SGA
LAW OFFICES

Issue 8
16th April 2016

"No taxes can be devised which are not more or less inconvenient and unpleasant."

— George Washington

NOMINAL INDEX

NOTIFICATION

HARYANA

PUNJAB

NEWS OF YOUR INTEREST

Edited by

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News From Court Rooms

KARNATAKA HC : Karnataka VAT : Where assessee in returns filed claimed partial input rebate and Assessing Authority allowed such rebate and thereafter assessee based on a judgment of Karnataka High Court in the case of M.K. Agro Tech (P.) Ltd., filed an application for rectification of assessment order and to grant full input tax rebate and Assessing Authority rejected application. Assessing Authority is directed to rectify the order. *(Anantha Refinery P Ltd. – January 20, 2016).*

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CESTAT, KOLKATA : Cenvat Credit : CENVAT credit with respect to motor vehicle chassis (Tractor) falling under Chapter 87 of the Central Excise Tariff Act, 1985 is not eligible. Penalty imposed under Rule 13 (1) of CENVAT Credit Rules, 2002 is set aside as appellant is a Government of India undertaking and cannot be said to have any malafide intention *(NALCO – March 29, 2016).*

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SUPREME COURT: Central Excise : Where process of bullet proofing was carried out on jeeps after their clearance from factory, its cost could not be added in transaction value. *(Mahindra & Mahindra Ltd. - March 8,2016)*

ALLAHABAD HC : Cenvat Credit : Where substantive conditions, viz., receipt of duty-paid capital goods and use thereof for specified purposes were satisfied, credit cannot be denied for procedural lapse, viz., delay in filing of declaration for taking credit. *(Global Sugar Ltd. – March 15, 2016).*

DELHI HC : Service Tax : Where Service Tax under VCES Scheme 2013 is paid, through cheque, With the cheque having been realized the date of payment is deemed to be the date of presentation of the said cheque in terms of Rule 6(2A) of the Service Tax Rules, 1994. *(Disha Securities and Manpower P Ltd. – April 5, 2016)*

SUPREME COURT: Karnataka VAT: Assessed is engaged in supply and installation of wind mills. Where assessee laid foundation to install wind mill after its sale, such foundation work was not liable to sales tax as wind mills were exempt from tax under Fifth Schedule. (Enercon India Ltd. – March 8, 2016).

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SUBJECT INDEX

Issue 8
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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 4231 OF 2006

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EVEREADY INDUSTRIES INDIA LTD.
Vs
STATE OF KARNATAKA

A.K. SIKRI AND ROHINTON FALI NARIMAN, JJ.

13th April, 2016

HF ▶ Revenue

Exemption from Entry Tax is not available to an exempted unit unless all the conditions of notification are fulfilled.

ENTRY TAX – EXEMPTION – EXEMPTED UNIT - EXEMPTION GRANTED UNDER NOTIFICATION DATED 25.6.1997 WITH A CONDITION REGARDING INVESTMENT OF A CERTAIN AMOUNT BY APPELLANT – UNIT ESTABLISHED SUBSEQUENTLY – FAILURE TO INVEST THE SAID AMOUNT – ENTRY TAX LEVIED AND PENALTY IMPOSED BY ASSESSING AUTHORITY – DISMISSAL OF APPEALS BY AUTHORITIES AND HIGH COURT – APPEAL BEFORE SUPREME COURT CONTENDING THAT ASSESSEE COVERED UNDER GENERAL NOTIFICATION EARLIER ISSUED IN 1993 BY GOVERNMENT MAKING IT ELIGIBLE FOR EXEMPTION – HELD: TO BE ELIGIBLE FOR EXEMPTION UNDER 1993 NOTIFICATION AS NEW INDUSTRIAL UNIT IT HAS TO BE CERTIFIED AS SUCH UNDER AN EARLIER NOTIFICATION ISSUED IN 1991 UNDER KARNATAKA SALES TAX ACT – 1993 NOTIFICATION HAS TO BE APPLIED ONLY ON SUCH UNITS ON WHICH 1991 NOTIFICATION APPLIES – STRICT INTERPRETATION OF EXEMPTION NOTIFICATION– ENTRY TAX RIGHTLY LEVIED – APPEAL DISMISSED – *SECTION 11-A OF KARNATAKA TAX ON ENTRY OF GOODS ACT, 1979*

INTERPRETATION OF STATUTES – EXEMPTION NOTIFICATION – STRICT INTERPRETATION – TO OBTAIN BENEFIT OF EXEMPTION NOTIFICATION ALL THE CONDITIONS MUST BE FULFILLED – PERSON INVOKING AN EXCEPTION OF EXEMPTION MUST SHOW THAT HE IS COVERED BY SUCH PROVISIONS – ONCE CONDITIONS ARE SATISFIED AND ASSESSEE GETS COVERED THEN LIBERAL CONSTRUCTION HAS TO BE PLACED UPON SUCH PROVISION.

Facts

The appellant is registered under the KST Act (Karnataka Tax on Entry of Goods Act, 1979) as well as under Karnataka Sales Tax Act, 1957. The appellant company had been granted exemption under both the Acts. Under KST Act, it was exempted from payment of entry tax on raw material and component parts for a period of 6 years from the date of commencement of commercial production in view of notification dated 25.06.1997. However, a condition was stipulated that the appellant should make an investment of Rs. 111 Crores to avail benefit under

the said notification. After obtaining exemption it established its unit at Somanahalli. However, the appellant company could not make investment of the mentioned amount due to which the assessing authority levied entry tax and penalty under section 6(2) of KST Act. The appeals filed were dismissed by the lower authorities and subsequently by High Court. An appeal is thus filed before the Supreme Court contending that the appellant is covered under the general notification issued in the year 1993 and is eligible for exemption under it.

Held:

The contention that the appellant can claim exemption by virtue of general notification dated 31.03.1993 issued under the Entry Tax Act was raised. This notification contains a 'table' enlisting types of industries and location of industries which were entitled to exemption. Though the appellant industry was covered by such category of industry, the exemption was available only to the "New Industrial Unit". To qualify under the "New Industrial Unit" it was essential that such a unit had to be certified to be eligible for exemption under the notification dated 21.06.1991 issued under Karnataka Sales Tax Act. This was an essential requirement to fall within the definition of a "New Industrial Unit" under the notification dated 31.03.1993 as this definition is assigned the same meaning as contained in the notification dated 21.06.1991.

Also, the notification dated 31.03.1993 makes it clear that this notification was not to be applied to a unit to which notification dated 19.06.1991 does not apply. So much so, the procedure given in notification dated 1991 for claiming exemption is also made applicable to the industrial unit seeking exemption under the notification 1993. Therefore, the appellant does not fulfil the requirement of notification dated 31.03.1993 as it is not certified under the notification dated 19.06.1991.

Following earlier judgments passed by this court, it is held that exemption notifications require strict interpretation. Only then the assessee can avail the benefit if it if has fulfilled all the conditions contained in the notification. It is a different matter that once the stipulated conditions in the exemption notifications are fulfilled and the assessee gets covered under it, the notification has to be construed liberally.

The appellant has not been able to cross the threshold and to find entry under notification dated 31.03.1993 for the reasons mentioned above. Hence, the appellant is not entitled to exemption from entry tax. The appeal is dismissed.

Cases referred:

- *Rajasthan Spinning and Weaving Mills, Bhilwara, Rajasthan v. Collector of Central Excise, Jaipur, Rajasthan (1995) 4 SCC 473*
- *Novopan India Ltd. v. CCE and Customs 1994 Supp. (3) SCC 606*
- *Hansraj Gordhandas v. CCE and Customs (1969) 2 SCR 253: AIR 1970 SC 755*

Present: For Appellant(s) Mr. Raghavendra S. Srivatsa, Adv.

For Respondent(s) Mr. V. N. Raghupathy, Adv.
Mr. Anirudh Sanganeria, Adv.
Mr. Chinmay Deshpande, Adv.
Mr. Amjid Maqbool, Adv.
Mr. Parikshit Angadi, Adv.

******

A.K. SIKRI, J.

1. The appellant herein (earlier known as BPL Soft Energy Systems Limited) has challenged the legality and validity of the order dated 12.01.2005 rendered by the High Court of Karnataka whereby three petitions of the appellant, after clubbing together, were heard and decided against it, by the said common order. Those petitions were preferred under Section 15A

of the Karnataka Tax on Entry of Goods Act, 1979 (hereinafter referred to as the 'KST Act') against the order which was passed by the Karnataka Appellate Tribunal, Bangalore. The necessity of filing three petitions arose because of the reason that three Assessment Years i.e. 1997-1998, 1998-1999 and 1999-2000 are involved, though the question raised in all these petitions was identical which pertains to the levy of entry tax under the KST Act. All the authorities below including the Karnataka Appellate Tribunal took the view that the appellant is liable to pay the tax under the provisions of KST Act and is not entitled to exemption from payment of entry tax on raw material under Notification/Government Order No.CI.92.SPI.1997 dated 25.06.1997. The High Court has, vide the impugned judgment, affirmed the said view of the authorities below.

2. Some of the seminal facts which require a mention to determine the lis, are recapitulated below:

2.1 The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is also a dealer registered under the provisions of the KST Act. The appellant is engaged in the manufacture of Dry Manganese Dioxide Batteries (DMD batteries). It has its manufacturing Unit at Somanahalli, Maddur Taluk, which falls under Zone-II of the notification dated 23.06.1997 issued by the State Government. Before establishing its manufacturing Unit at Somanahalli, Maddur Taluk, the appellant-company had approached the State Government for grant of incentive and exemption under the provisions of the KST Act and also under the provisions of the Karnataka Sales Tax Act, 1957. Pursuant to the request so made, the State Government had issued a Notification/Government Order in No. CI.92.SPI.1997 dated 25.06.1997 inter alia granting exemption from payment of entry tax on raw materials and component parts for a period of six years from the date of commencement of commercial production. In the Notification/Government Order, it was made clear that the appellant- company should make an investment of a sum of Rs.111 crores, to claim benefit under the notification dated 25.06.1997. After obtaining the said exemption from the State Government, the appellant-company established its manufacturing Unit at Somanahalli, Maddur Taluk. But for various reasons, the appellant-company could not make investment of a sum of Rs. 111 crores, as envisaged under the notification dated 25.06.1997. Therefore, the appellant-company was ineligible to claim the “Tax Holiday” under the aforesaid notification.

2.2 For the Assessment Year 1997-1998, initially, the Assessing Authority had passed an order under the provisions of the Entry Tax Act, granting exemption from payment of entry tax on raw materials, components and machinery parts brought into thelocal area (Somanahalli) for use in the manufacture of DMD batteries. Subsequently, the Assessing Authority had initiated reassessment proceedings and had passed the order and in that, has levied entry tax on the causing of entry of raw materials and components into the local area, on the ground that the appellant-company could not have availed tax exemption, since it did not fulfill the primary condition stipulated in the notification dated 25.06.1997 and it was also held by the Assessing Authority that since Government Order/Notification dated 25.06.1997 had been specifically issued granting entry tax exemption to the appellant-company subject to fulfilling certain conditions, the appellant-company is ineligible to seek exemption under general notification No. FD.11.CET.93(3) dated 31.03.1993. The Assessing Authority while framing the reassessment order under Section 6 of the Act, had also levied penalty under Section 6(2) of the KST Act.

2.3 Aggrieved by the aforesaid order passed by the Assessing Authority, the assessee had preferred the first appeal before the Deputy Commissioner of Commercial Taxes (Appeals) in KTEG.AP.25/02-03. The First Appellate Authority by his order dated 18.03.2003 had partly allowed the appeal filed by the assessee.

2.4 For the Assessment Years 1998-1999 and 1999-2000, the Assessing Authority had also passed reassessment orders under Section 6(1) of the KST Act and also had levied penalty under Section 6(2) of the KST Act. Aggrieved by the said order, the assessee had filed first appeals before the First Appellate Authority in Appeal Nos.KTEG.AP.24/02-03 (1998-1999) and 25/02-03 (1999-2000), who by his order dated 20.01.2003 had rejected the appeals so filed.

