Issue 12
16 June 2016

"Make sure you pay your taxes; otherwise you can get in a lot of trouble."
–Richard M. Nixon

NOMINAL INDEX

CIRCULARS, PUBLIC NOTICE AND NOTIFICATION

PUNJAB

HARYANA

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 : Liability of purchase tax does not arise on Inter-state stock transfer as Section 12(1)(a) of TNSEZ Act 2005 exempted a developer or entrepreneur from the levy of taxes both on the sale as well as the purchase of goods under the TNVAT Act, 2005. *(Nokia India Sales P Ltd. – April 12, 2016).*

KARNATAKA HC : Karnataka VAT : The Assessing Authority rejected books of accounts of assessee for reason that no branch certificates were produced by assessee and made assessment to best of his judgment enhancing declared turnover by 10 per cent, although the assessee has declared branch turnover. Non furnishing of branch certificates would not suffice to enhance declared turnover unless supported by suppression of turnover. *(Nandi Electronics – March 10, 2016).*

DELHI HIGH COURT: Delhi High Court strikes down service tax on Sale of flats before Construction in Suresh Kumar Bansal

There is no machinery provision for ascertaining the service element involved in the composite contracts for sale of flats under Construction. In order to sustain the levy of service tax on services, it is essential that the machinery provisions provide for a mechanism for ascertaining the measure of tax, that is, the value of services which are charged to service tax.

For the purposes of ascertaining the value of services, the Central Government has made Service Tax (Determination of Value) Rules 2006 (hereafter 'the Rules'). However none of the rules provides for any machinery for ascertaining the value of services involved in relation to construction of a complex.

Whilst Rule 2A of the Rules provides for mechanism to ascertain the value of services in a composite works contract involving services and goods, the said Rule does not cater to determination of value of services in case of a composite contract which also involves sale of land. The gross consideration charged by a builder/promoter of a project from a buyer would not only include an element of goods and services but also the value of undivided share of land which would be acquired by the buyer.

Regarding abatement of 75% in N/N 26/2012 Court held that this issue stands concluded against the Revenue by the judgment in the case of Commissioner of Central Excise v. Larsen and Toubro Limited (supra). In that case, the Supreme Court had affirmed the decision of the Orissa High Court in Larsen and Toubro Limited v. State of Orissa and Ors: (2008) 12 VST 31 (Orissa) wherein the Court held that Circulars or other instructions could not provide the machinery provisions for levy of tax. The charging provisions as well as the machinery for its computation must be provided in the Statute or the Rules framed under the Statute.

The abatement to the extent of 75% by a notification or a circular cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract.

Hence no service tax can be charged on composite contracts for Sale of flat before Construction. *(Suresh Kumar Bansal 3/6/2016)*

P & H HC : Service Tax : Tribunal has power to impose costs on adjudication authority for passing arbitrary/unreasoned orders and may also direct payment of costs into PM National Relief Fund. Revenue's appeal dismissed. *(Cocacola India P Ltd. – April 11, 2016).*

KARNATAKA HC: Karnataka VAT : Where assessee in assessment year 2005-06 claimed input tax credit on capital goods and both Assessing Authority and First Appellate Authority rejected claim and thereafter assessee, in subsequent assessment year 2006-07, again claimed input tax credit on above capital goods, there was no provision under VAT Act and Rules to carry forward rejected input tax credit to subsequent year. *(Ultra Tech Cement Ltd. – April 12, 2016).*

BOMBAY HC: Bombay high court admits appeal of Yash Raj Films against order of sales tax tribunal which held assessee liable to CST on royalty received during the year 2005-06 and 2008-2009. High Court is to decide whether tribunal was justified in holding that transfer of right to use in course of interstate trade when state had no authority to levy tax on interstate transaction of deemed sales upto May 2002. Question of law raised also includes whether tax on copy right would be applicable under BST Act and Transfer of Right to Use Act where transaction was completed before 2000. HC shall also consider whether there is transfer of right to use camera during rendition of photography service to clients where view of the assessee is that there is no effective transfer of possession and control of camera took place.

MADRAS HC: Central Sales Tax : Where dealer, registered under Puducherry Value Added Tax Act as well as Central Sales Tax Act, committed default in payment of value added tax and, therefore, Prescribed Authority, Puducherry refused to issue 'C' Forms to them by placing reliance upon section 43 of VAT Act, Prescribed Authority was entitled to rely upon section 43. *(M. Amurtham Petroleum Agency – April 7, 2016)*

MADRAS HC: Sri Lakshmi Textiles("the Petitioner") is a partnership firm engaged in the

business of inner garments and textiles registered under Tamil Nadu Value Added Tax Act, 2006 ("TN Vat Act"). The Petitioner was regularly filing the VAT return and paying the VAT liability after adjusting the corresponding input tax credit. For the Assessment Year 2013-2014, the Petitioner had reported total turnover and taxable turnover of Rs. 2,02,88,151/- and Rs. 15,98,693/- respectively in his return.

The Department alleged that because some of the selling dealer of the Petitioner had not paid the tax, the Petitioner is required to reverse the corresponding input tax credit and further sought to levy penalty under Section 27(3) of the TN VAT Act on the Petitioner.

The Hon'ble High Court of Madras relied upon the decision in the case of Sri Vinayaga Agencies Vs. the Assistant Commissioner (Ct), Chennai and another [(2013) 60 VST 283 (Mad)] and held that when the fact of Petitioner paying the taxes to his supplier is not under dispute, the Petitioner cannot be compelled to reverse the input tax Credit due to non-payment of VAT liability by the selling dealer. *(Sri Lakshmi Textiles Vs. the Commissioner of Commercial Taxes and Others [2016 (1) TMI 329 – MADRAS HIGH COURT])*

Issue 12
16 June 2016

SUBJECT INDEX

REGISTRY DIRECTED TO LIST THE MATTER IN THE WEEK COMMENCING 18TH JULY 2016 FOR FINAL HEARING – COMPREHENSIVE REPLY TO BE FILED BY ONE OF THE COUNSELS – OTHER COUNSELS DIRECTED TO FILE WRITTEN SUBMISSIONS NOT EXCEEDING 10 PAGES IN EACH CASE WITHIN SIX WEEKS - **VEDANTA ALUMINIUM LTD. VS STATE OF ORISSA & ORS.** 32

EXEMPTED UNIT – ELIGIBILITY CERTIFICATE –EXEMPTION GRANTED UNDER SECTION 4A OF UP TRADE TAX ACT – NOTICE ISSUED ALLEGING THAT ASSESSEE HAD MISUTILISED THE SAID CERTIFICATE – POWER CAN BE EXERCISED ONLY WHEN MISUSE OF CERTIFICATE IS FOUND IN ANY MANNER – NO ALLEGATION IN THE SHOW CAUSE NOTICE – REVENUE CLAIMED THAT ELIGIBILITY CERTIFICATE ITSELF WAS GRANTED WRONGLY – FACT KNOWN TO THE REVENUE WHEN THE ELIGIBILITY CERTIFICATE WAS GRANTED AND THERE WAS NO MISREPRESENTATION – NO CASE MADE OUT IN THE SHOW CAUSE NOTICE ABOUT THE MISUSE OF ELIGIBILITY CERTIFICATE – ELIGIBILITY CERTIFICATE COULD NOT HAVE BEEN CANCELLED UNDER SECTION 4A(3) – APPEAL OF REVENUE DISMISSED. *SECTION 4A OF UP TRADE TAX ACT, 1948* - **COMMR.OF TRADE TAX,U.P. VS CHETNA CHEMICALS PVT.LTD.** 16

PENALTY – ATTEMPT TO EVADE TAX – VALUATION OF GOODS – VEHICLE INTERCEPTED WHILE CARRYING MULTIPLE GOODS WITHOUT GIVING ANY INFORMATION AT THE ICC – NO BILLS OR GR WAS PRODUCED – VALUATION OF THE GOODS WAS MADE AFTER THE INVENTORY WAS PREPARED ON THE BASIS OF QUOTATIONS FROM THE LOCAL MARKET – PENALTY IMPOSED ON THE BASIS OF VALUATION DETERMINED BY DETAINING OFFICER – APPELLANT HAS CLAIMED THE VALUE OF GOODS AT A CONSIDERABLY LOWER PRICE – EVIDENCE PRODUCED IN THE SHAPE OF COPIES OF INVOICES FROM DELHI DEALERS AND ENTRY OF THOSE GOODS AT ICC – DETAINING OFFICER FAILED TO POINT OUT THE MANNER AND METHOD ADOPTED FOR DETERMINING THE VALUE OF GOODS – SECTION 46A OF PUNJAB VAT ACT ALSO NOT INVOKED – DETERMINATION OF PRICE HELD TO BE VOID AB INITIO – IMPUGNED ORDER SET ASIDE – MATTER REMANDED BACK TO DESIGNATED OFFICER WITH A DIRECTION TO DETERMINE THE PRICE AND IMPOSE THE PENALTY IN TERMS OF TRIBUNAL ORDER - **JAGMOHAN SINGH VS STATE OF PUNJAB** 38

SALE PRICE – PETROLEUM PRODUCTS – INCREASE IN PRICE OF PETROLEUM PRODUCTS – STATE GRANTED RELIEF WITH RESPECT TO VAT PAYABLE ON THE INCREASE BY AMENDING THE DEFINITION OF SALE PRICE – AMOUNT OF INCREASE IN PRICE OF PETROL AND DIESEL W.E.F. 6.6.2006 NOT TO CONSTITUTE PART OF SALE PRICE – LATER ON PRICES OF PETROLEUM PRODUCTS ARE REDUCED – OIL COMPANY CLAIMED THE REDUCTION OF SALE PRICE ON THE SIMILAR PATTERN EVEN AFTER REDUCTION OF PETROLEUM PRICES – HELD NOT PERMISSIBLE AS THE RELIEF HAD BEEN GRANTED BY THE STATE GOVT WITH AN OBJECT TO PROTECT THE INTEREST OF CONSUMERS – THE PROVISO WOULD CEASE TO OPERATE AFTER THE PETROLEUM PRICES ARE REDUCED – PROVISO CANNOT BE GIVEN OPERATION BEYOND THE ELEMENT OF INCREASE – APPEALS FILED BY PETROLEUM COMPANIES DISMISSED - **INDO BURMA PETROLEUM CORP. LTD. VS COMMISSIONER VAT DELHI & ORS.** 18

TURNOVER – SERVICE CHARGES COLLECTED IN CONNECTION WITH CLEANING AND TESTING OF OXYGEN CYLINDER – ASSESSMENT FRAMED INCLUDING CHARGES COLLECTED BY APPELLANT FROM THE CUSTOMER FOR CLEANING AND TESTING OF CYLINDER – TRIBUNAL REVERSED THE DECISION – HIGH COURT RESTORED THE DECISION OF ASSESSING AUTHORITY – APPEAL FILED BEFORE SUPREME COURT – DEFINITION OF TURNOVER INCLUDES COLLECTION OF ANY CHARGES "IN RESPECT OF" GOODS – WIDER MEANING TO BE GIVEN TO THE EXPRESSION "IN RESPECT OF" IN CONTRAST TO THE EXPRESSION "ANYTHING DONE TO THE GOODS" – DEALER UNDER OBLIGATION UNDER OXYGEN GAS CYLINDER

Issue 12
16 June 2016

SUPREME COURT OF INDIA

CIVIL APPEAL NO. 1337 OF 2010

Go to Index Page

ADVANCE GASES & CONSULTANTS LTD.
Vs
COMMR.OF TRADE TAX,U.P.

