SGA
LAW OFFICES

Issue 9
1 May 2016

"Death, taxes and childbirth! There's never any convenient time for any of them."

— Margaret Mitchell, Gone with the Wind

NOMINAL INDEX

NOTIFICATION

PUNJAB

HARYANA

NEWS OF YOUR INTEREST

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News From Court Rooms

GUJARAT HC: Where against order of assessment, assessee filed appeal before First Appellate Authority along with application seeking waiver of pre-deposit of assessed tax for purpose of entertaining appeal. First Appellate Authority was duty bound to consider application and give his reasons, either for allowing or rejecting same, and impugned waiver application deserved to be allowed. *Laxmi Group of Agencies – March 17, 2016).*

SUPREME COURT: SC grants special leave to Larsen & Toubro Ltd to appeal against Telangana & AP HC judgment where the issue involved interpretation of what would constitute 'in-transit sale', 'inter-state works contract' and 'intra-state works contract' SLP has been admitted by SC Bench comprising of Justice Madan B. Lokur and Justice N. V. Ramana.

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CESTAT, MUMBAI: In CST, Mumbai vs. Reliance Infocomm Ltd. (2015) 38 STR 558 (Cestat, Mumbai), it was held that Section 65(7) defines 'assessee' as a person liable to pay Service Tax and includes his agent. 'Assessee' is not defined as a person providing service. Hence Service provider and person liable to pay Service Tax could be different persons. But inclusion of value of services of 'agent' into value of taxable services only on the ground that the term 'assessee' includes 'agent' of assessee violates language of Section 67 of the Finance Act.

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CESTAT, NEW DELHI : Demand couldn't be raised even if assessee belatedly reversed Cenvat credit on exempted goods.

Cenvat Credit : Revenue cannot insist assessee to avail a particular option under rule 6(3) of Cenvat Credit Rules, 2004. Hence, if assessee has reversed pro-rata credit belatedly, and has complied with conditions under rule 6(3)(ii), read with rule 6(3A), demand under rule 6(3)(i) for specified percentage of value of exempted goods is not sustainable. *(Mahindra & Mahindra Ltd. – February 17, 2016).*

GUJARAT HC : Gujarat VAT - Where against order of assessment, assessee filed appeal

before First Appellate Authority along with application seeking waiver of pre-deposit of assessed tax for purpose of entertaining appeal.

First Appellate Authority was duty bound to consider application and give his reasons, either for allowing or rejecting same, and impugned waiver application deserved to be allowed. *(Laxmi Group of Agencies – March 17, 2016).*

CESTAT, BANGALORE : Service Tax : When assessee deposits tax amount along with interest before issuance of show-cause notice and matter does not involve fraud, etc., then, as per section 73(3) of Finance Act, 1994, no notice can be issued to assessee; if department officer issues notice for imposing penalty despite that, then, such officer is to be punished and not assessee.

The Hon'ble Karnataka High Court Judgment in the case of CCE & ST v. Adecco Flexione *Workforce Solutions Ltd. [CEA No. 101 of 2008, dated 8-9-2011] followed. (K R S Enterprises P Ltd. – February 4, 2016).*

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BOMBAY HIGH COURT: Section 73, read with sections 36 and 39, of the Gujarat Value Added Tax Act, 2003 - Appeals, revision, etc. - Appeal - Assessment years 1995-96 to 2004-05 - Against order passed by lower authority, assessee filed appeal before Tribunal - It, pursuant to order of High Court, had to deposit 50 per cent of disputed tax amount by way of pre-deposit for entertaining appeal - Tribunal allowed appeal holding that assessee was not liable to pay any tax - Thereafter Tribunal, on an application filed by assessee, passed an order directing Assessing Authority to grant refund of amount of pre-deposit - Whether refund of amount of pre-deposit was consequential to order of Tribunal and same had no connection with appeal preferred by revenue before High Court which remained pending and, thus, Tribunal acted within bounds of its jurisdiction in issuing direction of refund *[2016] 68 taxmann.com 171 (Bombay)*

CEATAT, AHMEDABAD: Non obtaining of Central Excise registration on reaching full exemption limit specified in Notification No. 8/2003-CE dated 01.3.2003, is liable for penalty. *(Himalaya Engineering Company – March 17, 2016).*

CESTAT, MUMBAI: Central Excise : Where assessee surrendered its registration certificate for de-registration, denial of de-registration on ground that a case of demand of duty was pending against it was wrong. *(Akasha Syncotex Ltd. – February 17, 2016).*

CESTAT NEW DELHI: Business Auxiliary Service - Pasteurizing of milk converting some of it into butter milk / curd and then packing these products including milk in plastic pouches clearly amount to manufacture hence not liable for service tax – *Shri Varindavan Dairies Vs. CST, Jaipur(2016 (4) TMI 627*

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SUBJECT INDEX

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 1954 OF 2006

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ENERCON (INDIA) LTD.
Vs
STATE OF KARNATAKA

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

8th March, 2016

HF ▶ Assessee

Foundation work like erection, installation, commissioning of Wind Mill does not attract sales tax as Wind Mill is exempted under the Act.

WORKS CONTRACT –GOODS - WIND MILL – EXEMPTED GOODS – WHETHER FOUNDATION WORK INCLUDED UNDER EXEMPTION -WIND MILL MANUFACTURED, INSTALLED AND COMMISSIONED UNDER CONTRACT – SALE OF WIND MILL EXEMPTED AS PER ENTRY 57 OF SCHEDULE V – COMMISSIONING EXPENDITURE EXCLUDED WHILE EXEMPTING SALE OF WINDMILL CONTENDING THAT SUCH EXPENDITURE ARE 'GOODS TRANSFERRED IN EXECUTION OF WORKS CONTRACT' – HIGH COURT UPHELD THE ORDER BY HOLDING THAT SUCH FOUNDATION WORK DID NOT FALL WITHIN THE MEANING OF WIND MILL – APPEAL BEFORE SUPREME COURT – HELD: FOUNDATION WORK OR INSTALLATION WORK, WHICH IS EVEN CONSIDERED AS PART OF WORKS CONTRACT BY THE ASSESSING OFFICER HIMSELF, CANNOT BE TREATED AS 'GOODS' - SUCH WORK INVOLVED IN EXECUTION OF WORKS CONTRACT DOES NOT ATTRACT SALE TAX – APPEAL ALLOWED – *ENTRY 57 OF SCHEDULE V OF KARNATAKA SALES TAX ACT*

Facts

The appellant is engaged in the manufacture, sale, installing and commissioning of Wind Mill (Wind Energy Converter).It had entered into a contract for commissioning, installing and erection of wind energy converter. It sought exemption from payment of sales tax on the ground that wind mills were exempted as per entry 57 of Fifth schedule to the Act. The appellant was allowed exemption on parts of windmill but commissioning expenditure was excluded from expenditure towards 'Wind Mills' by the assessing officer. This expenditure that was excluded was treated as 'transfer of goods involved in execution of works contract.' A revision petition was filed before High court whereby it is opined that the foundation work would not be exempted as it does not fall within the meaning of Wind Mill. This part of order is challenged by way of an appeal before Supreme Court.

Held:

The foundation work or installation work which is treated as part of works contract by the assessing officer cannot be treated as 'goods' and such work would not fall under expression 'Wind Mill'. The Assessing Officer had classified such work viz. foundation, erection etc. as 'goods involved in execution of works contract. In such a case no sales tax could have been charged thereon. Even first appellate authority proceeded on the basis that work like foundation work, electrical work, commissioning etc. was 'series of activities and further that it was indivisible'; on this finding also no sales tax could be levied.
Thus impugned orders are set aside and appeal is allowed.

Present: For Appellant(s): Mr. Dushyant Dave, Sr. Advocate
Mr. Subramoniam Prasad, Sr. Advocate
Mr. Abhay Kumar, Advocate
Mr. Tenzing Tsering, Advocate
Mr. Utkarsh Srivastava, Advocate
Mr. Ashmeet Singh, Advocate

For Respondent(s): Mr. Basava Prabhu S. Patil, Sr. Advocate
Mr. V. N. Raghupathy,Advocate

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A.K. SIKRI, J.

1. The appellant herein, by way of present appeal, questions the validity and legality of the judgment and order dated 18.08.2004 passed by the High Court of Karnataka, at Bangalore, in Sales Tax Revision Petition No. 72 of 2002 which was filed by the appellant herein. The said Revision Petition has been dismissed by the High Court thereby affirming the orders of the authorities below.

2. The facts in brief, which need to be noted for the disposal of the instant appeal, are that the appellant is engaged, inter alia, in the manufacture, sale, installing a0nd commissioning of Wind Mill (Wind Energy Converter). It is a registered dealer under the Karnataka Sales Tax Act (hereinafter referred to as 'the Act'). The appellant had entered into the contracts dated 12th June, 1997 and 11th July, 1997 with M/s. Jindal Aluminium Ltd., Bangalore. These contracts were for installation, erection and commissioning of "Wind Energy Converter" for 16 Nos. Enercon make E-30 rated at 2000 KW Wind Energy Converters. These were to be commissioned at Medakaripuram, Chitradurga Taluk, Karnataka State. The total value of the contracts was Rs.19,67,50,000/-. In the sales tax return filed by the appellant, it sought exemption from payment of sales tax on the ground that as per the provisions contained in Entry 57 of Fifth Schedule to the Act, Wind Mills were exempted from payment of sales tax. The provision for exemption is contained in Section 8 of the Act which reads as under:

> *"Section 8. Exemption of tax:- (1) No tax shall be payable under this Act on the sale of goods specified in the Fifth Schedule subject to the condition and exceptions, if any, set out therein."*

3. Fifth Schedule to the Act gives list of various kinds of goods which are entitled to exemption. As mentioned above, insofar as Wind Mills are concerned, relevant Entry is at Serial No. 57 which is as follows:

> *"57. Wind Mills and any specially designed devices which run exclusively on wind power including electric generators and pumps running on wind energy."*

4.The Assessing Officer after getting details of the aforesaid turnover of Rs.19,67,50,000/- from the appellant/assessee found that apart from various parts of Wind Mills which were supplied to the customers, expenditure was also incurred towards commissioning of

the said Wind Mills at the site which had to be excluded. The exercise done by the Assessing Officer in this respect can be seen from the assessment order passed by the Assessing Officer. The relevant portion whereof giving such details, is as follows:

In view of the above it is proposed to assess your case as follows:

Total Less:	turnover	Rs.19,67,50,000.00
1.	Wind Mills (Blades & Generators)	Rs.12,60,00,000.00
2.	Wind Mills (Parts i.e., Baskets & Studs & Nuts & other Accessories Add:G.P.@8%	Rs.3,49,60,805.00 Rs.27,96,864.00
3.	Sub Contract of labour (Drawing, Survey, Soil Investigation and Drainage Add:G.P.8%	Rs.7,07,548.00 Rs. 56,603.00
4.	Labour involved in sub-contract a) Civil (Vasu Foundation) b) Electrical(GET Engg) c) Erection charges (Mega Electrical) d) Hire charges Add:G.P.@8%	 Rs.17,46,742.80 Rs.10,76,704.00 Rs.11,13,307.00 Rs.21,91,900.00 Rs. 1,75,352.00
		Rs.17,08,25,826.00
Total taxable turnover proposed		Rs. 2,59,24,173.00
Classification: 1. Transfer of goods involved in execution of works contract u/s 43 of the Fifth Schedule to the Act Rs.2,59,24,173.50 at 10% 2. TOT on Rs. 2,59,24,173.50@3%		Rs.25,92,417.00 Rs. 7,77,725.00
Total tax proposed		Rs.33,70,142.55

5. It is manifest from the above that insofar as the manufacturing of various parts of Wind Mills are concerned, they were given exemption by applying the provisions of Section 8 read with Entry 57 of Fifth Schedule to the Act. The figure to this effect was arrived at Rs.17,08,25,826/-. However, on the remaining amount i.e Rs.2,59,24,173/-, the sales tax was held payable on the ground that the said expenditure did not qualify as expenditure towards "Wind Mills".

6. A bare reading of the order of the Assessing Officer as extracted above would show that such expenditure was treated as "transfer of goods involved in execution of works contract".

7. The appellant challenged this order by filing an appeal before the Joint Commissioner of Commercial Taxes (Appeals), City Division-I, Bangalore. The Appellate Authority remanded the case back to the Assessing Authority to redo the assessment while doing so he also observed that there was no immediate transfer of moveable property in goods through various series of activities like foundation work, electrical work, commissioning etc. and hence, it was indivisible and comprehensive contract of supply, erection/installation and commissioning of wind mills as described under Section 2(1)(v-i) of the Act. This order of

remand was challenged by the appellant by filing appeal before the Appellate Tribunal remitting the case back to the Assessing Authority to redo the assessment. The Tribunal dismissed the appeal. Being aggrieved, the appellant preferred Revision Petition before the High Court which has been dismissed by the impugned judgment.

8. The High Court after taking note of the provisions of Section 8 and Entry 57 has observed that meaning of the words "Wind Mills" is not defined under the Act and, therefore, some meaning has to be assigned to the same. It has further observed that since Section 8 of the Act exempts certain categories of "goods" which are specified in the Fifth Schedule of the Act, it is only those items which qualify as goods are to be exempted. Thereafter, an endeavour is made to point out what would be the goods falling within the expression "Wind Mill". It has held that the expression "Wind Mill" would include rotor consisting of blades, the hub assembly; nacelle; yaw system, tower and grid synchronization assembly including transformer unit for delivering the power to the grid net work. It is also opined that the electrical work and transformers are vital parts of a wind mill and the wind mill cannot be put to use and it would not be functional device without the electrical works and the transformers and, therefore, they would also be recorded as parts of wind mill. However, the High Court has come to the conclusion that insofar as foundation work etc. is concerned that would not be exempted as it does not fall within the meaning of wind mill. It is the validity of this part of the order which calls for our attention.

9. After hearing the learned counsel for the parties, we are of the opinion, that a fundamental mistake which is committed by the authorities below is that foundation work or installation work, which is even considered as part of works contract by the Assessing Officer himself, cannot be treated as "goods". Even if we proceed on the basis that such work does not fall within the expression "Wind Mill", still it could not be treated as goods which could be Exigible to sales tax under the Act. As pointed out above, the Assessing Officer himself classified such goods involved in execution of works contract. Once this was the opinion of the Assessing Officer and the part of work viz. foundation or erection work related to works contract, on this ground itself, no sales tax could have been charged thereon. We have also pointed out above that even the First Appellate Authority proceeded on the basis that the work like foundation work, electrical work, commissioning etc. was "series of activities and further that it was indivisible". On this finding as well, no further action to levy sales tax was required.

10. Therefore, on the aforesaid grounds, we set aside the impugned order and allow this appeal with consequential relief.

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SUPREME COURT OF INDIA

CIVIL APPEAL NOS. 2989-3008 OF 2016

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COMMISSIONER, DELHI VALUE ADDED TAX
Vs
ABB LTD.

DIPAK MISRA & SHIVA KIRTI SINGH, JJ.

5th April, 2016

HF ▶ Assessee

Goods imported from outside the country and within the country for use in works contract are covered under CST Act and not leviable to tax under local VAT Act if the movement is in pursuance to the contract.

INTER STATE SALES – WORKS CONTRACT – ASSESSEE ENTERING INTO A CONTRACT WITH SPECIFICATION OF GOODS AND SUPPLIERS BY THE CONTRACTEE – GOODS IMPORTED FROM OUTSIDE THE COUNTRY FOR THE CONTRACT – GOODS ALSO PURCHASED FROM OTHER STATES FOR THE PURPOSE OF CONTRACT – CLAIM OF EXEMPTION MADE ON ACCOUNT OF TRANSACTIONS BEING IN THE COURSE OF IMPORT AND INTER-STATE SALES – HIGH COURT ON FACTS HELD THE TRANSACTIONS TO BE EXEMPT BEING COVERED UNDER THE CST ACT – ON APPEAL BY REVENUE BEFORE SUPREME COURT – THE MOVEMENT OF GOODS IS ON THE BASIS OF CONTRACT – TRANSACTIONS EXEMPT UNDER DELHI VAT ACT BEING COVERED UNDER CST ACT – APPEAL DISMISSED.

The respondent dealer is a manufacturer and seller of engineering goods including Power Distribution System and SCADA System. Delhi Metro Rail Corporation (DMRC) had awarded a contract to the respondent dealer in which the respondent had to provide transformers, switchgears, high voltage cables, SCADA System and also complete electrical solution including control room for operation of Metro trains on the concerned section. The bid document contained detailed bill of goods, quantities and specification for the goods, sources (i.e. name of manufacturer/brand), detailed terms and conditions and requiring approval of sub-contractors/suppliers and testing. The goods as also the component of works required certification as well as acceptance.

For the year 2005-06, the respondent dealer was called upon to pay DVAT on the deemed sales made by it to DMRC. The assessee claimed that it was exempt from payment of VAT in respect of sale effected in the course of import and also in respect of inter-state sale of goods on account of provisions of section 3(a) and 5(2) of the CST Act 1956. The Assessing Authority rejected the claim and confirmed the demand under the Delhi VAT Act. The tax demand had been confirmed up to Tribunal against which the assessee approached High Court of Delhi.