2.5 The assessee aggrieved by the orders passed by the Assessing Authority under Sections 6(1) and 6(2) of the KST Act had also under Section 5(5) of the KST Act for the Assessment Years 1997-1998 and 1999- 2000 had filed appeals before the Karnataka Appellate Tribunal and they were registered as STA Nos. 571/2001, 709, 329 and 330/2003. The Tribunal by its common order dated 23.01.2004 had allowed STA No. 571/2001 and had partly allowed STA No. 709/2003 and had rejected STA Nos. 329 and 330/2003 for the Assessment Years 1997-1998, 1998-1999 and 2000-2001. In its order, the Tribunal has concluded that the assessee is not entitled to benefit of the Notification No.FD.11.CET.93(III) dated 31.03.1993; insertion of clause (g) to the explanation to KST Notification No. FD.239.CSL.90(I) dated 31.03.1993; no penalty can be imposed under Section 5(5) of the KST Act on the assessee company for the relevant Assessment Years.

3. Not satisfied with the aforesaid outcome, the appellant filed revision petitions under Section 15A of the KST Act before the High Court which has dismissed all the three petitions. Though, various arguments have been discussed by the High Court in the impugned judgment, a perusal of the judgment of the High Court would reflect that these arguments were advanced by the appellant to contend that it was not liable to pay entry tax under the Entry Tax Act and was entitled to exemption in terms of general Notification dated 31.03.1993. The High Court has rejected the plea by holding that due to amendment of notification dated 19.06.1991 by notification dated 31.03.1993, the appellant was excluded from getting the benefit of general Notification. In this behalf, it has concluded that subsequent insertion of clause (g) to Explanation III of notification dated 19.06.1991 was applicable to the general exemption issued under Section 11- A of Entry Tax Act. While so holding, the High Court has made a distinction between legislation by reference and legislation by incorporation and has held that in case of legislation by reference of subsequent amendments to the legislation referred to will become applicable whereas in case of legislation by incorporation, subsequent amendments to the legislation referred to do not apply. As per the High Court, in the present case, there was legislation by reference and not by incorporation and, therefore, the newly inserted clause (g) to Notification dated 19.06.1991 would be applicable while implementing general exemption notification dated 31.03.1993. The aforesaid principle stated by the High Court in the impugned judgment was severely criticised and attacked by the learned counsel for the appellant on the ground that in the present case there was legislation by incorporation and not by reference. However, we feel that it may not even be necessary to go into this aspect, having regard to the discussion that follows hereinafter.

4. As pointed out above, the order dated 25.06.1997 was passed granting exemption to the appellant from payment of entry tax on raw materials and component parts for a period of six years from the date of commencement of commercial products. However, it was subject to

the condition that the appellant should make an investment in the sum of Rs.111 crores in order to enable itself to claim the benefit of the aforesaid notification. It is an admitted fact that due to certain reasons, the appellant could not fulfill this condition as it did not invest Rs.111 crores in the project, as envisaged in the notification dated 25.06.1997. Therefore, insofar as exemption notification dated 25.06.1997 which was issued specifically in the case of the appellant, the appellant cannot be held entitled to the benefit thereof as it failed to fulfill the conditions.

5. The appellant, however, still claims the exemption by virtue of general Notification dated 31.03.1993 issued under the Entry Tax Act. This notification was issued under Section 11A of the Entry Tax Act. Vide this notification, the Government of Karnataka exempted the tax payable under the Entry Tax Act on the entry of raw materials, component parts and inputs and machinery and its parts into a local area for use in the manufacture of an immediate or finished product by the new industrial units. This notification contains a 'Table' which enlists type of industries and location of industries which are entitled to exemption as well as the period of exemption. It is not in dispute that the appellant industry stands covered by one such category of industry the description whereof is given in the notification. It is also located at a place which is stipulated in the said notification. However, the exemption was available to the new Industrial Units. The question arises as to whether the appellant falls within the ambit of "new industrial unit" as defined therein. Explanation in the notification defines "a new industrial unit" which reads as under:

> *"Explanation – (1) For the purpose of this notification "a new industrial unit" shall have the same meaning assigned to it in Notification No.FD 239 CSL 90(1), dated 19th June, 1991 issued under Section 8-A of the Karnataka Sales Tax Act, 1957.*
>
> *The provisions of this notification shall not apply to a unit to which the provisions of Notification No.FD 239 CSL 90(I), dated 19th June 1991 issued under section 8-A of the Karnataka Sales Tax Act, 1957 shall not apply.*
>
> *The procedure specified in Notification No. FD 239 CSL 90(I) dated 19th June 1991 issued under Section 8-A of the Karnataka Sales Tax Act, 1957 for claiming exemption under that notification shall mutatis mutandis apply to a industrial unit claiming exemption under notification."*

6. Reading of the aforesaid definition clearly suggests that "a new industrial unit" is given the same meaning which is assigned in the notification dated 19.06.1991. For this purpose, one needs to look into the meaning that is given to "a new industrial unit" in the notification dated 21.06.1991. A scan through the said notification leads us to the definition given to a "new industrial unit". We reproduce this Explanation in its entirety:

> *"Explanation I. – (a) For the purpose of this Notification;*
>
> *(i) A "Tiny Industrial Unit" or "Small Scale Industrial Unit" or "Medium Scale Industrial Unit" or "Large Scale Industrial Unit" means a unit which is registered as such with the Director of Industries and Commerce or the Ministry of Industries, Government of India.*
>
> *(ii) A Khadi and Village Industrial Unit as defined under the Karnataka Khadi & Village Industries Act, 1956 from time to time. [See Note 3]*
>
> *(b) "A New Industrial Unit" means any of the units described in Clause (a) above, which are certified to be eligible for exemption under this Notification, by the authorities mentioned in Clauses (a) and (b) of Para (1) under "Procedure" below."*

7. In order to qualify to be "A New Industrial Unit", the following conditions need to be fulfilled:

(i) It has to be either a Tiny Industrial Unit or Small Scale Industrial Unit or Medium Scale Industrial Unit or Large Scale Industrial Unit of the type of industries mentioned in Table contained in notification dated 21.06.1991 or else it has to be a Khadi or Village Industrial Units as defined under the Karnataka Khadi & Village Industries Act, 1956. (We are not concerned with this later category in the present case.)

(ii) Such a Unit has to be registered with the Director of Industries and Commerce or the Ministry of Industries, Government of India.

(iii) Such a Unit has to be certified to be eligible for exemption under the said notification by the authorities mentioned therein.

8. What is significant for our purposes is that such a Unit has to be certified to be eligible for exemption under the notification dated 21.06.1991. That is an essential requirement for a Unit to fall within the definition of "A New Industrial Unit" under the notification dated 31.03.1993 as it is assigned the same meaning as contained in the notification dated 21.06.1991. Notification dated 31.03.1993 further makes it clear that this notification is not to apply to a Unit to which notification dated 19.06.1991 does not apply. So much so, the procedure prescribed in the notification dated 19.06.1991 for claiming exemption is also made applicable to the Industrial Units seeking exemption under the notification dated 31.03.1993. In the instant case, it was admitted by the appellant itself that the Department of Industries and Commerce issued eligibility certificate in terms of industrial policy G.O. No. CI 30 SPC 96 dated 15.03.1996 and notification dated 15.11.1996 issued under Section 19- C of the KST Act. Such eligibility certificate would not be of any consequence in as much as, in order to get the benefit of the notification dated 31.03.1993, the appellant was required to get certification under the notification dated 19.06.1991. Obviously, therefore, the appellant does not fulfill the requirement of the notification dated 31.03.1993 as well.

9. It is trite that exemption notifications require strict interpretation. In order to get benefit of any exemption notification, assessee has to satisfy that it fulfills all the conditions contained in the notification This is so held by this Court in ***Rajasthan Spinning and Weaving Mills, Bhilwara, Rajasthan v. Collector of Central Excise, Jaipur, Rajasthan (1995) 4 SCC 473***, wherein this principle was stated in the following manner:

> *"16. Lastly, it is for the assessee to establish that the goods manufactured by him come within the ambit of the exemption notification. Since, it is a case of exemption from duty, there is no question of any liberal construction to extent the term and the scope of the exemption notification. Such exemption notification must be strictly construed and the assessee should bring himself squarely within the ambit of the notification. No extended meaning can be given to the exempted item to enlarge the scope of exemption granted by the notification."*

10. In ***Novopan India Ltd. v. CCE and Customs 1994 Supp. (3) SCC 606***, this Court held that a person, invoking an exception or exemption provisions, to relieve him of tax liability must establish clearly that he is covered by the said provisions and, in case of doubt or ambiguity, the benefit of it must go to the State. A Constitution Bench of this Court in ***Hansraj Gordhandas v. CCE and Customs (1969) 2 SCR 253: AIR 1970 SC 755*** held that (Novopan India Ltd. Case, SCC p. 614, para 16):

> *"16...such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be*

> *had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption."*

11. It is a different matter that once the conditions contained in the exemption notification are satisfied and the assessee gets covered by the exemption notification, for the purpose of giving benefit notification has to be construed liberally. However, in the present case, the appellant has not been able to cross the threshold and to find entry under notification dated 31.03.1993 for the reasons mentioned above. Therefore, we have no option but to hold that the appellant was not entitled to exemption from entry tax.

12. We, therefore, agree with the conclusions contained in the impugned order and dismiss the instant appeal finding no merit therein. There shall be no order as to costs.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 15 OF 2016

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WORLDS WINDOW IMPEX INDIA PVT. LTD.
Vs
STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

16th March, 2016

HF ▶ None

The issue regarding waiver of predeposit is to be decided in terms of an earlier judgment passed by the High court.

PREDEPOSIT – APPEAL – WAIVER OF – APPELLATE AUTHORITY - APPEAL FILED ALONGWITH AN APPLICATION FOR WAIVER OF PREDEPOSIT BEFORE FIRST APPELLATE AUTHORITY – APPEAL DISMISSED FOR NON COMPLIANCE OF S 62(5) OF THE ACT – DISMISSAL OF APPEAL BY TRIBUNAL ON SAME GROUNDS – APPEAL BEFORE HIGH COURT – ISSUE ALREADY CONCLUDED BY AN EARLIER JUDGMENT PASSED BY THE SAME HIGH COURT – ORDERS PASSED BY DETC AND TRIBUNAL SET ASIDE – MATTER REMITTED TO DECIDE IN VIEW OF THE JUDGMENT SO PASSED – *S. 62(5) OF PVAT ACT, 2005*

Facts

The assessment for the year 2006-07 was framed after the expiry of limitation period i.e in year 2010. An appeal was filed before DETC alongwith application for waiver of predeposit u/s 62(5) of PVAT Act which was dismissed for non deposit of 25% of additional demand. On dismissal of appeal by Tribunal an appeal is filed before High court.

Held:

The issue regarding predeposit stands concluded by the decision given by this court in an earlier judgment. The order passed by DETC and Tribunal is set aside and case is remanded to DETC to dispose it of in terms of the judgment so passed.

Case applied:

- *Punjab State Power Corporation limited V/s The state of Punjab and others (CWP No.26920 of 2013)*

Present: Mr. Sandeep Goyal, Advocate for the appellant.
Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

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AJAY KUMAR MITTAL,J.

1. This appeal has been filed by the dealer under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 27.11.2015 (Annexure A-3) passed by the Punjab Value Added Tax Tribunal (hereinafter referred to as "the Tribunal") in Appeal No. 708 of 2013, claiming the following substantial question of law:-

1. Whether on the facts and in the circumstances of the case, the impugned order passed by the Tribunal and 1st appellate authority deserves to be set aside in view of the subsequent judgment of this Hon'ble Court in the case of PSPCL v. State of Punjab?

