SGA
LAW OFFICES

Issue 14
16 July 2016

"I think coercive taxation is theft, and government has a moral duty to keep it to a minimum."

– William Weld

NOMINAL INDEX

NOTIFICATION

CHANDIGARH

PUNJAB

NEWS OF YOUR INTEREST

Edited by

Aanchal Goyal, Advocate
Partner SGA Law Offices
#224, Sector 35-A, Chandigarh – 160022
Tele: +91-172-5016400, 2614017, 2608532, 4608532

News From Court Rooms

MADRAS HC : TN VAT : Passing of the revised assessment orders, pursuant to Audit Inspection, without giving an opportunity of personal hearing to the assessee amounts to violation of principles of natural justice. Matter remanded back to AO. ***(Sun Paper and Stationers – June 6, 2016)***.

GUJARAT HC: Gujarat VAT: Provisional attachment of personal property of the Directors of the company during pendency of assessment for recovery of tax dues of the company is not valid even though vicarious liability exists. Order of attachment vacated***. (Different Solution Marketing P Ltd. – June 30, 2016)***

KARNATAKA HC: Karnataka VAT : Where assessee, a restaurant, opted to pay tax under Composition Scheme, whereas Assessing Authority passed reassessment order on assessee and denied him benefit of Composition Scheme based on ground that during year he purchased floor tiles from outside State and since they were 'goods in stock', there was a violation of conditions and restrictions imposed under Rule 135(2). As tiles were fixed in floor of restaurant, they could not be said to be 'goods in stock'. Costs of Rs.10,000 imposed on respondent Assessing Authority to be paid to assessee. ***(Anantha Padmanabha Bhat – June 3, 2016)***.

CESTAT, HYDERABAD : CENVAT credit : Assessee, a manufacturer of dutiable and exempted goods, did not maintain separate accounts for commonly used inputs/input services and chose second option available in Rule 6(3)(ii) of the CENVAT Credit Rules, 2004 and reversed proportionate credit. Merely because assessee failed to intimate Department regarding option exercised under Rule 6(3)(ii), it could not be said that Rule 6(3)(i) would automatically apply to instant case. ***(Aster P Ltd. – December 17, 2015).***

CESTAT, BANGALORE : Central Excise : Show Cause Notice is time-barred because the same was issued after more than one year from the date of the audit and irregular availment of CENVAT credit has come to the knowledge of the Department during the audit itself. ***(K K Nag Ltd. – June 29, 2016).***

MADRAS HC : TN VAT : Business Transfer Agreement as well as other records would show that the entire establishment has been transferred as such. If that be the case the assessee's contention that, sale of business has a whole is exempted from VAT ought to have been accepted***. (LEPL Projects Ltd. – June 28, 2016)***.

GUJARAT HC: Service Tax: Principle of mutuality does not apply for the services provided by the SEZ unit to the DTA unit of the same assessee since as per the scheme both the units are distinct and separate. However no service tax could be levied since the SEZ unit of respondent assessee had not charged for the services provided to its DTA unit. Department's appeal dismissed. ***(Larsen and Toubro Ltd. – July 1, 2016).***

CESTAT, BANGALORE: Cenvat Credit : Services received from agents carrying out 'sales promotion' as well as 'sale' of products manufactured by assessee, are eligible for input service credit. ***(Liebherr Machine Tools India (P.) Ltd. – February 12, 2016).***

GUJARAT HC: Gujarat VAT : Provisional attachment of personal property of the Directors of the company during pendency of assessment for recovery of tax dues of the company is not valid even though vicarious liability exists. Order of attachment vacated. ***(Different Solution Marketing P Ltd. – June 30, 2016)***

MADRAS HC : Service Tax : Though pre-deposit orders are appealable, however, in the circumstance of violation of rules of natural justice, writ petition is maintainable despite appeal remedy. ***(Tiruchitrambalam Projects Ltd – April 20, 2016)***.

CALCUTTA HC: quashes Rs 1.5 cr. service tax demand on Sourav Ganguly Facts a. Assessee (Sourav Ganguly) was former captain of the Indian Cricket Team. He participated in the IPL Cricket tournament as a member of the Kolkata Knight Rider's Team. He also acted as brand ambassador for various products and anchor in television shows. b. He received amounts under following heads:Writing Articles in Magazines ;Anchoring TV Shows ;Brand Endorsement; and Playing Cricket in IPL. Department raised demand of service tax of Rs. 1.5 crores under 'Business Auxiliary Service' or 'Business Support Service' and invoked extended period. The assessee filed writ petition and challenged the demand. The Calcutta High Court held as under :

1. Writing articles for newspapers or sports magazines or for any other form of media cannot by any stretch of imagination be said to be amounting to rendering business auxiliary service or business support service. Hence, the remuneration received by the assessee for writing articles would not attract service tax.
2. Television shows are meant for entertainment of the viewers. The remuneration received by the assessee for anchoring TV shows cannot be brought within the service tax net under business auxiliary service or business support services.
3. Since by amendment of the Finance, Act, 1994, a new taxable service category of 'Brand Promotion' was introduced with effect from July 1st, 2010. Thus, such category of service was not taxable prior to July 1st, 2010. Such service rendered by the assessee could not be taxed under the head of business auxiliary service for the period prior to July 1st, 2010.
4. Service tax demand raised on amount received for Playing Cricket in IPL under the head of 'Business Support Service', was also not legally tenable. The assessee was engaged as a professional cricketer for which the franchisee was to provide fee to the assessee. The assessee was under full control of the franchisee and had to act in the manner instructed by the franchisee. Hence, it could not be said that the assessee was rendering any service which could be classified as business support service. He was simply a purchased member of a team serving and performing under KKR and was not providing any service to KKR as an individual.
5. Since assessee had been submitting all relevant details from time to time and since notice could not bring out how there was suppression of facts, etc., hence, extended period could not be invoked and demand was hopelessly time-barred. - ***[2016] 71 Taxmann.com 60 (Calcutta)***

CESTAT, NEW DELHI : Cenvat Credit : Even if supplier has overvalued inputs and paid excess duty, buyer is entitled to take credit of duty so paid, so long as assessment at supplier's end is not modified. Authorities having jurisdiction over buyer have no jurisdiction to question assessment at supplier's end. Revenue's appeal dismissed. ***(Hindustan Electro Graphite Ltd. – March 11, 2016)***.

MUMBAI – CESTAT: Destruction of invoices in fire incident won't lead to denial of credit when all invoices recorded in ledger Facts:

a) During the course of audit of the assessee's record, audit officers observed that original invoices were not available. Assessee submitted that original invoices were lost/destroyed in an accident of fire.
b) Therefore, department contended that Cenvat credit was availed in respect of non-existing invoices as assessee was not having original input invoices to be produced for verification. The Adjudicating authority demanded interest and imposed penalty. The assessee filed appeal before the Commissioner (Appeals) which was allowed. Aggrieved by the impugned order, revenue filed the instant appeal. The CESTAT held as under:
    1) Even though invoices had been destroyed in fire, but if invoices had been recorded in the ledger and books of account of the assessee the Cenvat credit could not be denied.
    2) Assessee could not have recorded the invoices in the ledger unless physical invoices were available. Not only the invoice or ledger entry were there but the respondent might have paid invoice value to the service provider which could also be verified from the books of account. - ***Commissioner of Service Tax, Mumbai-I v. Kaycee Finance Services Ltd.[2016] 70 Taxmann.com 352***

MADRAS HC: TN VAT : Passing of the revised assessment orders, pursuant to Audit Inspection, without giving an opportunity of personal hearing to the assessee amounts to violation of principles of natural justice. Matter remanded back to AO. ***(Sun Paper and Stationers – June 6, 2016)***.

CESTAT, HYDERABAD : Service Tax : Where assessee takes premises on rent along with payment for maintenance charges and rent for 'fit outs' being furniture, carpet, fire extinguishers etc., then, entire contract would constitute a 'natural bundle in ordinary course of business' and would be classified as 'renting of immovable property' service. ***(Xilinx India Technology Services P Ltd. – April 7, 2016)***.

CESTAT, HYDERABAD: Cenvat Credit : As per Rule 4A of the Service Tax Rules,1994, there is no requirement that address of service recipient mentioned in invoice has to be registered; therefore, credit cannot be denied to service recipient merely on ground that address mentioned in invoice is an unregistered address***. (GE India Exports (P.) Ltd. – April 6, 2016).***

ISSUE 14
16 July 2016

SUBJECT INDEX

Issue 14
16 July 2016

SUPREME COURT OF INDIA

CIVIL APPEAL NO. 656 OF 2008

Go to Index Page

DEPUTY COMMISSIONER OF COMMERCIAL TAXES (VIGILANCE)
Vs
HINDUSTAN LEVER LIMITED

DEEPAK MISRA AND N.V. RAMANA, JJ.

30th June, 2016

HF ▶ Assessee

Maximum retail price which is inclusive of taxes is itself not enough to prove collection of taxes unless bifurcation of tax and sale price is shown.

**EXEMPTION – EXEMPTED UNIT – SALE PRICE – MAXIMUM RETAIL PRICE – WHETHER CHARGING MRP INCLUSIVE OF TAXES WITHOUT MENTIONING IT DISTINCTLY AS SALES TAX DISENTITLE THE EXEMPTED UNIT FROM CLAIMING EXEMPTION – PACKED TEA MANUFACTURED BY EXEMPTED UNIT – ON INSPECTION , TEA FROM EXEMPTED UNIT FOUND TO BE SOLD AT SIMILAR PRICE AS SOLD BY NON EXEMPTED UNIT OUTSIDE STATE –TAX DEEMED TO BE COLLECTED BY EXEMPTED UNIT THOUGH NOT MENTIONED SEPARATELY IN INVOICE THEREBY VIOLATING CONDITION OF EXEMPTION – APPEAL BEFORE HIGH COURT – HELD MERE MENTIONING OF MRP IS NOT ENOUGH TO ESTABLISH COLLECTION OF SALES TAX – APPEAL BY DEPARTMENT BEFORE SUPREME COURT - HELD : MENTIONING MRP IS A STATUTORY REQUIREMENT- SIMILAR PRICES ARE MAINTAINED TO PROTECT DISTORTION OF SALES AND MAINTAIN UNIFORM PRICING THROUGHOUT – NOT ENOUGH TO PROVE THAT THE SALE TAX HAS BEEN COLLECTED- SALE CONSIDERATION RECEIVED SHOULD NOT BE BIFURCATED AND DIVIDED ON THE BASIS OF ANY ASSUMPTION THAT THE SALE PRICE RECEIVED MUST HAVE INCLUDED THE TAX – BUYER AND SELLER ARE FREE TO AGREE UPON ANY PRICE WHICH MAY INCLUDE TAX COMPONENT IN THE ABSENCE OF CONTROLLED PRICING- PERUSAL OF ACCOUNT BOOKS INDICATIVE OF COLLECTION OF CONSIDERATION WITHOUT BIFURCATING TAX AND SALE PRICE – APPEAL DISMISSED AND COSTS IMPOSED ON REVENUE –*SECTION 8A OF KST ACT; RULE 2(r)OF STANDARDS OF WEIGHTS AND MEASURES (PACKAGED COMMODITIES) RULES, 1997*

Facts

The respondent company was engaged in the manufacture of blended packet tea for which a factory had been set up at Dharwad in Karnataka. The unit had been granted exemption vide government order 1990 and exemption notification of year 1991. During inspection it was found that the Dharwad unit had violated Explanation III (e) to the notification of 1991. It was noticed that the tea packets manufactured at Dharwad unit and outside Dharwad unit were

similarly priced. Two invoices from both the units were taken. The officer concluded that the dealer had added tax component to sale price of Dharwad tea though not under the nomenclature of tax or cess. Hence, the exempted unit of Dharwad was not entitled to benefit of exemption for violating Explanation III. On appeal before Tribunal, it was held that though the company has collected tax as such, in view of the fact that in the invoice, against KST and CST, it is left blank in respect of Dharwad tea, stand of assessee is accepted. The High court further went on to uphold the order of Tribunal and held that mere mentioning of MRP does not itself prove collection of tax in terms of sales tax laws. The buyer has not agreed to pay sales tax and the bill shows exemption from tax. Therefore, Tribunal is right in holding it against the state. Aggrieved by the order, an appeal is filed by the department before Supreme Court contending that MRP as mentioned on the packed tea is inclusive of tax component.

Held:

1) *The statement on the packaged product 'inclusive of all taxes' means all taxes which are leviable , were already included in the price mentioned. It should not be constructed as an admission that the respondent had charged sales tax. The respondent could not have deviated the statutory requirement by making a declaration contrary to the statutory rules. The consequences of not obeying and violating the statutory rules would have been severe.*

2) *Perusing the account books and trade circulars and invoices, it is noticed that the entire sale proceeds is shown as receipt and the amount is not bifurcated into sales price and tax collected.*

3) *The respondent – assessee has multiple units both exempted and non- exempted. He has therefore, adopted a uniform market price throughout India as business policy to ensure goods do not flow from one state to another state thereby distorting sales. Uniform pricing cannot be a ground to hold that the assessee was charging sale tax on goods manufactured from exempted unit. A Maximum Retail Price stating that it is inclusive of all taxes could be the starting point, but would not prove and establish that the sale tax has been collected.*

4) *Approving a judgment whereby it is held that unless price is controlled, it is open to the buyer and seller to agree upon the price payable which may include the tax. If he does so , he cannot be said to be collecting tax unless there is legal base to hold so. Thus, tax component may form part of sale price but cannot be treated as separate component.*

Hence, sale consideration received should not be bifurcated and divided on the basis of any assumption that the sale price received must have included the tax. The appeal is dismissed with costs assessed at Rs 1,00,000/-

Cases referred:

- *Lipton India Ltd. and another v. State of Karnataka and others (1996) 10 SCC 710*
- *T. Stanes & Co. Ltd. v. State of T.N. and another (2005) 9 SCC 308*
- *Delhi Cloth and General Mills Co. Ltd. v. Commissioner of Sales Tax, Indore (1971) 2 SCC 559*
- *Amrit Banaspati Co. Ltd. and another v. State of Punjab and another (1992) 2 SCC 411*
- *State of Karnataka v. M/s C. Venkatagiriah and Brothers (1994) Supp (2) SCC 572*
-

Present: For Appellant(s): Mr. Basavaprabhu S. Patil, Sr. Advocate
Mr. V. N. Raghupathy, AOR
Mr. Chinmay Deshpande, Advocate
Mr. Anirudh Sanganeria, Advocate
Mr. Amjid Maqbool, Advocate

For Respondent(s): Mr. Harish N. Salve, Sr. Advocate
Mr. Arvind P. Datar, Sr. Advocate
Mr. Ravinder narain, Advocate
Mr. Ajay Aggarwal, Advocate
Ms. Mallika Joshi, Advocate
Mr. Rajan Narain, AOR

******

DIPAK MISRA, J.

1. In the present appeal, by special leave, the appellant has called in question the legal acceptability of the order dated 25.01.2007 passed by the Division Bench of the High Court of Karnataka at Bangalore in STRP No. 62 of 2004 whereby the Division Bench has dismissed the Special Revision Petition preferred by the appellant-department and affirmed the order dated 27.12.2003 passed by the Special Bench constituting five members of the Karnataka Appellate Tribunal, Bangalore (for short, "the tribunal") constituted under the Karnataka Sales Tax Act, 1957 (for short, "KST Act").

2. Requisite facts to be exposited for adjudication of this appeal are that Brooke Bond India Limited established its factory at Dharwad in the State of Karnataka and the said factory was engaged in manufacture of blended packet tea. With the passage of time, Brooke Bond India Limited was amalgamated with the respondent-company with effect from 21.03.1997. There is no dispute over the fact that the respondent-company registered under the Companies Act is a dealer under the KST Act. The dealer was granted sales tax exemption benefit for five years from the date of commencement of production in accordance with exemption eligibility certificate issued by the Government of Karnataka as per the package of incentive granted vide Government Order dated 27.09.1990 and sales tax exemption notification dated 19.06.1991 to which we shall advert to at a later stage.

3. When the matter stood thus, the Assistant Commissioner of Commercial Taxes (Intelligence), Kolar visited the premises of the respondent-assessee on 20th December, 1996. During the course of physical inspection the authority noticed that there was contravention of the conditions laid down under Explanation III(e) to the notification dated 19.06.1991. It was noticed by the said authority that sale of tea packets by the respondent-company from the Dharwad unit which had the benefit of exemption and the units manufacturing tea outside Dharwad unit which did not have the benefit of exemption were similarly priced. Two invoices - one from Dharwad unit and one from non-Dharwad unit - were taken note of and found that the ultimate sale price in both cases is Rs. 118 (the non-Dharwad tea had a sales tax component of Rs. 12.27, whereas the Dharwad tea had no sales tax component). Based on the said material as well as material evincible from the price circulars of the respondent-company found in the office, the intelligence officer arrived at the conclusion that the dealer had added the tax component to the sale price of Dharwad tea though not under the nomenclature of tax or cess. Hence, it was concluded that the respondent company was not entitled to the benefit of exemption, for Explanation III(e) to the notification dated 19.06.1991 had been violated.

4. As the facts would further unravel, on the basis of the aforesaid finding of fact of the inspecting authority, a series of assessment orders dated 15.06.1998, 31.01.1999, 22.02.2000 and 01.07.2000 were passed wherein, inter alia, the claim of exemption on the turnovers of Dharwad tea based on notifications dated 27.09.1990 and 19.06.1991 came to be rejected. The assessment orders were assailed before the appellate authority and vide orders dated 25.02.1999, 07.03.2001 and 23.03.2001 the appellate authority upheld the view of the assessing authority by rejecting the claim of exemption advanced by the assessee on the ground

that there was collection of tax by considering the tax component in determination of sale price, though the same was not distinctly shown as tax and collected as such. The orders passed by the appellate authority were challenged before the tribunal which thought it appropriate to constitute a Special Bench and, accordingly, five members of the tribunal took up the matter. The tribunal after hearing learned counsel for the parties came to hold that though the company had considered the local tax element in the price fixed, but it cannot be stated that the company has collected the local taxes as such from the consumers in view of the fact that in the invoice against KST and CST, it is specifically left blank in respect of Dharwad tea; and accordingly accepted the stand put forth by the assessee-respondent. The said order was challenged before the High Court in revision petition.

5. The High Court to appreciate the controversy framed the following three questions of law:-

> *"(1) Whether the consideration of sales tax in fixing the price of the goods and sale of such goods along with identical goods on which taxes are collected along with the price has not resulted in an implied collection of tax in respect of such sales tax exempted goods?*
>
> *(2) Whether the assessee who produces identical products, one which is exempt from sales tax and one which sales tax is payable, both being priced on par and sold off the same shelf, could not lead to the presumption that there is a deemed collection and inclusion of sales tax in the price fixed?*
>
> *(3) Whether the legend 'inclusive of taxes' found on the packets of Dharwad and non-Dharwad tea, the distinction as such being lost on the consumer, whether it cannot be said that taxes are inclined and collected on the tax exempted tea."*

6. The High Court, after hearing the learned counsel for the parties and analysing the material on record, dissecting the relevant provisions of the KST Act and the notification for exemption came to hold as under:-

> *"30. Learned Advocate General invites our attention with regard to the price being the same with regard to Dharwad tea and non-Dharwad tea. Same is reflected in the books of accounts. The Company is governed by the Standards of Weights and Measures Act, 1976 and Rules. Rule 6 read with Rule 2(r) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 requires that the sale price of the package commodity shall be printed on the packages strictly in the following form:*
>
> *"Maximum (or Max) Retail Price Rs ... incl. of all taxes."*
>
> *Or*
>
> *"MRP Rs. ... INCL. OF ALL TAXES"*
>
> *31. Much of arguments were advanced before us that in the light of inclusive rate of tax, there is nothing but collection in the case on hand. The Tribunal in its order would say that so long as the buyer has not agreed to pay tax, and so long as the bill would show that the company is exempted from tax, there can be no inference of tax collection. Tribunal, in our view, is right in noticing that mere mentioning of MRP does not by itself a proof of any collection of tax in terms of sales tax laws. We are in agreement with the finding of the Tribunal.*

> *32. In fact, in Annexure-F there is a clear mention of exemption of tax in terms of the note at the end of the invoice itself. Therefore, the buyer is told in unmistakable terms that what is being paid as sale price and not as sales tax.*
>
> *33. The Tribunal, in our view, has considered not only the facts of the case but also all the case laws as applicable, and thereafter has come to a right conclusion in holding against the State. We are in agreement with the findings of the Tribunal."*

On the basis of the aforesaid analysis, the High Court concurred with the opinion expressed by the tribunal.

7. We have heard Mr. Basava Prabhu S. Patil, learned senior counsel along with Mr. V.N. Raghupathy for the appellant and Mr. Harish N. Salve and Mr. Arvind P. Datar, learned senior counsel for the respondent.

8. The present litigation has a history. Be it stated, this is the third round of litigation. In the first round, the State of Karnataka had availed the plea that the Government Order dated 27.07.1990, pursuant to which the Exemption Notification dated 19.06.1991 was issued, was itself not gazetted. The controversy travelled to this Court in ***Lipton India Ltd. and another v. State of Karnataka and others (1996) 10 SCC 710***. In the said case, the Court has held that:-

> *"7. The administration of the State of Karnataka represented by its Chief Secretary, does not find the said officer guilty of gross negligence. The Chief Secretary does not find it unpardonable that the statement was made on oath on behalf of the State Government in a pending proceeding before the High Court. We cannot agree. Whether the Chief Secretary thinks it necessary to take action against the said officer or not is not our concern. Our concern is that the State Government made a statement on oath before the High Court that was incorrect and the judgment of the High Court accepts and proceeds upon the basis of that statement. The High Court's judgment must, therefore, be set aside and the matter remanded to the High Court to be heard and decided afresh.*
>
> *8. We must caution the High Court at Karnataka, having regard to what we have stated above, that it should be very vigilant in accepting as correct a statement, even though it be made on oath, on behalf of the State Government. It is unfortunate that we should have to say this of a State Government, but the record before us leaves us no option.*
>
> *9. The learned counsel for the State Government now submits that we should not make this general observation in respect of affidavits filed on behalf of the State Government. As we have already stated, we have done so because the Chief Secretary of the State of Karnataka does not seem particularly troubled by the fact that a statement was made on oath on behalf of the State Government before the High Court which was not correct. He does not even think that the said officer was grossly negligent in making the statement that the said government order was not gazetted only on the basis of going through the Gazettes for the succeeding three months. We must assume that other officers of the State Government will be encouraged to make statements before the courts on oath upon as little or no enquiry, expecting from the Chief Secretary the same unconcern".*

9. After so holding, the Court has allowed the appeals and directed the State Government to pay costs which was quantified in the sum of Rs. 50,000/-. In the second round of litigation, the State of Karnataka sought to deny the exemption on the ground that grinding of tea does not amount to manufacture and, therefore, as such the exemption was not available.