T.S. THAKUR, CJI AND UDAY UMESH LALIT, J.

16th March, 2016

HF ▶ Revenue

Services charges collected in connection with cleaning and testing of oxygen cylinders would become part of turnover.

TURNOVER – SERVICE CHARGES COLLECTED IN CONNECTION WITH CLEANING AND TESTING OF OXYGEN CYLINDER – ASSESSMENT FRAMED INCLUDING CHARGES COLLECTED BY APPELLANT FROM THE CUSTOMER FOR CLEANING AND TESTING OF CYLINDER – TRIBUNAL REVERSED THE DECISION – HIGH COURT RESTORED THE DECISION OF ASSESSING AUTHORITY – APPEAL FILED BEFORE SUPREME COURT – DEFINITION OF TURNOVER INCLUDES COLLECTION OF ANY CHARGES "IN RESPECT OF" GOODS – WIDER MEANING TO BE GIVEN TO THE EXPRESSION "IN RESPECT OF" IN CONTRAST TO THE EXPRESSION "ANYTHING DONE TO THE GOODS" – DEALER UNDER OBLIGATION UNDER OXYGEN GAS CYLINDER RULES, 1981 TO CLEAN AND TEST THE CYLINDERS BEFORE DELIVERY – APPELLANT MANUFACTURER CANNOT AVOID THE CLEANING AND TESTING – THE PROCESS IS NOT INDEPENDENT OF THE SALE TRANSACTION – SUCH CHARGES INCLUDIBLE IN TURNOVER – APPEAL DISMISSED – *SECTION 2(i) OF U.P. TRADE TAX ACT, 1948*

Fact

The appellant who is a manufacturer and seller of Oxygen Gas collected certain cleaning and testing charges of cylinders from its customers. It was contended that the said service charges collected from the customers do not form part of the turnover. Having succeeded before the Tribunal, the revenue succeeded before High Court. On appeal filed before Supreme Court.

Held:

The definition of 'turnover' uses the term "in respect of" instead of the term "anything done to the goods". Therefore, the contention that the said charges have nothing to do with the goods and are only connected with container in which the goods are sold would not have any relevance for the determination of turnover as provided under the Act. Moreover, as per Rule 41of Oxygen Gas Cylinder Rules, 1981 cleaning and testing of cylinders before delivery of gas to the consumers is mandatory. In no manner, such charges can be disconnected with the transaction of sale and therefore considering the fact that turnover has to include all the

charges in respect of goods, the contention raised by assessee cannot be accepted. Accordingly, it was held that cleaning and testing charges would be part of turnover and hence taxable. Appeal dismissed.

Cases referred:

- *Union of India vs. Shri A.B. Shah and Ors. [JT 1996 (5) SC 128]*
- *Mines and Another vs. Lala Karam Chand Thapar Etc. [(1962) 1 SCR 9]*
- *Mc Dowell & Co. Ltd. vs. Commercial Tax Officer VII Circle, Hyderabad [AIR 1977 SC 1459]*
- *Totaram vs. State of Bombay [AIR 1954 SC 496]*
- *Har Prasad vs. Hans Ram [AIR 1966 Allahabad 124]*
- *South India Carbonic Gas Industries Ltd. Vs. State of Kerala [(2004) 135 STC 541]*

Present: For Appellant(s): Mr. Dhruv Agarwal, Sr. Advocate
Mr. Praveen Kumar, Advocate

For Respondent(s): Mr. Pawan Shree Agarwal, Advocate
Mr. Abhinav Kr. Malik, Advocate
Mr. Ravi P. Mehrotra, Advocate

Mr. Gunnam Venkateswara Rao, Advocate

******

O R D E R

1. These appeals arise out of a judgment and order dated 13.01.2009 passed by the High Court of Judicature at Allahabad whereby Trade Tax Revision Nos.863 of 2000, 201 of 2001 and 216 of 2001 filed by the respondent-Revenue have been allowed, orders passed by the Trade Tax Tribunal in Second Appeal Nos.206 of 1999, 100 of 2000 and 102 of 2000 set aside and those passed by the Assessing Officer and the First Appellate Authority affirmed.

2. The appellant-company carries on business of manufacture and sale of Oxygen Gas. For the assessment years 1994-1995, 1995-1996, the assessing officer assessed the appellant-company to payment of sales tax under the U.P. Trade Tax Act disallowing the contention raised on behalf of the appellant-company that service charges collected by it in connection with cleaning and testing of cylinders used for filling oxygen gas was not exigible to sales tax. Aggrieved, the appellant preferred appeals before the First Appellate Authority which were dismissed confirming the order passed by the Assessing Officer. The appellant then preferred second appeals before the U.P. Trade Tax Appellate Tribunal, Agra Bench, which were heard and allowed by the Tribunal in terms of its order dated 25.02.2000 in respect of assessment year 1994-1995 and 26.08.2000 in respect of assessment year 1995-1996. The Tribunal took the view that the charges collected by the appellant-company from the customers for cleaning and testing of cylinders used for filling the oxygen gas was not a part of the sales turnover of the appellant and hence not liable to be taxed. The High Court has in Trade Tax Revision Nos.863 of 2000, 201 of 2001 and 216 of 2001 reversed the view of the Tribunal and restored that taken by the Assessing Officer and the First Appellate Authority. The High Court has on an interpretation of the provisions of the Act and in particular on an interpretation of the expression "turnover" appearing in Section 2(i) of the U.P.Trade Tax Act, 1948 (for short "the Act") held that sums charged by the appellant-company from the purchasers towards cleaning and testing of the cylinder used for filling oxygen gas was in fact a part of its taxable turnover as the process of cleaning and testing of cylinder would tantamount to the dealer doing something in respect of the goods sold within the meaning of the expression "turnover' as defined in Section 2(i) of the Act. The High Court has relying upon the decision of this Court in ***Union of India vs. Shri A.B. Shah and Ors. [JT 1996 (5) SC 128]***, The Chief Inspector of ***Mines and Another vs. Lala Karam Chand Thapar Etc. [(1962) 1 SCR 9]*** and ***M/s Mc Dowell***

& Co. Ltd. vs. Commercial Tax Officer VII Circle, Hyderabad [AIR 1977 SC 1459] held that the definition of the term "turnover" was wide enough to include the process of cleaning of the cylinders in the case at hand for purposes of maintaining the purity of oxygen gas filled in the same. So also the High Court has relying upon the decision of of this Court in ***Totaram vs. State of Bombay [AIR 1954 SC 496]*** held that the expression "in respect of" has a wider connotation and has to be accordingly interpreted. Reliance was also placed by the High Court upon its decision in ***Har Prasad vs. Hans Ram [AIR 1966 Allahabad 124]*** where the High Court has interpreted the term "in respect of" appearing in Section 2(i) of the Act in its widest connotation so as to include even a document which was prepared before the proceedings started in a court of law but was projected or given in evidence in the proceedings subsequently. The High Court has relied upon ***South India Carbonic Gas Industries Ltd. Vs. State of Kerala [(2004) 135 STC 541]*** to hold that in a situation where a dealer cleans or tests cylinders before filling them with carbonic gas the charges recovered for such testing of cylinders was liable to be included in the taxable turnover of the dealer.

3. Appearing for the appellant-company, Mr.Dhruv Agarwal, learned senior counsel strenuously argued that the High Court had fallen in error in holding that the expression "anything done by the dealer in respect of the goods sold" would extend to cleaning and testing process undertaken by the dealer also. It was submitted that the process of cleaning of cylinders or testing the same did not involve anything done to goods themselves which in the case at hand was oxygen gas. It was argued by Mr. Agarwal that in order that "anything done to the goods" becomes chargeable to tax it was necessary that something was done to the goods themselves and not something done to the container in which the goods may be eventually sold.

4. The argument on the first blush appears attractive but does not in our opinion survive closer scrutiny. We say so for two precise reasons. Firstly, because the expression used in Section 2(i) of the Act which defines turnover is not "anything done by the dealer to the goods sold." The expression used is "anything done by the dealer in respect of the goods". If one were to accept Mr. Agarwal's contention that the legislature intended the tax to become chargeable only in case the dealer "does something to the goods", it could say so. Nothing prevented the legislature from providing in specific terms that "anything done by the dealer to the goods" alone would constitute taxable turnover within the meaning of Section 2(i) of the Act. The legislature has in our view purposely used a wider expression by employing the words "in respect of the goods" in Section 2(i) of the Act. The expression "in respect of" has been given a wider interpretation by the High Courts in the cases to which we have made a reference earlier to include things done not only to goods but things done in respect of the goods. There is no manner of doubt that the cleaning of the cylinders and testing the same for purpose of safety etc. is only to ensure that the goods being sold are pure and maintain the standards that are statutorily prescribed for the same. Anything which the dealer does to ensure to compliance with that legal obligation must therefore fall within the expression "anything done by the dealer in respect of the goods."

5. Secondly, because the obligation to clean the cylinders and to put them to test as stipulated under the Oxygen Gas Cylinder Rules, 1981 is squarely upon the licensee under the Rules. That obligation in the case at hand is upon the appellant company. The Rules stipulate that before filling oxygen gas in the cylinders the licensee must carry out hydrostatic/hydrostatic stretch test of every cylinder and only after the cylinder is thoroughly cleaned by some detergent and washed with approved solvents can it be used for filling the gas. This is evident from Rule 41 and 42 which reads as under:

> *"41. Inspection of cylinders before carrying out hydrostatic/hydrostatic stretch test:-*

(1) Prior to carrying out hydrostatic/hydrostatic stretch test, every cylinder shall be thoroughly cleaned by steam cleaning or washing out with approved solvents. Where the interior of the cylinder is affected by rust or other foreign matter it shall be cleaned by one of the following methods namely:

a) approved blasting, rotary wire brushing;

b) burn out treatment carried out in a furnace at a temperature not exceeding 300-C for a period of not exceeding one hour after which all free rusts and any other foreign matter shall be removed by steam cleaning or washing with approved solvents.

(2) The cylinders after cleaning shall be visually examined externally and as far as practicable internally for surface defect in accordance with the Code of practice issued by the Indian Standards Institution or any other Code approved in writing by the Chief Controller.

42. Hydrostatic/hydrostatic stretch test

(1) For cylinders used for permanent gases, high pressure liquefiable gases and all toxic and corrosive gases:

(i) The cylinders shall be subjected to hydrostatic stretch test in accordance with IS: 5844. The test pressure applied to the cylinder shall be retained for a period of not less than thirty seconds.

(ii) The permanent stretch by the cylinder due to application or test pressure shall not exceed the following limits namely:-

(a) In case of cylinders below 20 liters water capacity for non corrosive gases 10 per cent of the total stretch suffered during the test

(b) In other cases 10 per cent of the stretch suffered during the test or 1/5000th of the original volume of the cylinder whichever is less.

