SGA
LAW OFFICES

Issue 16

16 August 2016

" Solar power is the last energy resource that isn't owned yet--nobody taxes the sun yet."

– Bonnie Raitt

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News From Court Rooms

MADRAS HC : TN VAT : A report from the Enforcement Wing may be a starting point for issuance of a notice but AO has to apply his mind independently before passing an order denying input tax credit. Demand set aside. Matter remanded back. ***(Shri Coimbatore Jewellers India P Ltd. – June 7, 2016)***.

CESTAT, MUMBAI: CENVAT Credit : Expression "net cenvat credit" in rule 5 of CENVAT Credit Rules, 2004 means credit "availed" during relevant quarter. Hence, irrespective of date of invoice or date of receipt of inputs/services, refund of credit is allowed during period in which "date of taking credit" falls. ***(Decos Software Development P Ltd. – April 25, 2016)***.

CESTAT, MUMBAI: Service Tax : Laying of pipelines for water supply to staff quarters of NTPC, a commercial and industrial undertaking, is also a commercial activity and amounts to 'commercial or industrial construction services' and liable to service tax. ***(Central India Engineering Co. – June 14, 2016)***.

KERALA HC: Service Tax : Normally, writ is not available if alternate appeal-remedy is not exercised within specified time. However, if challenge is made based on adjudication order being passed in violation of principles of natural justice, then, writ is maintainable despite appeal-remedy becoming time-barred. ***(Biju Daniel – July 5, 2016)***.

DELHI HC: This is the link of another Order of Delhi HC where Deptt.of T&T acting in blatant violation of Statutory provisions of Dvat Act & the decisions of the Courts. Instead of following directions to grant refund, DT&T issued default notices of tax, interest and penalty for two years. HC set aside the orders and imposed exemplary costs on DT&T of Rs 20,000/- in each petition & with a direction to CVAT to refund the amount with interest by 8.8.2016 thru RTGS. CVAT to file affidavit of compliance of Refunds in 2 days. CVAT was also asked to issue notice on administrative side to make an adverse entry in the ACR of AVATO Mr. O.P.Singh & Jt. Comnr Mr. Pravesh Ranjan Jha. HC also observed that in absence of DVAT 50 the AVATO should not have proceeded further in the matter & issuing notices of default asstt. of Tax, intt. & Penalty. ***(Teleworld Mobiles Pvt. Ltd vs Commissioner T&T W.P.(C)6746/2016)***

DELHI HC: Delhi VAT : Responsibility should be fixed on negligent officers and disciplinary proceedings be initiated where there is a clear breach of the statutory duties involving delay in issuance of refund. ***(Prime Papers & Packers – July 28, 2016)***

GUJARAT HC: Gujarat VAT: Merely because small quantity of waste generated during the process of manufacturing sawn timber or logs sold as firewood, would not mean that the raw material purchased was not used fully for manufacture of the specified product. ITC cannot be disallowed. ***(Arya Lumbers P Ltd. – July 28, 2016)***.

BOMBAY HC: Whether Low Sulphur Fuel Oil and Low Sulphur Waxy Residue brought from abroad are not liable to entry tax, and the levy and assessment under the Maharashtra Entry Tax Act is ultra vires the Constitution of India, being beyond the legislative competence of the State of Maharashtra - NO: HC - Assessee's writ petition dismissed ***(Tata Power Company Ltd Vs State Of Maharashtra (Dated: August 2, 2016)***

CESTAT, HYDERABAD: Cenvat Credit : When Department demands duty/tax for a particular period, a corresponding right accrues to assessee entitling him to avail Cenvat credit on cenvatable documents evidencing inputs or capital goods or input services received by such assessee during

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CESTAT, CHENNAI: Cenvat Credit : Capital goods like steam boilers, etc. used for generation of captively-consumed electricity are eligible for credit, even if capital goods are installed in premises of sister unit. ***(OPG Metals P Ltd. – June 6, 2016).***

SC : Central Excise : In computing turnover limits for SSI-exemption purposes, clearances of dummy units/job-workers would be included and clearances by independent/genuine job-workers/units cannot be included***. (Satyam Technocast – July 15, 2016)***.

CESTAT, MUMBAI: Cenvat Credit : Having accepted service tax was paid by service provider, revenue cannot raise ground of non-taxability of service itself to deny input service credit to service recipient. ***(Kenersys India P Ltd. – July 8, 2016)***.

P & H HC: Punjab VAT : Tribunal was not justified in rejecting the claim of input tax credit merely on technicalities when the dealer was able to show that the tax had been paid to the selling dealer and was duly deposited with the State. The matter is remitted back to the Assessing Authority to examine the genuineness of the transaction and allow the ITC. ***(Avdesh Tracks Private Ltd. – August 2, 2016)***.

CCE&ST NEW DELHI : Central Excise : The activity of loading of business software in the Hardware / Nucleus Device by the applicant will not constitute manufacture under the Central Excise Law and is not liable to ED.***(Nucleus Software Exports Ltd. – July 15, 2016)***.

DELHI HC: Delhi VAT : Sealing of the premises of the transporters of goods of dealers is a willful violation of the statutory provisions by the officers concerned. They have acted not only in ignorance of the law but in violation of the statutory requirements. Disciplinary action taken by imposing costs of Rs.20,000 payable to petitioner. ***(Verma Roadways – August 4, 2016)***.

MADRAS HC : TN VAT : In the case of non-surrender of transit pass, if a dealer could produce sufficient legally valid and reliable documentary evidence to prove that the goods moved without the transit pass in question had actually crossed the borders of the State such evidences may be accepted by the Assessing Authority as an evidence of inter-state movement of goods. ***(Swamy Oil Industries – June 24, 2016)***.

DELHI HC : Delhi VAT : AO withheld the refund of VAT for adjustment against un-confirmed demand. Due to the careless action on the part of AO in granting refund of VAT, an interest burden of nearly 56 lakhs is now placed on the exchequer. Appropriate actions directed to be taken against the AO. ***(Shaila Enterprises – August 5, 2016)***.

DELHI HC : Delhi VAT : AO withheld the refund of VAT for adjustment against un-confirmed demand. Due to the careless action on the part of AO in granting refund of VAT, an interest burden of nearly 56 lakhs is now placed on the exchequer. Appropriate actions directed to be taken against the AO. ***(Shaila Enterprises – August 5, 2016)***.

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 4149 OF 2007

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SMT. B. NARASAMMA
Vs
DEPUTY COMMISSIONER COMMERCIAL TAXES KARNATAKA & ANR.

A.K. SIKRI AND R.F. NARIMAN, JJ.

11th August, 2016

HF ▶ Assesse/Revenue

Iron and Steel goods used in RCC would be treated as declared goods but where the goods are used for manufacturing of doors etc which are fitted into buildings, the benefit of declared goods would not be available.

WORKS CONTRACT – DECLARED GOODS – SINGLE STAGE TAXATION – RATE OF TAX - USE OF IRON AND STEEL IN REINFORCEMENT OF CEMENT CONCRETES – GOODS REMAIN SAME AT THE TIME OF TAXABILITY I.E. POINT OF ACCRETION – CUTTING INTO SHAPES AND BENDING DOES NOT ALTER THE CHARACTER OF GOODS – TAX CAN BE LEVIED ONLY AT ONE STAGE / RATE OF TAX CAN BE ONLY 4% – REVENUE APPEAL DISMISSED – *SECTION 14 OF CST ACT, 1956*

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Facts

The assessees have made use of declared goods i.e. Iron and Steel in the reinforcement of cement concrete that are used for buildings. The iron and steel products become part of pillars, beams and roofs etc. which are part of ultimate immovable structure. The question which arises in present appeals is as to whether iron and steel lose its character at the time of point of taxability i.e. at the time of accretion and hence taxable at a rate higher than tax applicable on declared goods.

In another set of cases, the assessee has used the declared goods i.e. iron and steel for manufacturing of doors, window frames and grills etc., which have been fitted into the buildings. The assessee sought exemption on the ground that goods have been already taxed.

Held:

The iron and steel products that are reinforced for cement concrete used in buildings and structures remains exactly the same goods at the point of taxability i.e. the point of accretion and that mere cutting into different shapes and bending does not make these items lose their identity as declared goods. The goods remain commercially the same goods which can not be taxed again. Similarly where the goods are to be taxed, the same can be only at the rate applicable to declared goods i.e. 4%.

However where the goods have been used in manufacturing of other goods i.e. Doors, Grills and windows etc., the goods lose their identity and as such can not be treated as declared goods. These goods are liable to be taxed again.

Cases referred:

- *State of Karnataka and etc. etc. v. M/s. Reddy Structures Pvt. Ltd. and etc. etc. in Civil Appeals arising out of SLP (Civil) Nos.18646-19117/2015*
- *Builders' Assn. of India v. Union of India, (1989) 2 SCC 645*
- *Gannon Dunkerley and Co. v. State of Rajasthan, (1993) 1 SCC 364*
- *State of Tamil Nadu v. M/s. Pyare Lal Malhotra and Others, (1976) 1 SCC 834*
- *State of Tamil Nadu v. M/s. Pyare Lal Malhotra and Others, (1976) 1 SCC 834*
- *Larsen & Toubro Ltd. v. State of Karnataka & Another, Civil Appeal No.4318 of 2007*
- *Ananth Engineering Works v. State of Karnataka, Civil Appeal No.4319 of 2007*

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Ms. Ashmita Singh, Advocate
For M/s Mitter & Mitter Co.

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Mr. Sumit Goel, Advocate
Ms. Rukhmini S. Bobde, Advocate
Mr. K. Ray, Advocate
For M/s. Parekh & Co.
M/s Keswani & Co.

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Mr. V. N. Raghupathy,Advocate
Mr. Anirudh S., Advocate
Mr. Parikshit Angadi, Advocate
Mr. Chinmay Deshpande, Advocate
Mr. Amjid Maqbool, Advocate

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R.F. NARIMAN, J.

1. Leave granted in SLP(C) Nos.15253/2015, 18646-19117/2015, 10081-10124/2015.

2.This group of appeals concerns the rate of taxability of declared goods – i.e. goods declared to be of special importance under Section 14 of the Central Sales Tax Act, 1956. The question that has to be answered in these appeals is whether iron and steel reinforcements of cement concrete that are used in buildings lose their character as iron and steel at the point of taxability, that is, at the point of accretion in a works contract. All these appeals come from the State of Karnataka and can be divided into two groups – one group relatable to the provisions of the Karnataka Sales Tax Act, 1957 and post 1.4.2005, appeals that are relatable to the Karnataka Value Added Tax Act, 2003. The facts in these appeals are more or less similar. Iron and Steel products are used in the execution of works contracts for reinforcement of cement, the iron and steel products becoming part of pillars, beams, roofs, etc. which are all parts of the ultimate immovable structure that is the building or other structure to be constructed.

3. Before coming to the submissions of learned counsel for the parties, it is necessary to first set out the relevant provisions of the Constitution, the Central Sales Tax Act and the two Karnataka Acts in question.

4. Article 286(3) of the Constitution reads as follows:-

> **"Article 286. Restrictions as to imposition of tax on the sale or purchase of goods**
>
> xx xx xx
>
> (3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,
>
> (a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter State trade or commerce; or
>
> (b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub clause (b), sub clause (c) or sub clause (d) of clause 29 A of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

5. Section 14 of the Central Sales Tax Act, insofar as it is relevant to the present case reads as follows:

> **"Section-14**
>
> **Certain goods to be of special importance in inter-State trade or commerce.** - It is hereby declared that the following goods are of special importance in inter-State trade or commerce:-
>
> (iv) iron and steel, that is to say,-
>
> (i) [pig iron, sponge iron and] cast iron including [ingot moulds, bottom plates], iron scrap, cost iron scrap, runner scrap and iron skull scrap;
> (ii) Steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);
> (iii) Skelp bars, tin bars, sheet bars, hoe-bar and sleeper bars;

(iv) Steel bars, rounds, rods, squares, flat, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths;
(v) steel structurals (angles, joists, channels, tees, sheet piling sections, Z-sections or any other rolled sections);
(vi) sheets, hoops, strips and skelp, both black and galvanized, hot and cold rolled plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in riveted condition;
(vii) Plates both plain and chequered in all qualities;
(viii) Discs, rings, forgings and steel castings;
(ix) Tools, alloy and special steels of any of the above categories;
(x) Steel melting scrap in all forms including steel skull, turnings and borings;
(xi) Steel tubes, both welded and seamless, of all diameters and lengths including tube fittings;
(xii) Tin-plates, both hot dipped and electrolytic and tin free plates;
(xiii) Fist plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers--heavy and light crane rails;
(xiv) Wheels, tyres, axles and wheels sets;
(xv) Wire rods and wires—rolled, drawn, galvanized, aluminized, tinned or coated such as by copper;
(xvi) Defectives, rejects, cuttings, or end pieces of any of the above categories;]

Section 15

Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.

Every sales tax law of a State shall, in so far as it imposes or authorizes the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:

The tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed [five per cent.] of the sale or purchase price thereof [***];"

6. By the 46th Amendment of the Constitution, Article 366 (29A) was added, by which it became possible by a deeming fiction to tax sale of goods involved in a works contract. Declared goods were taxable under Section 5(4) of the Act, which is set out hereunder:

"Section 5(4)

Notwithstanding anything contained in sub-section (1) or Section 5-B or Section 5-C a tax under this Act shall be levied in respect of the sale or purchase of any of the declared goods mentioned in column (2) of the Fourth Schedule at the rate and only at the point specified in the corresponding entries of columns (4) and (3) of the said Schedule on the dealer liable to tax under this Act on his taxable turnover of sales or purchase in each year relating to such goods:"

The Karnataka Sales Tax Act was amended to tax goods involved in works contracts. Taking advantage of the constitutional amendment, Section 5-B was inserted in the Karnataka Sales Tax Act, 1957. This Section reads as follows:-

"Section 5-B: Levy of tax on transfer of property in goods (whether as goods or in some other forms) involved in the execution of works contracts. Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-

section (3-C) of Section 5, but subject to sub-section (4), (5) or (6) of the said Section, every dealer shall pay for each year, a tax under this Act on his taxable turnover of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract mentioned in column (2) of the Sixth Schedule at the rates specified in the corresponding entries in column (3) of the said Schedule."

7. The Fourth Schedule of the said Act, which deals with declared goods in respect of which a single point tax is leviable under Section 5(4) reads as follows:

"Act 3 of 1983 (From 1-11-1982)

Sl No	Description of the Goods	Point of levy	Period for which applicable	Rate of tax
1	2	3	4	5
2.	"Iron and steel, that is to say,-"			
[(a)]	(i) pig iron and cast iron including ingot moulds, bottom plates	**-do-**	**From 1-11-82**	**4%**
	(ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes)	**-do-**	**From 15-7-75**	**4%**
	(iii) skelp bars, tin bars, sheet bars, hoe-bars and sleeper bars;			
	(iv) steel bars (rounds, rods, squares, flats, octagon and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);			
	(v) steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections);			
	(vi) sheets, hoops, strips and skelp, both black and galvanized, hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in riveted condition;			
	(vii) plates both plain and chequered in all qualities;			
	(viii) discs, rings, forgings and steel castings; sales by the first or the earliest of the successive dealers in the state liable to tax under this Act.			
	(ix) tool, alloy and special steels of any of the above categories;			

Act 30 of 1975 (15-7-75 to 31-10-82)

(x)	steel melting scrap in all forms including steel skull turnings and borings;	**-do-**	**15.7.75 to 31.10.82**	**4%**

8. Similarly, the Sixth Schedule, which is to be read with Section 5-B, insofar as it is relevant, reads as under:-

Sl. No.	Description of works Contact	Period for which applicable	Rate of Tax
1	2	3	4
6.	Civil works like construction of building bridges, roads, etc.	1-4-86 to 31-3-95	Five per cent
		1-4-95 to 31-3-91	Eight per cent

9. Post 1.4.2005, the Karnataka Value Added Tax Act, 2003, taxed declared goods and works contracts generally as follows:-

Section 4 - Liability to tax and rates thereof.

(1) Every dealer who is or is required to be registered as specified in

Sections 22 and 24, shall be liable to pay tax, on his taxable turnover,

(a) in respect of goods mentioned in,-

(i) Second Schedule, at the rate of one per cent,

(ii) Third Schedule, at the rate of four per cent in respect of goods specified in serial number 30 and five per cent in respect of other goods, and

(iii) Fourth Schedule, at the rate of twenty per cent.

(b) in respect of.-

(i) cigarettes, cigars, gutkha and other manufactured tobacco at the rate of fifteen per cent;

(ii) other goods at the rate of thirteen and one half per cent.

(c) in respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract specified in column (2) of the Sixth Schedule, subject to Sections 14 and 15 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), at the rates specified in the corresponding entries in column (3) of the said Schedule.

Third Schedule:

30. Declared goods as specified in Section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)

Sixth Schedule:

23.	All other works contracts not specified in any of the above categories including composite contracts with one or more of The above categories Fourteen and one half per cent	Fourteen and one half per cent

10. We have in the main to deal with the impugned judgment dated 1.9.2006 in Civil Appeal No.4318 of 2007, and judgment dated 12.8.2004 in Civil Appeal No. 4149 of 2007 in favour of Revenue, and a detailed impugned judgment which is challenged by the State of Karnataka dated 10.12.2013 in ***State of Karnataka and etc. etc. v. M/s. Reddy Structures Pvt. Ltd. and etc. etc.*** in Civil Appeals arising out of SLP (Civil) Nos.18646-19117/2015.

11. Shri N. Venkatraman led the arguments on behalf of the assessees, after whom Shri S.K. Bagaria, Shri K.V. Viswanathan, and some others followed. According to learned counsel, the present matter is concluded by two judgments of this Court, namely, ***Builders' Assn. of India v. Union of India, (1989) 2 SCC 645,*** and ***Gannon Dunkerley and Co. v. State of Rajasthan, (1993) 1 SCC 364***. The detailed judgment dated 10.12.2003 correctly extracts all the relevant passages from the aforesaid judgments to reach the conclusion that under the Karnataka Value Added Tax Act, 2003, the iron and steel products that are reinforced for cement concrete used in buildings and structures, remains exactly the same goods at the point of taxability – that is, the point of accretion, and that mere cutting into different shapes and bending does not make these items lose their identity as declared goods. Therefore, according to learned counsel, only tax at the rate of 4% can be levied, and not the higher rate levied in respect of civil construction works generally. Other learned counsel more or less argued along the same lines as Shri N. Venkatraman, only adding that it cannot be said that the identity of the iron and steel goods had changed at the point of taxability, and they cited several judgments to show that mere cutting and shaping of these products would not amount to "manufacture" and hence the very goods that were declared goods alone were taxable at the rate of 4%, both under the Karnataka Sales Tax Act as well as the Karnataka Value Added Tax Act, 2003.

12. Shri K.N. Bhat, learned senior advocate appearing on behalf of the State, relied strongly on ***State of Tamil Nadu v. M/s. Pyare Lal Malhotra and Others, (1976) 1 SCC 834***, in order to buttress his submission that the iron and steel products did not continue as iron and steel products but somehow became different goods at the point of accretion and that, therefore, they could be taxed at the higher rate applicable to civil constructions generally. He did not dispute the law laid down in the two Supreme Court judgments cited by Shri N. Venkatraman, and very fairly submitted that if the iron and steel products continued as declared goods then even though they were in a works contract they were subject to the drill of Section 15 of the Central Sales Tax Act, and would therefore be chargeable at 4% if it were found that the said products continue to remain the same.

13. Having heard learned counsel for the parties, we are of the opinion that Shri N. Venkatraman is right. The matter is no longer res integra. Two important propositions emerge on a conjoint reading of ***Builders Association and M/s. Gannon Dunkerley (supra)***. First, that works contracts that are liable to be taxed after the 46th Constitution Amendment are subject to the drill of Article 286(3) read with Section 15 of the Central Sales Tax Act, namely, that they are chargeable at a single point and at a rate not exceeding 4% at the relevant time. Further, the point at which these iron and steel products are taxable is the point of accretion, that is, the point of incorporation into the building or structure.

14. The relevant paragraphs from these two decisions, therefore, need to be set out. In ***Builders Association*** (supra), this Court held:

"We are of the view that all transfers, deliveries and supplies of goods referred to in clauses (a) to (f) of clause (29-A) of Article 366 of the Constitution are subject to the restrictions and conditions mentioned in clause (1), clause (2) and sub-clause (a) of clause (3) of Article 286 of the Constitution and the transfers and deliveries that take place under sub-clauses (b), (c) and (d) of clause (29-A) of Article 366 of the Constitution are subject to an additional restriction mentioned in sub-clause (b) of Article 286(3) of the Constitution. [para 32]

In Benjamin's Sale of Goods (3rd Edn.) in para 43 at p. 36 it is stated thus:

"Chattel to be affixed to land or another chattel.—Where work is to be done on the land of the employer or on a chattel belonging to him, which involves the use or affixing of materials belonging to the person employed, the contract will ordinarily be one for work and materials, the property in the latter passing to the employer by accession and not under any contract of sale. Sometimes, however, there may instead be a sale of an article with an additional and subsidiary agreement to affix it. The property then passes before the article is affixed, by virtue of the contract of sale itself or an appropriation made under it."

In view of the foregoing statements with regard to the passing of the property in goods which are involved in works contract and the legal fiction created by clause (29-A) of Article 366 of the Constitution it is difficult to agree with the contention of the States that the properties that are transferred to the owner in the execution of a works contract are not the goods involved in the execution of the works contract, but a conglomerate, that is the entire building that is actually constructed. After the 46th Amendment it is not possible to accede to the plea of the States that what is transferred in a works contract is the right in the immovable property.

The 46th Amendment does no more than making it possible for the States to levy sales tax on the price of goods and materials used in works contracts as if there was a sale of such goods and materials.

We are surprised at the attitude of the States which have put forward the plea that on the passing of the 46th Amendment the Constitution had conferred on the States a larger freedom than what they had before in regard to their power to levy sales tax under entry 54 of the State List. The 46th Amendment does no more than making it possible for the States to levy sales tax on the price of goods and materials used in works contracts as if there was a sale of such goods and materials. We do not accept the argument that sub-clause (b) of Article 366(29-A) should be read as being equivalent to a separate entry in List II of the Seventh Schedule to the Constitution enabling the States to levy tax on sales and purchases independent of entry 54 thereof. As the Constitution exists today the power of the States to levy taxes on sales and purchases of goods including the "deemed" sales and purchases of goods under clause (29-A) of Article 366 is to be found only in entry 54 and not outside it. We may recapitulate here the observations of the Constitution Bench in the case of Bengal Immunity Company Ltd. [AIR 1955 SC 661 : (1955) 2 SCR 603 : (1955) 6 STC 446] in which this Court has held that the operative provisions of the several parts of Article 286 which imposes restrictions on the levy of sales tax by the States are intended to deal with different topics and one could not be projected or read into another and each one of them has to be obeyed while any sale or purchase is taxed under entry 54 of the State List.

> *We, therefore, declare that sales tax laws passed by the legislatures of States levying taxes on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract are subject to the restrictions and conditions mentioned in each clause or sub-clause of Article 286 of the Constitution. We, however, make it clear that the cases argued before and considered by us relate to one specie of the generic concept of "works contracts". The case-book is full of the illustrations of the infinite variety of the manifestation of "works contracts". Whatever might be the situational differences of individual cases, the constitutional limitations on the taxing power of the State as are applicable to "works contracts" represented by "building contracts" in the context of the expanded concept of "tax on the sale or purchase of goods" as constitutionally defined under Article 366(29-A), would equally apply to other species of "works contracts" with the requisite situational modifications." (Paras 38-41)*

In ***M/s. Gannon Dunkerley*** (supra), this Court held:

> *"Apart from the limitations referred to above which curtail the ambit of the legislative competence of the State Legislatures, there is clause (3) of Article 286 which enables Parliament to make a law placing restrictions and conditions on the exercise of the legislative power of the State under Entry 54 in State List in regard to the system of levy, rates and other incidents of tax. Such a law may be in relation to (a) goods declared by Parliament by law to be of special importance in inter-State trade or commerce, or (b) to taxes of the nature referred to in sub-clauses (b), (c) and (d) of clause (29-A) of Article 366. When such a law is enacted by Parliament the legislative power of the States under Entry 54 in State List has to be exercised subject to the restrictions and conditions specified in that law. In exercise of the power conferred by Article 286(3)(a) Parliament has enacted Sections 14 and 15 of the Central Sales Tax Act, 1956. No law has, however, been made by Parliament in exercise of its power under Article 286(3)(b).*
>
> *For the same reasons Sections 14 and 15 of the Central Sales Tax Act would also be applicable to the deemed sales resulting from transfer of property in goods involved in the execution of a works contract and the legislative power under Entry 54 in State List will have to be exercised subject to the restrictions and conditions prescribed in the said provisions in respect of goods that have been declared to be of special importance in inter-State trade or commerce.*
>
> *So also it is not permissible for the State Legislature to impose a tax on goods declared to be of special importance in inter-State trade or commerce under Section 14 of the Central Sales Tax Act except in accordance with the restrictions and conditions contained in Section 15 of the Central Sales Tax Act.*
>
> *Since the taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works, the value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in the works and not the cost of acquisition of the goods by the contractor.*
>
> *We are also unable to accept the contention urged on behalf of the States that in addition to the value of the goods involved in the execution of the works contract the cost of incorporation of the goods in the works can be included in the measure for levy of tax. Incorporation of the goods in the works forms part*

of the contract relating to work and labour which is distinct from the contract for transfer of property in goods and, therefore, the cost of incorporation of the goods in the works cannot be made a part of the measure for levy of tax contemplated by Article 366(29- A)(b).” [paras 31, 37, 41 and 45]

15. At this juncture, it is important to note the fact situation in a typical case before us. The Karnataka Appellate Tribunal in an order dated 18.10.2010 in Civil Appeals arising out of SLP(C) Nos. 18646-19117 of 2015 narrates the factual position thus:

“Different types of steel bars/ rods of different diameters are used as reinforcement (like TMT bars, CTD bars etc). The reinforcement bars/ rods need to be bent at the ends in a particular fashion to withstand the bending moments and flexural shear. The main reinforcement bars/ rods have to be placed parallely along the direction of the longer span. The diameters of such main reinforcement rods/bars and the distance between any two main reinforcement bars/rods is calculated depending on the required loads to be carried by the reinforced cement concrete structure to be built based on various engineering parameters. At right angles to the main reinforcement bas/rods, distribution bars/rods of appropriate lesser diameters are placed and the intersections between the distribution bars/rods and main reinforcement bars/rods are tied together with binding wire. The tying is not for the purposes of fabrication but is to see that the iron bars or rods are not displaced during the course of concreting from the assigned positions as per the drawings. Welding of longitudinal main bars and transverse distribution bars is not done. In fact, welding is contra-indicated because it imparts too much rigidity to the reinforcement which hampers the capacity of the roof structure to oscillate or bend to compensate varying loads on the structure besides welding reduces the cross section of the bars/ rods weakening their tensile strength. The reinforcements are placed and tied together in appropriate locations in accordance with the detailed principles and drawings found in standard bar bending schedules which lay down the exact parameters of interspaces between bars/ rods, the required diameters of the steel reinforcement bars/ rods and contain the required engineering drawings for placement of bars in a particular manner. The placement of reinforcement bars/ rods for different structures is done under the supervision of qualified bar tenders and site engineers who are well versed with the engineering aspects related to steel reinforcement for creating reinforced cement concrete of desired load bearing capacities.

