the material used in job work/works contract is taxable at all or not already stands concluded against the assessees by judgment of this Tribunal in the case of ***Northern India Textile Processors Association, Faridabad*** (supra) and also by order dated 23.01.2017 of the Tribunal in STA Nos. 173-174 of 2011-12 M/s H.M. Mehra and Co., Sonepat V/s State of Haryana. Moreover, State Government in clarificatory order issued under section 56(3) of the HVAT Act clarified that dyes and chemicals etc. which are transferred in the process of treating/finishing the textiles into fabrics are not exempt from the levy of sales tax and have to be accordingly taxed. The said order was upheld by the Tribunal in the case of ***Northern India Textile Processors Association, Faridabad*** (supra). In fact, Mr. Sandeep Goyal representing some of the appellants in these cases conceded that the material is taxable but only that quantity of the material (dyes/colours) which is transferred to the fabric is taxable and the entire quantity thereof is not taxable and the chemicals which are not transferred at all to the fabric, are not taxable at all. Therefore, we have no hesitation in concluding that the appellants are not completely exempted from levy of tax under the State and Central Acts for the job work of dyeing and printing the fabrics carried out by them.

14. The issue that the process amounts to 'manufacture' does not arise in these cases because that issue could arise for adjudication if the appellants had been doing the work of dyeing and printing on their own cloth and then selling the dyed/printed fabric. However, the appellants/are doing only job work of dyeing and printing on the cloth of customers and so it does not amount to 'manufacture' and the case of ***Ujagar Prints*** (supra) has no applicability to the present cases.

15. The core question to be adjudicated, which was agitated very emphatically by counsel for the appellants, is as to whether chemicals used in the job work are not taxable at all

and dyes/colours are taxable only to the extent of the quantity which is transferred to the fabric and not the whole quantity.

16. The aforesaid question has to be answered against the assessees/appellants. This issue is also covered against them by the case of ***Northern India Textile Processors Association, Faridabad*** (supra). The State Government in its clarificatory order issued under section 56(3) of the HVAT Act held as under:-

> *"Therefore, it is clear from the above that apart from the textiles, which is not taxable, other goods namely dyes and chemicals etc. which are transferred in the process of treating/finishing the textiles into fabrics are not exempt from the levy of sales tax and have to be accordingly taxed."*
>
> *"The notion of the applicant that these goods, that is, the dyes and chemicals etc. having become incorporated into the textiles/fabrics, thereby, get merged into the definition of textiles and, hence, no taxable is totally misplaced. I do not find any merit in the submissions and contentions of the applicant Association which are accordingly dismissed. Clarification be issued in accordance with what is observed above."*

17. The said order was upheld by the Tribunal in the case of ***Northern India Textile Processors Association, Faridabad*** (supra.). Attending to the said order, dyes and chemicals etc used in treating as well as finishing the textiles into fabrics used in the process of dyeing/printing are not exempt from the levy of sales tax and have to be accordingly taxed. The Tribunal in paragraph 11 of the judgment in the case of ***Northern India Textile Processors Association*** (supra) held as under:-

> *"In view of the above discussion, we hold that in the present case as tax has been levied on deemed sale consisting of transfer of property in dyes and chemicals involved in execution of works contracts of dyeing and printing of textiles and textiles being a different commodity from dyes and chemicals and sales tax being a commodity tax, on sale of dyes and chemicals is not the same thing as tax on sale of textiles, therefore, no case of violation of any of the provisions of the Additional duties of excise (Goods of Special Importance) Act, 1957 Act militates against such levy of sales tax on processors. There is nothing in the provisions of the Haryana General Sales Tax Act, 1973 or the Haryana Value Added Tax Act, 2003 or the Central Sales Tax Act relating to the levy of tax on the deemed sale of dyes and chemicals at the hands of the processors which when read in the light of the provisions of the 1957 Act would exempt the deemed sale of dyes and chemicals. Therefore, we find no merits in the arguments of the appellant Association and their challenge to the impugned order of clarification issued under section 56 (3) of the Haryana Value Added Tax Act,*
>
> *2003 by the State Government has no merit. The appeal is rejected and the impugned order passed by the State Government is upheld".*

18. It is thus manifest that all the chemicals, dyes and colours used in the job work of dyeing and printing the fabrics are liable to be taxed. Reason for the same is that entire property in the said material is transferred to the fabric because the residue/solution left behind is wastage and is of no use or value. Consequently the value or property of all the chemicals and dyes/colours used in the job work gets transferred to the fabric and no value or property is left behind in the residue. The property in the chemicals used in the job work also gets transferred to the fabric because it is on account of transfer of the said chemical property that the cloth becomes ready for the actual process of dyeing. Dyes/colours also get absorbed in the textile

because of transfer of chemical property of the chemicals to the fabric. Thus it cannot be said that there is no transfer of property in the chemicals to the fabric. The material 'used in treating the textiles i.e. chemicals apart from the material i.e. dyes and colours used in the actual process of dyeing/printing, has also been held to be taxable in the clarificatory order and upheld by the Tribunal.

19. Our aforesaid conclusion that entire quantity of chemicals, dyes and colours used in the job work is taxable, is supported by the case of ***Matushree Textiles Limited*** (supra). Contention on behalf of the appellants that in that case the issue was whether works contract is taxable or not and not as to what part or how much thereof is taxable i.e. not about the quantity of material to be taxed, cannot be accepted, In that case, Hon'ble High Court interalia held as under:-

Paragraph 33

"We see no merit in the contentions raised by the respondents. When the term "sale" in the Works Contracts Act has been defined to include by a deemed fiction, the transfer of property in goods in any form, there is no reason to restrict the definition to cover only those transactions which involve transfer of goods in some physical form and not in some chemical form. In our opinion, the words "some other form" used in the definition of "sale" in the Works Contracts Act apply to the transfer of property in goods in its every form, i.e., physical form or any other form, including the chemical form. In other words, transfer of property in goods used in the execution of a works contract, either in its physical form or any other form including the chemical form constitutes sale under the Works Contracts Act. In the present case, the coloured shade is passed to the fabrics due to the chemical reaction of the materials used in the process of dyeing. Coloured shade may be due to the chemical reaction of one or more materials. The coloured shade represents the inherent chemical property of the materials used. Once there is passing of the chemical property of the materials used in the execution of works contract, then under the Works Contracts Act, there is a deemed sale of the materials used in the execution of the works contract. Accordingly we hold that in the process of dyeing, the coloured shade passed on to the fabrics constitutes sale of the materials used in dyeing, under the Works Contracts Act.