(2) For cylinders for low pressure non-corrosive liquefiable gases:

(i) The cylinder shall be subjected to hydrostatic test in accordance with IS : 5844 by non jacket method except that the volu-metric changes during the test need not be measured.

(ii) The test pressure shall be retained for a period of not less than 30 seconds. Any reduction in pressure noticed during this retention period of any leakage, visible bulge or deformation shall be treated as a case of failure in the test.

(3) As soon as the test is completed, the cylinder shall be thoroughly dried internally and shall be clearly stamped on the neck and with marks and figures indicating the person by whom the test has been carried out and the date of test, Code mark of the

person by whom the test has been carried out shall be registered with the Chief Controller."

6. Mr. Agarwal did not dispute and in our opinion rightly so that the obligation to clean the cylinders and to subject them to the prescribed tests under the relevant rules lie entirely upon the appellant company. There is indeed no escape for the appellant company from the said obligation if it has to manufacture and sell oxygen for otherwise the breach of the rules may itself result in cancellation of the licence granted to it. If that be so, the question of the appellant charging anything from the customers towards service rendered to the customer does not arise. One could appreciate a situation where the manufacturer of the gas has no legal obligation to clean the cylinders or put them to test before filling the gas in the same. In such a situation one could well argue that in the absence of any legal obligation upon the manufacturer to clean and test the cylinders, the customer is free to perform that part of the exercise on its own or have it performed from some other quarter. One could then contend that if the customer does not discharge his part of the obligation and asks the manufacturer to do so on his behalf, the manufacturer may be undertaking an exercise on payment of service charge not otherwise a part of the sale transaction. That however is not the position in the case at hand. Here the obligation to clean and test the cylinders rests entirely upon the manufacturer, in the light of the rules. There is no way the appellant-manufacturer, in the case at hand can avoid to do what the rules enjoin upon it. Such being the position, the process of cleaning and testing cannot be seen as a process independent of the sales transaction by which the appellant sells gas after it has subjected the cylinder to prescribed cleaning and testing process. The Tribunal was in that view in error in reversing the orders passed by the Assessing officer and the first Appellate Authority. The High Court in our opinion committed no mistake in reversing the view taken by the Tribunal and restoring that passed by the first Appellate Authority and the Assessing Officer.

7. In the result, these appeals fail and are hereby dismissed but in the facts and circumstances of the case without any order as to costs.

———

SUPREME COURT OF INDIA

CIVIL APPEAL NO. 4850 OF 2016

Go to Index Page

DISHNET WIRELESS LIMITED
VS.
THE COMMERCIAL TAX OFFICER (ADDL.) & ANR.

DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.

22 April, 2016

HF ▶ Assessee

The High Court should have decided the matter in writ petition where pure questions of law are raised and there is no dispute on the facts.

WRIT – ALTERNATIVE REMEDY – WRIT PETITION FILED BEFORE THE HIGH COURT RAISING PURE QUESTIONS OF LAW REGARDING TAXABILITY OF CERTAIN GOODS WHICH ARE LOCATED OUTSIDE THE STATE OF TAMIL NADU – WRIT PETITION DISMISSED RELEGATING THE PETITIONER TO AVAIL THE REMEDY OF APPEAL – SLP FILED BEFORE THE SUPREME COURT – NO INTERFERENCE IS CALLED FOR IN THE NORMAL CIRCUMSTANCES – HOWEVER, IN THE PRESENT CASE, THE QUESTIONS WHICH HAVE BEEN RAISED ARE PURE QUESTIONS OF LAW – HIGH COURT SHOULD HAVE DECIDED THESE MATTERS – FACTS NOT DISPUTED – APPEALS ALLOWED AND ORDER PASSED BY HIGH CURT IS SET ASIDE – MATERIAL REMITTED BACK TO THE HIGH COURT – INTERIM ORDER TO CONTINUE.

The petitioner was fastened with a liability to pay tax under the Tamil Nadu Value Added Tax Act, 2006. Writ Petition filed by the assessee was dismissed on the ground of alternative remedy. SLP was filed before the Supreme Court. It was submitted that the High Court refused to interfere in the matter without going into merits of the case simply on the ground that alternative remedy is available without appreciating that three pure questions of law arise for consideration in the present case. The Supreme Court held that the questions raised are pure questions of law and can be gone into in a writ petition under the peculiar circumstances. High Court should have decided these matters as the facts which are brought on record including the documents are not disputed. Accordingly, the appeals are allowed and order passed by High court is set aside and the matters are remitted back to the High Court for fresh consideration. Interim order passed by the courts shall remain in force till the disposal of appeal by the High Court.

Present: For Petitioner(s): Mr. F.S. Nariman, Sr. Advocate
Mr. Sunil K. Jain, Advocate
Mr. Pawanshree Agrawal, Advocate
Mr. Akarsh Garg, Advocate

Mr. S. Ganesh, Sr. Advocate
Mr. Dhruv Agrawal, Sr. Advocate

Mr. Sanand Ramakrishnan, Advocate
Mr. Rajeev Mishra, Advocate
Mr. Kamal Budhiraja, Advocate
Mr. Aman Gupta, Advocate
Mr. Vaibhav Mirg, Advocate
Mr. Abhinav Mukherjee, Advocate

Mr. Praveen Kumar, Advocate
Mr. Rajiv Agnihotri, Advocate
Ms. Babita Sant, Advocate

Mr. M.P. Devanath, Advocate
Mr. Abhishek Anand, Advocate
Mr. Hemant Bajaj, Advocate

Mr. K.K. Mani, Advocate
Ms. T. Archana, Advocate
Mr. Navin Prakash, Advocate

For Respondent(s): Mr. S.K. Bagaria, Sr. Advocate
Mr. Subramonium Prasad, Sr. Advocate
Mr. B. Balaji, Advocate
Mr. Muthuvel Palani, Advocate
Mr. Ashmeet Singh, Advocate
Mr. Utkarsh Srivastava, Advocate

Mr. Aniruddha P. Mayee, Advocate
Mr. A. Selvin Raja, Advocate
Ms. Charudatta Mahindrakar, Advocate

Mr. Kuldip Singh, Advocate

******

ORDER

1. Heard Mr. F.S. Nariman, learned senior counsel along with Mr. Subhash Sharma, learned counsel appearing for the appellant and Mr. Subramonium Prasad, learned senior counsel for the respondents.

2. Leave granted.

3. These appeals by way of special leave are directed against the judgment and order dated 09.12.2003 passed by the Division Bench of the High Court of Judicature at Madras in Writ Appeal No.2408 of 2013 whereby it has recorded its concurrence with the order passed by the learned Single Judge in writ petition wherein he has declined to interfere on the ground that alternative remedy under the Tamil Nadu Value Added Tax Act, 2006 (for short "the Act") is available. Ordinarily we would have accepted the view taken by the High Court that an alternative remedy being available the writ petition could not be entertained. However, the issues that have been raised here being different we take note of the same.

4. It is submitted by learned senior counsel appearing for the appellant that the High Court has declined to interfere and decided the matter without going into the merits of the case simply on the ground that alternative remedy is available and no questions of law are involved without appreciating the fact that in actuality there are more than three pure questions of law that arise for consideration in the present case. It is submitted by Mr. Nariman that the issues that arise for our consideration are:-

(i) *Whether the transfer of one of the businesses claimed by the petitioner as the whole of that business qualifies for exemption under Explanation III to Section 2(41) of the Tamil Nadu Value Added Tax Act, 2006?*

(ii) *Whether the State of Tamil Nadu has no jurisdiction to levy VAT Tax on telecommunication towers located outside the State of Tamil Nadu (as in the case of the SLP petitioner in the case of Dishnet Wireless Ltd.) even if they are regarded as "goods"?*

(iii) *Whether the Assessing Authority has jurisdiction to pass an assessment order with regard to a composite transaction as in the case of Aircel Ltd., where part of the telecommunication towers are within the State of Tamil Nadu and part are situated outside the State of Tamil Nadu and, whether there is any provision for bifurcation in the TNVAT Act, 2006, to enable such an assessment to be made as contended by the SLP petitioner.*

5. Mr. Bagaria, learned senior counsel for the respondents would suggest that these questions can be gone into in appeal. However, it is not disputed that these questions are pure questions of law and could be gone into in a writ petition under the peculiar circumstances. In our considered opinion the questions that have been raised by the appellant being absolutely pure questions of law, the High Court should have decided these matters. We may hasten to clarify that as far as these issues are concerned and the facts brought on record which include documents are not disputed. When we say that facts are not disputed it is meant that some transactions have taken place inside the State while the towers are located outside and the documents which are brought on record their existence is not disputed.

6. In view of the aforesaid, the appeals are allowed and the order passed by the High Court is set aside and the matters are remitted back to the High Court. The High Court is requested to dispose of these appeals within six months from the date of passing of this order. Interim orders passed by this Court shall remain in force till the disposal of these appeals by the High Court.

7. No order as to costs.

WRIT PETITION (C) NO.1055 OF 2013, WRIT PETITION (C) NO.1057 OF 2013 & WRIT PETITION (C) NO.11 OF 2014

8. In view of the order passed in the civil appeals, these writ petitions also stand disposed off.

———

SUPREME COURT OF INDIA

CIVIL APPEAL NO. 5103 of 2007

Go to Index Page

COMMR.OF TRADE TAX,U.P.
Vs
CHETNA CHEMICALS PVT.LTD.

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

1st April, 2016

HF ▶ Assessee

Eligibility Certificate cannot be withdrawn in absence of any allegation of misuse in the Show Cause Notice

EXEMPTED UNIT – ELIGIBILITY CERTIFICATE –EXEMPTION GRANTED UNDER SECTION 4A OF UP TRADE TAX ACT – NOTICE ISSUED ALLEGING THAT ASSESSEE HAD MISUTILISED THE SAID CERTIFICATE – POWER CAN BE EXERCISED ONLY WHEN MISUSE OF CERTIFICATE IS FOUND IN ANY MANNER – NO ALLEGATION IN THE SHOW CAUSE NOTICE – REVENUE CLAIMED THAT ELIGIBILITY CERTIFICATE ITSELF WAS GRANTED WRONGLY – FACT KNOWN TO THE REVENUE WHEN THE ELIGIBILITY CERTIFICATE WAS GRANTED AND THERE WAS NO MISREPRESENTATION – NO CASE MADE OUT IN THE SHOW CAUSE NOTICE ABOUT THE MISUSE OF ELIGIBILITY CERTIFICATE – ELIGIBILITY CERTIFICATE COULD NOT HAVE BEEN CANCELLED UNDER SECTION 4A(3) – APPEAL OF REVENUE DISMISSED. *SECTION 4A OF UP TRADE TAX ACT, 1948.*

Assessee was issued an Eligibility Certificate for tax exemption under Section 4A of UP Trade Tax Act. Later on a show cause notice was issued under Section 4A(3) alleging that assessee had misutilised the said Certificate. Allegations made that eligibility certificate itself was granted wrongly. This fact was already known to the Revenue when the Eligibility Certificate was granted and thus there was no misrepresentation. No case made out for misutilisation of the Eligibility Certificate in the Show Cause Notice. The Certificate could not have been cancelled in exercise of powers under Section4A(3) of the Act. Revenue Appeal dismissed.