The matter travelled to this Court but eventually the appeals were dismissed by orders dated 17.07.1998 and 07.09.1998 preferred by the State of Karnataka.

10. The present one is the third round. Mr. Patil, learned senior counsel appearing for the State would urge that the tribunal as well as the High Court is not justified in interfering with the finding of fact recorded by the Assessing Authority and the first appellate authority that the assessee had collected sales tax on the sale of tea manufacture at Dharwad and hence, not entitled for the benefit of sales tax exemption solely on the ground the company had considered local sales tax element in the sale price fixed. It is also contended by him that the levy of tax on the assessee cannot be found fault with inasmuch as inclusion of sales tax in the sale price would disentitle the assessee from the benefit of exemption stipulated in the Notification dated 19.06.1991 issued under Section 8A of the KST Act. Lastly, it is canvassed by Mr. Patil that the issue whether the legend "inclusive of taxes" found on both the packed tea produced in the exempted unit, Dharwad, Karnataka and tea obtained from outside the State and sold in the State (taxable tea), makes the end consumer believe that in the end consumer price sales tax element has been considered, has not been properly considered by the High Court. Learned senior counsel would submit that the High Court has not properly appreciated the authorities in the field and arrived at the erroneous conclusion. Mr. Patil has placed reliance on ***State of Karnataka v. M/s C. Venkatagiriah and Brothers (1994) Supp (2) SCC 572*** and ***T. Stanes & Co. Ltd. v. State of T.N. and another (2005) 9 SCC 308***.

11. Mr. Salve, learned senior counsel appearing for the assessee-respondent would urge that the declaration made by the assessee about MRP is a statutory declaration required as per Rule 2(r) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 framed under erstwhile Standards of Weights and Measures Act, 1976 and the same does not mean that the assessee had collected any amount by way of tax. The aforesaid statutory declaration only means that the end consumer does not have to pay amount beyond MRP. It is urged by him that the assessee had taken the stand that it has uniform MRP throughout India irrespective of whether sales tax is payable in certain States or not and despite the fact that the rate of tax is also different in different States because the assessee has felt that it is necessary to have uniform MRP for PAN India to prevent flowing of goods from one State to another. It is his further submission that revenue has erroneously based its conclusion on a comparison of price between the two units of the same manufacturer either in the same State or in two different States wherein one unit is covered by exemption and the other is not. Incrementing the said argument learned senior counsel would contend that though the two prices are uniform, the revenue on an erroneous comparison has presumed that the assessee has collected tax without appreciating the fact that the assessee has adopted a singular business model to have a uniform price throughout India which does not countenance any kind of comparison. Mr. Salve would contend that the authorities cited by the revenue are absolutely inapplicable to the facts of the case, for the controversy is totally different therein. According to Mr. Salve, the controversy in the case has been put to rest in ***Delhi Cloth and General Mills Co. Ltd. v. Commissioner of Sales Tax, Indore (1971) 2 SCC 559***.

12. The heart of the matter is whether the respondent has violated clause (e) of Explanation III to the Sales Tax Exemption notification dated 19th June, 1991. The said clause is reproduced below:-

"Explanation III. The provisions of this Notification shall not apply:

(a) xx xx xx xx

(b) xx xx xx xx

(c) xx xx xx xx

(d) xx xx xx xx

> *(e) To the turnovers on which any tax is collected by a new Industrial Unit under the provisions of KST Act, 1957."*

The above quoted clause stipulates that the notification will not apply on turnovers on which any tax is collected by the new industrial unit under the provisions of the KST Act. It is the submission of the appellant that inference should be drawn that the respondent company had collected sales-tax on packaged tea sold by the new industrial unit, and thus, there was violation of clause (e) of Explanation III to the Sales Tax Exemption Notification. Reliance is primarily placed on the observations of this Court in ***Amrit Banaspati Co. Ltd. and another v. State of Punjab and another (1992) 2 SCC 411*** and more particularly on paragraph 11, which reads as under:-

> *"11. Exemption from tax to encourage industrialisation should not be confused with refund of tax. They are two different legal and distinct concepts. An exemption is a concession allowed to a class or individual from general burden for valid and justifiable reason. For instance tax holiday or concession to new or expanding industries is well known to be one of the methods to grant incentive to encourage industrialisation. Avowed objective is to enable the industry to stand up and compete in the market. Sales tax is an indirect tax which is ultimately passed on to the consumer. If an industry is exempt from tax the ultimate beneficiary is the consumer. The industry is allowed to overcome its teething period by selling its products at comparatively cheaper rate as compared to others. Therefore, both the manufacturer and consumer gain, one by concession of non-levy and other by non-payment. Such provisions in an Act or Notification or orders issued by Government are neither illegal nor against public policy."*

13. Reference is also made to the decision of this Court in ***M/s C. Venkatagiriah and Brothers*** (supra) wherein it has been observed:-

> *"4. For the said proposition, the Tribunal relied upon a decision of the Mysore High Court in Spencer & Co. Ltd. v. State of Mysore (1970) 26 STC 283 (Mys). The proposition enunciated in the said decision is that the dealer can be held to have collected the tax under the Act, if:*
>
> *"[F]rom the facts and circumstances, it can be inferred that the seller intended to pass on the tax and the buyer had agreed to pay the sales tax in addition to the price and that in the accounts of the dealer he has shown such amounts separately."*
>
> *(emphasis supplied)*
>
> *Applying the said proposition, the Tribunal held that even though the bills issued by the dealer in this case did say specifically that the price charged was inclusive of tax it cannot be held that he has collected the tax. We are of the opinion that the additional requirement envisaged in Spencer & Co. Ltd (supra) is not correct in law. Whether a dealer has discharged the burden that is laid upon him by the statute is a question of fact, to be decided in each case with reference to the facts and material in that case. It is not a matter of law nor can the mode of proof be reduced to a proposition of law. Sub-section (2) or sub-section (1) of Section 10 of the Amendment Act do not provide for such a requirement. In such a situation, it cannot be said as a general proposition that unless the tax collected is reflected in the account books of the dealer, it cannot be said to have been collected. No such general proposition can be evolved in a matter totally within the realm of appreciation of evidence. It is up to the dealer*

> *to discharge the said burden by producing such material as he can and it is for the appropriate authority to say whether the dealer has succeeded in discharging the burden or not. In this view of the matter, we cannot agree with the Tribunal's view which has been upheld by the High Court. The endorsement in the bill that the price charged is inclusive of tax is prima facie proof against the dealer's contention. Unless he produces material to displace the presumption arising from the said endorsement, he must be held to have collected the tax."*

14. It is the argument of the assessee that the aforesaid declaration about MRP is a statutory declaration and that does not mean that the assessee had collected any amount by way of tax. The further stand is that the end consumer does not have to pay any amount beyond MRP and that is how the business model of the assessee operates and hence, there is no question of any comparison. In fact, the appellant department is of the view that the respondent assessee ought to have determined lesser price for the exempted unit as compared to other units. It is urged that the absence of any price control the view of the department is neither a legal requirement nor practically possible. Once this erroneous comparison is obliterated, the entire case of department collapses.

15. First, we shall deal with the applicability of the principle stated in ***Amrit Banaspati*** (supra). The issue raised in the case of ***Amrit Banaspati*** (supra) was quite distinct and separate. The question raised was whether the principle of promissory estoppel would apply, for the learned single Judge of the High Court on facts had found that there was sufficient material to direct the State to honour its commitment to refund the sales-tax. The issue involved in the said case relates to refund of tax paid to the State. In this context, this Court observed that refund of tax was made in consequence of excess payment or when it was realized illegally or contrary to law. The refund of tax due and realised in accordance with law cannot be comprehended and no law can be made for refund of tax to a manufacturer realized under the statute for the same would be invalid and ultra vires. A promise or an agreement to refund tax which was due under the law and realised in accordance with the law would be a fraud on the Constitution and breach of faith of the people. It is in this context, the aforesaid observations were made in paragraph 11 in the case of ***Amrit Banaspati*** (supra).

16. In fact, a careful elucidation of the said reasoning would support the stand of the respondent. The assessee, on the basis of exemption notification had set up a new undertaking incurring expenditure. This was done on the foundation that the new unit would be exempt from tax. The exemption granted under the law by a legally valid notification was to encourage investment in the backward districts and enabled the newly established industry to overcome initial financial problems, recoup and ensue reasonable return on the capital expenditure and associated risks. Exemptions are allowed to industrial units to overcome the teething problems. Observations in paragraph 11 in ***Amrit Banaspati*** (supra), nowhere stipulate that the sale price as fixed must expressly exclude the tax component. It is obvious when a manufacturer is granted an exemption, the unit would fix the sale price taking the said exemption into account. In this manner both the manufacturer and the consumer gain. As sales-tax is an indirect tax, the purchaser has to pay the same and when the tax is not levied, the purchaser does not pay the same.

17. The respondent having set up a new industry which was exempted, should not have, in terms of clause (e) of the Explanation III of the notification, collected any tax and to the extent the tax was collected the turnover was not exempted. Sales-tax, as noticed above, is an indirect tax, which is charged from the consumer or the purchaser. But the liability to pay is that of the dealer. It may be charged by the dealer from the purchaser. Sometimes this indirect tax is inbuilt and included in the retail price. This may be mandated by law to protect consumer

interest. One frequently comes across products where the maximum sale price is specified and stated on the packaging as in the present case. Rule 2 of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, framed under the erstwhile Standards of Weights and Measures Act, 1976, stipulated that the maximum sale price should be inclusive of all taxes. This was the statutory requirement binding on the respondent, who was selling packaged product. The statement on the packaged product inclusive of all taxes, means all taxes which were leviable, were already included in the price mentioned. It should not be constructed as an admission that the respondent had charged sales tax. The respondent could not have deviated or ignored the statutory requirement by making a declaration contrary to the statutory rules. The consequences of not obeying and violating the statutory rules would have been severe.

18. Observations made in ***M/s C. Venkatagiriah and Brothers*** (supra) have to be again understood in the context in which they were made. In the said case the dealer was exigible to Central Sales-tax only if he had collected the tax and not otherwise. In the said context, this Court referred to amendment made under the Central Sales-tax Act, putting the burden of proof on the dealer to show that he had not collected the tax. For this reason, it was observed that when an endorsement was made in the Bill that price charged was inclusive of tax, it was prima facie proof against the dealer's contention and in such circumstances where burden was on the dealer, he should produce material to displace the presumption. The finding of the tribunal that the Central Sales-tax had not been charged independently in the Bills, it was observed, would not be a conclusive proof or good finding in law. Importantly, this Court observed that the question whether the dealer had discharged the burden placed upon him by the statute is the question of fact and has to be decided in each case with respect to facts and material of the case. Significantly, in the present case no such burden has been placed on the assessee. Further the tribunal and the High Court have recorded as a finding of the fact that the assessee respondent had not collected the tax on sales made from the exempted unit. The assessee has relied upon invoices issued by them to the purchaser which have the following declaration:-

> *"Goods sold under this invoice are fully exempted from levy of KST/ CST under exemption certificate No. IDF/E3/50-St/92-93 dt. 1-12-1992 by the Director of Industries and Commerce Department, Govt. of Karnataka, Bangalore as applicable to our newly set up tea factory at Dharwad. We are on rolls of Asst. Commissioner, ST Bangalore. Our principal place of business is at No.2 4th Cross, MM Compound, Mysore Road, Bangalore.*
>
> *OR*
>
> *"Goods sold under this invoice are fully exempted from levy of KST/CST in terms of Govt. of Karnataka's order No. C/1/138/SPC/90 (GO dt. 27.9.1990 and Finance Department Notification No. FD/239/CSI/90 dt. 19.6.1991 and Industries and Commerce Department Certificate No. IDF/FS/91-24/93-94 dt. 5.6.1993 applicable to our newly set up factory at Dharwad (Ka). Our principal place of business is at Booke Fields, Marathahalli".*

19. It has been highlighted that 3,50,000 invoices relating to the said product manufactured and sold from the Dhaward unit were placed on record. Apart from this the assessee-respondent had also placed 1200 price circulars issued, which showed that the assessee respondent had not collected sales tax. The books of account corroborate the trade price circular and invoices. The entire sale proceeds or consideration was shown as receipt and the amount was not bifurcated into sale price and tax collected.

20. An assessee is entitled to carry on and conduct business, fix the maximum retail price of its products. In the present case in spite of the multiple units both exempted and non-

exempted, the respondent had adopted and followed uniform market price throughout India. The respondent is entitled and can fix a uniform price meant for whole of India. The uniform market price does not differ in spite of differences in sales-tax payable at the end point, i.e., at the point of sale. This is a matter of business policy and cannot be taken exception to. The respondent has also explained that uniform market retail price at all India level ensures that the goods from one State do not flow to the other State, thereby distorting sales. It avoids and prevents shortages of goods in lower tax area. Uniform pricing cannot be a ground to hold that the respondent was charging sales tax on a sale price of the goods manufactured in the exempt unit. Cost of production in different units of the respondent assessee can vary. Cost of production has various components and is computed with reference to revenue expenditure, rate of return on the capital expenditure, etc. These are complex commercial and business considerations which cannot be decided with reference to a single factor, i.e., the uniform market retail price. A market retail price stating that it is inclusive of all taxes could be the starting point, but would not prove and establish that the sales-tax has been collected.

21. Reliance placed on ***T. Stanes & Co. Ltd.*** (supra) is misconceived. The question involved therein related to interpretation of Section 22 of the Tamil Nadu General Sales-tax Act. The said Section stipulates that no person, who was not a registered dealer would collect any more tax and no registered dealer shall make any such collection, except in accordance with the provisions of the Act and the rules. The proviso stipulated that the sub-section would not apply to collection of an amount by a registered dealer towards an amount of tax already suffered under the Act in respect to the goods, the sale or purchase price of which was controlled by any law in force. In this background, it was observed that the term 'collected' would include any collection in any manner and purported recoupment as projected and pleaded would be nothing but collection. The contention of the assessee that he was only recouping and was not collecting the tax was rejected. Thus, the factual score is totally different.

22. In this context, it would be relevant to refer to the decision of the Court in ***Delhi Cloth and General Mills Co. Ltd.*** (supra). This case relates to Madhya Pradesh General Sales-tax Act, 1958. While interpreting the words "turnover" and "sale price" in the context of the charging Section it was observed that the liability to pay tax was on the dealer and the purchaser had no liability to pay tax. If a dealer had to pass the tax burden on to the purchaser, he could only do by adding the tax in question to the price of the goods sold. If that be so, the taxes collected by the dealer from the purchaser became a part of the sale price as fixed. Thus, the amount recovered by the dealer was in reality a part of the entire sale consideration. To appreciate the principle we may usefully reproduce certain passages from the said authority:-

> *"6. Under Section 4 the liability to pay tax is that of the dealer. The purchaser has no liability to pay tax. There is no provision in the Act from which it can be gathered that the Act imposes any liability on the purchaser to pay the tax imposed on the dealer. If the dealer passes on his tax burden to his purchasers he can only do it by additing the tax in question to the price of the goods sold. In that event the price fixed for the goods including the tax payable becomes the valuable consideration given by the purchasers for the goods purchased by him. It that be so, the tax collected by the dealer from his purchasers becomes a part of the sale price fixed, as defined in Section 2(o). In some of the Sales Tax Acts power has been conferred on the dealers to pass on the incidence of tax to the purchasers subject to certain conditions. Those provisions may call for different consideration. In the Act there is no such provision except Section 7-A which was introduced into the Act by Madhya Pradesh Act 23 of 1963. That provision would have relevance only in respect of the assessment for the year 1963-1964.*

Section 7-A says:

"No dealer shall collect any amount, by way of sales tax or purchase tax, from a person who sells agricultural or horticultural produce grown by himself or grown on any land in which he has an interest, whether as owner, usufructuary mortgagee, tenant or otherwise, when such produce is sold in the form in which it was produced, without being subjected to any physical, chemical or other process for being made fit for consumption save mere dehusking, cleaning, grading or sorting."

7. In these appeals, it is not necessary to examine the relevance of that provision. But that provision does any give only statutory power to collect sales tax as such from any class of buyers. There is no other provision in the Act which confers such a power on the dealers. Unless the price of an article is controlled, it is always open to the buyer and the seller to agree upon the price to be payable. While doing so it is open to the dealer to include in the price the tax payable by him to the Government. If he does so, he cannot be said to be collecting the tax payable by him from his buyers. The levy and collection of tax is regulated by law and not by contract. So long as there is no law empowering the dealer to collect tax from his buyer or seller, there is no legal basis for saying that the dealer is entitled to collect the tax payable by him from his buyer or seller. Whatever collection that may be made by the dealer from his customers the same can only be considered as valuable consideration for the goods sold.

x x x x x

x x x x x

10. From all these observations, it is clear that when the seller passes on his tax liability to the buyer, the amount recovered by the dealer is really part of the entire consideration paid by the buyer and the distinction between the two amounts, — tax and price — losses all significance."

The relevance of this decision is that it holds that in a given case the tax component may form a part of the sale price and cannot be treated as a separate component.

23. In the case at hand, when the respondent was not liable to pay tax and had not passed on the tax liability, we do not think, sale consideration received should be bifurcated and divided on the basis of any assumption that the sale price received must have included the tax. This fiction has no application in the present case. There is neither such principle nor any precept in law. In any case the finding of fact is to the contrary.

24. In view of the aforesaid premised reasons, the appeal, being sans merit, stands dismissed with costs which is assessed at Rs. 1,00,000 (Rupees One Lac Only).

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PUNJAB VAT TRIBUNAL

APPEAL NO. 645, 646, 647, 648, 649 OF 2004-05

Go to Index Page

STATE OF PUNJAB
Vs
K. AJESH & COMPANY

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

26th May, 2016

HF ▶ Revenue

Penalty U/s 14B is justified where the goods i.e. Diamond Jewellery is being carried without proper documents and not reporting at ICC.

PENALTY—ATTEMPT TO EVADE TAX—CHECK POST—DIAMOND JEWELLERY BROUGHT IN THE STATE OF PUNJAB FROM MUMBAI WITHOUT REPORTING AT ANY ICC—ON DEMAND `JANGAD VOUCHERS' BEING PRODUCED—PENALTY IMPOSED CONCLUDING ATTEMPT TO EVADE THE TAX AND TRANSACTION BEING NOT COVERED BY PROPER OR GENUINE DOCUMENTS—1ST APPEAL FILED BY DEALERS IS ACCEPTED—ON APPEAL BY REVENUE BEFORE TRIBUNAL—HELD—THE GOODS IN QUESTION WERE NOT COVERED BY PROPER AND GENUINE DOCUMENTS AS `JANGAD VOUCHERS' ARE NOT ACCEPTABLE AS PER PROVISIONS OF PGST ACT—DEALERS COMMITTED OFFENCE UNDER SECTION 14B(7)(iii) BY NOT REPORTING AT ANY ICC—RISK OF LIFE CANNOT BE CONSIDERED AS AN EXCUSE TO COMPLY WITH MANDATORY PROVISIONS OF LAW—GOODS IN QUESTION MEANT FOR TRADE AND NOT COVERED BY ENTRY 38 OF SCHEDULE-B CLAIMING THE SAME TO BE TAX FREE—NO SHELTER CAN BE TAKEN UNDER EXIM POLICY TO AVOID CHECKING OF GOODS AS CONDITIONS OF SAID POLICY NOT FULFILLED—NO PREJUDICE HAS BEEN CAUSED BY PASSING THE SINGLE ORDER AGAINST ALL THE RESPONDENTS CLAIMING THEMSELVES TO BE OWNERS—ORDER OF 1ST APPELLATE AUTHORITY CONTRARY TO CORRECT LAW AND PERVERSE—DESERVES TO BE SET ASIDE–APPEAL ACCEPTED—ORDER OF AETC IMPOSING PENALTY RESTORED – *SECTION 14-B OF PGST ACT, 1948*

Facts

During road side checking a car was intercepted in which three persons were travelling and were carrying more than 200 hundreds diamonds weighing about 2662.01 carats worth Rs.1,53,79,624/-. The persons had produced certain documents namely `Jangad Vouchers' to prove the genuineness of transactions. The Detaining Officer found that goods were being carried from Mumbai to Punjab without reporting at any ICC and were without any proper and genuine documents. After detention of goods u/s 14B of PGST Act a penalty of Rs.76,89,512/- was imposed u/s 14B (7)(iii). An appeal was filed before 1st Appellate Authority who accepted the same and deleted the penalty. After a protracted litigation, eventually the

appeal filed by State against the order of 1st Appellate Authority was taken up by Tribunal for hearing on merits.

Held:

The Penalizing Officer has not committed any error by passing a common order in the name of four owners of goods as the respondents never made a separate claim with regard to separate goods. They claimed ownership of goods commonly. The respondent did not raise any such objection before the Detaining officer or the 1st Appellate Authority and as such no illegality can be found in passing a common order by the Penalizing Officer especially when no prejudice has been caused to the respondent.

The contention of Respondent-Assessee that goods being tax free covered under Entry 38 of Schedule-B is not acceptable as the said entry could be applied only when Gem and Jewellery is sold to Foreign Tourist against Foreign Currency. Moreover the respondents have taken a plea that goods were not meant for sale and on the other hand they are seeking exemption under the aforesaid entry which would arise only at the time of sale and as such the contention of respondents is contradictory in nature.

In so far valuation of goods is concern the Detaining Officer has taken into consideration the value of goods in Dollar as per vouchers and also placed reliance upon the valuation given by Government Valuer. No counter report has been produced by the respondent and as such no fault can be found with the valuation of diamonds made by department.