The appellant company has submitted general photographs showing the progress of the work of placement and binding of reinforcement bars/ rods at its work sites. The said photographs also establish the correctness of the aforesaid findings relating to placement and binding together of steel reinforcement bars/ rods before such bars/ rods are embedded in cement concrete mixtures. In another case in STA No.1328/2008 decided by this Tribunal on 10.2.2009 (in the case of Sri J. Bhaskar Rao) which is relied on by the appellant, in the agreement between the Government of Karnataka, Minor Irrigation Department and the said appellant (who was a civil contractor engaged in the civil construction activity), specification for placement and binding together of reinforcement bars/ rods were stipulated by the Government of Karnataka as follows:

“Reinforcing steel shall conform accurately to the dimensions given in the bar bending schedules shown on the relevant drawings. Bars shall

be bent cold to the specific shape and dimensions or as directed by the Engineer in- charge using a proper bar bender, operated by hand or power to attain proper radii of bends."

"PLACING OF REINFORCEMENTS:

All reinforcement bars shall be accurately placed in exact position shown on the drawings and shall be securely held in position during placing of concrete by annealed binding wire not less than 1mm. in size and conforming to IS;280, and by using stays, blocks or metal chairs, spacers, metal hangers, supporting wires or other approved devices at sufficiently close intervals. Bars will not be allowed to end between supports not displaced during concreting or any other operation over the work .... As far as possible, bars of full length shall be used. In case this is not possible, overlapping bars shall not touch each other, but be kept apart by 25mm, or 1 (1/4) times the maximum size of the coarse aggregate whichever is greater, by concrete between them. Where not feasible, overlapping bars shall be bound with annealed steel wire, not less than, 1mm. Thickness twisted tight. The overlaps shall be staggered for different bars and located at points along the span where neither shear nor bending moment is maximum."

The above specification which are standard for all civil construction works also confirms the correctness of the findings recorded by us supra. Welding of bars/ rods reduces their cross section and to that extent decreases the tensile strength of the reinforcement bars/ rods defeating the very purpose of steel reinforcement in cement concrete. When bars/ rods are just joined together loosely by the use of binding wires, the elasticity of the steel bar/ rod is in no way hampered and each reinforcement bar/ rod acts independently. By the combined action of the main reinforcement bars/ rods and the distribution bars/ rods, the reinforced cement structures like roofs act as a rigid diaphragm whose elements displace equally in the direction of the applied in-plane loads.

From the above discussion it is clear that largely in building construction works, no pre-fabrication of any steel structure is done before embedding them in cement concrete mixture to form reinforced cement concrete structures. The findings of the lower authorities to the contrary effect in the cases on hand are entirely opposed to facts.

The only process to which the steel reinforcement rods/ bars are subjected to before being embedded with cement concrete mixture is bending at its ends after cutting of steel rods/ bars to the required size and tying them at the intersections with binding wire. None of these processes constitute a manufacturing process and no new commodity is produced before incorporation into the works."

16. Given this factual scenario, Shri K.N. Bhat referred to the judgment in ***State of Tamil Nadu v. M/s. Pyare Lal Malhotra and Others***, (1976) 1 SCC 834, and relied on paragraphs 9 and 10 of this judgment which read as follows:

"If the object was to make iron and steel taxable as a substance, the entry could have been: "Goods of Iron and Steel". Perhaps even this would not have been clear enough. The entry, to clearly have that meaning, would have to be: "Iron and Steel irrespective of change of form or shape or character of goods made out of them". This is the very unusual meaning which the respondents would

> *like us to adopt. If that was the meaning, sales tax law itself would undergo a change from being a law which normally taxes sales of "goods" to a law which taxes sales of substances, out of which goods are made. We, however, prefer the more natural and normal interpretation which follows plainly from the fact of separate specification and numbering of each item. This means that each item so specified forms a separate species for each series of sales although they may all belong to the genus: "Iron and Steel". Hence, if iron and steel "plates" are melted and converted into "wire" and then sold in the market, such wire would only be taxable once so long as it retains its identity as a commercial goods belonging to the category "wire" made of either iron or steel. The mere fact that the substance or raw material out of which it is made has also been taxed in some other form, when it was sold as a separate commercial commodity, would make no difference for purposes of the law of sales tax. The object appears to us to be to tax sales of goods of each variety and not the sale of the substance out of which they are made.*
>
> *As we all know, sales tax law is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type." [paras 9 and 10]*

17. Given the fact situation in these appeals, it is obvious that paragraph 10 of this judgment squarely covers the case against the State, where, commercial goods without change of their identity as such, are merely subject to some processing or finishing, or are merely joined together, and therefore remain commercially the same goods which cannot be taxed again, given the rigor of Section 15 of the Central Sales Tax Act. We fail to see how the aforesaid judgment can further carry the case of the revenue.

18. We may note that in Civil Appeal No.4318 of 2007, ***Larsen & Toubro Ltd. v. State of Karnataka & Another***, the Appellate Tribunal had passed an order dated 11.1.2002 in which it decided the case against the assessee on the ground that since the iron and steel products went into cement concrete, they changed form, and since they changed form, they were no longer declared goods and could be taxed without the constraints mentioned in Section 15 of the Central Sales Tax Act. A Sales Tax Revision Petition filed before the High Court yielded an order dated 14.6.2007 by which the assessee was sent back to the Appellate Tribunal for rectification. This rectification petition was dismissed by an order dated 30.11.2005. A Sales Tax Revision Petition was thereafter filed against both orders, namely, 11.1.2002 and 30.11.2005. The High Court, in the impugned judgment dated 1.9.2006, unfortunately adverted only to the rectification order dated 30.11.2005 and not to the original order of 11.1.2002 and thus dismissed the revision petition stating that no question of law arose. Ordinarily, we would have set aside the judgment and remanded the matter back to the High Court to determine the matter on merits, but at this point of time we find this would not serve any purpose. Instead, it is enough to set aside both the judgments impugned by the assessees, dated 1.9.2006 and 12.8.2004, in light of the law laid down in ***Builders Association*** and ***M/s. Gannon Dunkerley*** (supra), and declare that the declared goods in question can only be taxed at the rate of 4%.

19. In the State Appeals, we find that the lead impugned judgment in Civil Appeals arising out of SLP(C) Nos.18646-19117 of 2015 dated 10.12.2013 is an exhaustive judgment which has considered not only the facts in great detail but also the law laid down by the Supreme Court. We affirm the said judgment and dismiss the appeals of the State of Karnataka.

Civil Appeal No.4319 of 2007

M/s. Ananth Engineering Works v. State of Karnataka

20. This appeal is by the assessee from a judgment dated 26.10.2006 allowing a revision against the Appellate Tribunal's order dated 19.1.2006. In this appeal, we are concerned with Rule 6(4)(m) of the Karnataka Sales Tax Rules, 1957.

"Rule 6(4):

6. DETERMINATION OF TOTAL AND TAXABLE TURNOVER:

(1)…….

…….

(4) In determining the table turnover, the amount specified in clause (a) to (p) shall, subject to the conditions specified therein, be deducted from the total turnover of a dealer as determined under clauses (a) to (e) of sub-Rule (1).

(a)…..

(b)….

…..

(m) In the case of works contract specified in Serial Numbers 1,2,3,4,5,7,8,9,10,11,12,17,26,27,35,36,40 and 42 of the Sixth Schedule;

(i) all amounts received or receivable in respect of goods other than the goods taxable under sub-section (1-A) or (1-B) or Section 5 which are purchased form registered dealers liable to pay tax under the Act and used in the execution of works contract in the same form in which such goods are purchased.

(ii) ……

…….EXPLANATION-III For the purpose of sub-rule (4), the expression 'in the same form' used in sub-clause (i) of clause (m) shall not include such goods which, after being purchased, are either consumed or used in the manufacture of other goods which in turn are used in the execution of works contract."

21. On facts in this case, it has been found that the appellant is engaged in works contracts of fabrication and creation of doors, window frames, grills, etc. in which they claimed exemption for iron and steel goods that went into the creation of these items, after which the said doors, window frames, grills, etc. were fitted into buildings and other structures. On facts, therefore, we find that the High Court's judgment is correct and does not need to be interfered with inasmuch as the iron and steel goods, after being purchased, are used in the manufacture of other goods, namely, doors, window frames, grills, etc. which in turn are used in the execution of works contracts and are therefore not exempt from tax.

22. The appeal of the assessee is therefore dismissed.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 34 OF 2012

AVDESH TRACKS PRIVATE LIMITED
Vs
STATE OF PUNJAB AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

2nd August, 2016

HF ▶ Assessee

Small discrepancies in Tax invoices itself cannot be the basis to reject claim of ITC when the dealer had shown genuineness of the transaction.

INPUT TAX CREDIT – STATUTORY FORM/ TAX INVOICE – TECHNICAL DEFECT – GOODS PURCHASED – INVOICE ISSUED BY SELLER WITH REQUISITE INFORMATION AND SALE TAX CHARGED – INPUT TAX CREDIT CLAIMED – DENIAL ON THE GROUNDS THAT THE ORIGINAL COPY OF INVOICE LACKED 'INPUT TAX CREDIT IS AVAILABLE TO A PERSON AGAINST THIS COPY' AS REQUIRED TO BE PRINTED UNDER THE RULES – APPEAL BEFORE HIGH COURT – IN VIEW OF EARLIER JUDGMENTS IT IS HELD THAT STATUTORY FORMS ARE MERELY PRIMA FACIE PROOF AND NOT CONCLUSIVE – DEALER CAN CLAIM BENEFIT DESPITE MINOR DISCREPANCY IF IT CAN PROVE GENUINENESS OF THE TRANSACTION – RULE 54 IS NOT MANDATORY WHERE SUFFICIENT EVIDENCE IS GIVEN IN SUPPORT OF CLAIM - CLAIM NOT TO BE REJECTED ON MERE TECHNICALITIES WHEN DEALER HAS OTHERWISE SHOWN TAX BEING PAID TO SELLING DEALER AND DULY DEPOSITED WITH THE STATE – APPEAL ACCEPTED – MATTER REMITTED TO ASSESSING AUTHORITY TO EXAMINE GENUINENESS OF THE TRANSACTION AND THE CLAIM MADE – *S. 13 OF PVAT ACT, 2005; RULE 54 OF PVAT RULES, 2005*

Facts

The appellant had purchased goods from its seller which issued an invoice – cum –excise gate pass depicting the details of goods and sale tax charged. The appellant claimed ITC on the goods so purchased in its returns. The claim was rejected in spite of all other documents and invoices produced on the grounds that the original copy of invoice did not have words 'Input tax credit is available to a person against this copy' on it. This was considered mandatory by the department in view of the Rules given. Aggrieved by the orders passed by the authorities below, an appeal is filed before High court.

Held:

In view of earlier judgments passed by this court, it appears that in the absence of statutory form provided for claiming the benefit, the dealer can sill claim the benefit if it is able to prove that the transaction was genuine and tax had been paid to the selling dealer. Even after producing the statutory form, the authorities can deny the benefit if the transaction is found ingenuine. The form is merely a prima facie proof.

In the present case there is only a minor deficiency and these type of technical defects cannot be fatal for grant of ITC to the claimant. Therefore, the Tribunal was not justified in rejecting the claim of ITC on mere technicalities when the dealer has otherwise shown tax being paid to selling dealer and duly deposited with the state.

Also, provisions of Rule 54 are not mandatory, when the dealer is able to show from other evidence that the transaction is genuine.

The appeal is allowed and matter is remitted back to assessing authority to examine the genuineness of the transaction and claim made by the appellant.

Cases referred:

- *Commissioner of Central Excise. Ludhiana v. Ralson India Ltd.. 2006(202) ELT 759*
- *Commissioner of C. Ex,. Delhi-III Gurgaon v, Myron Electricals Private Limited. 2007(207) ELT 664*
- *Commissioner of Central Excise. Chd. v. M/s Aarti Steels Ltd., decided on 11.3.2010*
- *SPL Industries Ltd, v. Union of India and others, CWP No. 11495 of 2012 decided on 31.1.2013*
- *New Devi Grit Udyog, Raiseena, Gurgaon v. State of Haryana and others, VATAP No. 37 of 2014 decided on 8.9.2015*
- *Standard Concrete & Stone Agency. Faridabad and others v. State of Haryana and others. (1998) 12 PHT 185 (SC)*
- *SPL Industries Limited's case (supra); State of Punjab and another v, City Petro. (2009) 021 VST 353*
- *Marmagoa Steel Limited v. Union of India, 2005(192) ELT 82 (Bom.)*
- *Vimal Enterprise v. Union of India, 2006 (195) ELT 267 (Guj.)*

Present: Mr. Sandeep Goyal, Advocate for the appellant.
Mr. Sudeepti Sharma, Deputy Advocate General, Punjab.

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RAJESH BINDAL, J.

1.The present appeal arising out of the order dated 3.11.2011, passed by Value Added Tax Tribunal, Punjab, Chandigarh (for short, 'the Tribunal') in Appeal No. 169 of 2011, was admitted for determination of the following substantial questions of law:

> *"(i) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in rejecting the claim of Input Tax Credit merely on the grounds of technicalities when the selling dealer has shown the sales made to the appellant in his return and has duly deposited the tax on those sales ?*
>
> *(ii) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in holding that the provisions of Rule 54 are mandatory in nature ?"*

2. The dispute is regarding claim of input tax credit for the period from 1.7.2009 to 31.3.2010.

3. Learned counsel for the appellant submitted that during the aforesaid period, the appellant purchased various consignments of non-alloy ingots of different quality. The seller of the goods is a unit covered under the Central Excise Act, 1944 (for short, 'the 1944 Act'). The invoice-cum- excise gate pass admittedly depicted the description and price of the goods, excise duty and the sale tax charged. At the time of filing of return, the appellant claimed credit of the input tax paid at the time of purchase of the aforesaid material. As the refund was admissible to the appellant, the Assessing Authority issued notice for determination thereof. Though all the invoices and other documents were produced by the appellant before the Designated Authority, but still the claim of input tax credit on the material purchased from Sada Shiv Casting Pvt. Ltd.

was rejected, vide order dated 6.9.2010. Aggrieved against the order so passed, the appellant preferred appeal, which was rejected by the Deputy Excise and Taxation Commissioner (Appeals), Patiala vide order dated 24.5.2011. Still further, the appellant failed in appeal before the Tribunal.

4. Impugning the action of the authorities in rejecting the claim for input tax credit on the material purchased from Sada Shiv Casting Pvt. Ltd., learned counsel for the appellant, while referring to the provisions of Section 13(2) of the Punjab Value Added Tax Act, 2005 (for short, 'the VAT Act') and Rules 18, 21(3) and 51 of the Punjab Value Added Tax Rules, 2005 (for short, 'the Rules'), submitted that the entire information as provided for in the Rules was available in the invoices. Merely because on the original copy of the VAT invoice, the words "Input Tax Credit is available to a person against this copy" were not printed on the invoice will not debar the appellant from claiming input tax credit, as the same being highly technical, once sufficient material was produced in evidence before the competent authority to show that the seller had deposited the amount of tax collected from the appellant with the department. He further submitted that even submission of the tax invoice with the aforesaid words written thereon is also not a conclusive proof as the authority can still verify the claim. Meaning thereby the substance has to be seen and not merely the document. The appellant does not have any control over the kind of invoice issued by a selling dealer, hence, he cannot be penalised.

5. It was further submitted that input tax credit is available to a dealer even if VAT invoice is lost, destroyed or mutilated, as the claim can be made on production of other evidence. Claim is admissible in case the competent authority is satisfied. In support of his submissions, reliance was placed upon judgments of Division Bench of this court in ***Commissioner of Central Excise. Ludhiana v. Ralson India Ltd.. 2006(202) ELT 759*** and ***Commissioner of C. Ex,. Delhi-III Gurgaon v, Myron Electricals Private Limited. 2007(207) ELT 664; GCR No. 5 of 1999—Commissioner of Central Excise. Chd. v. M/s Aarti Steels Ltd., decided on 11.3.2010; CWP No. 11495 of 2012—M/s SPL Industries Ltd. v. Union of India and others, decided on 31.1.2013*** and ***VATAP No. 37 of 2014—M/s New Devi Grit Udyog, Raiseena, Gurgaon v. State of Haryana and others, decided on 8.9.2015***.

6. On the other hand, learned counsel for the State submitted that Input Tax Credit is available to a dealer in terms of Section 13 of the VAT Act. Sub-section (12) thereof provides that input tax credit shall be allowed only against original VAT invoice. The onus to prove the same is on the claimant. Rule 18 of the Rules provides for conditions for claiming input tax credit. Rule 21 of the Rules provides that no input tax credit shall be admissible in respect of a purchase, in case the invoice does not contain the requisite information, as specified in Rule 54 of the Rules. Rule 54 of the Rules, inter-alia, provides that VAT invoice should have the words "Input Tax Credit is available to a person against this copy". The word "shall" in the provision, as referred to above, would clearly mean that the provisions are mandatory. In case these are not held to be mandatory for claiming the input tax credit, the Rules will be redundant.

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

8. Before this court proceeds to deal with the issue raised, it would be appropriate to refer to the relevant provisions. The same are extracted below:

> *"Section 13(11 (121 to (151 of the Act*
>
> *SECTION 13. INPUT TAX CREDIT:*
>
> > *(1) A taxable person shall be entitled to the input tax credit, in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period:*

xx xx xx

(12) Save as otherwise provided hereinafter, input tax credit shall be allowed only against the original VAT invoice and will be claimed during the period in which such invoice is received.

(13) In case the original VAT invoice is lost or mutilated, the input tax credit will be available only after the designated officer has determined the credit in the prescribed manner.

(14) If upon audit or cross verification or otherwise, it is found that a taxable person has made a false input tax credit claim, the Commissioner or the designated officer, as the case may be, shall order for recovery of whole or any part of such input tax credit, as the case may be, without prejudice to any action or penalty provided for in this Act.

(15) The onus to prove that the VAT invoice on the basis of which, input tax credit is claimed, is bona fide and is issued by a taxable person, shall lie on the claimant."

Rules 18, 21, 26 and 54 of the Rules

R.-18. Conditions for input tax credit.- *The input tax credit under Section 13 of the Act will be admissible to a taxable person, if such a person has –*

(a) in his possession the original VAT invoice, issued to him by a taxable person, from whom purchase of such goods has been made, wherein tax charged, has separately been shown; and

(b) maintained proper record of all purchases of goods, eligible for input tax credit and all adjustments thereto in chronological order.

xx xx xx

R. 21-. Inadmissibility of input tax credit in certain cases.-

(1) No input tax credit shall be admissible to a person for tax paid on purchase of goods, if such goods are lost or destroyed or damaged beyond repair.

(2) Input tax credit available on the goods, which are lost, destroyed or damaged beyond repair, shall be reversed immediately on occurrence of such event.

(2-A) Input Tax Credit shall be allowed to a taxable person to the extent of tax payable on the resale value of goods or sale value of manufactured/processed goods where such goods by the taxable person are sold at a price,-

(i) Lower than purchase price of such goods in the case of resale; or

(ii) Lower than Cost price in the case of manufactured/ Processed goods;

and in such cases the balance Input Tax Credit (ITC) shall be reversed by the taxable person :

Provided that the provisions of this sub-rule shall not apply in cases where the sale has been made at a price lower than the companies, that is to say, Indian Oil Corporation Limited,

Hindustan Petroleum Corporation Limited, Bharat Petroleum Corporation Limited and HPCL Mittal Energy Limited.

(3) No input tax credit shall be admissible to a person in respect of such purchases for which he accepts from the selling person, an invoice which-

(a) has not been duly obtained from a taxable person against the bonafide transaction;

(b) does not contain all the required information as specified in rule 54; and

(c) has been issued by a person, whose certificate of registration has been cancelled under the provisions of the Act.

(4) Where some goods as input or output are lying in the stock of a taxable person and where such goods become tax-free from a particular date, then from that date, no input tax credit shall be admissible to the taxable person on the sale of goods lying in the stock or on using the goods as input for making such tax-free goods.

(5) No input tax credit shall be admissible on goods purchased by a person during the period, he opted for Turn over Tax (TOT) under Section 6 of the Act.

(6) Where input tax credit has already been availed of by a taxable person against the purchase of goods, a part of which is, either used in manufacturing the goods, specified in Schedule 'A' or disposed of otherwise than by way of sale, the input tax credit so availed for such part of goods will be deducted from input tax credit for the relevant period of use or disposal referred to above. If, as a result of such deduction, there is negative input tax credit balance for a particular period, the person concerned shall pay such tax forthwith, as if the same was payable in the said period.

(7) Input tax credit in the case of Iron and Steel goods as enumerated in clause (iv) of section 14 of the Central Sales Tax Act, 1956, except wheels, tyres, axles, wheel sets shall not be available unless the purchaser is a first stage taxable person or second stage taxable person or third stage taxable person.

(8) where some goods as input or output are lying in the stock of a taxable person and where rate of tax on such goods is reduced from a particular date, then from that date, input tax credit shall be admissible to the taxable person on the sale of goods lying in stock or on using the goods as input for manufacturing taxable goods, at the reduced rate.

xx xx xx

R.-26. Input tax credit on duplicate invoice.-

(1) In case, the original VAT invoice has been lost, destroyed or mutilated, a taxable person, shall make an application to the designated officer in Form VAT-7 along with a duplicate copy of VAT invoice, issued by the seller and an indemnity bond in Form VAT-8 for the amount, equal to the amount of input tax claimed under such invoice.

(2) On receipt of such application, the designated officer shall cross-check the transaction and after satisfying about the genuineness of the transaction, shall allow the claim by an order to be passed within a period of sixty days from the receipt of such application.

(3) The taxable person shall avail the input tax credit only after the receipt of the order mentioned in sub-rule (2).

xx xx xx

R.-54. Particulars to be mentioned in a VAT invoice.-

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

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

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

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

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

(b) the date of issue;

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

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

(e) full description of the goods;

(f) the quantity of the goods;

(g) the value of the goods per unit;

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

(i) the total value;

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

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

(l) signatures of the proprietor or partner or director or his authorised agent.

(m) in case of sale of Iron and Steel goods as enumerated in clause-IV of section-14 of Central Sales Tax Act, 1956 except wheels, tyres, axles, wheel sets, the following certificate shall be printed on the backside of the VAT invoice:-

Certificate under Rule 54 of the PVAT Rules, 2005.

(To be printed on the backside of the invoice).

Certified that in case of goods covered under this invoice:

First Importer/Manufacture	*First State Taxable person*	*Second Stage Taxable person*
(1)	*(2)*	*(3)*
Name of the Taxable person		
TIN		
Commodity		
Weight (In M.T.)		
Invoice No.		
Tax liability		

Stamp and Signature

Note:- (1) The first stage taxable person shall fill column 1 and 2, the second stage taxable person shall fill column 1, 2 and 3.