Paragraph 36

"..... .....

In other words, to constitute sale under the Works Contracts Act, the test is, whether the materials used in the execution of a works contract pass to the contractee either in its original form or in some other form ? If it passes, then there is deemed sale of the materials used in the execution of the works contract even if there is no specific agreement between the parties for sale of materials, even if the price for such sale is not agreed between the parties and even though the materials are not delivered as materials. In the present case, due to the chemical reaction of colours, chemicals and dyes, the inherent property in those goods are passed on to the fabrics. The fact that aftr the inherent property in those goods is transferred to the fabrics the remaining solution is thrown out as waste or affluent, does not in any way affect the taxability on transfer of the property in goods already effected on the fabrics. Admittedly, after dyeing, the solution made of colours, chemicals and dyes is thrown as waste, because, on transfer of the property in the form of coloured shade, the said solution becomes

worthless. Therefore, the Legislature has sought to tax the property in goods which passes and not the remnants or the affluent that remains after the passing of the inherent property in those goods."

Paragraph 39

As rightly contended by the counsel for the Revenue, under the Works Contract Act, what is relevant is the passing of property in goods used in the execution of the works contract and not the quantity of the material that passes. It is not the case of the respondents that the chemical solution used for dyeing retains its property even after dyeing. In fact, it is the specific case of the respondents that the solution prepared for dyeing the grey fabrics of one customer, cannot be used for dyeing the grey fabrics of another customer. It is the case of the respondents that on completion of dyeing, of a particular fabric, the chemical solution becomes worthless and is thrown as a waste. Therefore, it is clear that on completion of dyeing, the entire property of the materials used in dyeing are passed on and what remains as solution is nothing but the residue or the waste. In other words, the coloured shade on the fabrics represents the entire property of the materials used in dyeing ....."

40 "For all the aforesaid reasons, we hold that the property of the materials such as chemicals, colours and dyes used in the process of dyeing and printing are passed on to the fabrics of the customer and, such passing of property of the materials is a deemed sale and tax is leviable on such materials under the Works Contracts Act."

20. It is clear from the above principles of law laid down by Bombay High Court in ***Matushree Textile Limited*** (supra) that the property of the entire materials such as chemicals, colours and dyes used in the process of dyeing and printing are passed on/transferred to the fabrics of the customer and such passing of property of the materials is a 'deemed sale' and tax is leviable on such materials. Due to chemical reaction of colours, chemicals and dyes, the inherent property in those goods are passed on to the fabrics. The remaining solution is thrown as waste. On transfer of property thereof in the form of coloured shade, the said solution becomes worthless. The coloured shade represents the inherent chemical property of all the materials used in the execution of works contract and so there is a deemed sale of all the said materials used in the execution of the works contract. Thus all materials used in the job work/works contact by the appellants are taxable because entire inherent property thereof including that of all chemicals, dyes and colours used in the job work gets transferred to the fabrics. According to clarificatory order also, which was upheld in the case of ***Northern India Textile Processors Association, Faridabad*** (supra), all dyes and chemicals used in treating as well as finishing the textiles are taxable. Chemicals are used in treating the textiles before the actual process of dyeing. The chemicals are also, therefore, taxable according to the said order upheld by the Tribunal. Consequently crux of contention on behalf of the appellants that chemicals are not taxable at all because they are completely washed out and that only part of quantity of dyes and colours which is transferred to the fabrics is taxable, cannot be accepted.

21. As regards appeals at Sr. nos. 41 & 56 above relating to job work of embroidery on cloth, the issue is covered against the appellants by the case of ***M/s H.M. Mehra and Co., Sonepat*** (supra) which also related to embroidery on cloth. In case of embroidery, material/yarn used in the job work is directly transferred to the fabrics and is, therefore, taxable.

22. Judgements in the cases of ***Gannon Dunkerley and Co.*** (supra) and ***Mahim Patram Private Ltd.*** (supra) and the amendment of the HVAT Rules by notification dated 17.05.2010 do not help the appellants because charges towards labour and services and the cost of consumables such as water, electricity, fuel etc. used by the appellants in the execution of the

job work are not being subjected to tax and only chemicals, dyes and colours used in the job work are being taxed. Moreover, judgment in the case of ***Gannon Dunkerley and Co.*** (supra) was also considered in ***Matushree Textile Limited*** (supra) and still it was concluded that all chemicals, dyes and colours used in the job work of dyeing and printing the fabrics are taxable. Chemicals used in the job work done by the appellants do not stand on the same footing as consumption of fuel in any job work/works contract. Reports of experts regarding the extent of dyes/colours found in the fabrics on completion of dyeing/printing and regarding complete absence of chemicals in the said fabrics do not come to be rescue of the appellants on account of our above conclusion that entire property in the chemicals, dyes and colours used in the job work gets transferred to the fabrics and, therefore, entire quantity of the said materials is taxable.

23. Judgment in the case of ***R.M.D.C. Press Private Ltd.*** (supra) was held to be per incuriam in the case of ***Matushree Textile Limited*** (supra). Consequently case of ***R.M.D.C. Pvt. Ltd.*** (supra) and the case of ***Dainik Janambhumi*** (supra) based thereon cannot be followed. In the cases of ***Srikrishna Spinning and Weaving Mills Pvt. Ltd.***(supra) and ***Sreenivas and Co.*** (supra) the matters were remanded to the assessing authorities for fresh consideration. Consequently the same do not help the appellants in the present cases. Moreover, in ***Sreenivas and Co.*** (supra), reliance was placed on ***R.M.D.C.Press Pvt. Ltd.*** (supra) which was held to be per incuriam. For this reason also, ***Sreenivas and Co.*** (supra) cannot be followed.