The High Court considered all the relevant facts particularly terms, conditions and stipulations in the contract in the context of contention on behalf of respondent. It was held that importation of equipment was strictly as per requirement and specification set out by DMRC in the contract and only to meet said requirement of supply, the specified goods were imported and hence the event of import and supply was clearly occasioned by the contract awarded to the respondent by the DMRC. The High Court accepted the contention in respect of procurement of goods within the country and their movement from one State to another. The High Court had also considered the relevant provisions of the contract, specification of goods, requirement of inspection of goods, at more than one occasion and right of rejecting the goods even after testing the supply. High Court accepted the contentions advanced on behalf of respondent that transactions leading to import of goods as well as movement of goods from one State to another were occasioned by the contract awarded by the DMRC to the respondent, hence the transactions were not covered by Delhi VAT Act, but the Central Sales Tax Act.

On appeal by Revenue before the Supreme Court, Held:- The salient features flowing out as conditions in the contract and the entire conspectus of law on the issues, it is held that the movement of goods by way of import or by way of inter-state trade in this case was in pursuance of the conditions and/or as an incident of the contract between the assessee and DMRC. The goods were of specific quality and description for being used in the works contract awarded on turnkey basis to the assessee and, there was no possibility of such goods being diverted by the assessee for any other purpose. Following the law laid down in K.G. Khosla's case, there is no reason to take a different view. Accordingly the appeals were dismissed.

Cases referred:

- *K.G. Khosla & Co. v. Deputy Commissioner of Commercial Taxes, Madras (1966) 3 SCR 352 = AIR 1966 SC 1216*
- *Binani Bros. (P) Ltd. v. Union of India & Ors. (1974) 1 SCC 459*
- *Tata Iron and Steel Co. Ltd. v. S.R. Sarkar (1960) 11 STC 655 = AIR 1961 SC 65*
- *Oil India Ltd. v. The Superintendent of Taxes (1975) 35 STC 445 (SC) = (1975) 1 SCC 733*
- *English Electric Company of India Ltd. v. The Deputy Commercial Tax Officer (1976) 38 STC 475 (SC) = (1976) 4 SCC 460*
- *South India Viscose Ltd. v. State of Tamil Nadu (1981) 48 STC 232 (SC) = (1981) 3 SCC 457*
- *State of Maharashtra vs. Embee Corporation, Bombay 1997 (7) SCC 190*
- *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Ernakulam vs. Indian Explosives Ltd. 1985 (4) SCC 119*
- *Indure Ltd. and Anr. vs. CTO & Ors. 2010 (9) SCC 461*

Present: For Appellant(s): Mr. Ajit Kumar Sinha, Sr. Advocate
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Mr. Shashank Singh, Advocate
Mr. Sudhir Agarwal, Advocate
Mr. Shadman Ali, Advocate
Mr. D.S. Mahra, AOR

For Respondent(s): Mr. S. Ganesh, Sr. Advocate
Mr. R. Jawaharlal, Advocate
Mr. Sidharth Bawa, Advocate
Mr. Shyamlal Anand, Advocate
Mr. Ashwani Kumar, Advocate

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SHIVA KIRTI SINGH, J.

1. Instant appeals have been preferred by Commissioner, Delhi Value Added Tax to assail the judgment and order of the High Court of Delhi dated 28.09.2012 in S.T.A.Nos.51-70 of 2012. The High Court reversed the order of the VAT Tribunal and of other lower authorities on the basis of its conclusion that the inter-State movement of goods was in pursuance of and incidental to the contract for the supply of goods used in the execution of the works contract between the respondent-assessee and the Delhi Metro Railway Corporation Ltd. (hereinafter referred to as 'DMRC'). The High Court further came to hold that claimed sales should be deemed to have taken place in course of imports of the goods or inter-state trade and that such import/movement of goods was integrally connected with the contract for their supply to DMRC. On the basis of such twin findings the High Court has held that the transactions constituting inter-State trade and those constituting sale or purchase in the course of import were covered by Section 3(a) and Section 5(2) respectively of the Central Sales Tax Act, 1956 (hereinafter referred to as 'CST Act') and, therefore, exempt from taxation under the Delhi Value Added Tax Act, 2004 (hereinafter referred to as 'DVAT Act').

2. According to appellant the impugned judgment and order of the High Court is based upon erroneous interpretation of judgments of this Court particularly that of the Constitution Bench in the case of ***M/s. K.G. Khosla & Co. v. Deputy Commissioner of Commercial Taxes, Madras (1966) 3 SCR 352 = AIR 1966 SC 1216***. The appellant has placed strong reliance upon a subsequent Constitution Bench judgment in the case of ***M/s. Binani Bros. (P) Ltd. v. Union of India & Ors. (1974) 1 SCC 459*** . On the other hand, respondent has fully supported the view adopted by the High Court. Its contention is that ratio in the case of **K.G. Khosla** has not been doubted in the later judgment in the case of **Binani Bros.** and the conclusions drawn by the High Court on the basis of admitted facts are supported by the principle of law settled in the case of **K.G. Khosla** which has not been doubted in any other case. According to respondent the claim of sale in course of imports occasioned by the contract was negatived in the case of **Binani Bros.** on peculiar facts of that case which were quite different from the facts of the instant case, as correctly noticed by the High Court.

3. Before adverting to the main issue as to whether the High Court judgment is correct in law as well as in facts or not, it would be appropriate to notice some of the relevant facts. The respondent is a Public Limited Company engaged, inter alia, in manufacture and sale of engineering goods including power distribution system and SCADA system. It appears to be a market leader in power and automation technologies. It is a subsidiary of ABB Ltd., Zurich Switzerland which has operational presence in over 100 countries and employs around 1,30,000 personnel. On 15.05.2003 DMRC invited tenders for supply, installation, testing and commissioning of traction electrification, power supply, power distribution and SCADA system for Line 3 Barakhamba Road-Connaught Place-Dwarka Section of the DMRC. Respondent responded.

4. DMRC short listed the respondent and then executed the contract under which the respondent had to provide transformers, switch-gears, High Voltage Cables, SCADA system and also complete electrical solution, including control room for operation of metro trains on the concerned Section. The Bid Document contained detailed Bill of Goods, quantities and specifications for the goods, sources (i.e, name of the manufacturer/brand), detailed terms and conditions requiring approval of sub-contractors/suppliers and testing. The goods as also the components of works required certification as well as acceptance. The NIT required both, Technical Bid and Financial Bid. Besides the quotation of lumpsum price for the entire scope of work the Bid Document required individual breakup of price of goods and other details. Bid submitted by the respondent finally culminated into a contract on 04.08.2004. The contract document comprised of Special Conditions of Contract, General Conditions of Contract etc.

5. In the year 2005-06 the respondent was called upon to pay DVAT on the deemed sales made by it to DMRC. It denied its liability and claimed exemption under Section 7(a) and (c) of DVAT Act on the ground that it was exempted from payment of VAT in respect of sale effected in the course of import and also in respect of inter-state sale of goods, on account of provisions in Section 3(a) and 5(2) of the CST Act. The Assessing Officer vide order dated 25.11.2005 rejected the claim of the respondent and confirmed the demand of Rs. 47,62,366/- towards VAT, Rs. 3,32,258/- towards interest and also imposed a penalty of Rs. 1,20,56,196/-. The objections of the respondent under Section 74 of Delhi VAT Act were also rejected and hence the respondent preferred an appeal which was rejected by the Additional Commissioner on 11.03.2008. Further appeals before the VAT Tribunal, 40 in total in respect of different assessment periods were also disallowed by the VAT Tribunal by the common judgment dated 07.06.2012. On the issue of penalty there arose a difference between the two Members of the Tribunal and hence that was referred to third Member and is supposed to be pending. The respondent challenged the common judgment and order of the Tribunal vide STA Nos. 51-70 of 2012 and those appeals have been allowed by the order under appeal dated 28.09.2012.

6. The Assessing Officer as well as the Appellate Authority returned a finding that there was no link between the contractee, DMRC and the supplier of goods that were imported by the respondent and hence on account of lack of any privity of contract the requirements of Section 3(a) of the CST Act were not satisfied in respect of movement of goods from outside Delhi to the required site of DMRC in Delhi. Similar finding was returned in respect of movement of the goods under import, i.e., it can not be held to have been occasioned by the contract between DMRC and the respondent.

7. The High Court heard the matter in detail and considered all the relevant facts particularly terms, conditions and stipulations in the contract in the context of contention on behalf of respondent that the revenue authorities and tribunal had failed to consider relevant clauses and conditions of the contract which demonstrate and clarify that the importation of equipment was strictly as per requirement and specification set-out by DMRC in the contract and only to meet such requirement of supply the specified goods were imported and hence the event of import and supply was clearly occasioned by the contract awarded to the respondent by the DMRC. There was a similar contention in respect of procurement of goods within the country and their movement from one state to another. After carefully considering the relevant provisions of the contract, specifications of goods, requirement of inspection of goods at more than one occasion and right of rejecting the goods even on testing after supply, prompted the High Court to accept the contentions advanced on behalf of respondent that the transactions leading to import of goods as well as movement of goods from one state to another were occasioned by the contract awarded by the DMRC to the respondent and hence the transactions were not covered by the Delhi VAT Act but the CST Act.

8. Some of the material terms governing the contract between the respondent and DMRC which were highlighted before the Tribunal and have been noticed by the High Court are as follows:

> *"The Letter of Acceptance issue by DMRC, in terms of the Contract reads as:*
>
> > *"Your proposal to execute OHE works by M/s Best & Crompton Engg. Ltd. the sub-contractor and control and monitoring (SCADA, AMS, BMS) yourself is accepted. Other sub-contractor (s)/vendor approval (s) shall be as per relevant tender conditions."*
> >
> > *The contract specifically required approval of DMRC for sub-contractors/vendors as evident from the following provisions of the SCC to the Contract:*

"1.1.2.6 "Sub-Contractor" means any person named in the Contract as a sub-contractor, manufacturer or supplier for a part of the works or any person to whom a part of the Works has been subcontracted with the approval of the Employer and the legal successors in tittle to such person, but not any assignee of such person." (excerpts from GCC).

Clauses 4 and 4.5 read as follows:

"4. Sub-Contractors

For major sub-contracts (each costing over Rs. Four hundred thousand) it will be obligatory on the part of the Contractor to obtain approval of the Employer to the indentity of the sub-contractor. The Employer will give his approval after assessing and satisfying himself of the capability, experience and equipment resources of the sub-contractor. In case the Employer intends to withhold his approval, he shall inform the contractor in time to enable him to make alternative arrangements.

4.5 The Contractor shall not sub-contract the whole of the Works unless otherwise stated in the Special Condition of Contract:

(a) the Contractor shall not be required to obtain approval for purchases of Materials which are in accordance with the standards specified in the Contract or provisions of labour or for the sub-contracts for which the Sub–contractor is named in the Contract.

(b) The prior approval of the Engineer shall be obtained for other proposed Sub-contractors;

(c) Not less than 28 days before the intended date of each Sub-contractor commencing work, the Contractor shall notify the Engineer of such intention; and

(d) The contractor shall give fair and reasonable opportunity for contractors in India to be appointed as Sub-contractors.

The Contractor shall be responsible for observance by all Sub- contractors of all the provisions of the contract. The Contractor shall be responsible for the acts or defaults of any Sub-contractor, his representatives or employees, as fully as if they were the acts or defaults of the Contractor, his representatives or employees and nothing contained in sub-clause 4.5 (a) shall constitute a waiver of the Contractor's obligations under this Contract."

38 (c) Approved Sub-contractors:

Approved Sub-contractors shall be appointed in accordance with the procedure described as hereunder. If the Engineer/Employer instructs, the letting of a sub-contract for an item of Provisional Sums will be subject to pre-qualification of tenderers. In such a case, the Contractor shall prepare documents required for the pre-qualification, (including where

appropriate bills of quantities, quantified schedules of prices or rates, specifications, drawings and other like documents) for the work, Plant, Materials or services included in each such Provisional Sum."

Some of the other terms contained in the contract documents are as follows:

"13. Sub-clause 5.1

Construction and Manufacture Documents

No examination by the Engineer of the drawings or documents submitted by the Contractor, nor any approval by the Engineer in relation to the same, with or without amendment, shall absolve the Contractor from any of his obligations under the Contract or any liability for or arising from such drawings or documents.

Should it be found at any time after notification of approval that the relevant drawings or documents do not comply with the Contract or do not agree with the drawings or documents in relation to which the Engineer has previously notified his approval, the Contractor shall, at his own expense, make such alterations or additions as, in the opinion of the Engineer, are necessary to remedy such non-compliance or non-agreement and shall submit all such varied or amended drawings or documents for the approval of the Engineer.

Workmanship, materials and plant

Inspection:

7.3 The employer and the engineer shall be entitled during manufacture, fabrication and preparation at any places where work is being carried out, to inspect, examine and test the materials and workmanship, and to check the progress of manufacture, of all Plant and Materials to be supplied under the Contract. The contractor shall given them full opportunity to inspect, examine, measure and test any work on Site or wherever carried out.

The Contractor shall give due notice to the Engineer whenever such work is ready, before packaging, covering up or putting out of view. The Engineer shall then carry out the inspection, examination, measurement or testing without unreasonable delay. If the Contractor fails to give such notice, he shall, when required by the Engineer, uncover such work and thereafter reinstate and make good at his own cost." The DMRC issued a letter listing out the approved or authorized list of suppliers which reads as:

"TO WHOMSOEVER IT MAY CONCERN

This is to certify that following is a list of the approved vendors for 3E21 contract entered into between the DMRC Ltd. and ABB Ltd. On 4th August 2004.

1.	*40 MVA Traction Transformer*	*M/s. ABB Limited, Vadodara*
2.	*15 MVA Power Transformer*	*M/s. Crompton Greaves Ltd., Bhopal*
3.	*66 KV/25 KV Circuit Breakers*	*M/s. ABB Limited, Vadodara*
4.	*66 KV Capacity Voltage Transformer*	*M/s. ABB Limited, Vadodara*
5.	*66 KV Current Transformer*	*M/s. ABB Limited, Italy*
6.	*66 KV/25 KV Isolators*	*M/s. Switchgear and Structural Limited, Hyderabad*
7.	*60 KV/42KV lighting arresters*	*M/s. Elpro International Ltd., Pune*
8.	*Control and Relay panels*	*M/s. ABB Limited, Bangalore*
9.	*SCADA Systems*	*M/s. ABB Limited, Bangalore*
10.	*MV Switchgear*	*M/s. ABB Limited, Nashik*
11.	*Battery Bank*	*M/s. AMCO Power Systems, Bangalore*
12.	*LT Switchgear/ ACDB/DCDB*	*M/s. HEI Engineering (P) Ltd., Gurgaon*
13.	*3000/2500/1000/500/200 KVA Dry Type Auxiliary Transformer*	*M/s. Electromecannica Colombia, Italy*
14.	*66 KV/33 KV/25 KV HT Cable*	*M/s. ILJIN, Korea*
15.	*LV Cables (power and control)*	*M/s. KEI Industries, Bhiwadi*
16.	*66/33/25 KV Cable Terminations and joints*	*M/s. Tyco, Germany*
17.	*Ms. Round*	*M/s IISCO, Kolkata*
18.	*Cable Trays/Earthing materials / Electrodes.*	*M/s Techno Engg. Co, Chandigarh*

9. So far as the issue in respect of sale in the course of inter-state trade is concerned, the Tribunal rejected the claim on the ground that there was no specific order for supply of such goods issued by DMRC nor there was specific instruction for inter-state movement of goods. The High Court found that in fact the terms of the contract envisaged inter-state movement of goods. Such movement of goods was within the knowledge of DMRC because there was total ban on setting up/ working of heavy industries in Delhi and the DMRC had approved 18 places within the country from where the equipments and goods had to be supplied. These included the premises and factories of the respondent also. On facts, therefore, it was rightly held by the High Court that the inter-state movement of goods was within the contemplation of the parties and it can be reasonably presumed that such movement was to fulfill the terms of the contract and therefore the transaction was covered by Section 3(a) of the CST Act. The law on this issue was also considered by the High Court in correct perspective after noticing the case of ***Tata Iron and Steel Co. Ltd. v. S.R. Sarkar (1960) 11 STC 655 = AIR 1961 SC 65*** that where the goods moved from one state to another as a result of a covenant in the contract of sale it would be clearly a sale in the course of inter- state trade. The conclusion of the High on this issue also finds ample support from the following case laws which were noticed by the High Court (1) ***Oil India Ltd. v. The Superintendent of Taxes (1975) 35 STC 445 (SC) = (1975) 1 SCC 733*** (2) ***English Electric Company of India Ltd. v. The Deputy Commercial Tax Officer (1976) 38 STC 475 (SC) = (1976) 4 SCC 460*** (3) ***South India Viscose Ltd. v. State of Tamil Nadu (1981) 48 STC 232 (SC) = (1981) 3 SCC 457***.