The plea of Assessee regarding the goods being covered under Exim Policy of Government of India and as such not amenable to any checking, the same is not available in the present transaction. The Respondents are neither recognized export houses nor they are in possession of any export orders nor they are carrying any documents along with certification of Central Government. Since the Respondents do not fulfil any single condition for seeking exemption of Exim Policy, they cannot question the detention of goods taking shelter of the same.

The respondents on checking have not been able to show any genuine documents covering the goods as they have failed to produced any sale bill, cash memo or a delivery note containing such particulars as may be prescribed in ST XXIV or XXIV-A as prescribed by Rule 56A. The `Jangad Vouchers' produced do not have any sanctity as neither it contains the requisite particulars as contained in the Rules nor it ensures that transactions would have to be accounted for in the books. Such documents are best tools to instrument the evasion of tax. These `Jangad Vouchers' cannot be relied upon in any manner and could not have been accepted by the Detaining Officer.

The respondents have committed an offence of not reporting the goods at any ICC while entering the State of Punjab. The plea regarding non reporting due to risk of life cannot be accepted as it is the responsibility of every citizen to comply with the provisions of law without any hitch. The traders of God and Diamond cannot considered themselves above law or immune from law. As such the condition of reporting the goods at ICC even in the case of jewellery is mandatory in nature and the respondent by not doing so have been rightly penalized.

The plea of respondents regarding goods being not for sale also deserves to be rejected as the term `Trade' is duly define under Section 2(l) of PGST Act, 1948 which encompasses even the transaction of present nature. If any person indulges into any business or trade or any act or activity which could be treated as a process for buying and selling the goods or services that could be in connection with business or trade would fall within the proviso to Section 14B of the Act. Had the goods being not checked by the officers of the department, the possibility of same being kept out of the account books as well as the disposal without payment of tax was sure.

Accordingly the order of 1st Appellate Authority accepting the appeals filed by Dealers cannot be sustained as the same is in ignorance of the correct position of law. The order being perverse deserves to be reversed. Consequently all the appeals are accepted and impugned order passed by DETC is set aside and order passed by AETC is restored.

Cases referred:

- *Kabir Diamonds Vs State of Punjab 36 PHT 68*
- *Kabir Diamonds Pvt. Ltd. Vs State of Punjab (2010) 36 PHT 68 (PVT)*
- *Thermo King India Pvt Ltd. Vs Deputy Excise and Taxation Commissioner (2012) 18 STM page 474 (P & H)*
- *Dwarka Gems Ltd. Vs. State of Punjab [(2012) 18 STM 499 (PVAT Tribunal)*
- *Unique Chains, Mumbai Vs. State of Punjab [(2009) 13 STM 515 (PVAT-Tri.)]*

Present: Mr. N.K. Verma, Sr. Dy, Advocate General for the State.
Mr. K.L. Goyal, Sr. Advocate alongwith Mr. Rohit Gupta Advocate
Counsel for the respondent.

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

1. This order of mine shall of dispose off five connected appeal Nos. 645, 646, 647, 648 and 649 of 2004-05 filed by the State of Punjab against the common judgment dated 25.8,2003 passed by the Joint Director (Enforcement)- Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala (herein referred as the First Appellate Authority) accepting the appeal of the appellant and quashing the order of penalty dated 19,8.2002 passed against the appellants U/s 14-B(7)(iii) 14-8 (7) (iii) of the Punjab General Sales Tax Act, 1948 (herein referred as the Act of 1948).

(1) The case relates to the importing of more than 200 diamonds weighing about 2662.01 carats worth Rs.1,53,79,624/- from Mumbai to the State of Punjab (Ludhiana) by 3 persons for trade without any proper and genuine documents.

2. Since 7.8.2002, the case had been seeing many ups and downs and ultimately with the intervention of the Hon'ble the Punjab and Haryana High Court order dated 8.10,2011. This Tribunal has set to decide these appeals on merits. Since all the appeals involve common questions of law and facts, therefore, these are decided together.

3. On 7.8.2002, believing the information to be reliable Sh. Akashdeep Singh Sandhu, Excise and Taxation Officer, Mobile Wing, Patiala organized a special checking in the vicinity of Village Dalomajra, Sirhind-Rajpura G.T. Road. At about 10:00 A.M. On that day, three persons namely Shri Ashish Udani, Sh. Sahar Mehta and Sh. Pragnesh Doshi were seen coming in Vehicle No, RJ-14T- 3527. On the arrival of the car near them, the driver was signaled to stop and the vehicle stopped. When checked, they were found carrying diamonds contained in four packets which were later on weighed and found to be 2662.01 carats for which they failed to produce any proper and genuine documents as required U/s 1443 (2) and (4) of the Act of 1948.

4. The Detaining Officer recorded the joint statement of the aforesaid persons and also prepared the detention report, The aforesaid persons disclosed that these diamonds were worth Rs.35.00 lacs and they had not declared these diamonds at any of the ICCs while entering into Punjab from Mumbai via Delhi and they had to go to Ludhiana with the said goods in the said vehicle. They were not in possession of any invoice or declaration form pertaining to the said goods.

5.The Detaining Officer took the diamonds contained in four pouches in his possession. That apart, on further search of the vehicle, he also recovered 27 loose papers and a note book (showing sale transaction of the diamonds) which he also took into possession. Since the respondents failed to produce the documents covering the goods i.e. delivery challan, invoice or a declaration, therefore, the Detaining Officer detained the goods U/s 14-B (6)(ii) and issued a notice to the owner of the goods for 8.8.2002 to appear before him alongwith the account books or any other evidence to prove the genuineness of the transaction. He also sealed the goods in the presence of the aforesaid three persons.

6. On 8.8.2002, the said three persons appeared before him, where upon, the Detaining Officer got weighed and evaluated the goods, from M/s Jagdish Jewelers in the presence of the Sh. Sushant Singla etc. and thereafter, prepared the inventory of the goods in their presence and he then again sealed the goods. The case was then adjourned to 9.8.2002. Thereafter, on 12.8.2002, the case was forwarded to the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala. After perusing the report dated 12.8.2002, the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala directed the Detaining Officer to identify the real owners of goods. On 12.8.2002, the following appellants (claiming themselves to be owners of the goods) appeared before the Detaining Officer:-

(1) Sh. Shashi Kant Gandhi,

Partner M/s Balaji Corporation, Mumbai.

(2) Sh. Arnish Nitin Mehta,

Partner M/s Shrey Diam, Mumbai.

(3) Sh. Chetan V. Doshi,

Partner M/s Shardha Exports, Gujarat.

(4) Sh. Vijay Kumar,

Authorized, CA of M/s K. Ajesh and Company, Mumbai.

7. The aforesaid persons and the persons detained made a joint statement regarding their consent to evaluate the goods from the Government approved valuers. At the same time, they also submitted written reply dated 10.8.2002 (which was submitted on 12.8.2002) wherein they raised following objections:-

(1) The goods were being carried for exhibition and not meant for sale in the State of Punjab.

(2) The entries regarding the said goods were made by them in their account books.

(3) The three persons who were detained, were working as booking agents/sales promoters of the respondents as well as the other export houses in Mumbai.

(4) The respondents are recognized export houses i.e., total exporters of diamonds out of India and they are covered by the new Exim Policy and according to which the State Government Agencies could: not stop/check the goods.

8. On 12.8.2002 itself, the Assistant Excise and Taxation Commissioner examined the documents and recorded a note as under:-

(i) The goods were in large quantity therefore, these could not be meant for exhibition.

(ii) One note book was impounded from the possession of the carriers which indicates that the carriers were making the regular transactions of sale.

(iii) The owners of the goods did not produce any account books before him.

9. On 13.8.2002 Mr. Sushant Singla and Padam Jain, two Government approved valuers appeared and determined the value of the goods at Rs.90 lacs. However, in order to reach the exact conclusion regarding price of goods, the Assistant Excise and Taxation Commissioner sent the file back to the Detaining Officer to get the value of the goods determined, whereupon, the Detaining Officer, while taking note of the value of the goods as mentioned in the impounded eleven vouchers, assessed the value of the entire stock and submitted the report dated 18.8.2002 to the following effect:-

(1) Out of 27 loose papers (vouchers) 12 papers did not relate to the goods in question, however, the remaining fifteen vouchers pertained to the goods in question.

(2) Out of the said fifteen vouchers, the weight in carat size of diamonds and value per carat was mentioned on the four vouchers, but on the remaining vouchers, although the weight and size was mentioned yet the denomination of the price (whether in Rupees or Dollar) was not mentioned. He further gave the ownerwise details of sixteen vouchers as under:-

Sr No.	Name of the Company	No. of Vouchers	Date of vouchers
1.	M/s K. Ajesh and Company, Mumbai	4 vouchers	3 vouchers dated 2.8.2002 and 1 voucher 1.7.2002
2.	M/s Shardha Exports Gujarat,	1 voucher	2.8.2002
3.	M/s Shrey Diam, Mumbai	10 vouchers	2.8.2002
4.	M/s Balaji Corporation, Mumbai	1 voucher	2.8.2002

10. The Detaining Officer calculated the value of the goods on the basis of the price as mentioned by the owners over the vouchers themselves at 1,97,627/- dollars which was equivalent to Rs.94,86,094/- @ Rs.48 per dollar (the rate which was prevailing at that time). This is the price relating to those goods shown in the vouchers and regarding the remaining goods over which price was not mentioned, the Detaining Officer relied upon the value assessed by the government Approved Valuer at Rs.58,93,530/- and in this manner he determined the price of all the goods at Rs.94,86,094/- + 58,93,530 =1,53,79,624/-.

11. On receipt of the file, the Assistant Excise and Taxation Commissioner issued notices to the owners of the goods for 19.8-2002, in response to which the counsel appeared and submitted the written arguments. However, they could not submit complete set of account books- They only furnished stock statements and calculation charts of all the four firms as referred to above and the produced Jangad Registers.

12. After hearing, the counsel for the respondents, the Assistant Excise and Taxation Commissioner observed as under:-

(1) Out of total 27 loose papers, sixteen papers were duly printed vouchers bearing the names of the owners. The details of which are given as under:-

(a) Ten vouchers bear the name of the consignor as M/s Shrey Diam, Mumbai and the consignee is shown as M/s Pragnath Bhai and all these vouchers are dated 2.8.2002.

(b) One voucher dated 2.8,2002 bears the name of M/s Balaji Corporation Mumbai as the consignor and M/s Ashish Vidani as the consignee.

(c) One voucher dated 2.8.2002 shows M/s Shardha Exports Gujarat as consignor and M/s Ashish Exports is shown as consignee.

(d) Three vouchers dated 2.8.2002 were allegedly issued by M/s K. Ajesh and Company the consignor and M/s Pragnath Doshi as consignee.

(e) One voucher dated 1.7.2002 shows the name of M/s K. Ajesh and company as consignor and M/s Pragnath Doshi consignee but this voucher did not relate to the goods.

13. The Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala further observed that since the goods were large in quantity and number therefore the same can't treated as goods for exhibition; the respondents had changed stand and pleaded that the goods were meant to be shown to the foreign buyers in the State of Punjab for sale and that the respondents had failed to disclose the place, time and venue for exhibition and also the names of the foreign buyers and there was no known foreign buyers' market the Assistant Excise and Taxation Commissioner refused to believe that the goods were not meant for trade.

14. The Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala further observed that the stock statements did not reveal if they had deducted the stock in question although the goods had taken six days to react; from Mumbai to Punjab therefore, the account books were doubtful, They had also failed to show any entry in the "Jangad Registers" for M/s K. Ajesh and Company regarding the goods. The respondents on one side state that the goods were to be shown to the foreign tourists and on the other hand, they want to get the benefit of entry thirty eight of the schedule- B in order to show that the goods were tax free. The appellant also did not generate/report the goods at any of the ICCS on the way though they travelled by car from Mumbai to the place they were apprehended.

15. Ultimately, the Assistant Excise and Taxation Commissioner, vide order dated 19.8.2002 imposed a penalty of Rs. 76,89,512/- U/s 14-B (7) (iii) of the Act upon the appellants. The respondents filed five appeals: four individually, and fifth was filed jointly by all the respondents against this order, which was accepted by way of common order dated 25.8.2003 by the First Appellate Authority by way of which the order of penalty was quashed. These orders were dispatched on 8.9.2003 and were received in the office of Mobile Wing, Patiala on 29.9.2003.

16. On reference made by the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala, the Excise and Taxation Commissioner directed the Additional Excise and Taxation Commissioner-cum-Revisional Authority, Punjab to examine the legality and propriety of the order dated 25.8.2003. Accordingly, the Additional Excise and Taxation Commissioner, while exercising the powers U/s 21(l) of the Act, issued notice to the respondents pursuant to which the respondents appeared and gave in writing that the respondents had filed an appeal before the Sales Tax Tribunal, Punjab against the order of the Appellate Authority, therefore, they requested for keeping the revisional proceedings in abeyance. While disagreeing with the contentions raised by the respondents, the arguments in the revision were heard and the revisional authority vide his order dated 13.10.2003 set-aside the order dated 25.8.2013 Passed by the First Appellate Authority and restored the order of penalty passed by the Designated Officer, Patiala (Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala). Being dis-satisfied with the order dated 13.10.2003 passed by the Revisional Authority, the respondents preferred the revision numbers 56, 57, 58

and 59 of 2003-04 before the Sales Tax Tribunal, Punjab challenging the jurisdiction of the Excise and Taxation Commissioner to exercise the powers of revision U/s 21 of the Punjab General Sales Tax Act Shri P. Ram, the then Presiding Officer Sales Tax Tribunal, Punjab observed as under:-

> *"Accordingly, I have no hesitation in concluding that the DETC as an Appellate Authority for any matter and an Appellate Authority under the PGST Act is not an authority subordinate to the ETC for the purposes of undertaking a suomoto revision under Section 21 of the PGST Act, Accordingly, in all these cases, the orders of the Revisional Authority are set-aside being beyond the jurisdiction and the revision petitions are accepted. In view of this, the appeals filed against the orders dated 25.8.2003 of the First Appellate authority have become infructuous."*

17. Thus, the Sales Tax Tribunal, Punjab while setting aside the orders of the Revisional Authority being without jurisdiction further observed that, the appeals filed by the respondents against the order dated 25-8.2003 had become infructuous.

18. Still aggrieved, the State of Punjab filed a reference application before the Sales Tax Tribunal, Punjab to return a finding regarding the competency of the Additional Excise and Taxation Commissioner to revise the order passed by Deputy Excise and Taxation Commissioner. Whereupon, the Hon'ble Punjab and Haryana High Court vide its order dated 18.10.2011 while ignoring the order passed by the Additional Excise and Taxation Commissioner and the order by the Sales Tax Tribunal, Punjab observed as under:-

> *"After hearing learned counsel for the parties, we find that the present references are academic in nature as admittedly the State is in appeal against the order passed by the Deputy Excise and Taxation Commissioner on 25.8.2003. Since the appeal is pending at the instance of the State, the question whether the Additional Excise and Taxation Commissioner could exercise suomoto revisionsal power under Section 2 of the Act to interfere with the order passed by the Deputy Excise and Taxation Commissioner is academic in nature as all questions at the instance of the State can be decided on merits by the Tribunal. The scope of the revisional jurisdiction need not be gone into the present set of cases when the order passed by the Deputy Excise and Taxation Commissioner has been challenged in appeal as well.*
>
> *In view of the said fact, the references are returned unanswered. Learned Punjab VAT Tribunal is directed to decide the appeals on merits without taking into consideration the earlier decision of the Sales Tax Tribunal that the order passed by the Additional Excise and Taxation Commissioner is without jurisdiction. The Tribunal shall decide the appeals on merits in accordance with law."*
>
> *Sd/-*
>
> *Hemant Gupta, Judge*
>
> *Sd/-*
>
> *18.10.2011* *G.S. Sandhawalia, Judge*

19. Consequently, these appeals filed by the State have come up before me for disposal.

20. Arguments heard. Record perused.

21. Both the counsel for the parties agree that in the light of the direction issued by Hon'ble High Court of Punjab and Haryana that the appeals pending before the Tribunal be decided on merits the question with regard to the jurisdiction of Additional Excise and Taxation Commissioner has become irrelevant and need not be gone into and the appeals be decided on merits.

22. The first objection raised by the counsel for the respondent, at the very outset, is that the appeal was apparently time barred on account of delay of 491 days in fifing the appeal. In order to meet with this argument, the counsel for the appellant Mr. N.K. Verma, Sr. DAG, Punjab has urged that the appellate authority passed the order on 13.10.2003 against which reference petition was filed before the Additional Excise and Taxation Commissioner which was ultimately decided on 13.10.2003. The respondents had filed appeals against the order dated 13.10.2003 passed by the Additional Excise and Taxation Commissioner which were allowed by the Tribunal on 10.1.2005. The Tribunal had observed that the Additional Excise and Taxation Commissioner had no authority to revise the order passed by the Deputy Excise and Taxation Commissioner, consequently, he had set-aside the order passed by the Revisional Authority thereafter, a reference petition was filed before the Tribunal which remained pending before the Hon'ble High Court till 18.10.2011 however the respondents had already filed the appeals against the order passed by the First Appellate Authority. In these circumstances, Hon'ble High Court directed the Tribunal to decide the appeals on merits. Therefore, since the respondents remained involved in the litigation, therefore the delay in filing the appeal was not intentional. He has further contended that the Tribunal vide order dated 24.5.2012 has already condoned the delay on 26.4.2012, therefore, the question of the limitation no more survives.

23. Having heard the contention, this Tribunal need not go deep into the controversy in the light of the order passed by my predecessor condoning the delay on 26.4.2012, consequently the question regarding limitation no more survives. The order condoning the delay reads as under:

"Present:- Mr. K.L. Goyal, Sr. Advocate with Mr. Jaginder Singh, Advocate
Counsel for the appellant.

Mr. Mukesh Kaushik, DAG for the State.

The State Counsel submits that the necessary corrections with red ink have been made in the grounds of appeal as well as the application made for condonation of delay and that the amended memorandum of appeal has already been placed on the record of this appeal. An application for condonation of delay of 491 days has been moved alongwith the memorandum of appeal. As revealed by the record, this application has not been disposed off as yet. Mr. K.L. Goyal, Ld. Sr. Advocate gracefully submits that he has no objection, if this, delay is condoned in filing this appeal. In view of this statement the delay stands condoned. The Ld. State Counsel seeks time to file written arguments.

Adjourned to 24.5.2012.

Sd/-

26.4.2012 Chairman, VAT"

24. In the light of the aforesaid order the counsel for the appellant has no further argument to advance on the issue of limitation.

25. Mr. N.K. Verma, DAG while the assailing the order dated 19.8.2002 passed by the appellate authority has contended that the impugned order is totally incorrect and has been passed without taking all the facts, circumstances and the evidence on the record; the alleged "jangad" vouchers which neither relate to the goods in question nor have any evidentiary value

in the eyes of law can't be said to be a proper document to accompany the goods at the time of their movement from Mumbai to Ludhiana. The said 'jangad vouchers' have neither been recognized by the Bombay Sales Tax Act nor the Punjab General Sales Tax Act and nor can be equated with delivery note or invoice therefore in the absence of any proper and genuine documents, the goods could not be carried from State of Maharashtra to the State of Punjab for trade, The carriers of the goods neither reported the goods at any ICC as required U/s 14-B (2) and (4) of the PGST Act, 1948 nor maintained any record thereof as per Rules. The appellate authority had no material with it to conclude that the non giving information at the ICC was not fatal, therefore non adhering to the strict compliance of the Sub- Section (2) and (4) of Section 14-B attracts penalty U/s 14-B(7) (iii) of the Act.

26. It has been further urged that at the time of checking, the Detaining Officer detained more than two hundred pieces of precious stones (diamonds) and also recovered 27 loose papers and one note book from the possession of the Ashish Udani, Sh. Sahar Mehta and Shri. Pragnesh Doshi (who appear to be closely associated with the respondent firms) had come alongwith the goods in car No. RJ-14T-3527 from Mumbai to Ludhiana. They appear to have commenced the journey on August 2, 2002 and were apprehended on 7th August, 2002 near Village Delomajra Rajpura Sarhind, G.T. Road by the checking party. The respondents have failed to get compared the goods with the "jangad vouchers" as alleged by them. They also failed to explain as to why they were not carrying any deliver note, transit slip, or invoice regarding the goods. According to them the goods were worth Rs.35,00,000/- whereas while comparing value of the goods on basis of those vouchers wherein the goods were priced in dollars, the price has been calculated at Rs.94,86,094/- and the price of the other goods which were not priced in any currency was determined at Rs.58,93,530/- on that basis. The total value of the goods was thus determined at Rs.1,53,79,624/-. This value has never been challenged by the respondents by producing any counter expert. Mr. Verma has also stated that, the respondents failed to produce complete set of account books and furnished only stock statements and calculation charts. The value as stated by the respondent could not be accepted in the light of the contradictory statements; viz initially they had stated that the goods were worth Rs.35,00,000/- and then they stated that the goods were worth Rs.62,00,000/- which was again contradictory as per their own statement of accounts. The said price was not reflected in there, accounts books. He further argued that the owners did not deduct the goods from their stocks as per stock statement after handing over the same to the carriers.

27. He also argued that carrying such goods without any proper and genuine documents and any declaration, as per the Maharashtra Sales Tax Act or the law prevailing in the State of Punjab at that time, is contrary to the system of accountancy. Even jangad vouchers dated 2.7.2002 issued by M/s K. Ajesh and Company were not shown as entered in jangad register as maintained by K. Ajesh. Even these registers appear to be an afterthought as these were not shown by the owners at the initial stage. It was also contended that it is not appealable to the common sense that three persons who had started from a long distance of 2000 kilometers with such large number of diamonds worth of Rs. 1.50 crore would pickup these goods for display as samples or for exhibition even without any permission from the authorities of the State of Punjab and would not know the date, time and venue of exhibition for display of those goods. It appears that having failed to point out the venue time and place of exhibition, they changed their stand and took the plea that the goods were meant to be shown to the foreign buyers in the State of Punjab. However, they also failed to explain and identify any such buyers. This plea also dashes to the ground for the reason that these three persons could not point the intended place of their visit where they were to come across such foreign buyers in the State of Punjab. He further contended that there being no known market of diamonds for foreign buyers in the State of Punjab, the plea of the owners could not be accepted. The plea that all these concerns are recognized export houses or total exporters of the diamonds out of India and they are

covered under the New Exim Policy para No. 2.42 and 2.42.1 of the Government of India accordingly no Central or Government agency can detain the goods meant for export purposes can't be accepted. In this regard, he has referred me the following provisions of new Exim Policy:-

> *"Consignment of items meant for exports shall not be with held/delayed for any reasons by any agency of the Central/ State Government. In case of any doubt the authorities concerned may ask for an undertaking form the exporter."*

Exim Policy Para No. 2.42.1 FREE MOVEMENT OF EXPORT GOODS. NO SEIZURE OF STOCKS

> *"No seizure of stocks shall be made by any agency so as to disrupt the manufacturing activity and delivery schedule of export goods. In exceptional cases, the concerned agency may seize the stock on the basis of prima-facie evidence. However, such seizure should be lifted within seven days."*

28. Mr. Verma has submitted that the appellant has not made any such case so as to attract the provisions of aforesaid policy.