2. A few facts relevant for the disposal of the present appeal as narrated therein may be noticed. The appellant is a dealer having TIN No. 03402021410 and is engaged in import and trading of ferrous and non-ferrous metals and metal scrap. It had filed its quarterly and annual returns for the assessment year 2006-07 after claiming Input Tax Credit (ITC). A notice was issued to the appellant by the Excise and Taxation Officer. The assessment was framed for the assessment year 2006-07 vide order dated 5.5.2011 (Annexure A-1) by creating an additional demand of Rs.10,69,23,103/-. The assessment order had been passed after the expiry of limitation as according to Section 29(4) of the Act, the assessment for year 2006-07 could have been framed on or before 20.11.2010. Feeling aggrieved by the assessment order, Annexure A-1, the appellant filed an appeal along with an application for waiver of predeposit under Section 62(5) of the Act before the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana Division, Ludhiana [DETC (A)], who vide order dated 31.5.2013 (Annexure A-2) dismissed the appeal for non-deposit of 25% of the total demand. Thereafter, the department filed a complaint in the office of Senior Superintendent of Police, Fatehgarh Sahib for registration of a case against the petitioner. Upon investigation, the police filed closure report dated 22.3.2015 (Annexure P-2/A). Against the order, Annexure A-2, the appellant filed an appeal before the Tribunal. The Tribunal vide order dated 27.11.2015 (Annexure A-3) upheld the order of the DETC(A) and dismissed the appeal. Hence, the present appeal.

3. We have heard learned counsel for the parties.

4. The question involved herein relates to interpretation of Section 62(5) of the Act. It is not disputed by the learned counsel for the parties that the issue arising in the appeal stands concluded by the decision of this Court in CWP No. 26920 of 2013 (Punjab State Power Corporation Limited v. The State of Punjab and others) decided on 23.12.2015 wherein after considering the relevant statutory provisions and the case law on the point, it was held as under:-

33. It is, thus, concluded that even when no express power has been conferred on the first appellate authority to pass an order of interim injunction/protection, in our opinion, by necessary implication and intendment in view of various pronouncements and legal proposition expounded above and in the interest of justice, it would essentially be held that the power to grant interim injunction/protection is embedded in Section 62(5) of the PVAT Act. Instead of rushing to the High Court under Article 226 of the Constitution of India, the grievance can be remedied at the stage of first appellate authority. As a sequel, it would follow that the provisions of Section 62(5) of the PVAT Act are directory in nature meaning thereby that the first appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts and circumstances. It is not to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. Only when a strong prima facie case is made out will the first appellate authority consider whether to grant interim protection/injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the first appellate authority is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of predeposit to continue as a condition precedent to the hearing of the appeal before it. Therefore, the power to grant interim

protection/injunction by the first appellate authority in appropriate cases in case of undue hardship is legal and valid. As a result, question (c) posed is answered accordingly.

34. In some of the petitions, the petitioners had filed an appeal without filing an application for interim injunction/protection which are still pending whereas in other petitions, the first appellate authority had dismissed the appeal for want of pre-deposit and further appeal has also been dismissed by the Tribunal on the same ground without touching the merits of the controversy. Where the appeals are pending without an application for interim injunction/protection before the first appellate authority, the petitioner may file an application for interim injunction/protection before the appeals are taken up for hearing by first appellate authority and in case such an application is filed, the same shall be decided by the said authority keeping in view all the legal principles enunciated hereinbefore. The other cases where the first appellate authority had dismissed the appeal for want of pre-deposit without touching merits of the controversy or further appeal has been dismissed by the Tribunal, the said orders are set aside and the matter is remitted to the first appellate authority where the petitioners may file an application for interim injunction/protection before the appeals are taken up for hearing by the first appellate authority who shall adjudicate the application for grant of interim injunction/protection to the petitioner in the light of the observations made above. All the cases stand disposed of in the above terms."

5. In view of the above, the orders dated 31.5.2013 (Annexure A-2) passed by the DETC(A) and dated 27.11.2015 (Annexure A-3) passed by the Tribunal are set aside. The matter is remanded to the DETC(A) and the present appeal is disposed of in terms of the judgment in Punjab State Power Corporation Limited's case (supra).

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SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CWP NO. 6111 OF 2016

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GUPTA PROMOTERS PVT. LTD
Vs
STATE OF HARYANA AND OTHERS

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

31st March, 2016

HF ▶ Direction issued

Respondent is directed to decide the objection raised by petitioner first before framing of assessment in view of expiry of limitation period.

NOTICE – LIMITATION – ASSESSMENT – NOTICE FOR FRAMING ASSESSMENT ISSUED- REPLY FILED BY PETITIONER CONTENDING THAT ASSESSMENT PROCEEDINGS WERE TIME BARRED – ASSESSMENT PROCEEDINGS BEING CARRIED OUT WITHOUT CONSIDERING REPLY/ OBJECTION FILED BY PETITIONER – WRIT FILED AGAINST NOTICE BEING BEYOND JURISDICTION– INTERFERING WITH NOTICE UNDER CHALLENGE NOT JUSTIFIED AT THAT STAGE – RESPONDENT DIRECTED TO CONSIDER THE REPLY FILED AND PASS A SPEAKING ORDER – APPEAL DISPOSED OF –

Facts
In this case, assessment proceedings for the year 20110-11 were initiated vide notice dated 18/3/2016. The petitioner filed a detailed reply pleading that the said assessment proceedings were time barred as it ought to be done within three years of limitation. Even if amendment dated 21.9.2015 was considered whereby the time period was increased from three to six years even then that amendment was prospective. The assessment authority proceeded to frame assessment subsequent to filing of reply. Hence, a writ is filed.

Held:
At this stage there is no justifiable reason to interfere with the notice under challenge. The respondent is directed to decide the reply so filed within the time specified and pass a speaking order.

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

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AJAY KUMAR MITTAL,J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the notice dated 18.3.2016 (Annexure P-4), for initiating assessment proceedings for the year 201011 and for quashing the assessment proceedings initiated vide notice, Annexure P-4.

2. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. A circular dated 7.5.2013 (Annexure P-1) was issued by the Excise and Taxation Commissioner, Haryana, to the effect that the assessment of tax in the cases of building contracts, should be levied as the said contract would be covered under the definition of 'works contract'. Consequently, another circular dated 4.6.2013 (Annexure P-2) was issued to execute the earlier circular, Annexure P-1, vis-a-vis the limitation issue, implementation part of the monitoring. As per the said circular, Annexure P-2, the assessment should be framed within a period of three years. Subsequently, vide circular dated 10.2.2014 (Annexure P-3), the circular dated 7.5.2013 was varied and value of the land was sought to be included for imposition of VAT The petitioner had got itself registered under the Haryana Value Added Tax Act, 2003 (in short "the Act") in the year 2014. For the assessment year 2010-11, the assessment proceedings had been initiated vide notice dated 18.3.2016 (Annexure P-4) under Section 16 of the Act. The petitioner being an unregistered dealer in the said year, the same had been received through e-mail on 26.3.2016. The said assessment was to be framed within a period of three years as per Section 16 of the Act, i.e. by 31st March, 2014. The petitioner filed a detailed reply dated 28.3.2016 (Annexure P-5) specifically pleading that the assessment proceedings were time barred. It was mentioned therein that even if the amendment dated 21.9.2015 (Annexure P-6) was considered, whereby the limitation period had been increased from 3 years to 6 years, then also the assessment proceedings were time barred as the said amendment was prospective in nature. The Assessing Authority proceeded on to frame the assessment proceedings and directed the petitioner to appear before it for further proceedings. Hence, the present writ petition.

3. We have heard learned counsel for the petitioner.

4. The writ-petitioner has challenged the notice dated 18.3.2016 (Annexure P-4) issued by the Deputy Excise and Taxation Officer-cum-Assessing Authority, Gurgaon (East), on the ground that the same was beyond limitation. It was urged that the notice having been issued without jurisdiction being beyond limitation, the proceedings pursuant thereto could not continue.

5. From the perusal of the writ petition, we find that the petitioner on receipt of the notice, Annexure P-4, filed objection/reply dated 28.3.2016 (Annexure P-5) to the said notice.

6. At this stage, we do not find any justifiable reason to interfere with the notice under challenge. The petitioner has filed objection/reply dated 28.3.2016 (Annexure P-5) to the said notice. Respondent No.2 shall decide the objection/reply, Annexure P-5, within a period of six weeks from the date of receipt of the certified copy of the order, in accordance with law after affording an opportunity of hearing to the petitioner and by passing a speaking order before proceeding further in the matter.

7. The writ petition stands disposed of accordingly.

8. It is, however, made clear that in case the petitioner has any grievance after the order is passed by the authority, it shall be open to the petitioner to take recourse to the remedies as may be available to it in accordance with law.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 104 OF 2012

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STATE OF HARYANA
Vs
KARNAL AGRICULTURAL INDUSTRIES LIMITED

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

15th February, 2016

HF ▶ Respondent – assessee

Matter remanded back to Revisional Authority to look into the evidence regarding use of Petroleum Products for grant of Input Tax Act.

INPUT TAX CREDIT – PETROLEUM PRODUCT – FUEL – AGRICULTURAL IMPLEMENTS MANUFACTURED BY HEATING METAL – PETROLEUM PRODUCT USED BY ASSESSEE IN MANUFACTURING PROCESS – INPUT TAX CREDIT DENIED ON PURCHASE OF PETROLEUM PRODUCT ALLEGING THAT THE PRODUCT IS USED AS FUEL – APPEAL FILED BEFORE TRIBUNAL ACCEPTED HOLDING THAT THE ASSESSMENT ORDER IS SILENT ON THE ISSUE REGARDING USAGE OF PETROLEUM PRODUCT AS FUEL OR OTHERWISE – APPEAL FILED BY REVENUE BEFORE HIGH COURT DISMISSED IN VIEW OF CATEGORICAL FINDING GIVEN BY TRIBUNAL – MATTER REMANDED TO REVISIONAL AUTHORITY TO LOOK INTO EVIDENCE AND PASS A SPEAKING ORDER – APPEAL DISPOSED OF – *SECTION 8 AND ENTRY I OF SCHEDULE E OF HVAT ACT, 2003*

Facts

The Respondent - Assessee is a manufacturer of Disc, an Agricultural Implement for which a metal is used as a raw material and processed thereon. For its processing, furnace is heated for which petroleum product i.e. furnace oil is purchased. The respondent company has claimed Input tax credit on its purchase of furnace oil. Initially the claim was allowed but after revision the claim was disallowed and a demand was created alleging that the assessee used petroleum based products as fuel. The appeal of the company was accepted by Tribunal. Hence an appeal is filed by revenue before the High court contending that in same kind of case for the year 2005-06 the case was remanded by Tribunal to revisional authority.

Held:

A perusal of Entry I of Schedule E of HVAT Act shows that no ITC is available on the petroleum product when used as fuel. The order of Tribunal categorically states that assessment order does not mention that the petroleum product was used as fuel or otherwise. In the absence of finding regarding the issue, ITC could not be disallowed.

For the year 2005-06, the matter was remanded for considering whether the petroleum product was used as fuel or for greasing and coating discs by taking into account account books of assessee.

Hence, matter is remanded to Revisional Authority to pass fresh orders after examining the evidence on record in accordance with law.

Present: Ms. Mamta Singla Talwar, DAG, Haryana.
Mr. Avneesh Jhingan, Advocate for the respondents.

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AJAY KUMAR MITTAL,J.