In **Oil India Ltd.** this Court held that the inter-state movement must be the result of a covenant, express or implied in the contract of sale or an incident of the contract. In other words, the covenant regarding inter- state movement need not be specified in the contract, It would be enough if the movement was in pursuance of or incidental to the contract of sale. In **English Electric Co. of India Ltd.** the law was clarified thus: "if there is a conceivable link between the movement of the goods and the buyer's contract, and if in the course of inter-State movement the goods move only to reach the buyer in satisfaction of his contract of purchase and such a nexus is otherwise inexplicable, then the sale or purchase of the specific/ascertained goods ought to be deemed to have taken place in the course of inter-State trade or

commerce……". In **South India Viscose Ltd.** it was held that if there is a "conceivable link" between contract of sale and the movement of goods from one state to another to meet the obligation under a contract of sale it would amount to an inter-state sale and such character will not be changed on account of interposition of an agent of the seller who may temporarily intercept the movement.

10. On the issue of sale in the course of import it is relevant to extract Section 3 and 5 of the CST Act, 1956 enacted by the Parliament in exercise of powers under Article 286(2) of the Constitution of India:

> ***"3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.-*** *A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase:*
>
> *(a) occasions the movement of goods from one State to another; or*
>
> *(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.*
>
> *Explanation1- Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.*
>
> *Explanation 2 – Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.*
>
> ***5. When is a sale or purchase of goods said to take place in the course of import or export.***
>
> *(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.*
>
> *(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.*
>
> *(3) Notwithstanding anything contained in sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export."*

11. A Constitution Bench of this Court had the occasion to consider in the case of **M/s. K.G. Khosla & Co.** (supra) whether sales in that case were in the course of imports. The assessee in that case had a contract with the Director General of Supplies, New Delhi for supply of axle bodies manufactured by its principals in Belgium. Although goods were inspected in Belgium also but under the contract they could be rejected on further inspection in India. After supplying the goods the assessee claimed the sales to be in course of import. After losing up to High Court, the assessee succeeded before the Supreme Court. The Constitution Bench held that Section 5(2) of the CST Act does not prescribe any condition that before the sale could be

said to have occasioned import, it is necessary that the sale should precede the import. The sale is only required to be incidental to the contract. In other words the movement of goods from another country to India should be in pursuance of the conditions of the contract. The incident was held to be import of goods within Section 5(2) on the reasoning that the entire transaction was an integrated one by which a foreign seller through its Indian agent namely the assessee sold the goods to Indian purchaser namely the Director General of Civil Supplies. It will be useful to reproduce the passage from that judgment which is as follows:

> *" ……appellant K.G. Khosla & Co., hereinafter referred to as "the assessee" entered into a contract with the Director-General of Supplies and Disposal, New Delhi, for the supply of axle-box bodies. According to the contract the goods were to be manufactured in Belgium, and the D.G.I.S.D., London, or his representative, was to inspect the goods at the works of the manufacturers. He was to issue an inspection certificate. Another Inspection by the Deputy Director of Inspections, Ministry of W.H. & S., Madras, was provided for in the contract. It was his duty to issue inspection notes on Form No. WSB.65 on receipt of a copy of the Inspection Certificate from the D.G.I.S.D. London and after verification and visual inspection. The goods were to be manufactured according to specifications by M/s La Brugeoies. ET. Nivelles, Belgium.*
>
> x x x
>
> *10. The next question that arises is whether the movement of axle-box bodies from Belgium into Madras was the result of a covenant in the contract of sale or an incident of such contract. It seems to us that it is quite clear from the contract that it was incidental to the contract that the axle-box bodies would be manufactured in Belgium, inspected there and imported into India for the consignee. Movement of goods from Belgium to India was in pursuance of the conditions of the contract between the assessee and the Director-General of Supplies. There was no possibility of these goods being diverted by the assessee for any other purpose. Consequently we hold that the sales took place in the course of import of goods within Section 5(2) of the Act, and are, therefore, exempt from taxation."*

12. For analysing the main contention advanced on behalf of the appellant that the present case is identical to that of the assessee in the case of **Binani Bros**. (supra), we have examined the facts of **Binani Bros.** (supra) with meticulous care. In para 13 of that judgment the most peculiar and conspicuous aspect of **K.G. Khosla** case (supra) was noticed and highlighted that "under the contract of sale the goods were liable to be rejected after a further inspection by the buyer in India." In the same paragraph it was further highlighted with the help of a quotation from **K.G. Khosla** case (supra) that movement of goods imported to India was in pursuance of the conditions of the contract between the assessee and the Director General of Supplies. There was no possibility of such goods being used by the assessee for any other purpose. In the next paragraph of the Report the peculiar facts of **Binani Bros**. (supra) were highlighted in the following words, "….. the sale by the petitioner to the DGS&D did not occasion the import. It was purchase made by the petitioner from the foreign sellers which occasioned the import of the goods". In paragraph 16 it was further pointed out that there was no obligation on the DGS&D to procure import licences for the petitioner.

13. There is no difficulty in holding that **Binani Bros.** (supra) did not differ with the earlier judgment of a Constitution Bench in the case of **K.G. Khosla** (supra). A careful analysis of the facts in **Binani Bros.** (supra) leads to a conclusion that the case of West Bengal Sales Tax authorities in that matter that there were two sales involved in the transactions in question, one by the foreign seller to the assessee and the second by the assessee to the DGS&D, because

there was no privity of contract between the DGS&D and the foreign sellers, was accepted mainly because the assessee was found entitled to supply the goods to any person, even other than DGS&D because there was no specification of the goods in such a way as to render it useable only by the DGS&D. This was coupled with the fact that the latter had imposed no obligation on the assessee to supply the goods only to itself. Further, there were no obligations of testing and approving the goods during the course of manufacture or for that matter, even at a later stage with a right of rejection. Such a right of rejecting the specific goods in the present case is identical to the similar right in respect of goods in **K.G. Khosla** case (supra). Hence we are unable to accept the main contention of the appellant that this case is similar to that of **Binani Bros** (supra). To the contrary, we agree with the reasonings of the High Court for coming to the view that the present case is fit to be governed by the ratio laid down in **K.G. Khosla**'s case (supra).

14. The legal principles enunciated in **K.G. Khosla** (supra) have been reiterated in ***State of Maharashtra vs. Embee Corporation, Bombay 1997 (7) SCC 190*** and stand supported by the judgment in the case of ***Deputy Commissioner of Agricultural Income Tax and Sales Tax, Ernakulam vs. Indian Explosives Ltd. 1985 (4) SCC 119***, as well as in ***Indure Ltd. and Anr. vs. CTO & Ors. 2010 (9) SCC 461***. In these cases, sale in course of imports was accepted without requiring privity of contract between the foreign supplier and the ultimate consumer in India.

15. The aforesaid conclusion leading to our concurrence with the views of the High Court is also based upon the salient facts, particularly the various conditions in the contract and other related covenants between DMRC and the respondent which have been spelt out in paragraph 31 of the High Court judgment, enumerated and described as follows :

> *"(1) Specifications were spelt out by DMRC;*
>
> *(2) Suppliers of the goods were approved by the DMRC;*
>
> ***(3)*** *Pre-inspection of goods was mandated;*
>
> ***(4)*** *The goods were custom made, for use by DMRC in its project;*
>
> ***(5)*** *Excise duty and Customs duty exemptions were given, specifically to the goods, because of a perceived public interest, and its need by DMRC;*
>
> ***(6)*** *The Project Authority Certificate issued by DMRC the name of the subcontractors as well as the equipment/goods to be supplied by them were expressly stipulated;*
>
> ***(7)*** *DMRC issued a Certificate certifying its approval of foreign suppliers located in Italy, Germany, Korea etc. from whom the goods were to be procured.*
>
> ***(8)*** *Packed goods were especially marked as meant for DMRC's use in its project."*

16. Before us there was no attempt to assail the aforesaid features and to even remotely suggest any factual error on the part of the High Court in noting those features.

17. The salient features flowing out as conditions in the contract and the entire conspectus of law on the issues as notice earlier, leave us with no option but to hold that the movement of goods by way of imports or by way of inter-state trade in this case was in pursuance of the conditions and/or as an incident of the contract between the assessee and DMRC. The goods were of specific quality and description for being used in the works contract awarded on turn key basis to the assessee and there was no possibility of such goods being diverted by the assessee for any other purpose. Hence the law laid down in **K.G.**

Khosla's (supra) case has rightly been applied to this case by the High Court. We find no reasons to take a different view.

18. In the result the appeals are found without any merit and dismissed as such. The parties are, however, left to bear their own costs.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 5649 OF 2016

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SURAJ BHAN MAM CHAND
Vs
THE STATE OF HARYANA AND ANOTHER

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

22nd March, 2016

HF ▶ None (Direction issued)

Respondent is directed to take a decision on the letter sent by petitioner for issue of refund.

REFUND – LACK OF ACTION ON PART OF DEPARTMENT – AMOUNT FOUND IN EXCESS AND REFUNDABLE – APPLICATION FOR REFUND VOUCHER SENT AND REFUND RECOMMENDED TO BE RELEASED- SUBSEQUENTLY, ISSUE OF REFUND TAKEN UP AGAIN ON BASIS OF 'C' FORMS THAT NEEDED VERIFICATION – LETTERS SENT AGAIN TO DEPARTMENT REGARDING NON RECEIPT OF REFUND VOUCHER – NO RESPONSE GIVEN – WRIT FILED – RESPONDENT DIRECTED TO DECIDE ON THE LETTER SENT AND GRANT REFUND WITHIN A PERIOD OF ONE MONTH AFTER DECISION, IF FOUND ELIGIBLE – WRIT DISPOSED OF – *SECTION 20 OF HVAT ACT, 2003*

Facts

For the assessment year 2011-12 an amount of Rs 13,88,749/- was found in excess and refundable to the petitioner. The petitioner applied for refund voucher. It was ordered o be released by the authorities. However, the joint ETC sent it for verification of c forms submitted and produced by the petitioner. A meeting was held subsequently to finalize the issue of refund. The petitioner sent letter to the department informing them for non receipt to refund voucher but no response was received. A writ is filed in this regard.

Held:

The respondent is directed to take a decision on the letter sent by petitioner within two months. If the petitioner is found entitled to the refund, the same be paid within next one month in accordance with law.

Present: Mr. Jaskaran Singh, 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 mandamus directing respondent No.2 to refund the amount of tax paid in excess by the petitioner and as assessed by the assessing authority vide order dated 27.3.2015 (Annexure P-1).

2. The petitioner is engaged in the business of gunny and jute bags and purchased the bardana from within the State of Haryana after payment of full tax as well as outside the State of Haryana which is sold in the course of Inter-State Trade or Commerce. The assessment for the year 2011-12 was framed by the Excise and Taxation Officer-cum- Assessing Authority vide order dated 27.3.2015 (Annexure P-1) for the year 2013-14 under Section 15(2) of the Value Added Tax Act, 2003 and an amount of Rs. 13,88,749/- was found in excess and refundable to the petitioner. The petitioner applied for issue of refund voucher and respondent No.2 recommended vide letter dated 6.5.2015 (Annexure P2) for release of the refund amount to the Deputy Excise and Taxation Commissioner who recommended vide letter, Annexure P-3, for the refund of the said amount to the Joint Excise and Taxation Commissioner (Range), Ambala. After the file of the petitioner was put up before the Joint Excise and Taxation Commissioner (Range), Ambala for grant of necessary approval, the same was sent back for verification of C-Forms submitted and produced by the petitioner and the entire exercise was required to be carried out before the assessment is framed. The meeting was held for the purpose of finalizing the issue of refund which is discernible from the minute sheet, Annexure P-4. The petitioner vide letters dated 5.10.2015 and 28.11.2015 (Annexure P-5 Colly) informed the department for non-receipt of the refund voucher. Thereafter, the petitioner sent a letter dated 2.2.2016 (Annexure P-6) to respondent No.2 for issuance of refund voucher of Rs. 12,88,749/-, 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 sent a letter dated 2.2.2016 (Annexure P-6) 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 letter dated 2.2.2016 (Annexure P-6), 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. It is further directed that in case it is found that the petitioner is entitled to the amount of refund, the same be paid to it within next one month in accordance with law.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 12693 OF 2015

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CHHABRA TRADERS
Vs
STATE OF PUNJAB AND ANOTHER

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

21st January, 2016

HF ▶ Assessee

Assessment order passed without hearing the assessee is held to be violative of natural justice.

WRIT / ALTERNATIVE REMEDY –PRINCIPLES OF NATURAL JUSTICE – *EX-PARTE* ASSESSMENT – WRIT FILED AGAINST *EXPARTE* ASSESSMENT ORDER CONTENDING THAT PETITIONER WAS MEDICALLY UNFIT ON DUE DATE FOR APPEARANCE – VIOLATION OF NATURAL JUSTICE PLEADED – ALTERNATIVE REMEDY OUGHT TO BE AVAILED AS PER RESPONDENT - HELD - IMPUGNED ORDER IS VIOLATIVE OF NATURAL JUSTICE AS THE ASSESSEE WAS PREVENTED BY SUFFICIENT CAUSE FOR NON-APPEARANCE – MATTER IS RESTORED TO ASSESSING OFFICER TO EXAMINE THE MATTER AFRESH AFTER GIVING OPPORTUNITY TO PETITIONER TO PRODUCE DOCUMENTS – *SECTION 29 OF PVAT ACT, 2005 ; ARTICLE 226 OF CONSTITUTION OF INDIA.*

Facts

The petitioner had filed his returns.Ex - parte assessment was framed for the year 2010-11 thereby raising a demand under the local Act as well as CST Act. It is contended that the petitioner was unable to appear due to his medical unfitness on due date which has led to his being deprived of opportunity of hearing. The respondent department has argued that the petitioner should avail alternative remedy instead of filing a writ.

Held:

Since the petitioner could not appear due to his medical unfitness, sufficient opportunity to present his case was not afforded to the petitioner before passing the impugned order.

Thus the assessment order is held to be passed in violation of principles of natural justice as per law laid down in an earlier judgment passed by the Apex court. The matter is restored to the Assessing officer to examine petitioner's claim for input tax credit after giving an opportunity to produce all the documents.

Cases referred:

- *Larsen and Toubro Limited v. The State of Haryana and others. 2012(2) 166 PLR 345*
- *Canara Bank v. V.K. Awasthy AIR 2005 SC 2009*

Present: Mr. Ankit Dhiman, Advocate for the petitioner.
Mr. Jagmohan Bansal, Addl.A.G.Punjab.

******

RAJ RAHUL GARG,J.

1. Challenge in this petition is to the order dated 26.5.2015, Annexure PI passed ex parte by the Excise and Taxation-cum- Designated Officer for the assessment year 2010-11 as the petitioner was unable to represent its case on medical ground on the date of passing the assessment order.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner firm is a registered dealer under the provisions of the Punjab Value Added Tax Act, 20905 (in short, "the PVAT Act"). It is engaged in the business of trading of iron and steel hardware goods at Village Sohana, District Mohali. In the year 2005, the State of Punjab had enacted the PVAT Act to provide for levy and collection of value added tax and turnover tax on the sales or purchases of goods. The petitioner filed its returns for the year 2010-11 on quarterly basis in Form VAT 15. Based on the aforesaid returns, annual statement in Form VAT 20 was also filed. Vide order dated 26.5.2015, Annexure P.1, assessment had been framed ex parte creating a demand of Rs. 24,35,706/- and Rs. 20,782/- under the PVAT Act and Central Sales Tax Act, 1956 (in short, "the CST Act") respectively. According to the petitioner, its proprietor could not appear before respondent No.2 as he was not medically fit on the due date. Medical certificate has also been attached as Annexure P.2 with the petition. Hence the instant writ petition by the petitioner.

3. Reply by way of affidavit of Excise and Taxation Officer, Mohali on behalf of the respondents has been filed wherein it has been inter alia stated that the petitioner has filed the present petition without availing the alternative remedy of appeal before the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala. Further, the petitioner did not appear before the authorities on the date of the passing of the impugned order. On these premises, prayer for dismissal of the petition has been made.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner submitted that the petitioner could not appear before the authorities on the due date on medical ground. Therefore, as sufficient opportunity of hearing was not given to the petitioner to represent its case, the impugned order is violative of the principles of natural justice. On the other hand, learned State counsel did not dispute the ex parte order dated 26.5.2015. He, however, submitted that the petitioner has an efficacious remedy of appeal against the impugned order.

6. After hearing learned counsel for the parties, perusing the impugned order and overall facts and circumstances of the case, we find that the petitioner was unable to appear before the respondent authorities on the date of the passing of the assessment order on medical ground. Therefore, sufficient opportunity to represent its case was not afforded to the petitioner before passing the impugned order. Thus, there was violation of the principles of natural justice.

7. The Hon'ble Apex Court in **Canara Bank v. V.K. Awasthy AIR 2005 SC 2009** while dealing with the doctrine of principles of natural justice had noticed as under:-

> *"8. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.*

9. The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

10. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasijudicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "'vocate interrogate and adjudicate".

In the celebrated case of Cooper v. Wandsworth Board of Works, (1963) 143 ER 414, the principle was thus stated:

> *"Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat". Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.*

11. Principles of natural justice are those rules which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice."

7. Further, this Court in ***Larsen and Toubro Limited v. The State of Haryana and others.*** 2012(2) 166 PLR 345, considering the question of entertaining writ petition where alternate statutory remedy was available, had in para 6 observed thus:-

"6.The following are the broad principles when a writ petition can be entertained without insisting for adopting statutory remedies

i) where the writ petition seeks enforcement of any of the fundamental rights;

ii) where there is failure of principles of natural justice; or

iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged...."