2. Admissibility of ITC is subject to furnishing of correct information."

9. Section 13 of the Act provides that a taxable person shall be entitled to input tax credit in such manner, as may be prescribed. The input tax credit is available against original VAT invoice and can be claimed during the period in which such invoice is received. The input tax credit can be availed of if the designated officer determines the credit in the prescribed manner. The onus to prove that the claimant is entitled to input tax credit and the transaction is bonafide, is on him. In case, on audit or cross-verification, it is found that the actual person had claimed false input tax credit, the competent authority can order for recovery thereof without prejudice to any penal action.

10. Rule 18 of the Rules provides that input tax credit shall be available in case the taxable person has original VAT invoice issued to him by the taxable person from whom the goods have been purchased. The tax charged thereon has been shown separately. He has maintained proper record of his purchases eligible for input tax credit. Rule 21 of the Rules, which prescribes certain conditions for admissibility of input tax credit, *inter-alia*, provides that no input tax credit shall be admissible in case the VAT invoice does not contain the required information as specified in Rule 54 of the Rules. Rule 26 of the Rules provides that in case the original VAT invoice has been lost, destroyed or mutilated, claim can be made on the basis of a duplicate copy thereof issued by the selling dealer and an indemnity bond in the form specified. The benefit is admissible to the claimant after the designated officer cross-checks the transaction and satisfies himself about the genuineness of the transaction. Rule 54 of the Rules provides the particulars to be mentioned in a VAT invoice. It provides that VAT invoice shall be issued from duly bound invoice or cash memo book, except where it is prepared on computer or any other electronic or mechanical device. It shall be in triplicate. The original copy of the VAT invoice shall contain the words "input tax credit is available to a person against this copy". It will be issued to the purchaser only. The second copy thereof will not entitle the holder to claim input tax credit. It shall be used only for the purpose of transportation of goods. The last copy shall be retained by the seller. "VAT Invoice" shall be printed on the invoice. The VAT invoice shall contain the serial number, date of issue, name, address, registration number of selling and buying dealer, description, quantity and value of goods, rate

and the amount of tax charged, total value, mode of transportation, stage of purchase and the signature of the authorised person of the selling dealer.

11. The issue as to whether minor discrepancy in the contents of an invoice will be fatal for making a claim for input tax credit was considered by Division Bench of this Court in ***M/s New Devi Grit Udyog's case*** (supra). The case pertained to the claim made under Haryana Value Added Tax Act, 2003. It contains similar provisions with reference to the contents of VAT invoice for claiming the benefit of input tax credit. The issue considered by this court was as to whether a purchaser can be penalised where the selling dealer does not comply with any of the requirements regarding particulars to be mentioned in VAT invoice. The answer was in negative. In that case, the discrepancy was non-mentioning of buyer's name and TIN number. It was opined that the purpose of incorporating Rule 54 (3) in the Haryana Value Added Tax Rules, 2003 is to safeguard the interest of revenue from non-genuine transaction. It is procedural in nature and does not confer any substantive right. In the event of non-mentioning of certain particulars, heavy onus is on the dealer claiming input tax credit to produce other sufficient evidence to show that the transaction was genuine and that the tax was paid to the selling dealer. While referring to the judgments in ***Standard Concrete & Stone Agency. Faridabad and others v. State of Haryana and others. (1998) 12 PHT 185 (SC), M/s SPL Industries Limited's*** case (supra); ***State of Punjab and another v. City Petro. (2009) 021 VST 353; Marmagoa Steel Limited v. Union of India, 2005(192) ELT 82 (Bom.) and Vimal Enterprise v. Union of India, 2006 (195) ELT 267 (Guj.)***, the Division Bench opined as under:

> *"**12.** In the present cases, the Assessing Officer was not justified in declining the benefit of input tax credit only on the ground that the tax invoices did not contain the name of the buyer and also its TIN number. No doubt, non mentioning of the name and the TIN number can be a circumstance, but it cannot be held to be conclusively against the purchaser. The judgment cited by learned counsel for the State in **Babu Verghese's** case (supra) was different. The question involved therein was validity of extension granted by the Bar Council of India to existing members of Kerala Bar Council (KBC) under proviso to Section 8 of the Advocates Act, 1961 and consequent validity of elections held by KBC during the extended term.*
>
> *13. In such circumstances, we find that the matter requires to be remanded to the Assessing Officer who shall consider the matter afresh and shall not reject the tax invoice only on the ground that it does not contain the name of the buyer and its TIN number where the buyer is able to justify the genuineness of the transaction by producing evidence before him. Ordered accordingly. Consequently, the impugned orders Annexures A.1, A.2, A.4 and A.7 are set aside. All the appeals stand disposed of as such."*

12. Considering a similar issue with reference to entitlement of modvat credit under the 1944 Act, a Division Bench of this Court in ***Ralson India Ltd.'s*** case (supra) opined that mere technicalities should not be a hurdle in grant of modvat credit under the beneficial scheme once it is proved that the transaction was genuine and the tax had been paid to the State. Paragraph 9 thereof is extracted below:

> *"9. Rule 57A of the Rules allows to a manufacturer credit of any duty of excise etc. paid on the goods used in the manufacture of the specified goods. Rule 57G lays down the procedure to be observed by the manufacturer intending to take credit of the duty paid on the inputs. Sub-rule (3) contemplates that no Modvat credit shall be taken by the manufacturer unless the inputs are received in the factory under the cover of various documents enumerated thereunder. However, sub-rule (6), which is in the nature of a non-obstante clause, carves out an*

exception to sub-rule (3). It provides that a manufacturer may take credit on the inputs received in his factory on the basis of original invoice, if duplicate copy of the invoice has been lost in transit, subject to the satisfaction of the Assistant Commissioner of Central Excise that : (i) the inputs have been received in the factory of the said manufacturer and (ii) the duty was paid on such inputs. The scope of satisfaction of the Assistant Commissioner is restricted to the two aforenoted aspects. From a conjoint reading of sub-rules (3) and (6), the intent and object of the Legislature is manifestly clear. It is to prevent the misuse of the modvat claims and any fraud being played by a manufacturer. Being a beneficial legislation, its object of input duty relief to a manufacturer should not be defeated on a technical and strict interpretation of the Rules governing modvat. In fact, in order to obviate any difficulty on account of loss of duplicate copy of the invoices, Notification No. 23/94- C.E. (N.T.), dated 20-5-1994 has been issued by the Board enabling a manufacturer to take Modvat credit on the basis of original copy of the invoice, provided the loss of duplicate copy of the invoice had occurred only in transit and the Assistant Commissioner is satisfied about its loss."

13. The issue was also considered by a Division Bench of this Court in ***M/s SPL Industries Ltd.'s case*** (supra). It was a case where rebate of duty on export of goods was under consideration. The petitioner therein was not able to produce the prescribed form. It was opined that the form prescribed in the Rules was a *prima facie* proof of export of goods. If any material was available with the adjudicating authority, he could still opine that the goods were not exported. Even in the absence of the prescribed form, if there is sufficient material with the adjudicating authority, he can still come to the conclusion that the goods were, in fact, exported, which entitled the benefit to the party. Relevant paragraph thereof is extracted below:

"We have heard learned counsel for the parties at length and find that the claim of the petitioner for rebate is required to be examined in the light of documents produced by the petitioner in support of the assertion that the goods were in fact exported. The production of original and the duplicate copy of ARE-1 Form duly endorsed by the Officer of the Customs is prima-facie proof of the fact that the goods have been exported. Even if the documents are produced, the adjudicating authority can still come to the conclusion that the goods were not exported. On the other hand, if the documents such as original or the duplicate copy of ARE-1 Form is not produced, the adjudicating authority can still come to the conclusion that the goods were in fact exported. The Central Excise Officer has to record a satisfaction that the claim is in order. It is question of fact as to whether the claim is genuine or not. Such satisfaction can be recorded even in the absence of original/duplicate copy of ARE-1 Form. The express language of the notification is the recording of the satisfaction of the Central Excise Officer that the claim is in order so as to sanction the rebate either in whole or in part.

Since such exercise has not been undertaken by the Adjudicating Officer or any of the authorities under the Act, therefore, we set aside the orders passed and remit the matter back to the Adjudicating Authority to record a satisfaction to the effect whether the claim of the petitioner for rebate is in order or not."

14. The consistent view, as appears from the aforesaid judgments of this court, is that even in the absence of a statutory form provided for claiming any benefit, such as modvat credit or input tax credit, a dealer can still claim the same in case he is able to prove that the transaction was genuine and the tax had been paid to the selling dealer. Even production of the prescribed form was not final for claiming such a benefit as the competent authority could still

opine, in case there is sufficient material available with him, that the transaction was not genuine and the claimant/dealer was not entitled to the benefit. The prescribed form is merely a *prima facie* proof.

15. In the case in hand, the selling dealer is a manufacturing unit covered under the provisions of the 1944 Act. For sale of the goods to the appellant, it had issued Invoice-cum-Excise Gate Pass. This is so provided under the Central Excise Rules, 1944. It contains all material particulars, such as name, address and registration number of the selling and buying dealer, printed invoice number, date, description, quantity and rate of goods, excise duty charged, sale tax charged along with rate thereof, the date and time of removal of goods from the factory, as is specifically required under the 1944 Act and the Rules. The only discrepancy, on the basis of which input tax credit is sought to be denied to the appellant is that the invoice did not contain the words "Input Tax Credit is available to a person against this copy". The opinion expressed by the authorities is that it is a mandatory condition, which cannot be ignored. Mere non-mentioning thereof is fatal. In our view, the opinion expressed is contrary to the law laid down by this court as these type of technical defects in the invoices cannot be fatal for grant of input tax credit to the claimant. The claim of the appellant had been rejected only on the ground that the invoice did not contain the words "Input Tax Credit is available to a person against this copy". The input tax credit available to a person and the genuineness of the transaction otherwise had not been examined by the authorities to record a finding that the tax, credit of which was being sought by the appellant, had in fact been paid by him to the selling dealer at the time of purchase of goods.

16. Accordingly, question No. (i) is answered in negative while holding that the Tribunal was not justified in rejecting the claim of input tax credit merely on technicalities, when the dealer was able to show that the tax had been paid to the selling dealer and duly deposited with the State. Question No. (ii) is also answered in negative while holding that the provisions of Rule 54 of the Rules are not mandatory, in case the claimant/dealer is able to prove from other evidence that the transaction and the claim is genuine.

17. For the reasons mentioned above, the appeal is allowed. The matter is remitted back to the Assessing Authority to examine the genuineness of the transaction and the claim made by the appellant.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 4083 OF 2016

CHANCELLOR CLUB, GURGAON
Vs
STATE OF HARYANA AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

28th July, 2016

HF ▶ Revenue

Assessment proceedings need not be concluded within a period of 5 years when notice has been served within that period.

ASSESSMENT—LIMITATION—ASSESSMENT YEAR 2003-04—NOTICE ISSUED ON 29.1.2009 I.E. WITHIN 5 YEARS— CONTENTION RAISED THAT ASSESSMENT IS BARRED BY LIMITATION AS IT OUGHT TO BE CONCLUDED WITHIN FIVE YEARS – HELD - ASSESSMENT HELD TO BE WITHIN LIMITATION AS NOTICE STOOD SERVED WITHIN A PERIOD OF 5 YEARS FROM THE DATE OF DUTY BECOMING PAYABLE – ASSESSMENT NEED NOT BE CONCLUDED FINALLY WITHIN THE PERIOD OF THOSE FIVE YEARS – WRIT DISMISSED – *SECTION 10A OF PUNJAB ENTERTAINMENT DUTY ACT, 1955*

REVISION—WHETHER DEPARTMENT CAN FILE REVISION—ASSESSMENT ORDER SET ASIDE BY 1ST APPELLATE AUTHORITY—REVISION PREFERRED BY DEPARTMENT—ORDER OF 1ST APPELLATE AUTHOIRTY SET ASIDE CONSEQUENTLY—WRIT FILED CONTENDING REVISIONAL POWER CAN ONLY BE EXERCISED SUO MOTU—HELD NO, DEPARTMENT ITSELF BEING A PARTY NOT DEBARRED FROM PREFERRING REVISION—AUTHORITY SUBORDINATE TO REVISIONAL AUTHORITY CAN APPLY FOR REVISION IN VIEW OF SEC. 12—WRIT DISMISSED. – *SECTION 12 OF PUNJAB ENTERTAINMENT DUTY ACT, 1955.*

REVISION—LIMITATION—ORDER OF 1ST APPELLATE AUTHORITY SETTING ASIDE ASSESSMENT ORDER RECEIVED ON 16.4.2015 BY DEPARTMENT—REVISION FILED BY DEPARTMENT ON 3.6.2015—WRIT FILED BY ASSESSEE CONTENDING THE APPLICATION FOR REVISION BEING BARRED BY LIMITATION—HELD: REVISION APPLICATION FILED WITHIN 60 DAYS OF RECEIPT OF ORDER STANDS WITHIN THE LIMITATION PERIOD—WRIT DISMISSED.

Facts

Assessment for the years 2003-04 to 2008-09 was framed vide order dated 20.5.2014. On appeal the Assessment Orders were set aside by the 1st Appellate Authority for being barred by limitation. A revision was preferred before Excise and Taxation Commissioner who accepted it and set aside the orders of 1st Appellate Authorities remanding the matter for fresh adjudication. Thus, a writ is filed contending:

(i) Commissioner had erred in holding the Assessment orders to be within limitation period;

(ii) That the revision was filed late and there was no application for condonation of delay;

(iii) That the order of 1st Appellate Authority is not revisable before Commissioner as it can be done only suo muto and department cannot invoke the same.

Held:

1. *Section 10(A) of the Act shows that the duty has to be levied within a period of 5 years from the date it becomes payable. It is not the case that the notice issued was beyond period of 5 years as it was issued on 29.1.2009 for the Assessment Year 2003-04 i.e. within 5 years. The language of the Act and the Rules does not suggest that Assessment proceedings ought to be concluded within 5 years from the period in question. Therefore, the Assessment is within limitation period.*

2. *Power of revision can be invoked suo motu as well as application made within the specified time by any authority subordinate to the revisional authority (Sec.12). It does not debar a revision filed by department as it is party to the case.*

3. *The copy of order was received on 16.4.2015 by the department and revision was filed on 3.6.2015 i.e. within 60 days. Therefore, revision is filed within the limitation as per the Act.*

Writ petition is dismissed.

Present: Mr. Sandeep Goyal and Mr. M. K. Dutta, Advocates for the petitioner.

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RAJESH BINDAL, J.

1. This order will dispose of two petitions bearing CWP Nos. 4083 and 4084 of 2016, as the issues involved in both the petitions are identical.

2. The facts have been extracted from CWP No. 4083 of 2016.

3. Challenge in the petition is to the order dated 27.8.2015, passed by Excise and Taxation Commissioner, Haryana under the provisions of the Punjab Entertainment Duty Act, 1955 (for short, 'the Act').

4. Learned counsel for the petitioner submitted that assessment of the petitioner under the provisions of the Act for the assessment years 2003-04 to 2008-09 was framed vide orders dated 20.5.2014. The orders were challenged in appeals. The Joint Excise and Taxation Commissioner (Appeals), vide common order dated 12.12.2014, accepted the appeals and set aside the orders of assessment opining them to be barred by limitation. Aggrieved against that order passed by Joint Excise & Taxation Commissioner (Appeals), the department preferred revisions before the Excise and Taxation Commissioner, who vide common order dated 27.8.2015 accepted the same and while setting aside the order passed by the first appellate authority remanded the matter back for fresh adjudication as the issues on merits had not been gone into.

5. While challenging the order passed by the Excise and Taxation Commissioner, even though the matter had been remitted back to the lower appellate authority for decision on merits, learned counsel for the petitioner sought to raise the issue of limitation for assessment, the ground on which its appeals were accepted by the first appellate authority and entertainment of revision by the revisional authority. Learned counsel for the petitioner submitted that assessment of the petitioner under the provisions of the Act for the assessment years 2003-04 to 2008-09 was framed by the Entertainment Tax Officer, Gurgaon vide orders dated 20.5.2014.

Aggrieved against the orders, the petitioner preferred appeals before the Joint Excise & Taxation Commissioner, who vide common order dated 12.12.2014, accepted the appeals and set aside the orders of assessment opining the same to be beyond the period of limitation. Aggrieved against the order passed by the first appellate authority, the department preferred revision before the Excise & Taxation Commissioner, who while accepting the revision, remitted the matter back to the first appellate authority for fresh consideration on merits.

6. Learned counsel for the petitioner further submitted that the revisional authority had gone wrong in opining that the orders of assessment passed by the Entertainment Tax Officer were within the period of limitation, if seen in the light of the provisions of the Act. He further submitted that the revision filed by the department before the revisional authority was belated and there was no application filed for condonation of delay. As per the provisions of the Act, even delay could not be condoned. Further, the submission is that the order passed by the Joint Excise & Taxation Commissioner was not revisable before the Excise & Taxation Commissioner. It is the *suo-motu* power and the department could not invoke the same.

7. After hearing learned counsel for the petitioner, we do not find any merit in the submissions made.

8. The relevant provisions of the Act and the Punjab Entertainment Duty Rules, 1956 (for short, 'the Rules') are reproduced hereunder:

> ***"Sections 10-A and 12 of the Act***
>
> ***10A. Keeping of accounts, submission of returns etc.*** *(1) A proprietor may be required to keep accounts, and submit returns, in the manner prescribed.*
>
> *(2) If the prescribed authority is satisfied that the entertainments duty has not correctly been levied, collected and paid, he may, within a period of five years, from the date the entertainments duty had become due after giving the proprietor a reasonable opportunity of being heard proceed to levy the amount of entertainments duty due and recover the same,*
>
> *xx xx xx*
>
> ***12. Power of revision.*** *The Commissioner or such other officer, as the Government may, by notification, appoint in this behalf may of his own motion [or on application made within a period of sixty days from the date of the order], call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in reference thereto as he may deem fit.*
>
> *Provided that the Commissioner or the other officer may, before deciding such application direct applicant to deposit, in whole or in part, the amount of duty due, and the penalty, if any, imposed on him under this Act.*
>
> *xx xx xx*
>
> ***Rule 17 of the Rules***
>
> ***17. Assessment.*** *(1) When it appears to the Entertainment Tax Officer concerned that an assessment of payment for admission in case of free concessional, surreptitious or unauthorised entries should be made, he shall serve upon the proprietor a notice in Form PED 4.*
>
> *(a) Calling upon him to produce his books of accounts or other documents which such officer wishes to examine together with any objection which the*

proprietor may wish to prefer aid any evidence which he may wish to produce in support thereof.

(b) Stating the period or periods in respect of which assessment is proposed.

(c) Fixing a date, ordinarily not less than ten days after the date of service of the notice for producing such accounts and document and consideration of the objections, which the proprietor may prefer.

Provided that such notice shall not relate for a period prior to 5 years from the date of issue of notice.

(2) Where the Entertainment Tax Officer is satisfied that proprietor has duly paid in full the amount of entertainments duty due from him on the entries under assessment, he shall discharge the notice in Form PED 4 served upon the proprietor and shall send an intimation to that effect to him.

(3) Where after considering any objections made by the proprietor and any evidence produced in support thereof, the Entertainment Tax Officer determines the liability of the proprietor for a sum higher than the amount of entertainments duty admitted by the proprietor, he shall record an order stating briefly reasons upon which his decision is based.

"(3A) Where the Entertainment Tax Officer has determined the liability of the proprietor for a sum higher than the amount of entertainments duty admitted by the proprietor, he shall serve upon the proprietor a notice in form PED 4A calling upon him as to why a penalty of the amount to be specified therein, be not imposed and shall pass an order after considering the reply, if any submitted by such proprietor."

(4) Every Entertainment Tax Officer shall maintain a register in Form PED 5 in which he shall enter the details of each case started under sub rule (1) above."

9. As far as the issue regarding the assessment being barred is concerned, in our opinion, the contention is totally misconceived. A bare perusal of the language of Section 10A of the Act shows that the prescribed authority has been given power to proceed to levy entertainment duty within a period of five years from the date the duty became payable. In similar line is the language of Rule 17 of the Rules, which provides that notice issued for assessment shall not relate to a period prior to five years from the date of issuance of notice. It is not the case of the petitioner that notice for assessment issued by the Entertainment Tax Officer to the petitioner was beyond a period of five years, for a period for which the assessment was sought to be framed, as even for the first assessment year, namely, 2003-04, notice was issued on 29.1.2009, well within 5 years. The language of the Act and the Rules, as referred to above, does not suggest that assessment proceedings have to be concluded within five years for the period involved, hence, the contention, being misconceived, is rejected.

10. The second issue raised is regarding the maintainability of the revision filed by the department before the Excise & Taxation Commissioner. A perusal of Section 12 of the Act shows that power of revision could be invoked by the Excise & Taxation Commissioner *suo-motu* or on an application made within a period of 60 days from the date of order passed by any authority subordinate to him. It does not debar a revision filed by the department being party to the litigation. The proviso of Section 12 of the Act, which was sought to be relied upon by learned counsel for the petitioner, to state that revisional jurisdiction could only be invoked by a party, as there is a condition of pre-deposit, is merely to be noticed and rejected, as proviso to a Section will not control the contents of the main Section. Further, the contention that Excise & Taxation Commissioner is not the competent authority is also totally misconceived as language

of the Section provides that the Commissioner can revise an order passed by any authority subordinate to him. It was not disputed at the time of hearing that Joint Excise & Taxation Commissioner in the department of Excise & Taxation is an authority subordinate to the Excise & Taxation Commissioner.

11. As far as the limitation regarding filing of revision by the department before the Excise and Taxation Commissioner is concerned, the Section provides that jurisdiction could be invoked within a period of 60 days from the date of order. The revision was preferred by the department on 3.6.2015. The opening form attached with the revision filed by the department before the Excise & Taxation Commissioner shows that it is dated 3.6.2015 and the date on which the order was communicated to the authority, who filed the revision, was 16.4.2015. The issue was raised by the petitioner before the Excise & Taxation Commissioner as well and was considered and rejected, noticing the fact that as per the memorandum of revision, copy of the impugned order was received by the department on 16.4.2015 and counting therefrom, the revision had been filed within 60 days. No material was referred to by learned counsel for the petitioner either before the revisional authority or before this court to controvert the facts so recorded by the revisional authority, hence, it cannot be opined that the revision preferred by the department before the Excise & Taxation Commissioner was beyond limitation.

12. For the reasons mentioned above, we do not find any merit in the present petitions. The same are, accordingly, dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 5780 OF 2007

MAHABIR TECHNO LIMITED
Vs
STATE OF HARYANA AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

2nd August, 2016

HF ▶ Assessee

Section 40 of HGST Act envisages the outer limit of five years for conclusion of revisional proceedings and not merely initiation of it.

REVISIONAL – LIMITATION – WHETHER PERIOD MENTIONED IN STATUTE IS FOR INITIATION OR CONCLUSION OF PROCEEDINGS – HELD : IN CONTRAST TO OTHER SECTIONS , LANGUAGE OF SECTION 40 SUGGESTS THAT REVISIONAL PROCEEDINGS ARE TO BE CONCLUDED WITHIN THE PERIOD OF FIVE YEARS FROM THE DATE OF PASSING OF ORDER AND NOT MERELY INITIATED – *S. 40 OF HGST ACT, 1973*

Facts
The assessment for the years 1995-96 and 1996-97 were framed on 28/3/2000 and 31/7/2000 respectively. Notices u/s 40 were issued on 3/7/2002. The matter remained pending and subsequently notices were issued on 22/1/2007 by the Revisional Authority. The notices were held to be barred by limitation by the high court. The matter was taken up before Supreme court by the state which was remitted back to consider whether the period provided in the section is for initiation of proceedings or conclusion thereof.

Held:
On perusal of other sections, S. 28(4) and S. 28(5) of the Act it is clear that the assessment has to be 'proceeded with' within a period of five years which means initiation of proceedings. Similarly, S. 31 reflects that reassessment has to be initiated within a period of three years from date of final assessment order.

Contrastingly, legislature has used different words in S .40 which suggests that no order shall be revised after expiry of five years from the date of order.

The only meaning that can be figured out is that proceedings have to be concluded after passing of order and not initiated within the time specified.

In the present case the period of five years for the assessment years in question would expire on 28/3/2005 and 31/7/2005 respectively. The proceedings of revision however, have not been concluded within the period of five years from the date of order sought to be revised as envisaged in S 40. Therefore, the Revisional Authority does not have any jurisdiction to pass the order. The writ is allowed and impugned notices are set aside.

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

Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana.

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RAJESH BINDAL, J.

1. The petitioner has approached this Court impugning the notices dated 22.1.2007 (Annexure P-12 and P-13) issued under Section 40 of the Haryana General Sales Tax Act, 1973 (for short, 'the Act'), for the assessment years 1995-96 and 1996-97, respectively, for *suo-moto* revision of assessment.

2. Learned counsel for the petitioner submitted that the assessment of the petitioner for the year 1995-96 was framed on 28.3.2000, whereas for the year 1996-97, the same was framed on 31.7.2000. Notices under Section 40 of the Act and the Central Sales Tax Act, 1956 for the years 1995-96 and 1996-97 were issued on 3.7.2002. As the matter remained pending and were not finalised by the revisional authority and subsequently notices were issued on 22.1.2007, the petitioner filed CWP No. 5780 of 2007, which was allowed vide order dated 20.1.2010, opining that the notices were beyond limitation. The plea raised by the State relying upon the provisions of Haryana Value Added Tax Act, 2003, was rejected. The State went before Hon'ble the Supreme Court by filing Civil Appeal No. 6927 of 2011. On 11.8.2011, Hon'ble the Supreme Court while setting aside the order passed by this Court, remitted the matter back to consider the issue as to whether the period provided in the section is for initiation of proceedings or conclusion thereof.