Present: For Appellant(s): Mr. D.K. Goswami, Advocate
Mr. Ravi Prakash Mehrotra,Advocate
Mr. Ashutosh Sharma, Advocate

For Respondent(s): Mr. Kavin Gulati, Sr. Advocate
Mr. Avi Tandon, Advocate
Mr. Rohit Sthalekar, Advocate
Mr. T. Mahipal,Advocate

******

ORDER

1. It is not in dispute that an eligibility certificate dated 14.02.1984 for tax exemption was granted to the respondent under Section 4A of the U.P. Trade Tax Act (hereinafter referred to as 'the Act'). Thereafter, a show cause notice was issued under Section 4A(3) of the Act alleging that the respondent had misutilised the said certificate. Section 4A(3) of the Act under which the action was taken reads as under:

> *"4A(3). Where the Commissioner of Sales Tax is of the opinion ion that facility of exemption from, or reduction in the rate of tax obtained on the basis of eligibility certificate referred to in clause (d) of sub-section (2) has been misused in any manner whatsoever, he may, by order in writing cancel the Eligibility Certificate from such date, whether before or after the date of such order, as may be specified therein."*

2. It is clear from the above that power can be exercised by the Commissioner to cancel the eligibility certificate only when misuse of the certificate is found in any manner whatsoever. However, we find that in the show cause notice there was no allegation of misuse of eligibility certificate which was granted to the respondent. On the contrary, the case was sought to be made out that the eligibility certificate itself was granted wrongly, inasmuch as the Unit has installed a second hand Pouch Sealing Machine purchased from M/s. Gorakhpur Grah Udyog Kendra, Gorakhpur. In these circumstances, we are of the opinion that the High Court has rightly held that this fact was known to the appellant when the eligibility certificate was granted and there was no misrepresentation. In any case, as mentioned above, no case was set up by the appellant in the show cause notice that there was misuse of the eligibility certificate. Therefore, it could not have been cancelled in exercise of powers confirmed under Section 4A(3) of the Act.

3. In view of the aforesaid, this appeal is devoid of any merit and, accordingly, dismissed.

———

SUPREME COURT OF INDIA

CIVIL APPEAL NO. 5103 OF 2016

Go to Index Page

INDO BURMA PETROLEUM CORP. LTD.
Vs
COMMISSIONER VAT DELHI & ORS.

T.S. THAKUR AND UDAY UMESH LALIT, JJ.

13th May, 2016

HF ▶ Revenue

Deduction provided from 'Sale Price' to the extent of increase in rate of petroleum products would not be available after the petroleum prices are reduced

SALE PRICE – PETROLEUM PRODUCTS – INCREASE IN PRICE OF PETROLEUM PRODUCTS – STATE GRANTED RELIEF WITH RESPECT TO VAT PAYABLE ON THE INCREASE BY AMENDING THE DEFINITION OF SALE PRICE – AMOUNT OF INCREASE IN PRICE OF PETROL AND DIESEL W.E.F. 6.6.2006 NOT TO CONSTITUTE PART OF SALE PRICE – LATER ON PRICES OF PETROLEUM PRODUCTS ARE REDUCED – OIL COMPANY CLAIMED THE REDUCTION OF SALE PRICE ON THE SIMILAR PATTERN EVEN AFTER REDUCTION OF PETROLEUM PRICES – HELD NOT PERMISSIBLE AS THE RELIEF HAD BEEN GRANTED BY THE STATE GOVT WITH AN OBJECT TO PROTECT THE INTEREST OF CONSUMERS – THE PROVISO WOULD CEASE TO OPERATE AFTER THE PETROLEUM PRICES ARE REDUCED – PROVISO CANNOT BE GIVEN OPERATION BEYOND THE ELEMENT OF INCREASE – APPEALS FILED BY PETROLEUM COMPANIES DISMISSED.

On 1.6.2006, rates of petrol and High Speed Diesel were increased by Rs. 4 and Rs. 2 respectively w.e.f. midnight of 5/6.6.2006. To grant partial benefit to the consumer, the Ordinance was promulgated on 21.6.2006 and it had been provided by way of inserting a proviso in the definition of sale price that the amount equal to increase in the price of petrol and diesel w.e.f. 6.6.2006 shall not form part of sale price of petrol and diesel sold after the date of promulgation of the Ordinance till such date as the Government may, by Notification in the Official Gazette, directs.

On 30.11.2006, the price of petrol and High Speed Diesel were partially rolled back and w.e.f. 16.2.2007, the entire increase in prices had been wiped out.

The appellant oil companies filed Returns by claiming the benefit of operation of 1st proviso to Section 2(1)(zd) claiming that the reduction in price as per the proviso would be available even after the partial roll back w.e.f. 30.11.2006 and complete roll back w.e.f. 16.2.2007. On 5.6.2007, a Notification was issued by the Government to bring an end to the operation of proviso.

The Assessing Officer issued a default notice and ultimately levied the tax and penalty. The Tribunal while upholding the levy of tax, set aside the demand of penalty. High Court affirmed the said view holding that the proviso simply protected and gave exemption in respect of enhanced advolrem VAT payable on account of increase in prices of petrol and diesel from 6.6.2006 and the proviso ceased to operate partly and full, w.e.f. partial and complete roll back respectively. On appeal before the Supreme Court, held:

The provision ought to be given normal and natural meaning keeping in mind the context, object and reasons for its enactment and incorporation. The idea was to protect the interest of the consumer by giving exemption in respect of enhanced advolrem VAT payable on account of increase in prices of diesel and petrol from6.6.2006. When the increase component ceased to exist, the question of any liability of VAT in that respect also does not arise. The proviso cannot be given operation beyond the element of increase, so that even after complete roll back, the benefit in respect of that amount must operate. This was not the intent and benefit can be granted only in respect of element of VAT respecting increase in rates and not beyond. Appeals filed by the assessee are thus, dismissed.

Present: For Petitioner(s): Mr. S. Ganesh, Sr. Advocate
Mr. Hrishikesh Baruah, Advocate
Mr. Shikhar Mittal, Advocate
Mr. Pranav Jain, Advocate
Ms. Radhika Gupta, Advocate

For Respondent(s): Mr. Arvind Datar, Sr. Advocate
Mr. Ajit K. Sinha, Sr. Advocate
Mr. Ajay Sharma, Advocate
Mr. D. S. Mahra, Advocate

******

UDAY UMESH LALIT, J.

1. Leave granted.

2.These appeals by special leave challenge correctness of the common judgment and order dated 27.02.2012 passed by the High Court of Delhi at New Delhi in Sales Tax Appeal No.20 of 2012 and other connected matters. Apart from lead matter i.e. Sales Tax Appeal No.20 of 2012 filed by Indo Burma Petroleum Corporation Ltd., the High Court also dealt with Sales Tax Appeal Nos.6, 7, 10, 14, 16, 23, 25 and 27 of 2012 filed by Hindustan Petroleum Corporation Limited, Sales Tax Appeal Nos.8, 11, 17, 18, 21, 22, 28 and 30 of 2012 filed by Indain Oil Corporation Limited and Sales Tax Appeal Nos.9, 12, 13, 15, 19, 24, 26 and 29 of 2012 filed by Bharat Petroleum Corporation Limited. These petroleum companies had filed Sales Tax Appeals under Section 81 of the Delhi Value Added Tax Act, 2004 ("the Act" for Short).

3. On 01.06.2006 rates of Petrol and High Speed Diesel were increased by Rs.4/- and Rs.2/- respectively from the midnight of 5/6th June, 2006. This increase in rates would have resulted in ad valorem increase in Value Added Tax (VAT) at the rate of 0.66 paise per litre of Petrol and 0.22 paise per litre of High Speed Diesel. With a view to grant some relief in the price rise to the customers, the Government of National Capital Territory of Delhi issued a Memorandum dated 20.06.2006 which was to the following effect:

"GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI
OFFICE OF THE COMMISSIONER,

VALUE ADDED TAX
DEPARTMENT OF TRADE
AND TAXES, BIKRIKAR
BHAWAN, I.P. ESTATE, NEW DELHI

No.F1[13/Pll/VAT/Act/2006/2069 Dated 20th June, 2006

MEMORANDUM

In pursuance of the ordinance dated 20.06.2006 [copy enclosed] promulgated by the Lt. Governor of the National Capital Territory of Delhi, Value Added Tax shall not be charged with immediate effect on the incremental prices [including the duties and levies charged thereon by the Central Government] of petrol and diesel as has been announced by the Government of India with effect from 6th June, 2006.

Therefore, diesel and petrol shall be sold in the National Capital Territory of Delhi by not taking into account the component of the Value Added Tax on the increased price with immediate effect, meaning thereby that VAT shall continue to be charged on the pre-revised prices of diesel and petrol till further notification in this regard.

[HANS RAJ]

ADDITIONAL COMMISSIONER [POLICY]"

4. On 21.06.2006 an Ordinance was promulgated by the Lieutenant Governor inserting a proviso to the definition "Sale Price" in Section 2(1)(zd) of the Act. Said Section after such insertion of the proviso reads as under:

"(zd) "sale price" means the amount paid or payable as valuable consideration for any sale, including-

(i) the amount of tax, if any, for which the dealer is liable under Section 3 of this Act;(ii) in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable to a person for such delivery including hire charges, interest and other charges incidental to such transaction;

(ii) in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration or hiring charges received or receivable for such transfer;

(iii) any sum charged for anything done by the dealer in respect of goods at the time of, or before, the delivery thereof;

(iv) amount of duties levied or leviable on the goods under the Central Excise Act,1944 (1 of 1944) or the Customs Act, 1962 (52 of 1962), or the Punjab Excise Act, 1914 (1 of 1914) as extended to the National Capital Territory of Delhi whether such duties are payable by the seller or any other person; and

(v) amount received or receivable by the seller by way of deposit (whether refundable or not) which has been received or is receivable whether by way of separate agreement or not, in connection with, or incidental to or ancillary to the sale of goods;

(vi) (vii) in relation to works contract means the amount of valuable consideration paid or payable to a dealer for the execution of the works contract; less –

(a) any sum allowed as discount which goes to reduce the sale price according to the practice, normally, prevailing in trade;
(b) the cost of freight or delivery or the cost of installation in cases where such cost is separately charged;

and the words "purchase price" with all their grammatical variations and cognate expressions, shall be construed accordingly;

Provided that an amount equal to increase in the prices of petrol and diesel (including the duties and levies charged thereon by the Central Government) taking effect from the 6th June 2006 shall not form part of the sale price of petrol and diesel sold on and after the date of promulgation of this Ordinance till such date as the Government may, by notification in the Official Gazette, direct:

Provided further that the first proviso shall not take effect till the benefit is passed on to the consumers.

Explanation:-A dealer's sale price always includes the tax payable by it on making the sale, if any."

(The proviso for the sake of convenience has been highlighted in italics.)