1. This appeal has been preferred by the appellant-assessee under section 36(1) of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated 11.4.2012, Annexure A.3 passed by the Haryana Tax Tribunal, Chandigarh (in short, "the Tribunal") for the assessment year 2004-05. It was admitted on 14.2.2013 to consider the following question of law:-

> *"Whether the input tax credit can be allowed on furnace oil (Petroleum Product) the primary use of which has fuel only?"*

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is working as Deputy Excise and Taxation Commissioner (ST) cum- Revisional Authority, Karnal. The respondent company - M/s Karnal Agricultural Industries Limited, Karnal is engaged in the manufacturing of disc which is a part of Cultivator Harrow, an agricultural implement used for cultivation of land for agricultural purpose. The raw material for manufacturing of disc is billet (small bar of metal for further processing) or old railway line i.e. iron and steel which is first cut into size, heated in a furnace at a high temperature, rolled to make a plate and then cut in the shape of a disc. Finally, the product is painted or powder-coated for marketing and longevity. The respondent company purchased petroleum products i.e. furnace oil worth Rs.2,91,17,607/- for use in furnace for heating involved in processing of metal for manufacturing of discs and claimed input tax credit on it in its returns which was allowed by the Assessing authority vide order dated 24.2.2006, Annexure A.l. The Deputy Excise and Taxation Commissioner (ST)-cum-revisional authority (DETC) in exercise of the powers of revision provided under section 34 of the HVAT Act vide order dated 21.5.2008, Annexure A.2 revised the order of the assessing authority after examining the reply filed by the dealer. The input tax claim on the purchases of Rs. 2,91,17,607/- of furnace oil was disallowed which was used as fuel by the respondent and as such a demand of Rs. 7,24,306/- was created. The respondent company preferred an appeal against the order of the revisional authority before the Tribunal. Vide order dated 11.4.2012, Annexure A.3, the Tribunal accepted the appeal and set aside the order of the revisional authority. According to the appellant, the revisional authority revised the assessment order of the assessing authority for the assessment year 2005-06 and the Tribunal vide order dated 11.4.2012, Annexure A.4 remanded the case to the revisional authority. Hence the instant appeal by the revenue.

3. We have heard learned counsel for the parties.

4. The issue that arises for consideration in this appeal is whether the assessee had been using the petroleum based products as a fuel or not.

5. Entry I of Schedule E of Section 8 of the HVAT Act reads thus:-

Sr. No.	***Description of goods***	***Circumstances in which input tax shall be nil***
1.	Petroleum product and natural gases	i) when is used as a fuel ii) when exported out of State.

A perusal of the above entry shows that the petroleum product and natural gas when used as fuel or when the same are exported out of State, no input tax credit will be available to the dealer. It has been categorically recorded by the Tribunal that there is no mention in the assessment order of any petroleum products purchased inside the State and used in manufacture whether as fuel or otherwise. The record however shows that the petroleum products had been purchased inside the State at concessional rate of tax. There is no finding to the effect that the furnace oil was used as fuel by the company. In the absence of any clear finding recorded by the revisional authority that the furnace oil was used as fuel by the assessee, the revisional order regarding disallowance of input tax credit on purchase of furnace oil could not be legally sustained. For the assessment year 2005-06, under similar circumstances, the matter had been remanded to the revisional authority by the Tribunal to consider the contention of the assessee that it had used furnace oil for greasing and coating of discs and not as fuel by producing its books of account and other relevant documents.

6. In view of the above, we find that the matter requires to be remanded to the revisional authority i.e. DETC to pass fresh order after examining the evidence on record in accordance with law. Consequently, the impugned order passed by the Tribunal dated 11.4.2012, Annexure A.3 is set aside. The appeal stands disposed of. Needless to say that nothing observed hereinbefore shall be an expression of opinion on the merits of the controversy.

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PUNJAB & HARYANA HIGH COURT

CEA NO. 57 OF 2015

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COMMISSIONER OF CENTRAL EXCISE
Vs
MARUTI SUZUKI INDIA LTD.

AJAY KUMAR MITTAL AND HARI PAL VERMA, JJ.

29th February, 2016

HF ▶ Revenue

Matter is remitted to Tribunal to pass a speaking order on the issue of admissibility of CENVAT credit on goods used in Research and development.

CENVAT CREDIT – RESEARCH AND DEVELOPMENT – CAPITAL GOODS(MACHINES/ EQUIPMENTS/ APPARATUS) USED IN R&D – CENVAT CREDIT AVAILED ON SUCH CAPITAL GOODS – PENALTY AND INTEREST IMPOSED FOR CLAIMING CENVAT CREDIT ON CAPITAL GOODS USED IN R&D INSTEAD OF MANUFACTURING OF GOODS – APPEAL ALLOWED BY TRIBUNAL IN FAVOUR OF ASSESSEE COMPANY – APPEAL BEFORE HIGH COURT BY REVENUE CONTENDING IMPUGNED ORDER TO BE NON SPEAKING – APPEAL ALLOWED AS ORDER PASSED BY TRIBUNAL NOT BASED ON FACTS AND LAW – IMPUGNED ORDER HELD TO BE NON SPEAKING – MATTER REMITTED TO TRIBUNAL DECIDE AFRESH -

Facts

The assessee is engaged in manufacture and clearance of motor vehicles and parts thereof and had availed CENVAT credit qua machines/ equipments installed in R&D building separately from production area. The CENVAT so availed appeared in admissible as the machines / apparatus in question were not used for manufacture of goods but were solely used for research and development. Consequently, penalty and interest were imposed for wrongly availing CENVAT credit. An appeal was filed before Tribunal which was allowed in favour of assessee. An appeal is thus filed before High court contending that the impugned order is non speaking and liable to be quashed.

Held:

A perusal of order passed by Tribunal shows that it has not dealt with all aspects of facts and law before reaching the conclusion. No justified reasons have been recorded by the Tribunal for allowing the appeal of assessee. The order does not qualify as being a reasoned and speaking order. Thus, matter is remitted to Tribunal to decide afresh and pass a speaking order.

Present: Mr. Kamal Sehgal, Advocate for the appellant.
Mr. M.P. Devnath, Advocate with
Mr. Amar Pratap Singh, Advocate for the respondent.

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AJAY KUMAR MITTAL,J.

1. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 15.1.2015 (Annexure A-3) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

(i) *Whether the respondent can avail CENVAT credit in respect of Capital Goods used exclusively for the purpose of Research and Development of New Model, localization of CKD parts, localization of inner parts of suppliers, quality and warranty analysis and counter measure and components and vehicle level testing, as the machines/equipments/apparatus/ capital goods in question are not used for the manufacture of goods but are solely used for the purpose of Research and Development?*

(ii) *Whether a place separate from manufacture/ manufacturing process located in the unit where only R&D is carried out for the New Model, localization of CKD parts, localization of inner parts of suppliers, quality and warranty analysis and counter measure and components and vehicle level testing, can be termed as factory under CEA 1944?*

(iii) *Whether a place located in the unit (registered premises) where no goods are manufactured nor any manufacturing process is carried out for the manufacture of goods can be termed as factory in terms of CEA 1944?*

(iv) *Whether the CENVAT credit of Rs. 9,97,38,882.00 availed by the respondent is liable to be recovered from them under Rule 14 of the CCR-2004 read with proviso to Section 11 A(1) of the Central Excise Act, 1944 by invoking the extended period?*

(v) *Whether the respondent has rendered themselves liable to penalty under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002?*

(vi) *Whether interest leviable at the appropriate rate is also recoverable from them on the inadmissible CENVAT credit of Rs. 9,97,38,882/- under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AA of the Central Excise Act, 1944?*

2. The facts, in short, necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee is engaged in the manufacture and clearance of motor vehicles and parts thereof. During the course of internal audit conducted by the officers of the Audit Branch of Central Excise Commissionerate, Delhi-Ill from 2tfh to 23rd, 26th, 27th and 29th November, 2012, on test check of records for the year 2011-12, it was found that they had availed CENVAT credit qua machines/equipment/apparatus installed in Engineering Research Design and Development building and lab located separately from the production area used exclusively for R&D for new models development, localization of CKD parts, localization of inner parts of suppliers quality and warranty analysis and countermeasures and component and vehicles testing purpose amounting to Rs. 10,38,87,794/- for the period from November 2007 to October, 2012. The CENVAT Credit so availed appeared to be inadmissible as the machines/equipment/apparatus in question were not used for the manufacture of goods but were solely used for the purpose of research and development. Accordingly, a show cause notice dated 20.3.2013 (Annexure A-1) was issued to the assessee for recovery ofRs. 9,97,38,882/- along with interest and penalty for wrongly availing and utilizing Cenvat Credit.

The Adjudicating Authority vide order dated 17.12.2013 (Annexure A-2) confirmed the said demand along with interest and also imposed penalty of equal amount, i.e., Rs. 9,97,38,882/-. Feeling aggrieved, the assessee filed an appeal before the Tribunal who vide order dated 15.1.2015 (Annexure A-3) allowed the appeal and set aside the order, Annexure A-2. Hence, the present appeal.

3. We have heard learned counsel for the parties.

4. Learned counsel for the revenue submitted that the Tribunal has wrongly rejected the appeal of the revenue without considering the arguments raised by the department and relevant provisions of law. It was also urged that the impugned order does not satisfy the test of being a reasoned and speaking order and was, thus, liable to be quashed.

5. On the other hand, the impugned order was supported by learned counsel for the respondent.

6. The Hon'ble Apex Court in M/s Kranti Associates Pvt. Ltd. and another v. Sh. Masood Ahmed Khan and others, (2010) 9 SCC 496 while dealing with the requirement of passing a reasoned order by an authority whether administrative, quasi judicial or judicial, had laid down as under:-

> *"17. The expression 'speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order. (See 1878-97 Vol. 4 Appeal Cases 30 at 40 of the report).*
>
> *18. This Court always opined that the face of an order passed by a quasi-judicial authority or even an administrative authority affecting the rights of parties, must speak. It must not be like the 'inscrutable face of a Sphinx'.*
>
> *19 to 50 XX XX XX*
>
> *51. Summarizing the above discussion, this Court holds:*
>
> *(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *(b) A quasi-judicial authority must record reasons in support of its conclusions.*
>
> *(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
>
> *(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
>
> *(e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
>
> *(f) Reasons have virtually become as indispensable component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
>
> *(g) Reasons facilitate the process of judicial review by superior Courts.*

(h) *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*

(i) *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

(j) *Insistence on reason is a requirement for both judicial accountability and transparency.*

(k) *If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*

(l) *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.*

(m) *It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).*

(n) *Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".*

(o) *In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".*

7. A show cause notice dated 20.3.2013 (Annexure A-1) was issued to the assessee for recovery of Rs. 9,97,38,882/- along with interest and penalty for wrongly availing and utilizing Cenvat Credit. The Adjudicating Authority vide order dated 17.12.2013 (Annexure A-2) confirmed the said demand along with interest and also imposed penalty of equal amount, i.e., Rs. 9,97,38,882/-. Feeling aggrieved, the assessee filed an appeal before the Tribunal who vide order dated 15.1.2015 (Annexure A-3) allowed the appeal. The Tribunal while allowing the appeal of the respondent had dealt with the issue in para 3 of the order. A perusal thereof shows that it does not satisfy the test of a reasoned and speaking order. Para 3 is quoted below:-

"The definition of capital goods as given in Rule 2(a) of the Cenvat Credit Rules, 2004 covers the goods listed in this sub Rule, which have been 'used in the factory of manufacture of final product.' Thus, for capital goods Cenvat

Credit, their use in or in relation to manufacture of final product is not required and their use in the factory of manufacture for the purpose whether in or in relation to manufacture or for any other purpose including R&D would be enough for permitting the Cenvat Credit. In view of this, the impugned order is not sustainable. The same is set aside. The appeals are allowed."

8. The Tribunal being a final fact finding authority was required to deal with all aspects of facts and law and then record its conclusions based thereon. No legally justified reasons have been recorded by the Tribunal for allowing the appeal of the assessee.

9. In view of the above, since the order dated 15.1.2015 (Annexure A-3) does not qualify being a reasoned speaking order as enunciated by the Apex Court in M/s Kranti Associates Pvt. Ltd's case (supra),accordingly, the appeal is allowed and the order dated 15.1.2015 (Annexure A-3) passed by the Tribunal is set aside. The matter is remitted to the Tribunal to decide the same afresh and for passing a well reasoned speaking order after affording an opportunity of hearing to the parties in accordance with law.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 5292 OF 2016

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S.S.B. ENTERPRISES
Vs
UNION OF INDIA AND ANOTHER

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

18th March, 2016

HF ▶ Directions issued

Direction issued to the respondent department to consider the application filed for amendment of bills of entry.