29. He has also urged that the plea of the respondent that the case falls under entry 38 of Schedule B of Punjab General Sales Tax Act to make the goods tax free also is not maintainable. The appellants while bringing the goods of such heavy cost for trade while entering into the State of Punjab were bound to conform to the provisions of Section (2) and (4) of Section 14-B of the Act and on failure to comply with the aforesaid provisions, the respondents were certainly liable to face the penalty.

30. To the contrary the counsel for the respondents has raised the following points in his arguments:-

> *The persons carrying the goods at the time of apprehension by the Excise and Taxation Officer, Mobile Wing, Patiala, G.T. Road Sarhind-Rajpura were carrying "jangad vouchers" as issued by the owners of the goods as per common trade practice duly recognized by Gem and Jewelery Export Corporation, Diamond Exporters Association Ltd. and Bombay Merchants Association therefore, these documents could be said to be genuine and proper documents covering the goods. As the goods were neither meant for sale nor made any transaction of sale in the State of Punjab and the goods were also not in the course of interstate sale therefore generation of declaration at the ICC at the time of entry can't be treated as a mandatory formality to be confirmed by the respondents. Since there was no legal requirement to declare the goods at the ICC, consequently, the imposition of penalty was totally unjustified.*

31. The respondent has also placed reliance over the judgment delivered in the case of ***M/s Kabir Diamonds Vs State of Punjab 36 PHT 68*** In order to contend that the goods being very valuable items, the disclosure of the same could attract danger not only to the goods but to the life of their carriers also. It was further urged that even if it is assumed that the person had brought the goods from outside the State for sale in the State of Punjab, still it would not amount to interstate sale as defined U/s 3 (a) of the CST Act, but this sale could be treated as sale within the State of Punjab as per Section 4 of the CST Act, therefore, in that situation also, the transaction did not require generating of the declaration at the ICC while entering into the State of Punjab.

32. It is also argued that the definition of the dealer as envisaged In the Act has not been taken into consideration. According to the Act, the dealer who makes sale or purchase of goods in the State of Punjab but the persons in the question had not made any sale or purchase

in the state of Punjab, therefore, they can't be termed as dealers liable to pay the tax as per section 4 of the Act. It was further argued that the goods were brought by those persons from Mumbai to the State of Punjab for exhibiting the same to certain foreign buyers. The Status of those persons bringing the goods was not more than that of carrier, broker commission agent as the sale could be concluded only on approval of the owners and information of the same was to be given permission of Gem and Jewellery Export Corporation and intimation to the revenue authorities for exporting such goods was also required to have been given. The respondents had produced ail the account books in their possession but the same have been ignored without any reasons. Lastly, it has been urged that the enquiry officer should have imposed penalty independently against each owner of the goods in proportion to their ownership over the goods but this common order passed by the department is technically bad.

33. Eventually, the counsel for the respondents while supporting the judgment passed by the First Appellate Authority has pressed for dismissal of the appeal.

34. Having given my thoughtful consideration to the aforesaid contentions raised by both the parties, the following points arise for determination:-

(1) *"Whether a common order passed by the Penalizing Officer quo all the four appellants suffered from any illegalities?"*

(2) *"Whether the goods detained (precious stones i.e. diamonds) attract entry 38 of schedule 8 of the Punjab General Sales Tax Act and are tax free so as not to attract section 14 B (7) (iii) of the Act?"*

(3) *"Whether Section 14-B is applicable to the goods imported from outside the State and brought for trade into the State of Punjab?"*

(4) *If Section 14-B is attracted; "whether the goods carried by the persons were meant for trade and were covered by proper and genuine documents?"*

(5) *"Whether the respondents while bringing the goods into the State of Punjab had violated the provisions of Section 14-B of the Punjab General Sales Tax Act, 1948?"*

(6) *"Whether an attempt to evade or avoid the tax is proved against the respondent?"*

35. As regards, the first contention, it would be appropriate for the Tribunal to go back to the history of the case tracing back to the time, the goods were detained. The three persons namely Shri Ashish Udani, Sh. Sahar Mehta and Shri. Pragnesh Doshi, when apprehended by the Excise and Taxation Officer, Mobile Wing, Patiala were found carrying huge quantity of diamonds while bringing the same from Mumbai to the State of Punjab. The Detaining Officer in his report stated that (i) the respondents failed to produce any documents relating to the goods and (ii) they failed to report information regarding those goods at any of the information Collection Centre of Punjab. He also reported having recovered the following items:-

(1) *Diamond in four Pouches.*

(2) *27 loose papers.*

(3) *A note book was found in the possession of Mr. Ashish Udani Sh. Sahar Mehta and Shri. Pragnesh Doshi.*

36. In their joint statement they admitted the aforesaid facts:-

The appellants in their first joint statement did not disclose if they were not the owners of the goods and they owned them dividedly or any of a particular item belonged to a particular person."

37. On that day they also did not disclose if the respondents are the owners of the goods. Even when representatives of the respondents M/s Shardha Exports, Gujarat, Mumbai, M/s Balaji Corporation, Mumbai, M/s K. Ajesh Company, Mumbai by and M/s Shrey Diam, Mumbai appeared before him, they did not make any separate claim with regard to the separate goods. But they claimed ownership of the goods commonly. The respondents were given opportunity of being heard during those proceeding also and they did not claim ownership of different items, therefore, Sh. Avtar Singh, Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala vide order dated 19.8.2002 passed a common order of penalty against all the four owners. It was only thereafter, that all the four owners filed different appeals against the order dated 19.8.2002 before Joint Director (enforcement)-cum- Deputy Excise and Taxation Commissioner, Patiala, however, all the four respondents also filed a common appeal. The said appeals were decided by the appellate authority on 25.8.2003 by a common judgment. It may be noticed that the respondents did not raise any such objection before the Detaining Officer or the First Appellate Authority that the common order should not have been passed by the Assistant Excise and Taxation Commissioner. It may be further observed that the question in issue in all the five appeals (four appeals filed by the four respondents and the fifth appeal filed by all of them in common) was the same. The valuation was assessed for ail the goods together. The counsel representing all the respondents before the Assistant Excise and Taxation Commissioner as well as the First Appellate Authority were not different, the counsel representing before the Tribunal as well as in the High Court also remained one. There was no conflict/clash of interest between the respondents. No prejudice has been caused to them on deciding the case of all the respondents through a common order. They have failed to establish if any prejudice has been caused to them. As such, in the absence of any prejudice caused to the respondents or pleaded by them, the order passed by the Assistant Excise and Taxation Commissioner by way of one order can't be termed as invalid in any manner.

38. Now coming to the contention raised by the counsel for the respondents that the goods attracted entry 38 of schedule-B, it may be observed that the argument does not carry any weight, The entry 38 reads as under:-

"Gem and jewellery when sold to foreign tourist against foreign currency."

39. On analysis of the aforesaid entry, it transpires that the said entry could be applied only when the goods are sold to the foreign tourist(s) but this contention raised is contradictory to the arguments advanced by the counsel as on the one hand he argues that the goods were not for sale and on the other hand he wants to take his case within the preview of entry 38 of schedule-B. As such the conclusion could safely be drawn that the goods were brought by the persons to the State of Punjab for sale and entry 38 of Schedule '8' of the Act of 1948 is not attracted.

40. As regards the value of the goods, it would be essential to notice that the assessing authority dealt with the matter elaborately and provided full opportunity to the appellant to lead evidence regarding the correct value of the goods. The respondents did not produce the complete account books before the Detaining Officer as well as Assistant Excise and Taxation Commissioner, initially respondents had given value of the goods at Rs.35 lacs thereafter, they pleaded that the value of the goods was Rs.62 lacs. On request of the representatives of the carriers participating in the proceedings the value of the goods was assessed in their presence. On that day, the government approved valuers namely Sh. Sushant Singla and Padam Jain were also called for the purpose of valuation. As such, the value of the goods was determined by them at Rs. 90 lacs. However, still to be more sure, the Assistant Excise and Taxation

Commissioner sent the file back to the Detaining Officer to determine the value of the goods as per the value shown in the impounded vouchers. The Detaining Officer observed as under:-

(1) The note book of twelve vouchers did not relate to the goods in question whereas the only 15 vouchers pertained to some of the goods.

(2) Out of the said 15 vouchers, only four vouchers showed the weight in carat size of diamonds and value per carat was mentioned in dollars and on the remaining vouchers though weight and size were given yet the price in rupees or the dollars was not mentioned.

41. Thus, the Detaining Officer, after taking into consideration the value of some of the goods in dollars, assessed the goods which related to vouchers at Rs.94,86,094/-. Regarding the remaining goods, covered by the other vouchers over which no value was mentioned, was assessed at 58,93,530/-. For this, he relied upon the price as given by the Government valuer, thus he determined the value of goods at Rs.1,53,79,124/-. No counter report has been produced by the respondents. Thus the price of the diamonds cannot be assessed less than Rs.1,53,79,124/-.

42. While taking cognigence of other contention raised by the respondents in their application dated 10.8.2002 submitted on 12.8.2002 before the Assistant Excise and Taxation Commissioner to the effect that they are recognized export houses/total exporters of diamond out of India and they were covered under the new Exim Policy Para No.2.42 and 2.42.1 of the Government of India accordingly no Central or State Government agency had jurisdiction to check the goods handled by their agents, I do not countenance this contention. At the cost of repetition, paras No. 2.42 and 2.42.1 of the Exim Policy of Government.

43. India as referred by the appellant in their application dated 10.8.2002 read as under:-

"Consignments of item meant for exports shall not be with held/delayed for any reasons by any agency of the Central/State Government. In case of any doubt the authorities concerned may ask for an undertaking form exporter."

Exim Policy Para No.2.42.1 FREE MOVEMENT OF EXPORT GOODS. NO SEIZURE OF STOCKS

44. No seizure of stocks shall be made by any agency so as to disrupt the manufacturing activity and delivery schedule of export goods. In exceptional cases, the concerned agency may seize the stock on the basis of prima-facie evidence. However, such seizure should be lifted within seven days.

46. First of all, the policy does not create a complete bar over the seizure of goods of export houses by the Central or State Government Agencies, secondly, the policy if any does not over ride the law of the State. Further, the bare perusal of the aforesaid provision of Exim Policy indicates that the applicability of the policy was subject to the proof of certain conditions. The appellants have failed to point out the necessary documents for taking their case within the purview of the said policy. Necessary conditions for taking the case within the purview of the aforesaid policy are as under:-

(i) The appellant must be recognized export house;

(ii) They must be in possession of some export orders.

(iii) The goods must be accompanied by such orders and bill of lading, shipment and the other documents alongwith the certification of the Central Government that those were meant for export.

47. The policy further indicates that it should be a consignment for a particular place where the goods are to be taken but the respondents do not fulfill even a single condition/ingredient They have not produced any certification of the Central Government regarding their recognition of their being export houses, any certification of consignments, the bill of lading and the goods receipt, rather they have pleaded that their representatives were taking the goods for exhibition in the State of Punjab for collecting customers/prospective buyers from Abroad, This averment by itself without any further proof does not make them eligible for deriving benefit under that policy particularly when they are not recognized export houses, as such they cannot seek the protection of the Exim Policy of Government India as referred by them.

48. The next contention raised by the counsel for the respondents that the goods carried by the respondents were not meant for sale as they did not enter into transaction of sale in the State of Punjab, The goods at the most could be treated to have been taken in the course of interstate sale therefore, the proviso to Section 14-B (2) & (4) do not apply to those persons and the reporting/generation of the declaration at the ICC was not the legal requirement for those persons to conform. In this regard, he has also taken me through "jangad vouchers" which the persons were carrying and has urged that those "jangad vouchers" could be treated as delivery notes prepared in compliance with Rule 56 of the Act. I do not find myself persuaded to the contentions. Undisputedly, the carriers of goods who are claiming themselves to be the brokers were bringing the goods from the respondents (who claim themselves to be the recognized export houses) from Mumbai for exhibition of those goods to the foreign buyers in the State of Punjab. In other words the respondents claim themselves to be the recognized export houses dealing with the export of diamonds outside the country, therefore, they must be having the necessary documents of recognition, as such, in their possession but they have failed to do so. In any case, the Punjab General Safes Tax Act, 1948 has been brought on the statue book with the primary object to collect the revenue by way of taxation from the owners/incharge of the goods including the dealers and also to prevent the evasion of tax from such class of persons who import the goods for trade into the State of Punjab without any payment of tax. It is clearly borne out from the plain reading of the language of various sub sections of Section 14-B of the Act.

49. Sub Section (1) of the 14-B empowers of the state Government to issue the notification for establishment of check posts or the ICC at such places as has been notified. Sub Section (2) places mandatory condition that an owner or person incharge of a goods vehicle shall carry with him a goods vehicle record, a trip sheet or a log book, as the case may be and a goods receipt and a sale bill or cash memo or delivery note containing such particulars as may be prescribed (under Rule 56-A of the Rules) made under the Act, 1948. The said person/incharge of the goods/driver as the case may be would produce a copy of such documents before the officer incharge of the check post or information collection centre or any other officer checking the vehicle at any place. Sub Section (3) of section 14-B requires the driver of the goods vehicle to keep the vehicle stationery for a reasonable time and allow the officer incharge of the check post or the ICC to check the contents in the vehicle and the officer so checking could apply ail means including braking open of the packages for the purposes of inspection.

50. Sub Section (4) of Section 14-B of the Act, 1948 further requires the owner or the person incharge of the goods vehicle entering the limits or leaving the limits in the State of Punjab to stop the vehicle at the nearest check post or the ICC and furnish in duplicate a declaration mentioned in sub section (2) alongwith the documents in respect of the goods carried in such vehicle before the Officer Incharge of the check post or ICC, who shall return a copy of the declaration duly verified by him to the owner or person incharge of the goods vehicle. A proviso to this section further imposes duty upon the owner or person incharge of

such vehicle to furnish a declaration in duplicate in respect of his entry into the State of Punjab in the prescribed form and obtain a copy thereof duly verified by the Officer Incharge of the check post or ICC and that copy should be delivered by him to officer incharge of the check post or the ICC at the point of its exit.

51. Section 14-B (6) clause (1) requires the officer incharge of the ICC to detain the goods if he has reasons to suspect that the goods are meant for trade and are not covered by proper and genuine documents specified in sub section (2) or (4) or the driver has not conformed to the directions issued by the officer incharge at the ICC as provided sub section (3) or that the person transporting the goods is attempting to evade the tax.

52. Section 14-B Sub Section (6) clause (ii) also provides for detention of the goods if the owner or the person incharge of the goods fails to submit the documents as mentioned in sub section (2) and (4) at the nearest check post or ICC on his entry into or exit from the State of Punjab the penalty for the violation of the provisions Section 6 (ii) of Section 14-B has been provided under Section 14-B (7) (iii) of the Act.

53. There is no dispute with the fact that the respondents were given full of opportunity of being heard and lead evidence in regard to the pleas set up by them as provided U/s 14-B of the Act. No such objection has been raised by the respondents at any stage.

54. The necessity of enacting this stringent provisions arose because of large scale evasion of tax by the dealers and as well as the other persons and exiting machinery, prior to the enforcement of the Act, was not sufficient to curb this menace.

55. The vires of the Section was challenged before the Division Bench our own High Court, who While holding the constitutionality/validity of the Punjab General Sales Tax Act, 1948 in the case of ***Amrit Banspati Company Ltd. Vs State of Punjab and others volume 122(2001) STC page/323*** observed that provisions of Section 14-B (7) (ii) and 14-B (7) (iii) are valid to the extent as they are serving the cause of the State against tax evaders yet the provisions oh. Section 14-B (7) (iii) were partially declared unconstitutional in as much as it imposes minimum penalty equivalent to 50% of the value of the goods. However, the state was left free to introduce the provisions for imposition of appropriate penalty for non compliance sub Section (2) and (4) of Section 14-B of the Act.

56. The crux of the judgment delivered in ***Amrit Banspati's case*** (Supra) is that while holding the awarding of penalty for non production of the documents as well as for a generating necessary declaration as prescribed under the Act at the time of entry or exit from the State as valid, the Division Bench of the High Court only sought the State legislature to make certain amendment regarding imposing of reasonable penalty commensurating to the gravity of the offence. However, after the passing of the judgment in 2000 the State Government had amended the provisions accordingly regarding awarding the proportionate penalty under the Act.

57. In the present case, the representatives of the respondents, though undisputedly, were the person's incharge of the goods. They were in a motor vehicle (car) which they stopped on giving signal by the detaining officer. However despite demand, he was not shown any documents covering the goods. The State has not raised any objection regarding goods vehicle record therefore the State cannot raise objection with regard to the first set of documents, however the representatives of the respondents failed to produce any sale bill, cash memo or a delivery note containing such particulars as may be prescribed in form ST-XXIV or XXIV-A as prescribed by Rule 56-A of the Rules. The respondents have admitted that there was no sale bill or cash memo pertaining to the goods in their possession. However, regarding the alleged delivery challan recovered from their possession, they have urged that the carriers of the goods were carrying the "jangad vouchers'" in common parlance known as "approval vouchers" and

the same may be treated equivalent to delivery notes. In Gujarati language and in common, the word used in gold, diamond and bullion trade is jangad voucher which is carried at the time of movement of goods. Sh. K. L. Goyal, Sr. Advocate has given much stress regarding taking note of "jangad vouchers" for seeking protection U/s 14-B (2) & (4) of the Act. The First Appellate Authority also agreed with the contentions of the respondent relating to jangad vouchers while accepting the appeals. He has now again vehemently stressed that while accepting the appeal, the First Appellate Authority observed that all the particulars as prescribed in the delivery note in form ST-XXIV-A, are contained in 'jangad vouchers" also and therefore, accordingly, because only nomenclature of the documents is different, therefore, on the strength of the same alone, it can't be assumed that the proper: documents were not being carried. It was not necessary for the traders entering, into the State of Punjab to carry form ST-XXIV or XXIV-A but it should be replica of the said form.

58. Having given my thoughtful consideration to the aforesaid contentions I do not find myself in agreement to the contentions raised by the counsel for the respondents as well as the observations made by the First Appellate Authority for following reasons:-

(i) *Even according to the respondents as well as language of "jangad Vouchers". They were never prepared with the intention to carry the same from one State to the other with the goods.*

(ii) *The "Jangad Vouchers/even as per the respondents, are approval vouchers and not the delivery notes.*

(iii) *On the perusal of the "jangad vouchers" as well as Form ST-XXIV, it transpires that there is word wide difference between the two documents. Both need to be reproduced. First of all, I pickup sample of "jangad vouchers" allegedly issued by Shardha Exporters and it is reproduced as under:-*

SHARDA EXPORTERS

DIAMONDS MANUFACTURERS, IMPORERS & EXPORTERES

On approval to *ASHISH UDANI* *Date 2.8.2002*

Through……..

294/295, Sopriwala Estate, Tata Road, Opera House, Mumbai-4, Tel.3694493 The following goods delivered to you on approval for showing to buyers/ inspection/assortment. The goods remain our property subject to our order and will be returned to us on demand in same condition. You will not sell or pledge or mortgage the said goods. You will be responsible for the goods till a sale note signed by me is passed in respect thereof or till the price is paid to me. The goods will be held in your custody to your risk in all respect. Subject to Mumbai jurisdiction.

No	*Particulars*	*Weight in Carats*	*Price per Carat (Rs./$)*
1.	*+6 ½ TTLB EXT*		
2.	*+6 ½ TTLB-2*		
3.	*+6 ½ OWTLB DLX*		
4.	*+6 ½ OWTLB EXT*		
5.	*OW.N*		
6.	*+6 ½ WHT*		

FOR SHARDA EXPORTERS

The above goods received and entrusted to me as per the terms and conditions mentioned above.

Receiver's Sign.

Other "jangad vouchers" are more or less of similar type. Now the Form ST-XXIV as prescribed under Rule 56-A of the Punjab General Sales Tax Rules is reproduced as under:-

Form ST-XXIV

Delivery Note *Serial No……*

(Section 14-B(2))

(1) *Name of the complete address of the consignor.*

(2) *Registration certificate number of the consignor under the Punjab General Sales Tax Act, 1948/ Central Sales Tax Act, 1956, if any.*

(3) *Name and complete address of the consignee.*

(4) *Registration certificate number of the consignee under the Punjab General Sales Tax Act, 1948 Central Sales Tax Act, 1956, if any.*

(5) *List of goods dispatched.*

(6) *Place of destination.*

(7) *Description of goods.*

(8) *Quantity-weight.*

(9) *Approximate value.*

(10) *Vehicle number.*

Signature/Thumb of the person transporting the goods

Signatures or thumb of the person issuing the delivery note.

*Dated*_____

Name of the check post……..

Dated……

59. Now, on analysis of the two documents, it transpires that no complete address of consignee or consignor has been given; no registration certificate of the consignor (owners of the goods) or the consignee, the place of dispatch and destination has been recorded. Many of the documents do not: contain the quantity, quality weight and approximate value of the goods. None of the documents contains the vehicle number through which the goods were to be transported and where to be transported and the purpose of importing goods is not mentioned, It has been observed in case of ***Thermo King India Pvt Ltd. Vs Deputy Excise and Taxation Commissioner (2012) 18 STM page 474 (P & H)*** that where there is no registration number of the consignor, consignee or the name and address of the consignee to whom the goods were to be delivered the appellant was liable to pay the penalty.