8. No other point was raised.

9. In view of the above, the impugned order dated 26.5.2015, Annexure P. 1 passed in violation of the principles of natural justice as per the law laid down by the Apex Court in ***V.K.Awasthy's*** case (supra) is set aside and the matter is restored to the Assessing Officer to examine the petitioner's claim for Input Tax Credit afresh in accordance with law after giving opportunity to it to produce all the relevant documents. The petition stands disposed of. The parties are directed to appear before the Assessing Officer on 8.3.2016.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 16031 OF 2015

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SUPER MULTICOLOR PRINTERS PVT. LTD.
Vs
UNION TERRITORY, CHANDIGARH AND ANR.

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

1st March, 2016

HF ▶ Assessee

General service of notice by publication on official website is not a valid service of notice under Rule 86 of PVAT Rules.

NOTICE – VALIDITY OF SERVICE – RETURNS FILED FOR THE ASSESSMENT YEAR 2007-08 ON 20.11.2008 – PERIOD OF FRAMING ASSESSMENT EXTENDED ON 18.11.2011 BY A GENERAL SERVICE OF NOTICE BY UPLOADING ON WEBSITE – DEMAND RAISED VIDE ORDER DATED 17.11.2014 - WRIT FILED CHALLENGING EXTENSION ORDER AND ASSESSMENT ORDER ON THE GROUND OF LIMITATION – HELD: GENERAL NOTICE OR PUBLICATION ON WEBSITE NOT IS NOT A VALID WAY OF SERVING NOTICE AS PER RULE 86 OF RULES – ASSESSMENT ORDER PASSED THUS VOID AND ILLEGAL – *SECTION 29 OF PVAT ACT, 2005 AND RULE 86 OF PVAT RULES, 2005*

Facts

For the assessment year 2007-08, returns were filed on 20.11.2008. The Commissioner vide order dated 18.11.2011 extended the period of limitation by a general order for the year in question by uploading on its website. Consequently, assessment was framed on 17.11.2014 and a demand was raised against which a writ is filed contending that the general service of notice was against the Rules.

Held:

Rule 86 of PVAT Rules does not permit a general notice or by publication on the website of department. Service of individual notice is essential for invoking power and absence of such individual notice renders the assessment order void and illegal. Thus, the impugned orders are set aside.

Cases referred:

- *A.B. Sugars Limited v. State of Punjab and others (2010) 29 VST 538 (P&H)*
- *State of Punjab v. M/s Olam Agro India Ltd. VATAP No. 84 of 2013*
- *Sony India Pvt. Ltd. v. Union Territory of Chandigarh and another CWP No. 15695 of 2014*

Present: Mr. Sandeep Goyal, Advocate for the petitioner(s).
Mr. Vikas Cuccria, Advocate for the respondents, (in CWP No. 16031 of 2015).
Mr. Vikram Sharda, Advocate for the respondents, (in CWP No. 26000 of 2015).

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AJAY KUMAR MITTAL,J.

1. This order shall dispose of two petitions bearing CWP Nos. 16031 and 26000 of 2015 as according to learned counsel for the parties, the questions of law and facts involved therein are identical. For brevity, the facts are being extracted from CWP No. 16031 of 2015.

2. 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 order dated 18.11.2011 (Annexure P-1) under proviso to Section 29(4) of the Punjab Value Added Tax Act, 2005 (in short "the Act") for extension of limitation period for the assessment year 2007-08; for quashing the assessment order dated 17.11.2014 (Annexure P-2) whereby tax had been levied upon the petitioner(s) for the assessment year 2007-08 even though the assessment had already become barred by limitation in view of Section 29(4) of the Act as applicable to UT, Chandigarh on 20.11.2011 and for issuance of a writ of mandamus restraining the respondents from enforcing the payment of tax on the basis of demand notice issued in Form No. VAT-56.

2. A few facts necessary for adjudication of the writ petitions as narrated therein may be noticed. The petitioner is engaged in the business of manufacturing of printing materials like multicolor labels, pharma foils, corrugated boxes etc. On 15.12.2005, the Central Government extended the Act to the Union Territory of Chandigarh for levy and collection of VAT and turnover tax on the sales or purchases of goods and for the matters connected therewith and incidental thereto and repealed the Punjab General Sales Tax Act, 1948 as applicable to UT, Chandigarh. The petitioner had filed its return for the year 2007-08 on quarterly basis in Form VAT-15. On the basis thereof, statement showing a gross turnover of ? 13,13,83,980/- was also filed. As per Section 29(4) of the Act, the assessment of the dealer could have been framed only within a period of three years from the last date of filing of the annual statement. Since, in the present case, the annual statement in Form VAT-20 was filed on 20.11.2008 for the assessment year 200708, the assessment, if any, could have been framed only upto 20.11.2011, i.e. within a period of three years. The Excise and Taxation Commissioner, UT, Chandigarh vide order dated 18.11.2011 (Annexure P-1) extended the period of limitation by a general order for the year 2007-08 by uploading the same on its official website without any service upon the petitioner under Rule 86 of the Chandigarh Value Added Tax Rules, 2006 (hereinafter referred to as "the Rules"). As per proviso to Section 29(4) of the Act, if the Commissioner grants any extension of period for framing assessment, then it is imperative on the part of the department to provide an opportunity of hearing before granting any such extension. In the present case, no opportunity of hearing was granted to the petitioner and the assessment was finalized exparte vide order dated 17.11.2014 (Annexure P-2) by creating an additional demand. Similar order passed by the Excise and Taxation Commissioner, Punjab extending the period of limitation had been set aside by the Tribunal holding that the extension is not valid in terms of judgment of this Court in ***A.B. Sugars Limited v. State of Punjab and others (2010) 29 VST 538 (P&H)***. The Division Bench of this Court vide order dated 20.8.2013 passed in ***VATAP No. 84 of 2013 [State of Punjab v. M/s Olam Agro India Ltd. (formerly Olam Export India Ltd.)]*** upheld the order of the Tribunal by observing that the extension of limitation period without proper service was not valid. Further, this Court vide order dated 27.4.2015 (Annexure P-3) passed in ***CWP No. 15695 of 2014 (Sony India Pvt. Ltd. v. Union Territory of Chandigarh and another)*** held that Rule 86 of the Rules does not envisage service of a general notice or by publication on the website of the department and that the absence of individual notices rendered the assessment order illegal and void. Hence, the present writ petitions for quashing the extension order as well as the assessment order passed by respondent No.2.

3. We have heard learned counsel for the parties.

4. A Division Bench of this Court on ***M/s Olam Agro India Ltd's case (supra)*** had held that Rule 86 of the Rules does not envisage service of a general notice or by publication on the website of the department. It was further held that the service of an individual notice is a sine qua non for invoking power and the absence of such individual notice renders the assessment orders illegal and void. The said judgment was followed by another Division Bench of this Court in ***Sony India Pvt. Ltd's case (supra)***.

5. Admittedly, no individual notices were issued to the petitioners whereas general notices were put up on the website which would not meet the legal requirement under proviso to Section 29(4) of the Act read with Rule 86 of the Rules.

6. In view of the above, Annexure P-2 is quashed in both the writ petitions and the present writ petitions are disposed of in terms of the order dated 27.4.2015 (Annexure P-3) passed in ***Sony India Pvt. Ltd's case (supra)***.

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PUNJAB & HARYANA HIGH COURT

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CWP NO. 7129 OF 2016

R.P. METTALS
Vs
STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

21st April, 2016

HF ▶ Dealer

Order for Cancellation of Registration Certificate is set aside having been passed without issuance of notice.

NATURAL JUSTICE – REGISTRATION CERTIFICATE – CANCELLATION OF – REGISTRATION CERTIFICATE CANCELLED – NO OPPORTUNITY OF HEARING GRANTED BEFORE CANCELLING – WRIT FILED CONTENDING IMPUGNED ORDER TO HAVE BEEN PASSED IN VIOLATION OF PRINCIPLES OF NATURAL JUSTICE – ORDER SET ASIDE- AUTHORITIES TO DECIDE THE MATTER AFRESH -

Facts
It is contended by the petitioner that its registration certificate was cancelled without affording an opportunity of hearing to the petitioner. Hence, a writ is filed praying for quashing of the impugned order.

Held:
It is undisputed that no opportunity was afforded to the petitioner before canceling the R.C. except one letter with which it was confronted. Thus, the order cancelling the R.C. is set aside and it is open to the authorities to proceed afresh.

Present: Mr. Navdeep Monga, Advocate for
Mr. Sandeep Goyal, Advocate for the petitioner.
Mr. Jagmohan Bansal, Addl. AG, Punjab.

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AJAY KUMAR MITTAL,J.

1. The petitioner has approached this Court under Articles 226/227 of the Constitution of India, seeking quashing of order dated 5th April, 2016 (Annexure P-10), whereby, the Registration Certificate dated 9h June, 2009 (Annexure P-1) of the petitioner, was cancelled by the respondent authorities.

2. The primary grievance of the petitioner is that the aforesaid action has been taken by the respondent authorities without following the principles of natural justice, as neither any notice was issued nor any opportunity of hearing was provided to the petitioner before doing so.

3. Notice of motion was issued. Upon notice, reply has been filed by the State. However, this has not been disputed by the learned State counsel that the Registration Certificate had been cancelled without issuing any prior notice to the petitioner though the petitioner was confronted with one letter.

4. On instructions from Sh. Gulshan Hurria, Excise & Taxation Officer, Mandi Gobindgarh-respondent No.3, learned State counsel states that the impugned order dated 9th April, 2016 (Annexure P-10), vide which the Registration Certificate of the petitioner was cancelled, may be set aside. However, liberty be granted to the respondent authorities to pass a fresh order after affording an opportunity of hearing to the petitioner, in accordance with law.

5. In view of the above, while disposing of the writ petition, the impugned order dated 5th April, 2016 (Annexure P-10) is hereby set-aside. It shall, however, be open to the respondent authorities to proceed in the matter afresh, in accordance with law.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 7568 OF 2016

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RECORDERS & MEDICARES SYSTEMS (P) LTD.
Vs
STATE OF HARYANA AND OTHERS

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

26th April, 2016

HF ▶ Directions issued

Assessing Authority is directed to decide the representative filed by assessee against the issuance of demand notice.

NOTICE -LACK OF ACTION ON PART OF DEPARTMENT – DEMAND NOTICES ISSUED UNDER THE ACT – REPLY FILED BY PETITIONER TO THE SAID NOTICES – NO DECISION TAKEN ON THAT ISSUE – WRIT FILED – RESPONDENT DIRECTED TO DECIDE THE REPLY FILED WITHIN THE TIME SPECIFIED AFTER HEARING THE PETITIONER- WRIT DISPOSED OF

Facts

In this case demand notices were issued under the Haryana General Sales Tax Act, 1973. The petitioner had filed a reply to these which stood undecided by the authorities. Thus, a writ is filed for quashing of the said notices.

Held:

The respondent is directed to decide the reply so filed after affording an opportunity of hearing to the petitioner within the time specified.

Present: Mr. Muneesh Malhotra, Advocate,
Mr. Sandeep Kumar Bokolia, Advocate and
Mr. Vikram V. Minhas, Advocate for the petitioner.

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AJAY KUMAR MITTAL,J.

1. Prayer in this writ petition filed under Article 226 of Constitution of India for quashing the demand notices dated 18.11.2014 (Annexure P7), dated 15.04.2015 (Annexure P10), dated 18.08.2015 (Annexure P14) and dated 29.09.2015 (Annexure P16) issued by the Excise & Taxation Officer-cum-Assessing Authority, Mini Secretariat., Sector-1, Panchkula, Haryana (respondent No.3) under the Haryana General Sales Tax Act, 1973.

2. It is not disputed that the petitioner has approached the concerned respondent by filing detailed reply dated 05.03.2015 (Annexure P9). According to learned counsel for the petitioner, the same has not been decided by the said authority so far.

3. In view thereof, we dispose of the writ petition by directing respondent No.3 to pass a speaking order on the reply dated 05.03.2015 (Annexure P9) filed by the petitioner after affording an opportunity of hearing to the petitioner within two months from the date of receipt of certified copy of this order . It is, however, clarified that if any adverse order is passed by the said 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 26 OF 2010

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S.M.V. AGENCIES PVT LTD.
Vs
STATE OF PUNJAB AND ANR.

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

12th February, 2016

HF ▶ Revenue

The activity of Construction and sale of flats to prospective buyers is covered under 'Works Contract; and hence liable to tax.

WORKS CONTRACT - REAL ESTATE DEVELOPMENT - CONSTRUCTION OF FLATS, BUILDINGS AND INFRASTRUCTURE ON BEHALF OF PROSPECTIVE BUYERS - WHETHER 'WORKS CONTRACT' AND LIABLE TO TAX UNDER PVAT ACT - HELD: YES - ISSUE IS ALREADY SETTLED BY LARGER BENCH OF SUPREME COURT IN THE CAS E OF LARSEN & TOUBRO LTD - APPEAL DISMISSED - *SECTION 2(zu) OF PVAT ACT, 2005*

Facts

The appellant is a Real Estate Project Developer engaged in construction and sale of residential flats, buildings and infrastructure. It had been developing land at Patiala Road, Zirakpur. An application was filed for determination u/s 85 as to whether such activity would be covered as 'Works Contract' and liable to tax under Punjab VAT Act, 2005. Commissioner answered in affirmative and held that such activity is covered under the definition of 'works Contract' under Punjab VAT Act, 2005 following the judgment of K. Raheja Development Corporation V State of Karnataka (2005) 5 SCC 162. Appeal filed before Tribunal was dismissed. On appeal before High Court:-

Held:

The issue stands covered by an earlier judgment passed by the Supreme Court and later on approved by larger bench in the case of Larsen and Toubro Limited V state of Karnataka (2014) 1 SCC 708. The said judgment was followed by Punjab & Haryana High Court in CHD Developers Limited Karnal V State of Haryana and others (CWP No. 5730 of 2014). As per these judgments the activity of Building Developmentand Construction is essentially a 'Works Contract' and liable to tax under VAT provisions. Thus, the appeal is dismissed and substantial question is answered against the assessee.

Case followed:

- *K. Raheja Development Corporation V State of Karnataka (2005) 5 SCC 162*
- *Larsen and Toubro Limited V state of Karnataka (2014) 1 SCC 708*
- *CHD Developers Limited Karnal V State of Haryana and others (CWP No. 5730 of 2014)*

Present: Mr. Sandeep Goyal, Advocate for
Mr. Rishab Singla, Advocate for the appellant.
Ms. Sudeepti Sharma, DAG, Punjab.

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AJAY KUMAR MITTAL,J.

1. The appellant has approached this Court by filing appeal under Section 68(2) of the Punjab Value Added Tax Act, 2005 (in short 'the Act') against the impugned order dated 27.11.2009 (Annexure A7), passed by the Value Added Tax Tribunal, Punjab (hereinafter to be referred as 'the Tribunal').

2. Briefly relevant facts of the case are being taken. The appellant is a real estate project developer who is engaged in the construction and sale of residential flats, buildings and infrastructure facilities all across the country. As per averments made in the appeal, the appellant company is developing land at Patiala and VIP Road at Zirakpur, Tehsil Derabassi, District Mohali. The appeal was admitted for determination of substantial questions of law which are as under:-

(i) Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in holding that the appellant is engaged in the works contract and is thus liable to be registered under the provisions of the Punjab VAT Act, 2005?

(ii) Whether on the facts and circumstances of the case, the appellant is liable to be registered under the Punjab VAT Act, 2005 as a taxable person and liable to pay tax on the sale of flats constructed by it on land purchased by it in its own name?

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

4. The primary dispute herein relates to whether the appellant is liable to be registered under the provisions of the Act or not.

5. It was not disputed that the appellant who is a works contractor is required to pay VAT on the material used for carrying out the works contract in respect of the sale of flats on the amount of material incorporated therein after the date of sale of the flat. Accordingly, it was also not disputed that as a consequence, the appellant would be required to be registered under the provisions of the Act.