24. Case of ***Super Fine Processors Pvt. Ltd.***(supra) simply held that clarificatory order issued by State Government, in favour of the assessee on application made by Northern India Textile Processors Association, was, binding on the Assessing Authorities. Thus in that case. Hon'ble High Court did not give any finding in favour of the assessee. On the other hand, the State Government had already given finding by way of clarification in favour of the assessee. The said judgement is, therefore, of no help in the present cases.

25. The case of ***Pest Control India Ltd.*** (supra) was completely in different facts. In that case, the petitioner company was rendering service of pest control, house disinfection, anti-termite treatment etc. Obviously in that case, the pesticide used by the petitioner was not taxable as it was a case of rendering service. It was not a case of job work done by the petitioner company on any goods of the customers. The said case, therefore, has no applicability to the facts of the cases in hand.

26. There is no dispute with the proposition of law that this Tribunal is the last fact finding authority and, therefore, higher responsibility is cast on it to decide the cases by recording complete facts and assigning cogent reasons, as held in the case of ***Abhishek Industries Ltd.*** (supra). However, this Tribunal is deciding the cases by fully discharging the said responsibility.

27. Orders dated 04.07.2006 and 06.06.2006 of the First Appellate Authorities relied on by counsel for the appellants cannot be used as precedents and infact should not have even been cited as precedents before the Tribunal.

28. Definitions of 'sale' and 'sale price' relied on by counsel for appellants do not help them because we have found that there is complete transfer of inherent property of all chemicals, dyes and colours (whether as such or in some other form), used in their job work, to the fabric and, therefore, value of the entire materials so used is taxable.

29. Other judgments cited by Mr. Sandeep Goyal are also not applicable to the present cases. The case of ***Sarvodaya Printing Press Fine Art Printer*** (supra) related to the job work of printing and the same, therefore, is not applicable to the present cases. In ***Vijayakumar Mills Ltd.*** (supra), ***Voltas Ltd.*** (supra) and both cases of ***Larsen and Tourbo Ltd. (Patna and Orissa)***

(supra), exclusion of labour and service charges and other like charges was held, relying on ***Gannon Dunkerley and Co.*** (supra) which has already been discussed. The case of ***Microtrol Sterilization Services Pvt. Ltd.*** (supra) related to sterilization of goods by exposure to ethylene oxide. The same, therefore, has no applicability to the present cases, just like the case of ***Pest Control India Ltd.*** (supra). For the same reason, the case of ***Dynamic I&C Services (P) Ltd.*** (supra), relating to business of cleaning of boilers in plants like Thermal Power Stations and Fertilizer Complexes, is not applicable to the present cases. The case of ***M/s Chandok Textiles Enterprises Pvt. Ltd.*** (supra) is based on decision of State Government of U.P. itself on the representation of the Northern India Textile Processors Association. The said case also, therefore, is not attracted to the fact of the present cases. The case of D***hingra Jardine Infrastructure Pvt. Ltd.*** (supra) related to developers/builders. The same, therefore, has no applicability; to the present cases.

30. In appeals STA nos. 629 to 634 of 2012-13 (at Sr. no. 18) filed by M/s Frisco Fab Dyeing & Printing P. Ltd., Faridabad, opportunity has to be given to the assessee for producing VAT D-l forms in support of its claim for concessional rate of tax under section 7(3)(a) of the HVAYT Act, as prayed for by counsel for the appellant. Consequently the said cases are remanded to the Assessing Authority for the limited purpose of giving reasonable opportunity to the assessee to produce VAT D-l forms and to pass appropriate order on the basis thereof.

31. Mr. Sandeep Goyal submitted that in some cases, the first Appellate Authority while deciding the first appeals filed by the assessees, enhanced the TTO and remanded the cases to the Assessing Authority, which being disadvantages to the assessees could not be done in the appeals filed by them. Consequently orders of the first Appellate Authorities in such cases, if any, are set-aside to that extent only.

32. It is expressly made clear that the principle of law laid down in the present cases shall operate prospectively only and the orders already passed by the Authorities below by levying tax on lesser quantity of chemicals, dyes and colours or by levying no tax at all on the chemicals which are in favour of the assessees in the present cases or in any other case to that extent, shall not be reopened by revision or otherwise to the disadvantageous of the assessees.

33. For the reasons aforesaid, all the appeals are dismissed subject to directions/observations in the preceding three paragraphs.

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HARYANA TAX TRIBUNAL

STA NO. 45 OF 2014-15

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SHRI SHAKUMBARI STEELS
Vs
STATE OF HARYANA

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

SACHIN JAIN, MEMBER

8th March, 2017

HF ▶ Revenue

Delay in filing of appeal after inordinate delay of 3 years and 4 months cannot be condoned.

APPEAL – CONDONATION OF DELAY – REGISTERED POST – PRESUMPTION OF SERVICE – DELAY OF 3 YEARS AND 4 MONTHS – IN TOTAL 20 APPEALS FILED BEFORE FIRST APPELLATE AUTHORITY – ORDER RECEIVED IN 19 APPEALS – APPLICATION FOR CERTIFIED COPY OF ORDER IN REMAINING CASE FILED AFTER 3 YEARS – NO SUFFICIENT CAUSE SHOWN FOR CONDONATION OF DELAY – APPEAL DISMISSED – *SECTION 33 OF HVAT ACT, 2003.*

Facts

The appellant has filed an Appeal against the order of first Appellate Authority dated October 1, 2010. The endorsement shows that it was sent on October 11, 2010 to appellant through Registered Post. However, the appeal is now being filed after a delay of more than 3 years 4 months . The state has contended that the appeal is time barred. The appellant has argued that the certified copy of the impugned order was received by on March 11, 2014. So, the appeal is filed within sixty days of receipt of order and is within limitation period.

Held:

The record show that the dispatch of impugned order was made by Registered post to the appellant on October 13, 2010 on the correct address. There is presumption of service upon appellant. He has failed to show as to why he has not applied for copy of order when he received 19 orders out of total 20 appeals filed by him and waited for more than 3 years to do so. There is no sufficient cause shown for condonation of delay. Appeal dismissed.

Present: Mr. S.C. Pruthi, Advocate counsel for the Appellant.
Sh. N.K. Gupta, J.D. (L) for the State.