LACK OF ACTION ON PART OF DEPARTMENT – BILLS OF ENTRY FILED FOR IMPORTING CONSIGNMENT OF SUGAR BAGS- SAD PAID IN VIEW OF NOTIFICATION ISSUED PRIOR THERETO LEVYING SAD ON GOODS SPECIFIED IN SCHEDULE I OF CUSTOMS TARIFF ACT –SAD LEVIED ON SALES TAX AND VAT ON ALL LIKE GOODS IMPORTED IN INDIA CONSEQUENTLY -SAD CONTENDED TO HAVE BEEN CHARGED WRONGLY AS ENTRY 12 OF SCHEDULE I OF ADDITIONAL DUTY OF EXCISE (GOODS OF SPECIAL IMPORTANCE) ACT EXEMPTS SUGAR- APPLICATION FILED IN THIS REGARD FOR AMENDING BILLS OF ENTRY – NO RESPONSE RECEIVED – WRIT FILED – RESPONDENT DIRECTED T DECIDE THE APPLICATION AND PASS A SPEAKING ORDER – *SECTION 3(5) OF CUSTOMS TARIFF ACT, 1975. 1ST SCHEDULE TO THE ADDITIONAL DUTY OF EXCISE (GOODS OF SPECIAL IMPORTANCE) ACT, 1957*

Facts

The petitioner had imported consignments of sugar. A notification was issued prior thereto thereby levying SAD on all goods specified in schedule I of Customs Tariff Act, 1975. SAD was levied to sales tax and VAT leviable on sale or purchase of like goods in India.

The petitioner had paid SAD at the time of clearance. However, as per entry 12, sugar is specified in schedule I of the Additional Duty of Excise (Goods of Special Importance) Act,1957 as per which sugar is exempted . Thus, petitioner moved an application for amendment of Bills of entry but no response is received. Hence writ is filed in this regard.

Held:

The respondent is directed to take a decision on application and pass a speaking order within a period of two months.

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

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AJAY KUMAR MITTAL,J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing respondent No.2 to decide the application dated 18.11.2015 (Annexure P-1).

2. The petitioner is engaged in import and trading of different kind of goods. The respondents in exercise of power conferred under Section 3(5) of the Customs Tariff Act, 1975 (in short "the Act") issued notification dated 1.3.2006 levying Special Additional Customs Duty (SAD) at the rate of 4% on all the goods specified under First Schedule to the Act. The SAD was levied to the sales tax, value added tax, local tax leviable on sale or purchase or transportation of like goods in India. The petitioner in its ordinary course of business during 2012-13 and 2013-14 imported 20 consignments of sugar. All the Bills of Entry were filed at Land Customs Station, Attari Road, Amritsar. The petitioner at the time of clearance of goods paid SAD at the rate of 4% apart from other custom duties. As per entry at Sr. No. 12, all goods, i.e. sugar, unmanufactured tobacco, manufactured tobacco, cigars, cigarettes, woven fabrics etc. specified in the 1st Schedule to the Additional Duty of Excise (Goods of Special Importance) Act, 1957 are also exempt from SAD. In view of Entry 12, the respondents could not charge SAD on sugar as it was exempted but they still charged. Accordingly, the petitioner moved an application dated 18.11.2015 (Annexure P-1) before respondent No.2 under Section 149 of the Customs Act, 1962 for amendment of Bills of Entry, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has moved an application dated 18.11.2015 (Annexure P-1) to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the application dated 18.11.2015 (Annexure P-1), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two months from the date of receipt of certified copy of the order.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 85 OF 2014

GREESH TRADERS & BROTHERS
Vs
STATE OF PUNJAB

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

29th February, 2016

HF ▶ Revenue

Photocopied Bill prepared manually cannot possibly bear a clerical mistake showing undervaluation of goods.

PENALTY – CHECK POST/ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – UNDERVALUATION OF GOODS – GOODS IN TRANSIT DETAINED ON GROUNDS OF UNDERVALUATION OF GOODS – ANOTHER INVOICE PRODUCED SUBSEQUENTLY AFTER FEW HOURS OF DETENTION ALLEGEDLY SHOWING CORRECT VALUE – PENALTY IMPOSED DISAPPROVING THE PLEA OF CLERICAL MISTAKE IN FIRST INVOICE– APPEAL BEFORE TRIBUNAL – HELD: BOTH INVOICES WERE NOT ORIGINAL - PHOTOCOPIED BILL PREPARED MANUALLY – CLERICAL MISTAKE NOT POSSIBLE IN SUCH AN EVENT – INTENTION TO EVADE TAX CONCLUDED – PENALTY UPHELD – APPEAL DISMISSED – *S. 51(7) OF PVAT ACT, 2005*

Facts

The goods vehicle containing MT Yellow Peas was in transit. The driver produced the invoice, GR and VAT XXXVI on demand. The goods were detained as it was suspected that the goods were undervalued in the invoice. However, after few hours of detention, another invoice was produced which was alleged to be the correct invoice showing the correct value. The designated officer disapproved the plea of clerical mistake of appellant and imposed penalty u/s 51(7) of the PVAT Act, 2005. An appeal is filed before Tribunal.

Held:

Both the invoices produced at subsequent stages were not genuine or original.

The clerical mistake could not have occurred by mistake in this case. The photocopy of the bill was prepared manually or filled manually which goes to show that it was not a clerical mistake but the invoice was prepared intentionally by recording undervaluation to evade tax. Penalty is rightly imposed. The appeal is dismissed.

Present: Mr. J.S.Bedi, Advocate Counsel for the appellant.
Mr. N.D.S. Mann, Addl., Advocate General for the State.

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

1. An appeal against the order dated 4.10.2013 passed by the Designated Officer, Information Collection Centre Doomwali, District Bathinda was dismissed by the First Appellate Authority, Ferozepur Division, Head quarter at Bathinda on 11.12.2013, Consequently, the appellant has preferred this second appeal.

2. On 25.9.2013, when the driver while carrying Yellow Peas in the vehicle bearing No. PB-29G-9072 reached ICC Doomwali (District Bathinda) he was apprehended. The Detaining Officer when asked the driver to show the proof relating to the transaction, he produced the following documents:-

(1) *Invoice No.271, dated 21.9.2013 of M/s SharpCorpn. Ltd. Mombai, valuing Rs.80,792/-.*

(2) GR No. 1328, dated 21.9.2013 issued by Abohar Fazlika Road lines, Gandhidham.

(3) VAT-XXXVI, dated 25.9.2013 for Rs.80,792/-.

3. On verification of the documents, it came to light that the goods loaded in the truck were 27,850 MT Yellow Peas, however, those were to be worth Rs.80,792/-. Finding that the goods were highly under valued, the vehicle was detained by the Excise and Taxation Inspector and notice was served upon the driver. However, after a few hours of the detention, the driver produced another invoice No. 271 of the same date issued by Sharp Corpn. Ltd. Mumbai showing the value of the goods as 8,07,928/- and explained that he had contacted with the dealer telephonically and informed him about the lesser value shown in the invoice, then he had sent a second invoice through fax. Thereafter, none appeared before the "detaining officer, ultimately, he forwarded the case to the designated officer.

4. On receipt of the documents, the designated officer issued notice U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005 to the owner of the goods for 1.10,2013 in response to which Sh. Mohinder Singh, Accountant of the firm appeared and explained that the actual value of the goods was Rs.8,07,928/- and not Rs.80,792/-. Thereafter, none appeared to join the enquiry. The Designated Officer, while disapproving the plea of the appellant that the first invoice was the result of clerical mistake, observed that the invoice of under valuation was prepared in order to evade the tax and imposed a penalty to the tune of Rs.2,18,141/-U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

5. Feeling aggrieved the appellant filed the appeal whereupon, the First Appellate Authority, Bathinda dismissed the same on 11.12.2013 hence this second appeal.

6. The counsel for the appellant while assailing the orders passed by the authorities below, urged that the goods were shown of actual weight in the invoice but the price was incorrectly recorded due to over site, When the goods were detained, the driver in all fairness, contacted the owners who while detecting mistake dispatched another copy of the bill by fax, therefore, no mensera could be attributed to the appellant and he can't be condemned for concealing the value of the goods. In the absence of the mensera, penalty could not be imposed.

7. It was also argued that the penalty could not be imposed upon the appellant for showing under valuation of the goods.

8. To the contrary, the State Counsel has submitted that the violation of the Rules as well as under valuation shown by the consignor or the consignee attracts penalty. On perusal of the VAT invoice No.271 dated 21.9.2013 which was produced at the time of checking, it transpires that a photocopy of the invoice was prepared which was filled in hand. However, the signatures of the consignor are also a photocopy. The original invoice was not produced,

therefore, it would be treated as photocopy of the invoice. The Rule 54 (2) has been enacted calling for the consignor to prepare the invoice in particular manner which reads as under:-

RULE 54. PARTICLUARS TO BE MENTIONED IN A VAT INVOICE

(1) A VAT invoice, shall be issued from duly bound invoice or cash memo book, except when invoices are prepared on computer or any other electronic or mechanical device. It shall be at least in triplicate i.e. Original Copy, second copy and he last copy. The respective copies of the invoice shall bear these words clearly.

(2) On the original copy of the VAT invoice, the words "Input Tax Credit is available to a person against this copy" shall be printed and it will be issued to the purchaser only. On the second copy, the words, "This copy does not entitle the holder to claim Input Tax Credit" shall be used for the purpose of transportation of goods. The last copy shall be retained by the seller.

(3) The words "VAT Invoice" shall be prominently printed on the invoice.

(4) A VAT invoice shall contain, the following details:-

(a) a consecutive serial number printed by a mechanical or electronic process. In case of a computer generated invoice, the serial number may be generated and printed by computer, only if, the software automatically generates the number and the same number cannot be generated more than once.

(b) the date of issue;

(c) the name, address and registration number of the selling person;

(d) the name, address and registration number of the purchaser;

(e) full description of the goods;

(f) the quantity of the goods;

(g) the value of the goods per unit;

(h) the rate and amount of tax charged in respect of taxable goods;

(i) 'the total value;

(j) if the goods are being sold, transferred or consigned to a place outside State, serial number of Form VAT-36;

(k) mode of transportation of goods and details thereof; and

(l) signatures of the proprietor or partner or director or his authorized agent;

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9. The appellant in violation of the said rule did not carry the second copy of the invoice for the purpose of transportation of the goods. It is not recorded on the copy (carried by him) that "this copy does not entitled the holder to claim input tax credit." This copy is also not the carbon copy of the original one. But it appears that this copy was prepared with the intention to show under valuation with the intention to evade the tax. Similarly, the copy which was produced lateron also does not appear to be correct copy of the original rather it appears that the same was sent after preparing the same lateron, after the truck was apprehended. The appellant failed to produce the original documents (i.e. invoices) at subsequent stage.

10. Secondly, the mistake cannot said to be clerical one as it was not a mistake which could occur per chance. The actual price of goods, if calculated, comes to Rs.8,07,928.50/-p but the invoice shows the price as Rs.80,792/-, The photocopy of the bill was prepared or filled manually which goes to show that it was not a clerical mistake but the invoice was prepared intentionally by recording under valuation with the intention to evade the tax.)

11. As regards the contention that the penalty could not be imposed on account of showing the 'under valuation' of goods. It may be observed that in the present case undervaluation appears to have been shown with the intention to grab the tax and keep the goods worth Rs.8,07,928.50 less Rs.80,792/- out of the account books. Consequently, it would have to be held that the imposition of penalty on account of undervaluation of the goods was justified.

12. Having gone through the orders passed by the authorities below, the same appear to be well reasoned and well founded.