60. It may further be observed that on examination of the "jangad register", the entries mentioned therein do not correspond to the jangad vouchers, the jangad vouchers are admittedly not recognized under the Bombay Sales Tax Act, 1959 as valid document to accompany at the time of movement of goods from one State to the other, According to the appellants, the word 'jangad" was imported from Gujarat but the place from where the goods

have been dispatched is Mumbai, therefore the delivery note was required to be prepared by the owners of the goods as per the Bombay Sales Tax, 1959 as per the law of the State where these were to be taken. In taxation laws particularly and in the present society generally, where the State is Rules and Regulations and where the State has issued clear mandate to Its citizens to act or transact a business in a particular mode and manner and it also issued particular formats with a direction to proceed in that manner then the people of the State/Country can't claim themselves to be above or immune from such law and move as per Rules made by themselves and such documents can't take place of those as made by the State. Unless some exception to a custom or usage is made by a statue, the people can't force their own mode of working and ask the State to treat it as valid.

61. As a matter of fact such loose papers not bearing any serial Numbers, address of parties, quality, quantity and value of the goods and place of destination can be said to be the best tools to instrument the evasion of tax. Such documents are used for following reasons:-

(1) To make quick money.

(2) To evade many other taxes. Such as custom duty, Excise and income tax to meet particular situation in the market of competition.

62. The trade community in order to evade the tax keeps the duplicate or parallel account books and show imaginary stock in the balance sheet Production ratio is not shown realistically. Unaccounted sales and purchases are made. No sale invoices are issued, similarly, the issue of such type of "approval memos" or sale on loose sheets is also device to evade the tax. Later on after realization of sale proceeds these documents are destroyed or goods are shown as returned from the vendee or their agents as the case may be. They record such sales in rough books showing "the delivery for sales on approval" or "jangad" basis and finally it is shown that the order is cancelled and entry in the rough books is closed. As such this transaction running through alleged "jangad vouchers" is nothing but a device to keep the goods out of the account books and to evade the tax of the State where the carriers of the goods had entered I therefore, therefore, hold that these "jangad vouchers" can't be termed equivalent to the delivery notes so as to complete the formality as provided by Rule 14-B (2) of the Act.

63. Similarly, the respondents while entering into the State of Punjab have further contravened the Section 14-B (4) by not furnishing information at the nearest ICC i.e. ICC Mehemadpur (Import) Shamboo. In this case, the appellant has deliberately entered the State of Punjab after crossing all the ICCs situated in the Bombay and on the way to the State of Punjab, moved freely as if no law of the State governs them. AH this clearly shows that they did so with the intention to evade the tax. The counsel for the respondents has placed reliance on the judgment delivered in case of Kabir Diamonds (Supra) in order to contend that the goods being of precious nature, carriers could not generate information out of risk to their lives as there were all chances of they being robbed of the goods, As such their case is covered by the judgment of ***M/s Kabir Diamonds Pvt. Ltd., 109 Moti Bazar Chandni Chowk, New Delhi Vs State of Punjab (2010) 36 PHT 68 (PVT)***.

64. The provisions of Section 14-B (4) are of mandatory nature and no rule in the alternative had been made which may provide protection to the appellants or provided an exemption of the said Rule in a peculiar situation or event, therefore, the Rule has to be complied with by the appellants in letter and spirit. It may further be observed that in this democratic country where the State is responsible for the law and order as well as it stands as guard to the right to the life of the person or protection of property of the citizens, the people of the country move alongwith valuables and millions of rupees freely on the roads however, neither they are above or immune from law and nor they are provided any protection or exemption against such laws, therefore the trade community with an intention evade tax cant invent such a device or protection against such Rule. While dealing with the similar

circumstances, it was observed in case of ***Dwarka Gems Ltd. Vs. State of Punjab [(2012) 18 STM 499 (PVAT Tribunal)*** as under:-

> *"The preceding discussion crystallizes the conclusion that the goods in the possession of Sh. Ajit Singh were meant for trade. That being so, he was obligated to furnish a requisite declaration at the nearest ICC while entering the limits of Punjab State in compliance with the first proviso to sub-section 2 of section 51 of the Act, 2005. Before boarding the bus for Ludhiana, he could have asked the driver for stopping the Bus at the ICC. If the driver had refused to do so or Sh. Ajit Singh was apprehending danger to his life in reporting the goods at ICC, he could have asked the Chandigarh Branch of the appellant to provide a vehicle alongwith security for traveling to Ludhiana, Patiala and back to Chandigarh, The law can hardly recognize the excuse of Sh. Ajit Singh that he did not have control over the bus driver or that he would have endangered his life by making declaration at the ICC, Before undertaking journey he could have preconceived or visualized such a venture. He war; carrying jewellery worth lacs. The hidden risks could be well gauged or imagined before hand."*

65. Regarding furnishing of declaration and getting himself registered in the State of Punjab, if the person had imported the goods for trade in the State of Punjab. I find support from the judgment delivered in case of ***Unique Chains, Mumbai Vs. State of Punjab [(2009) 13 STM 515 (PVAT-Tri.)]***, wherein it was observed as under:-

> *"As per section 6 (3) (a) (l) of the VAT Act, if any person imports taxable goods for sale, he is to get himself registered under, the Punjab VAT Act, Neither permission for acting as casual trader was taken nor registration was there. The goods were intercepted transit and detained on 12.01.2008. There was deaf violation of first proviso of sub section (2) of Section 51 where the words "goods vehicle" is not there and any person selling goods in the course of interstate trade or commerce was to furnish a declaration with such particulars as may be prescribed. These particulars had been prescribed in sub Rule (i) of Rule 63 to be in form VAT 12. That was not done. On the other hand, some transactions of sale had definitely had been there at Ludhiana and Amritsar which showed that goods (Gold ornaments) had been brought for trade in Punjab."*

66. The facts in the case of Kabir Diamonds were quite different. In that case, the appellant while carrying the gold and diamond jewellery was traveling in the bus and it was not in his control to stop the bus at the ICC. The carrier could not direct the driver to stop the bus at the ICC as soon as bus entered in the State of Punjab to enable him to make a declaration. But in the, present case, it was not one person but three persons who were traveling in their own car, they before carrying the goods for trade knew well for generating the information regarding the goods at the ICC before entering into the State, they being the regular traders knew fully well as to how they should move and report at the ICC, But they intentionally did not make any such report despite the fact that they crossed many ICCS falling on the way from Mumbai to Punjab and the vehicle in which they were moving was within their control. Therefore, the judgment of M/s Kabir Diamonds which is on its own facts and circumstances would not come to the protection of the carriers in this case.

67. As regards, the next contention raised by the counsel for the respondent that the goods were not meant for sale which is a condition precedent for invoking Section 14-B of the Act, therefore, the penalty U/s 14-B (7) (iii) of the Act can't be imposed upon the appellants, it may be noted that the said contention, in the given circumstances of the case, can't be

accepted. On critical analysis of the provisions of Section 14-B as envisaged under the Punjab General Sales Tax Act, 1948, as amended vide Act No.13 of 1999 w.e.f. 29.9.1999, it may be observed that the owner or person incharge of the goods which are meant for purposes of "trade" was required to carry with him, the goods vehicle record, a trip sheet and log book as the case may be and the goods receipt and a sale bill or cash memo or delivery note containing such particulars as may be prescribed. Similarly, as per Sub-Section 14-B (6) of the Act also requires that such person, if carriers the goods under transport, are meant for "trade", if not covered by genuine documents, he would be liable to pay penalty under the Act, The word "trade" has been defined in Section 2 (L) of the Punjab General Sales Tax Act, 1948 which reads as under:-

> *"Trade includes (i) any trade, commerce or manufacture or any adventure or concern in the nature of the trade, commerce or manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on with the motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and (ii) Any transaction in connection with, or ancillary or incidental to, such trade, commerce, manufacture, adventure or concern."*

68. Similarly, as per Webster dictionary the word "trade" is defined as under:-

> *"The activity or process of buying selling or exchanging goods or services;*
>
> *The amount or thing or services that are brought and sold;*
>
> *The money made by buying and selling thing or services;*
>
> *The Act of exchange of one thing for another;*

69. The word trade is synonyms to business. If any person indulges into any business or trade or any Act or activity which could be treated as a process for buying and selling the goods or services that could be connection with business or trade as to fall within the proviso to Section 14-B of the Act.

70. In the present case, the appellants were the person incharge of the goods they had brought the goods for trade. The circumstances including the quantity of the goods, the note book containing transactions before entering into the State of Punjab reveal that the carriers were not brokers but they being closely related to the owners had brought the goods for sale in the State of Punjab, however, with the passage of time, they continued improving their version. Since the goods were in large quantity and brought by four persons 1 therefore, those could not be only for exhibition. They had come from a long distance. Even as culled out from the "jangad vouchers" the sale was to be complete on payment. In other words, it also amounts to safe on payment of price thereof at a future date. The story that they had come from Punjab only for exhibition is erroneous as they had not come under any brand name or to say with a particular design. They did not know as to where they had to go and at which place and time they had to place the goods for exhibition. They did not know as to who were the foreign buyers in Punjab. The Tribunal also takes note of it that there was not such a known diamond market in the State of Punjab for exhibition of such diamonds to the foreign buyers. As such these goods can't said to be for exhibition or for showing them to the foreign buyers but fact remains that the respondents had entered the State of Punjab with the valuable goods to take them to Ludhiana (a business hub of Punjab State) without any genuine documents for the purposes of trade with the intention to evade the tax. They also could neither show any documents relating to the goods nor they, generated/reported the goods by making a declaration under Rule 56-A in form ST XXIV-A at any check post or ICC regarding those goods. It is evident from the above position that had the goods not been checked by the officers

of the department, then the possibility of the same being kept out of the account books as well as their disposal without payment tax was sure.

71. Rule 56-A of the Punjab General Sales Tax Rules, 1949 reads as under:-

> *"Delivery note and declaration referred to in Sub-Section (2) & (4) of Section 14-B shall be in form ST XXIV and XXIV-A respectively.*
>
> *The carriers of the goods have also contravened Rule 56-B of the Rules of 1949. The said Rule imposes a serious obligation upon the carrier of the goods to maintain true record of such goods transported, delivered or received for transport in the form of transport receipt forwarding note, way bill dispatch register and delivery register which shall be in the prescribed forms respectively and such record shall be preserved by him for a period of five years."*

72. As regards the production of account books, no regular books of account allegedly maintained by the respondents except those Jangad Registers were produced. Such account books had never been made a part of the record.

73. No other argument has been raised. The First Appellate Authority has not noticed all the facts, circumstances, the documents and the legal position as referred, The impugned judgment is quite in ignorance of the correct position of law therefore, the same being perverse deserves to be reversed.

74. As an upshot of the aforesaid discussions, the questions as framed in the proceeding paras are answered against the respondents.

75. Consequently, all the five appeals are accepted, impugned order passed by the Deputy Excise and Taxation Commissioner is set aside and the order passed by the Assistant Excise and Taxation Commissioner is restored. Copy of the judgment be placed in each file.

76. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

Go to Index Page

REVISION NO. 7 OF 2014

SKYLARK SPINNING MILLS
Vs
STATE OF PUNJAB

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

3rd June, 2016

HF ▶ Revenue

Entire amount of exemption is liable to be recovered from an exempted unit who closes his business before expiry of exemption period and gets its registration cancelled.

EXEMPTED UNIT—CLOSURE OF UNIT—RECOVERY OF EXEMPTION AMOUNT—REVISION UNIT GRANTED EXEMPTION FOR 9 YEARS—DISCONTINUED ITS BUSINESS AFTER 5 YEARS—REGISTRATION CERTIFICATE UNDER SALES TAX ACT GOT CANCELLED—REVISIONAL ORDER PASSED AFTER EXPIRY OF EXEMPTION PERIOD SEEKING RECOVERY OF EXEMPTION AMOUNT ON ACCOUNT OF CLOSURE OF UNIT—APPEAL FILED BEFORE TRIBUNAL—ONCE REGISTRATION CERTIFICATE IS CANCELLED THE UNIT CEASES TO BE A UNIT ELIGIBLE FOR EXEMPTION—NO OPPORTUNITY REQUIRED FOR CANCELLATION OF CERTIFICATE WHICH WOULD BE DEEMED TO HAVE BEEN CANCELLED AUTOMATICALLY—PROVISIONS OF RULE 9(5) OF PGST (D&E) RULES 1991 ARE RETROSPECTIVE AND HENCE APPLICABLE TO PRESENT CASE—ORDER PASSED WITHIN REASONABLE PERIOD—APPEAL DISMISSED - *SECTION 21 OF PGST ACT, 1948 RULE 9(5) OF PGST (D&E) RULES, 1991*

Facts

The petitioner dealer was an exempted unit under the industrial policy of state having been granted exemption from 1.8.1999 to 31.7.2008 for an amount of Rs.1,61,10,000/-. The petitioner firm remained in operation from August 8, 1998 to April 29 , 2004 and availed the exemption. Thereafter, it discontinued its business and got the registration certificate under sales tax Act cancelled on 30.4.2004 . The returns filed by the dealer during the period upto 2004 were assessed by assessing authority and the entire amount of tax considered exempt in view of exemption being available to the assessee.

A suo moto notice was issued to the petitioner on 25.6.2008 for recovery of exemption amount and after giving opportunity of hearing an order of revision u/s 21(1) of the PGST Act, 1948 was passed creating demand under local Act and Central Act. An appeal is filed before Tribunal inter-alia contending:

1) Exemption certificate could have been cancelled after providing the unit an opportunity of being heard which has not been done.

2) *The exemption certificate was not cancelled at any time during currency of exemption of exemption certificate and no notice of recovery could be issued after expiry of period of exemption i.e. 31.7.2008.*

3) *The provisions of Rule 9(5) of PGST (D&E) Rules 1991 were introduced by way of amendment in 2001 whereas exemption certificate was issued in 1998 and therefore, amendment made in 2001 would not be applicable to the present case.*

Dismissing the appeal, Tribunal held:-

1) *Once the exemption certificate of a dealer is cancelled, he ceases to be a unit to which exemption is admissible. In this case, the registration certificate of the dealer , being a unit, has been cancelled on the application made by the petitioner which would result into the dealer automatically losing his right to exemption which was available only to a unit as his eligibility would be deemed to have been cancelled.*

2) *The amendment made in Rule 9(5) of PGST (D&E) Rules, 1991 is retrospective in nature as the legislature never intended to make the same as prospective. The dealer was bound by the Rules which would include the Rules amended from time to time. Moreover, the wording of the Rule indicate that it is procedural in nature.*

3) *As regards the contention of grant of opportunity u/r 8 (2) of the Rules, the hearing is required to be given only where the authority wants to cancel the exemption certificate. But in the present case, appellant voluntarily got his registration cancelled and therefore he was aware of the fact that his benefits would also be liable to be withdrawn. As such he is estopped from taking benefit of Rule 8(2) of 1991 Rules .*

4) *As regards limitation, the order has been passed within reasonable period and therefore, impugned order cannot be faulted on that ground.*

Resultantly, the appeal is dismissed.

Cases referred:

- *Stella industries Pvt. Ltd. Vs. State of Haryana and others (2009) 20 VST 62 (P&H).*
- *Oswal Agro Mills Vs state of Punjab and others (2005) 139 STC page/51 (P&H)*
- *Star Rice Industries Pvt. Ltd. Vs. State of Punjab decided on 30.5.2014*
- *Hari Chand Rattan Chand & Co. Vs the Deputy Excise and Taxation decided on 22 May, 1969.*
- *Narayan Singh Mohinder Singh Vs the State of Punjab decided on 17 July, 1962*
- *National Rayan Corporation Ltd. Vs. The Punjab State Legislature*

Present: Mr. K.L.Goyal, Sr. Advocate alongwith Mr. Navdeep Monga, Advocate
Counsel for the appellant.

Mr. N.K. Verma, Sr. Dy. Advocate General for the State.

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

1.This is a petition U/s 21 of the Punjab General Sales Tax Act, 1948 read with Section 65 of the Punjab Value Added Tax Act, 2005 against the order dated 7.10.2008 (the copy of which was supplied on 20.5.2014), passed by the Revisional Authority directing the recovery of Rs.1,89,550/- under the Punjab Value Added Tax Act, 2005 and Rs.5,36,071/- under the Central Sales Tax Act, 1956 regarding which the exemption was granted to the petitioner

during the year 1999-2000 to 2003-04 pursuant to the exemption certificate No. 15/98-99/ Mns dated 24.2.1999 issued by the Excise and Taxation Commissioner, Mansa.

2. The facts in brief are that the petitioner firm has been engaged in manufacturing of cotton yarn. The said firm being "eligible unit" moved an application for seeking exemption certificate which was granted to him by the Assistant Excise and taxation Commissioner on 24.2.1999 granting exemption to the tune of Rs. 1,61,10,000/- or w.e.f. 1.8.1999 to 31.7.2008 whichever is earlier.

3. The petitioner firm remained operative w.e.f. 8.8.1998 to 29.4.2004 and enjoyed the exemption during this period. However, on the application of the petitioner firm to the effect that it has been discontinuing the business and his registration certificate be cancelled. The registration certificate of the petitioner firm was cancelled by the competent authority on 30.4.2004, on account of the closure of business by the petitioner.

4. The petitioner had filed the returns since the year 1999- 2000 to 2003-04 which were decided by the Assessing Authority. The details of which are as under:-

Assessment year	Date of decision	Exemption on account of tax availed during the year
1999-2000		96,386/-
2000-01	7.4.2003	------
2001-02	4.1.2003	44,225/-
2002-03	3.9.2003	21,599/-
2003-04	21.3.2005	42,340/-
	Total	2,04,550/-(less tax paid 15000/-) Tax exemption was enjoyed to the tune of Rs. 1,89,550/-

5. Similarly, the petitioner had enjoyed the tax exemption under the Central Sales Tax Act, 1956 to the tune of Rs. 5,64,871/- w.e.f. 1999-2000 to 2003-04. However, the appellant firm discontinued its business for all times to come and for all intents and purposes. The issuance of the certificate of exemption dated 24.2.1999 was subject to the provisions and conditions contained in the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (herein referred as the D and E Rules, 1991). Accordingly, on cancellation of registration certificate, the department considered that the eligibility/ exemption certificate issued to him stood cancelled consequently, it issued suo-moto notice to the petitioner on 25.6.2008 for recovery of the exemption amount of tax availed by him in the light of the Section 9 (5) of the D & E Rules 1991. Consequently, after giving full opportunity of being heard, the Revisional Authority, while exercising the powers U/s 21 (1) of the Punjab General Sales Tax Act, 1948 passed an order creating demand to the tune of Rs. 1,89,550/- under the Punjab Value Added Tax Act and Rs.5,36,071/- under the Central Sales Tax Act, 1956.

6. Feeling aggrieved against this order passed by revisional authority dated 7.10.2008, the petitioner has come up in revision.

7. Arguments head. Record perused.

8. As regards preliminary objection raised by the State counsel regarding deposit of 25% of the demand before the appeal is entertained, this Tribunal does not find any substance in it, the case pertains to the demand created under the Punjab General Sales Tax Act, therefore, pre deposit of 25% was not a mandatory formality for entertaining the revision petition U/s 21 (1) of the Act, therefore, the revision petition was entertained without deposit of 25% of the demand.

9. The next contention raised by the counsel for the appellant is that the appellant was granted registration U/s 7 of the Punjab General Sales Tax, 1948 (herein referred as the Act, 1948) and the cancellation thereof as been made on the application of the appellant U/s 7 (6) of the Act by the Assessing Authority in the background as referred to above. The Counsel has urged that the eligibility certificate is issued to a unit for the tax exemption by the District Industries Centre, whereas the exemption certificate is issued under Rule 5 (1) of the D & E Rules, 1991 by the Designated Officer (Excise and Taxation Officer). The said certificate could be cancelled under Rule 8 (2) by the prescribed authority (AETC) after providing the 'unit' an opportunity of being heard. The prescribed authority, meant for cancellation of the exemption certificate, has been defined under Rule 2 (23) of the D & E Rules, 1991 which reads as under:-

> *"Prescribed authority means an officer of the department of Excise and Taxation, incharge of the District."*

10. The counsel has vehementally urged that the Exemption Certificate was not cancelled at any time in compliance of Rule 8 (2) of the D & E Rules, 1991 after providing an opportunity to the appellant of being heard. It was further urged that certificate for registration could be cancelled during the period before expiry of the exemption certificate and no notice for recovery could be issued after expiry the period of exemption i.e. 31.7.2008. The order of recovery is also without jurisdiction in as much as it was passed without cancellation of the Exemption Certificate and exemption certificate could be cancelled only before the expiry of date of exemption. In this regard, it has placed reliance on the following judgment:-

> ***M/s Stella industries Pvt. Ltd. Vs. State of Haryana and others (2009) 20 VST 62 (P&H).***

11. It was also contended that the provisions of Rule 9 (5) were introduced by way of amendment in 2001 whereas Exemption Certificate was issued in 1998, therefore, the amendment made in 2001 would not be applicable to the facts of the present case. In this regard, he has relied upon the judgment ***Oswal Agro Mills Vs state of Punjab and others (2005) 139 STC page/51 (P&H)*** and ***Star Rice Industries Pvt. Ltd. Vs. State of Punjab decided on 30.5.2014***.

12. To the contrary, Sh. N.K. Verma Sr. Dy. Advocate General has countered the contentions in the best of his competence and command by urging that the provisions of Section 9 (5), though had been added by way of amendment in 2001, yet the same are retrorespective in nature and apply to the Certificates in operation. The legislature never intended for non application of this amendment to the Exemption Certificates issued to the dealers prior to this amendment in the Rule. Rather he has highlighted that the provision being procedural in nature is applicable to all the pending proceedings. He further contended that the petitioner "unit" having itself got cancelled its registration certificate would loose its identity for all intents and purposes including that the petitioner having lost the status of an unit cant claim the benefit of Section 8 (2) of D & E Rules, 1991. On cancellation of the registration certificate, the petitioner does not remain eligible unit, as such Exemption Certificate issued in his favour would automatically be deemed to have been cancelled. He has placed reliance on the judgments delivered in the following cases:-

11. Judgment on the merits of the case

1. State of Haryana Vs. A.S.Fuels Pvt. Ltd (SC) para 9,10,11.
2. T.D.T. Copper Limited Vs Haryana Tax Tribunal decided on 2.4.2012 (Pb & Hr) para No.10 wherein the Hon'ble High Court observed that Withdrawal of eligibility certificate would result into automatic cancellation of the exemption certificate

3. State of Haryana Vs Bharti Teletech (Supreme Court)

Para 23, 24 & 25 wherein it was observed that no lenient view should be taken in favour of such like units.