6. There was consensus between the parties, that in view of the decision of the Supreme Court in ***K. Raheja Development Corporation Vs. State o f Karnataka (2005) 5 SCC 162***, which was approved in ***Larsen & Toubro Limited v. State of Karnataka, (2014) 1 SCC 708*** and followed by this Court in ***CHD. Developers Limited Karnal Vs. The State of Haryana and others in CWP No. 5730 of 2014***, decided on 22.04.2015, the issue involved herein stands already concluded against the appellant. It was observed in the said decision as under:-

"19. To consider whether the Appellants are executing works contract one needs to look at a typical Agreement entered into with the purchaser. The relevant clauses are clause (q), (r) of the recitals and clauses 1, 5(c) and 7, which read as follows:

"(q) (i) Construction of the said multi-storeyed building;

(ii) Sale of the units in the aforesaid multistoreyed building to different persons in whose favour ultimately a Deed of Conveyance would be obtained by the Holders, directly from the Vendors, of an undivided fractional interest in

the said land (i.e. the area of 5910.17 sq. metres described in the First Schedule hereunder written) and such owner of units would own, on ownership basis, the respective units on condition that an Agreement would be entered into between the Holders on the one hand and the persons (desiring to acquire on ownership basis a unit in such multistoreyed building) on the other hand and it would be an essential, integral and basic concept, term and condition of the proposed transaction (which would be by way of a package deal not capable of being segregated or separated or terminated one without the corresponding effect on the other) that K. Raheja Development Corporation as the Land-holder would agree to sell to such persons an undivided fractional interest in the said land described in the First Schedule hereunder written on condition that they i.e. M/s K. Raheja Development Corporation as Developers on behalf of and as Developers of such person would construct for, as a unit ultimately to belong to such person a unit or units that would be so mutually selected and settled by and between K. Raheja Development Corporation and the person concerned; r) The Prospective Purchaser is interested in acquiring ownership rights in respect of unit/s Nos. 1101 on the eleventh floor/s of the said multi-storeyed building named 'Raheja Towers' and also car parking space/s No./s nil in the basement/ground floor of the said building (hereinafter referred to as 'the said Unit')"

XX XX XX

1. As and by way of a package deal:

a) K. Raheja Development Corporation, (as Holders) agree to sell to the Prospective Purchaser an undivided 0.42% share, right, title and interest in the said land described in the First Schedule hereunder written (with no right to the Prospective Purchaser to claim any separate sub-division and/or right to exclusive possession of any portion of the said land) for a lump sum agreed and quantified consideration of Rs.3,25,000/- (Rupees three lacs twenty five thousand only) to be paid by the Prospective Purchaser to the Holders at the time and in the manner stated in Clause 2 hereof;

b) K. Raheja Development Corporation, (as Developers) agree to build the said building named 'Raheja Towers', having the specifications and amenities therein set out in the Second Schedule hereunder written and as Developers for the prospective Purchaser, the Developers shall build for and as unit/s to belong to the Prospective Purchaser, the said premises (details whereof are set out in the Third Schedule hereunder written) for a lump sum agreed and quantified consideration of Rs. 5,07,000/- (Rupees five lacs seven thousand only) to be paid

by the Prospective Purchaser to the Developers at the time and in the manner set out in Clause 3 hereof. The said premises shall have the amenities set out in the Fourth Schedule hereunder written.

XX XX XX

5. *The under mentioned terms and provisions are express conditions to be observed, performed and fulfilled by the Prospective Purchaser, on the basis of which this Agreement has been entered into by the Holders/Developers and the due and proper fulfillment whereof are to be conditions precedent to any title being created and/or being capable of being documented by the Prospective Purchaser in the aforesaid fractional interest in the land described in the First Schedule hereunder written and/or in the said premises:*

   a) XX XX XX

   b) XX XX XX

   c) The overall control and management of the project and the development and completion of the said building shall be with the Developers and furthermore the Developers are and shall continue to be in possession of the said land and building and shall be entitled to a lien thereon and that the Prospective Purchaser shall not be entitled to claim or demand from the Holders possession of any portion of the said land or to claim or demand from the Developers possession of the said premises unless and until the Prospective Purchaser has paid in full through the Holders the full consideration money payable to the Holders under Clause 2 above and the full consideration money payable to the Developers under Clause 3 above.

   XX XX XX

7. *If the Prospective Purchaser commits default in payment of any of the installments of consideration aforesaid on their respective due dates (time being the essence of the contract) and/or in observing and performing any of the terms and conditions of this Agreement, the Holders/Developers shall be at liberty, after giving 15 days notice specifying the breach and if the same remains not rectified within that time, to terminate this Agreement, in which event, a sum equivalent to 10% of the amounts that may till then have been paid by the Prospective Purchaser to the Holders and the Developers respectively shall stand forfeited. The Holders and the Developers shall, however, on such termination, refund to the Prospective Purchaser the balance amounts of the installments of part payment, if any, which may have till then been paid by the Prospective Purchaser to the Holders and the Developers respectively but without any further amount by way of interest or otherwise. On the Holder/Developers terminating this Agreement under this Clause, they shall be at liberty to dispose off the said Unit/s and the said fractional interest in the land to any other person as they deem fit, at such price as they may determine and the Prospective Purchaser shall not be entitled to question such sale, disposal or to claim any amount from them."*

> *20. Thus the Appellants are undertaking to build as developers for the prospective purchaser. Such construction/development is to be on payment of a price in various installments set out in the Agreement. As the Appellants are not the owners they claim a "lien" on the property. Of course, under clause 7 they have right to terminate the Agreement and to dispose off the unit if a breach is committed by the purchaser. However, merely having such a clause does not mean that the agreement ceases to be a works contract within the meaning of the term in the said Act. All that this means is that if there is a termination and that particular unit is not resold but retained by the Appellants, there would be no works contract to that extent. But so long as there is no termination the construction is for and on behalf of purchaser. Therefore, it remains a works contract within the meaning of the term as defined under the said Act. It must be clarified that if the agreement is entered into after the flat or unit is already constructed, then there would be no works contract. But so long as the agreement is entered into before the construction is complete it would be a works contract."*

In view of the above, the substantial questions of law are answered against the assessee. Accordingly the appeal is dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP 2192 OF 2016

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M.K. OVERSEAS PVT. LTD.
Vs
STATE OF PUNJAB AND ANR.

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

5th April, 2016

HF ▶ None

The petitioner is directed to avail alternative remedy instead of filing of writ against the Revisional order passed by commissioner.

WRIT/ ALTERNATIVE REMEDY – TAX PAID FOR ASSESSMENT YEAR – SUO MOTTO REVISION TAKEN UP – ORDER PASSED SUBSEQUENTLY – WRIT FILED – REVISION MAINTAINABLE BEFORE TRIBUNAL AGAINST THE REVISIONAL ORDER OF COMMISSIONER – PETITIONER TO AVAIL ALTERNATIVE REMEDY – WRIT DISPOSED OF – *SECTION 65 OF PVAT ACT, 2005*

Facts

In this case the petitioner had been imposed with penalty u/s 51 which was later set aside by the designated officer. Subsequently assessment was framed imposing tax which was duly deposited by petitioner. Thereafter, matter was taken up by Commissioner for revision requiring it to produce certain documents. The petitioner replied to that contending that it had paid the tax. The Commissioner passed an order u/s 65 against which a writ is filed.

Held:

Revision is maintainable u/s 65(2) of the Act against the order of Commissioner. Regarding the subject of predeposit, it is mentioned that the Tribunal has the power to waive off partially or completely the amount meant to be deposited for.

Cases referred:

- *Punjab State Power Corporation Limited vs. The State of Punjab and others CWP No.26920 of 2013*
- *Ambuja Cements Limited vs. The State of Punjab and Others CWP No.2184 of 2015*

Present: Mr. Sanjiv Thakur, Advocate for
Mr. Sanjiv Bansal, Advocate for the petitioner.

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AJAY KUMAR MITTAL,J.

1. This order shall dispose of CWP Nos.2192, 2433, 2454, 2456 and 2474 of 2016 as according to the learned counsel for the petitioner(s), the issue involved in all the petitions is identical. However, the facts are being extracted from CWP No.2192 of 2016.

2. In CWP No.2192 of 2016, the petitioner impugns the order dated 2.12.2015, Annexure P.10 passed by respondent No.3 under the provisions of Section 65 of the Punjab Value Added Tax Act, 2005 (in short, "the Act") directing the petitioner to deposit an amount of Rs. 2,99,11,497/- towards the tax payable under the Act and an amount of Rs.8,97,23,118/- towards Central Sales Tax (CST) within 30 days.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.2192 of 2016 may be noticed. The petitioner is a company namely M/s M.K. Overseas Pvt. Limited. It is engaged in the business of processing of meat and sales thereof. The petitioner purchases discarded buffalos as raw material and after slaughtering the same, the meat is processed, packed and frozen for sale, whereas the other by products such as meat bone meal and Tallow oil are extracted. Under Section 16 of the Act, certain goods are notified as tax free goods as per Schedule A appended to the Act. Under the provisions of the Act, the petitioner had been selling the poultry feed supplements to various parties. On 10.6.2011, a vehicle which was transferring goods from the poultry unit of the petitioner company reached the Information Collection Centre, Jharmari from Derabassi side. On inspection of documents, it transpired that the goods being transported were poultry feed supplements and thus were exempt. The Designated Officer however vide order dated 27.6.2011, Annexure P.3 imposed a penalty of Rs.1,03,495/- under Section 51(7)(b) of the Act The petitioner filed an appeal against the order before the Deputy Excise and Taxation Commissioner (Appeals) [DETC], Vide order dated 5.8.2013, Annexure P.4, the matter was remanded to the Designated Officer with a direction to examine whether the item was covered under Schedule 'A' or not and if it was covered, reasons for levy of penalty be given. After the remand, vide order dated 24.3.2014, Annexure P.5, the Designated authority set aside the order of imposing penalty holding that the goods in question were poultry feeds which were tax free. Thereafter, Excise and Taxation Officer, respondent No.4 passed order of assessment Annexure P.6 for the assessment year 2010-11 imposing total tax due amounting to Rs.4,79,924/- and Rs.71,138/-. The petitioner deposited the said amount on 18.9.2014, Annexure P.7 and intimated the same to respondent No.4. The aforesaid order came up for suo motu consideration before respondent No.3 who issued notice dated 5.11.2015, Annexure P.8 to the petitioner requiring it to produce certain documents. The petitioner submitted reply dated 17.11.2015, Annexure P.9 claiming that no amount had either been saved from taxation nor was required to be added back as stipulated in the notice dated 5.11.2015, Annexure P.8. Thereafter, the petitioner received order dated 2.12.2015, Annexure P.10 whereby respondent No. 3 passed order under Section 65 of the Act requiring the petitioner to pay the amounts of Rs.2,99,11,497/- and Rs.8,97,23,118/-. Hence the instant writ petition by the petitioner.

4. We have heard learned counsel for the petitioner.

5. The issue regarding interpretation and validity of Section 62(5) of the Act has been settled by this Court vide judgment dated 23.12.2015 rendered in CWP No.26920 of 2013 (***Punjab State Power Corporation Limited vs. The State of Punjab and others***). The following questions arose for consideration before this Court in the said petition:-

> *"(a) Whether the State is empowered to enact Section 62(5) of the PVAT Act?*
>
> *(b) Whether the condition of 25% pre-deposit for hearing first appeal is onerous, harsh, unreasonable and, therefore, violative of Article 14 of the Constitution of India?*
>
> *(c) Whether the first appellate authority in its right to hear appeal has inherent powers to grant interim protection against imposition of such a condition for hearing of appeals on merits?"*

This Court while upholding the provisions of Section 62(5) of the Act had concluded 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 pre-deposit 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."*

6. Against revisional order passed by the Commissioner, revision is maintainable under Section 65(2) of the Act. Further subsection (3) of Section 65 of the Act which is pari materia to Section 62 (5) of the Act provides for mandatory pre-deposit before entertaining of revision by the Tribunal. Sub-sections (2) and (3) of Section 65 of the Act are quoted thus:-

> *"**Revision***
>
> ***65.** (1) xxxxxxx*

(2) A Tribunal, on application made to it against an order of the Commissioner under sub-section (1), within a period of thirty days from the date of communication of the order, may call for and examine the record of any such case and pass such order thereon, as it thinks just and proper.

(3) No application for revision under sub-section (2), shall be entertained unless such application is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of tax, penalty and interest, if any."

After considering the relevant statutory provisions and the case law on the point, the provisions of Section 65(3) of PVAT Act were held to be intra vires in CWP No.2184 of 2015 ***(M/s Ambuja Cements Limited vs. The State of Punjab and Others***) decided on 21.1.2016 with the rider that the first appellate authority may grant interim protection qua partial or complete waiver of condition of pre-deposit in deserving cases.

6. Identical issues being raised in the present petitions, the same are disposed of in the similar terms as in CWP No.2184 of 2015 (***M/s Ambuja Cements Limited vs. The State of Punjab and Others***).

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PUNJAB & HARYANA HIGH COURT

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CWP 6800 OF 2016

OASIS TECHNOCONS LTD.
Vs.
STATE OF PUNJAB AND ANR.

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

11th April, 2016

HF ▶ Directions issued

Department is directed to take a decision on the application for refund submitted by it.

REFUND – LACK OF ACTION ON PART OF DEPARTMENT – PETITIONER FOUND ENTITLED TO REFUND OF INPUT TAX CREDIT – NUMEROUS APPLICATION SUBMITTED BY PETITIONER IN THIS REGARD – FINALLY, LEGAL NOTICE SERVED FOR REFUND OF THE AMOUNT ALONGWITH INTEREST – NO RESPONSE GIVEN BY RESPONDENT – WRIT FILED – RESPONDENT DIRECTED TO DECIDE ON THE LEGAL NOTICE SERVED AND REFUND THE AMOUNT , IF AMOUNT FOUND PAYABLE – WRIT DISPOSED OF – *SECTION 39 OF PVAT ACT, 2005.*

Facts

The petitioner was held to be entitled to refund of excess Input Tax credit vide order dated 4/1/2016. The petitioner submitted an application for refund of the same. Thereafter many applications were submitted before a legal notice was served upon the respondents for payment of refund alongwith interest. No response has been received. A writ is filed in this regard.

Held:

The respondent is directed to take a decision on the legal notice sent by petitioner as per law within the time specified and if the petitioner is found entitled to refund, the same be released within one month as per law.

Present: Mr. R.K. Girdhar, 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 the respondents to refund the amount of excess Input Tax Credit (ITC) to the petitioner in terms of order dated 4.1.2016 (Annexure P-1) passed by respondent No.5 along with interest @ 12% per annum.

2. The petitioner is A-Class Government Contractor and is a registered dealer under the Punjab Value Added Tax Act, 2005 (in short "the Act") having TIN No. 03672032756. The petitioner has filed all its statutory quarterly returns and also the annual return under the Act.

During the scrutiny of returns/VAT-20, it was found that the petitioner had not filed true and correct returns and had claimed and availed deductions on account of labour and services out of total declared work done. The respondent-department initiated the assessment proceedings against the petitioner under Section 29(2) of the Act. On receipt of the notice, the petitioner produced all the requisite records including TDS certificate and details of Form VAT-28 for the year 2013-14, bills etc. Respondent No.5 vide order dated 4.1.2016 (Annexure P-1) held the petitioner entitled for refund of excess ITC amounting to? 1,38,86,847/-. The petitioner submitted an application dated 17.2.2016 (Annexure P-2) for refund of the amount along with VAT-29 Form. Thereafter, the petitioner also submitted a number of applications for refund of the excess ITC amount, but to no effect. Accordingly, the petitioner served a legal notice dated 16.3.2016 (Annexure P-3) upon the respondents for the payment of refund amounting to Rs. 1,38,86,847/- along with interest, in view of the order dated 4.1.2016 (Annexure P-1), but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent a legal notice dated 16.3.2016 (Annexure P-3) to the respondents, 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.5 to take a decision on the legal notice dated 16.3.2016 (Annexure P-3), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of six weeks from the date of receipt of certified copy of the order. It is further directed that in case any amount is found payable to the petitioner, the same be released to it within next one month, in accordance with law.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 154 OF 2013

ROCK & STORM DISTILLERIES PVT. LTD.
Vs
STATE OF PUNJAB

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

17th March, 2016

HF ▶ Dealer

When all other requirements of documents are complete showing impossibility of tax evasion, mere non submission of information at ICC is of no consequence.

PENALTY – CHECK POST/ ROAD SIDE CHECKING –ATTEMPT TO EVADE TAX – NON REPORTING AT ICC – GOODS (WHISKY) IN TRANSIT FORM PUNJAB TO A.P. – GOODS APPREHENDED AND DETAINED ON ACCOUNT OF NON-GENERATION OF FORM AT ICC BEFORE LEAVING CONSIGNOR STATE–PENALTY IMPOSED SUSPECTING EVASION OF TAX –APPEAL BEFORE TRIBUNAL – HELD : VEHICLE WAS ON A ROAD WHERE IT WAS YET TO CROSS ICC - PENALTY IMPOSED ON MERE APPREHENSION THAT GOODS WOULD NOT BE REPORTED AT ICC –GOODS SENT UNDER VALID EXCISE PERMIT BY CONSIGNEE STATE GOVERNMENT - CST STOOD PAID AND GOODS COVERED UNDER C FORM – THUS MERE NON SUBMISSION AT ICC IS OF NO CONSEQUENCE IN SUCH EVENTUALITY – APPEAL ACCEPTED – *S. 51 OF PVAT ACT, 2005*

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – JURISDICTION – GOODS IN TRANSIT APPREHENDED BY EXCISE & TAXATION OFFICER (MW), BATHINDA IN SANGRUR DISTRICT – POWER GIVEN TO MOBILE WING, BATHINDA FOR CHECKING IN FARIDKOT AND FEROZEPUR DIVISIONS – NO POWER TO DETAIN THE VEHICLE IN SANGRUR DISTRICT - PENALTY IMPOSED SUBSEQUENTLY ON ACCOUNT OF ATTEMPT TO EVADE TAX – APPEAL FILED CONTENDING THAT SAID OFFICER NOT AUTHORIZED TO DETAIN VEHICLES IN THE AREA WHERE HE APPREHENDED THE APPELLANT'S VEHICLE – HELD: OFFICER THOUGH NOT AUTHORIZED TO APPREHEND IN THAT AREA YET PENALTY WAS NOT IMPOSED BY HIM – MERE DEFECT IN JURISDICTION DOES NOT INVALIDATE THE SEARCH PROCEEDINGS – APPEAL ACCEPTED - *S. 51 OF PVAT ACT, 2005*

Facts

The goods (Liquor) were sold to Arunachal Pradesh from Sangrur District. The vehicle carrying the goods (whisky) was apprehended at Moonak. It produced the invoice and GR. As VAT XXXVI could not be produced, goods were detained. Penalty was imposed as information

regarding goods was not furnished at any ICC at the time of leaving state of Punjab. The appeals filed below were dismissed. An appeal is filed before Tribunal contending that the officer who had apprehended the vehicle had no jurisdiction to apprehend it in the area of Sangrur.