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

1. By This is second appeal by assessee M/s Shri Shakumbari Steels, Sonepat.

2. Order of the first Appellate Authority, Rohtak is dated 01.10.2010. As per endorsement thereon, it was sent to the appellant/counsel, besides Authorities, vide endorsement dated 11.10.2010. In the form of present appeal, which was received by post in this Tribunal on 07.05.2014, it has been mentioned that date of communication of order of first appeal is 11.03.2014. In ground No. 8 of present appeal, it has been alleged that the appellant was not served copy of the first appellate order which has been received only on 11.3.2014.

3. We have heard counsel for appellant and State Representative on the question of limitation and perused the case file.

4. State Representative raised preliminary objection that the present appeal is barred by limitation. It was submitted that order of the first Appellate Authority was communicated to the appellant/counsel vide endorsement dated 11.10.2010 and limitation period for filing the appeal was 60 days only and, therefore, the instant appeal is barred by long delay of more than three years four months.

5. On the other hand, counsel for the appellant contended that he had 20 cases before the same first Appellate Authority and he received orders of the said authority in 19 cases and did not receive the impugned order in this case only. It was submitted that he had been enquiring from the first Appellate Authority about its order in the first appeal in this case and was always given assurance and ultimately he applied for certified copy of order of the first Appellate Authority in March 2014 and received it on 11.03.2014 and, therefore, the present appeal filed on 07.05.2014 is within limitation having been filed within limitation period of 60 days.

6. Vide order dated 09.01.2017, State Representative was directed to produce record regarding dispatch/delivery of impugned order dated 01.10.2010 of the first Appellate Authority to the appellant or its counsel. Accordingly State Representative produced the said record on 25.01.2017 and also on 01.03.2017 when this appeal was heard on the question of limitation. The said record was perused by us as well as by counsel for the appellant. According to said record, copy of impugned order of the first Appellate Authority was sent to the assessee-appellant by registered post vide postal receipt dated 13.10.2010. Address of the assessee-appellant was correctly mentioned in the said postal receipt.

7. We have carefully considered the matter. Even if a letter is sent by ordinary post, there is presumption that the letter is delivered in normal course if it is correctly addressed. The said presumption is far stronger if a letter is sent by registered post. In the instant case, impugned order of first Appellate Authority was sent to the assessee- appellant by registered post. It was correctly addressed. There is, therefore, very strong presumption that the same was delivered to the assessee-appellant within 2-3 days or maximum of 7 days. The said presumption has not been rebutted in any manner in this case. Consequently the appeal is barred by limitation by long and inordinate delay of more than 3 years 4 months after excluding the limitation period.

8. The submissions advanced by counsel for the appellant are self-defeating. If out of 20 cases, counsel for the appellants or the concerned assessee-appellants had received orders of the first Appellate Authority in 19 cases and the order was not received in this case only, then the assess-appellant/counsel would not have waited for long period of 3 years 5 months to apply for certified copy of the order. Counsel for the appellant had allegedly been requesting the first Appellate Authority and was being given assurances. However, no written request for supply of ordinary copy or certified copy of order of the first Appellate Authority was made for 3 years 5 months. The submission that during this long period, the counsel had been making only oral requests to the first Appellate Authority and had been waiting for the copy of the impugned order, cannot be accepted because the counsel would not have waited for long period of 3 years 5 months on the basis of mere oral requests and oral assurances. In fact, during this long period of 3 years 5 months, the Officer who as first Appellate Authority, Rohtak had heard the appeal

on 28.09.2010, also must have been transferred from Rohtak in ordinary course. Be that as it may, the submissions by counsel for the appellant cannot be accepted being completely untenable. On the other hand, there is presumption that copy of impugned order of the first Appellate Authority was delivered to the assessee-appellant in October, 2010 and there is long and inordinate delay of more than 3 years 4 months in filing this appeal after excluding the limitation period. There is neither any application nor any ground whatsoever much less sufficient ground for condonation of the said long delay in filing this appeal.

9. Resultantly we find that the instant appeal is barred by limitation. The appeal is accordingly dismissed as time barred.

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PUBLIC NOTICE (PUNJAB)

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PUBLIC NOTICE REGARDING EXTENSION OF e-FILING OF VAT-15

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE & TAXATION

PUBLIC NOTICE

KIND ATTENTION: DEALERS/CHARTERED ACCOUNTANTS/LAWYERS/OTHER STAKEHOLDERS

This is to inform all the concerned that the last date of e-filing of VAT-15 for the 4th Quarter of 2016-17 has been extended till 10th May, 2017.

Dated: 29th April, 2017

Excise & Taxation Commissioner, Punjab

NOTIFICATION (HARYANA)

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AMENDMENT IN HVAT SCHEDULE A, B, E AND G - REVISION IN RATE OF TAX ON LIQUOR AS PER EXCISE POLICY 2017

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

Notification

The 7th April, 2017

No. 15/ST-1/H.A. 6/2003/S.59/2017. - Whereas, the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 59 read with proviso to said sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following amendment in Schedule A, B, E and G appended to the said Act with effect from the 1st April, 2017, namely:-

AMENDMENT

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

(1) in Schedule A, under columns 1, 2 and 3,-

(a) serial number 5 and entries thereagainst shall be omitted;

(b) serial number 5A and entries thereagainst shall be omitted; and

(c) serial number 10 and entries thereagainst shall be omitted;

(2) in Schedule B, under columns 1 and 2, for serial number 31B and entries thereagainst shall be omitted.

(3) in Schedule E, under columns 1, 2, 3 and 4, for serial number 4 and entries thereagainst shall be omitted.