3. While referring to the provisions of Section 40 of the Act, under which power is sought to be exercised by the authorities, learned counsel for the petitioner submitted that the language plainly suggests that no order shall be revised after the expiry of period of five years from the date of order. It is the outer limit. This does not talk about issuance of show cause notice for initiation of proceedings. Referring to the language as used in Section 28(4) and 28(5) of the Act, learned counsel for the petitioner submitted that the Legislature had used different language in those sections where the intention is for initiation of proceedings and not for conclusion thereof. In support of the plea, reliance was placed upon judgment of Andhra Pradesh High Court in ***State of Andhra Pradesh vs Toshiba Anand Batteries Limited (and another cases) (1995) 096 STC 0664*** and judgment of Hon'ble the Supreme Court in ***State of Andhra Pradesh vs Khetmal Parekh (1994) 093 STC 0406***.

4. On the other hand, learned counsel for the State submitted that the matter has been remitted back by Hon'ble the Supreme Court to consider the issue as to whether the period as provided under the Act is the outer limit for conclusion of revisional proceedings or for initiation thereof. It has to be read in the manner which gives it a true meaning for the reason that an assessee can always delay the proceedings and as a result of which the process initiated will be frustrated.

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

6. Before the issue is discussed on merits, it would be appropriate to refer to relevant provisions of the Act. Sections 28(4), 28(5), 31 and 40 of the Act are extracted below

SECTION - 28

(ASSESSMENT OF REGISTERED DEALER)

(1) to (3) xx xx

(4) If a dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (2), the assessing authority shall, within five years after the expiry of such period, proceed to assess to the best of his judgment the amount of the tax due from the dealer.

(5) If a dealer does not furnish returns in respect of any period by the prescribed date, the assessing authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the dealer.

xx xx xx

SECTION -31

(REASSESSMENT OF TAX)

If in consequence of definite information which has come into his possession, the assessing authority discovers that the turnover of the business of a dealer has been under assessed, or has escaped assessment in any year, the assessing authority may, at any time within three years from the date of final assessment order and after giving the dealer a reasonable opportunity, in the prescribed manner, of being heard, proceed to reassess the tax payable on the turnover which has been underassessed or has escaped assessment.

xx xx xx

SECTION-40

(REVISION)

(1) The Commissioner may call on his own motion for the record of any case pending before, or disposed of by, any officer appointed under sub-section (1) of section 3 of the Act to assist him or any assessing authority or appellate authority, other than the Tribunal, for the purposes of satisfying himself as to the legality or to propriety of any proceedings or of any order made therein and may pass such order in relation thereto as he may think fit.

[Provided that no order, shall be so revised after the expiry of a period of five years from the date of the order.

[Provided further that the aforesaid limitation of period shall not apply where the order in a similar case is revised as a result of the decision of the Tribunal or any Court of Law],

(2) and (3) xx xx xx"

7. A perusal of provisions of Section 28(4) and 28(5) of the Act, which deal with assessment of a registered dealer shows that the language used is that in case of failure on the part of the assessee to file return or respond to a notice, the assessing authority may proceed to assess to the best of his judgment within five years after the expiry of such period, which would mean initiation of proceedings.

8. Similarly Section 31 of the Act, which provides for reassessment of tax, envisages reassessment in consequence of definite information which comes to the possession of the assessing authority on the basis of which it could be opined that the turnover of the business of a dealer has been under assessed, or has escaped assessment. The period provided is to initiate re-assessment proceedings within three years from the date of final assessment order.

9. In contrast to the aforesaid two provisions, Section 40 of the Act, which provides for revision, used the word, 'so revised'. Different words used by the Legislature in this section as compared to other two sections have to be given its true meaning. Plain reading of the language suggest that no order shall be revised after the expiry of a period of five years from the date of order. The only meaning which can be assigned to the language used is that the proceedings have to conclude with the passing of the order. It is not merely initiation of proceedings for revision. Second proviso to Section 40(1) of the Act enlarges the limitation, if the revision is a result of any decision of the Tribunal or Court.

10. To somewhat similar is the language used in Andhra Pradesh General Sales Tax Act. The relevant provisions of Sections 20(1) and 20(3) of the Andhra Pradesh General Sales Tax Act, are reproduced as under:-

> *"(1) The Commissioner of Commercial Taxes may suo motu call for and examine the record of any order passed or proceeding recorded by any authority, officer or person subordinate to it, under the provisions of this Act, including sub-section (2) of this section, and if such order or proceeding recorded is prejudicial to the interests of revenue, may make such enquiry, or cause such enquiry to be made and subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such order or proceeding and may pass such order in reference thereto as it thinks fit,*
>
> *xx xx xx*
>
> *(3) In relation to an order of assessment passed under this Act, the powers conferred by sub-sections (11 and (21 shall be exercisable only within such period not exceeding four years from the date on which the order was served on the dealer, as may be prescribed."* (emphasis supplied).

11. While interpreting the aforesaid provisions, a Division Bench of Andhra Pradesh High Court in ***Toshiba Anand Batteries Limited's*** case (supra) opined that exercise of power of revision should conclude before the end of four years from the date of passing of the order, which is sought to be revised. Relevant para from the judgment are extracted below:-

> *" According to our view the exercise of powers of revision must come to an end within a period of four years from the date of passing of the order by the subordinate authority. The effect of section 20(3) of the APGST Act in our opinion, is that the revising authority is powerless beyond the period of four years to deal with the revision. The exercise of powers as a whole cannot extend beyond the period of four years from the date on which the order of subordinate authority was served on the dealer."*

12. No judgment taking a contrary view was cited by learned counsel for the State.

13. If the facts of the case are read in the light of the enunciation of law, referred to above, the assessment of the petitioner for the year 1995-96 was framed on 28.3.2000 and for the year 1996-97, it was framed on 31.7.2000, the period of five years would expire on 28.3.2005 and 31.7.2005, for the respective two years. It is not in dispute that by that time the proceedings had not been concluded. Even in the earlier round of litigation, the petitioner had challenged the notices issued on 22.1.2007. Prior to that it is not the case of either of the parties that in the matter before the Court any interim stay has been granted. The proceedings initiated for revision of the orders of assessment having not concluded within the period of five years from the date of order sought to be revised, as envisaged under Section 40 of the Act, the Revisional Authority now does not have any jurisdiction to pass the order.

14. For the reasons mentioned above, the writ petition is allowed. The impugned notices dated 22.1.2007 (Annexures P-12 and P-13) are quashed.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 12 OF 2 016

KHANNA PAPER MILLS LTD.
Vs
STATE OF PUNJAB AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

4th August, 2016

HF ▶ Assessee

Full input tax credit is available on the purchase of Pet Coke if used in generation of power for captive consumption.

INPUT TAX CREDIT – PET COKE – GENERATION OF POWER FOR CAPTIVE CONSUMPTION – PET COKE PURCHASED FOR GENERATION OF POWER USED FOR CAPTIVE CONSUMPTION – ITC CLAIMED U/S 13 – DENIAL OF – APPEAL BEFORE HIGH COURT – PET COKE DOES NOT FIND MENTION IN RESTRICTIVE CLAUSE OF S. 13(4) OR NEGATIVE CLAUSE OF S. 13(5)(B) THEREBY INDICATING THAT PET COKE IS ELIGIBLE FOR FULL ITC IF PURCHASED FOR CAPTIVE CONSUMPTION FOR GENERATION OF POWER - ITC ALLOWED TO APPELLANT IN THE PRESENT CASE – *S. 13(1), 13(4) , 13(5)(B) OF PVAT ACT , 2005*

Facts

The appellant is engaged in manufacturing of paper and paper products for which pet coke is purchased as a raw material to be used for generation of captive power. VAT @ 4.5% alongwith surcharge 10% is paid thereon. Input TAX credit was sought on the purchased pet coke u/s 13 which was denied by the Commissioner and the Tribunal. An appeal has thus been filed before High court.

Held:

S. 13 (1) says that ITC would be available on taxable goods purchased if they are used in manufacturing process. On perusal of the subsections of S. 13, it is clear that restrictions for claiming the benefit of ITC are given in S. 13(4) and S. 13(5) of the Act.

The item in question is not mentioned anywhere in the restricting sections so as to disentitle the claim as mentioned in S.13(5)(b) or to limit the claim to certain extent as provided in S.13(4) .Thus, the appellant is entitled to full input tax credit on the tax paid on purchase of pet coke used in generation of power for captive consumption.

Case referred:

- *State of Punjab and others v. Malwa Cotton & Spinning Mills Ltd.. (2011)39 VST 65 (P&H)*

Present: Mr. K. L. Goyal, Senior Advocate with
Mr. Sandeep Goyal, Advocate for the appellant.
Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.

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RAJESH BINDAL, J.

1. The appellant has filed the present appeal arising out of the order dated 4.12.2015, passed by the Value Added Tax Tribunal, Punjab (for short, 'the Tribunal'), raising the following substantial questions of law:

> *"(i) Whether on the facts and in the circumstances of the case, the appellant is entitled for input tax credit on the tax paid by it under the Punjab VAT Act 2005 on the purchases of pet coke where it is used for generation of electrical energy for captive consumption?*
>
> *(ii) Whether on the facts and in the circumstances of the case, the restrictions mentioned in Section 13(5)(i) read with Section 13(4) are applicable on the purchase of pet coke?*
>
> *(iii) Whether on the facts and in the circumstances of the case, the impugned order is violative of principles of natural justice as all the issues raised before the Tribunal have not been dealt in the order?*
>
> *(iv) Whether on the facts and in the circumstances of the case, the clarification issued by the Ld. Commissioner in the case of Avon Ispat and Power Ltd. is applicable to the present case?"*

2. However, we find that only the following question of law arises for determination by this court:

> *"(i) Whether on the facts and in the circumstances of the case, the appellant is entitled for input tax credit on the tax paid by it under the Punjab VAT Act 2005 on the purchases of pet coke where it is used for generation of electrical energy for captive consumption?"*

3. Learned counsel for the appellant submitted that the appellant is a manufacturer of paper and paper products. Its factory is situated at Fatehgarh Road, Amritsar. During the course of manufacturing process, the appellant uses various raw materials including waste paper, chemicals, packing material and pet coke. The goods manufactured by the appellant are either sold during the course of intra-state or inter-state trade. Pet coke is purchased by the appellant for generation of power for captive consumption. Value added tax is paid thereon @4.5% with surcharge @10% thereon. As the appellant is entitled to input tax credit on pet coke used in generation of power for captive consumption in terms of the provisions of Section 13 of the Punjab Value Added Tax Act, 2005 (for short, 'the Act'), however, with a view to avoid any ambiguity later on, a clarification was sought vide application dated 16.12.2012 filed under Section 85 of the Act to the Excise and Taxation Commissioner for clarifying the issue regarding entitlement of the appellant to input tax credit on the transactions, as referred to above. The Excise and Taxation Commissioner, vide order dated 26.4.2014, clarified that the appellant will not be entitled to benefit of input tax credit as the same is available on the goods mentioned in Section 13(4) of the Act. The order was challenged before the Tribunal, who vide its order dated 4.12.2015 dismissed the appeal relying upon an earlier judgment of this court in ***State of Punjab and others v. Malwa Cotton & Spinning Mills Ltd.. (2011)39 VST 65 (P&H)***.

4. While impugning the orders passed by the Excise & Taxation Commissioner as well as the Tribunal, learned counsel for the appellant submitted that the provisions of Section 13 of the Act, which provide for input tax credit, are quite explicit. Section 13(5)(i) of the Act clearly provides that on the goods used for generation of power for captive consumption, input tax credit is available. The only exceptions are provided for in Section 13(5)(b) of the Act and with

reference to the amount of tax and goods on which input tax credit can be claimed are mentioned in Section 13(4) of the Act. He further submitted that there is already a clarification issued by the Excise & Taxation Commissioner in the case of ***Avon Ispat and Power Ltd.. Ludhiana*** on 2.12.2011 regarding entitlement of full input tax credit on heavy petroleum stock. In that case, the Excise & Taxation Commissioner opined that the dealer shall be entitled to full input tax credit of the entry tax paid thereon as it is not one of the goods mentioned in Section 13(4) or 13(5)(b) of the Act. He further submitted that the said clarification has neither been withdrawn nor superseded till date. Further, the submission is that the judgment of this Court in ***Malwa Cotton & Spinning Mills Ltd.'s case*** (supra) is also distinguishable for the reason that the issue raised therein was regarding input tax credit on diesel, which is an item specifically mentioned in the exception clause in Section 13(5)(b) of the Act, hence, not applicable.

5. On the other hand, learned counsel for the State submitted that Section 13(1) of the Act is a general section providing for input tax credit, however, the same will have to give way to the special provision providing for input tax credit on the goods, which are used for generation of power for captive consumption, for which Sections 13(4) and 13(5)(b)(i) of the Act are relevant. As admittedly the appellant is using pet coke for generation of power for captive consumption, it is not entitled to input tax credit thereon.

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

7. The relevant provisions of Section 13 of the Act are extracted below:

> ***"SECTION 13. INPUT TAX CREDIT:***
>
> *(1) A taxable person shall be entitled to the input tax credit, in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period:*
>
> *PROVIDED THAT the input tax shall not be available as input tax credit unless such goods are sold within the State or in the course of inter-State trade or commerce or in the course of export or are used in the manufacture, processing or packing of taxable goods for sale within the State or in the course of interstate trade or commerce or in the course of export:*
>
> *xx xx xx*
>
> *(4) Input tax credit on furnace oil, transformer oil, mineral turpentine oil, water methanol mixture, naphtha and lubricants, shall be allowed only to the extent by which the amount of tax paid in the State exceeds [five percent]:*
>
> *PROVIDED THAT these goods are used in production of taxable goods or captive generation of power.*
>
> *(5) A taxable person under this section, shall not qualify for input tax credit in respect of tax paid on purchase of,-*
>
> *xx xx xx*
>
> *(b) petrol, diesel, aviation turbine fuel, liquefied petroleum gas and condensed natural gas, unless the taxable person is in the business of setting such products;*
>
> *xx xx xx*
>
> *(i) goods used in generation, distribution and transmission of electrical energy unless such generation, distribution and transmission of electrical energy is for captive*

consumption, in which case it would be allowed subject to provisions of sub-section (4) of this section:

xx xx xx"

8. The appellant in the present case is purchasing pet coke for the purpose of generation of power for captive consumption, on which input tax credit is claimed.

9. A perusal of Section 13(1) of the Act shows that a taxable person shall be entitled to input tax credit in respect of input tax paid on taxable goods purchased from a taxable person within the State if goods are sold within the State or in the course of inter-State trade or commerce or in the course of export outside the territory of India or are used in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-State trade or commerce or in the course of export outside the territory of India.

10. Sub -section (4) of Section 13 of the Act restricts the benefit of input tax credit over and above 5% on furnace oil, transformer oil, mineral turpentine oil, water methanol mixture, naphtha and lubricants, if these goods are used in production of taxable goods or captive generation of power.

11. Sub-section (5) of Section 13 of the Act provides for a negative list stating that a taxable person shall not be entitled to input tax credit in respect of the tax paid on specified goods on purchase thereof. Clause (b) thereof provides that input tax credit is not available on purchase of petrol, diesel, aviation turbine fuel, liquefied petroleum gas and condensed natural gas, unless the taxable person is in the business of sale of such products. Clause (i) of sub-section (5) of the Act provides that even on the goods used in generation, distribution and transmission of electrical energy also input tax credit is not available, unless such generation, distribution and transmission of electrical energy is for captive consumption. In that case, the benefit is allowable subject to provisions of Section 13(4) of the Act.

12. It is not in dispute that the goods purchased by the appellant, which are used in generation of power for captive consumption are not mentioned either in Section 13(4) or in Section 13(5)(b) of the Act.

13. Though Section 13(5) of the Act contains the list of goods on which input tax credit is not available under certain conditions, however, in clause (i) thereof, while providing that input tax credit will not be available on goods used in generation, distribution and transmission of electrical energy, but it further provides that in case it is used for generation, distribution and transmission of electrical energy for captive consumption, the benefit of input tax credit shall be available subject to the provisions of sub-section (4) of Section 13 of the Act. Section 13(4) of the Act enumerates certain specific goods for the purpose of entitlement of input tax credit in case those are used in production of taxable goods or for captive generation of power. It further provides that benefit shall be available only in case the tax already paid exceeds 5%. The fact is that provision has been made in Section 13(5)(i) of the Act for permitting input tax credit on all goods used for generation, distribution and transmission of electrical energy if used for captive consumption. The spirit thereof cannot be ignored.lt has been made subject to Section 13(4) of the Act, where certain specified goods have been mentioned, which could be used for captive generation of power and on which input tax credit is available, but over and above 5%. While the scope of goods to be used in captive generation of power has been extended in Section 13(5)(i) of the Act, the same has to be given full meaning. The only restriction is that the benefit has to be subject to the provisions of Section 13(4) of the Act. While harmoniously constructing both the provisions, the only conclusion which can be arrived is that on the goods specifically mentioned in Section 13(4) of the Act, the benefit shall be available to the extent provided therein, whereas on the other goods, there would be no restriction as such for claiming the benefit of input tax credit, except those specifically mentioned in Section 13(5)(b) of the

Act, namely, petrol, diesel, aviation turbine fuel, liquefied petroleum gas and condensed natural gas, as even many of those goods may be used in generation of power for captive consumption.

14. In similar line was the clarification given by the Excise and Taxation Commissioner in the case of ***Avon Ispat and Power Ltd.. Ludhiana***, where heavy petroleum stock, being not one of the items mentioned in Section 13(4) or Section 13(5)(b) of the Act, the Excise and Taxation Commissioner opined that full input tax credit of the entry tax paid on purchase thereof shall be available in view of Section 13 read with Section 13A of the Act.

15. As far as the judgment of this court in ***Malwa Cotton & Spinning Mills Ltd.'s*** case (supra) is concerned, it was a case of claim of input tax credit on diesel, for which there is a specific provision in Section 13(5)(b) of the Act, which debars input tax credit to a person on purchase of petrol, unless he is in the business of selling that product. The undisputed fact in the present appeal is that pet coke, which the appellant is purchasing for use in production of power for captive consumption, is not mentioned in Section 13(5)(b) of the Act, for disentitling the appellant input tax credit thereon in its entirety or restricting the claim to certain limit, as provided in Section 13(4) of the Act.

16. For the reasons mentioned above, the appeal is allowed. The substantial question of law is answered in positive in favour of the assessee holding that the appellant shall be entitled to full input tax credit of the tax paid on purchase pet coke, where it is used for generation of power for captive consumption.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 3 OF 2011

G.N. GENERAL MILLS
Vs
STATE OF PUNJAB AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

3rd August, 2016

HF ▶ Assessee

The additional condition imposed by Tribunal is set aside when the earlier judgment relied upon does not envisage any such condition.

PURCHASE TAX – RICE & PADDY – DEDUCTION FROM TURNOVER - EXPORT - ASSESSMENT FRAMED – PADDY PURCHASED OUT OF WHICH RICE MANUFACTURED EXPORTED – PURCHASE TAX ON PADDY LEVIED – BENEFIT AGAINST H FORMS GIVEN WHILE FRAMING ASSESSMENT UNDER CST ACT THEREBY ACCEPTING THE EXPORT TRANSACTION BUT TAX LEVIED ON PURCHASE - FIRST APPELLATE AUTHORITY ALLOWED DEDUCTION OF PURCHASE TURNOVER FROM GROSS TURNOVER ON ACCOUNT OF EXPORT OF RICE – ORDER REVERSED BY TRIBUNAL – RECTIFICATION FILED BEFORE TRIBUNAL CONTENDING THAT THE CASE STOOD COVERED BY JUDGMENT PASSED BY HIGH COURT ON SAME FACTS – APPEAL ACCEPTED WITH A CONDITION TO PROVE THAT PADDY WAS PURCHASED AFTER PROCUREMENT OF EXPORT ORDER AND TO PRODUCE H FORMS – APPEAL BEFORE HIGH COURT – CASE STANDS COVERED BY A JUDGMENT ALREADY PASSED BY THIS COURT – NO CONDITION LEVIED IN EARLIER CASE – APPEAL ACCEPTED AND ORDER OF TRIBUNAL MODIFIED TO THE EXTENT IT IMPOSED THE CONDITION TO PROVE THAT PADDY PURCHASED WAS AFTER EXPORT ORDER WAS RECEIVED – *SECTION 5(2)(a)(vi) OF PGST ACT, 1948.*

Facts

Assessment was framed whereby the tax on purchase of paddy, out of which rice manufactured was exported, was levied. Matter was remanded on appeal and the transaction of export sale was admitted and benefit of H forms produced was given while framing assessment under CST Act. On appeal before First Appellate Authority, the Assessing Authority was directed to allow deduction of Purchase Turnover relatable to export as H forms were furnished already. The State appealed against this order before Tribunal which was accepted. Rectification was filed by appellant – Assessee referring to judgment of Rattna Rice and General Mills which was accepted by Tribunal. However, a condition was imposed that the dealer is liable to produce H form and prove that the paddy was purchased for purpose of complying with the export order. Aggrieved by the order of Tribunal, the appellant filed an appeal before High court.

Held:

The issue raised is squarely covered by the judgment passed by this court in the case of Rattna Rice and General Mills. The Tribunal has rightly held that the dealer is entitled to rebate of tax

on paddy in terms of S 5(2)(a) (vi) of the Act. The directions given by Tribunal to the extent of proving that purchase of paddy was done after procurement of export order, is set aside. The appeal is accepted.

Cases referred:

- *Rama Krishna Trading Co. Jalandhar v. State of Punjab, Appeal No. 154 of 2002-03*
- *State of Punjab v. M/s Rattna Rice and General Mills. Fazilka, GSTR No. 14 of 2005*
- *State of Karnataka v. Azad Coach Builders Pvt. Ltd, and another. (2010) 36 VST 1*

Present: Mr. Sandeep Goyal, Advocate for the appellant.
Ms. Sudeepti Sharma, Deputy Advocate General, Punjab.

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RAJESH BINDAL, J.

1.This order will dispose of four appeals bearing VAT Appeal Nos. 3, 4,5 and 6 of 2011 raising the following substantial question of law:

> *"Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in directing the appellant to produce complete H-Forms and also to prove that the purchase of paddy was made after and for the purpose of complying with the export order whereas those documents were already produced while framing the assessment under the CST Act, 1956 ?"*

2. All the appeals have been filed by same dealer. The assessment years involved are 1997-98, 1998-99, 1999-2000 and 2000-01. The facts have been taken from VAT Appeal No. 4 of 2011 pertaining to the assessment year 1998-99.

3. Learned counsel for the appellant submitted that assessment of the appellant was framed by the Assessing Officer vide order dated 28.2.2002 and the benefit of rebate of tax on purchase of paddy, rice manufactured out of which was exported outside India was not granted. The appellant preferred appeal. The matter was remitted back for reconsideration. After remand, the case was taken up and decided afresh vide order dated 3.11.2005 and the claim of the appellant for rebate of tax on purchase of paddy, rice manufactured out of which was exported outside India was declined, whereas the transaction of export sale as such was admitted and the benefit thereof was granted while framing the assessment under Central Sales Tax Act, 1956 against statutory "H" form. Aggrieved against the order of assessment, the appellant preferred appeal, which was accepted by the first appellate authority. It was directed that rebate of tax paid on purchase of paddy, rice manufactured out of which was exported, for which form 'H' was furnished, be granted. The tax be re-computed following the earlier judgment of the Sales Tax Tribunal (for short, the Tribunal') in ***Appeal No. 154 of 2002-03—M/s Rama Krishna Trading Co. Jalandhar v. State of Punjab***. The State, being aggrieved against the order passed by the first appellate authority, preferred appeal before the Tribunal. The Tribunal, vide order dated 1.1.2009, accepted the same and set aside the direction given by the first appellate authority, whereby the matter was remanded back to the Assessing Authority for re-calculation of the tax. The appellant filed rectification application referring to the judgment of this court in ***GSTR No. 14 of 2005—State of Punjab v. M/s Rattna Rice and General Mills. Fazilka***, decided on 17.3.2009 opining that rebate of tax on the type of transaction in question was available under Section 5(2)(a)(vi) of the Punjab General Sales Tax Act, 1948 (for short, 'the Act'). The Tribunal, while accepting the rectification application, directed that the Assessing Authority shall decide the issue as directed by the first appellate authority in terms of the judgment of this Court in ***M/s Rattna Rice and General Mills's case*** (supra). However, the condition was put in that the dealer shall be liable to produce complete

'H' form and prove that the paddy was purchased for the purpose of complying with any export order.