13. It was also contended that the proceedings U/s 21 (1) of the Punjab General Sales Tax Act, 1948 as well as under the Central Sales Tax Act have been suo moto initiated for which statue does not fix any period of limitation. He has taken me through Section 21 (1) of the Punjab General Sales Tax Act, 1948 which reads as under:-

> *"The Commissioner may of his own motion call for the record of any proceedings which are pending before, or have been disposed of by any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order made therein and may pass such order in relation thereto as he may think fit."*

He has referred me to the following judgments:-

I ***Hari Chand Rattan Chand & Co. Vs the Deputy Excise and Taxation decided on 22 May, 1969***.

Wherein, it was observed that there is no period of limitation prescribed for the exercise of revisional powers suo-moto by the Commissioner U/s 21 (1) of the Punjab General Sales Tax Act 1948.

II. ***Narayan Singh Mohinder Singh Vs the State of Punjab decided on 17 July, 1962*** wherein, it was observed that Commissioner is not bound to take into consideration the provisions of Section 11-A when exercising his revisional powers U/s 21 (1) of the Act. He also contended that the judgment if any which may refer to the period of limitation, does not lay down the strict rule of law but indicates that the revisional powers should be exercised within a reasonable time. In the present case the authorities have initiated proceedings within a reasonable time. Therefore, the said judgment is not applicable to the facts of the present case.

III. ***National Rayan Corporation Ltd. Vs. The Punjab State Legislature*** did not intend to fetter the powers of the Commissioner U/s 21 (1) of the act and the rule of limitation gave free hand to the Commissioner to exercise its powers, if there are reasonable grounds to appear regarding fraud or concealment of facts. He has also taken me through the judgments cited by the counsel for petitioner and contended that the same are not applicable to the facts of the present case. He pointed out that in case of "***Hisar Cement Pvt. Ltd Vs State of Haryana*** (Supra). The Eligibility Certificate was cancelled after the expiry of the exemption period, whereas in our case the R.C. was cancelled before the period of expiry of exemption, consequently eligibility ceased to exist therefore, the Exemption would be deemed to have been cancelled during the exemption period. In that case the exemption was for 18.9.93 to 17.9.02 and the authority decided to withdraw the certificate w.e.f. 27.1.2003. In these circumstances, the Court had observed that any order passed for withdrawal of eligibility certificate after its currency is over, would be clearly beyond the enabling provision of sub rule (8) of Rule 28-A of the Rules.

14. In case of Stella Industries Vs State of Haryana (Supra), it was observed that after its currency is over, any order passed for withdrawal of eligibility certificate, would be clearly beyond provisions of Sub Rule 8 of Rule 28-A of the Rules. In the present case the exemption has not been exhausted and period of exemption had not expired when registration certificate was cancelled.

15. Arguments heard. Record perused.

16. The admitted facts of the case which, have not been controverted or disputed by the petitioner are that the appellant must be a "unit" for seeking deferment of exemption from the payment of tax under the D & E Rules, 1991. Rule 3 (i) relating to the conditions of eligibility for attaining eligibility certificate is relevant which reads as under:-

Rule 3 Conditions for eligibility:-

(i) Deferment or exemption from payment of tax under the Act shall be admissible to a unit.
The word unit has been defined in Rule 2 (xxvii) of D & E Rules, 1991 which reads as under:-

"Unit" means an industrial unit which is registered as a dealer under the Act. If more than one units are owned or setup by a dealer, then each unit shall be eligible for exemption separately under the Act.

Note:- The expression and terms, used in these Rules which have not been defined, shall have the same meaning as have been assigned to them under the Act or the Rules made thereunder.

17. Admittedly, the mode of availing the benefit of deferment or, exemption from the liability to pay tax can be granted to a unit to which eligibility certificate has been issued. From the combined reading of Rule 2 (XXVII) Rule 3 (1) and Rule 5 (1) of D & E Rules, 1991, it is apparent that only those persons, who are registered dealers, were entitled to get an Eligibility Certificate and could apply for seeking deferment or exemption certificate i.e. why the word 'unit' has been used in the Rules as it implies to registered dealers.

18. Rule 8 (1) Sub Rule (ii) refers to the following conditions which may enable the department to cancel the deferment or exemption certificate.

Rule 8 Cancellation of deferment or exemption certificate

The deferment or exemption certificate granted in respect of a unit shall be liable to be cancelled on any of the following grounds:-

(i) That the certificate has been obtained by fraud, deceit, misrepresentation, misstatement or concealment of material facts.

(ii) That 'unit' had discontinued its business at any time for a period exceeding six months or it has closed his business during the period of deferment of exemption.

(iii) _____

(iv) _____

(v) _____

(vi) _____

(vii) _____

(2) The prescribed authority shall before passing an order of cancellation on the grounds as set out in Sub Rule (ii) had to give an opportunity of being heard to the unit.

19. It may further be observed that the Exemption Certificate was got to be renewed from year to year. The unit was also to be asked to furnish the yearly return as per Rules. Now coming to the factual scenario as prevailing in the present case, it is noticed that the discontinued the business after 31.3.2004 and it, by moving an application of its own, got cancelled the registration certificate for all intents and purposes and it did not file any annual returns thereafter.

20. In these circumstances, when once the registration certificate of the petitioner (an unit) has been cancelled on the application made by the petitioner itself, the result would be that the petitioner ceased to be an unit, therefore, he automatically looses his right to continue to enjoy eligibility for exemption which was available only to an 'unit' and as his eligibility would be deemed to have been cancelled. I find support to my this view from the judgment delivered in case of State of Haryana an others Vs. A.S. Fuels Pvt. Ltd. and another {IT 2008 (9) SC 281:2008 (9) SCC 230}. In the said case, the State of Haryana had approached Supreme court as the High Court had construed the effect of sub-rule 10 (v) of Rule 28-A of the Rules which authorizes the department to withdraw the tax exemption certificate but had granted liberty to the State to scrutinize if it was a case for withdrawal of the eligibility certificate under sub-rule (8) of Rule 28A of the Rules and, thereafter, to proceed in accordance with the law. However, the Apex Court while scanning the anatomy of Rule 28A, opined that under sub-rule 8(b), when the eligibility certificate is withdrawn, the exemption/entitlement certificate is also deemed to have been withdrawn from the First day of its validity and the unit shall be liable to payment of tax, interest or penalty under the Act as if no entitlement certificate had ever been granted to it. Thereafter, the Supreme Court adverted to sub-rule 11 (a) and, in that context, it observed thus:-

> *"....There were several conditions which are relevant; firstly, there is a requirement of continuing the production for at least next five years; secondly, consequences flowing in case of violation of the conditions laid down in clause (a). In other words, in case of non continuance of production for next five years, the result is that it shall be deemed as if there was no tax exemption/entitlement available to it. The proviso permits to the dealers to explain satisfactorily to the DETC that the loss in production was because of the reasons beyond the control of the unit. The materials have to be placed in this regard by the party. The High Court seems to have completely lost sight of sub-rule (11) (b)"*

21. In this case earlier, the Hon'ble High Court had left the matter regarding the cancellation of the eligibility certificate to the screening committee but the Apex Court said that the High Court had completely lost site of Section-11 (b) of the Rules, which provide that if the condition stipulated in "clause-A" are not fulfilled. It shall be deemed that the exemption/entitlement was not ever affected. On cancellation of eligibility certificate or deferment certificate or exemption certificate before it is due for expiry, the entire amount of tax deferred or exempted shall be payable immediately in lump sum and the provisions relating to recovery of tax, interest and imposition of penalty under the Act shall be applicable in such cases. As such in the present case also, since the petitioner himself applied for discontinuing the business and cancellation of the registration certificate therefore it ceases to be an unit and on cancellation registration certificate, the eligibility/exemption certificate issued to it would be deemed to have been automatically cancelled. Consequently, the exemption certificate would also loose its existence and the petitioner would become liable to make the payment when once the petitioner looses the status of a "unit" then the petitioner cant claim the benefit of Rule 8(2) of the act which is applicable only to an unit.

22. As regards, the contention of the counsel for the appellant that Sub Rule (5) of Rule 9 is retrorespective in nature and would not be applicable to the certificates issued prior to 31.9.2001, when Rule 9 (5) came into force.

23. In this regard, it may be observed that the legislature never intended to make the same of prospective nature. The exemption certificate was issued subject to the conditions of the D & E Rules, 1991. The appellant cant say that he was to be governed by the Punjab General Sales Tax (deferment and exemption) Rules 1991. The rules include the rules which have been amended from time to time. The wording of the Rule also indicates that it being procedural in nature, would apply to the cases where the cancellation is made after coming into force of the Rule.

24. As regards, the contention that opportunity of being heard has to be granted under Rule 8 (2) of Rules before the exemption certificate is cancelled by the authority. No doubt the intention to provide a hearing to the person, against whom the order is likely to be passed, was to be given to such person so that he should have the time and opportunity to explain the situation existing against him. The certificate holder could explain the reasons for discontinuing the business and could say that he had discontinued the business for certain reasons. But in the present case, the appellant voluntarily requested the authority to cancel the registration. He also never challenged the said order of cancellation since 2004 till today. As such he knew and was aware that all the benefits awarded to him were liable to be withdrawn or would stand automatically withdrawn on the cancellation of the registration certificate, therefore, in such cases, the petitioner is estopped to claim benefit of Section 8 (2) of the D & E Rules, 1991. I find support to my this view from the judgment delivered in case M/s T.D.T. Copper Limited vs. Haryana Tax Tribunal Chandigarh and others (Supra) wherein, it has been observed in para 10 as under:-

> *"In view of the clear enunciation of law by Hon'ble the Supreme Court in A.S. Fuels Pvt. Limited's case (Supra), it follows that the petitioner is not entitled to grant of exemption and that of the eligibility certificate. The petitioner would be responsible to deposit the whole amount of tax exemption taken by him along with the other amount. The writ petition is wholly without merit and is, thus, liable to be dismissed."*

25. I have also gone through the judgments delivered in case of ***Hisar Cement Pvt. Ltd. Vs. State of Haryana and others*** and ***M/s Stella Industries (P) Ltd. Vs. the State of Haryana*** (Supra) and find that both are not applicable to the facts of the present case.

26. Having gone through the orders passed by the Revisional Authority, this Tribunal is of the definite opinion that the petitioner could not take benefit of its own wrong and now come to contend that he should have been awarded the opportunity of being heard before cancellation of the exemption certificate.

27. As regards, the question of limitation, the counsel has cited the judgment ***State of Punjab and Others Vs Bathinda, District Cooperative Milk P.Union Ltd 2007 (6) Recent Apex Judgments (RAJ) 158*** in order to contend that limitation to entertain the revision was at the maximum within five years but in the present case the assessments for the year 1999-2000 to 2003-04 were revised vide order dated 7.10.2008, therefore, the same are time barred. In this regard, it is observed that the exemption certificate was upto the year, 2008. The revision were initiated by the department suo-moto on 25.6.2008 while exercising the powers U/s 21 (1) of the Act, 1948 by the competent authority. Suo- moto proceedings initiated by the department have not been circumvented by any law of limitation in as such as the Punjab General Sales Tax Act, 1948 does not prescribe any particular period of limitation. However, the Apex Court has also not created any absolute bar to initiate Suo-moto revisional proceedings but the department should have the reasons to explain such delay. In the present case, the assessment

for the year 2001-02 was made on 4.10.2003, for the year 2002-03 on 3.9.2003, for the year 2003-04, on 21.3.2005, the certificate of exemption was upto 2008.. The department had issued notice for revising the assessment on 25.6.2008 and the order was passed by the revisional authority on 7.10.2008, therefore, the impugned order having been passed within a reasonable time can't be stigmatized on the ground of limitation.

28. As such this Tribunal is of the opinion that the Revisional Authority acted within a reasonable time.

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

30. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 321 OF 2013

SUKHRAJ AGRO PAPER LTD.
Vs
STATE OF PUNJAB

JUSTICE HARBANS LAL
CHAIRMAN

3rd October, 2013

HF ▶ Assessee

Penalty imposed on basis of change of opinion after passing of subsequent judgment is liable to be set aside as previously law stood in favour of dealer.

PENALTY - DIESEL – CAPTIVE CONSUMPTION – INPUT TAX CREDIT – CHANGE OF OPINION – INPUT TAX CREDIT AVAILED ON DIESEL USED FOR CAPTIVE CONSUMPTION INADMISSIBLE AS PER LAW – DEMAND RAISED AND PENALTY IMPOSED – APPEAL BEFORE DETC PARTLY ACCEPTED – APPEAL BEFORE TRIBUNAL CONTENDING THAT AT THE TIME OF FILING RETURNS LAW STOOD IN FAVOUR OF DEALER – SUBSEQUENT PASSING OF JUDGMENT BY HIGH COURT LED TO CHANGE OF OPINION OF FIRST APPELLATE AUTHORITY – PENALTY THUS OUGHT TO BE DELETED ON GROUND OF CHANGE OF OPINION – APPEAL ACCEPTED AND PENALTY DELETED – *S. 13 ,53 OF PVAT ACT, 2005*

Facts

The manufacturing dealer/ appellant had availed Input Tax Credit against the purchase of diesel used for captive consumption which was not admissible u/s 13 of the Act as per department. An additional demand was thus created. Aggrieved by the order an appeal was filed which was partly accepted. An appeal is thus filed before Tribunal.

Held:

It is contended that when assessee filed its returns, at that time law was in favour of assessee in respect of captive consumption of diesel. Subsequently, there was change of law in view of a judgment passed by the High court. The DETC passed its order after this judgment was passed changing its opinion. On this ground the penalty should be waived off. The contention so raised is accepted and penalty is waived of on the ground of change of opinion..

Case referred:

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

Present: Mr. Rishab Singla, Advocate, Counsel for the appellant.
Mr. Rajat Bansal, Assistant Advocate General for the State.

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JUSTICE HARBANS LAL, CHAIRMAN

1. This appeal is directed against the order dated 28.3.2013 passed by the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala, whereby, he partly accepted and partly dismissed the appeal preferred against the order dated 27.7.2012 of the Assistant Excise and Taxation Commissioner-cum-Designated Officer, Barnala, creating an additional demand of Rs.l4,13,284/-while framing assessment of the appellant-assessee for the year 2008-09 U/S 29 of the Punjab Value Added Tax Act, 2005 (For short, the Act, 2005).

2. The factual matrix of this case is that the appellant is engaged in the manufacturing of craft paper, sale and supply thereof. The returns filed by the dealer alongwith VAT-20 were examined by the Designated Officer and found that the dealer had availed an ITC against the purchase of Diesel, shown tax free sales to the tune of Rs. 1,29,65,480/- against the purchase of Rs.21,55,558/- and had also claimed an ITC which was not admissible under Section 13 (5) of the Act, 2005. On the basis of these discrepancies, the assessment proceedings were initiated by the Designated Officer by issuing a notice to the appellant. In response to the notice, the representative of the firm appeared, who was confronted with the facts of the case. After completing legal formalities, the Assistant Excise and Taxation Commissioner-cum-Designated Officer, Barnala framed assessment of the appellant-assessee for the year 2008-09, creating an additional demand of Rs.14,13,284/- under the Punjab Value Added Tax Act, 2005 vide his order dated 27.7.2012. Being aggrieved therewith, the appellant-assessee went up in appeal, which was partly accepted on the issue of sale of wheat straw, but rest of the appeal was dismissed by the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala, vide his order dated 28.3.2013, where-against, this appeal has been filed.

3. I have heard the Id. counsels for the parties, besides perusing the record with due care and circumspection.

4. Mr. Rishab Singla, Advocate appearing on behalf of the appellant- assessee has confined his arguments only to the penalty of Rs.1,55,688/- imposed U/s 53 of the Act, 2005 as upheld by the Deputy Excise and Taxation Commissioner(Appeals), Patiala Division, Patiala. Mr. Singla has canvassed at the bar that when the appellant-dealer filed the returns, the law regarding captive consumption On diesel was in favour of the appellant-dealer and subsequently, the law underwent change in view of ***State of Punjab and others Vs. Malwa Cotton & Spinning Mills Ltd.(2011) 39 VST 65 (P&H)***. He further puts that in this regard, there being change of opinion, the penalty of Rs. 1,55,688/- is liable to be waived off.

5. Mr. Rajat Bansal, Id. Assistant Advocate General could not controvert this contention in any manner.

6. In ***Malwa Cotton and Spinning Mills Ltd.*** (Supra) the Division Bench of Hon'ble Punjab and Haryana High Court has held as under:-

> *"Under Section 13 (5) of the Punjab Value Added Tax Act, 2005, diesel is an item on which input-tax credit is not available unless as provided under clause (b), i.e. unless the taxable person is in the business of selling such products. Therefore, input-tax credit paid on purchase of diesel used in generation of electric power for captive use in the factory of the dealer cannot be claimed in terms of clause (i) of Section 13 (5). An express and special provision excludes a general provision".*

7. This judgment was delivered on 24th of August, 2010, whereas, herein, the assessment year is 2008-09, when the law on the issue of captive consumption of purchase of diesel used in generation of electric power for captive use was in favour of the appellant-dealer. Obviously, the matter involves interpretation of law. The appeal was decided by the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala on 28.3.2013

i.e. after coming into being of the judgment in ***M/s Malwa Spinning Mills Ltd.*** (Supra). There being change of opinion, the penalty of Rs. 1,55,688/- is waived off. The appeal is accepted to this extent and rest of the appeal is dismissed. Accordingly, this appeal is disposed off.

8. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 548 OF 2014

RAJIV KUMAR AGGARWAL CONTRACTORS
Vs
STATE OF PUNJAB

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

17th May, 2016

HF ▶ Revenue

No deduction is admissible on Diesel being used as raw material in a works contract u/r 15(4).

WORKS CONTRACT - INPUT TAX CREDIT – DIESEL – FUEL FOR RUNNING THE PLANT – USE OF DIESEL IN RUNNING A HOT MIX PLANT – ITC CLAIMED ON FUEL - CLAIM DENIED BY DEPARTMENT – DEMAND RAISED AND PENALTY AND INTEREST IMPOSED – APPEAL BEFORE TRIBUNAL – HELD: CLAIM RIGHTLY REJECTED AS ITC ON DIESEL STANDS DISALLOWED AS PER S.13 OF THE ACT - NO SALE OR PURCHASE OF DIESEL CARRIED OUT – THEREFORE, NO ITC IS TO BE ALLOWED ON DIESEL IN WORKS CONTRACT – INTEREST RIGHTLY LEVIED AS RETURNS FILED SUFFERED FROM ILLEGALITY INSTIGATING THE DEPARTMENT TO FRAME ASSESSMENT - *S.13 OF PVAT ACT, 2005*

WORKS CONTRACT - DIESEL – DEDUCTION – DEDUCTION U/R 15(4) CLAIMED ON DIESEL USED IN RUNNING A PLANT – HELD : NO DEDUCTION ON DIESEL IS TO BE ALLOWED AS IT IS USED AS RAW MATERIAL IN THE PRESENT CASE OF WORKS CONTRACT – *RULE 15(4) OF PVAT RULES , 2005*

Facts

The appellant is engaged in business of hot mix plant where diesel is used for running the plant and is a part of Integral process. The appellant claimed Input tax credit on diesel. However, the assessment was framed to the contrary raising a demand and penalty and interest was imposed. The first appeal was dismissed. An appeal is thus filed before Tribunal claiming deduction on diesel u/r 15(4) of the Rules.

Held:

1) *Had it been the intention of statute to treat diesel as fuel for production in works contract, then it would have specifically mentioned the same in the Act and would not have added provisions disallowing ITC on diesel by inducting S.13(4) and (5) and (i) of the PVAT Act. Therefore, no deduction can be allowed on diesel in works contract.*

2) *Also, deduction u/r 15 is not permissible as diesel is only a raw material in the present case and no deduction is to be allowed on raw material.*

3) *No ITC is to be allowed as appellant is not engaged in sale and purchase of diesel.*

4) Regarding the contention that no interest should have been imposed, it is held that since the annual returns filed by the appellant suffered from illegality, claim of interest as raised by department, is justified. The appeal is dismissed.

Present: Miss Supriya, Advocate Counsel for the appellant.
Mr. N.K. Verm a, Sr. Dy. Advocate General for the State.

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

1. The Assistant Excise and Taxation Commissioner, Hoshiarpur while exercising powers U/s 29(7) of the Punjab Value Added Tax Act, 2005 vide his order dated 18.11.2013, framed the amended assessment while creatine additional demand to the tune of Rs. 16,24,492/- under the Punjab VAT Act/ The appeal filed by the appellant against the said order was also dismissed or 8.8.2014, hence this regular second appeal.

2. The case of the-appellant Is that he is engaged in the business of Hot Mix Plant and diesel is used as a fuel for running the plant as well as for melting the bitumen to the particular temperature for mixing the same for crusher for laying the roads as such the diesel being apart of integral process, the appellant was entitled to deduction alongwith other expenses under Rule 15(4) of the Punjab Value Added Tax Rules, 2005. The Assistant Excise and Taxation Commissioner ignored this fact and disallowed the FTC on diesel and framed the assessment that was contrary to the procedure as laid down under the framed under the Act of 2005. It was further submitted that the Assistant Excise and Taxation Commissioner had enhanced the tax liability by adding interest U/s 32 (i) of the Act. The said provision was not applicable to the case of the appellant fails to pay the amount of tax within thirty days from the service of notice. The aforesaid contentions were not raised before the Assessing Authority but the appellant had raised only the two issues before him which are reproduced as under:-

1. The appellant claims ITC of Rs. 11,54,755/- on purchase of diesel amounting to Rs. 1,31,25,494/-.
2. Material supplied by the Government Department was not taxable and earth filling purchases need verification.