(4) in Schedule G, under columns 1, 2, 3 and 4, after serial number 3 and entries thereagainst, the following serial number and entries thereagainst shall be inserted, namely:-

"4 (a)	Country liquor	13% plus five percent surcharge	When sold for the first time in the State by the distillery: Provided no Input Tax Credit shall be admissible on sale of these goods.
(b)	Beer, RTB, and	13.5% plus five	When sold for the first time in the

	Wine	percent surcharge	State by the L-1B1, L-1-AB1, L-1W in case of beer and wine, and L1-B1-A in case of RTB: Provided no Input Tax Credit shall be admissible on sale of these goods.
(c)	Indian Made Foreign Liquor (IMFL)	14% plus five percent surcharge	When sold for the first time in the State by L-1B and L-1AB: Provided no Input Tax Credit shall be admissible on sale of these goods.
(d)	Imported Foreign Liquor (IFL) bottled in Origin (BIO)	33% plus five percent surcharge	When sold by any dealer for the first time in the State and all sales by an L-1BF (Licensee) dealer except covered under entry 5: No Input Tax Credit shall be admissible to any dealer subsequent to L-1BF (Licensee) dealer on sale of these goods.
5	Liquor including Imported Foreign Liquor (bottled in Origin)	18% plus five percent surcharge	When sold by bar, pub and club holding L-4/L-5 /L-10C/ L-10E/L-12C/L-12G license: Provided no Input Tax Credit will be admissible to the dealers covered by this entry on purchase of liquor."

SANJEEV KAUSHAL,
Additional Chief Secretary to Government,
Haryana, Excise and Taxation Department

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

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CENTRE, STATES TAXMEN TO DECIDE SERVICES RATE IN GST THIS WEEK

The fitment committee is likely to hold more meetings before GST Council's meeting on 18-19 May where tax rates for different products and services are to be finalised

New Delhi: Tax officials of the central and state governments will this week hold their maiden meeting on devising a formula for tax rate to be levied on services under the Goods and Services Tax (GST) regime from 1 July.

While the GST Council had previously decided on a four- tier rate structure of 5, 12, 18 and 28%, its fitment committee will hold its first meeting this week on slotting different services in one of the slabs, a senior official told PTI. The task before the panel is to keep the impact of GST on inflation and prices near neutral or zero.

The fitment committee is likely to hold more meetings before GST Council's meeting on 18-19 May where tax rates for different products and services are to be finalised so as to enable roll out of the biggest tax reform from 1 July.

"The fitment committee will start with deciding on tax rates on services. Since the Centre alone has the power to levy service tax under the current regime, fixing of the tax rate on services would be an easier task," the official said.

The official said that most of the services where both value added tax (VAT) and service tax were levied would be fit around the standard rate of 18%, while those on which only 12.5% VAT was levied would be brought to 12%. Also services provided by transportation and logistics players would be fitted in 12% bracket, while services in 9% bracket could be fitted in 12%, the official said.

Tax rate which is closest to the present incidence of tax on a good or service will be chosen with a view to keeping the shift from the present regime of excise duty plus VAT or service tax to a new uniform GST neutral for consumers. The official said tax rates will be decided in a fashion to keep their impact on inflation as well as revenues to the government near neutral. Once tax rates on services are decided, the fitment committee will meet again after a fortnight or so to decide on tax rates on goods before a full report of the panel is put up for consideration before the GST Council in its 18-19 May meeting in Srinagar.

Also Read: President Pranab Mukherjee gives assent to 4 supporting legislations on GST

The GST Council, headed by Union finance minister and comprising state representatives as members, would kick start the discussion on rates in the May meeting and the final fitment would be done by June.

Under the current regime, the Centre has the power to levy tax on production of goods (except liquor for human consumption, opium, narcotics) while the states have the power to levy tax on sale of goods. In the case of inter-state sales, the Centre has the power to levy a tax (the Central Sales Tax) but, the tax is collected and retained entirely by the originating states.

Revenue secretary Hasmukh Adhia had earlier said that the Centre will make a strong case to the GST Council for not touching services that are out of tax net currently, it will also pitch for keeping concessional rate for services like transport at the current level.

Currently, there are 17 items in negative list of services on which tax is not levied. On top of that there are over 60 services, like religious pilgrimage, healthcare, education, skill development, journalistic activities which are exempt from service tax.

The official further said that once goods and services are fitted in tax brackets, the fitment committee will work out the inflation impact. While fitting an item, effort will be made to keep it at the closest possible bracket in which it is at present to keep impact on inflation at minimal. "While it is given that there will be some impact on inflation to begin with but in 6-8 months as companies analyse the GST impact on sales and start passing on the benefits of tax rate reduction to consumers, inflation would come down," the official added.

Also Read: Why deteriorating state finances should worry us

Nangia & Co Director (Indirect Taxation) Rajat Mohan said currently taxes on services are levied by the central government at a general rate of 15%. "We expect going forward this rate of tax would increase to 18%. This will give rise to a marginal increase in budgets vis-a-vis your phone bills, internet bills, professional services, consultant services, rent on commercial buildings, the supply of manpower, cosmetic surgery, interior decorator services, security agency services, etc," he said.

Also there are some service sectors which are taxed at a rate lower than 15% like transportation of goods or passenger by Indian railway at 4.5%, service by way of supply of food in restaurants, hotel (10.5%), transportation of goods by transportation agency or radio taxi at (4.5-6%), tour operator services (9%), construction of complex (4.5%), economic class air- fare (6%), business class air-fare (9%). Such services should be put in tax brackets of 5% or 12% and not in the bracket of 18%.

"The government would like to restrict the inflationary impact of GST which could be done only by ring-fencing all such services in the tax bracket close to the current rate of taxes," Mohan added. He said countries like Canada, Australia and New Zealand and Malaysia, witnessed a one-time increase in inflation for a very short period after GST implementation, that was normalised eventually.

Courtesy: LiveMint

16th April, 2017

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SERVICES MAY BE TAXED AT 12%, 18% UNDER GST

A two-day meeting of a GST council panel from today seeks to identify what services should fall into which of the two slabs

New Delhi: The powerful GST council headed by finance minister Arun Jaitley is likely to limit the tax rate on services under the new indirect tax regime that will come into force on 1 July to just two slabs—12% and 18%. Goods are to be taxed at five different rates.

A panel within the council discussing the tax slabs under the goods and services tax (GST) regime will meet in the capital on Tuesday and Wednesday and identify what all services should fall into which of the two slabs, a person with direct knowledge of the matter said on condition of anonymity.

It will then be placed before the council's two-day meeting in Srinagar, starting on 18 May.

Businesses have demanded a lower rate of 5% on services, which has not found favour within the council.