5. On 24.11.2006 Delhi Value Added Tax (Amendment) Act, 2006 came into force. While repealing the Ordinance, Section 2 of the Amendment Act provided as under:

"2. Amendment of Section 2:- In the Delhi Value Added Tax Act, 2004 [Delhi Act 3 of 2005] [hereinafter referred to as "the Principal Act"], in Section 2, in sub-section (1), in clause [zd], before the Explanation occurring at the end thereof, the following provisos shall be inserted, namely –

"Provided that an amount equal to increase in the prices of petrol and diesel [including the duties and levies charged thereon by the Central Government] taking effect from the 6th June, 2006 shall not form part of the sale price of petrol and diesel sold on and after the date of the commencement of the Delhi Value Added Tax [Amendment] Act, 2006 till such date as the Government may, by notification in the Official Gazette direct:

Provided further that the first proviso shall not take effect till the benefit is passed on to the consumer."

6. On 30.11.2006 there was partial roll back of prices of Petrol and High Speed Diesel which had been enhanced with effect from 06.06.2006. The prices were again rolled back and brought to pre 06.06.2006 status w.e.f. 16.02.2007.

7. The appellant oil companies filed their VAT Returns with the Tax Authorities on the footing that by reason of the continued operation of the first proviso to Section 2(1)(zd) they were permitted to recover VAT only on the amount of sale price currently charged, as reduced by the amounts of Rs.4/- per litre on Petrol and Rs.2/- per litre on High Speed Diesel. In other words, even after the partial roll back which came into effect on 30.11.2006 and complete roll back w.e.f. 16.02.2007 the appellants continued to deduct amounts of Rs.4/- per litre on Petrol and Rs.2/- per litre on High Speed Diesel from the prevailing sale price and charged/recovered VAT in respect of sale price so reduced by Rs.4/- and Rs.2/- as stated above.

8. On 05.06.2007 following Gazette Notification was issued by the Government of NCT:

> *"Notification No.F.3[8]/Fin.[T&E]/2007-08/ Dated 5th June, 2007 In exercise of the powers conferred by first proviso to clause [zd] of sub- section [1] of Section 2 of the Delhi Value Added Tax Act, 2004[Delhi Act 3 of 2005], the Lt. Government of the National Capital Territory of Delhi, hereby, directs that the date of publication of this notification in the Official Gazette, to be the date from which the proviso referred to above shall cease to be effective.*
>
> *By order and in the name of the Lt. Governor of the National Capital Territory of Delhi.*
>
> *[Ajay Kumar Garg]*
>
> *Dy. Secretary Finance [T& E]"*

9. In October 2007, Notices of default under Section 32 of the Act were issued to the appellants. Notice dated 22.10.2007 issued to the appellants in the lead matter i.e. Indo Burma Petroleum Company Ltd. stated as under:

> *"……The exemption of VAT which was allowed vide notification dated 24/11/2006 was only in respect of that portion of price of petrol & diesel which was incremental to the price of petrol & diesel prevalent as on 5/6/2006. However, it has been observed that the oil company even after reduction in the price of petrol & diesel has not paid VAT on an amount equal to the prices by which the price of petrol & diesel were increased on 6/6/2006 which is not as per law."*

10. The Notices as aforesaid having called upon the appellants to pay VAT and penalty, objections were taken by each of the appellants under Section 74 of the Act which were rejected by the Additional Commissioner III, Department of Trade and Taxes, Government of National Capital Territory of Delhi vide Common order dated 04.08.2008. It was observed:

> "The amendment clearly says that to extend relief from the increase made in the *price level of 05-06-2006 Govt. declared to forgo the VAT on the increased portion taking effect from 06-6-2006. The base price fixed by the Govt. in deciding the exemption was the price level prevailing on 05.05.2006. The amendment was made only to stop the prices from further increase. The Govt. had no intention to allow any relief on the price level prevailing on 05.06.2006 and if any intention would have been there then such an amendment should have been made prior to 06.06.2006. Now, with the reduction in price on 30-11-06 and 16-02-07 the prices came down to the level of 05.06.2006 and with prices coming at the level it is implied that, the exemption allowed in VAT would cease as this would not be in conformity with the intentions of the legislature. The notification dated 05-06-2007 issued by the Govt. was done only to end the prevailing confusion among the petroleum dealers. Once the price decreased on 16-02- 07 and brought at par with price on 05-06-2006, the notification issued by the Govt. would deem to have become inoperative. The penalty imposed upon the dealers are consequential to the tax imposed."*

11. The matters were carried in appeal by the appellants, namely Appeal Nos.134-147/ATVAT/08-09 and other connected matters. The Appellate Tribunal in its common judgment and order dated 01.12.2011 dismissed the appeals as regards the main issue but set aside the demand of penalties. It was observed, as under:

> *"17…. Tax is to be paid as per Section 4 of the Act on the taxable turnover. Taxable turnover is to be computed as per Section 5 r/w Section 2(1)(zm) of the Act. Section 2(1)(zm) talks about the 'sale price'. 'Sale price' is defined by*

*Section 2(1)(zd) as a **valuable consideration for any sale** including amount of tax payable under the Act. (emphasis in bold) Thus if a State Govt. wants to give relief against the price increased by the Central Government the it could only do so by not charging tax on the increased portion but for doing so it had to exclude the increased portion from the purview of the expression **'valuable consideration for any sale'**. In our considered view purpose of the Govt. of NCT of Delhi in introducing the proviso in question, when considered from the plain language of the proviso, was to direct the appellant dealers to continue to pay the VAT as if there was no increase in the prices by the Central Govt. In our considered view, the act of the Govt. of NCT of Delhi in introducing the proviso in question, by no stretch of imagination, could goad the appellants to embark upon an exercise in reducing the basic price for calculating the VAT, as argued by the Ld. Counsel for the appellants because simple meaning of this proviso is that oil companies were not required to include the increased component as a part of sale consideration under Section 2(1)(zd) of the Act. When the increased component was not to be a part of sale consideration under Section 2(1)(zd) of the Act, the obviously the appellants were not to charge VAT on the same as per the definition of the term 'sale price' which came to be controlled by introduction of the proviso in question. When there was no effect of the increased component, in the liability to pay Vat then it was immaterial when there was complete roll back or when the Notification was issued as per this proviso. Thus in our considered view, the submission of the Ld. Counsel for the appellants that the meaning of this proviso was that appellants shall continue to follow the deduction till another notification was issued which was in fact issued in June 2007 and oil companies stopped taking benefit of the proviso after this notification in June 2007, is without any merit."*

12. The appellant-companies being aggrieved in so far as the interpretation placed on the first proviso to Section 2(1)(zd) of the Act was concerned, preferred appeals under Section 81 of the Act before the High Court. The High Court took the view that upon the partial roll back w.e.f. 30.11.2006 and upon the complete roll back w.e.f. 16.02.2007 benefit of the proviso ceased to be partly or fully applicable. According to the High Court the proviso simply protected and gave exemption in respect of enhanced ad valorem VAT payable on account of increase in petrol and diesel from 06.06.2006 and the benefit under the proviso ceased to operate partly and fully on and w.e.f. partial and complete roll back respectively. These appeals by special leave challenge the correctness of the decision of the High Court. We have heard Mr. S. Ganesh, learned Senior Advocate in support of the appeals and Mr. Arvind Datar learned Senior Advocate for the respondents.

13. According to the appellants, the benefit in terms of the proviso in question was to the extent of VAT chargeable and payable in respect of the amount of increase and the benefit so quantified must be made available regardless of any variation or decrease in the rates of Petrol and High Speed Diesel. For example, if the price before the increase in rates is taken to be x and the price were to be **x+4** as a result of increase w.e.f. 06.06.2006, the benefit of VAT payable in respect of the element of increase i.e. 4 must be available even if upon partial roll back the price were to be **x+1** or upon full roll back the price were to be **x** itself. If the logic is accepted, upon full roll back, according to the appellants the VAT would be payable on **x-4**.

14. In our view, the proviso ought to be given normal and natural meaning keeping in mind the context, object and reasons for its enactment and incorporation. The idea was to protect the interest of the consumers by giving exemption in respect of enhanced ad valorem VAT payable on account of increase in prices of diesel and petrol from 06.06.2006. On the element of increase no additional ad valorem VAT was payable and according to the proviso

the increased component was not to be part of sale consideration. Consequently VAT was not to be charged in respect of such increased component, as per definition of the term "sale price" which came to be controlled by introduction of the proviso. When there was no increased component and therefore no liability to pay VAT in respect of such increased component, benefit under the proviso ceased to be applicable. The proviso cannot be given operation beyond the element of increase, so much so that even after complete roll back, the benefit in respect of that amount must operate. That certainly was not the intent. The idea was to grant benefit only in respect of that element of VAT respecting increase in rates and not beyond. If that component of increase ceased to be in existence, the benefit of proviso also ceased to be in operation.

15. We, therefore, affirm the view taken by the High Court and the Appellate Authority and are not persuaded to take a different view in the matters. Affirming the judgment of the High Court, these appeals are dismissed without any order as to costs.

———

SUPREME COURT OF INDIA

CIVIL APPEAL NO.503-504 OF 2006

Go to Index Page

RAJA BRICKS & TILE INDUSTRIES
Vs
THE ADDITTIONAL COMMSSIONER OF COMMERCIAL TAXES & ANR.

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

4 March, 2016

HF ▶ Assessee

Roofing tiles are taxable at the lower rate even if these are decorative roofing tiles.

ENTRIES IN SCHEDULE – ROOFING TILES – ASSESSMENT FRAMED HOLDING THAT THE ITEM IN QUESTION BEING SOLD BY ASSESSEE WOULD NOT BE TREATED AS ROOFING TILE BUT WOULD BE COVERED UNDER THE DESCRIPTION OF "OTHER TILES" AND HENCE TAXABLE @ 15% - ROOFING TILE SPECIFICALLY COVERED UNDER SUB-ENTRY (iii) OF ENTRY 8 OF PART-T OF SECOND SCHEDULE – FIRST APPELLATE AUTHORITY ON FACTS HELD THAT THE ASSESSEE SOLD ROOFING TILES – HIGH COURT REVERSED THE DECISION ON THE GROUND THAT TILES WHICH ATTRACT LOWER RATE OF TAX ARE MEANT FOR COMMON MAN AND WHEN SUCH TILES ARE DECORATIVE TILES, THEY WOULD NOT BE COVERED BY SUB-ENTRY (iii) – ON APPEAL SUPREME COURT HELD THE ONLY CONSIDERATION FOR DETERMINATION OF THE RATE OF TAX WOULD BE AS TO WHETHER THE TILES MANUFACTURED BY ASSESSEE FALL WITHIN THE DESCRIPTION CONTAINED IN SUB-ENTRY (iii) – NO DISPUTE THAT ASSESSEE HAS MANUFACTURED ROOFING TILES – NO FURTHER INQUIRY REQUIRED TO BE MADE – GOODS TAXABLE AT THE LOWER RATE FALLING UNDER SUB-ENTRY (iii) OF ENTRY 8 OF PART-T OF SECOND SCHEDULE TO THE ACT. *KARNATAKA SALES TAX ACT.*

Facts

Assessee is a manufacturer of bricks and tiles. It filed its Returns in respect of roofing tiles as well as decorative roofing tiles. Tax is paid @ 5% claiming the same to be covered under Entry 8(iii) of Part-T of Second Schedule of the Act. Assessing Officer levied the tax @ 15% holding that it would be covered under "Other Tiles" as contained in sub-entry (iv). On appeal, the 1st appellate authority after going through the entire process of manufacturing of roofing tile and considering the raw material used by the assessee held that the tiles have been made out of ordinary clay without glaze finishing and no attempt has been made by Assessing Authority to know the difference between roofing tiles and decorative tiles. On appeal by the Revenue, High Court reversed the decision on the ground that roofing tiles falling under Entry (iii) are those tiles which attract lower rate of tax and are made for common man and decorative tiles would not be covered by sub-entry (iii). It was also observed that the assessee itself keeps two different sets of account books – one of the sale of roofing tiles and other for decorative tiles. On appeal before the Supreme Court.