3. The Assistant Excise and Taxation Commissioner, Hoshiarpur declined the ITC to the tune of Rs 11,55,044/- on purchase of diesel and also disallowed the ITC to the tune of Rs.2.63/- on petrol. Consequently by adding interest, created additional demand to the tune of Rs. 16,24,492/- against the appellant.

4. In appeal, the appellant had claimed deduction of fuel U/R 15 (4) of the Rules and also challenged the imposition of penalty. The Deputy Excise and Taxation Commissioner did not agree with the contentions of the appellant and dismissed the appeal.

5. Hence this second appeal.

6. Heard, the State Counsel has submitted that originally the appellant had claimed ITC on the purchase of diesel and petrol before the assessing authority, but the latter disallowed the same. Now the appellant has, in the alternative, claimed deduction in the light of Rule 15 (4) of the Rules. However, the diesel can not be treated as fuel so as to fall in the definition of fuel attracting Rule 15: (4) of the Rules. At the most, it could be treated as raw material quo which deduction is not permissible.

7. Having heard the rival contentions and having perused the record of the case. Before sitting to make interpretation of the Rule 15 (4), it is-essential to reproduce the Rule which reads as under:-

Rule 15 (4) *The value of the goods, involved in the execution of a works contract, shall be determined by taking into account the value of the entire works contract by deducting there-from the components of payment, made towards labour and services, including ----*

(a) *labour charges for execution of the works;*

(b) *amount paid to a sub-contractor for labour and services;*

(c) *charges for planning, designing and architects fees.*

(d) *charges for obtaining for hire, machinery and tools used for the execution of the works contract;*

(e) *Cost of consumables, such as, water, electricity and fuel, used in the execution of the works contract, the property, which is not transferred in the course of execution of a works contract;*

(f) *Cost of establishment of the contractor to the extent, it is relatable to the supply of labour and services;*

(g) *Other similar expenses relatable to supply of labour and services and;*

(h) *Profit earned by the contractor to the extent, it is, relatable to the supply of labour and services.*

8. According to the ordinary dictionary meaning, the word fuel is a material for producing heat or other forms of energy i.e. wood, coal, oil or gas.

9. Every inflammable items can't be termed as fuel so as to fail U/s 51 (4) of the Act.

10. As per Webster dictionary, fuel means a material such as coal and gas which is burned to produce heat or power. In the common paralance appealing to the common sense, every material or inflammable article like cloth cardboard, petrol or rubber can't be said to be fuel, or used as fuel for producing been any intention of the statue to treat the diesel as fuel for production in works contract then it would have specifically mentioned the same in the Act and would not have added the provisions for disallowing the ITC on the diesel by inducting section 13 (4) and (5) (h) and (i) in the Punjab VAT Act, consequently, .on combined reading of Rule 15 as well as section 13 (4) (5) (b) (h) and (i) of the Act, the conclusion could be drawn that no deduction could be allowed on account of use of diesel in the works contract.

11. Accordingly, since the diesel can at the most be treated as raw material for which no deduction is permissible U/R 15 (4) of the Rules, therefore, the appellant is not entitled to any deduction on account of using of diesel for heating the bitumen to a certain temperature under Rule 15 (4) of the Rules.

12. Similarly, he is not entitled to any ITC on diesel as appellant is not a dealer indulging in sale and purchase of such goods.

13. Now coming to the next contention that the appellant is not entitled to interest, in this regard it is observed that in the light of the settled law that the appellant was not entitled to any ITC on the diesel and also could not claim any deduction under Rule 15 (4) of the Ruies, therefore, the annual statement filed by the appellant suffered from major illegality leading to the intention of the appellant to evade the tax, which impelled the department to initiate the assessment proceedings, as such the claim of interest as raised by the department was justifiable.

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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HARYANA GOVT. CLARIFICATION

Go to Index Page

CLARIFICATION REGARDING THE RATE OF TAX APPLICABLE ON SALE PURCHASE OF LED LIGHTS

ORDER OF CLARIFICATIONA MADE BY SHRI ROSHAN LAL, IAS
ADDL. CHIEF SECRETARY TO GOVERNMENT HARYANA,
EXCISE AND TAXATION DEPARTMENT
UNDER SECTION 56(3) OFTHE
HARYANA VALUE ADDED TAX ACT, 2003

QUERIST: CREATIVE FIBCOM, GURGAON

HF ▶ Revenue

LED lights are covered under Entry 21 A of Schedule C w.e.f. April 4, 2015 and liable to be taxed @5% only after this date.

LED LIGHTS – ENTRIES IN SCHEDULE – CLARIFICATION SOUGHT CONTENDING LED LIGHTS ARE COVERED UNDER ENTRY 21 A OF SCHEDULE C – HELD: LED LIGHTS DO NOT STAND COVERED UNDER THE GIVEN ENTRY AS ENTRY 21 A IS EXHAUSTIVE AND NO OTHER GOODS CAN BE DEEMED TO BE COVERED BY THIS ENTRY – ITEM IN QUESTION IS AN UNCLASSIFIED ITEM LIABLE TO BE TAXED @12.5% - HOWEVER, AFTER AMENDMENT OF THE SAID ENTRY, LED LIGHT IS COVERED UNDER ENTRY 21 A AND IS TAXABLE @ 5% W.E.F. APRIL 4 , 2015.

The applicant has sought clarification regarding rate of tax applicable on LED light. It is contended that the said item is covered under Entry 21 A of Schedule C of HVAT Act. However, the department has held that since the entry is exhaustive, no other item can be deemed to be falling under it. It is an unclassified item. After amendment of the Entry 21 A , LED lights are included in it which means that rate of tax applicable will be 5% w.e.f. April4, 2015 and 12.5 % upto March 31, 2015.

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M/s Creative Fibcom, Udhyog Vihar, Gurgaon holding TIN No- 06631828689 has sought a clarification under section 56(3) of the Haryana VAT Act, 2003 on the following issue:-

1. What would be the rate of tax applicable on sale purchase of LED Lights?

According to the statement of facts and his own interpretation of the law, LED lights are covered under Entry 21A of Schedule C of the Haryana VAT Act. Further it has been stated that the applicant presently does not deal in the 'LED Light Segment' but intends to start the whole sale business. According to the applicant the term "Electronic Tubes Lights with Electronic Ballast" fall in entry 21 A, which also covers 'LED Lights' as the process is almost similar or same as in Electronic Tube Lights and LED Lights.

The issue was examined and personal hearing was also given to the concerned party. Entry 21A of Schedule C appended to the Haryana VAT Act reads as under:-

"21A *Compact fluorescent lamps, tubes and bulbs and chokes of T-5, 28W energy efficient, electronic tube lights with electronic ballast"*

The matter has been examined in detail. It is noticed that LED Lights neither find mention in the entry 21A nor in any other schedule appended to the Act. The entry '21A' is exhaustive and no other goods which do not find mention in the said entry can be deemed to be covered by this entry. The goods i.e LED Lights do not fall in any other entry of Schedules appended to the HVAT Act. The product is thus unclassified item and liable to tax @ 12.5%.

However, the Government vide Notification No. 15/ST- 1 /H.A.6/2003/S.59/2015, dated 15th June, 2015 has amended entry '21A' of Schedule 'C' by adding 'LED Lights' in entry 21A of the Schedule 'C'. Therefore, in view of the above 'LED Lights' are un-classified goods and are taxable @ 12.5% upto 31.03.2015 and taxable @ 5% w.e.f. 01.04.2015.

The matter is clarified accordingly.

Chandigarh
Dated:05.05.2016

(ROSHAN LAL)
Additional Chief Secretary to Government Haryana,
Excise & Taxation Department.

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HARYANA GOVT. CLARIFICATION

Go to Index Page

CLARIFICATION REGARDING THE ENERGY EFFICIENT "BRUSHLESS DIRECT CURRENT CEILING FAN"

ORDER OF CLARIFICATIONA MADE BY SHRI ANURAG RASTOGI, IAS
PRINCIPAL SECRETARY TO GOVERNEMTN, HARYANA,
EXCISE AND TAXATION DEPARTMENT
UNDER SECTION 56(3) OFTHE
HARYANA VALUE ADDED TAX ACT, 2003

QUERIST: LUCAS TVS LTD., REWARI

HF ▶ Revenue

ENTRIES IN SCHEDULE – BRUSHLESS DIRECT CURRENT CEILING FAN – CLARIFICATION SOUGHT CONTENDING THAT THE ITEM IN QUESTION IS A RENEWABLE ENERGY DEVICE AS IT REDUCES ENERGY CONSUMPTION – HELD: IT IS NOT A RENEWABLE ENERGY COMPONENT AND IS NOT COVERED UNDER ANY ENTRY OF ANY SCHEDULE – UNCLASSIFIED ITEM - TAXABLE @12.5%

The applicant is a manufacturer and seller of "Brushless Direct Current Ceiling Fan'. Clarification is sought contending that the item is taxable under entry 75 of schedule C as it is renewable energy component. It is held that the item is not a renewable energy component and is not classified under any entry of any schedule. It is an unclassified item and is taxable @12.5%.

*****

M/s Lucas TVS Ltd. Rewari has sought a clarification under section 56(3) of the Haryana Value Added Tax Act 2003 on the following issue.

Whether the energy efficient "Brushless Direct Current Ceiling fan" falls within the scope of Renewable Energy Equipments and parts thereof under entry no. 75 at Schedule 'C' of the HVAT Act 2003?

According to the statement of facts and its own interpretation of law "Brushless Direct Current Ceiling fan" there is no specific head (entry) to cover the energy efficient "Brushless Direct Current Ceiling fan". As per understanding of the applicant the energy efficient "Brushless Direct Current Ceiling fan" seeks to reduce energy consumption by more than 50% and therefore is a renewable energy device or component which should be covered by entry 75 of the Schedule 'C' appended to the Act.

As per technical specifications given by the applicant Brushless direct Current (BLDC) motors are actually permanent magnet synchronous AC motors that are driven by an inverter

that is synchronized to the motor. In this configuration, the combination of motor and inverter displays characteristics at the DC input to the inverter which are the same as DC motors thus they are called brushless DC motors. Because there are no current flowing in the rotor of a BLDC motor, there are no rotor losses. In addition, the rotor of a BLDC fan is lighter and thus will have lower inertia. These two features make BLDC fans more efficient.

The matter has been examined. Entry 75 of Schedule 'C' appended to the Act reads as under:

"75 Renewable energy devices, components and spare parts thereof"

It is noticed that entry 75 covers only those devices or components which are used for conversion or preservation of energy to be derived from the natural sources of energy that is not depleted by use. Meaning of "renewable energy" as given in various dictionaries is as under:

The oxford dictionary

"A natural resource or source of energy that is not depleted by use, such as water, d, or solar power"

http://www.dictionary.com/

"Any naturally occurring, theoretically inexhaustible source of energy, as biomass, solar, wind, tidal wave, and hydroelectric power, that is not derived from fossil or nuclear fuel."

From Wikipedia, the free encyclopaedia

"Renewable energy is generally defined as energy that is collected from resources which are naturally replenished on a human timescale, such as sunlight, wind, rain, tides, waves, and geothermal heat.[2] Renewable energy often provides energy in four important areas: electricity generation, air and water heating/cooling, transportation, and rural (off-grid) energy services.[3]"

In the light of above definitions/meaning of renewable energy, the product "brushless direct current ceiling fan" manufactured and sold by the applicant may be an energy saving device but cannot be treated as a renewable energy device or component. Therefore, "Brushless Direct Current Ceiling Fan' is not covered by entry 75 of Schedule 'C\ It is also not covered by any other entry of any schedule appended to the Act. The product is, thus, an unclassified item liable to tax at the general rate i.e. 12.5%.

The matter is clarified accordingly.

Chandigarh
Dated:24.06.2016

(ANURAG RASTOGI)
Principal Secretary to Government Haryana,
Excise & Taxation Department.

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SGA
LAW OFFICES

NOTIFICATION (Chandigarh)

Go to Index Page

NOTIFICATION REGARDING EXTENTION OF PUNJAB VAT (AMENDMENT) ACT, 2013 TO CHANDIGARH WITH MODIFICATIONS

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 29th June, 2016

G.S.R. 636(E).—In exercise of the powers conferred by section 87 of the Punjab Reorganisation Act, 1966 (31 of 1966), the Central Government hereby extends to the Union territory of Chandigarh, the Punjab Value Added Tax (Second Amendment) Act, 2013, (Punjab Act No.38 of 2013), as in force in the State of Punjab on the date of publication of this notification, subject to the following modifications, namely:-

MODIFICATIONS

1. In section 1,-
   (a) in sub-section (1), after the words, brackets and figures "the Punjab Value Added Tax (Second Amendment) Act, 2013", the words "as extended to the Union territory of Chandigarh" shall be inserted;
   (b) in sub-section (2), the proviso shall be omitted.
2. In section 2, after the words, figures and brackets "the Punjab Value Added Tax Act, 2005", the words "as extended to the Union territory of Chandigarh" shall be inserted.
3. Section 3 shall be omitted.
4. In section 4,-
   (a) in the new section 8-C, as so inserted, for the words "State Government", whenever they occur, the word "Administrator" shall be substituted;
   (b) new sections 8D and 8E, as so inserted, shall be omitted.
5. In section 5, clause (ii) shall be omitted.
6. Section 7 shall be omitted.
7. Section 10 shall be omitted.

ANNEXURE
THE PUNJAB VALUE ADDED TAX (SECOND AMENDMENT) ACT, 2013
(Punjab Act No.38 of 2013)

Short title and commencement.

1. (1) This Act may be called the Punjab Value Added Tax (Second Amendment) Act, 2013.

(2) It shall come into force at once.

Provided that amendment of sub-section (1) of section 13 shall come into force on and with effect from the Ist day of April, 2014 and omission of sub-section (1-A) of section 13 shall be deemed to have come into force on and with effect from the 4th day of October, 2013.

Amendment of section 4 of Punjab Act 8 of 2005.

2. In the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the principal Act), in section 4, for sub-section (2), the following sub-section shall be substituted, namely:-

"(2) The Tribunal may consist of Chairman and three other members to be appointed by the State Government from time to time."

Amendment in section 6 of Punjab Act 8 of 2005.

3. In the principal Act, in section 6, for sub-section (7), the following sub-section shall be substituted, namely:-

"(7) (a)Notwithstanding anything contained in this Act or the rules made thereunder, the State Government may by notification specify the goods on which a taxable person shall pay tax in advance at the rates notified by the Government but not exceeding the rates including surcharge applicable on such goods under this Act, when he imports such goods into the State subject to such conditions, as the State Government may specify in the notification. The aforesaid payment of tax in advance shall be counted towards the final tax liability of the taxable person:

Provided that the State Government may by notification exempt any taxable person or class of taxable persons from payment of tax in advance or reduce the rate of payment of tax in advance subject to such conditions, as may be notified:

Provided further that if on an application made by a taxable person, the Commissioner or an officer authorized by him, after verifying all aspects of the case, arrives at a decision that such taxable person should be exempted from payment of tax in advance or that the rate of payment of tax in advance should be reduced for such taxable person, he may do so and impose such terms and conditions on such taxable person as he may deem fit.

Explanation.- The taxable person, who imports goods into the State, shall pay tax in advance, on the presumption that such goods are meant for the purposes of sale or for use in manufacture or processing of goods meant for sale, unless, it is proved otherwise by such taxable person. It is further presumed, unless, it is proved otherwise by such taxable person, that such goods or any product manufactured there from, shall not be sold below the price at which such goods have been purchased and imported in the State.

(b) The tax already paid in advance under the provisions of sub-section (7) of section 6 as it existed prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, shall be deemed to have been paid tax in advance under the provisions of clause (a)".

Insertion of new sections 8-C, 8-D and 8-E in Punjab Act 8 of 2005.

4. In the principal Act, after section 8-B, the following sections shall be inserted, namely:- Tax on maximum retail price.

"8-C, (1) Notwithstanding anything contained in this Act, the State Government, if satisfied that it is necessary or expedient so to do in public interest, may, by notification in the Official Gazette, direct that, in respect of any goods or class of goods covered under the Standards of Weights and Measures (Packaged Commodities) Rules, 1977, a taxable person who is a manufacturer or a first importer of goods, may, at his option, pay tax on the basis of Maximum Retail Price (MRP) as printed upon such goods subject to such conditions as the State Government may specify in the notification.

(2) A taxable person, who opts to pay tax as provided under sub-section (1), shall pay tax at the rate as notified by the State Government on the value of Maximum Retail Price (MRP) by issuing an invoice showing value of goods and tax separately, as Maximum Retail Price (MRP) printed would be inclusive of the tax payable. For the purpose of computing tax liability, such a taxable person shall not be entitled to claim any deduction on account of any trade discount or incentive in terms of quantity or cash discount that he may have given to the purchaser.

(3) The taxable person, who has opted under sub-section (1), shall be at liberty to cancel his option by making an application to the designated officer, in such form and subject to such conditions as the State Government may specify in the notification.

(4) All subsequent taxable persons, purchasing goods on which tax on the basis of Maximum Retail Price (MRP) as provided under sub-section (1) has already been paid, shall be exempted from payment of tax on the sale of such goods, subject to such conditions as the State Government may specify in the notification.

Power to grant tax incentives to certain class of Industries.

8-D. Notwithstanding anything contained in this Act, the State Government may, if satisfied that it is necessary or expedient so to do in the interest of Industrial development of the State, grant tax incentives to such class of Industries for such period and subject to such conditions, as may be prescribed, in the case of Industries, which came into production for the first time, as and when notified in the Industrial Policy framed by the Department of Industries.

Retention of tax collected.

8-E. Notwithstanding anything contained in the Act, the State Government, may, if satisfied that it is necessary or expedient so to do in the interest of Industrial development of the State, allow retention of tax collected to such class of Industries subject to such conditions, as may be prescribed."

Amendment in section 13 of Punjab Act 8 of 2005.

5. In the principal Act, in section 13,-

(i) in sub-section (1), for the first proviso, the following proviso shall be substituted, namely:-

"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 inter-State trade or commerce or in the course of export."

(ii) sub-section (1-4) shall be omitted;

(iii) for sub-section (9), the following sub-section shall be substituted, namely:-

"(9) A person shall reverse input tax credit availed by him on goods which remained in stock at the time of closure of the business."; and

(iv) for sub-section (12), the following sub-section shall be substituted, namely:-

"12) Save as otherwise provided hereinafter, input tax credit shall be claimed only against the original VAT invoice and will be claimed during the period in which such invoice is received. The input tax shall be utilized in accordance with the conditions mentioned in this section, but in no case the amount of input tax credit on any purchase of goods shall exceed the amount of tax, in respect of the same goods or goods used in manufacture of same goods, actually paid, if any, under this Act, into the Government treasury.".

Amendment in section 29 of Punjab Act 8 of 2005

6. In the principal Act, in section 29.-

(i) for sub-section (4), the following sub-section shall be substituted, namely:-

"4) An assessment under sub-section (2) or sub-section (3), may be made within a period of six years after the date when the annual statement was filed or due to be filed, whichever is later:

Provided that the assessment under sub-section (2) or sub-section (3), in respect of which annual statement for the assessment year 2006-07 has already been filed, can be made till the 20th day of November, 2014.

Explanations: (1) The limitation period of six years for an assessment under sub-section (2) or sub-section (3), shall also apply to those cases in which the aforesaid period of six years has yet not expired.

(2) It is clarified that prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, the Commissioner was not required to issue any notice to the concerned person before extending the limitation period of assessment."; and

(ii) after sub-section (10), the following sub-section shall be inserted, namely:-

"(10-A) Notwithstanding anything to the country contained in any judgment, decree or order of any court, tribunal or other authority, an order passed by the Commissioner under sub-section (4) prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, shall not be invalid on the

ground of prior service of notice or communication of such order to the concerned person.".

Insertion of new section 39-A in Punjab Act 8 of 2005.

7. In the principal Act, after section 39, the following new section shall be inserted, namely:-

Punjab VAT Refund Fund.

"39-A, (1) There shall be constituted a fund to be called the Punjab VAT Refund Fund, which shall be maintained and operated by the Department of Excise and Taxation in such manner, as may be prescribed.

(2) The amount collected on account of advance tax under sub-section (7) of section 6, shall directly be credited into the Punjab VAT Refund Fund.

(3) After allowing refund claims from the Fund, the balance amount in the Fund, shall be deposited in the Consolidated Fund of the State, as may be prescribed."

Insertion of new section 45-A in Punjab Act 8 of 2005.

8. In the principal Act, after section 46, the following new section shall be inserted, namely:-
Power to purchase under priced goods.

"46-A.(1) Where a designated officer has, for the purpose of any of proceeding under this Act, reasons to believe that any of the goods as notified by the State Government whether in stock or in transit, are underpriced as shown in a document or book of account produced before him, he may, with the prior approval of the Commissioner or such other officer, as the Commissioner may, in writing, authorize for the purpose, make an offer to purchase such goods at the price shown in the document or book of account, increased by ten per cent plus freight and other expenses, if any, incurred by the owner in relation to the goods.

(2) If the owner of the goods accepts the offer, as provided under sub-section (1), he shall make delivery of the goods on a date, time and at such place, as specified by the officer making the offer and shall be paid the offered price with other expenses within a period of ten days of the delivery of the goods, but, if he rejects the offer, or after accepting the offer fails to deliver the goods on the specified date, time and at the specified place, it shall be construed as a conclusive proof that the owner has underpriced the goods and the price of the goods as determined by the designated officer to the best of his judgment shall be considered as the actual price of such goods.

(3) The goods purchased under sub-section (2), shall be sold by public auction in the manner, as may be prescribed, as early as possible, but, if the goods are of a perishable nature or subject to speedy and natural decay or are such as may, if held, lose their value or when the expenses of keeping them are likely to exceed their value, then, such goods shall be immediately sold or otherwise disposed of in the manner, as may be prescribed. The sale proceeds of the goods or the amount obtained by disposal of the goods shall be deposited in the Government treasury."

Amendment in section 51 of Punjab Act 8 of 2005.