Services account for more than half of the country's $2.3 trillion gross domestic product, or GDP.

At present, services are taxed by the central government at a flat 15% but relief (called abatement) is given to a host of transactions by restricting levy of the tax to 40-60% of the value of the transaction. The proposed two rates will be applied in such a way that the GST rate on services is closer to existing effective service tax outgo on the transaction.

Experts said that services which currently attract 15% tax will move up to 18% GST rate, while those enjoying the benefit of abatement and hence have a lower effective tax outgo at present will come under 12% GST.

The non-availability of full credit for taxes previously paid on raw materials under the current system means the actual service tax incidence at present on a transaction is higher than what the applicable tax rate implies. However, in the GST regime, seamless availability of tax credits would help in reducing the impact of an increase in the tax rate.

"The inflationary impact on account of an increase in the tax rate on services under GST may not be directly proportional to such increase, but will be much lower," said Bipin Sapra, tax partner at the consulting firm EY.

The 'rate fitment' panel meeting will also discuss how to place different goods in the five slabs—5%, 12%, 18%, 28% and 28% plus cess. Commodities which at present have excise duty exemption but attract state-level value-added tax (VAT) may be placed under the 5% GST slab. Those with concessional excise duty and VAT will be placed under the 12% or 18% rates. Items that currently come under peak excise and VAT rates will attract 28% GST while luxury items will come under the 28% plus cess category.

Courtesy: LiveMint

17th April, 2017

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GST: JHARKHAND ASSEMBLY TO HOLD SPECIAL SESSION ON APRIL 27

State's enrolment progress under GST is tardy. Of the 80,000 registered dealers and traders, only 55,000 have migrated to GST fold so far

A special session of the Jharkhand assembly will be convened on April 27 for the passage of the State Goods and Services Tax (SGST) bill, a prerequisite that all states must follow before the implementation of a uniform GST nationwide likely from July 1.

The parliamentary affairs ministry has written to the cabinet and coordination department in this regard. It was cleared by the cabinet on Tuesday and would be sent to the assembly speaker and Rajbhawan for the customary approval of the governor.

Legislative assemblies of all states need to pass the state GST law in order to switch over from the current system of levying multiple indirect taxes at the state and central level. The proposed state legislation would confer power on the state government to levy goods and services tax on the supply of goods and services or both which take place within the state.

The initiative of holding a special assembly session is a sequel to the passage of four supplementary legislations that will enable the government to roll out the landmark GST.

The four bills passed by the Rajya Sabha on April 6 are: Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, Goods and Services Tax (Compensation to States) Bill, 2017 and Union Territory Goods and Services Tax Bill, 2017. The Centre is expected to give final approval to rules and rates the next month.

Parliamentary affairs minister Saryu Rai said, "Previously the special session was planned on April 28 but it has been advanced by a day in view of chief minister Raghubar Das's busy schedule that day."

After Telangana, the BJP-ruled Jharkhand is likely to be the second state to hold a special session on SGST.

"GST is expected to jack up the state's revenue. In case the state fails to reap the expected benefit, the Centre will compensate the loss for the next five years," Rai said.

He, however, was not sure whether the assembly will be debate the State Goods and Services Tax Bill. It will depend on the opposition, he said.

The JMM indicated that they want a debate. "We will seek a clarification from the treasury bench on the state's share and likely losses and gains from the GST regime," said JMM general secretary Supriyo Bhattacharya.

Even as the Centre is preparing to roll out GST from July 1, Jharkhand's enrolment under GST is still tardy. Around 80,000 dealers and traders are registered with the state commercial department. Till date, only 55,000 dealers and traders have migrated to the GST fold.

Joint commissioner (administration) of the state commercial tax department, Gopal Krishna Tiwary, however, said they would be able to achieve the enrolment target by July.

"Over 10,000-15,000 dealers, who had been registered around 4-5 years back, never filed their returns. We wanted to scrap their registration. But, as per a provision in GST, we can cancel their registration only after realising the due tax amount. Therefore, the database is displaying their enrolment as pending," he said, adding, "we will sort out the issue soon."

Meanwhile, the Federation of Jharkhand Chamber of Commerce and Industries (FJCCI) wrote to the Union minister of state for finance Arun Ram Meghwal urging no action should be taken against traders for one year, as it is a new system and the possibility of mistakes cannot be ruled out.

Courtesy: Hindustan Times

18th April, 2017

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STATES ASKED TO PASS GST BILLS BY MAY-END

The council is keen to meet the 1 July deadline for GST, which has missed several past deadlines owing to political differences

New Delhi: The goods and services tax (GST) council chaired by finance minister Arun Jaitley has urged states to approve state GST laws by the end of May to smoothen the roll-out of the historic tax reform by its target date of 1 July.

President Pranab Mukherjee signed off on the four supporting GST bills on Thursday. According to a person aware of the discussions between the central and state governments, completing the exercise by the end of May will give businesses and traders a month's time to familiarize with state laws before the new regime kicks in.

The council is keen to meet the 1 July deadline for GST, which has missed several past deadlines owing to political differences.

Telangana became the first to pass the State Goods and Services Bill 2017 on Sunday. Rajasthan and Chhattisgarh legislative assemblies have scheduled discussions of the respective state GST bills in the last week of April, the person cited above said, on condition of anonymity. State assemblies approving the supporting statutes will conclude the 28-month long legislative process for the tax reform which began with the introduction of the Constitution (122nd) Amendment Bill in Lok Sabha in December 2015.

The state laws form the basis for levying state GST (SGST) on the supply of goods and services within the state, replacing value-added tax (VAT). Their consent to the reform was obtained by the Union government with a law for full compensation for five years for any revenue loss from GST adoption, mainly from elimination of the 'tax on tax' resulting from restrictions on flow of tax credit across the supply value chain. For compensation, 14% growth over states' tax receipts in the last financial year will be taken as a benchmark.

"Passing of state GST Acts and releasing rules and associated forms would be a major milestone in introduction of GST. But based on the recently released rules, it is expected that GSTN (GST Network, the company that manages the IT infrastructure for GST) may also be required to make further changes in the return formats," said Prashant Deshpande, partner, Deloitte Haskins & Sells LLP.