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

14. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 20 OF 2014

K.C.DHIMAN & SONS
Vs
STATE OF PUNJAB

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

10th March, 2016

HF ▶ Revenue

Misdescription of goods invites penalty as it is done with the intention to show those goods in invoice that attract lesser rate of tax.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – MISDESCRIPTION OF GOODS - GOODS IN TRANSIT MISREPRESENTED IN INVOICE – PENALTY LEVIED FOR ATTEMPT TO EVADE TAX – ORDER UPHELD BY TRIBUNAL CONCLUDING APPELLANT HAD FULL KNOWLEDGE OF BILL IN QUESTION – GOODS ATTRACTING LOWER RATE OF TAX PURPOSELY SHOWN IN INVOICE TO EVADE TAX – APPEAL DISMISSED – *S. 51(7) OF PVAT ACT,2005*

Facts

The vehicle carrying goods reached ICC and the driver produced the documents. On scrutiny it was found that the goods were projected as 'Rolling Material' whereas they were actually 'melting iron scrap. Goods were detained. Penalty was imposed u/s 51(7) of the PVAT Act on the ground of attempt to evade tax. An appeal is filed before Tribunal.

Held:

It was in knowledge of appellant that the goods in question did not tally with those mentioned in invoice. The bill procured was with an intention to evade tax. If the dealer had sold the scrap then he ought to have mentioned that in invoice but that did not happen.

There is misrepresentation on part of appellant to conceal the truth that goods attracting lesser rate of tax were being carried. The appeal is dismissed.

Present: Mr. Aakash Juneja, Advocate Counsel for the appellant.
Mr. N.D.S. Mann, Addl. Advocate General for the State.

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

1. On 13.4.2010, the appellant firm M/s K.C.Dhiman & Sons , Mandi Gobindgarh (herein referred as the appellant) had brought four trucks of scrap from Delhi covered by the following documents for use at Mandi Gobindgarh projecting the same to be "Rolling

Material" in the invoices. When all the four trucks bearing No. HR-63C-3618, HR-38G-6651, PB-11V-9313 and HR-37A- 5351 reached the ICC shamboo import District Patiala. The drivers presented the following documents:-

(1) *Bill No. 107, dated 12.4.2010 issued by M/s A.S. Trading Company Okhla Delhi in favour of the above dealer for Rs.3,79,950/- alongwith GR No. 108 dated the 12.4.2010 issued by Siddarth Goods Carrier, New Delhi for the transportation of goods from Delhi to Mandi Gobindgarh.*

(2) *Bill No.108, dated 12.4.2010 issued by M/s A.S. Trading Company Okhla Delhi in favour of the above dealer for Rs.3,01,920/- alongwith GR No. 109 dated the 12.4.2010 issued by Siddarth Goods Carrier, New Delhi for the transportation of goods from Delhi to Mandi Gobidgarh.*

(3) *Bill No.110, dated 12.4.2010 issued by M/s A.S. Trading Company Okhla Delhi in favour of the above dealer for Rs.2,97,126/- alongwith GR No. 111 dated the 12.4.2010 issued by Siddarth Goods Carrier, New Delhi for the transportation of goods from Delhi to Mandi Gobindgarh.*

(4) *Bill No. 109, dated 12.4.2010 issued by M/s A.S. Trading Company Okhla Delhi in favour of the above dealer for Rs.3,56,694/- alongwith GR No. 110 dated the 12.4.2010 issued by Siddarth Goods Carrier, New Delhi for the transportation of goods from Delhi to Mandi Gobindgarh.*

2. On scrutiny of the documents, the invoice as well as GRs were found to contain mis-description of goods as the documents were related to "Rolling Material" whereas the goods were actually found to be "melting iron scrap". When confronted with the discrepancy as per classification made U/s 14 of the Central Sale Tax Act 1956, the drivers failed to explain the same.

3. The Detaining Officer recorded the statement of the drivers; detained the goods and issued notice U/s 51 (6) (a) of the Punjab Value Added Tax Act read with Section 9 (2) of the Central Sales Tax Act, 1956. After concluding the formalities, the case was forwarded to the Designated Officer who also issued notice to the appellant, in response to which the appellant stated only that the mis-description of the goods does not attract the penalty and the appellant never intended to evade the tax. After thorough examination of the documents and the law of the land, the Designated Officer vide his order dated 17.5.2010 observed that the goods were not covered by proper and genuine documents and there was an attempt to evade the tax, consequently, the penalty to the tune of Rs.4,00,707/- was imposed upon the appellant.

4. The appeal filed by the appellant was dismissed by the First Appellate Authority, Patiala Division, Patiala on 11.2.2013. Hence this second appeal.

5. This appeal being delayed one was accompanied by an application for condonation of delay. The delay was condoned.

6. Arguments heard.

7. While assailing the impugned order, the counsel for the appellant urged that he is a registered dealer and has been transporting "Rolling Material" from New Delhi to Mandi Gobindgarh. The drivers accompanying the trucks had deposited the entry tax. The goods were not having any misdescription rather the same were covered by the genuine documents, but still the penalty was imposed. It was also argued that the judgment delivered in the case of Bhilwara Spinners Ltd., Ludhiana Vs. State of Punjab (2004) 24 PHT 143 (STT Pb) observes that no penalty could be imposed in the absence of any intention to evade the tax, as such, since the appellant had no intention to evade tax, therefore, penalty could not be imposed.

8. To the contrary, the State Counsel has countered the contentions raised by the Counsel for the appellant tooth and nail by urging that the tax on the scrap was lesser than that on the rolling material. The goods were misdescribed in the bills with an intention to misuse the bills for the purpose of evading the tax. The drivers represented the goods to be scrap for payment of entry tax. This representation also did not tally with the invoices. Had the goods not been detained and checked then the appellant would have used the bills relating to the rolling material for the purposes of showing the bogus purchase and kept the scrap out of the account books.

9. Having heard the rival contentions, I do not find myself persuaded by the contentions raised by the counsel for the appellant. The appellant tally knew that the goods carried in the four trucks did not tally with invoice of the dealer had sold the scrap then he must have mentioned the same in the invoices, but that did not happen. It appears that the scrap so loaded in the vehicles was not covered by the genuine documents and the bills regarding the rolling material were procured with an intention to keep the goods out of the account books. It further transpires that the appellant knowing-fully well that the bills were regarding the rolling material mis-represented to the authorities that the bills related to scrap. Actually, this was-also done with the intention to conceal the true facts and throw dust in eyes of the check post authorities that the goods attracting lesser tax were being taken away on payment of higher tax. Thus, intention to evade the tax is clearly made out in the case.

10. Having gone through the orders passed by the authorities below, no such defect or illegality has been detected so as to call for any interference at my end.

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

12. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 316 OF 2015

MADAN LAL BANSAL & CO.
Vs
STATE OF PUNJAB

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

1st March, 2016

HF ▶ Appellant

Mere fact that the shop for running business is near escape route cannot be made a ground to restrain business at that place.

REGISTRATION CERTIFICATE – AMENDMENT OF – APPLIED FOR AMENDING REGISTRATION CERTIFICATE FOR OPENING BRANCH OFFICE – APPLICATION DECLINED IN VIEW OF REPORT PREPARED BY AETC – APPEAL DISMISSED HOLDING THAT PROPOSED AREA OF BUSINESS BEING NEAR ESCAPE ROUTE LIKELIHOOD OF TAX EVASION ON PART OF APPELLANT – APPEAL BEFORE TRIBUNAL – DISALLOWANCE ON MERE BASIS OF CONJECTURES AND SURMISES NOT PERMISSIBLE – APPELLANT NEVER BEEN A DEFAULTER OR ACCUSED OF TAX EVASION EARLIER – AREA IN QUESTION ALREADY ALLOWED FOR BUSINESS TO MANY OTHER SIMILAR FIRMS – RESTRAINT ON THE GROUND OF BUSINESS AREA BEING NEAR ESCAPE ROUTE IS UNCONSTITUTIONAL -STATE DIRECTED TO ALLOW APPLICATION – APPEAL ACCEPTED – *S. 23 OF PVAT ACT, 2005 AND RULE 11 OF PVAT RULES, 2005*

Facts

An application for amending the Registration certificate was filed for opening a branch office by the dealer. The application was rejected. An appeal was filed which was also dismissed holding that the area in which the shop sought to be opened is near many escape routes and as such there is a chance of tax evasion. Aggrieved by the order an appeal is filed before Tribunal.

Held:

The appellant has never been accused of evading tax or being a defaulter. The report prepared by the AETC regarding possibility of tax evasion cannot be made the basis to decline the application as it does not contain any allegation against the appellant. There is no minimum transaction requirement or specific area requirement for opening a branch. Moreover, the respondents have allowed many similar firms to work there. The department is action on conjectures. Mere fact that the shop for running business is near border area or escape route cannot be made a ground to restrain business at that place. The appeal is accepted and state is directed to allow the registration certificate.

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

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

1. An application for amendment in registration certificate moved by the M/s Madan Lal Bansal & Co.,# 25 , Sector-4B, Battan Lal Road, Mandi Gobindgarh, TIN No.03081136073 (herein referred as the appellant) for opening a new branch office at main Road Bareta, District Mansa, Punjab with effect from 20.7.2014.

2. This application dated 5.8.2014 received under rule 11 and 12 of the Punjab VAT Rules remained pending with the Excise and Taxation Officer Mandi Gobindgarh and ultimately it was dismissed on 1.6.2015 on the basis of the verification dated 6.4.2015 made by the Assistant Excise and Taxation Commissioner, Mansa. The appeal filed by the appellant was dismissed on 9.7.2015 on the following grounds:-

(1) The appellant has small shop and has no godown to keep the goods purchased and for unloading the vehicles.

(2) He has no weighing machine for weighment of goods. The appellant has only one employee who has no knowledge about the sale /purchase and he does books and maintain register. The purposed area with the shop sought to be opened is near many escape routes as such there are chances of evasion of tax.

3. Having heard the rival contentions and having perused the record, I do not find any merit in the contentions raised by the state counsel. The appellant is taxable person working in the name and style of M/s Madan Lal Bansal & Co. Admittedly he has been filing his return regularly and is not a defaulter of any tax. He has never been accused of evading any tax, suppressing of any turnover or concealment of any facts. The department has not put him to dock at any time with regard to cancellation of TIN Number allotted to him or imposition of penalty in connection with the evasion of tax. Earlier, the application moved by the appellant for his registration as a taxable person has been accepted after due verifications and he was allotted registration number. Rule 11 of the Punjab VAT Rules, 2005 provides for the entitlement of amendment in registration which reads as under:-

> *"An application for amendment of registration granted under the Act shall be made in form VAT 5 within a period of 30 days from the occurrence of the event necessitating such amendment. The application shall specify clearly, the amendment required to be made and the reasons therefor. The Designated Officer, if satisfied with the reasons given, for making such amendment, may allow to make the purposed amendment and inform the applicant in form VAT-6.*
>
> *PROVIDED THAT if the amendment of registration relates to an additional place of any business, located out side the jurisdiction of the Designated Officer, then an information about the amendment, shall also be forwarded to the Designated Officer within whose jurisdiction such additional place of business is situated."*

4. The appellant has performed his part of obligation by moving an application U/s 23 read with Rule 11 of the Rules. The Designated Officer did not pass any speaking order but acted on the basis of the verification made by the Assistant Excise and Taxation Commissioner, Mansa who had reported that the appellant had a small shop over which he had employed one employee and no transaction had taken place at the premises and there are many escape routes, therefore, there was every possibility of bogus billing at the shop. The report made by the Assistant Excise and Taxation Commissioner, Mansa could not be made the basis for declining the application for opening the branch as it does not contain any allegation

against the appellant that he did not disclose the true facts or he evaded the tax. There is no requirement for a specific area or minimum number of transactions to be completed which may be essential for the amendment. As regards the branch to be opened near the escape routes and border area, this Tribunal called for a report of Excise and Taxation Officer, Mansa who reported that the following similar firms were running business at the purposed place where the appellant wants to open the branch:-

(1) M/s Prem Building Material, Bareta.
(2) M/s Balaji Building Material, Bareta.
(3) M/s Garg Iron Trading Company, Bareta.
(4) M/s Jai Laxami Building Material, Bareta.
(5) M/s Shri Shyam Building Material, Bareta.
(6) M/s Satnam Building Material, Bareta.