Held:

The logic applied by High Court is wrong. The only consideration in a taxing statute would be as to whether the tiles manufactured by the assessee fall within the description contained in sub-entry (iii). This aspect has been decided by the authorities in favour of appellant. No further enquiry would be thus required to be made. Accordingly it is held that goods manufactured by appellant are covered by sub-entry (iii) of Entry 8 of part-T of Second Schedule and liable to be taxed @ 5%.

Present: For Appellant(s): Mr. Sanjay Kumar, Advocate
Mr. R.N. Keswani, Advocate
For M/s Keswani & Co.

For Respondent(s): Mr. V. N. Raghupathy, Advocate

******

O R D E R

1. The appellant/assessee is the manufacture of bricks and tiles. It is registered under the Karnataka Sales Tax Act (hereinafter referred to as "the Act") and is paying sales tax on the goods manufactured and sold by it. For the relevant Assessment Year i.e. 1993-94, the appellant/assessee filed its sales tax return in respect of the roofing tiles as well as decorative roofing tiles. As per the appellant since roofing tiles are contained in Entry 8(iii) of Part 'T' of Second Schedule to the Act, attracting 5% duty thereupon, the aforesaid goods were excisable to the duty at the rate of 5%. The Assessing Officer, however, was of the opinion that the item in question would not be treated as "roofing tiles", but comes within the description of "other tiles" in the aforesaid entry and on that basis, he levied the sales tax at 15%. This view has been upheld by the High Court as well in the impugned judgment dated 18.11.2004, against which the present appeal is preferred by the assessee.

2. In order to appreciate and decide the controversy, in the first instance, we reproduce Entry 8 of Part 'T' of the Second Schedule of the Act which reads as under:

8	Tiles,	
(1)	Mosaic tiles and chips	1-4-88 to 31-3-95 Thirteen percent 1-4-95 to 31-3-96 fifteen percent 1-4-96 to 31-3-98 Twelve percent From 1-4-98 [Ten percent]
(ii)	Ceramic and glazed floor and well tiles	1-4-88 to 31-3-95 Thirteen percent 1-4-95 to 31-3-96 fifteen percent 1-4-96 to 31-3-98 Twelve percent From 1-4-98 [Ten percent]
(iii)	Roofing tiles other than country tiles	1-3-88 to 31-3-95 Five percent From 1-4-95 (Four percent)
(iv)	Other tiles not covered by items (i),(ii) and (iii) above	1-4-88 to 31-3-96 Fifteen percent 1-4-96to 31-3-98 Twelve percent From 1-4-98 (Ten percent)
(v)	Jointing powder (other than cement) and situ-mixture for laying tiles and chips specified above.	1-4-88 to 31-3-95 Thirteen percent 1-4-95 to 31-3-96 Fifteen percent From 1-4-98 (Ten percent)

3. A reading of the aforesaid Entry would indicate that in sub-heading (i), (ii) and (iii) there are specific kinds of tiles mentioned therein which attract a particular percentage of sales tax mentioned against those. If the goods/tiles are not covered by sub-entries (i),(ii) & (iii), then the residual entry namely sub-entry (iv) of Entry 8 would be applicable. The reading of the

aforesaid entry would also demonstrate that insofar as roofing tiles, other than country tiles are concerned, they are specifically included in sub-entry (iii) in which 5% duty is payable for the period 1.3.1988 to 31.3.1995 and from 1.4.1995 duty has been reduced to 4%. Since the relevant Assessment Year in the instance case is 1993-94, if the goods manufactured by the assessee fall in this sub-entry, it would attract sales tax at the rate of 5%.

4. There is no dispute that the goods manufactured by the appellant are roof tiles. There are two kinds of such roof tiles manufactured by the assessee which are known as roofing tiles and decorative roofing tiles. Nevertheless, both are treated as tiles. In fact, the order of the Joint Commissioner of Commercial Taxes (Appeals) would reveal that the aforesaid description is existed as is clear from the following discussion contained the said order:

> *"21. The appellant has claimed that in the manufacture of decorative and glared tiles base material is fire clay which is fire powered, process and loaded in special type of kilns. The firing technic is (eligible) wherein the fuel used is furnace oil/electric power since to defuse the basic materials and it requires the temperature of 1200 degree to 1300 degree centigrade. "Whereas in roofing tiles base materials are ordinary clay. The maximum temperature required is 900 degree centigrade. The used is firewood, paddy husk, coconut shell, groundnut shell, keeping in view of these differences in manufacture, when the assessment records are pursued, it revealed that the appellant has purchased only fuel, firewood and saw dust. Which has been promptly assessed under Section 6? There is no purchase of furnace oil or fireclay. In the absence of these items, it should be concluded that the appellant has not manufactured decorative tiles or glazed tiles. The raw materials purchased and firewood is consumed for the manufacture of roofing tiles. Firewood which has been purchased and assesses under Section 6 will not generate 1200 degree to 1300 degree centigrade which is required to manufacture decorative tiles.*
>
> *22. Further, the description of the tiles given by the appellant in case of weather proof tiles W-tiles flooring tiles, Spanish tiles, Hexagonal tiles, Helmet tiles are accepted. W-tiles helmet tiles are protruded tiles, which cannot be used inside the house as decorative tiles. All weather proof tiles can be used only outside because it can withstand sun and rain. But sun and rain cannot enter a house and no such tiles can be used inside the house. If also produced these tiles for my examination they are all made of ordinary clay without glazed finishing. At no stretch of imagination it can be called decorative tiles. Unfortunately Assistant Commissioner of Commercial Taxes (Int.) nor Deputy Commissioner of Commercial Taxes (Assessment) has not attempted to know the difference between roofing tiles and decorative tiles; yet, they ventured to assesses it as decorative tiles."*

5. Notwithstanding the same, the High Court on a totally irrelevant consideration has excluded the aforesaid tiles from the purview of sub-entry (iii). Reasoning given by the High Court is that the roofing tiles falling under sub-entry (iii) are those tiles which attract lower rate of tax and are meant for common man and when such tiles are decorative tiles they would not be covered by sub-entry(iii). We do not understand this logic given by the High Court in support of its impugned judgment. The other reason given by the High Court is that the assessee itself keeps two different set of accounts books, one of the sale of "roofing tiles" and the other for "decorative tiles". We are dealing with a tax statute. The only consideration here would be as to whether the tiles manufactured by the assessee fall within the description contained in sub-entry (iii). Insofar as this aspect is concerned, it has been decided in favour of the appellant by the authorities themselves. Once that determination is held in favour of the

assessee, no further inquiry which is not germane to the issue would be permissible. We are , thus, of the opinion that the goods manufactured by the appellant are covered by sub-entry (iii) of Entry 8 Part 'T' of the Second Schedule on which only 5% sales tax is payable and not 15% as held by the authorities below.

6. These appeals are, accordingly, allowed and the impugned judgment of the High Court is set aside.

———

SUPREME COURT OF INDIA

CIVIL APPEAL NO. 2708 OF 2004

Go to Index Page

WESTERN COALFIELDS LTD.
Vs
STATE OF MAHARASHTRA & ANR.

RANJAN GOGOI, ARUN MISHRA AND PRAFULLA C. PANT, JJ.

6 May, 2016

HF ▶ Revenue

Excavators are motor vehicles under Section 2(28) of Motor Vehicles Act, 1988 and thus liable for registration and payment of taxes under the said Act.

CLASSIFICATION OF GOODS – EXCAVATORS – MOTOR VEHICLE – WHETHER EXCAVATORS WOULD BE CONSIDERED AS MOTOR VEHICLE WITHIN THE MEANING OF SECTION 2(28) OF MOTOR VEHICLES ACT, 1988 SO AS TO MAKE THE SAME LIABLE FOR REGISTRATION AND PAYMENT OF TAXES – CONFLICTING VIEW OF TWO BENCHES – MATTER REFERRED TO LARGER BENCH – DECISION IN THE CASE OF GOODYEAR WAS UNDER THE PROVISIONS OF CENTRAL EXCISE ACT – DECISION IN THE CASE OF NATWAR PARIKH AND CO. IS UNDER MOTOR VEHICLES ACT, 1988 – EXCAVATORS WOULD BE COVERED UNDER SECTION 2(28) OF MOTOR VEHICLES ACT, 1988 AND THUS LIABLE TO TAX AND REGISTRATION – APPEAL DISMISSED.

*The petitioner filed the appeal claiming that excalators are not motor vehicles and thus not liable for registration and payment of tax under Motor Vehicles Act, 1988. A Bench of Supreme Court on consideration of judgments in the case of **Goodyear India Ltd. Vs Union of India** and two decisions of 2 Judges Bench of the Court in **Natwar Parikh & Company vs State of Karnataka** and **Chairman, Registration Road State Transport Corporation and others vs Santosh and others**, referred the matter to a Larger Bench for consideration. The Larger Bench on consideration of the judgments and provisions of the Act.*

Held:

Three Judges Bench decision of the Court in "Good Year" is in the context of provisions of Central Excise Tariff determining the classifiability of tyres of a particular size for payment of Central Excise Duty. The Two Judges Bench decision in Natwar Parikh & Company and Chairman, Rajasthan Road Transport Corporation squarely deal with the issue holding that vehicles involved in those cases would come within the meaning of the definition in Section 2(28) of the Act. Having taken note of section 2(28) of the Act and the facts of the present case it is held that decision in "Good Year" would have no application for determination of the question that arises in the present case. Decision in the cases of Natwar Parikh & Company and Chairman Rajasthan Road Transport Corporation, would be applicable to the present case and it is held that excavators belonging to the appellant would fall within the meaning of

definition of Motor Vehicles contained in Section 2(28) of the Act and would therefore be liable for registration and payment of taxes etc. Appeal dismissed.