Held:

Though the said officer had no jurisdiction to apprehend the vehicle in that area yet the detaining officer did not impose the penalty himself and mere jurisdictional defect in search and seizure will not invalidate the search proceedings.

Regarding genuineness of documents it is pointed out that the goods were covered by valid permit issued by government of Arunachal Pradesh. Tax stood paid and goods were covered by C forms. In such circumstances, mere non submission at ICC is of no consequence. The question of tax evasion does not arise in such a situation.

Also, the driver had not yet crossed ICC Moonak. It was mere apprehension that he would not report the goods while leaving the state of Punjab.

The appeal is accepted and penalty is quashed.

Present: Mr. K.L.Goyal, Sr. Advocate alongwith
Mr. Rohit Gupta, Advocate Counsel for the appellant.
Mr. Amit Chaudhary, Addl. Advocate General for the State.

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

1. This appeal has arisen out of the order dated 25.1.2013 passed by the First Appellate Authority, Patiala Division, Patiala, dismissing the appeal against the order dated 27.6.2012 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda imposing a penalty of Rs.1,10,000/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005.

2. The appellant is engaged in the business of manufacture of Indian made foreign liquor in the name and style of M/s Rock & Storm distilleries Pvt. Ltd.,Village Chhajli, Tehsil Sunam, District Sangrur. The appellant had sold liquor to M/s Arunachal IMFL Bounded Warehouse Banderdewa, Arunachal Pradesh against the govt, permits. On 19.6.2012, the driver of the vehicle while carrying the whisky was going from Sunam to Arunachal Pradesh via Moonak. When he reached near Moonak, he was apprehended by the Excise and Taxation Officer, Mobile Wing, Bathinda and when he was confronted with the documents, he (the driver) produced the following documents relating to the goods:-

(1) *Invoice No. 150, dated 19.6.2012 of M/s Rock & Storm distilleries Pvt. Ltd.,Village Chhajli, Tehsil Sunam, District Sangrur in favour of M/s Arunachal IMFL Bounded Warehouse, Banderwaha, Arunachal Pradesh.*

(2) *GR. No. 726, dated 19.6.2012 of M/s Public Carrier, and other Excise related permissions and permits.*

3. Since the driver did not disclose about the goods in VAT XXXVI at nearest ICC of Punjab, therefore, the Excise and Taxation Officer, Mobile Wing, Bathinda, while suspecting the transaction to be in-genuine, issued notice U/s 51 (6) (b) of the Punjab VAT Act to the appellant directing him to appear before him on 20.6.2012.

4. In response to the notice, Sh. Suresh Kumar appeared before the Detaining Officer and explained that the liquor i.e. Whisky worth Rs. 2,20,000/- was being transported to Arunachal Pradesh under valid documents.

5. Thereafter, the case was forwarded to the Designated Officer who also issued notice to the appellant for 27.6.2012.

6. On 27.6.2012, the appellant again appeared before the Designated Officer, but failed to produce the account books in order to prove the genuineness of the transaction. Since the information regarding the goods was not furnished at any ICC at the time of leaving the State of Punjab and the appellant had admitted his fault that he wanted to keep the goods out of the account books, therefore, the Designated Officer vide his order dated 27.6.2012, imposed a penalty to the tune of Rs.1,10,000/- against the appellant U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005.

7. Feeling aggrieved, the appellant preferred the appeal, whereupon, the Deputy Excise and Taxation Commissioner, Patiala Division, Patiala, vide his order dated 25.1.2013, observed that the appellant had failed to perform the obligations regarding furnishing of the information at the ICC, therefore, the inference would be drawn that he had intention to keep the goods out of the account books. The appellant could not assign any reason for non furnishing of the required information at the ICC consequently, he dismissed the appeal, hence this second appeal.

8. The prime contention raised by the counsel for the appellant in the present case is that the vehicle admittedly was apprehended by the Excise and Taxation Officer, Mobile Wing, Bathinda on 19.6.2012 at Moonak Jakhal Road i.e. in the territory of Tehsil Moonak District Sangrur which falls within the jurisdiction of Divisional Excise and Taxation Commissioner, Mobile Wing, Patiala for purposes of Excise and Taxation, therefore, the Excise and Taxation Officer, Mobile Wing, Bathinda having not been vested with the powers to apprehend the vehicle within the area of Sangrur District could not intercept the vehicle No. HR-47-6487 in order to check any type of evasion for the purpose of Section 51 of the Punjab VAT Act, therefore the detention of the vehicle by Excise Taxation Officer, having no jurisdiction over area was void and it seriously effects the imposition of penalty by the Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda on the basis of such illegal detention.

9. To the contrary, the State counsel has urged that detention made by the Excise and Taxation Officer, Mobile Wing, Bathinda does not suffer from any illegality. Mere fact that the Detaining Officer had no jurisdiction to detain the goods does not invalidate the jurisdiction of Designating Officer to award penalty.

10. Having heard the rival contentions and having gone through the record of the case, it transpires that state cannot wriggle out of the following facts:-

(1) The driver alongwith truck No. HR-47-6487 was intercepted by the Excise and Taxation Officer, Mobile Wing, Bathinda ' on 19.6.2012.

(2) The truck was intercepted at Moonak Jakhal Road within area of Punjab and still there was ICC at Moonak which was ahead of the place of detention and the driver was still to cross that ICC. The goods were covered by genuine documents i.e. invoice No.150, dated 19.6.2012 issued by the Rock & Storm Distilleries Pvt. Ltd. Sunam and GR No.726, dated 19.6.2012 from Sunam to Arunachal Pradesh.

(3) The goods were also accompanying Excise related permissions and permits.

(4) The goods were liquor and could not be taken away without permit to be issued by the State of Arunachal Pradesh as also without permission of the Excise and Taxation Officer of the Area.

11. The State Counsel has not disputed that the Excise related permissions and permits in favour of the appellant for taking liquor to Arunachal Pradesh were short of any defects. The Counsel for the appellant has taken me through certain documents relating to the orders and permits for import of liquor issued by the Govt, of Arunachal Pradesh, sanction of export on Form L-36 & 38, form VAT XXXVI generated at ICC Moonak. C-form issued in favour of the appellant.

12. All the aforesaid circumstances, persuade me to hold in favour of the appellant that the goods carried by the driver of the appellant were covered by the genuine documents, since he had not yet crossed ICC Moonak therefore, he could get the VAT 36 generated at the said ICC but on the mere apprehension that he had not generated the goods earlier at Sunam and was not generate the goods at Moonak does not attract the penalty. The other point raised by the appellant is that the Excise and Taxation Officer, Mobile Wing, Bathinda had no jurisdiction over the area for detaining the person in that area i.e. Sangrur District, therefore, the detention was illegal. In this regard, it may be observed that in order to establish the jurisdiction of the Excise and Taxation Officer, Mobile Wing, Bathinda, the appellant has produced before me the copy of the order issued by the Excise and Taxation Commissioner, Punjab, Patiala which reads as under:-

"In supersession of the orders dated 23.5.2006, whereas Notification no.S.0.14/P.0.5/2005/S.3/2005, dated 31st March, 2005, empowers the Commissioner to allocate jurisdiction in writing to the Excise and Taxation Officesr, Mobile Wings, for the purpose of Section 51 of the Punjab Value Added Tax Act, 2005,1, D.P. Reddy, I.A.S., allocate the jurisdiction as under:-

Sr. No.	*Designation of the Officer*	*Area of jurisdiction*
1.	*Excise and Taxation Officers, Mobile Wing, Patiala*	*Districts of Patiala and Sangrur*
2.	*Excise and Taxation Officers, Mobile Wing, Chandigarh.*	*Districts of Ropar, Mohali, Ludhiana-II and Ludhiana -III*
3.	*Excise and Taxation Officers, Mobile Wing, Ludhiana*	*Districts of, Ludhiana-I and Ludhiana -II and Ludhiana-III*
4.	*Excise and Taxation Officers, Mobile Wing, Jalandhar*	*Districts of Jalandhar-I,- Jalandhar-II, Nawan Shahar, Kapurthala and Hoshiarpur.*
5.	*Excise and Taxation Officers, Mobile Wing, Amritsar*	*Districts of Amritsar-I, Amritsar-II and Gurdaspur*
6.	*Excise and Taxation Officers, Mobile Wing, Bathinda*	*All Districts of Ferozepur and Faridkot Divisions.*

However, their jurisdiction under Sections 46,47,49 and 66 of the Punjab Value Added Tax Act, 2005 shall be the whole of the State of Punjab.

Patiala, dated the 2006 *D.P. REDDY*
Excise and Taxation Commissioner, Punjab"

13. On examination of the aforesaid order, it is revealed that the Excise and Taxation Officer, Mobile Wing, Bathinda had no jurisdiction to apprehend/ detain the vehicles/goods U/s 51 in the area of Ferozepur, Fardikot Divisions, thus, the Excise and Taxation Officer, Mobile Wing Bathinda usurped the jurisdiction and wrongly detained the goods in area of Sangrur District. Admittedly, Sangrur District is not a part of the Ferozepur and Faridkot Districts. No doubt, he had the power to detain the goods but he could not extend his powers beyond the area for which he was authorized. All this goes to show that he had motive to

detain the goods. In any case irrespective of the fact that Act of search was malafide I ignore the defect in the jurisdiction to detain the goods, as the detaining officer had detained the goods and he himself did not impose the penalty it is settled by now that mere jurisdictional defect in search and seizure will not invalidate the search proceedings.

14. Now, I set to examine whether the goods were covered by genuine documents. The allegations against the driver are only that he did not generate the goods at the ICC. In this regard, it may be observed that the goods were covered by genuine documents and he was still to reach the ICC for generating the information. The Detaining Officer as well as the Designated Officer also could not point out any other defect in the goods, price and the other documents accompanying the goods, but only pointed out that the driver failed to generate the goods at the nearest ICC. For the sake of repetition, the goods had started from Sunam and were tipped for Arunachal Pradesh and the same were covered by valid permit duly issued by the Government of Arunachal Pradesh and permission/ approval by the local Excise and Taxation Authorities of District Sangrur (Punjab). The tax was already paid on the goods and were covered under "C" Form, therefore such a transaction could not be kept out of the account books. In such circumstances, mere non submission of the information at the ICC is hardly of any consequence. Since the transaction was under "C" Form and the required CST @ 2% had already been paid, therefore, the question of evasion of tax also does not arise.

15. Having perused the impugned order and having gone through the record of the case the Tribunal observes that both the authorities have not taken note of the aforesaid circumstances as well as bonafide of the appellant regarding dispatching of the goods to the destination under the valid orders.

16. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 110, 111, 112 & 113 OF 2015

TRIVANI RICE INDUSTRY
Vs
STATE OF PUNJAB

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

29th February, 2016

HF ▶ Revenue

RECTIFICATION - ASSESSMENT ORDER – CLERICAL MISTAKE – OPPORTUNITY OF BEING HEARD – ASSESSMENT ORDER PASSED WITH A CLERICAL MISTAKE OF DATE – MISTAKE RECTIFIED BY ASSESSING OFFICER AND APPELLANTS INFORMED SUBSEQUENTLY- APPEAL FILED CONTENDING THAT OPPORTUNITY OF BEING HEARD OUGHT TO BE PROVIDED BEFORE SUCH RECTIFICATION – HELD: NO PRIOR NOTICE IS REQUIRED TO BE GIVEN FOR MERE CORRECTION OF CLERICAL MISTAKE OF DATE – APPELLANTS INFORMED DULY AFTER CORRECTION – OPPORTUNITY OF HEARING TO BE GIVEN FOR RECTIFICATION OF ASSESSMENT ORDER U/S 29(7) AND NOT IN THIS CASE- APPEAL DISMISSED – *SECTION 29(7) & 29(8) OF PVAT ACT, 2005*

Facts

The facts giving rise to the case are that the assessment order for the year 2008-09 was passed by the Designated officer on 20/11/2012. Due to typing error it was printed on the order as 20/12/2012. A communication was sent by Assessing Officer that date of order may be read as 20/11/2012 instead of 20/12/2012. An appeal was filed before first appellate authority contending that the assessing authority had corrected the date on its own to bring it within limitation and that no opportunity was given to it before correction. On dismissal of appeal, an appeal is filed before Tribunal.

Held:

The documents show that the assessment was framed on 20.11.2012 and not on 20.12.2012. The date was mentioned wrongly due to clerical mistake. After correction it was intimated to the appellant. The opportunity of being heard was to be provided to appellant if an amendment was to be made in assessment order u/s 29. The present case does not fall within the category of such section as it is only a clerical mistake that needed rectification. Since appellant was duly informed subsequent to correction, no opportunity of being heard was required to correct such clerical mistakes. The appeals are dismissed.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith
Mr. Navdeep Monga, Advocate counsel for the appellant.
Mr. Amit Chaudhary, Addl. Advocate General for the State

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

1. This order of mine shall dispose off five connected appeals No.110 to 114 of 2015 filed by the appellants against the order dated 16.12.2014 passed by the Deputy Excise and Taxation Commissioner (A), Faridkot Division, HQ at Bathinda (herein referred as the First Appellate Authority) dismissing the appeals against the order dated 7.3.2013 passed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, Faridkot, whereby the Assessing Authority had corrected the typical mistake caused in the date of order i.e. from 20.12.2012 to 20.11.2012. Since all the five appeals involve the common questions of law and facts, therefore, these are decided together.

2. The factual background of the case is that the Designated Officer decided the following cases relating to the assessment for 2008-09. The details of which are enumerated as under:-

Sr.No.	**Appeal No.**	**Name of company**	**Assessment year**	**Under Section**	**Date of order**
1.	110 of 2015	Trivani Rice Industries	2008-09	Punjab VAT Act	20.11.2012
2.	111 of 2015	Maha Durga Industries	2008-09	PIDRA Act	20.11.2012
3.	112 of 2015	Maha Durga Industries	2008-09	PIDRA Act	20.11.2012
4.	113 of 2015	S.K. Industries	2008-09	Punjab VAT Act	20.11.2012
5.	114 of 2015	S.K. Industries	2008-09	Punjab VAT Act	20.11.20121
					Date of order recorded as 20.12.2012 by mistake)

3. The appellants have already preferred the appeals against the said order before the First Appellate Authority, Faridkot Flead quarter at Bathinda which are still pending adjudication.

4. The main grievance of the appellants which gave rise to these second appeals is that the Designated Officer while commencing the case since 28.1.2010 decided the same on 20.12.2012 but in order to bring the same within limitation, corrected the date of order from 20.12.2012 to 20.11.2012 vide an exparte order dated 7.3.2013. The relevant extract of the order is the same in all the five cases. The extract of the order passed in all the five cases is reproduced as under:-

> *"The assessment case of the above firm for the year 2008-09 was decided by the undersigned vide my order dated 20.11.2012, but while typing, the date of the order was typed as 20.12.2012 an inadvertently through a typical mistake. Thus the date of the assessment may be read as 20.11.2012 instead of 20.12.2012.*
>
> *The appellants preferred the appeal against the said order dated 7.3.2013 before the First Appellate Authority who dismissed the same with the following observations:-*
>
> > *"On the other hand, the State representative has stated that only date of assessment order was changed by the Designated Officer- cum- Asstt.*

Excise & Taxation Commissioner, Faridkot from 19.12.2012 to 19.11.2012 (wrongly typed as "19") which was wrongly written while typing the assessment order. No material difference has been made in the assessment order. Fie has requested that the appeal may kindly be dismissed.

I have considered the arguments of both the sides and have also gone through the record. The Designated Officer has not made any material difference in the assessment order. The date of assessment has been changed by the Designated Officer which was earlier typed wrongly. Hence the appeal is dismissed."

Similar order has been passed in all the five appeals

Still aggrieved, the appellant has preferred this second appeal. Out of the nine cases, only five orders passed by the Appellate Authority have been challenged by way of regular second appeals.

Arguments heard. Record perused.