4. Learned counsel for the appellant submitted that the Tribunal had exceeded its jurisdiction by adding word in the judgment of this court in ***M/s Rattna Rice & General Mills' case*** (supra), where the issue involved was identical to the issue in the present set of appeals. Once there was no such direction issued in that case, the words added by the Tribunal in the order passed in rectification application were totally un-called for. The State accepted the verdict in ***M/s Rattna Rice & General Mills'*** case (supra). He further submitted that in Section 5(2)(a)(vi) of the Act, simple words used are that the goods had been sold in the course of export outside the territory of India. There is no condition attached. The paddy and rice have been held to be a single commodity for the purpose of export in terms of Section 15 (ca) of the Central Sales Tax Act, 1956. Reference was also made to the judgment of Constitution Bench of Hon'ble the Supreme Court in ***State of Karnataka v. Azad Coach Builders Pvt. Ltd, and another. (2010) 36 VST 1 (SC)***. It was further submitted that transaction of sale of rice was in the course of export outside the territory of India was accepted by the Assessing Authority while framing assessment under the Central Sales Tax Act, 1956 and it was so recorded in the order of assessment that 'H' forms have been perused and placed on record, meaning thereby that those were verified and only thereafter the requisite rebate was granted to the appellant.

5. On the other hand, learned counsel for the State submitted that Section 29 of the Act is an over-riding provision. It provides that tax on sale and purchase of goods shall not be imposed in case such sale or purchase takes place in the course of export outside the territory of India, provided that it was for compliance of an order for such export. Hence, there was no error in the order passed by the Tribunal directing the appellant to prove that purchase of paddy was for complying with the order of export. She further submitted that paddy is contained in Schedule 'C', whereas stage of tax has been prescribed in Schedule 'D' of the Act. She referred to the judgment of Hon'ble the Supreme Court in ***Monga Rice Mill and others v. State of Haryana and another. (2004) 6 SCC 101*** to submit that identical issue was considered by Hon'ble the Supreme Court, though with reference to Haryana General Sales Tax Act, 1973, and there was not much difference. The opinion expressed by Hon'ble the Supreme Court was that export orders have to be prior in time. As the appellant had not produced any export order, no question of rebate on purchase of paddy can be granted.

6. Heard learned counsel for the parties and perused the relevant referred record.'

7. In our opinion, the issue sought to be raised by the parties is squarely covered by the judgment of this court in ***M/s Rattna Rice and General Mills' case*** (supra). In that case, the following questions of law were considered:

> *"1. Whether in view of ratio laid down by the Hon'ble Pb. & Haryana High Court in the case of M/s Veeru Mal Monga & Sons v. State of Haryana and others, the orders of the Hon'ble Sales Tax Tribunal accepting the revisionists application are sustainable in law ?*
>
> *2. Whether the revisionists are entitled to rebate of Tax U/s 5(2)(a)(vi) of the Punjab General Sales Tax Act, 1948 ?*
>
> *3. Whether the judgment given by the Hon'ble Pb. & Haryana High Court in the case of M/s Veeru Mal Monga & Sons has a binding force on the Punjab Sales Tax Tribunal, when there is no direct judgment contrary to the judgment given by the Hon'ble Pb. & Haryana High Court ?"*

8. A perusal of the aforesaid questions shows that there was specific issue regarding entitlement of rebate under Section 5(2)(a)(vi) of the Act and the effect of the judgment of Hon'ble the Supreme Court in ***Monga Rice Mill and others' case*** (supra), which was a case

decided under the Haryana General Sales Tax Act, 1973. The facts of the case in ***M/s Rattna Rice and General Mills' case*** (supra) and the case in hand are identical. Both are the cases of rice shellers, who were purchasing paddy, the rice manufactured out of which was exported outside India. The relevant paras of the judgment are extracted below:

> *"A perusal of the contents of Form 'H' would show that the sale made by the dealer has to be after the agreement or order and it has to be for the purposes of complying with the terms thereof. The columns 5 and 6 of the Part 'B' of the schedule further shows that the goods have been actually exported. The form would further reveal that in case the goods are re-imported the information with regard to the same has to be furnished to the sales tax authorities within a month from the date of the import. This form was furnished by the dealer which has been accepted. Therefore, on facts it is established that the twin test laid down by the various judgments stand satisfied and, therefore, the dealer would be entitled to seek exemption in respect of these goods for the purposes of working out his turnover.*
>
> *The judgment of the Division Bench of this Court rendered in the case of* ***M/s Veerumal Monga and Sons*** *(supra) would not be applicable to the instant references made to this Court because in that case it was found as a fact that the transaction involving the purchase of paddy by the dealer did not fall within the ambit of Section 5(3) read with Section 15(a) of the CST Act. It was further found that it was not a transaction preceding the sale or purchase of paddy occasioning export thereof outside India. However, in the present case, the facts are entirely different. The sale has been made to a export house and form 'H' issued under Rule 12(1) read with Section 5 of the CST Act has been placed on record. Therefore, the view taken by the Tribunal in its conclusion deserves to be accepted in principle. We make it clear that we are not expressing any opinion on the question regarding relevance of Section 27 of the HGST Act.*
>
> *As a sequel to the above discussion, question no. 1' is answered against the revenue by holding that the Division Bench judgment of this court in* ***M/s Veerumal Monga and son's case*** *(supra) would not apply to the facts of the instant references and, therefore, the question is answered against the revenue and in favour of the dealer. As a necessary corollary the answer to question no. 2 is required to be answered in favour of the dealer especially when question no.l has been answered against the revenue. Accordingly, the dealer is held entitled to exemption under Section 5(2)(a)(vi) of the PGST Act.*
>
> *It follows that answer to question no. 3 has to be answered in the negative because the judgment of this court in Veerumal Monga's case (supra) would not apply to the facts and circumstances available in the instant references. Accordingly question no. 3 is also answered against the revenue.*
>
> *For the reasons aforementioned, question no. 1 is answered against the revenue and in favour of the dealer whereas question no. 2 is answered in favour of the dealer. Question no. 3 is answered in the negative against the revenue."*

9. In the case in hand, it is not in dispute that the appellant had furnished 'H' forms, which were accepted. The aforesaid judgment with identical facts is considering the provisions of the Act in question. All the issues raised by the State, which was the petitioner before this court, were considered and it was opined that the Tribunal had rightly decided the issue in favour of the dealer holding him entitled to rebate of tax on paddy in terms of Section 5(2)(a)(vi) of the Act. With a view to maintain consistency, we deem it appropriate to follow

the earlier judgment of Division Bench of this court and answer the question in negative, i.e., against the revenue and in favour of the assessee.

10. As no such direction was given by the Division Bench of this court dealing with the issue earlier, the appeals are accordingly accepted.

11. The directions given by the Tribunal to the extent *"... and prove that the purchases of paddy, deduction of which is claimed from total turnover had been made after and for the purpose of complying with the agreement/order or in relation to such export"* are set aside.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 20643 OF 2015

PACIFIC COMMERCIAL COMPANY
Vs
UNION OF INDIA AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

29th July, 2016

HF ▶ Directions given

Authorities are directed to decide the application filed by petitioner requesting for disposal of seized goods as they were perishable in nature.

DETENTION OF GOODS - LACK OF ACTION ON PART OF DEPARTMENT – COSMETIC CONSIGNMENT IMPORTED – GOODS DETAINED BY CUSTOM AUTHORITIES – SHOW CAUSE NOTICE ISSUED BY AUTHORITIES – CONTENDING THE GOODS TO BE PERISHABLE, REQUEST FOR DISPOSAL OF GOODS - NO ACTION TAKEN – WRIT FILED – RESPONDENT DIRECTED TO DECIDE APPLICATION FOR APPLICATION OF DISPOSAL OF THE GOODS SEIZED AND TO DISPOSE OF THE SHOW CAUSE NOTICE ISSUED EARLIER WITHIN THE TIME SPECIFIED – WRIT DISPOSED OF.

Facts
In this case the consignment of cosmetic goods imported was detained by the customs authorities. A show cause notice was issued on 15/3/2012. The petitioner requested then authorities to dispose of the goods as they were perishable but no action has been taken. Thus, a writ is filed praying for a direction to authorities to either dispose of the goods or to decide the application of petitioner.

Held:
The respondent is directed to dispose of the application filed by petitioner for disposal of seized goods which as per the petitioner have already expired. Also, the respondent is directed to dispose of the show cause notice issued on 15/3/2012. The needful is to be done within four weeks of from the date of receipt of this order.

Present: Mr. Jagmohan Bansal, Advocate for the petitioner.
Mr. Sharan Sethi, Advocate for respondent No.2.

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RAJESH BINDAL, J.

1. The petitioner approached this court with a grievance that the consignment of cosmetic goods imported by him was detained by the Customs Authorities on 16.3.2011 and the same is still lying at the port.

2. The goods are perishable. First show cause notice was issued to the petitioner on 15.3.2012. Immediately, thereafter, on 21.4.2012, the petitioner requested the Authorities to dispose of the goods being perishable. No action has been taken thereon till date. The prayer in the writ petition is for direction to the Authorities to either dispose of the goods or to decide the application of the petitioner.

3. It is further submitted that as per the petitioner, the declared value of the goods is Rs.15.92 lacs. However, the Authorities assessed the same for more than Rs.27 crores. Learned counsel further submitted that in the opinion of the Director of the Revenue Intelligence, except the goods for the value of Rs.11,65,262.50 paise, the other goods cannot be permitted to be imported being in violation of the Intellectual Property Rights (Imported goods) Enforcement Rules, 2007.

4. Learned counsel for respondent No.2 submitted that as the goods were to be got tested to find out its genuineness with the brand manufacturers in the country, they were to be heard. It took time to dispose of the application. However, he stated that the notice issued to the petitioner shall be disposed of within shortest possible time and a decision on the application filed by the petitioner for disposing of the goods shall also be taken.

5. After hearing learned counsel for the parties, in our opinion, the present petition can be disposed of, at this stage, with direction to respondent No.2 to dispose of the application filed by the petitioner for disposal of the seized goods, which according to the petitioner, have already expired and further to dispose of the show cause notice issued on 15.3.2012.

6. Ordered accordingly. The needful shall be done within four weeks from the date of receipt of certified copy of this order.

7. Petition stands disposed of accordingly.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 13131 OF 2016

NSC PROJECTS (P) LTD.
Vs
STATE OF PUNJAB AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

1st August, 2016

HF ▶ Assessee

Interest is to be paid to the assessee on the balance amount of refund due to him in view of S.40 of PVAT Act, 2005.

REFUND – INTEREST – ASSESSMENT FRAMED AND AMOUNT OF REFUND DETERMINED - AMOUNT PARTLY REFUNDED – BALANCE LEFT DUE DESPITE REPEATED REMINDERS – WRIT FILED CLAIMING INTEREST IN RESPECT OF BALANCE AMOUNT - HELD – INTEREST @ ½ % TO BE PAID ON THE BALANCE AMOUNT CALCULATING IT AFTER EXPIRY OF 60 DAYS FROM THE DATE OF APPLICATION FILED FOR REFUND TILL AMOUNT REFUNDED ACTUALLY - WRIT ALLOWED – *S. 40 OF PVAT ACT, 2005*

Facts
The petitioner had applied for refund which was due to be granted. A part of that amount was refunded but balance was yet to be refunded. The petitioner had sent reminders for the same. It has claimed that interest @ 6% should be allowed on the non refunded amount calculated after expiry of 60 days from the date of application so filed. A writ is thus filed claiming interest on the balance amount.

Held:
The petitioner is entitled to interest @ ½ % per month for the period commencing after expiry of 60 days from the date of application filed for refund till the amount is actually refunded.

Present: Mr. Avneesh Jhingan, Advocate for the Petitioner.
Mr. Jagmohan Bansal, Additional AG, Punjab.

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RAJESH BINDAL, J.

1. The petitioner approached this court seeking a direction to the respondents to refund an amount of Rs.19,53,605/-.

2. Learned counsel for the petitioner submitted that assessment of the petitioner for the year 2013-14 was framed by the Assessing Authority vide order dated 3.7.2015 and a refund of Rs.74,89,218/- was determined. The amount was payable on application filed by the petitioner.

3. The petitioner through counsel filed application for refund on 27.7.2015. Part of the amount due to the petitioner, namely Rs.55,35,613/- was transferred in the bank account of the petitioner on 24.12.2015, whereas, the balance amount has not been refunded till date despite reminders dated 28.12.2015 and 22.2.2016.

4. He further submitted that in terms of provisions of Section 40 of the Punjab Value Added Tax Act, 2005 (for short 'the Act'), the petitioner is also entitled to interest on delayed refund of the amount @ 6% per annum for the period, 60 days after the filing of the refund application till the amount is refunded.

5. On instructions from Gurjit Singh, ETO, Amritsar-II and without prejudice to the right of the Department to take any appropriate proceedings, in this regard, learned counsel for the respondents stated that partly the amount has already been refunded as admitted by the petitioner, whereas, the balance amount shall be refunded to the petitioner within one month from today. He further submitted that as the amount has been refunded without much delay, the petitioner is not entitled to any interest.

6. Heard learned counsel for the parties and perused the paper-book.

7. The fact that in the assessment for the year 2013-14 as framed vide order dated 3.7.2015 the petitioner was found entitled to refund of Rs. 74,89,218/- is not in dispute. The petitioner filed application for refund of the amount on 27.7.2015. Further, it is not in dispute that part of the amount refundable to the petitioner on assessment i.e. Rs. 55,35,613/- was refunded to the petitioner by transferring the same in its bank account on 24.12.2015. The balance of Rs. 19,53,605/- was not refunded without there being any reason. As the stand taken by the learned counsel for the respondents is that balance amount shall be refunded within one month from today, while accepting the same, no direction, as such, is required to be issued.

8. As regards the claim of interest on the delayed refund of the amount is concerned, Section 40 of the Act, as is reproduced hereunder, explicitly provide that if the amount is not refunded to the person within sixty days from the date of application, simple interest @ $^{1}/_{2}$% per month is payable for the period immediately following the expiry of the period of sixty days till the date of refund.

> *"Section 40. : Where an amount required to be refunded by the Commissioner or the designated officer, to any person, is not so refunded to him within a period of sixty days from the date of the application, a simple interest at the rate of half per cent per month on the said amount shall be paid to such person from the date, immediately following the expiry of the period of sixty days to the date of the refund. "*

9. In the present case, application for refund of the amount due as per the assessment was filed by the petitioner on 27.7.2015. The amount was not refunded till 27.9.2015. Partly, the same was refunded on 24.12.2015 and party is yet to be refunded.

10. Considering the provisions of Section 40 of the Act, as referred to above, in our opinion, the petitioner is also entitled to interest @ $^{1}/_{2}$% per month for the period commencing after expiry of 60 days from the date of application dated 27.7.2015 filed for refund, till the amount is actually refunded to the petitioner. The amount of interest be calculated and paid along with the refund of the balance amount of Rs. 19,53,605/-.

11. Petition stands allowed accordingly.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 19 OF 2016

HCL INFOSYSTEMS LTD.
Vs
STATE OF PUNJAB

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

28th July, 2016

HF ▶ Appellant

Penalty u/s 51 is deleted as Nature of transaction is to be determined by assessing authority and not by check post officer.

PENALTY - CHECK POST – ATTEMPT TO EVADE TAX – NATURE OF TRANSACTION – GOODS IN TRANSIT DECLARED – PENALTY U/S 51 IMPOSED ON THE BASIS OF IMPROPER AND DOCUMENTS – TRIBUNAL ACCEPTED THE APPEAL REMITTING THE MATTER TO DECIDE WHETHER THE TRANSACTION WAS A SALE OR STOCK TRANSFER IN ADDITION TO OTHER ISSUES – APPEAL BEFORE HIGH COURT CONTENDING CHECK POST OFFICER NOT AUTHORIZED TO GO INTO NATURE OF TRANSACTION – HELD: ISSUES RAISED BY TRIBUNAL INDICATE THAT THE MATTER IN QUESTION NEEDS ADJUDICATION REGARDING NATURE OF TRANSACTION – NATURE OF TRANSACTION NOT TO BE DETERMINED BY CHECK POST OFFICER , POWER BEING LIMITED TO SUMMARY PROCEEDINGS U/S 51 – PENALTY DELETED - APPEAL ALLOWED- *S.51 OF PVAT ACT, 2005*

Facts

The appellant had entered into a contract with PICTES as per which it was supposed to provide computers to certain schools. The consignment was in transit from Uttarakhand to Jalandhar. The goods were declared but penalty was levied opining that the documents were not complete. The Tribunal accepted the appeal and remitted the matter for fresh adjudication raising certain issued as noticed by Tribunal. Hence, an appeal is filed before High court contending that the officer at check post could not go into the nature of transaction.

Held:

The issues raised by Tribunal for adjudication refer to whether the invoice issued was a sale or conferred only right to use not amounting to sale. Also, it was to be determined whether it was an interstate sale or just a stock transfer.

This shows that the issue in this case is regarding determination of transaction. The proceedings u/s 51 are summary in nature. The nature of transaction can be determined only by Assessing Authority and not by officer at check post. Therefore, the order imposing penalty is set aside. However, the assessing authority shall be at liberty to determine nature of transaction.

Cases referred:

- *Century Finance Corporation Ltd, and another vs. State of Maharashtra. AIR 2000 (SC) 2436*
- *Thyssen Krupp Elevator (India) Pvt Ltd, vs. State of Punjab and another (2012) 41 PHT 224 (P&H)*
- *Devi Pass Gopal Krishan Ltd Moga vs. State of Punjab (2009) 33 PHT 413 (P&H)*

Present: Mr. Avneesh Jhingan, Advocate, for the appellant.
Mr. Jagmohan Bansal, Addl. A.G., Punjab

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RAJESH BINDAL, J.

1. This order shall dispose of two appeals bearing VAT Appeal Nos. 19 and 20 of 2016.

2.The facts have been taken from VAT Appeal No.19 of 2016. In this appeal, the appellant has raised the following substantial questions of law:-

"i) Whether the penalizing officer under Section 51(7)(b) of the Act has the jurisdiction to determine the issues on which the matter was remanded by the Tribunal?

ii) Whether in the facts and circumstances of the case, the Tribunal could have remanded the matter back to the penalizing officer to answer the questions which fall within the ambit of the regular assessing authority?

iii) Whether in the facts and circumstances of the case, the Tribunal after coming to the conclusion that the questions involved in the case were regarding nature of transaction and regarding sale or right to use, still could have continued the proceedings under Section 51 of the PVAT Act by remanding the matter back?

iv) Whether in the facts and circumstances of the case, Section 51 of the PVAT Act could have been invoked in the present case when the transaction was voluntary reported by the appellant at Information Collection Centre and no element of tax was involved or payable?

v) Whether in the facts and circumstances of the case, orders of the lower authorities, Annexures A-2, A-3 and A-6 are sustainable in law, as no attempt to evade the tax has been established and no defect in the accompanying documents have been pointed out?

3. The facts of the appeal, in brief, are that the appellant entered into a contract as Turnkey Hardware & Service Provider with Punjab ICT Education Society(PICTES) under the department of School Education, Government of Punjab. As per the contract, certain computers were to be provided by the appellant to different schools, on lease, maintenance and transfer basis for a period of five years. The consignment of the computers was supplied through the trucks from Uttrakhand to Jalandhar, and on the way at Information Collection Centre (Imports) Shambhu the goods were declared but still penalty of Rs.38,77,337/- was levied on the appellant opining that the documents were not genuine and proper.

4. The appeal of the appellant was dismissed by the Deputy Excise and Taxation Commissioner(Appeals) -cum-Joint Director (investigation), Patiala. In further appeal, the VAT Tribunal Punjab set-aside the orders passed by the authorities below and remitted the matter back to the Assistant Excise and Taxation Commissioner, Shamboo (Export) for fresh decision after answering the issues as noticed in the order passed by the Tribunal.

5. Learned counsel for the appellant, while referring to the judgment of Hon'ble the Supreme Court in 20th ***Century Finance Corporation Ltd, and another vs. State of Maharashtra. AIR 2000 (SC) 2436*** submitted that the transaction in the present case being

during the course of interstate trade and commerce, no tax was leviable in the State of Punjab. The consignment was accompanied with all the requisite documents. The import of goods into the State of Punjab was declared at the check post, voluntarily. The officer posted at the check post had no jurisdiction to go into the nature of transaction to opine that it was not accompanied by proper documents and levy penalty. He further submitted that such a jurisdiction was with the regular assessing authority. The proceedings under Section 51 of the PVAT Act are summary in nature. In support of the plea, reliance was placed upon ***M/s Thyssen Krupp Elevator (India) Pvt Ltd, vs. State of Punjab and another (2012) 41 PHT 224 (P&H)*** and ***Devi Pass Gopal Krishan Ltd Moga vs. State of Punjab (2009) 33 PHT 413 (P&H)***.

6. On the other hand, learned counsel for the respondent submitted that the contract for supply of computers, maintenance of hardware was entered into by M/s HCL Infosystems Ltd. Mohali. At the time of import of goods, TIN number of the Mohali Dealer was not furnished. The appellant should have transferred the goods to Mohali and thereafter used the same for the purpose of the execution of the contract entered into with Punjab ICT Education Society (PICTES). As there was an attempt to evade the tax, penalty was imposed. He further submitted that in the invoice produced at the check post even Central Sales Tax had not been charged. The proposition of law that nature of transaction cannot be gone into by the Officer at the check post was not disputed by learned counsel for the respondent.

7. In response, learned counsel for the appellant submitted that as per contract, the goods were being transferred from the State of Uttrakhand to Punjab for right to use. It was not a sale. This was so mentioned in the invoice. The amount was shown only for the purpose of octroi and insurance, hence, no tax was chargeable.

8. We have heard learned counsel for the parties and perused the paper book.

9. There is no dispute on the proposition of law that the nature of transaction cannot be gone into by the Officer at the check post. It is the job of the regular assessing authority. Number of judgments have been cited by learned counsel for the appellant on that issue, which could not be disputed. The Tribunal while accepting the appeal filed by the appellant, recorded that following issues, arise for consideration:

> *"1. Whether the invoice issued by the company was as per rules of procedure.*
>
> *2. Whether the invoice issued by the company was a sale in favour of the schools or conferred a right to use only and it does not amount to sale.*
>
> *3. Whether the transfer of goods is an interstate sale or stock transfer by the appellant to the THSP not subject to taxability by the State, where the goods were to be installed.*
>
> *4. Whether there is an envolvement of tax of Punjab State.*
>
> *5. Whether the constitution of THSP and the appellant is the same and whether the goods were sent as stock transfer under the orders of the head office."*

10. A perusal of the aforesaid issues, shows that issue is regarding determination of nature of transactions. The proceedings under Section 51 of the VAT Act are summary in nature. The officer at the check post can not determine the nature of transaction, that being the job of the regular assessing authority. Accordingly, the proceedings initiated for levy penalty under Section 51 of the VAT Act are quashed. Consequently, all the orders are set aside. However, the same will not debar the appropriate Assessing Authority to determine the nature of transaction in proper proceedings. The questions of law are answered accordingly.

11. Disposed of.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 17515 OF 2001

SHANTI FASTNERS
Vs
STATE OF PUNJAB AND ANOTHER

RAJESH BINDAL AND LISA GILL, JJ.

21st July, 2016

HF ▶ Assessee

Once the assessment is finally completed for an assessment year, no provisional assessment can be enforced for a part of the same period.

PROVISIONAL ASSESSMENT – ASSESSMENT – INSPECTION – ASSESSMENT FOR A PART OF YEAR FRAMED RAISING DEMAND – CHALLENGED IN HIGH COURT – IN THE MEANWHILE, FINAL ORDER PASSED RAISING NO ADDITIONAL DEMAND – PROVISIONAL ASSESSMENT ORDER CANNOT BE ENFORCED – WRIT ALLOWED – PROVISIONAL ASSESSMENT ORDER QUASHED.

Facts
In this case, the assessment for the year 2000-2001 was finally framed vide order dated 27.12.2002 whereby no tax was found due from petitioner. Before that, vide order dated 17.8.2001, a provisional assessment was framed for the period 1/4/2000 to 20/9/2000 arising out of an inspection.

The petitioner has submitted that since the assessment for the year 2000-2001 was completed, the provisional assessment for the part of the year cannot be enforced.

Held:
As the assessment for the year 2000-2001 was completed, a provisional assessment for a part of that year could not be enforced as the assessing authority had taken care of the entire material available with him at the time of framing of assessment. The writ is allowed and the order dated 17/8/2001 is set aside.

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

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RAJESH BINDAL, J.

1. The petitioner has approached this Court impugning the order dated 17.8.2001 passed by the Assessing Authority while deciding the inspection case and framed assessment for the period from 1.4.2000 to 20.9.2000. Though the petitioner has challenged the order of assessment raising the legal issue that there was no provision for framing of provisional

assessment under the Punjab General Sales Tax Act, 1948, however, he submitted that the period for which provisional assessment was made relates to the assessment year 2000-2001. Assessment for the completed year was framed on 27.12.2002 and finally no amount of tax was found to be due. The petitioner unit was an exempted unit. The entire amount of tax assessed was adjusted against the exemption limit. The submission is that once the assessment for the complete year was framed, the provisional assessment framed for part of the year cannot be enforced.

2. Learned counsel for the State did not dispute the fact that assessment for the complete year 2000-2001 was framed by the assessing authority vide order dated 27.12.2002 and no tax was finally found to be payable.