Cases referred:

- *Goodyear India Ltd. Versus Union of India and others (1997) 5 SCC 752*
- *Natwar Parikh & Co. Ltd. Versus State of Karnataka and others (2005) 7 SCC 364*
- *Chairman, Rajasthan State Road Transport Corporation and others versus Santosh and others (2013) 6 SCC 94.*

Present: For Appellant(s): Mr. P.S. Patwalia, ASG
Mr. Anip Sachthey, Advocate
Ms. Anjali Chauhan, Advocate
Mr. Archit Upadhayay, Advocate

For Respondent(s): Mr. Rahul Chitnis, Advocate
Mr. Nishant Ramakantrao Katneshwarkar, Advocate
Mr. Aditya A. Pande, Advocate

*****

ORDER

1. The question that arises in this case is whether excavators of the description available on the record of the case and belonging to the appellant Western Coalfields Ltd. is a `motor vehicle' within the meaning of Section 2(28) of the Motor Vehicles Act, 1988 (hereinafter referred to as "the Act") so as to make the same liable for registration and payment of taxes under the Act. A two judge Bench perceiving a conflict of views between the decision of a three judge Bench of this court in ***Goodyear India Ltd. Versus Union of India and others (1997) 5 SCC 752*** and two decisions of two judges Bench of this Court in ***Natwar Parikh & Co. Ltd. Versus State of Karnataka and others (2005) 7 SCC 364*** and ***Chairman, Rajasthan State Road Transport Corporation and others versus Santosh and others (2013) 6 SCC 94*** has referred the question to a larger Bench for consideration.

2. We have heard the learned counsels for the parties. We have read and considered the order of reference; the relevant provisions of the Statutes and the decisions referred to above. The three judge Bench decision of this court in ***Goodyear*** (supra) is in the context of the provisions of the Central Excise Tariff under Item 16 thereof for the purpose of determining the classifiability of tyres of a particular size for payment of central excise duty. The question in that case was whether tyres of the size 1800 and above would be classifiable as "tyres for motor vehicles" or would fall within the residuary sub-item (3) "all other tyres". Naturally, "tyres for motor vehicles" attract a higher rate of duty (60%) than the tyres which fell within the residuary clause (20%). It is in the above context that the description of motor vehicles contained in Item 34 of the Central Excise Tariff was considered and a conclusion was reached that tyres above 1800 size would not be classifiable under the entry "tyres for motor vehicles" and instead would be appropriate for classification under the residuary item "all other tyres".

3. On the other hand, the two judge Bench decisions in ***Natwar Parikh & Co. Ltd.*** (supra) and ***Chairman, Rajasthan State Road Transport Corporation*** (supra) squarely dealt with the issue and the conclusions therein that the vehicles involved in the said cases would come within the meaning of the definition in Section 2(28) of the Act was on a consideration of the provisions thereof. We have taken note of the definition contained in Section 2(28) of the Act and having regard to the facts of the case we are of the view that the decision in ***Goodyear*** (supra) would have no application for determination of the question that arises in the present case. Having read and considered the decisions in ***Natwar Parikh & Co. Ltd.*** (supra) and ***Chairman, Rajasthan State Road Transport Corporation*** (supra) we are in respectful agreement with the conclusions reached therein. We, therefore, answer the question referred by holding that the excavators belonging to the appellant fall within the meaning of the

definition of 'motor vehicles' contained in Section 2(28) of the Act and would, therefore, be liable for registration, payment of taxes, etc. as envisaged under the provisions of the Act.

4. The appeal is dismissed upholding the decision of the High Court.

———

SUPREME COURT OF INDIA

SLP NO. 33923 OF 2012

Go to Index Page

VEDANTA ALUMINIUM LTD.
Vs
STATE OF ORISSA & ORS.

T.S. THAKUR, CJI, MRS. R. BANUMATHI AND MR. UDAY UMESH LALIT, JJ.

11th May, 2016

HF ▶ None

Matters relating to the constitutionality of Entry Tax is to be finally heard by the Larger Bench in the week commencing 18th July 2016.

ENTRY TAX – CONSTITUTIONAL VALIDITY – MATTERS REFERRED TO THE LARGER BENCH OF 9 JUDGES – INTERIM APPLICATION FOR DIRECTIONS OR MODIFICATION MADE IN THE APPEALS – APPROPRIATE TO SET DOWN THE MAIN MATTERS FOR FINAL HEARING – REGISTRY DIRECTED TO LIST THE MATTER IN THE WEEK COMMENCING 18TH JULY 2016 FOR FINAL HEARING – COMPREHENSIVE REPLY TO BE FILED BY ONE OF THE COUNSELS – OTHER COUNSELS DIRECTED TO FILE WRITTEN SUBMISSIONS NOT EXCEEDING 10 PAGES IN EACH CASE WITHIN SIX WEEKS.

The Supreme Court while hearing interim applications in the matter relation to Entry Tax ordered that in view of the fact that main matter is pending for consideration before a Larger Bench of 9 Judges, it would be appropriate that instead of making any directions or modifications on the basis of interim applications, the matter is set down for final hearing in July 2016. Mr. Harish N. Salve permitted to file a common comprehensive compilation of all the submissions relevant to the points referred to for determination supported by decisions relied on behalf of the assessees concerned. Similarly, State Governments are free to have the decisions relied upon by the States to be included in the common compilation to be filed by Mr. Salve. Other counsels also permitted to file submissions not exceeding 10 pages in each case within six weeks. No adjournment to be granted on the date fixed for hearing. Registry directed to club all the connected matters and list for final hearing before the Larger Bench in the week commencing 18th July 2016.

Present: For Petitioner(s): Mr. Harish N. Salve, Sr. Advocate
Mr. Ajay Aggarwal, Advocate
Ms. Mallika Joshi, Advocate

Mr. Rajan Narain, Advocate
Mr. Harish N. Salve, Sr. Advocate
Mr. Tushar Jarwal, Advocate
Mr. Rahul Sateeja, Advocate
Ms. B. Vijayalakshmi Menon, Advocate

Mr. Jagdeep Dhankar, Sr. Advocate
Mr. Kedar Nath Tripathy, Advocate

Mr. S.K. Bagaria, Sr. Advocate
Mr. Alok Yadav, Advocate
Mr. Somnath Shukla, Advocate
Mr. Udit Jain, Advocate
Mr. R. Chandrachud, Advocate

Mr. S.K. Bagharia, Sr.Advocate
Mr. Syed Shahid Hussain Rizvi, Adv
Mr. Ajit K. Singh, Advocate

Mr. Arvind P. Datar, Sr. Advocate

Ms. Anuradha Dutta, Advocate
Mr. Tushar Jarwal, Advocate
Mr. Rahul Sateeja, Advocate
Ms. B. Vijayalakshmi Menon, Advocate

Mr. E. C. Agrawala, Advocate

Mr. Tarun Gulati, Advocate
Mr. Sparsh Bhargava, Advocate
Mr. Anupam Mishra, Advocate
Mr. R. Chandrachud, Advocate

Mr. Sunil Kumar Jain, Advocate
Mr. Bibekananda Mohanti, Advocate
Mr. Pawanshree Agrawal, Advocate

Mr. Ajay Bhargava, Advocate
Ms. Vanita Bhargava, Advocate
Mr. Jeevan B. Panda, Advocate
For M/s. Khaitan & Co.

Mr. U.A. Rana, Advocate
Ms. Mrinal Elkar Mazumdar, Advocate
Mr. Himanshu Mehta, Advocate
For M/s Gagrat & Co.

M/s Mitter & Mitter Co.

Mr. Pradhuman Gohil, Advocate
Mr. Vikash Singh, Advocate
Ms. Taruna Singh Gohil, Advocate
Mr. Jairiti S. Jadeja, Advocate
Mr. Himanshu Choubey, Advocate

Mr. Shibashish Misra, Advocate

Mr. Pramit Saxena, Advocate

Mr. Pawan Upadhyay, Advocate
Ms. Sharmila Upadhyay, Advocate
Mr. Nishant Kumar, Advocate

For Respondent(s) Mr. Rakesh Dwivedi, Sr. Advocate
Mrs. Kirti Renu Mishra, Advocate
Ms. Apoorva Garg, Advocate

Ms. Apurva Upmanyu, Advocate

Mr. Maninder Singh,ASG
Mr. Jugal Kishore Gilda, AdvocateGen.
Ms. Sharmila Upadhyay, Advocate
Mr. Ajay Aggarwal, Advocate
Ms. Mallika Joshi, Advocate
Mr. Rajan Narain, Advocate
Mr. Chanchal Kumar Ganguli, Advocate
Ms. Narmada, Advocate

******

O R D E R

1. Heard.

2. Learned counsel for the parties submit that the main appeals/petitions are all ripe for listing before a larger Bench of Nine-Judges. They submit that instead of dealing with the interim applications or directing any modification in the arrangement already made, it would be more appropriate if the appeals/petitions are set down for final hearing in the month of July 2016. We accordingly direct that the papers shall be placed before the Hon'ble Chief Justice for constituting an appropriate Bench to hear the main appeals/petitions in the month of July 2016.

3. Mr. Harish N. Salve, learned senior counsel appearing for some of the petitioners, submits that he would file a comprehensive compilation of his submission on each one of the questions that have been referred for determination by the larger Bench. This would include suggestions which other counsel appearing in the connected matters may have to make including citing the decided cases relied upon by them or any additional facets that they may like to project in support of their cases.

4. We accordingly permit Mr. Salve to file a common comprehensive compilation of all submissions relevant to the points referred to for determination supported by the decisions relied on behalf of the assessees concerned. Learned counsel for the State Governments are similarly free to have the decisions relied upon by the States to be included in the common Compilation to be filed by Mr. Salve.

5. We make it clear that apart from the comprehensive compilation which Mr. Salve proposes to file, each one of the counsel for the parties to these appeals/petitions shall file a brief of the submissions not exceeding 10 pages in each case. The submission shall be filed within six weeks from today. We make it clear that none of the counsel shall be permitted to seek any adjournment on the dates fixed for hearing. No further notice regarding this need be issued by the Registry. This order shall be uploaded on the official website of the Supreme Court for information of all those who are not present today at this hearing.

6. The Registry shall club all the connected matters and list them for final hearing before the larger Bench in the week commencing 18th July, 2016.

———

PUNJAB & HARYANA HIGH COURT

GSTR NO. 9 OF 2011

MAHAVIR TECHNO LTD.
Vs
STATE OF HARYANA

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

4th May, 2016

HF ▶ Assessee

Tribunal order passed without considering the amendment of law and decision of court set aside and matter remanded back.

ASSESSMENT – LIMITATION – CHANGE IN LAW – ASSESSMENT PERTAINING TO HGST ACT – NO LIMITATION PRESCRIBED – HVAT ACT INTRODUCED REPEALING HGST ACT – LIMITATION OF 3 YEARS OF INTRODUCTION OF NEW ACT – TRIBUNAL REJECTING APPEAL WITHOUT CONSIDERING IMPACT OF AMENDMENTS IN LAW – SUBSEQUENT JUDGMENT OF TRIBUNAL TAKING A CONTROVERSY VIEW – CASE REMANDED BACK FOR READJUDICATION AFRESH.

Fact

Assessment of the dealer for the year from 1998-99, 2002-03 were framed under section 28 of Haryana General Sales Tax Act, 1973 on 29.06.2008 after the Haryana VAT Act, 2003 had come into force. The assessee came that even though no limitation had been provided under HGST Act, the period of three years had been prescribed under HVAT Act. Accordingly the assessment framed on 29.06.2008 were clearly beyond limitation. The Tribunal rejected the claim on the ground that delay in finalization of assessment proceeding had occurred due to repeated request made by the Assessee from time to time. On the question of law refer to the High Court.