5. The counsel for the appellant, in order to persuade this Tribunal regarding the mistake caused by the Designated Officer, has urged that actually the order was not passed on 20.11.2012 but it was passed on 20.12.2012. In order to prove this fact, he has taken me through the zimini orders, disposal register and other documents. On scrutiny of these documents, it transpires that these cases were taken up on various dates and continued till 20.IT The zimini order dated 20.11.2012 indicates that the assessment on that date (20.11.2012) and not on 20.12.2012, it appears that while dictating the order, the date was wrongly recorded as 20.12.2012 as such this being a clerical mistake, when detected, was corrected by the Assessing Officer on 7.3.2013 regarding which the due intimation was sent to the appellants. It is not denied that appellants were not informed about the removal of the clerical mistake. The Counsel for the appellant has further urged that the order of assessment could not be amended without providing an opportunity to the appellant of being heard. Having heard the contention, the same does not find any merit in it. The Designated Officer was required to provide an opportunity of being heard to the appellant if he wanted to amend the assessment made under Sub-Section (2) of Section 29, if he discovers under the assessment of tax payable by person for the reason that (a) Such person has committed willful neglect, or (b), has made misrepresentation of facts, or (c) A part of the turnover has escaped the assessment.

6. The present case being a case of mere clerical mistake in the order does not fall in any of the clauses of Sub Section (7) of Section 29 of the Punjab VAT Act, therefore no notice was required before making correction of such clerical mistake. However, appellants were duly informed of the correction. Consequently, it has to be held that no opportunity of being heard was required to correct such clerical mistakes.

7. Resultantly, finding no merit in the appeals, the same are dismissed. Copy of the order be placed in each file.

8. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 357 OF 2013

SHAM LAL VIJAY KUMAR
Vs
STATE OF PUNJAB

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

31st March, 2016

HF ▶ Revenue

Penalty for evasion of tax is deemed to have been imposed upon the dealer who had appeared before designated officer even if in the order name of the transport company is mentioned.

PENALTY – ATTEMPT TO EVADE TAX – OWNER OF GOODS – ACCOUNTANT OF FIRM APPEARED BEFORE DETAINING OFFICER AND PENALISING OFFICER – REPRESENTED HIMSELF AS MANAGER OF TRANSPORT COMPANY – PENALTY IMPOSED UPON TRANSPORT COMPANY – APPELLANT DEALER FULLY REPRESENTED BEFORE THE AUTHORITIES – PENALTY WOULD BE DEEMED TO HAVE BEEN IMPOSED UPON APPELLANT DEALER BEING OWNER OF GOODS – ON MERITS ALSO GENUINENESS OF DOCUMENTS HAS NOT BEEN PROVED – APPEAL DISMISSED – *SECTION 14-B OF PUNJAB GENERAL SALES TAX ACT, 1948.*

The assessee had made purchases of goods i.e. pulses from Delhi. The checking officer intercepted the vehicle at escape route but no declaration had been produced showing information given at ICC. Accountant of the appellant appeared and admitted his fault. He claimed himself to be the Manager of the transport company. Penalty was imposed in the name of transport company. In the appeal filed before Tribunal, the penalty order was set aside on the ground that no penalty can be imposed on the transport company.

Feeling aggrieved, an appeal was filed before the High Court, by Revenue, where the case was remitted back to the 1st appellate authority after finding that Tribunal should have remanded the matter instead of quashing the penalty. The said appeal was dismissed by 1st appellate authority. On second appeal before the Tribunal, Held:- Shri Gian Chand, who is admittedly an Accountant of the appellant firm, appeared before the Detaining Officer and got the goods released on furnishing of cash payment (Security of Rs. 1,38,232/-). However, he himself got recorded as Manager of M/s Chaudhary Road Carrier, Ludhiana. Even before Designated Officer, the same representation was made which was believed to be correct. All the facts were confronted to Gian Chand who confessed to have made an attempt to evade the tax. Merely mentioning of name of transport company in the order would not mean that penalty has been imposed upon transport company as the order has to be read as a whole. Otherwise also, in case the penalty had been imposed upon transport company and paid by it, then appellant should not have been aggrieved by the order. Since the notice had been issued to the owner of goods and Gian Chand (Accountant of the firm) had appeared and represented the appellant,

the penalty would be deemed to have been imposed upon the dealer i.e. appellant. Even on merits, genuineness of documents had not been proved as the dealer had failed to perform its obligation. Goods were not declared at the ICC with an intention of keeping the transaction out of the account books. Admission of the dealer is also on record and therefore penalty has been rightly imposed. Appeal dismissed.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith
Mr. Rohit Gupta, Advocate for the appellant
Mr. B.S. Chahal , Dy. Advocate General for the State.

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

1. This appeal has arisen out of the order dated 28.2.2013 passed by the Deputy Excise and Taxation Commissioner-cum- Joint Director (Investigation), Patiala Division, Patiala (herein referred as the First Appellate Authority) dismissing the appeal of the appellant against the order dated 11.5.2001 passed by the Designated Officer, Mobile Wing Chandigarh imposing a penalty to the tune of Rs. 1,38,732/- upon the appellant U/s 14-15 (7) (iii) of the Punjab General Sales Tax Act, 1948.

2. On 5.5.2001 the driver while carrying the goods (Pulses and vegetables) relating to six consignees in truck No. HR-37-1597 came from Delhi for delivery, of the goods at Barnala. The Excise and Taxation Officer, Mobile Wing Punjab Chandigarh intercepted him at village Jogewala i.e. escape route from Khanouri to Patran. On demand, the driver produced the following documents:-

1. *GR Nos. 4020, 4014 and 4013 dated 4.5.2001 of M/s Chaudhary Road Carriers Delhi alongwith the different bills mentioned in the GRs.*

3. On scrutiny of the documents, it come to light that no ST XXIV-A form was in possession of the driver. On enquiry, the driver disclosed that he was coming through the escape route on the directions of his masters and he did not approach the ICC for declaration in the State of Punjab.

4. Consequently, he detained the goods and issued a show cause notice to driver for further communication to the owner of the goods for 6.5.2001.

5. It needs to be highlighted here that Sham Lal is the partner of firm M/s Sham Lal Vijay Kumar (appellant). Admittedly, Sh. Gian Chand is the manager/accountant of the appellant firm, however, he recorded himself as manager of the transport company. May be due to his this mis-representation, this confusion remained in vogue throughout the proceedings. The original order recorded by the Designated Officer indicates that Gian Chand claiming himself to be the owner of the goods appeared before him and admitted that they had failed to give any information at any ICC. They had also disclosed before the Designated Officer on 6.5.2001 that they did not want to enjoy any further opportunity of hearing. At this, the Detaining Officer accepted the request of the appellant and released the goods against a cash security of Rs. 1,38,732/- and forwarded the case to the Assistant Excise and Taxation Commissioner, Mobile Wing, Chandigarh (Designated Officer). Whereupon, the notice was issued by him on 7.5.2001 for 11.5.2001, in response to which Gian Chand again appeared as owner of the goods and admitted his fault and showed his inability to say anything to the contrary. He also could not produce account books for verification and the ST XXIV-A Form to prove the genuineness of the transaction. He also requested that he was ready to pay the penalty. Consequently, a penalty to the tune of Rs.1,38,732/- was imposed upon the appellant on 11.5.2001.

6. While describing fact situation which led to the passing of the order dated 11.5.2001, it may be mentioned that the order imposing a penalty was passed against the dealer, however, name of the firm was wrongly mentioned as M/s Chaudhary Road Carrier, who actually was the transporter of the vehicle. The relevant part of the order dated 11.5.2011 reads as under:-

> *"I, therefore, impose a penalty of Rs. 1,38,732/- (Rs. One lac thirty eight thousand seven hundred thirty two only) u/s 14-B (7) (ii) of the Punjab General Sales Tax Act, 1948 after giving the dealer a proper opportunity of being heard. The amount already recovered as cash security is converted into penalty."*

7. The penalty was deposited by Gian Chand, admitted by accountant of the owner (appellant) of the goods.

8. While making misuse of the mentioning of the name of the firm as M/s Chaudhary Road Carrier in the heading of the order by the Designated Officer, the plea was taken before the Deputy Excise and taxation Commissioner that the order was passed against the transporter. But the said plea was not accepted however the Tribunal, in the second appeal, set-aside the penalty on the ground that no penalty was imposable on the transport company. On further appeal to the Hon'ble High Court by the State of Punjab, multiple pleas were raised whereupon Hon'ble High Court allowed the appeal. Though the High Court wanted to remit the case back to the Assessing Authority, but on the asking of the counsel for the appellant, the case was remitted to the Deputy Excise and Taxation Commissioner (i.e. First Appellate Authority). The relevant part of observations recorded by the Hon'ble High Court in VAT Appeal No. 72 of 2010 decided on 5.7.2012 read as under:-

> *6. No doubt, it is essential to issue notice to the consignee and failure to do so would vitiate the proceedings as held by the Division Bench of this Court in State of Punjab and another. M/s Khalsa Pulp and Paper Industries Pvt. Ltd. (2010) 35 PHT 566 (P & H). It has come on record that Sh. Gian Chand Manager of M/s Chaudhary Road Carrier had sought release of the goods by furnishing cash security. The penalty imposed by the department has been paid by the consignee and thereafter, the appeal had also been filed by the respondents consignee. Once that was so, we are of the opinion that the issuance of notice to the respondents was mandatory. The failure to issue notice rendered the order imposing a penalty unsustainable. In such circumstances, it was appropriate for the Tribunal to have remanded the matter to the Assessing Authority and has erred in not remitting the same to the Assessing Authority. However, the Ld. Counsel for the respondent made a statement that no evidence is required to be led and therefore, instead of remitting the matter back to the Assessing Authority, the same may be sent to the First Appellate Authority who had dismissed the appeal only on the ground of non maintainability on behalf of the respondents. Ld. State Counsel has no objection to the matter being remitted to the First Appellate Authority.*

9. Thus, in the light of the aforesaid observations made by the Hon'ble High Court, the case was remitted back to the First Appellate Authority for fresh decision in accordance with law.

10. When the case came up before the First Appellate Authority then vide his order dated 28.2.2013, while disapproving the contentions raised by the Counsel for the appellant, it rejected the appeal on the following grounds:-

1. The appellant failed to produce any evidence or document regarding the genuineness of the transaction.

2. The person who appeared after issuance of notice to the driver on behalf of the owner Sham Lal as well as Gian Chand appeared before the Detaining Officer and admitted that ICC had intentionally avoided to evade the tax.

3. No evidence has been produced which may show that the goods brought from Delhi were accounted for by the consignee.

4. Hon'ble High Court was inclined to remit the case back to the Assessing Authority so that the appellant may prove the genuineness of the transaction. Had the transaction been genuine and there was no attempt to evade tax then he would not have misdirected the Court to remit the case back to the First Appellate Authority.

5. If the goods in Delhi are tax free and are taxable in the State of Punjab then any dealer of Punjab State need not to give 'C' Form to the consignor for the transaction of pulses.

6. If the information regarding the goods is not given at the ICC then the transaction would be skipped over and the goods would not be accounted for in the account books and returns, resultantly, tax is evaded.

7. The First Appellate Authority while accepting the contentions raised by the ETI further stated that in the given circumstances, non submission of information at the ICC was intentional and with a view to evade the tax.

11. Aggrieved against the aforesaid order passed by the First Appellate Authority on 28.2.2013, the appellant has preferred this second appeal.

12. Heard. The First contention advanced by the Counsel for the appellant is that no penalty could be imposed upon the Transport Company as per Section 14-B of the Act. According to the said Section, the penalty could be imposed upon the consignor or consignee, after giving notice and due opportunity of being heard. Thus, the notice to the consignor or consignee or his representative and the driver was required to be issued by the Detaining Officer as well as the Designated Officer for providing opportunity for hearing c being heard. In this regard, Section 14-B (7) (ii) of the Punjab General Sales, Tax Act, 1948 which governs the adjudication of the present case reads as under :-

> *14.(7) [(i) The officer detaining the goods under sub-section 6, shall record the statement, if any, given by the consignor or consignee of the goods or his representative or the driver or other person-in charge of the goods vehicle and shall require him to prove the genuineness of the transaction before him in his office within a period of seventy two hours of the detention. The said officer shall, immediately thereafter, submit the proceedings alongwith the concerned records to such officer, as may be authorized that behalf by the State Government for conducting necessary enquiry in the matter.]*
>
> *(ii) The officer authorized by the State Government shall, before the conducting the enquiry, serve a notice on the consignor or the 'consignee of the goods detained under clause (i) of sub-section (6), and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to avoid or evade the "[tax due or likely to be due under this Act, he shall, by order, impose on the consignor or consignee of the goods, a penalty, which shall not be less than twenty per cent*

and not more than thirty per cent of the value of the goods and in case he finds otherwise, he shall order the release of the goods and the vehicle, if not already released, after recording reasons in writing and shall decide the matter finally within a period of fourteen days from the commencement of the enquiry proceedings].

13. On bare reading of Section 14-B-(7) (i) & (ii), it transpires that the giving of notice to the consignor or consignee, their representative or the driver or other person charge of the goods vehicle by the Detaining Officer was sufficient. Similarly, as per Clause (iii) of sub-section (ii) of sub-section (7) 14 of the Act notice was required to be given to the consignor or consignee by the competent authority empowered to hold enquiry and impose penalty.

14. Now coming to the fact situation of the present case in order to find out, if the compliance has been made, it has been admitted throughout in the appeal as well as the arguments that Gian Chand was accountant with the appellant firm (authorized agent of the firm) who admittedly is the consignee of the goods. He appeared before the Detaining Officer and got released the goods on furnishing cash payment (security) of Rs.1,38,732/- with the Excise and Taxation Officer. The enquiry proceedings recorded by the Detaining Officer also reveal that Gian Chand had appeared before the Detaining Officer and made a statement admitting the fault of the appellant firm. However, he got recorded himself as Manager of M/s Chaudhary Road Carrier, Ludhiana (though it was not factually correct). Similar representation was made by him before the Designated Officer, therefore, while believing the representation made by Gian Chand, it was not essential for the Designated Officer to further call the consignee or consignor again. The Detaining Officer was competent to entertain the consignor, consignee or their representative or the driver. Notice was issued to the driver also. The Detaining Officer was not supposed to know if he besides being the accountant of the appellant firm was also representing Chaudhary Road Carrier, Ludhiana, therefore, the statement made by Gian Chand before the Detaining Officer on 9.5.2001 would be treated as the statement of the person representing the appellant firm. The order dated 9.5.2001 passed by the Detaining Officer also indicates that Gian Chand had appeared before him and was confronted with the facts of the case. The counsel for the appellant has tried to stress that the notice dated 10.5.2001 is in violation of the provisions of the Punjab General Sales Tax Act as it was issued to Gian Chand, Manager M/s Chaudary Road Carrier, Ludhiana for 11.5.2001, therefore, the order of penalty stands vitiated.

15. Having considered the rival contentions, I do not find myself persuaded by the same. Since Gian Chand had appeared before the Detaining Officer; deposited the security with him; admitted his fault and got released the truck, therefore, in all bonafide, the Assistant Excise and Taxation Commissioner proceeded to issue notice to him for 11.5.2001 as he was required to decide the case within a limited time of fourteen days from the date of detention. The notice does not suffer from any such short comings and as such the appellant cannot get any benefit of his own wrong.

16. However while going to the worst, it may be noticed that pursuant to the notice, Gian Chand admittedly representative of the appellant firm as well as, claiming himself to be the Manager of the Transport Company appeared and again admitted his fault before the Designated Officer. Thus, the order dated 11.5.2001 passed by the Designated Officer reveals that Gian Chand is not only the representative of the Transport Company, but also is representative of the appellant firm, it is not disputed that Gian Chand was the Accountant/Manager of the appellant firm. He has been appearing before the Tax Authorities as representative of the firm and getting cases relating to taxation settled, therefore it is proved that Gian Chand, was the representative and authorized agent of the appellant firm and he

while appearing before the Designated Officer admitted his fault, therefore, the appellant cannot wriggle out of this fact that Gian Chand represented the appellants and got depositee the amount and got released the goods on behalf of the appellant firm. They never objected, if Gian Chand was not representing them and had no authority to represent them. On perusal of the order dated 11.5.2001 if it is read as a whole, it is not difficult conclude that the said order was passed against the appellants and not the transport company.

17. Even otherwise, assuming for the sake of argument, if the penalty was imposed upon M/s Chaudhary Road Carrier and they had deposited the said amount and got the goods released then the appellant should not have been aggrieved by the penalty and contested the matter. As a matter of fact, since on the top of the order, the Designated Officer recorded the name of the firm as M/s Chaudhary Road Carrier this line of the order, it was mis-used and made subject of contest whereas the law of the land calls for reading the order as a whole and not a line of it. If the order dated 11.5.2001 is read as a whole, then it would be revealed that notice was issued to the owner of the goods. Gian Chand appeared and represented the appellants and the penalty was imposed upon the "dealer" i.e. the appellant.