5. All this goes to establish that it is not the appellant alone who wants to work at that place but the respondents have already allowed many similar firms to work there. Moreover, the purposed area of the business is at distance of 10 1/2 kilometers from the ICC Chullar kalan. As regards, the escape routes nearby the place of occurrence, it would be suffice to say that the department is acting on conjectures and mis-apprehensions. Though, there may be roads to some cities, towns of the region, yet the mere fact that the shop for running the business by the appellant is near the border area or the escape routes is not by itself a ground to put a restraint to run the business at that place. The Constitution has granted liberty to the appellant to run any trade or business at any place in India. However reasonable restrictions could be imposed upon him by way making rules directions and issuing guidelines in the interest of the revenue. Still if the appellant makes any mis-chief or evades any tax or makes an illegal transaction in violation of rules, it may check him and bring the appellant to book. As such the orders passed by the authorities below dis-allowing application for amendment in the Registration Certificate on the basis of mere conjectures, surmises and mis-apprehensions, cannot be sustained and are set-aside.

6. Resultantly, this appeal is accepted, impugned orders are set- aside and the State is directed to allow the amendment in the Registration Certificate in accordance with the Rules within a week from passing of this order. This order would be subject to compliance of conditions if any imposed by the authority concerned.

7. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 50 OF 2015

SWASTIK WIRE PRODUCTS
Vs
STATE OF PUNJAB

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

10th March, 2016

HF ▶ Revenue

Getting an order passed on merits on a time barred appeal without disclosing the factum of delay is of no consequence.

APPEAL - CONCEALMENT OF FACTS – CONDONATION OF DELAY – PENALTY IMPOSED FOR USING SAME INVOICE TWICE - APPEAL FILED BEFORE DETC AFTER 8 YEARS CONCEALING THE FACT OF DELAY IN FILING – ORDER PASSED ON MERITS DISMISSING THE APPEAL – APPEAL BEFORE TRIBUNAL – CONCEALMENT REGARDING DELAYED FILING AND GETTING ORDER PASSED ON MERITS PURPOSELY DONE TO BRING THE APPEAL BEFORE TRIBUNAL WITHIN LIMITATION – ORDER PASSED ON MERITS ON TIME BARRED APPEAL WITHOUT GETTING DELAY CONDONED IS OF NO CONSEQUENCE – APPELLANT GUILTY OF DELAY AND LACHES – DUE TO MISUSE OF INVOICE TO EVADE TAX PENALTY IMPOSED IS JUSTIFIED - APPEAL DISMISSED – *SECTION 51(7), SEC. 62 AND SECTION 64 OF PVAT ACT, 2005*

Facts

In the present case, penalty was imposed on the appellant for using the same invoice for two different transactions. An appeal was filed before DETC after 8 years without mentioning date of filing and without recording reason as to how the appeal was filed after such a huge delay. The order was passed on merits and appeal was dismissed. Hence an appeal is filed before Tribunal.

Held:

The appellant neither moved an application for condonation of delay nor brought this fact to the notice of the appellate authority. To get the appeal dismissed on merits was another device to bring the appeal before Tribunal within limitation. If the order is challenged after such a long time and an order on merits is obtained on such time barred appeal without getting delay condoned, in such an event, such order would be of no consequence.
Also, on merits it is found that the said invoice was used twice on 6/4//2002 and 7/4/2002 respectively. Thus appeal is dismissed.

Present: Mr. J.S.Bedi, Advocate Counsel for the appellant.
Mr. Sukhdip Singh Brar, Addl. Advocate General for the State.

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

1. This appeal is directed against the order dated 29.8.2014 passed by the Deputy Excise and Taxation Commissioner(A), Patiala Division, Patiala (herein referred as the First Appellate Authority) dismissing the appeal of the appellant against the order dated 28.12.2004 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Chandigarh (herein referred as the Designated Officer) creating additional demand to the tune of Rs.1,94,000/- U/s 14-B(7) (ii) of the Punjab General Sales Tax Act, 1948.

2. The appellant is engaged in the business of copper and copper rod wire. On 7.4.2002 at 4.25 A.M., near Zirakpur. The Excise and Taxation Officer, Mobile Wing, Punjab Chandigarh intercepted vehicle No. PB-08P-9676 while it was carrying copper wire from Delhi to Jalandhar. The Excise and Taxation Officer detected that the invoice covering the goods is dated 5.6.2002 and is the same which was reported at ICC, Lalru a day earlier. When confronted the driver disclosed that the goods had started from Delhi on 4.6.2002 at 9.30 P.M. it also came to light that the same vehicle had got ST XXIV-A form on 6.4.2002. At that time the goods were also accompanying the same GR and bill. On the aforesaid facts, the Assistant Excise and Taxation Commissioner on 30.9.2002 imposed a penalty of Rs. 1,94,000/- upon the appellant for using the same invoice for two different transactions with an intention to evade the tax. This order was challenged in the appeal whereupon the Joint Director, (Enforcement) Patiala Division, Patiala vide order dated 2.6.2004 remitted the case back to the Assistant Excise and Taxation Commissioner, who vide order dated 28.12.2004 reiterated the same penalty against which the appeal was filed in the year 2014 without mentioning the date of filing of the appeal and without recording, in the appeal, as to how this appeal was filed before the Deputy Excise and Taxation Commissioner after 9 1/2 years of the passing of the order. However, the Deputy Excise and Taxation Commissioner, vide his order dated 29.8.2014, dismissed the appeal on merits. Hence this second appeal.

3. Arguments heard. Record perused.

4. It would be worthy to note that the appellant is guilty of concealment of material of facts regarding filing of the appeal for a period of 8 years. The appellant did not disclose the reasons for filing the delayed appeal before the Deputy Excise and Taxation Commissioner. The Assistant Excise and Taxation Commissioner, Mobile Wing, Chandigarh passed the order on 28.12.2004, the appellant moved an application for seeking the copy of the order which was issued to him on 20.3.2006. This fact is apparent from the copy of the order enclosed by the appellant alongwith the appeal. Thus, the inference would be drawn that the appellant had received the copy of the order dated 28.12.2004 on 20.4.2006 and did not file the appeal for eight years for the reasons best known to him. Ultimately he woke up from long slumber and filed the appeal in 2014. It is further surprising that the appellant neither moved an application for condonation of delay nor brought this fact to the notice of the Appellate Authority. However, the appellate authority dismissed the appeal on the merits. To get the appeal dismissed on merits without disclosing to the Deputy Excise and Taxation Commissioner about the delay in filing the appeal, is another device to bring the appeal before the Tribunal within limitation. It is well settled by now that on expiry of the period of limitation for filing the appeal, the order which has not been appealed within time, becomes final and binding upon the parties. The appeal against such an order filed, without getting the delay condoned would not be of any consequence. However, the appellant would be guilty of delay and laches. If the order is challenged after such a long time and an order on merits is obtained on such time barred appeal without getting the delay is condoned, in such situation, such order would be of no consequence.

5. In any case, while examining the case on merits, the invoice and the GR which were issued by the sellers on 5.4.2002, were presented by the driver alongwith the goods on 6.4.2002. The transaction was also got generated at the ICC, Lalru on 6.4.2002, however, the driver was again apprehended at Lohgarh, Zirakpur with the same invoice on 7.4.2002 and

could not explain about the invoice relating to the goods in question and the reason for non generating these goods at the ICC. All this goes to show that he had made misuse of invoice with intention to evade the tax. As such the penalty imposed against him by the Designated Officer was justified.

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

7. Pronounced in the open court.

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SGA
LAW OFFICES

NOTIFICATION (Haryana)

NOTIFICATION REGARDING AMENDMENT IN VAT RATE OF LIQUOR

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 7th April, 2016

No. 13 /ST-1/H.A.6/2003/S.59/2016. - Whereas, the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

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

Amendment

In the Haryana Value Added Tax Act, 2003 (Act 6 of 2003), in Schedule A, against serial number 10, under column 3, for the figure and sign "**8%**", the figure and sign "**10%**" shall be substituted and shall be deemed to have been substituted with effect from 1st day of April, 2016.

Roshan Lal,
Additional Chief Secretary to Government,
Haryana, Excise and Taxation Department.

SGA
LAW OFFICES

NOTIFICATION (Haryana)

NOTIFICATION REGARDING AMENDMENT OF RULE 9 OF PUNJAB PASSENGERS AND GOODS TAXATION RULES, 1952

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 16th March, 2016

No. 8 /PGT-II/P.A. 16/1952/S.22/2016.-In exercise of the powers conferred by section 22 of the Punjab Passengers and Goods Taxation Act, 1952 (Punjab Act 16 of 1952), the Governor of Haryana hereby makes the following rules further to amend the Punjab Passengers and Goods Taxation Rules, 1952, in their application to the State of Haryana, namely: -

1. These rules may be called the Punjab Passengers and Goods Taxation (Haryana Amendment) Rules, 2016.

2. In the Punjab Passengers and Goods Taxation Rules, 1952, in rule 9, in sub-rule (2E) (i), in clause (a),-

   (I) serial number 3 and 4 and entries thereagainst shall be omitted; and

   (II) after serial number 2 and entries thereagainst, the following serial numbers and entries thereagainst shall be added, namely:-

"3	Ordinary bus with more than twelve persons seating capacity (contract carriage permit holder)	Rs.125/- per seat per month
4.	Deluxe/ Semi Deluxe bus with more than twelve persons seating capacity (contract carriage permit holder)	Rs.175/- per seat per month
5.	Ordinary AC bus with more than twelve persons seating capacity (contract carriage permit holder)	Rs.200/- per seat per month
6.	Deluxe/ Semi Deluxe AC bus with more than twelve persons seating capacity (contract carriage permit holder)	Rs.300/- per seat per month
7.	Luxury AC bus with more than twelve persons seating capacity (contract carriage permit holder)	Rs.350/- per seat per month".

Roshan Lal,
Additional Chief Secretary to Government,
Haryana, Excise and Taxation Department

SGA
LAW OFFICES

NOTIFICATION (Punjab)

NOTIFICATION REGARDING AMENDMENT IN "SCHEDULE B" AND "E" REGARDING CRUSHER SAND AND STONE DUST

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 2nd April, 2016

No. S.O.39/P.A.8/2005/S.8/2016.-Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act No.8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in Schedules 'B' and 'E' respectively, appended to the said Act, with effect from 1st day of April 1, 2016, by dispensing with the condition of previous notice, namely

AMENDMENT

(1) in Schedule 'B', in serial number 145, for the words and sign "Crusher sand and Stone dust", the words and sign " Crusher sand, Stone dust and Stone bajri," shall be substituted; and

(2) in Schedule 'E', in serial number 30, for the words and sign " Stone bajri and sand when carried in", the words and sign "Stone bajri and sand when sent outside the State through," shall be substituted.

D.P. REDDY,
Additional Chief Secretary (Taxation)
Government of Punjab,
Department of Excise and Taxation.

SGA
LAW OFFICES

NOTIFICATION (Punjab)

AMENDMENT OF RULE 36 IN PUNJAB VALUE ADDED TAX RULES, 2005

PUNJAB GOVT. GAZ. (EXTRA), FEBRUARY 25, 2016
(PHGN 6, 1937 SAKA)

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 20 February, 2016

No. S.O.12/P.A.8/2005/S.70/2016.- In exercise of the powers conferred by sub-section (1) of section 70 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules, further to amend the Punjab Value Added Tax Rules, 2005, namely:-

RULES

1. (1) These rules may be called the Punjab Value Added Tax (Amendment) Rules, 2016.
   (2) They shall come into force on and with effect from the date of their publication in the Official Gazette.
2. In the Punjab Value Added Tax Rules, 2005, in rule 36, in sub-rule (1), the third proviso shall be omitted.