3. After hearing learned counsel for the parties and considering the submissions made above, in our opinion, the order of impugned assessment dated 17.8.2001 framed for the part of the year cannot be enforced at this stage as for the complete year 2000-2001, the assessing authority had finally taken care of the entire material available with him at the time of framing of assessment. Nothing to the contrary has been shown or referred to at the time of hearing. Accordingly, the writ petition is allowed. The impugned order dated 17.8.2001 (Annexure P-1) is set aside.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 5 OF 2015

SHARMA ENGINEERING WORKS
Vs
STATE OF PUNJAB AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

8th August, 2016

HF ▶ Assessee

Non- service of copy of order passed by First Appellate Authority renders the appeal filed immediately after receipt of demand notice as to be within limitation period.

LIMITATION – APPEAL – PENALTY ORDER PASSED - APPEAL BEFORE FIRST APPELLATE AUTHORITY – DISMISSAL OF – SUBSEQUENTLY, DEMAND NOTICE SERVED ON APPELLANT – APPEAL FILED IMMEDIATELY ON RECEIPT OF SUCH NOTICE – DISMISSAL BY TRIBUNAL ON GROUNDS OF DELAY IN FILING – APPEAL BEFORE HIGH COURT CONTENDING THAT COPY OF ORDER PASSED BY FIRST APPELLATE AUTHORITY NEVER SERVED ON APPELLANT – HOWEVER, APPEAL FILED IMMEDIATELY ON RECEIPT OF DEMAND NOTICE – HELD :CONTENTION RAISED STANDS UNDISPUTED – THEREFORE, APPEAL FILED WITHIN LIMITATION FROM DATE OF DEMAND NOTICE – APPEAL ALLOWED REMITTING THE MATTER TO TRIBUNAL FOR FRESH DECISION –

Facts

In this case, penalty u/s 14 of PGST Act had been imposed against which an appeal was filed before the First Appellate Authority. The order dismissing the appeal was passed on 15/7/2005. However, an appeal was filed before Tribunal only after recovery notice was issued on 22/7/2013 was served on appellant. The Tribunal dismissed the appeal being barred by limitation. Aggrieved by the order, an appeal is filed before High court contending that neither notice for hearing of appeal before First Appellate Authority was served nor the order passed by it was received by appellant. In such eventuality, the appeal was filed immediately after receipt of recovery notice.

Held:

It is undisputed that copy of order passed by first appellate authority was not served upon the appellant and the appeal was filed before Tribunal within limitation from the date it received demand notice, hence, the same could not have been dismissed on account of delay and should have been considered on merits. The appeal is allowed and matter is remitted back to Tribunal for decision on merits.

Present: Mr. Sandeep Goyal, Advocate for the appellant.
Mr. Piyush Bansal, DAG, Punjab

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RAJESH BINDAL, J.

1. The assessee is in appeal before this Court against the order passed by the Value Added Tax Tribunal, Punjab (for short 'the Tribunal) on December 04, 2014 in appeal No. 548 of 2013 raising the following substantial questions of law: -

> *"(i) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in dismissing the appeal of appellant on the ground of delay whereas the appellant had filed the appeal within the period of limitation after the certified copy of order was supplied to him?*
>
> *(ii) Whether on the facts and in the circumstances of the case, the Ld. Tribunal ought to have condoned the delay, if any, since there is a serious dispute with regard to the service of certified copy of order?*
>
> *(iii) Whether on the facts and in the circumstances of the case, the Ld. Tribunal is justified in holding that the appellate authority is justified in dismissing the appeal in default even though section 20 of PGST Act, 1948 obliges the appellate authority to pass an order on merits of the case?*
>
> *(iv) Whether the Ld. Appellate Authority was obliged to supply certified copy of order where an ex-parte order has been passed in the absence of the appellant?"*

2. Learned counsel for the appellant submitted that penalty of Rs. 2,81,000/- was imposed upon the appellant by Assistant Excise and Taxation Commissioner vide order dated 10.03.2004 passed under Section 14 (B)(7) of the Punjab General Service Tax Act, 1948 (for short 'the Act'). Aggrieved against the aforesaid order, the appellant preferred appeal before the Excise and Taxation Commissioner-Cum-Joint Director (Enf.) Patiala Division, Patiala which was dismissed vide order dated 15.07.2005, in default.

3. As the appellant was not served notice for hearing of the appeal by the first Appellate Authority, it could not avail of its further remedy of appeal. The appellant came to know about the order passed only when recovery notice was issued to it on 22.07.2013. Immediately, thereafter, appeal was filed before the Tribunal which was dismissed vide order dated 04.12.2014.

4. The contention raised by learned counsel for the appellant is that neither the notice for hearing of the appeal was served by the first Appellate Authority nor the copy of the order finally passed. As the appellant did not receive the copy of the order passed by the first Appellate Authority, it could not avail of its remedy of appeal against the order. When the intimation was received by the appellant with the receipt of notice for recovery of the amount, immediately the appeal was filed before the Tribunal, hence, the same could not be dismissed on account of delay.

5. Learned counsel for the respondents on instructions from Amit Goyal (ETO) ICC, Shambhu (Import) submitted that on verification, it could not be established that copy of the order passed by the first Appellate Authority was served upon the appellant.

6. After hearing learned counsel for the parties and considering the submissions noticed above, it is found that undisputedly copy of the order passed by the first Appellate Authority was not served upon the appellant and the appeal was filed by the appellant before the Tribunal within limitation from the date it received demand notice, hence, the same could not have been

dismissed on account of delay and should have been considered on merits subject to any other statutory compliance.

7. Accordingly, the present appeal is allowed. The impugned order dated 04.12.2014 passed by the Tribunal is set aside and the matter is remitted back to Tribunal for decision on merits subject to other statutory compliance. The parties through counsels are directed to appear before the Tribunal on 29.08.2016.

8. The appeal stands disposed of.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 420 OF 2015

SAGAR STEELS
Vs
THE STATE OF PUNJAB

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

6th May, 2016

HF ▶ Revenue

Penalty is upheld where assessee has failed to prove that goods were in transit.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS INTERCEPTED WHILE BEING UNLOADED AT PREMISES OF FIRM A – GOODS CONSIGNED TO APPELLANT AS PER ICC DATA – GOODS DETAINED – EXPLANATION TENDERED THAT GOODS BROUGHT FROM OUTSIDE THE STATE TO BE FURTHER SUPPLIED TO FIRM A AND B ON BASIS OF PRIOR ORDER – PENALTY IMPOSED U/S 51 AND FOR ABSENCE OF INVOICE AND E-TRIP AS REQUIRED U/R 64 –A - GOODS CONTENDED TO BE NOT IN TRANSIT SO AS TO ATTRACT PENALTY U/S 51 AND RULE 64-A ALLEGED TO BE INAPPLICABLE TO THE CASE – HELD – NO PROOF INDICATING TRANSACTION BEING COMPLETE BETWEEN APPELLANT AND FIRM A GIVEN – DISCREPANCY IN INVOICE WITH RESPECT TO TIMING OF DETENTION AND TIME OF ISSUE – CONTENTION OF GOODS NOT IN TRANSIT NOT ACCEPTABLE – RULE 64 A APPLICABLE IN VIEW OF SUBSECTION (2), (4) AND (6) OF S. 51 THEREBY LEADING TO PENALTY U/S 51 (7) OF THE ACT – NON PRODUCTION OF MANDATORY DOCUMENTS CONCLUDED ATTEMPT TO EVADE TAX –APPEAL DISMISSED - *S. 51 OF THE PVAT ACT, 2005 AND RULE 64 A OF THE PVAT RULES, 2005.*

Facts

The goods were intercepted at 1.30 PM .The checking officer observed that the driver could not produce any documents with respect to the transaction and the consignee of the goods was the appellant firm whereas the goods were being unloaded at premises of firm A in the same town.

It was alleged that the goods were bought from Bhavnagar firm and reported at ICC. The appellant had prior orders placed by firm A and Firm B for supplying the same. Some were already unloaded at firm B and remaining were being unloaded at A when they were intercepted. However, penalty was imposed u/s 51 of the Act on the grounds of failure to produce invoice and failure to generate e-TRIP as required by Rule 64A. Aggrieved by the order, an appeal is filed before Tribunal contending that S. 51 and Rule 64- A are not applicable to the case.

Held:

1) The contention that the goods were not in transit is not acceptable as the appellant has not proved that the transaction between firm A and the appellant stood completed and that the goods unloaded already stood accepted by appellant. Also, the invoice was issued in favour of firm A at 3.00 PM whereas the detention report shows interception at 1.PM. The story set up that goods were not in transit cannot be accepted. Therefore, goods were in transit and thus S. 51 is applicable to such detention.

2) As regards applicability of Rule 64 A, it is held that S. 51 (2) r/w Rule 64 A clearly indicated that e-TRIP has to be accompanied with the goods alongwith other documents as required under subsection (2) of s. 51.Further, it is given that in case of violation of subsections (2) and (4) of S. 51, the procedure to proceed is given in subsection (6) of Section 51 which reveals that if documents are improper as required under subsection (2) and (4), penalty is leviable under Section 51(7) of the Act. Hence, Section 51 is attracted as non production of mandatory documents is sufficient to prove the attempt.

Present: Mr. Rakesh Cajla, Advocate Counsel for the appellant.
Mr. B. S. Chahal, Dy. Advocate General for the State.

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

1. This appeal has arisen out of the order dated 17.5.014 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala imposing penalty to the tune of Rs.4,01,416/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

2. Brief facts leading to the detention of the truck No.RJ-07GC-0753 and imposition of the penalty are that on 5.5.2014 at 1.30 PM. the Excise and Taxation Officer, Mobile Wing, Patiala intercepted vehicle No.RJ-07GC-0753 at the time when it was entering the premises of Maa Ashirwad Steel Mills, Village Kumbh, Mandi Gobindgarh. On checking, the Excise and Taxation Officer (herein referred to the Detaining Officer) found the following defects:-

(1) The goods were taxable in nature and meant for trade. The driver did not produce any documents pertaining to the goods in transaction.

(2) As per ICC data, the consignee of goods was M/s Sagar Steels, Gobindgarh whereas, the goods were being unloaded at the premises of the M/s Maa Ashirwad Steel Mills, Village Kumbh Mandi Gobindgarh.

3. The Detaining Officer prepared a detention report and confronted the driver with the transaction but he failed to produce any documents to order to prove the genuineness of the transaction, as such, the case was transferred to the Designated Officer, who also issued notice to the appellant. M/s Sagar Steels, Mandi Gobindgarh who appeared through counsel submitted the explanation to the effect that the goods were brought from M/s Priya Blue Industries Pvt. Ltd., Bhavnagar regarding which he had reported at the ICC. He had prior orders of Maa Ashirvad Steel Mills and Shree Vaishnu Steel Rolling Mills. He had unloaded some of the goods at the premises of Shree Vaishnu Steel Roiling Mills. The goods were intercepted when the remaining goods were being unloaded at the premises of Ashirwad Steel Mills Mandi Gobindgarh therefore, the goods can't be said to be in transit, he had paid the advance tax at the ICC to the tune of Rs.33,400/- therefore, no Punjab tax was involved. After taking into consideration, the reply submitted by the appellant and after providing an opportunity of being heard, the Designated Officer vide order dated 17.5.2014 imposed penalty to the tune of Rs.4,01,416/-upon the appellant with the following observations:-

1. The dealer failed to produce any invoice and the invoices so produced before him later on by the counsel are an afterthought as such attempt to evade tax is proved.
2. No e-trip in form 12-A as required under Rule 64-A of the Punjab VAT Act, 2005 was generated by the owner of the goods though it was a case of intrastate transaction. The compliance of Rule 64-A was necessary as the appellant had submitted that he had sold the goods to the firms after bringing the goods in the State of Punjab. Besides compliance of Rule 64-A of the Rules, the vehicle was required to reach the destination within time as prescribed by the Rules.
3. It has been proved beyond any doubt that dealer had attempted to evade tax.

4. The appeal filed by the appellant was dismissed by the First Appellate Authority, Patiala Division, Patiala on 20.4.2015 hence this second appeal.

5. Arguments heard. Record perused.

6. The counsel for the appellant has contended that the goods were not in transit as the same had already reached the destination and out of the goods some goods were unloaded at Shree Vaishnu Steel Rolling Mills, Mandi Gobindgarh and the remaining goods were in the process of unloading at the premises of M/s Ashirwad Steel Mills, Village Kumbh Mandi Gobindgarh therefore, since the goods reached had the destination, therefore, the same can't be said to be in transit as such Section 51 of the Act is not applicable to the facts of the present case.

7. Having heard the rival contentions, I do not find myself in agreement with the arguments advanced by the counsel for the appellant. As a matter of fact the goods were actually in transit as is apparent from the first detention report prepared by the Excise and Taxation officer, Mobile Wing, Patiala at 1.30 PM. at the time of detention. He has recorded in his report that the truck was intercepted on 5.5.2014 at 1.30 PM when it was entering into M/s Ashirwad Steel Mills, Villages Kumbh, Mandi Gobindgarh. This fact has not been denied by the driver Gopi Lal in his statement recorded on the same day after which the detention report was prepared and show cause notice was issued to the incharge of the goods for 6.5.2014. It is not proved by the appellant in any manner that the transaction between M/s Ashirwad Steel Mills, Village Kumbh, Mandi Gobindgarh and the appellant stood completed and the goods stood already unloaded and accepted by the appellant The another fact which goes to prove that the goods were in transit is that as per the invoice issued by the appellant in favour of m/s Maa Ashirwad Steel Rolling Mills, the goods were intercepted at 1.30 PM whereas the invoice No.9 was issued in favour of Maa Ashirvad Steel Rolling Mills at 3.00 PM on the same day. In these circumstances, neither the story as setup by the appellant that the goods were being unloaded nor that the goods were not in transit can be accepted and the net conclusion would be that the goods were in transit when those were intercepted by the Excise and Taxation Officer, Mobile Wing, Patiala. As such Section 51 of the Punjab Vat Act, 2005 would certainly be applicable to such detention by the detaining officer.

8. The second contention raised by the appellant is that Section 64-A is not attracted to the case as goods were directly transported from outside the State of Punjab as such no penalty could be imposed. It was further argued that Section 51 (6) (a) is attracted only if the appellant violates the provision of Sub-Section (2) & (4) of Section 51 of the Act. Sub-Sections (2) & (4) of the Section 51 of the Act do not provide for generating any e-trip as provided under Rule 64-A of the Rules. Therefore, no penalty could be imposed U/s 51 (7) (b) of the Act.

9. To the contrary, the State Counsel has urged that a on combined reading of Section 51 (2) and (4) and Rule 64-A of the Rules, it is crystal clear that in case of an intrastate transaction, the owner incharge of the goods is required to generate the e-trip and in case of local transaction, the goods were required to reach the destination within 6 hours of the dispatch of the goods. The appellant became the owner incharge of the goods as soon as he receives the same into the State of Punjab for onward transfer of the same to the other consignee. As such it was mandatory for him to issue e-trip in this intrastate transaction.

10. Having pondered over the arguments advanced by the rival parties, I do not find myself persuaded by contentions as raised by the counsel for the appellant. The question raised by appellant is that Rule 64-A of the Rules (as was existing at the relevant time) was incorporated with a view to check the intrastate transaction, therefore, it was made mandatory, for the seller transferring the goods to the buyers, to generate e-trip/in other wards to generate information in VAT 12-A through virtual information Collection Centre. The Sub-Clause (2) of Rule 64-A of the Rules also provided that the said e-trip is necessary document to be dispatched alongwith the goods receipt, trip sheet log book, bill, cash memo, sale invoices, vehicle's record in which such goods are being transported or delivery challan etc. as the case may be, as a proof for such transaction. Rule 64-A Sub-clauses-1 and 2 read as under:-

RULE 64-A. PROCEEDURE FOR FURNISHING INFROMATION IN RESPECT OF INTRASTATE TRADE OR COMMERCE OF GOODS THROUGH VIRTUAL INFORMATION COLLECTION CENTRE

(1) The owner or person incharge of the specified goods, before putting the same into transit any intrastate destination, for trade or commerce by any mode of transition, shall submit information in Form VAT-12-A, through Virtual Information Collection Center on the official website of the department i.e. www.pextax.com; or any other website as may be specified by the commissioner.

(2) Such owner or person incharge, after tendering of the aforesaid information though electronic mode, shall generate electronic receipt bearing unique number allotted to such person, as a proof for submission of the said information. The aforesaid receipt shall be a necessary document alongwith the goods receipt, trip sheet, log book, bill, cash memo, sale invoice, vehicle's record in which such goods are being transported or delivery challan etc. as the case may be, as a proof for such transaction.

11. From bare reading of the aforesaid Rule, it transpires that Sub Clause (2) of the Rule 64-A by implication has been made a part sub section (2) of Section 51. Sub Section (2) of Section 51 of the Act reads as under:-

SECTION 51 ESTABLISHMENT OF INFORMATION COLLECTION CENTRES OR CHECK POST AND INSPECTION OF GOODS IN TRANSIT:-

(2) The owner or person incharge of (the goods or) a goods vehicle shall carry with him a goods vehicle record, goods receipt, a trip sheet or log book, as the case may be and a sale invoice or bill or cash memo or delivery challan containing such particulars, as may be prescribed, in respect of such goods meant for the purposes of business, as are being carried in the goods vehicle

(or by any other means) and produce a copy of each of the aforesaid documents to an officer incharge of a check post or information collection centre or any other officer not below the rank of an Excise and Taxation Officer checking the vehicle at any place.

ROVIDED THAT a person selling goods from within or outside the State in the course of (intrastate or) interstate trade or commerce, shall also furnish or cause to be furnished a declaration with such particulars, as may be prescribed.

PROVIDED FURTHER THAT a taxable person, who sells or dispatches any goods from within the State to a place outside the State or imports or brings any goods or otherwise receives goods from outside the State, shall furnish particulars of the goods in a specified form obtained from the Designated Officer, duly filled in and signed.

12. Sub Section-2 if read with Sub Clause (2) of Rule 64-A, then it would not difficult to make out that the declaration by way of e-trip has to be accompanied with the goods alongwith other documents as required under Sub Section (2) of Section 51 in case of intrastate transaction. The procedure to proceed in violation of Sub Section (2) and (4) has been provided in Clause (a) of Sub Section (6) of Section 51 which reveals that if the goods carried by goods vehicle which are meant for trade or commerce and are not covered by proper and genuine documents as mentioned in Sub Section (2) and (4) of Section 51 of the Act or that the person transports the goods is attempting to evade payment of tax, then the Designated Officer after providing the consignor or consignee an opportunity of being heard can impose a penalty under Section 51 (7) (b) of the Act to the extent of 30% of the value of the goods. Section 51 (6) (b) also provides that the violation of Sub Section (2) and (4) of Section 51 is sufficient to prove an attempt on the part of a person transporting the goods to evade tax if the violation of such mandatory provisions is made out, the penalty U/s 51 (7) (b) of the Act could be attracted. The non production of the mandatory documents at the time of transporting the goods was sufficient to prove such attempt.

13. As such the arguments advanced by the counsel are not sustainable.

14. No other argument has been raised.

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

16. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 123 OF 2014

VIJAY SHARMA & SONS
Vs
THE STATE OF PUNJAB

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

6th May, 2016

HF ▶ Assessee

Penalty for road side checking is deleted where the Detaining Officer was found to have exceeded his jurisdiction.

PENALTY—ATTEMPT TO EVADE TAX—ROAD SIDE CHECKING/CHECK POST—IMPORT OF TWO CONSIGNMENT FROM OUT OF STATE—VEHICLES LYING STATIONARY IN FRONT OF WEIGH BRIDGE—DETENTION ON THE GROUND OF NON-PRODUCTION OF DOCUMENTS IN FAVOUR OF ALLEGED SUBSEQUENT SALE—ALLEGATIONS AGAINST THE OFFICER—ENQUIRY HELD—OFFICER FOUND TO HAVE EXCEEDED THE JURISDICTION— PENALTY DROPPED FOR ONE CONSIGNMENT IN REMAND BUT SUSTAINED FOR ANOTHER—NO EVIDENCE OF FURTHER SALE TO ANY DEALER—GOODS SUBJECTED TO ONE STAGE TAXATION AND NO FURTHER TAX PAYABLE—ASSESSMENT OF THE CONSIGNOR FRAMED AND NO TAX FOUND DUE—GOODS DECLARED VOLUNTARILY AT THE TIME OF IMPORT—EXCISE DUTY PAID MORE THAN THE TAX INVOLVED—PENALTY IMPOSED WITHOUT CONSIDERING ALL THE ASPECTS OF THE MATTER—PENALTY DELETED. – *SECTION 14-B OF PGST ACT, 1948*

Facts

The Assessee imported two consignment of Iron and steel from Bhavnagar in two different trucks. Detention made when the vehicles were found stationary outside the weigh bridge in Mandi Gobindgarh. On demand documents pertaining to import of goods were produced but no documents in favour of M/s Luxmi Rolling Mills were produced to whom the goods were allegedly sold. Penalty was imposed for both the trucks through one order. On appeal the 1st Appellate Authority remanded the case back. The designated officer in the remand proceedings dropped penalty qua one truck but upheld for the another. Appeal filed against said order was dismissed and 2nd appeal was filed before Tribunal.

Held:

The detention of goods was made by the Detaining Officer against whom the complaints have been made for his high handedness. In the enquiry the said officer was indicted and it was found that he imposed the penalty without affording opportunity of being heard to the Assessee. Even the disciplinary action was recommended against the said officer. The goods were reported at 8.06 A.M. at Khanna and the goods have been detained at 8.15 A.M. It is not possible to sell the goods within 9 minutes. Enquiry report also proved that the blank papers

were got singed and were manipulated. Goods were liable to tax at once stage and no tax was involved in the hands of appellant which is reflected even in the Assessment order where no tax have been found due against the Assessee. Transaction was voluntarily reported at ICC and hence there were no chances of evasion of tax. The Excise duty paid was in excess of tax involved and hence a person would not loose the amount of Excise duty paid for saving tax under Punjab General Sales Tax Act. The penalty order has been passed without taking into consideration all aspects of the matter. Penalty deleted. Appeal Accepted.

Present: Mr. Surjit Bhadu, Advocate Counsel for the appellant.
Mr. B.S. Chahal, Dy. Advocate General for the State.

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

1. This appeal has arisen out of the order dated 23.6.2010 acknowledged on 19.2.2014 passed by the Deputy Excise and Taxation a Commissioner-cum Joint Director (Investigation), Patiala Division, Patiala (herein referred as the First Appellate Authority) dismissing the appeal against the order dated 23.4.2007 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Chandigarh imposing a penalty to the tune of Rs.2,20,000/- U/s 14 (b) (7) (ii) of the Punjab General Sales Tax Act, 1948.

2. M/s. Vijay Sharma and Sons opposite Trimurti Resorts, G.T. Road Khanna (herein referred as the appellant) was registered under the Punjab General Sales Tax Act, 1948. The appellant had purchased iron and steel from M/s Gupta Steels Bhavnagar vide bill No.672, dated 26.10.2002 worth Rs.3,51,345/- loaded in truck NO.PB-05J-9805 (herein referred as the first truck).

3. He also purchased the iron and steel vide bill No.766 dated 23.10.2002 purchased from Alang Ship Breakers Ltd., Bhavnagar loaded in truck n No. PB-1GW-9377 worth Rs.3,84,870/- (herein referred as the second truck).

4. The first truck entered Khanna on 30.10.2002 at 8.06 AM and second truck entered Khanna on the midnight of 29 & 30.10.2002. Both the trucks were parked in front of Every Computer Kanda adjacent of Lakshmi Rolling Mills and office of the appellant. On 30.10.2002, the Detaining Officer checked tie vehicles. On demand, drivers of the vehicles produced the following documents:

(1) Bill No. 672, dated 26.10.2002 of M/s Gupta Steels Bhavnagar.

(2) GR No.937, dated 24.10.2002 of M/s Rampura Road Carriers, Bhavnagar.

(3) Bill No. 766, dated 23.10.2002 of M/s Alang Ship Breake's Ltd. Bhavnagar.

(4) GR. No.12134, dated 23.10.2002 of M/s Patra-Bhavnagar Transport Nagar Bhavnagar.

5. On scrutiny of the documents the drivers failed to produced any bill or documents in favour of M/s Lakshmi Rolling Mills where the goods were going therefore, the Detaining Officer checked the goods and issued the notice through the drivers of the vehicles and then after completing all the formalities, he forwarded the proceedings to the Assistant Excise and Taxation Commissioner Mobile Wing Chandigarh who vide order dated 30.12.2012 imposed a penalty to the tune of Rs.2,20,000/-against the appellant qua both the trucks.

6. Feeling aggrieved, the appellant preferred the appeal before the First Appellate Authority who vide order dated 21.3.2003 observed that the penalty was imposed without affording proper opportunity to the appellant of being heard and it was not proved from the record that the documents covering the goods were not proper and genuine and remitted the cases back to the Assistant Excise and Taxation Commissioner, Mobile Wing Chandigarh.