18. Now coming to the other contentions, I agree with the contentions raised by Shri N.K. Verma, Counsel for the State that the owner of the goods was required to prove the genuineness of the documents and that he had no intention to evade the tax but he has failed to perform his obligation. The driver was coming through the escape route with the taxable goods in the State of Punjab and did not make a declaration Form STXXIV with the intention to keep the goods out of the account books. If, the goods were taxable in the State of Punjab and were tax free in Delhi, then, the consignee need not have given 'C' Form to Delhi dealer for transaction of pulses. This is the main cause that the information at the ICC was skipped to evade the tax likely to be due in Punjab. Genuineness of the transaction was required to be proved on the basis of the account books but he failed to produce the same also. Further the intention of the dealer is glaring in the case, as Gian Chand in order to create a fuss over the issue misrepresented himself as an employee of the transport company before the Detaining Officer as well as before Penalizing Officer which also clearly goes against the appellant. The admissions made by Gian Chand and representative of the firm before the Detaining Officer as well as the Competent Authority imposing penalty regarding intention and guilt of the firm to evade the tax, also go a long way to prove that the appellant had no other intention except to evade the tax.

19. Resultantly while examining the case from all the angles, the Tribunal does not find any merit in the appeal, therefore, the same is hereby dismissed.

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NOTIFICATION (Punjab)

AMENDMENT OF RULE 37 OF PVAT RULES, 2005 AND FORM VAT-2A

PUNJAB GOVT. GAZ. (EXTRA), APRIL 12, 2016
(CHTR 23, 1938 SAKA)

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

NOTIFICATION

The 12th April, 2016

No. G.S.R.35/P.A.8/2005/S.70/Amd.(59)/2016.-In exercise of the powers conferred by the 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:-

1. (1) These rules may be called the Punjab Value Added Tax (Third Amendment) Rules, 2016.
   (2) They shall be deemed to have come into force on and with effect from the first day of October, 2014.
2. In the Punjab Value Added Tax Rules, 2005 (hereinafter referred to as the said rules), in rule 37, after sub-rule (1), the following sub-rule shall be inserted, namely:-
   "(1-A) Any amount payable by the dealers and manufactures of cigarettes and cigars in respect of tax, excluding additional tax under section 8-B of the Act, shall be paid into the Government Treasury in Form VAT-2 A. One third of tax payable shall be credited to the Punjab State Cancer and Drug Addiction Treatment Infrastructure Fund.".
3. In the said rules, in the Form VAT-2A, in item 7, for sub-items "(d1) and (d2)" the following shall be substituted namely:-

(d1) Two third of 7 (d)	0040-00-111-10
(d2) One third of 7 (d) (to be credited to the Punjab State Cancer and Drug Addiction Treatment Infrastructure Fund)	0040-00-111-12".

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

PUBLIC NOTICE (Punjab)

E-FILING OF VAT-15 DATE EXTENDED FOR 4th QUARTER OF 2015-16

GOVERNEMTN OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION
PUBLIC NOTICE

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

This is to inform all the concerned that the last date of e-filing of VAT-15 for the 4th Quarter of 2015-16 has been extended till 6th May, 2016.

Dated: 26th April, 2016 Excise & Taxation Commissioner, Punjab

NOTIFICATION (Haryana)

NOTIFICATION REGARDING AMENDMENT IN HVAT ACT, 2003, SCHEDULE B

HARYANA GOVT. GA7-, (EXTRA.), MAR. 14, 2016
(PHGN. 24, 1937 SAKA)

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

Notification

The 14th March, 2016

NO.6/ST-I/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 Hary ana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following amendment in Schedule B appended to the said Act, with effect from 1st February', 2016, by dispensing with the condition of previous notice, namely:-

Amendment

In the Haryana Value Added Tax Act, 2003 (6 of 2003), in Schedule B, under columns 1 and 2, after serial number 3C and entry' thereagainst, the following serial number and entry thereagainst shall be inserted, namely:-

31D	all goods sold by casual traders to the visitors in the premises of Surajkund Crafts Mela, Surajkund in Faridabad District organized by the Haryana Tourism Department".

ROSHAN LAL,
Additional Chief Secretary to Government, Hary ana,
Excise and Taxation Department.

PUBLIC NOTICE (Haryana)

ANOTHER OPPORTUNITY FOR DEVELOPERS TO OPT FOR LUMP SUM SCHEME UNDER RULE 49-A

EXCISE & TAXATION DEPARTMENT, HARYANA

PRESS NOTE

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Another opportunity for Developers to opt for lump sum Scheme under Rule 49-A

The Haryana Government has introduced a revised lump sum Scheme for builders and developers on 24.9.2015. The Scheme provides to the developers, a simplified and hassle free mode of payment of tax. Under the Scheme, a developer registered under the Haryana VAT Act, 2003 who has opted for the Scheme, was to pay, in lieu of tax payable under the HVAT Act, a lump-sum tax @ 1% of the aggregate amount specified in the agreement between the buyer and the registered developer. A composition developer under this revised Scheme was also authorized to make purchases of goods for use in execution of works contract from outside the state @ 2% against 'C' form.

A developer registered under the HVAT Act could have opted for the Scheme within 60 days from the date of its notification. However, registered developers who could not opt for the Scheme earlier, may now opt for the Scheme for the period 01.04.2016 onwards, by submitting an application in form CD1 to the appropriate assessing authority, latest by 30.04.2016.

Excise and Taxation Commissioner,

Haryana, Panchkula.

NOTIFICATION (Haryana)

EXTENTION OF DATE FOR FILING OF RETURNS FOR DEALERS EFFECTED BY RESERVATION AGITATION

Consequent upon implementation of the electronic governance under sub section (1) of section 54-A of the HVAT Act, 2003, vide order dated 05.08.2015, I am satisfied that circumstances exist for extension of period prescribed for furnishing of online quarterly returns by those registered dealers who have been affected during the reservation agitation in the State in February, 2016. Therefore, in exercise of powers conferred upon me under sub section (3) of section 54-A of the Haryana Value Added Tax Act, 2003, I, Shyamal Misra, IAS, Excise and Taxation Commissioner, Haryana, do hereby extend the period upto 31.07.2016 for filing online quarterly returns for the quarter ending 31.03.2016, by the affected registered dealers who have lodged valid claim for compensation within the prescribed period before the appropriate authority designated by the Government for this purpose.

(SHYAMAL MISRA)
Excise and Taxation Commissioner,
Haryana, Panchkula.

Panchkula
18.04.2016

NOTIFICATION (Haryana)

NOTIFICATION REGARDING AMENDMENT IN SCHEDULE 'A', 'B' AND 'C' OF HARYANA VALUE ADDED TAX ACT, 2003

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 29th April, 2016

No. 14/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 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 Schedules A, B and C appended to the said Act with immediate effect, namely:-

AMENDMENT

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

1. in Schedule A,-

   (i) serial number 13 and entry thereagainst shall be omitted.

   (ii) under columns 1, 2 and 3, after serial number 13 and entries thereagainst, the following serial number and entires thereagainst shall be added, namely:-

"14	Cotton yarn, when manufactured and sold by the manufacturing unit established in the State, but not including the cotton yarn waste and yarn manufactured from cotton waste.	0".

2. in Schedule B,-

   (i) under columns 1 and 2, after serial number 4 and entry thereagainst, the following serial number and entires thereagainst shall be inserted, namely:-

   "4A Besan, Binola and Oil Cake (Khal)";

   (ii) under columns 1 and 2, after serial number 12 and entry thereagainst, the following serial number and entires thereagainst shall be inserted, namely:-

   "12A Chhota (Mini) Toka (leafy vegetables cutter for Kitchen)";

(iii) under columns 1 and 2, for serial number 44 and entry thereagainst, the following serial number and entires thereagainst shall be substituted, namely:

(iv)

"44 All kinds of footwear (excluding Footwear made of leather but including Hawaii chappals and straps thereof) with maximum retail price not exceeding ' 500 per pair provided that the maximum retail price is indelibly marked or embossed on the footwear itself, and shoe-uppers".

3. in Schedule C,-

(i) under columns 1 and 2, for serial number 4 and entry thereagainst, the following serial number and entires thereagainst shall be substituted, namely:-

"4 all types of yarns including sewing thread and wastes of all types of yarns **but not including cotton yarn when manufactured and sold by the manufacturing unit established in the State";**

(ii) under columns 1 and 2, after serial number 29 and entry thereagainst, the following serial number and entires thereagainst shall be inserted, namely:-

"29A Battery operated electrical vehicle";

(iii) under columns 1 and 2, after serial number 94 and entry thereagainst, the following serial number and entires thereagainst shall be inserted, namely:-

"94A Vermicelli (Sewian)";

(iv) under columns 1 and 2, for serial number 98 and entry thereagainst, the following serial number and entires thereagainst shall be substituted, namely:-

"98 Wheat atta including maida and sooji, rice flour, gram flour, barely ghat, barely flour and sattu, dalia of wheat or barely, damaged wheat, rajmah, lobia, rongi, sago (sabudana), soyabean meal, and soyabean flour";

(v) under columns 1 and 2, after serial number 100E and entry thereagainst, the following serial number and entires thereagainst shall be inserted, namely:-

"100F All types of footwear except those covered by entry 44 of Schedule B; ".

ROSHAN LAL,
Additional Chief Secretary to Government, Haryana,
Excise and Taxation Department.

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

BOOKSELLERS UNDER SCANNER FOR EVADING SALES TAX

The Sales Tax Department is all set to tighten the noose around the shopkeepers selling school books and uniforms. As per information, some shopkeepers are evading sales tax by setting up counters in city schools for the sale of books and uniforms.

The department also recovered Rs 4.19 lakh from a reputed bookseller in Sector 17. The bookseller had set up a counter at a renowned private school in Sector 40 and was evading sales tax.

A department official said they had started investigation against the shopkeepers at their own level. He also said records of four uniform sellers in the city were also being checked. One of the uniform sellers in Sector 22 is depositing only Rs 4,000 in tax quarterly.

Meanwhile, the Education Department has issued a notice to all private school, directing to give information about the cost and publisher of books prescribed for students by 20 April. The CBSE has been requested to take action in this regard.

Notably, despite repeated warning, many schools have set up counters for the sale of books and uniforms. As per rules, 5 per cent tax is imposed on stitched uniforms and stationery items.

A worker at a bookshop said they had started giving bills to costumers after the strictness by the department. However, the department is facing trouble in taking action against the schools as these do not come under its purview. The department can take action against the registered dealers only.

Chandigarh Deputy Commissioner Ajit Balaji Joshi said raids would be conducted in the schools violating the norms.

Notably, various schools have prescribed books of private publishers in place of the NCERT books.

As per instruction issued by the Central Board of Secondary Education (CBSE), school premises can't be used for any commercial activity and no shop can be set up for the sale of books and uniforms in the school.

Courtesy: The Tribune

18th April, 2016

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

TRADERS TO SUKHBIR: ABOLISH FEE, TAX ON RED CHILLIES

FAZILKA: The traders of the district have demanded a roll back in the annual processing fee of Rs 800 imposed on traders for maintaining their accounts with the Sales Tax Department.

In a letter to Deputy CM Sukhbir Singh Badal today, they have pleaded that since they were not being offered any special services, the imposition of such a fee was uncalled for.

A large number of traders led by Ehzilka Beopar Mandal chiefAshok Gulbadhar attended the state level programme to launch Bhagat Puran Singh Health Insurance Scheme for traders by Sukhbir in Jalalabad yesterday evening.

Ashok said that following utter chaos at the programme, they could not meet Badal but have dispatched a memorandum to the Deputy CM by post today.

Krishan Lai Jasuja, president, Karyana Merchant Association, said that the state government has levied 6.6 per cent tax on red chilly but there was no such tax in neighbouring Haryana and Rajasthan.

"The traders have to suffer due to this disparity. The state government should abolish this tax," he demanded. The state government had also recently announced to withdraw the tax on turmeric and reduce tax on cumin (zira). fennel (saunf) and coriander (dhania) to four per cent.

"The government is befooling the traders as it has yet not issued notification in this regard till date", rued Jasuja.

Courtesy: The Tribune

20 April, 2016

NEWS OF YOUR INTEREST

PUNJAB ELECTRIC VEHICLE MAKERS DEMAND EXEMPTION FROM VAT

CHANDIGARH: With over half a dozen manufacturers located across the state, Punjab has a potential to become one of the major manufacturing centres for e-rickshaws. However, the state levies 14.30% VAT on e-rickshaw, the highest in the Northern region, which is affecting its sale in the state. The manufacturers in Punjab are catering to Delhi, Bihar, Uttar Pradesh, Andhra Pradesh etc.

Recently, many states such as Haryana, Karnataka and Delhi have reduced VAT on green vehicles to 5%. The manufacturers have urged the state government to reduce or exempt VAT to encourage the industry as well as the citizens to adopt green mobility.

According to them, under VAT notifications, all environment-friendly vehicles fall under the zero VAT category but some states continue to levy hefty VAT, thereby making these environment-friendly and electric vehicles way beyond the reach of people. This levy scuttles the government's proposals to add incentive and bring down the prices of electric vehicles which may still be in its nascent stage but is seeing considerable promise in India.

"The government should promote e-vehicles as these are environment- friendly, but unfortunately Punjab levies highest VAT in the region on e-rickshaws. We urge the state government to reduce the VAT or exempt it completely as it will boost manufacturing and promote the e-rickshaw manufacturers in the state," said Sanjeev Kumar, marketing manager, Speedways Electric, Jalandhar. The company manufactures over 2,000 vehicles per annum.

They also demanded that if the government wanted to increase the penetration of e-rickshaws, it should provide infrastructure support for setting up charging stations at multiple points and convenient locations.

"The proposed move will not only bring down the air pollution but will also have a positive impact on reducing the high concentration of pollutants," said a senior executive of Nanya Aircon (P) Ltd., Delhi, which also manufactures e-rickshaws.

Courtesy: The Tribune

27the April, 2016

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

PETROL PUMP DEALERS BEGIN HUNGER STRIKE

MOHALI: Members of the Petrol Pump Dealers Association, Punjab, started an indefinite hunger strike in protest against the higher value added tax (VAT) being imposed by the Punjab Government as compared to other states.

The oil dealers from nine districts bordering other states held a peaceful protest in Phase VII here. However, they raised slogans against the Punjab Government and oil companies.

Paramjit Singh Doaba, president of the association, GS Chawla, owner of a petrol pump in Phase VII, and Girish Sapra, oil dealer from Zirakpur, sat on fast today.

Doaba said the protest would continue till their demands were met. If the authorities concerned failed to take any action, dealers would stop purchasing fuel from May 1.

He said since long they had been asking the Punjab Government to reduce VAT and bring it on a par with neighbouring states. The government had promised that VAT of northern states would be equalised, but the promise was not fulfilled.

Ashwinder Mongia, president of the Mohali district unit of the association, said the sale of petrol had gradually shifted to neighbouring states over the past 15 years due to the higher rate of VAT imposed in Punjab as compared to Haryana, Himachal and Chandigarh.

He said Punjab levied 36.54 per cent VAT, including taxes, on petrol, whereas in others states VAT varied between 26.25 per cent and 27 per cent.

He said the sale of diesel had also gone down in Punjab after the IOCL scrapped entry tax in Haryana.

He alleged that the IOC was overcharging in Punjab by fixing the retail selling rate on the basis of the Panipat refinery, instead of the Bathinda refinery.

He said there were 64 petrol pumps in Mohali district and another 800 in areas adjoining other states, which were adversely affected.

Courtesy: The Tribune

30th April, 2016

NEWS OF YOUR INTEREST

COTTONSEED, OILCAKES EXEMPTED FROM VAT

Ginners allege exemption to go from their pockets

CHANDIGARH, APRIL 30: The state government's decision to exempt cottonseed (binola) and oilcake (khal) from Value Added Tax (VAT) has not gone down well with the cotton ginning industry.

Cotton ginners allege that the exemption meant for the farmers will not go from the government's exchequer, but from their pockets.

In a notification issued yesterday, the state government has exempted cottonseed, oilcakes, besan, footwear (excluding those made of leather, but including hawai chappals) of MRP less than Rs 500 etc from the payment of VAT. The government has also placed cotton yard manufactured and sold by units established in Haryana under zero VAT category.

The notification mentions that the exemptions are being given in view of the announcements made in the Budget speech.

Though the exemption will benefit farmers, since both cottonseed and oilcake are used as fodder for cattle, the cotton ginning industry is upset at the move.

"If the government were to give any benefit to the farmers, it should have given that from the state exchequer. Now, the entire burden of exemption will shift on ginners," alleged Sushil Mittal, president of the Haryana Cotton Ginners Industries Association. He said the ginners paid 4.2 per cent VAT on purchase of raw cotton.

On the current price of Rs 5,000 per quintal, they have to pay Rs 210 towards VAT.

"After ginning, we are left with 34 kilograms of cotton and 66 kg of cottonseed. Since, most of the ginned cotton is sold outside Haryana; we get Rs 65 as CST from the customer. Earlier, we used to recover Rs 80 as VAT on cottonseed and the rest of Rs 65 from the government as input refund. However, with yesterday's notification, we will lose Rs 80 on each quintal of cotton we purchase," he said. Roshan Lal, Additional Chief Secretary in the Excise and Taxation Department, however, maintained that the apprehensions of cotton ginners were unfounded.

"As far as cotton yarn was concerned, the cotton industry will get refund of VAT paid by them. Even in case of ginners, they will get input refund of the excessive VAT paid by them because the department had already made it clear that the conditions that existed before September 15 in this regard have again been restored," Roshan Lal said.

Courtesy: The Tribune

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