9. In the principal Act, in section 51, -

(i) in sub-section (6), for clause (b), the following clause shall be substituted, namely:—

"(b) If the owner or the person Incharge of the goods has not submitted the documents as mentioned in sub-sections (2) and (4) or has not submitted the information, as specified in the rules at the nearest check post or information collection Centre, in the State, as the case may be, on his entry into or before exit from the State, such goods shall be detained along with the vehicle for a period not exceeding seventy two hours subject to orders under clause (c) of sub-section (7).

Note: - (1) "Person in-charge of the goods" shall include carrier of goods or agent of a transport company or booking agency or any other bailee for transportation and in-charge or owner of a bonded warehouse or of any other warehouse.

(2) "information collection Centre" shall include Virtual information collection Centre."; and

(ii) after sub-section (12), the following sub-section shall be inserted, namely:-

"(12-A) Where a goods vehicle is found transporting the goods on an escape route and a penalty exceeding rupees two lacs has been imposed upon the owner of the goods under clause (c) of sub-section (7) and if the officer imposing the penalty is satisfied that the owner of the goods vehicle or the transporter is also involved in committing the aforesaid offence, then the owner of the goods vehicle or the transporter, as the case may be, shall also be liable to pay a penalty of rupees twenty five thousands for the first time of occurrence of such an offence and if the same vehicle is again found to be involved in such like an offence and a penalty exceeding rupees two lacs is again imposed, then such officer shall order the confiscated, shall be sold by public auction in the prescribed manner.

Note. - "An 'escape route' shall mean the route on the way of which no Information Collection Centre is located."

Amendment in section 56 of Punjab Act 8 of 2005.

10. In the principal Act, in section 56, in the last line, for the sign ".", the sign "." shall be substituted and thereafter, the following proviso shall be added, namely: -

"Provided that in case a person, who has availed of a refund under a star rating/fast track refund scheme, as may be prescribed, is subsequently found to have willfully or fraudulently claimed refund which was not due to him, he shall be liable to pay penalty subject to the maximum of five times the refund amount so claimed, as may be prescribed by State Government, in addition to the payment of refund amount so claimed and interest payable thereon."

Amendment in section 66 of Punjab Act 8 of 2005.

11. In the principal Act, in section 66, for sub-section (2), the following sub-section shall be substituted, namely: -

"(2) The Tribunal may suo-moto or on a reference from the affected person of the Commissioner or any other officer so authorized by the Commissioner may, consider

rectification of a mistake or an error apparent from the record in an order within a period, of five years from the date of passing of such order;

Provided that on such rectification shall be made, if it has the effect of enhancing the tax or reducing the amount of refund without affording an opportunity of being heard to the affected person.

Explanation: Error apparent from the record in an order shall include an order that has become erroneous as a result of amendment of this Act."

[F. No. U-11020/5/2014-UTL]

HITESH KUMAR S. MAKWANA, Jt. Secy.

NOTIFICATION (Punjab)

Go to Index Page

NOTIFICATON REGARDING APNA TAX SCHEME

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

Notification

The 29th June, 2016

APNA TAX SCHEME

No.2/49/2016 ET.II(7)/13859 Chandigarh, dated the: 29-06-2016

A. Objective of the Scheme

Section 45 of Punjab Value Added Tax Act, 2005 says that even/ taxable person who sells the goods for value exceeding Rs. 100 shall issue the invoice/bill. But, it has been observed that in many cases, the dealers either do not issue bills or if they do so they do not record them in their account books with an intent to evade tax on sales. There are many instances where the bills are issued electronically first and then they are deleted from the computer systems. Some dealers are maintaining parallel bill books also. Though many campaigns like Jago Grahak Jago have been organized nationally, yet consumers do not exercise their right to obtain invoices at the time of making purchases. These anomalies are resulting into revenue losses.

The main objectives of APNA TAX SCHEME are given below:-

1. To sensitize the public and spread awareness amongst the consumers/ customers, the trade and the industry circles and taxpayers and citizens about tax laws.
2. To inculcate a healthy tax culture where the taxpayers and the tax collectors discharge their obligations with a sense of responsibility.
3. To utilize mode of technology to promote taxpayer awareness.
4. To ensure that there is 100% tax compliance.
5. To encourage the dealers to issue bills.
6. To encourage and motivate the consumers to obtain bills from the dealers.

B. Eligibility

(i) Any person having a bill/cash memo/retail invoice (sale to customers only) covering the purchases made in Punjab would be an eligible participant.

(ii) The total minimum bill value acceptable will be Rs.100/- (excluding value of tax free goods and VAT).

(iii) Purchases made against VAT invoice by taxable persons who purchase for re-sale or manufacturing will not be allowed to participate in the scheme.

(iv) Sale bills of motor vehicles, petroleum products, petrol/ motor spirit & diesel, LPG, lump-sum dealers for example Dhabas. bakeries, brick kilns and plywood manufactures are not eligible for the draw.

(v) Only original bills will be eligible for the draw.

C. Modalities of the Scheme.

(i) The Scheme is consumer specific.

(ii) Every customer, having retail bill/invoice against the purchases made by him, is eligible to participate in the lucky coupon draw'.

(iii) A customer, after getting the Bill/ Invoice against the purchases made by him, may upload the details of the Bill/ Invoice through mobile phone compatible application.

(iv) A bonafide customer is required to submit the following details.

a. TIN of the dealer

b. Bill/invoice Number

c. Amount of the Bill/invoice

d. Date of Purchase

e. Name of the Customer

f. Mobile Number

(v) Thereafter, the customer is required to upload the photo/scanned copy of the bill/invoice in which Registration Number (TIN) of the selling dealer, the name of item and rate and amount of tax charged is apparent.

(vi) The bill is required to be uploaded before the end of the month (last date of the month) in which the purchase has been made.

(vii) The scheme shall initially be launched for a year and shall be subject to periodic review.

(viii) The Scheme shall be applicable to only retail bills (sale to consumers).

D. Prizes under the Scheme

(i) The number of awards per month shall be 10 or 1% of the number of entries received for the month whichever is higher i.e. if the number of entries is 50.000 then 500 prizes would be awarded and if the number of entries are 500 then 10 prizes would be awarded.

(ii) The prize amount would be five times the taxable value of goods (i.e. total bill value excluding VAT and value of tax free goods) purchased in the bill subject to maximum of Rs. 50,000/-. The value of exempted/tax free goods shall be deducted from the total bill value.

(iii) One person shall be eligible for one prize only during a month and the higher of the prize amount would be awarded.

(iv) If any uploaded bill results in detection of tax evasion, then the person who has uploaded such bill will be eligible for a prize amount five times the taxable value of goods (i.e. total bill value excluding VAT and value of tax free goods) purchased in such bill, subject to maximum of Rs 1,00,000/- in addition to the prize, if any won by him under this scheme. 25% of the prize money shall be paid to him at the time of detection and remaining 75% shall be paid at the time of final recovery.

E. Verification for Authenticity of Retail Invoice/Cash Memo/Bill

A sample checking of the Retail Invoice/Cash Memo/Bill will be done by the concerned O/o Assistant Excise and Taxation Commissioners in the districts regarding the genuineness of the bills from the record of the dealer who has issued the bill.

F. Draw of Lots

(i) A computerized draw of lots will be held on monthly basis on the 15,h of the succeeding month, if the 15th happens to be a holiday then on the next subsequent working day. All the bills issued and received from 1st of the month to last day of the month shall be included in the draw to be held every month.

(ii) A specific serial number/unique number will be allotted to each bill which is eligible for the draw.

(iii) For holding the draw of lots, a software/module for the purpose will be prepared by the department.

G. Constitution of Committee

A committee for holding draw of lots is proposed to be constituted consisting of the following officers:-

(i)	Additional Excise and Taxation Commissioner-1 or any other Officer not below the rank of Additional Excise and Taxation Commissioner nominated by Excise and Taxation Commissioner, Punjab	-	Chairman
(ii)	Deputy Controller of Finance and Accounts	-	Member
(iii)	Secretary or any other member of the Punjab Tax Bar Association nominated by the President of Punjab Tax Bar Association	-	Member

H. The Procedure

(i) The draws will be held electronically in the presence of committee.

(ii) After the draw of lots, the list of successful participants will be displayed at the website of the Department.

(iii) A successful applicant will be required to submit original copy of the bill in the office of Assistant Excise and Taxation Commissioner in the concerned District and shall have to submit his Bank A/c Number and IFSC Code to claim the prize.

(iv) A successful applicant will be required to submit self certified copy of any of the following documents as identity proof at the time of claiming the prize:-

(a) Bank / Kisan / Post Office current Pass Book with photograph.

(b) Aadhar Card.

(c) Passport

(d) Driving License.

(e) Income Tax Assessment Order.

(f) Latest rent agreement.

(g) Latest Water / Telephone / Electricity / Gas Connection Bill for that address, either in the name of the applicant or that of his / her immediate relation like parents etc.

(h) Any post / letter / mail delivered through Indian Postal Department in the applicant's name at the address of ordinary residence.

(i) Pension document with photograph.

(j) Arms License.

(k) Service Identity Cards with photograph issued to employees by Central/State Government, PSUs/Public Limited Companies.

(l) Pan Card.

(m) Smart Card issued by RGI under NPR.

(n) MNREGA Job Card.

(o) Health Insurance Smart Card issued under the scheme of Ministry of Labour/Bhagat Puran Singh Sehat Bima Yojna.

(v) The payments to the winners would be directly credited to the bank account.

(vi) The department of Excises Taxation reserves the right to withdraw the scheme at any time 'without assigning any reason

I. Funding of Awards

The awards will be given out of ETTSA funds.

J. Disputes Resolution

In case of any dispute, the matter shall be referred to Excise S Taxation Commissioner. The decision of the Excise S Taxation Commissioner, Punjab shall be final.

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

Chandigarh, dated the
24th June, 2016

Endst. No. 2/49/2016 ET.II(7)/13860-62 Chandigarh, dated the 29-06-2016

A copy is forwarded for information and necessary action to the following:-

1. Accountant General. Punjab. Chandigarh.
2. Excise and Taxation Commissioner, Punjab, Patiala.
3. Controller, Printing and Stationery, Punjab, Mohali. He is requested to publish this Notification in the Punjab Government Gazette and to send 50 printed copies to this Department.

Special Secretary to Govt. of Punjab,
Department of Excise and Taxation

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NEWS OF YOUR INTEREST

Go to Index Page

GST MAY SEE ANOTHER ROADBLOCK OVER SC VERDICT ON ARUNACHAL

The Narendra Modi government's push for the Goods and Services Tax (GST) bill could see another roadblock in the upcoming monsoon session of Parliament with theCongress getting set to attack the Centre on the SupremeCourt verdict to restore the ousted Congress government in Arunachal Pradesh.

The apex court on Wednesday directed the restoration of ousted Chief Minister of Arunachal Pradesh Nabam Tuki as it quashed the decision of Governor Jyoti Prasad Rajkhowa advancing the assembly session in December 2015.

The monsoon session of parliament will begin on July 18.

Senior Congress leader Kapil Sibal on Wednesday said that the government will have to answer every question pertaining to the political crisis in Arunchal Pradesh in the Parliament.

Sibal said this in reply to the question whether the issue of political crisis in Arunachal Pradesh will be raised in the coming monsoon session.

The winter session of parliament saw a tussle between the opposition and the government on the GST, which continued till the last budget session. The GST bill has not been passed yet.

Ahead of the monsoon session, the government has reached out to the Congress for passage of the GST Bill in the Rajya Sabha.

Finance Minister Arun Jaitley on Tuesday spoke to Leader of Opposition in Rajya Sabha Ghulam Nabi Azad and deputy leader of the Congress in the House Anand Sharma and also invited them for a meeting on GST.

Earlier, new Parliamentary Affairs Minister Ananth Kumar had a telephonic conversation with Leader of the Opposition in the Rajya Sabha Ghulam Nabi Azad and Anand Sharma.

The GST, considered as one of the most significant tax reforms, is being stalled in the Rajya Sabha because of stiff opposition by the Congress.

Congress has been keen on capping GST rate at 18 percent, deletion of the provision which allows imposition of one percent tax by additional levy and an independent dispute resolution mechanism.

Meanwhile, the government is also banking on the changing party arithmetic in the Rajya Sabha to enact the law.

Earlier in June, after a meeting of Empowered Committee of State Finance Ministers on GST in Kolkata, Arun Jaitley announced that every state had either supported or accepted the proposed GST, except Tamil Nadu, which expressed its reservations and offered suggestions.

Courtesy: Business Standard
13 July, 2016

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NEWS OF YOUR INTEREST

Go to Index Page

WE HOPE THAT THE (GST) SYSTEM WOULD BE READY BY FEBRUARY: GST NETWORK'S NAVIN KUMAR

The government is hoping to get the Goods and services Tax (GST) Bill passed in the monsoon session of Parliament. Business Today's Dipak Mondal spoke to Navin Kumar, Chairman of GST Network, the company floated by the central and state governments to build the information and technology (IT) network for GST, on whether the system is ready for the timely roll-out of the new law.

What's the status of the IT infrastructure need to build for GST?

We have taken Infosys as our IT partner. They will build the application and the infrastructure as per our specifications. In the RFP (request for proposal), we had given our requirement and specifications. We gave the contract to Infosys in October 2015, and we had hoped that the constitutional amendment would happen in the winter session. That did not happen, but we decided was to go ahead with the application development.

The entire system consists of hardware (servers storage, network, connectivity, etc) and software. We decided to hold back the procurement of hardware but decided to start the work on software and we have made very good progress on that. We are hoping that in July when the Rajya Sabha meets and passes the bill , we would give Infosys the go-ahead for the procurement of hardware. When that happens, installation and testing part would begin and by then parallely the software development would be completed, which would then be installed in the hardware and testing could be done. So, we hope that our system would be ready by February.

Would you explain how the system would work?

The IT system that we are building, the entire system involves all the tax authorities (all the state, union territory governments along with the Centre). We would build a common GST portal. On this portal, three essential services would run-registration, filing of return and payment.
When a taxpayer comes on our portal and registers himself, then the information that he files at our portal is sent to the tax authorities. As you know GST is a dual tax--the state GST and the Central GST-so his application would be sent to both, the central government and the state government. They will approve the application and then we would generate his GSTIN (GST Identification Number) and he becomes the registered taxpayer.

Every month or every quarter, depending on the kind of taxpayer, he would file returns. So he comes to our portal to file returns and again we send this data to concerned tax authorities. He can also pay the taxes from our website. The money would not come to us but would go to the respective tax authorities. The consolidated funds of states or consolidated funds of the centre.
This is the front end, this is what we are doing. As I told you all the data would go to the

respective tax authorities - the CBEC (Central Board for Excise and Customs) and the tax department of states. Therefore, they should have their own system also to receive this data, and do their functions--audit, assessment, refund and recovery, etc. We call that the back end. The responsibility of developing the back end is with the respective tax authorities. **Have you assessed the preparation of back-end required to be built by the states and the CBEC?**

When we started out in 2014, we realised that doing the front-end alone was not sufficient and we started asking the states what their status was. The government had done a study of all the states in 2012 to see where did the computerisation of their tax system stood. We updated and studied that data, and found that half of the states were not prepared.

We reported this to finance minister and told that these states would not be able to do it on their own and that we are ready to help them in building their system if they want us to. The revenue secretary then convened a meeting of all the states and asked them if they would be able to do the back end on their own or they would want GST Network to help them out. As many as 12 states and union territories said that they would be happy to allow GSTN to do the back end for them.

When we made that offer we made it clear that we cannot develop separate (customised) back end for them, we create one application and they all have to use it. We basically wanted them to agree on a common processes.VAT was standalone tax for each state and every state has its own processes. So, to make them agree on a common set of processes was tough, but we made them do that.

The remaining states decided to build their own system, but we had this sense that not all of them would be able to do it on their own. So, we made an open offer whichever states - up to the end of 2015 - would realise that they could not develop the system on their own could ask us to build it for them. Later seven other states approached us to build the back-end for them. So, we categorised the states as Model 1 states, which were building their own system and Model 2 states for which we were building the system.

The CBEC and the remaining states are doing it on their own. I am happy to note that most of them have made good progress and now if the GST Bill is passed (in the monsoon session), all of them would take the work in all seriousness and go full steam. I think they would be able do it on time.

We are interacting with the states on a regular basis. We have held eight workshops with them. We inform them what progress we have made, what they need to do and they apprise us of the progress they have made. We also keep reporting that to the central government so that if there is any problem they can intervene.

What are the major challenges that you faced?

When we started, we approached the IT companies. We wanted to sensitise the industry about the kind of system we wanted and we also wanted their advice on the issue. We had planned to keep the project in BOOT (Build-own-operate-transfer) model which means that the company which gets the project would invest their own money, and when the system starts working they would recover their money through user charges. We wanted the system to be built on BOOT model so that we do not have any financial liabilities.

But the IT companies were reluctant to work on BOOT model. They said they had worked on that model in the past and they have a lot of money stuck with the government. They said something like Rs 5,000 crore of their payments were stuck with various government departments.

So, we were very worried that if companies did not come forward for the project, we could not do it on our own.

So, we held three interactions with the industry in December 2014, and we asked them what their concerns were, how do they want the project to be modelled. All these interactions helped and we were relieved to see big companies like TCS, Infosys, Wipro, Tech Mahindra and Microsoft bid for the project and finally Infosys got the project. We had Infosys to do the work, but we have to tell them

How are you funding the IT infrastructure building since companies were not ready to do the project on BOOT model?

So, we agreed to fund it ourselves. The total cost of the contract to Infosys is Rs 1,380 crore. We have already made two payments to Infosys for two milestones delivered. When GSTN was incorporated in March 2013, the government sanctioned Rs 315 crore and we have been able to spend only Rs 150 crore. The two payments made to Infosys is from this Rs 150 crore only. We would borrow Rs 500 crore from financial institutions and the rest of the fund would be generated from user charges when the system starts working.

The key to success of the GST is trained personnel. What have you done for training of tax officials?

All states have people doing VAT and the central government has people doing excise and service tax. All these people are well-versed in VAT, and GST is also not very different from VAT. The law is similar, the logic is similar but the processes are different. Therefore, you have to train the officers. That work has already begun. For the law part, department of revenue has already started a training programme for state officers and CBEC officers. We are also collaborating with them.

For technology, that we will do. We have drawn up a training programme, we are waiting for the bill to pass. Hopefully, we would start that from August.

This is going to be very important because in most states the VAT system is not automated. While the front end is computerised, the back end in many states is still manually done. Therefore, the tax authorities have to be trained in IT system. We also have a training programme for taxpayers.

There will be around one lakh tax officers in the states and centre. We can't train all of them on our own. So, our strategy is to train some master trainers. We would be training a number of officers from states and CBEC, and they would then go back and train other officers. But for that training, on our portal we will make arrangements. We will give these master trainers a schedule--on our website we will have a schedule for each of these master trainers - so when they put in request that on these particular days they want to train these many officers, we would give them access to the system.

Courtesy: Business Today
12th July, 2016

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NEWS OF YOUR INTEREST

Go to Index Page

PUNJAB GOVERNMENT LAUNCHES APNA TAX APP TO CHECK TAX EVASION

LUDHIANA: In a bid to check tax evasion by VAT dealers like shopkeepers,retailers & other businessmen and bring more transparency, Punjab government has started "Apna Tax Scheme". Under which mobile phone application "Apna Tax" has also been launched which is compatible for both Android as well as IOS enabled mobile phones. While providing further details, JK Jain,deputy excise & taxation commissioner (DETC) Ludhiana, informed that this scheme and mobile app would help in checking tax evasion by those dealers who sometime at the time of billing, charge tax from their customers, but do not deposit tax with the department and as this is a very serious offence department would not tolerate it.

Jain also said that with this scheme and mobile app, the department wants to connect directly with the customers. All customer needs to do is upload a copy of his bill using the mobile app Apna Tax & once the bill is submitted via app, the customer uploading it would become eligible for cash prize, that would be announced after a monthly lucky draw. The maximum value of cash prize would be Rs 50,000 and entries from first day to last day of month would be considered," informed the DETC. He further stated that the draw of prizes would be conducted on 15th of every month and the minimum number of cash prizes per month would be 10. He said the first draw of prizes would be conducted on August 15, 2016.

Courtesy: The Times of India
12th July, 2016

NEWS OF YOUR INTEREST

Go to Index Page

UPLOAD BILLS TO STOP TAX EVASION, WIN PRIZES, SAYS DETC

LUDHIANA: In a bid to check tax evasion by shopkeepers, businessmen and traders and bring more transparency, the state government has started an 'Apna Tax Scheme'. Under this scheme, a mobile phone application 'Apna Tax' has been launched, compatible for both Android as well as iOS enabled phones.

JK Jain, District Excise and Taxation Commissioner (DETC), Ludhiana, informed that this scheme and mobile app would help in checking tax evasion to a large extent. He said sometimes, shopkeepers, businessmen and traders at the time of billing, charge tax to their customers, but do not submit the same with the department. This is a serious offence and the department will not tolerate it, Jain added.

Jain said with this scheme and mobile app, the department wants to connect directly with the customers. All they (customers) need to do is upload a copy of their retail bill (amount exceeding Rs 100) using the mobile app 'Apna Tax'. He added that dealer to dealer bills are not eligible for this scheme. Under this scheme, retail bills related to petrol, diesel, automobiles, LPG, bakery, plywood and brick kilns are also not eligible.

"Once the bill is submitted on the app, the customer uploading it will automatically get eligible for the cash prize that would be announced after a monthly lucky draw. The maximum value of the cash prize will be Rs 50,000 or five times the amount of bill (whichever is less). Similarly, if the department get holds of a particular bill, for which due tax has not been submitted by the shopkeepers/businessmen/traders with the department, the customers will get eligible for a cash prize of Rs 1 lakh or five times the amount of the retail bill (whichever is higher) through a monthly lucky draw," the DETC informed.

He further stated that the draw of prizes would be conducted on the 15th of every month and the minimum number of cash prizes per month would be 10 and maximum would be 1% of total number of bills uploaded. The first draw of prizes will be conducted on August 15, he added.

DETC JK Jain urged the people to avail this facility in large numbers and contribute their bit in checking tax evasion. He said every person should emphasise on taking a proper bill at the time of buying something and should understand that amount collected from taxes would ultimately be spent for their welfare. "Apna Tax" mobile app can be downloaded from Google Play Store or pextax.com, he added.

Courtesy: The Tribune
13th July, 2016