7. On receipt of the remand order, the Designated Officer after according an opportunity of being heard to the appellant as per orders passed by the First Appellate Authority, accepted the arguments qua the second truck i.e. truck Not PB-10W-9377. However, being dissatisfied with the contentions regarding the first truck i.e. PB-05J-9805, imposed the penalty to the tune of Rs. 1,05,403/- for the following observations:-

> *In view of the facts and circumstances, available on the record I hold that out of these two vehicles, the sales made to M/s Vashisht Ispat Udyog, Khanna seem to be genuine one and no attempt o evade tax is established in that transaction. So far as, the second vehicle i.e. PB-05J-9805 is concerned, I hold that evidence furnished by Prop of the firm i.e. Mr. Vijay Sharma and sons is not satisfactory as goods were sold to M/s Lakshmi Steel Rolling Mills, Khanna as evident from the facts and enquiry in the matter and this was the only allegation of the department when goods were detained by the detaining officer. The value of the goods in the vehicle No. PB-05J-9805 was Rs.3,51,345/- which was purchased from M/s Gupta Sales, Bhavnagar. The goods are taxable and are meant for trade. I therefore, impose a penalty of Rs.1,05,403/- U/s 14 B (7) (ii) of the repealed PGST Act, 1948. The excess amount i.e. Rs.1,14,596/- is refundable to the dealer i.e. M/s Vijay Kumar and Sons, Khanna on proper application as an amount of Rs.2,20,000/- stood already paid by firm against bank guarantee which was got encashed. Issue copy of order.*

8. The appeal filed by the appellant against the order was dismissed on 23.6.2010 which was received by the appellant on 19.2.2014. Hence this appeal has been filed. The delay in filing the appeal has already been condoned.

9. Mr. Rajni Kant Sharma was the detaining officer at the time of initial detention of both the trucks. He has alleged that both the trucks were going to M/s Lakshmi Rolling Mills Khanna. On demand, the appellant had produced the documents as referred to above and he could not find any fault with the documents but still imposed the penalty. The appellant levelled allegations against the appellant that the officer had dragged him in this false case of malice ulterior motives regarding which he as well as Steels Chamber of Commerce Industry and Small Scale Re Rollers Association, Mandi Gobindgarh had lodged the complaint against the officer for his high handedness and his designs of minting money from the business men on the false pretext. The appellant had disclosed in his complaint that actually both the trucks were stationary before Every Computer Kanda and the officer obtained the signatures of one Vinod Vashisht on the blank papers without waiting for the attendance of the appellant. Sh. Vinod Vashisht who was asked to join the enquiry had nothing to do with the case. The enquiry ended against Sh. Rajni Kant Sharma. Consequently, the Deputy Excise and Taxation Commissioner remitted the case back to the Designated Office vide order dated 21.3.2003 while observing that it has not been proved that the doormen under which the goods were covered were not proper and genuine. It would be suffice to say that, after the remand order, the penalty qua the second true!, which was not sold to M/s Lakshmi Rolling Mills was quashed, whereas the consignment which was sold to M/s Lakshmi Rolling Mills attracted the penalty.

10. It is surprising to see that none of the trucks was found in the, premises of M/s Lakshmi Rolling Mills but the same were lying parked on the road in front of the office of the

appellant, therefore, it could not be presumed that the goods were meant for sale to M/s Lakshmi Rolling Mills. It is not known as to for what reason, the penalty was imposed against the first truck which was sold to the M/s Lakshmi Rolling Mills.

11. As a matter of fact the conduct of Shri Rajni Kant Sharma, the Detaining Officer was not above board. He was in the habit of making irregularities and excesses over the business community of Mandi Gobindgarh regarding which they were very much annoyed with him and lodged joint complaint against him, whereupon Mr. K.V.S. Sidhu, Assistant Excise and Taxation Commissioner was appointed as an enquiry officer who submitted his report, the relevant extract of which reads as under:-

> *"I have gone through the material facts of the case. The consignor and consignee are came from Bhavnanagar. The consignor and consignee are genuine parties. The goods have been duly entered at the ICC's of Punjab. While entering Khanna, the octroi receipts as issued by the officials are in the name of consignee firm. All these facts clearly indicate that the deafer had no malafide intention to evade tax. According to the dealer the vehicles were lying parked in front of M/s Lakshmi Steel Rolling Mills, Khanna and Office of Vijay Sharma & Sons is also adjacent to the premises of that firm Shri Rajni Kant Sharma detained the goods on the basis of the statements of the drivers and ignored all the genuine documents which were covering the goods. The dealer contends that the goods are never unloaded without prior weighment after such a long journey. The vehicles came from Gujrat, normally stand near the office, are weighed, sold, billed and then dispatched to the buyer.*
>
> *The point to enquire is that "whether the dealer was given a full chance to explain his position before imposition of penalty?' What I gather from the file is that the dealer was never called to explain his position. There are some inherent defects in the scheme of things on the order sheet. The notice was issued to Vijay Sharma & Sons for 11.11.2002. But it is signed by Mr. Rakesh Vashisht who is no body in that firm. Similarly the order, sheet shows that Shri Rakesh Vashisht was present to get his case decided. Sh. Rakesh Vashisht had no authority to represent the case of M/s Vijay Sharma & Sons. Moreover when all the documents are genuine and duly recorded in the account books of M/s Vijay Sharma & Sons why the dealer would refuse to present the account books? What I drive from the file is that Sh. Rajni Kant Sharma has used the signatures of the Rkesh Vashisht taken at time of release of goods on the blank papers. I am of the view that the Detaining Officer has deliberately ignored to call the dealer to explain his position and has acted arbitrarily; if such lapse remains unchecked the prestige of the department it may go to ignoble depths."*

12. The record further reveals that the Assistant Excise and Taxation Commissioner, Mobile Wing, Chandigarh could not take pains to go into the depth of the matter and he imposed the penalty Without affording an opportunity of being heard to the appellant which fact is apparent from the order dated 21.3.2003 passed by the Deputy Excise and Taxation Commissioner(A), Patiala Division, Patiala who had quashed the order on that very ground.

13. As regards the conduct of the Detaining Officer, Shri K.V.S. Sidhu, in his report dated 7.10.2003, finally observed as under:-

> *"I am fully convinced that the complainants are genuinely" made by the aggrieved parties. The arbitrary and unlawful actions of Shri Rajni Kant Sharma need thorough probe.*
>
> *Sd/-*
> *K.V.S. Sidhu,*

Asstt. Excise and Taxation Commissioner,
7.10.2003 *Sangrur*

14. On the basis of the aforesaid report, the Additional Excise and Taxation Commissioner (Admn.), vide his order dated 30.10.2003/4.11.2013, recommended for the suspension and taking of the disciplinary action against Shri Rajni Kant Sharma (the Detaining Officer). The relevant extract of the order passed by the Additional Excise and Taxation Commissioner (Admn) dated 30.10.2003 /4.11.2003 reads as under:-

> *"From above, it may be said that the charges levied in the complaints are supported by documentary evidence. Shri R.K. Sharma is in the habit of over stepping his jurisdiction and indulging into unlawful activities to meet his own ulterior motives. By doing so, he caused loss of revenue, harassment to the trade and and brought bad name to the department. His conduct is unbecoming of a responsible officer, entrusted with the responsibility of safeguarding public money.*
>
> *We may send out report as above, requesting the Government to place him under suspension pending disciplinary action."*

15. While considering the aforesaid recommendations made by the Assistant Excise and Taxation Commissioner vide his order dated 4.11.2003 recommending the proposal, the competent authority suspended him which was as followed by framing of the charge sheet against him.

16. Thus, in these circumstances it would not appeal to the human behaviour that the detention made by such an officer could be valid and free from bias and irregularities and made basis for imposing penalty particularly when the genuine documents so produced by the appellant could not be vitiated by any evidence. That was the reason that the Assistant Excise and Taxation Commissioner was compelled to withdraw the order of penalty qua truck No. PB 10W-9377 but it is not known as to what special reasons passed him award the penalty qua the other truck.

17. The grounds as set out by the Designated Officer appear to be bogus primarily for the reason that Vijay Sharma has claimed the goods as contained in both the trucks and produced the documents covering those goods. He has made the explanation that the goods were related to him; his office is quite adjacent to the office of M/s Lakshmi Rolling Mills Khanna therefore, the department took the impression that the goods have been sold to M/s Lakshmi Steel Rolling Mills Khanna, without charging any tax. Actually the goods belonged to M/s Vijay Sharma and Sons and the truck was lying in front of his office. The trucks were to be weighed and thereafter sold after issuing the bills (invoices) to M/s Lakshmi Rolling Mills Khanna so as he did, therefore no fault could be found with transaction particularly when he had reported both the transactions at the ICCs and produced the invoices issued in the name of the appellant, therefore, there was no occasion to keep the goods out of the account books.

18. Having closely scrutinized the record of the case and having discussed the facts and circumstances minutely in the proceeding paras, the Tribunal is of the opinion that the appellant has a good case in his favour or following reasons:-

1. *The appellant made purchases from two different sellers vide invoice No.672 and 766 and further sold the goods to two different registered dealers of the State of Punjab and one out of them was M/s Lakshmi Steel Rolling Mills, Khanna and the other was M/s Vashisht Ispat Products Ltd., Khanna. Though both invoices No. 679 and 680 were*

issued on the same date i.e. 31.10.2002 to the aforesaid firms and both the invoices were containing the similar particulars but the Detaining Officer exonerated the appellant by accepting the invoice No.680 as genuine whereas the penalty imposed qua invoice No.679 on the basis of short reason that invoice was ingenuine.

2. *Both the trucks entered Khanna and reported at the octroi post of Khanna at 8.06 AM whereas the Detaining Officer detained the trucks at 8.15 AM on the same date i.e. 30.12.2002 when these were lying stationery in the front of the office of the appellant which is also proved from the enquiry has held by Sh. K.V.S. Shidu, Assistant Excise and Taxation Commissioner, therefore, it was not feasible for appellant to sell the goods of both the trucks within 9 minutes.*

3. *It has also been determined by the enquiry officer that the appellant had got blank papers signed from Rakesh Vashisht and manipulated his statement which was used for imposing penalty. No proper opportunity was given to the appellant Vijay Sharma (Owner of the goods) to plead his case.*

4. *In the year 2002-03 the goods in question were subject to taxation at the last stage, therefore, no tax was involved at the hands of the appellant particularly when the department had accepted the assessment as filed for the year 2002-03. The assessment was framed by the department while accepting the books of account and declared turnover if Rs.10,33,19,035/-, after allowing the claim of RD sales worth Rs.10,21,31,691/- (including the transaction on which the penalty was imposed).*

5. *The transaction was voluntarily reported at the ICC as well as octroi post and the payment regarding the transaction was made on 28.10.2002 before the receipt of goods on 30.10.2002 therefore, there was no chance or evasion of tax.*

6. *The transaction was against "C" Forms, the appellant had paid the excise duty to the selling dealer @ 16% and the selling dealer had issued the invoice to him regarding sale of goods whereas rate of tax on the goods in question was 4%. Thus the appellant would not loose 16% of the amount of excise duty in order to save 4% tax under the Punjab Value Added Tax Act.*

7. *The case of the department is that the goods were going to M/s Lakshmi Steel Rolling Mills without any invoice but no enquiry was made from M/s Lakshmi Steel Rolling Mills, in this connection therefore the inference should not have been drawn against the appellant regarding intention to evade.*

19. In the circumstances, the orders posted by the authorities below appear to be not, correct and have been passed without taking aforesaid facts and circumstances into consideration, therefore, the same are liable to be set-aside.

20. Resultantly, this appeal is accepted, impugned order is set-aside and the order of penalty stands quashed.

21. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 13 OF 2014

KRBL LIMITED
Vs
THE STATE OF PUNJAB

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

2nd June, 2016

HF ▶ Assessee

Revisional Authority is required to pass speaking order on the preliminary objections taken by the Assessee.

REVISION—COMMISSIONER—OBJECTIONS FILED AGAINST INITIATION OF REVISIONAL PROCEEDINGS ON VARIOUS GROUNDS—OBJECTION DISMISSED SUMMARILY—APPEAL FILED BEFORE TRIBUNAL—SUMMARY DISPOSAL OF APPLICATION IS BAD IN THE EYES OF LAW—MATTER REMITTED BACK TO REVISIONAL AUTHORITY TO PASS A FRESH SPEAKING ORDER ON THE ISSUES RAISED BY THE ASSESSEE – *SECTION 65 OF PVAT ACT, 2005*

Facts

The Assessment of the dealer for the year 2005-06 and 2006-07 was framed by the Assessing Authority raising additional demand. In appeal filed against said order, the first 1st Appellate Authority remitted the matter back. Feeling aggrieved the Assessee filed appeals before Tribunal who accepted the appeals and with certain observations remitted the case back to Assessing Authority. The Order of tribunal was not challenged by the Department and in the remand proceedings the Assessing authority followed the order of Tribunal and framed the de novo assessment. Revisional proceedings were initiated against this order in which the Assessee filed objections questioning the validity of revisional proceedings. The revisional authority dismissed the objections holding that proceedings were within reasonable time and there is not enough documentary evidence on record to prove the genuineness of exports. Feeling aggrieved against the rejection of objections, the Assessee filed revision before Tribunal. The Tribunal

Held:

From the reading of observations made in the impugned order it transpires that petition has been dismissed in a summarily manner without application of mind. No specific mention has been mentioned for ignoring the objections and also the judgment delivered in the case of State of Punjab vs. Bhatinda District Cooperative Milk Producers Union Ltd. on the issue of limitation. No observations were made by the authority before opining that the revisional proceedings could be initiated if the order has been passed without enough evidence. Nothing has been mentioned that how the order is bad or illegal. Accordingly the matter is remitted

back to the revisional authority to pass afresh speaking order based on reasons which impelled the authority to initiate revisional proceedings.

Cases referred:

- *State of Punjab v. Bathinda District Coop. Milk P. Union Ltd. (2008) 11 STM 20 (SC)*

Present: Mr. B.B. Bansal, Advocate counsel for the appellant.
Mr. B.S. Chahal, Dy. Advocate General for the State.

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

1. This order of mine shall dispose of two connected Revision Petitions No.13 and 14 of 2014 filed by the petitioner M/s KRBL Limited, Village Bhasaur, Dhuri, District Sangrur (herein referred as the petitioner) against the order dated 5.9.2014 passed by the Additional Excise and Taxation Commissioner cum Revisional Authority, Punjab dismissing the objection petition file by the petitioner before him.

2. The case has a chequered history. The petitioner company has been engaged in the business of purchase of wheat and paddy and manufacturing of rice for export. It has its branches in the other states like Punjab, Uttar Pradesh Haryana, Rajasthan and Delhi. The paddy was purchased against the export orders and after converting the same into rice. It was sent to its branches including Ghaziabad (Uttar Pradesh) from where it was exported through its headquarters at Delhi. The company had obtained orders for exporting rice to the different countries. The assessment in the year 2005-06 and 2006-07 was framed on 8.5.2009 by the assessing authority, whereby it had created additional tax liability to the tune of Rs.94,27,159/- under the Punjab Value Added Tax Act and 36,87,201/- under the Sale Tax Act.

3. The appellant challenged the aforesaid orders by way of appeals before the Deputy Excise and Taxation Commissioner, Patiala Division, Patiala who vide order dated 27.8.2009 remitted the case back to the assessing authority for passing fresh orders on certain issues regarding disallowing of ITC on exporting of the rice but of India by branch of Punjab and also regarding interest and penalty imposed.

4. Feeling aggrieved against the said order, the petitioner filed two appeals No.48 and 49 of 2010 against the order dated 27.8.2009, whereupon the Tribunal accepted the appeals and remitted the case back. The Tribunal had mainly framed the two following questions relevant for decision:-

1. Export against the rice shown as directly moved from Punjab and to Kandla port.
2. Export against the rice the shown as milled out of the paddy moved from Ghaziabad (U.P.) unit to Kandla port.

5. As regards, the first issue the Tribunal vide its Judgment dated 2.12.2010 observed as under:-

> *"From the perusal of the all the statements, it is sufficiently clear that the paddy purchased in Punjab and sent to Kandla for export out of India stands substantially proved and is allowed in toto. Regarding paddy sent from Punjab (Dhuri) to Ghaziabad branch, the appellant provided the details under the columns receiving date of Gautam Budh Nagar UP; Form 31 No. Of bags, weight (Quintals) Truck No and GR details. The Tribunal after taking note of the fact that details of paddy dispatched from Dhuri to Ghaziabad for the years 2004-05, 2005-06 and 2006-07 were provided by the appellant. This paddy was*

stated to have been shelled into rice and exported out of India through Kandla port. However, since Sh. S.K. Garg, Excise and taxation Officer, Mohali submitted written statement which has been placed on file. There remained a closing balance of rice at Ghaziabad at the close of the year 2006-07, which was stated to have been exported out of India in the next financial year i.e. 2007-08. The evidence could not be produced in the court, as the case for the year 2007-08 has not been finalized, therefore the Tribunal remitted case back t the assessing authority to examine the evidence produced by the appellant and then to frame the assessment as per law. After the case was remitted to the Assessing Authority, after receiving the evidence in entirety, vide its order dated 7.6.2011 frame the denovo assessment in the terms of the order dated 27.8.2009 passed by the Deputy Excise and Taxation Commissioner as well as the order dated 2.12.2010 passed by the Tribunal.

6. The Department did not challenge the order dated 2.12.2010 passed by the Tribunal and the order dated 7.6.2011 passed by the Assessing Authority before the first appellate authority but feeling dis-satisfied with the order passed by the Assessing Authority on the ground that it was not based on enough evidence, the Revisional Authority issued notice to the petitioner company u/s 65 for initiating the revisional proceedings on 11.7.2014. The petitioner filed the objection petition during pendency of the revisional proceedings before the Additional Excise and Taxation Commissioner-cum Revision Authority, Punjab Patiala, which was dismissed on 5.9.2014.

7. Feeling aggrieved against the order dated 5.9.2014, the appellant has preferred this revision petition.

8. Arguments heard. Record perused.

9. On perusal of the record it transpires that the petitioner had raised the following objections before the Tribunal.

1. *The de-novo so assessment framed, merged with the order passed by the Hon'ble VAT Tribunal, Punjab Chandigarh.*
2. *That the Revisional proceedings having been initiated after five years as the original assessment order was passed on 8.5.2009 for both the years even the de-novo assessment was also framed after three years as the de-novo assessment was also framed on 7.6.2011, therefore the provisional proceedings could not be initiated. (The Judgment in case of State of Punjab v. Bathinda District Coop. Milk P. Union Ltd. (2008) 11 STM 20 (SC). Was placed reliance).*
3. *That the notice so issued to the petitioner did not point out any specific defect or the documents which were required to be filed before the assessing authority at the time of original assessment as well as at the time of de-novo assessment.*
4. *That the Revisional proceedings have been initiated, only on the allegation that enough evidence was not filed by the Assessee but did not mention or point out any illegality or impropriety in the assessment order which was the sine quo for initiating revisional proceedings the was enough correct and genuine one. Moreover, it was for the Assessing authority to satisfy itself before granting exemption. (No further record or evidence can be called for), therefore revisional proceedings could not be initiated.*

5. *That the evidence was examined by the Designated Officer cu Assistant Excise and Taxation Commissioner, Sangrur as per the directions of the Hon'ble VAT Tribunal, Punjab as well as the Deputy Excise and Taxation Commissioner, therefore before initiating the revisional proceedings revisional authority was required to point out the illegality or impropriety in the order.*

10. The Revisional Authority dismissed the objection petition with the following observations:-

1. *There is not enough documentary evidence on the record for proving the genuineness of the exports of rice shown as made from Ghaziabad out of the paddy transferred from Dhuri to Ghaziabad.*

2. *The revisional proceedings for the assessment years 2005-06 and 2006-07 had been initiated against the de-novo assessment order dated 7.6.2011, therefore, the proceedings were initiate within reasonable time.*

11. From the reading of the observations/it transpires that the objection petition was dismissed in a summary manner without application of mind. No specific reasons have been mentioned for ignoring objections and also the judgment delivered in case of State of Punjab vs. Bathinda District Coop. Mill P. Union Ltd. (2008)11 STM 20 (SC) on issue of limitation. No observations were made by the authority before opining that the proceedings could be initiated if the order has been passed without evidence. Noting has been mentioned as to how the order was bad or illegal. Thus, the summary disposal of the application in such a case, having a chequered history where the Hon'ble VAT Tribunal, Punjab had already intervened and was seized of the matter to examine the validity of the order passed by the assessing authority is apparently bad in the eye of la. Thus the order certainty prejudices the mind of the petitioner and has compelled him to say that the order was biased.

12. In the light of the aforesaid discussions, this Tribunal deems it appropriate to remit the case back to the revisional authority to pass a fresh speaking order based on reasons which implied the authority to initiate revisional proceedings and while deciding so the revisional authority may make specific observations "if the proceedings so initiated are squarly on the grounds mentioned under Section 65 of the Punjab Value Added Tax Act. The parties are directed to appear before the revisional authority on 5.8.2016.

13. Pronounced in the open court.

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PUBLIC NOTICE (Chandigarh)

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AMENDMENT IN FORM VAT-15 FOR FILING RETURNS FOR THE 1ST QUARTER, 2016-17

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

PUBLIC NOTICE

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

Amendment in Form VAT-15 for filing returns for the 1st Quarter, 2016-17

Whereas in view of the representations from the Tax bar association and various other trade organizations that they are unable to calculate their stock position in compliance 'with the recent amendment in section 13 (1) of the Punjab Value Added Tax Act, 2005 as extended to U.T., Chandigarh and also in many cases the balance sheet for the F.Y. 2015-16 are yet to be finalized. All the stakeholders are informed through this Public Notice that:-

1. An option in the return module is given to the dealers wherein they may indicate whether they want to file their return for the Ist Quarter of 2016-17 in the amended or the older version of VAT-15.
2. The option will remain available for filing the returns for the 1st and 2nd quarters of 2016-17. In case the dealer opts, to file his return using the older version of VAT-15; he may deposit the due tax in accordance with it. If the tax so deposited is less due to the excess credit on account of filing return in older form VAT-15, he shall be required to pay the tax due, if any, for the quarter- I and II along with the return for the Third quarter with an interest calculated @ 1.5 % per month u/s 32 of the Punjab Value Added Tax Act, 2005 as extended to Chandigarh.
3. The last date for filing the returns for the Ist quarter is further extended up to 16.08.2016 in public interest.
4. The amended form with the above-mentioned changes shall be made available soon.

Dated: 11.08. 16

Excise and Taxation Commissioner,
U.T. Chandigarh.

PUBLIC NOTICE (Punjab)

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ISSUANCE OF MANUAL STATUTORY FORMS FOR THE 1ST QUARTER OF FY 2016-17

OFFICE OF THE EXCISE & TAXATION COMMISSIONER, PUNJAB, PATIALA

To

1. All the Dy. Excise & Taxation Commissioner of Divisions,
2. All the Asstt. Excise & Taxation Commissioners, District Incharge.

Memo No. VAT-6-2016/353-385 Patiala, dated 18.7.16

Memorandum

Since there has been some delay on the part of WIPRO in implementing the online statutory forms, therefore, you may issue the statutory forms manually for the 1st quarter of FY 2016-17. These instructions are not applicable for Patiala and Mohali Districts.

Sd/-

Asstt. Excise and Taxation Commissioner (VAT)
For Excise and Taxation Commissioner, Punjab

CC: A copy is forwarded to:-

1. P.A. to E.T.C., Punjab.
2. P.A. to Director (E&T), Punjab
3. P.A. to Addl. ETC-1-cum-CEO ETTSA with the request that this may be uploaded on the website.
4. P.A. to Addl. ETC (VAT-1)

SGA
LAW OFFICES

ARTICLE

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GOODS AND SERVICES TAX

CA Rachit Goyal

With both the houses of Parliament, unanimously passing the, 122nd Constitutional amended Bill, paving way for one of the biggest taxation reforms, the GST Bill is all now set to roll out very soon, aiming to convert the country into a unified market, replacing most of the indirect taxes and subsuming all those into a single tax regime.