D.P. REDDY,
Additional Chief Secretary Taxation
Government of Punjab,
Department of Excise and Taxation

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LAW OFFICES

NOTIFICATION (Punjab)

NOTIFICATION REGARDING AMENDMENT OF RATE OF TAX ON UNBRANDED HONEY AND CONNECTED MATERIALS

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 18th March, 2016

No. S.O.29/P.A.8/2005/S.8/S.8/2016.-Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act No.8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in Schedule 'A' and Schedule 'B' appended to the said Act, with immediate effect, by dispensing with the condition of previous notice, namely:-

AMENDMENT

1. In Schedule 'A, after the existing serial No. 88, the following serial number shall be inserted, namely:-

   "89. Unbranded honey, sale of capital goods, boxes, containers for packing of unbranded honey and beeswax used in beekeeping for production of honey.";

2. In Schedule 'B',

   (i) serial number 48 and the entry relating thereto, shall be omitted;

   (ii) in the 'List of Industrial inputs and Packing Material' given at the end, in serial number 4, in the entry given under column 3, the word and sign ''beeswax", shall be omitted.

D.P. REDDY,
Additional Chief Secretary to
Government of Punjab
Department of Excise and Taxation.

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LAW OFFICES

NOTIFICATION (Punjab)

NOTIFICATION REGARDING APPOINTMENT OF OFFICERS AND CONFERMENT OF POWERS

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION

NOTIFICATION

The 20th February, 2016

No. S.O.13/P.A.8/2005/S.3/2016.- In supersession of the Government of Punjab Department of Excise and Taxation, Notification No. S.O.M/P.A.5/2005/S.3/2005, dated the 31st March, 2005, No. S.O 10/P.A.8/2005/S.3/2007, dated the 27th February, 2007, S.O.33/P.A.8/2005/S.3/2007, dated the 20th August, 2007, S.O. 41/P.A.8/2005/S.2 and 3/ 2011. dated the 16th May, 2011, S.O 113/P.A.8/2005/S.3/2011, dated the 22nd December. 2011, S.O. 91 /P.A.8/2005/S.3/2012, dated the 31st October, 2012 and S.O.4/P.A.8/2005/ Ss.2 and 3/2014, dated the 3rd January, 2014, and in exercise of the powers conferred by sub-sections (1) and (2) of section 3 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to appoint the following officers as specified in column 2 of the Table given below to assist the Commissioner and is further pleased to confer upon them the powers, to be exercised by them as specified under column 3, within the area of jurisdiction so specified against each such officer in column 4 of the said Table, namely

TABLE

Serial No.	Designation of the officer	No.	Extent of the powers conferred upon him	Area of jurisdiction
1	**2**		**3**	**4**
1	Additional Excise and Taxation Commissioner.		To act as Designated officer under sections 32, 53, 56, 60,61 and 65 of the said Act.	Whole of the State of Punjab.
2	Joint Excise and Taxation Commissioner.		To act as Designated officer under Sections 32, 46,47,49,53,56,60,61, 65, 66 and 74 of the said Act.	Whole of the State of Punjab.
3	Deputy Excise and Taxation Commissioner		To act as Designated officer under sections 28, 39,46, 47 and 66 of the said Act.	The Division in which posted.

4	Deputy Excise and Taxation Commissioner (Appeals)	To be the Appellate Authority under section 62 of the Act.	Whole of the State of Punjab.
5	Joint Director (Enforcement)-cum-Deputy Excise and Taxation Commissioner (Intelligence)	To act as a Designated officer under sections 39, 46, 47, 66 and 74 of the said act.	Whole of the State of Punjab
6	Assistant Excise and Taxation Commissioner (who are acting as Senior Auditors)	To act as a Designated Officer under sections 11, 13, 14, 26, 27, 28, 29, 30, 31,32, 38, 39, 40, 42, 46, 47, 48, 49, 51, 53, 54, 56, 60, 61, 65, 66, 74, 77, 83, and 87 of the Act.	The Division in which posted.
7	Assistant Excise and Taxation Commissioner	To act as a Designated Officer under sections 11, 13, 14, 18, 26, 27, 28, 29, 30, 31, 32, 36, 38, 39, 40, 42, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 65, 66, 74, 77, 83, and 87 of the Act.	To District in which posted.
8	Assistant Excise and Taxation Commissioner (Mobile Wing)	To act as a Designated Officer under sections 29, 30, 32, 39, 40, 42, 46, 47, 49, 51, 52, 53, 54, 56, 57, 58, 60, 61, 66, 74 and 87 of the Act.	As specified by the Commissioner
9	Assistant Excise and Taxation Commissioner posted in Head Office.	To act as a Designated Officer under sections 11, 13, 14, 26, 27, 28, 29, 30, 31, 38, 39, 40, 42, 46, 47, 48, 49, 51, 54, 55, 56, 57, 58, 59, 60, 61, 65, 66, 74, 77, 83 and 87 of the Act.	Throughout the State.
10	Excise and Taxation Officer	To act as a Designated Officer under sections 11, 13, 14, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,32,36, 38, 39, 40, 42, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 66, 74, 76, 77, 83 and 87 of the Act	The District in which posted.
11	Excise and Taxation Officer (Mobile Wing)	To act as Designated Officer under section 29, 30, 32, 39, 40, 42, 46, 47, 49, 51, 52, 53, 54, 56, 57, 58, 60, 61, 66, 74 and 87 of the Act.	As specified by the Commissioner.

D.P. REDDY,
Additional Chief Secretary to
Government of Punjab
Department of Excise and Taxation.

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LAW OFFICES

NOTIFICATION (Punjab)

NOTIFICATION REGARDING EXEMPTION OF ENTERTAINMENT DUTY TO PUNJABI CULTURAL AND MUSICAL SHOWS

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

ORDER

The31st March, 2016

In exercise of the powers conferred by sub-section(3) of section 11 of Punjab Entertainments Duty Act, 1955 (Punjab Act No. 16 of 1955), and all other powers enabling in this behalf, the Governor of Punjab is pleased to exempt, with effect from 1st April, 2016, the Punjabi Cultural and musical shows, from the payment of entertainment duty in the State of Punjab.

Chandigarh, dated
The 31st March, 2016

D.P. REDDY
Additional Chief Secretary (Taxation)
Government of Punjab
Department of Excise and Taxation

NOTIFICATION (Punjab)

NOTIFICATION REGARDING EXEMPTION OF ENTERTAINMENT DUTY TO PUNJABI FILM

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

ORDER

The 31st March, 2016

In exercise of the powers conferred by sub-section (2) of section 6 of Punjab Entertainments Tax (Cinematograph Shows) Act, 1954 (Punjab Act No. VIII of 1954), and all other powers enabling in this behalf, the Governor of Punjab is pleased to exempt, with effect from 1st April, 2016, the shows of Punjabi Films from the payment of entertainment tax in the State of Punjab.

Chandigarh, dated
The 31st March, 2016

D.P. REDDY
Additional Chief Secretary (Taxation)
Government of Punjab
Department of Excise and Taxation

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LAW OFFICES

NEWS OF YOUR INTEREST

VAT SCAM: HC NOTICE TO HARYANA, CBI

CHANDIGARH: The Punjab and Haryana high court on Monday issued notice to the Haryana government and Central Bureau of Investigation (CBI) among others on a petition seeking investigation into the alleged offences of money laundering, corruption and tax evasion amounting to more than Rs.10,000 crore.

The high court bench of justice Paramjit Singh Dhaliwal, while seeking response by May 11, has directed the state government not to destroy any record pertaining to the case and provide adequate security to the petitioners.

The order came on the petition of one Raghbir Singh and others who had alleged that either companies or promoters whose names had figured in the 'Panama Papers' leak for alleged offshore holdings unearthed recently were among the beneficiaries of the scam in the state.

The SIT, formed by the Haryana Lokayukta, too had found that the DLF, BPTP, Omex Ltd, BPTP, Unitech and other prominent builders and developers, in nexus with the officers of the excise department, had committed the offences of corruption and money laundering and therefore a CBI probe was recommended, the petitioner told the high court.

"However, so far, Haryana government has not taken any action on the SIT report. Rather, interestingly in file notings of the finance ministers of both Congress and Bharatiya Janata Party (BJP) governments could be seen shielding the officers responsible for causing disappearance of the record relating to the scam," petitioner's advocate Pardeep Rapria said, while further alleging the role of state finance minister Captain Abhimanyu in shielding the officers of the excise department.

Courtesy: The Hindustan Times
12th April, 2016

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LAW OFFICES

NEWS OF YOUR INTEREST

RAID ON FIRM FOR EVADING VAT

GURGAON: A team of the Deputy Excise and Taxation Commissioner (East) Gurgaon, today raided the premises of a firm namely Subodh Gupta, located in Udyog Vihar Phase-I of the city after a complaint was received at the department's headquarters in Chandigarh. Excise and Taxation Commissioner Shyamal Mishra sent the complaint to the DETC (East) for enquiry and verification.

According to DETC (East) Samir Yadav, the firm registered in the name of Subodh Gupta had raised a bill of a painting which was sold to the Director, National Gallery of Modern Art, Delhi, at a cost of Rs 2.25 crore on August 28, 2015. The VAT amount of Rs 29.53 lakh was also taken from the buyer, taking the total to Rs 2.54 crore.

He said that on checking the records at the Director General of Audits, it was found that the seller firm had neither shown the VAT amount in its quarterly returns nor deposited the VAT with the government. A notice was served on the firm in this regard but it did not respond. Therefore, the firm was raided today.

Courtesy: The Tribune
4th April, 2016

NEWS OF YOUR INTEREST

PUNJAB TO TAX TRANSPORTATION OF SAND, GRAVEL GOING OUT OF STATE

CHANDIGARH: The Punjab government has decided to tax transportation of sand and gravel out of the state, as the rising cost of construction threatens to turn into a volatile issue ahead of assembly elections in 2017. According to a notification issued last week, 'stone bajri and sand' will be taxed at Rs4,000 per tractor-trailer trip, ordinary truck having capacity up to nine tonnes will be charged Rs7,000, and any other vehicle bigger than these will have to shell out Rs10,000. This has been done by making amendments to the Punjab Value Added Tax, 2005.

Calling it an eyewash, former Congress Legislature Party (CLP) leader Sunil Jakhar alleged that the sand mafia in the state had political patronage at the highest level, and the move was just to hoodwink the fact that the trade was monopolized. "There is no large-scale transportation of sand out of the state, and this will not help in generating revenue," he claimed.

Interestingly, where the state government seems to make an effort to ensure availability of construction material at affordable rates, it has not publicized this decision like its previous initiatives. Meanwhile, many believe the move could fail to give desired results, as most of the 45-odd sales tax barriers are not located exactly on the state's borders. Vehicles carrying sand and gravel can claim they are taking the material to villages across the barrier, and later sneak it into neighbouring states.

A truck full of sand, that could be bought for Rs15,000-16,000 two years ago, has been selling for up to Rs19,000. Similarly, 10,000 cubic feet gravel came for Rs30,000 before 2014 Lok Sabha elections has registered an increase of Rs5,000. A scheme has already been floated for consumers to book sand and gravel at market committee offices for home delivery. The Punjab Mandi Board will supply these minerals from sand quarries to consumers at their doorstep or at market committee yards by charging transport rates fixed by the transport department on a kilometre basis. The post of director industries and mining will also be bifurcated, with director mining having the sole responsibility to look after the mining of sand and gravel.

In September 2014, the cabinet had decided to check the spiralling prices of sand and gravel, and amended rules for allotment of 37 quarries to the Punjab State Industrial Export Corporation (PSIEC) at a fixed rate of royalty. The cabinet had also amended the Punjab Minor Mineral Rules, 2013. The Punjab Congress had demanded a special assembly session on high sand prices in the state. The new VAT has come into effect from April 1, but there has been no attempt to spread awareness about it. A notification in this regard has been issued by the Department of Excise and Taxation.

Courtesy: The Times of India
7th April, 2016