The Central Board of Excise and Customs (CBEC) recently released draft rules on electronic way bills (e-way bills) that entities have to furnish regarding the goods meant to be moved within or out of a state. About 5.65 million taxpayers out of an estimated 8 million excise, service and value-added tax assessees have so far joined the GSTN website.

Courtesy: LiveMint
19th April, 2017

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RECORD OF GOODS LOST, STOLEN, GIFTS TO BE MAINTAINED IN GST

NEW DELHI: A record of goods lost, stolen or destroyed as well as those given as free sample and gifts will have to be maintained under the new goods and services tax regime, which kicks in from July 1.

Also, each volume of books of account will have to be maintained with serial numbers and any entry in registers, accounts and documents will not be erased, effaced or overwritten, say draft rules for maintaining record under the GST.

The rules, released by the CBEC, provide for maintaining separate account or records for each activity, including manufacturing, trading and provision of services.

"A true and correct account of the goods or services" with relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt, payment and refund vouchers and e-way bills will have to be maintained under the new GST regime that is scheduled to kick in from July 1.

GST is being hailed as the biggest tax reform since Independence and is supposed to make it easier to do business by reducing compliance requirements.

The rules stipulate maintaining of accounts of stock for each commodity received and supplied with clear details of "the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples and balance of stock including raw materials, finished goods, scrap and wastage thereof".

Also, a separate account of advances received, paid and adjustments will have to be maintained. Alongside, details of tax payable, tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit note, debit note, delivery challan issued or received during any tax period will have to be maintained.

Particulars including name and address of suppliers as well as those receiving the supplies will have to be kept, the rules said, adding that accounts have to be serially numbered.

"Any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries shall be scored out under attestation and thereafter correct entry shall be recorded," it said.

Where registers and other documents are maintained electronically, there must be a log of every entry edited or deleted.

"Unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person," the rules stated.

Manufacturers have to maintain monthly production accounts, showing the quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured, including the waste and by-products thereof.

Service providers, on the other hand, will have to maintain the accounts showing the quantitative details of goods used in the provision of each service, details of input services utilised and the services supplied.

All physical records, including invoices, bills of supply, credit and debit notes, and delivery challans have to be preserved for a particular period to be provided in the GST laws.

A proper back-up of electronic records will have to be maintained and preserved in a manner that the information can be restored within reasonable period of time in the event of destruction of such records due to accidents or natural causes.

Courtesy: The Economic Times

20th April, 2017

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BIHAR BECOMES SECOND STATE AFTER TELANGANA TO PASS GST BILL

The Bihar Goods and Services Tax (GST) Bill, 2017, was passed by the bicameral state legislature on Monday, making Bihar the second state after Telangana to adopt the new tax reforms.

With the lone exception of Communist Party of India (Marxist–Leninist), all the political parties backed the Bills associated with the GST.

Bihar was also the second state in the country, after Assam, to rectify the constitutional amendment Bill.

The Bill, along with five others, was tabled in a special session of the state legislature on Monday.

Terming the tax reform as pro-poor and a development-booster, Commercial Tax Minister Vijayendra Yadav said GST is the need of the hour. Crediting Chief Minister Nitish Kumar for the smooth passage of the Bill, the minister said Kumar had been a strong supporter of the new tax regime since the time it was conceptualised.

Courtesy: Business Standard

25th April, 2017

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14 STATES SET TO PASS GST BILL BY MID-MAY

All states are expected to approve state GST law by May-end

Fourteen state legislatures will approve their respective State Goods and Services Tax (SGST) law by mid-May, according to revenue secretary Hasmukh Adhia. Addressing a GST Conclave here on Tuesday, he said all states were expected to pass their SGST law by May-end to ensure that the GST regime was rolled out by July .

Bihar and Telengana have already passed the SGST law.Rajasthan is likely to pass it on Wednesday.

Mr Adhia said the new regime would not have any inflationary impact on the economy since the country would be shifting from multiple-level taxes that had a cascading effect to the GST that would do away with such a scenario and aid in easing inflation.

'Prices to fall'

Allaying fears that consumers would have to pay more for goods and services under the GST regime due to an increase in tax, Mr. Adhia said that in the GST regime prices of most items would fall and those of services might stay at the same level. "Around 60% of the income of the Centre and States comes from items that attract 12.5% excise duty and 14% value added tax. There will be a likely reduction on the tax on these items under GST," he said. Also, though a majority of the services would bsee service tax going up to 18% in the GST regime from the current 15%, most services would get the benefit of input tax credit on purchases, and, therefore, the overall tax incidence would stay the same, he said. However, there could be a marginal increase of tax for some services, he added. All food grains and absolute essential items for people were likely to be exempted from GST, he said. Therefore, GST would not have an inflationary impact. Mr Adhia, however, said the GST Council would take a call on it.

The GST Council's next meeting is slated for May 18-19, and is expected to discuss fitment of commodities in the four-tier tax structure under GST.

Under the GST regime, every registered person would be assigned a compliance rating on the basis of the record of compliance in respect of specified parameters. Such ratings would be made public. A prospective client would be able to see a supplier's compliance rating. This would help in deciding whether to deal with the supplier concerned or not, according to Prakash Kumar,CEO of GST Network (company providing IT infrastructure and services for implementation of GST). He said it would help in healthy competition among taxable persons. Mr Adhia said GSTN had shortlisted 34 companies to be empanelled as GST Suvidha Provider (GSP).

GSP will develop applications for taxpayers for quick monitoring of GST compliance activities, and provide role-based access to divide various GST related activities like uploading invoice and filing returns among different set of users. Mr. Adhia said GSTN will shortly appoint more

startups and firms to make simple and easy software solution for filing returns, adding that there will be helplines attending to queries in national and vernacular languages.

Courtesy: The Hindu

25th April, 2017

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GST IMPACT: GOVERNMENT MAY SLAP CUSTOMS DUTY ON IMPORTED MOBILE PHONES

NEW DELHI: The government may slap customs duty on imported mobile phones after switching to the goods and services tax (GST) regime as it seeks to give a boost to local manufacturing, ward off Chinese imports and induce companies like Apple to make in India. Such a move could, however, increase the price of imported smartphones by 5-10%.