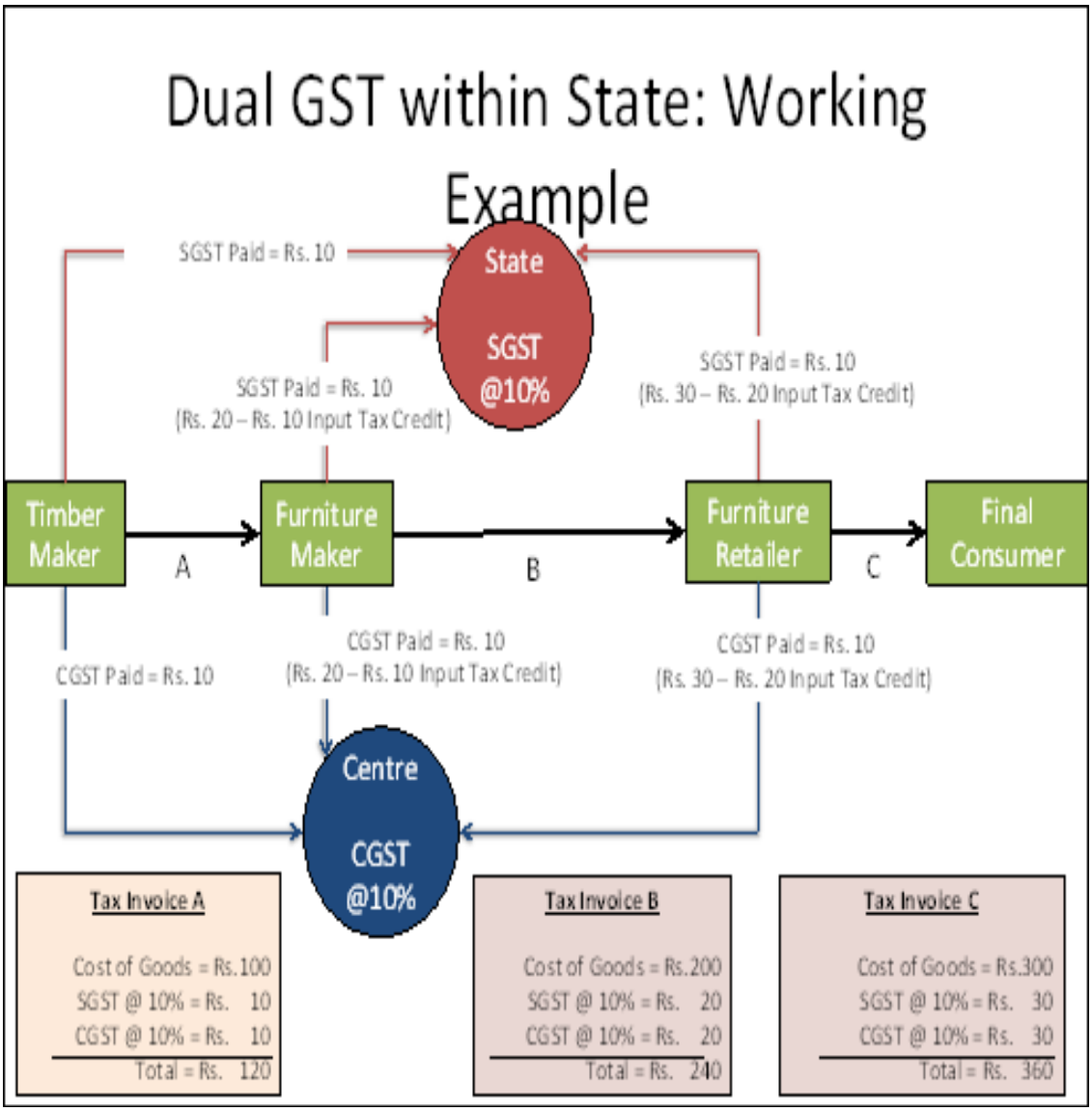
GST is proposed to have a federal structure, **Central GST** levied and collected by the Centre and a **State GST** administered by States. The rationale behind GST is that it simplifies the indirect tax regime with a single tax, detailed as follows:

BASIC CONCEPT OF GST:

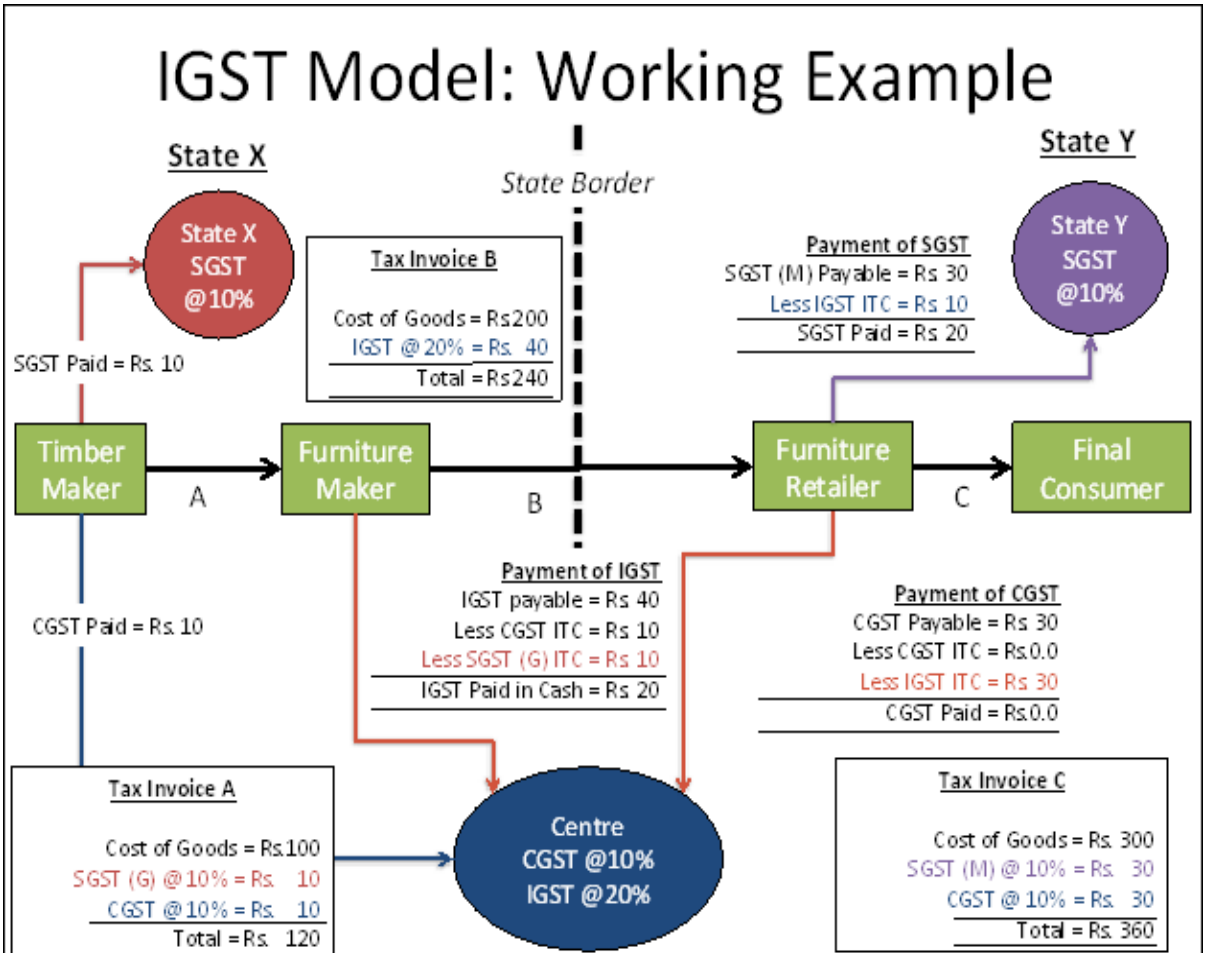
- It is a comprehensive tax levy on manufacture, sale and consumption of goods and services at a national level. Through a tax credit mechanism, this tax is collected on value-added goods and services at each stage of sale or purchase in the supply chain.
- The system allows the set-off of GST paid on the procurement of goods and services against the GST which is payable on the supply of goods or services. However, the end consumer bears this tax as he is the last person in the supply chain.
- Under this system, goods and services are not differentiated as they move through the supply chain. GST is typically levied on all transactions involving goods and services including import, supply of goods as well as provision of services.
- GST is a destination based consumption tax, thus it is usually levied on import of goods and services while export transactions are zero rated under the GST scheme.

TAX LEVY MECHANISM OF GST:

- The two components of GST i.e. **Central GST (CGST) and State GST (SGST)** shall be simultaneously levied across the value chain, except on **exempted goods** and services, goods which are outside the purview of GST and the transactions which are below the prescribed **threshold limits**.
- Tax will be levied on every supply of goods and services i.e. Centre would levy and collect Central Goods and Services Tax (CGST), and States would levy and collect the State Goods and Services Tax (SGST) on all transactions within a State. The input tax credit of CGST would be available for discharging the CGST liability on the output at each stage. Similarly, the credit of SGST paid on inputs would be allowed for paying the SGST on output. No cross utilization of the CGST and SGST credit would be permitted.



- In case of inter-State transactions, the Centre would levy and collect the **Integrated Goods and Services Tax (IGST)** on all inter-State supplies of goods and services under Article 269A (1) of the Constitution. The IGST would roughly be equal to CGST plus SGST. The IGST mechanism has been designed to ensure seamless flow of input tax credit from one State to another. The inter-State seller would pay IGST on the sale of his goods to the Central Government after adjusting credit of IGST, CGST and SGST on his purchases (in that order).The exporting State will transfer tothe Centre the credit of SGST used in payment of IGST. The importing dealer will claim credit of IGST while discharging his output tax liability (both CGST and SGST) in his own State. The Centre will transfer to the importing State the credit of IGST used in payment of SGST. Since GST is a destination-based tax, all SGST on the final product will ordinarily accrue to the consuming State.



- **Cross utilization of credit of CGST between goods and services would be allowed**. Similarly, the facility of cross utilization of credit will be available in case of SGST. However, the cross utilization of CGST and SGST would not be allowed except in the case of inter-State supply of goods and services under the IGST model.
- **GSTN**- The GST system seeks to establish an IT infrastructure with a standard interface for the taxpayer (for the core services of taxpayer registration, filing of return, payment of tax and generation of credit statement) and a common and shared IT infrastructure between the Central govt and State govt along with other bodies of govt of India e.g RBI and Central Govt tax authorities.
- The **Additional Duty of Excise or CVD** and the **Special Additional Duty or SAD** presently being levied on imports will be subsumed under GST. As per explanation to clause (1) of article 269A of the Constitution, IGST will be levied on all imports into the territory of India. Unlike in the present regime, the States where imported goods are consumed will now gain their share from this IGST paid on imported goods.

REGISTRATION PROCESS FOR GST:

The registration for GST as proposed will be PAN based and will serve the purpose for Centre and State. Each dealer to be given unique ID GSTIN.This would bring the GST PAN-linked system in line with the prevailing PAN-based system for Income tax facilitating data exchange and taxpayer compliance. Post registration verification in risk based cases only.

Existing dealers: On the appointed day, every person registered under the Central/State laws shall be granted a registration on a provisional basis which will be valid for 6 months. On submission of required information such provisional certificate of registration shall be finalized.

New dealers: Single application to be filed online for registration under GST.

ANNUAL COMPLIANCE'S FOR GST :

There will be common e-return for CGST, SGST, IGST and there will be separate return for outward supplies, inward supplies, monthly & annual return. The taxpayer would need to submit periodical returns to both the Central GST authority and to the concerned State GST authorities. Further there will be a quarterly return for lump sum payment.

The periodicity of return filing for different categories of tax- payers is as follows:-

S.No.	Return	For	To Be filed by
1	GSTR-1	Outward supply made by taxpayer	10^{th} of the next month
2	GSTR-2	Inward Supplies received by taxpayer	15^{th} of the next month
3	GSTR-3	Monthly return	20^{th} of the next month

Source: Compiled from background material on GST issued by ICAI

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FEARING HIGH TAX RATES, LOBBYING STARTS FOR EXEMPTION FROM GST

NEW DELHI: Within days of Parliament passing the Constitution Amendment Bill for rolling out the Goods and Services Tax (GST) in India, several sectors have begun hectic lobbying for exemption from the new tax.

One such sector is renewable energy, where most of the equipment is imported. Solar power equipment enjoys zero customs duty, while a 5% duty is levied on importing wind energy equipment. "Imported solar panels will go from zero to 18%. Thus, the solar tariffs will rise by 75 paise to Rs.1 per unit," said Ravi Seth, CFO of ReNew Power Ventures Pvt Ltd. He added that this rise in input cost will jeopardise projects on power tariffs.

"We have already made presentations before the government to keep renewable sector outside GST. Finance ministry says that once the GST Council is formed, this matter will be looked into," said Sunil Jain, CEO of Hero Future Energies, a Hero Group company. Being on 'zero' custom status other duties like countervailing duty or special additional duty are also 'zero'. And the renewable sector is also exempt from VAT and excise duty. But all this will change with the GST and tariffs will go up by at least 10%, he said.

Sources said while the ministry of new and renewable energy is in support of keeping the sector outside GST, the government did not make any commitments.

The telecom sector is also vying for similar privileges. The GST is likely to lead to a spike in charges for the consumers. The exclusion of petro products and electricity duty from the new GST will lead to a cascading adverse impact as telecom towers are a big consumers of diesel and electricity. "We are waiting for the GST Council to be formed. Hopefully, they will understand the impact on the economy and telecom sector," said Rajan Mathews, director general of Cellular Operators Association of India.

The tourism sector is also demanding inclusion in the definition of export of services, so that they also get several exemptions. "The government will need to make an exception for the airline sector as the current service tax ranges from 5.6% to 9% of the base fare, which is considerably less than the GST rate," said Sharat Dhall, president, Yatra.com .

However, the government seems to be against giving too many exemptions. "Industry has started sending presentations to seek exemptions, or to be in the low-tax rate. But, to have a low-standard rate, the tax base has to be large, thus exemptions will have to be granted in the rarest or the rare cases," said a source in the revenue department.

Courtesy: The Hindustan Times
12th August, 2016

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GST WILL SIMPLIFY TAXATION OF STATES, WILL GIVE MANY OF THEM HIGHER REVENUES: JAITLEY

NEW DELHI: Finance minister Arun Jaitley spoke to HT on a variety of issues ranging from goods and services tax (GST) to Kashmir and the railways finances. Excerpts:

When do the actual negotiations on the rates start?

Once the GST Council is constituted after the 122nd Constitution Amendment Bill is notified, the empowered committee will evolve into the GST Council. In the council, all pending procedural issues and substantive issues like rates will be negotiated. The pace of those negotiations and their success will determine how soon will be the likely date of its implementation.

There is lobbying by some industries to keep them outside GST?

You can exempt some and overtax others. The more you exempt, the more you will overtax others. Obviously there will be pulls and pressures. But more states would be interested in sorting it out because states have a very large interest in it. It will simplify their taxation significantly and give many of them much higher revenues in the long run; so the sooner the better.

What is the kind of revenue loss the Centre will suffer for forgoing a large part of service tax?

The revenue department is working on the estimates. I do not want to be alarmist. But that is why the rate, as far as the Centre is concerned, should be sufficient to take care of the revenue of the Centre. It is precisely for this reason that the need for a fiscally strong Centre has to be emphasised. It is for this reason I have been saying that India is a union of states, not a confederation of states. If you speak only in terms of revenues of the states ignoring the centre (then) that is not how the constitutional structure is.

There is a view that GSTN (the company setting up the tech backbone) is a private entity?

This was done in 2013. One reason why I can, with the wisdom of hindsight, say it has been kept as a private entity because probably those who created it technically as a private entity wanted the salary structures to be flexible so that they get the best talent and are not restricted by the government pay grades. It is a huge operation and therefore you needed the best talent. But in the selection of the private sector partners they have been more than careful. After all, LIC housing, ICICI, HDFC and NSE are important and credible organisations.

What about the Congress demand for bringing the supplementary legislations as money bills?

The character of a bill doesn't depend on the option of a minister. It depends on the contents of that bill. In the first instance, the draft will be approved by the GST Council where we will also

have the Congress finance ministers approving it. So, the characterization will depend on what kind of a bill is approved by them.

So we can't rule out these coming as financial bills?

This is a purely constitutional issue depending on the character of the bill. There can't be any pre-conditions-- either by me or by the Opposition. I am not commenting on any possibility. It will depend on the contents of the bill.

The Congress feels GST is too important to be moved as a money bill?

Every year the finance bill (that is brought) is important. And every year it is presented as a money bill. It's the most important bill which has been presented year after year since 1947. And it has always been a money bill.

After GST, will the annual budget be lighter because it will contain fewer tax proposals?

The direct tax and customs duties will remain. The service tax part and the central excise part will be subsumed in GST. One part of it will become lighter.

But it will be bulkier if you eventually decide to add the railway budget to it?

That's a pending issue. It is still under discussion.

Indian Railways are believed to be staring at a deficit (cash operating loss) of Rs 20,000 crore. Aren't you worried?

The Indian Railways is too important an organisation in the government. I don't think we will ever allow it to default (on payment of salaries and pension). I don't see the possibility of any default. Please don't forget if overall trade is down, railways suffer.

With GST nearly done, is labour the next big area for reforms?

There are many changes taking place in that field. In the last few months there have been four significant reform measures: The Monetary Policy Committee (MPC), Aadhar, Bankruptcy Code and the GST. The three significant areas that the Indian economy has to concentrate on are: strengthening public sector banks, reviving private sector investment and implementation of major infrastructure programmes.

Inflation has again shot up above 6%, the RBI upper tolerance level. Where you do see inflation moving in the coming months?

The impact of monsoon will be felt after a reasonable time. The latest figures factors in the higher cost of vegetables and pulses, both of which in the next few months are poised for a reduction. Vegetables are always seasonal. In pulses, the acreage this time seems to be indicating that we may cross the 20 million tonne mark, which means pulses prices should significantly come down.

Exports have again contracted after moving back into positive zone last month after 18 months?

Exports are relatable to two factors: One is the genuine reduction in export volume because the buying countries are buying less as they have lesser money. The second is, even where the quantum remains the same, the values have come down because of low commodity prices. There are signs that the bottoming out is taking place.

Can we expect a big jump in India's rankings in the World Bank's Ease of doing business because of the new bankruptcy code and GST?

Bankruptcy Code is a pre-June reform, prior to the cut-off of the World Bank's review period, though the actual implementation will be afterwards. GST certainly will be afterwards. But then

ease of doing business is a work in progress because you have to ease it at the level of municipalities. Even if the Centre and states reform, changes will have to take place at the level of municipalities.

In the all-party meeting on Kashmir, the Prime Minister talked about comparing the quality of life and freedom on the other side of fence in Pakistan-occupied Kashmir. Can you elaborate?

I think the Prime Minister said this in the context of drawing a comparison of quality of life between the two countries. This he also said in the context of residents of Jammu and Kashmir who are settled in other parts of India. It was more in relation to a display of comparison. There are people on the other side who say that the whole election process in PoK was rigged.

I personally believe that a dialogue among all mainstream parties—national and state— (will bring out) a commonality of approach (that) is required. In today's meeting, many a speaker highlighted this.

Once that commonality is achieved, will you be reaching out to the Hurriyat?

It will depend on the strategy the home ministry adopts. I would not be in a position to respond to this. In the past, Prime Minister Vajpayee's government has spoken to them.

There is also a view that the youth in the Valley are led by different leaders in different districts in Kashmir. There no one leader that they have.

This looks more an emotive reaction to the killing of a militant in an encounter who they had started eulogizing because of his larger than life image on the social media. I think global events in relation to the Islamic world are inspiring some people.

Courtesy: The Hindustan Times
13th August, 2016

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TEA INDUSTRY REITERATES NEED FOR SPECIAL GST RATE

The tea industry has reiterated its plea to maintain a special concessional rate under the proposed GST regime. "Tea, being a product of mass-consumption, should be kept under a special rate under the GST regime, and it should be at par with the current rate of 5.5 to 6 per cent," the Indian Tea Association said in a letter to state finance minister Amit Mitra. He is also the chairman of the Empowered Committee of State Finance Ministers.

The industry felt that since tea is a labour-intensive sector, whose major operations were agricultural in nature, the scope of availing input tax-credit was limited.

The ITA, the apex industry body, said that in the current tax regime, the industry received various concessions and benefits from the Central and the State governments by way of excise duty exemption and lower VAT rates.

Concessional rate

"The proposed new regime of GST does not provide any certainty on the continuity of these benefits," the ITA said. The industry also wanted a concessional GST rate for teas sold in the public auction, by which system 50 per cent of tea now produced is, mandatorily, sold. It also wants a waiver of the one per cent additional tax on inter-state supplies of goods proposed under GST saying that this would have a significant impact on products like tea which are produced only in select states. The Tea Association of India, another industry body, said as tea is a plantation crop, it should be exempted from GST which has many exclusions, like petroleum, land components of real estate and interest component in the financial sector.

Courtesy: The Hindu
14th August, 2016

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GST TO STRENGTHEN GROWTH, MAKE ECONOMY MORE PREDICTABLE: PM

PM Narendra Modi said, GST is a tax that will bring equitable regime and turn the country into one marke

Prime Minister Narendra Modi on Monday said the Goods and Services Tax (GST), which will replace a raft of different central and state levies, will strengthen growth efforts and make economy more predictable.

Modi credited all political parties for passing a Constitutional amendment in the just concluded Monsoon Session of Parliament to bring a single unified value added tax system to turn the country into world's biggest single market.

"GST (Bill), which has been passed recently, will further strengthen the way we are trying to accelerate growth and make the economy predictable," he said in his address to the nation from the ramparts of the Red Ford on 70th Independence Day.

All political parties need to be thanked for that, he said.

GST, he said, is a tax that will bring equitable regime and turn the country into one market.

Parliament has passed the 122nd Constitution Amendment Bill to make changes in the power of the Centre to levy taxes like excise, and those of states to collect retail sales taxes.

Proposed a decade ago, GST is viewed as potentially transformative for India's economy that could add as much as 2 percentage points to the GDP, while improving the ease of doing business and encouraging investment in manufacturing.

It is also expected to result in greater tax compliance, boosting government revenues.

GST will replace more than a dozen central and state levies, including central excise, service and sales tax as well as VAT on sale of goods and entry tax, to make movement of goods seamless across the 1.3 billion strong market. Instead of the goods being taxed multiple times at different rates, under the new GST regime they would be taxed at point of consumption.

Modi said the series of steps taken by the government to reform regulations and law as well as change in approach towards doing business has led to appreciation of India's growth story by the World Bank, IMF, World Economic Forum and credit rating agencies.

India has made rapid improvement on the ease of doing business ranking and has emerged as a favoured destination for FDI, he said, adding that the country climbed 19 positions on the WEF ranking for logistics and infrastructure.

In an analysis, a UN organisation has predicted that India will climb to third stop from current 10th in global ranking in two years.

Courtesy: Business Standard
15th August, 2016

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GOVERNMENT WORKS OVERTIME TO READY GST BY APRIL 1

NEW DELHI: Work has begun full throttle on readying the goods and services tax (GST) architecture with government officials burning the midnight oil and foregoing weekends to get the rules ready for the tax reform that's regarded as one of India's biggest reforms.

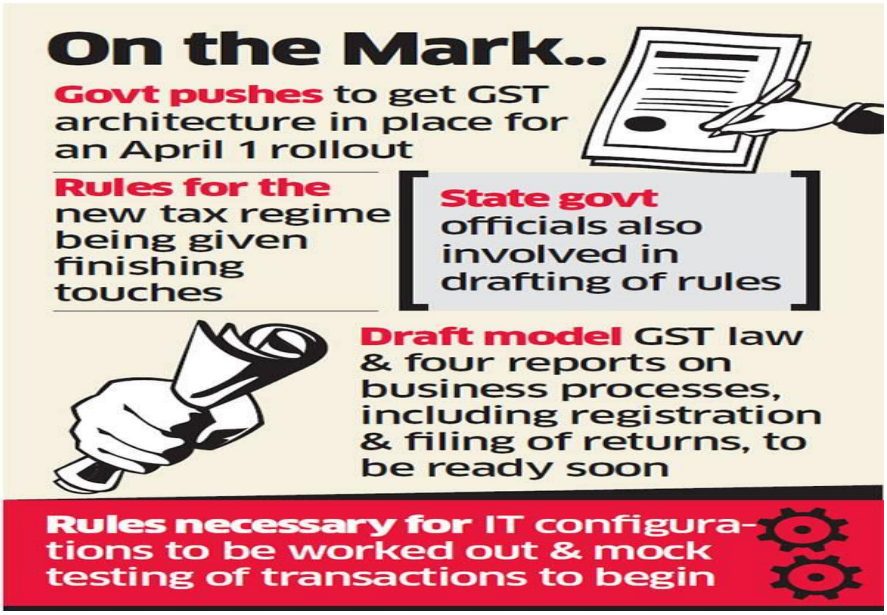
The rules that will form the backbone of the new tax are being given finishing touches as the government pushes to get things in place for an April 1, 2017, rollout. The government hopes to draft the rules in 45 days so that testing can start even before the January-March window.

"We want to push through with key stuff so that software can be tested," said a government official involved in the process. State government officials are also involved in the drafting of rules that could be put up for stakeholder feedback quickly.

Rules are necessary for IT configurations to be worked out and mock testing of transactions to begin.

There has been some uncertainty about getting everything ready by April 1, but the finance ministry doesn't share those doubts.

A number of provisions such as those dealing with valuation, which are currently defined through rules, have been enshrined in the act to bring about more predictability. But the rules are imperative as these will define key processes.



The draft model GST law and four reports on business processes including registration and filing of returns will be ready soon.

States have begun the ratification process for the constitution amendment bill to enable GST, which will replace a plethora of state taxes such as value added tax and entry tax and central taxes including excise duty and service tax.

The GST Council that will approve the law and rules and also finalise the rates will be set up soon after the presidential assent for the constitutional amendment. "All the groundwork would be ready for the council to take it up quickly," said another official. Officials have already begun work on the model GST law in line with stakeholder feedback.

Companies too are already working on enterprise resource planning (ERP) software and an early draft of rules will allow them to expeditiously carry out changes and be ready in time for the GST rollout.

"Industry would hope that final rules would be notified latest by December 31, which would at least give three months for preparation," said Pratik Jain, partner and leader, indirect tax, PwC India. "The IT configuration cannot take place till the time rules are known. However, it is important to note that certain key provisions such as input credit and valuation have been incorporated in the Model Act itself."

Courtesy: The Economic Times
15th August, 2016