The ministry of electronics and information technology has secured legal opinion from the attorney-general who has said that imposing customs duty on phones will not violate the Information Technology Agreement (ITA), an international pact which mandates signatory countries to allow duty-free imports of certain electronics products.

An inter-ministerial committee, comprising representatives from the finance, commerce, and telecom and IT ministries, has been set up to examine the issue in detail.

These developments follow a growing thought in the government that zero customs duty is not helping the case of manufacturing in the country.

In addition, certain exemptions that are currently available to domestic handset makers — such as no countervailing duty on imported electronic components — will have to go after the GST regime comes into force. Imposition of customs duty will protect local manufacturers.

At present around 30% of all phones sold in India are imported, a bulk of which come from China.

The government has been wooing smartphone companies such as Apple to set up manufacturing facilities in India.

While the iPhone maker is set to assemble handsets in India at a plant in Karnataka being set up by its contract manufacturer Wistron, it has demanded several tax concessions. The government's stated position is that it will not give special concessions to any single company.

The government believes ITA does not cover the entire mobile phone category. A senior IT ministry official said that according to ITA, 'one to many push button cellular telephony' devices are exempt. "We are saying that our phones, even feature phones, are one to one, they are not one to many, so therefore all phones are not covered under ITA. The attorney-general's legal opinion also said that ITA did not cover mobile phones," said the official.

India has unilaterally exempted some electronic components from countervailing duty, levied in lieu of central excise duty. But this exemption may not continue under the GST regime, which will allow minimal exemptions. The finance ministry has asked the IT ministry to instead consider a change in the customs duty regime to shield domestic manufacturing.

Experts say electronic manufacturing needs to be incentivised.

"The present incentives to manufacture mobile phones in India need to be continued under the GST regime. Raising customs duty is a simple solution, if ITA so permits," said Bipin Sapra, partner, EY.

Courtesy: The Economic Times

26th April, 2017

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TWO RATES FOR SERVICES UNDER GST, SAYS GOVT

NEW DELHI: The government said on Tuesday that there will be two slabs for services under GST, with segments such as transport facing a lower levy compared to the 18% tax on several services.

While a decision on the rates would be taken by the GST Council, comprising Union finance minister Arun Jaitley and state FMs, revenue secretary Hasmukh Adhia said that services such as transport, where fuel was a major component, could face a lower levy, with tax practitioners talking of a 12% tax on such services. "The abatement rate has to be factored in and there can be more than one rate," Adhia told reporters.

Currently, on several services, only a part of the fee is treated as service. For instance, when it comes to goods transport, service tax is levied on 30% of the bill. Currently, service tax is pegged at 15% but the actual levy in several categories is much lower.

Apart from being a service where the main input, petrol and diesel have been kept out of the GST net, transportation is a key service for the economy and a steep rise in the levy will push up transportation costs for the economy.

"Wherever public interest is involved, the government will have to ensure that the actual incidence does not rise much. This will include railways, construction and restaurants," said service tax lawyer R S Sharma. Although petroleum products — from crude to petrol, diesel, natural gas and aviation fuel — are currently out of GST, Adhia told reporters, there will be an annual review and the GST Council will decide amid indications that the Centre will seek to include the key revenue generator.

The revenue secretary, Hasmukh Adhia, also reiterated the government's keenness to move to GST from July and said that states are expected to enact state laws by the end of May.

"Trade and industry should not be complacent. There will be no change for small traders and the ERP software of the large players are being upgraded." He also sought to allay fears over a possible price rise following GST given that cascading effect of taxes will go away. "Almost 60% income of the Centre and the states comes from items that attract 14% VAT and 12.5% excise duty. There will be a likely decrease in the tax on each of these items under GST," Adhia said.

He said that once the new indirect tax regime is rolled out, the incidence of tax on imported goods would be the same as on the locally manufactured items. Imported goods, he said, will be subject to Integrated GST (IGST) for which credit can be claimed at the time of sale. IGST is just an interim tax or a washout tax which is equivalent to the GST rate on a specific product. In case of locally manufactured goods, a similar GST rate will be applicable and hence, there will be no advantage for the imported goods. The government levies countervailing duty (CVD) and special additional duty (SAD) on imported goods to protect domestic manufacturers.

Courtesy: The Times of India

26th April, 2017

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CHHATTISGARH PASSES STATE GST BILL, BECOMES FIFTH STATE TO ADOPT TAX REFORM LAW

RAIPUR: Chhattisgarh Vidhan Sabha on Friday passed the state Goods and Service Tax (GST) Bill- 2017 by voice vote. With this Chhattisgarh became the fifth state in the country to adopt the bill and pave the way for rolling out of the new tax regime from July one.

During the one day special session, which is also an extended sitting of the budget session which concluded on March 30, the house passed the bill after a three hour long debate with chief minister Raman Singh and treasury benches describing the GST Bill as historic. The other states which had adopted GST bill date are Bihar, Jharkhand, Telangana and Rajasthan.

Replying to the debate, chief minister Raman Singh termed the GST regime as 'historic", saying that the new tax regime also usher in the concept of " One nation, One tax and one Law", thus promoting the cause of national integration. He said the GST Bill is also aimed at simplification of tax system and expanding the tax base. "Initially, the biggest concern of the states was to compensate the loss," the chief minister said, adding that Chhattisgarh fought for the states' right and advocated right of the state to get the compensation against the loss.

"We succeeded and the state would be getting the required compensation," Singh said. The revenue loss to the producer states following the implementation of GST would be compensated for the next five years and hence there was no reason of worry about the state's finances. He underlined that the state's economy would grow after the latest tax reform.

The opposition members however, expressed concern over the possible fears that there would be inflation, return of inspector raj and hardship to small traders. Leader of the opposition T S Singhdeo said some of the provisions in the GST Law could cause problem to the common man and hence there is a need to analyze and adopt the experiences of tax reforms implemented in other countries.

State commercial taxes minister Amar Agrawal, who tabled the bill, said the camps would be organized across the state to address the queries of traders and businessmen about GST.

Courtesy: The Times of India
28th April, 2017