Held:

A perusal of the order of Tribunal shows that no cogent reasons have been recorded by it relating to the applicability of amendments brought in HVAT Act effective from 01.04.2013 and its effect on present case. Moreover, the Tribunal in identical issue subsequently held that assessments prior to 01.04.2003 had to be completed by 31.03.2006. Accordingly, it would be appropriate to send the matter back to the Tribunal to decide afresh in accordance with law.

Cases referred:

- *Khazan Chand Nathi Ram v. State of Haryana (2004) 136 STC 261 (P&H)*
- *Ballarpur Industries Limited v. State of Punjab and others (2010) 35 PHT 5 (P&H)*
- *The State of Punjab and others v. M/s The Patiala Cooperative Sugar Mills Limited, Rakhra, District Patiala, VATAP No. 110 of 2013*
- *Pawan Kumar Vijay Kumar, New Mandi, Narnaul v. State of Haryana (2013) 45 PHT 566 (HTT)(FB)*

Present: Mr. Rishab Singla, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

******

AJAY KUMAR MITTAL, J.

1. This order shall dispose of GSTR Nos. 9 to 18 of 2011 as according to the learned counsel for the parties, all the references are interconnected and common questions of law and facts are involved therein. For brevity, the relevant facts are being extracted from GSTR No. 9 of 2011.

2. In GSTR No. 9 of 2011, the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as "the Tribunal") vide order dated 8.8.2011 has referred for opinion of this Court following questions of law under Section 42 of the Haryana General Sales Tax Act, 1973 (in short "the Act") and under Section 9(2) of the Central Sales Tax Act, 1956 (for brevity "the Central Act") read with Section 42 of the Act arising out of its order dated 23.8.2010 passed in STA Nos. 315-324 of 2008-09 relating to the assessment years 1998-99 to 2002-03:-

i. Whether on the facts and in the circumstances of the case the assessment orders for the years 1998-99 to 2002-03 passed on 29.6.2008 are barred by limitation in view of the provisions of Rule 28A(10)(ii) of the HGST Rules which require the assessments to be completed by 31st December in respect of the assessment year immediately preceding thereto?

ii. Whether on the facts and in the circumstances of the case, the assessment orders for the years 1998-99 to 2002-03 passed on 29.6.2008 had been delayed inordinately, so have become barred by limitation?

iii. Whether after introduction of the Haryana Value Added Tax Act, 2003 with effect from 1.4.2003, as amended vide Haryana Act No.3 of 2010 dated 2.4.2010 with retrospective effect, and repeal of the HGST Act, the corresponding provisions of Section 15(3) of the HVAT Act for completing assessment would govern the assessment proceedings in respect of the cases pending under the HGST Act as well or the provisions of section 28(4) of the HGST Act would continue to apply in such cases?

3. A few facts necessary for adjudication of the references as narrated therein may be noticed. The petitioner is a dealer registered under the Act as well as the Central Act. It had been granted exemption under Rule 28A of the Haryana General Sales Tax Rules, 1975 (in short "1975 Rules") read with Section 13B of the Act for a period of nine years from 11.12.1995 to 10.12.2004 with an overall exemption limit of Rs. 1,07,09,738/-. The Assessing Authority vide order dated 29.2.2008 framed the assessment for the year 1998-99 raising a demand of Rs. 60,94,133/- under the Central Act. The proceedings were initiated on 12.6.2001 by issuing a statutory notice for 1.8.2001. Similar orders were passed for the years 1999-2000, 2000-01, 2001-02 and 2002-03. Feeling aggrieved by the assessment orders, the petitioner filed appeals before the Joint Excise and Taxation Commissioner (Appeals) [for brevity "DETC(A)"] who vide order dated 16.6.2008 remanded the case back for re-hearing the petitioner. Still dissatisfied by the order dated 16.6.2008, the petitioner filed appeals before the Tribunal for setting aside the assessment orders. The Tribunal vide order 23.8.2010 rejected the plea of the petitioner based upon Rule 28A(1)(ii) of the 1975 Rules relying upon its judgment in the case of M/s Rajni Agro Oil Mills v. State of Haryana in STA Nos. 218-219 of 2009-10 decided on 17.5.2010. Further, the plea of the assessee regarding inordinate delay in finalization of the assessment proceedings was rejected by the Tribunal by observing that the delay had occurred due to repeated requests made by the assessee from time to time. The Tribunal rejected the plea

of the petitioner regarding proviso to Section 15(3) of Haryana Value Added Tax Act, 2003 (in short "the HVATAct") read with Section 61(2) thereof, holding that in view of the judgment of this Court in ***Khazan Chand Nathi Ram v. State of Haryana (2004) 136 STC 261 (P&H)***, the provisions of the Act would continue to govern the proceedings as the amendment in the year 2010 had no bearing on the appeals. Hence, the present references.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner submitted that after the introduction of the HVAT Act, the assessments were required to be completed by 31.3.2006. Section 61(1) of the HVAT Act was substituted by Act No.3 of 2010 on 2.4.2010 w.e.f. 1.4.2003 whereas the appeals were decided by the Tribunal on 23.8.2010. It was further submitted that for the assessment years 2000-01 and 2002-03, the assessment was barred by limitation as per proviso to Section 15(3) read with Section 61 (2) of the HVATAct according to which the assessment had to be framed within three years from the close of the year to which the assessment related. The Tribunal has decided the issue by relying upon the order in ***Khazan Chand Nathi Ram's*** case (supra) whereas the case of the petitioner is totally different. It was urged that in these circumstances, the order of the Tribunal was unsustainable. Learned counsel has relied upon the judgments in ***Ballarpur Industries Limited v. State of Punjab and others (2010) 35 PHT 5 (P&H)***; ***The State of Punjab and others v. M/s The Patiala Cooperative Sugar Mills Limited, Rakhra, District Patiala, VATAP No. 110 of 2013*** decided on 26.2.2014 and the judgment of the Tribunal taking divergent view in ***Pawan Kumar Vijay Kumar, New Mandi, Narnaul v. State of Haryana (2013) 45 PHT 566 (HTT)(FB)*** in support of his contentions. A prayer was made that the matter requires to be remitted to the Tribunal to decide afresh in view of the aforesaid circumstances.

6. On the other hand, learned State counsel besides supporting the order of the Tribunal submitted that Section 61(2) of the HVAT Act only defines the authorities constituted thereunder as competent to hear and decide the pending application, appeal, revision or other proceedings. It was urged that Section 61(2) of the HVAT Act does not give any retrospective effect to the HVAT Act either expressly or by necessary implication. Learned counsel has relied upon the judgment in ***Khazan Chand Nathi Ram's*** case (supra).

7. The issue raised herein involves examination of factual matrix viz-a-viz various amendments incorporated in the HVAT retrospectively w.e.f. 1.4.2003. A perusal of the order of the Tribunal shows that no cogent reasons have been recorded by it relating to the applicability or otherwise of the various amendments brought in HVAT effective from 1.4.2003 and its effect on the facts of the present case. Moreover, the Tribunal while dealing with the identical issue in ***Pawan Kumar Vijay Kumar, New Mandi, Narnaul's case (supra)*** subsequently has expressed divergent opinion by holding that the assessment framed in respect of the assessment year prior to 1.4.2003 had to be completed by 31.3.2006 after coming into force of the HVAT Act. Accordingly, it is considered appropriate that in order to effectively adjudicate the references that the matters are sent back to the Tribunal to decide afresh in accordance with law.

9. In view of the above, the references are remanded to the Tribunal to re-adjudicate the issues afresh by providing opportunity of hearing to the parties and by passing a speaking order after recording cogent reasons in accordance with law. Needless to say that nothing observed hereinbefore shall be taken to be expression of opinion on the merits of the controversy.

10. References stand disposed of accordingly.

———

PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 80 OF 2016

JAGMOHAN SINGH
Vs
STATE OF PUNJAB

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

3rd June, 2016

HF ▶ Assessee

Penalty under Section 51 cannot be imposed by increasing the value of goods arbitrarily and without any basis

PENALTY – ATTEMPT TO EVADE TAX – VALUATION OF GOODS – VEHICLE INTERCEPTED WHILE CARRYING MULTIPLE GOODS WITHOUT GIVING ANY INFORMATION AT THE ICC – NO BILLS OR GR WAS PRODUCED – VALUATION OF THE GOODS WAS MADE AFTER THE INVENTORY WAS PREPARED ON THE BASIS OF QUOTATIONS FROM THE LOCAL MARKET – PENALTY IMPOSED ON THE BASIS OF VALUATION DETERMINED BY DETAINING OFFICER – APPELLANT HAS CLAIMED THE VALUE OF GOODS AT A CONSIDERABLY LOWER PRICE – EVIDENCE PRODUCED IN THE SHAPE OF COPIES OF INVOICES FROM DELHI DEALERS AND ENTRY OF THOSE GOODS AT ICC – DETAINING OFFICER FAILED TO POINT OUT THE MANNER AND METHOD ADOPTED FOR DETERMINING THE VALUE OF GOODS – SECTION 46A OF PUNJAB VAT ACT ALSO NOT INVOKED – DETERMINATION OF PRICE HELD TO BE VOID AB INITIO – IMPUGNED ORDER SET ASIDE – MATTER REMANDED BACK TO DESIGNATED OFFICER WITH A DIRECTION TO DETERMINE THE PRICE AND IMPOSE THE PENALTY IN TERMS OF TRIBUNAL ORDER.

The vehicle of the appellant was intercepted by Detaining Officer on the ground that goods were not reported at the ICC. No bills or GRs were produced and vehicle was found carrying multiple goods. Item-wise details were prepared on separate sheets and quotations of respective items were procured from the local market. On the basis of those quotations, the valuation of the goods was determined at Rs. 35,40,288/-. Accordingly a penalty of Rs. 20,21,835/- was imposed vide order dated 11.03.2016. Appeal filed by the assessee before the 1st appellate authority was also dismissed. On appeal before the Tribunal.

Held:

The appellant has claimed that goods in question were of considerably lower value. For this purpose he has produced the invoices raised by Delhi based firms for the similar goods and those have also been recorded at the same price at the ICC's of Punjab. The Detaining Officer failed to point out the manner and method which was adopted and the procedure followed for determining valuation of goods. Section 46 of the Act was also not invoked and thus the determination of price has rendered the order passed by lower authorities as void ab initio.

Accordingly, the impugned orders are set aside and case is remanded back to Designated Officer with direction to determine the price of goods and impose the penalty accordingly in terms of aforesaid order.

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

******

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

1.This appeal has arisen out of the order dated 18.4.2016 passed by the First Appellate Authority, Patiala Division, Patiala dismissing the appeal against the order dated 11.3.2016 imposing a penalty to the tune of Rs.20,21,835/-. The First Appellate Authority dismissed the appeal on twin grounds which are detailed as under:-

1. *The appellant had failed to comply with Section 62 (5) of the Punjab Value Added tax Act, 2005.*
2. *The appellant had contravened the provisions of Section 51 (2) (4) & (6)(b) of the Punjab Value Added Tax Act, 2005 therefore, he was liable to pay the penalty U/s 51(7)(c) of the Punjab Value Added Tax Act, 2005.*

2. On 25.2.2016, the driver, while carrying variety of taxable goods in Vehicle No. PB-08CB-0165, when reached the Information Collection Centre, Shamboo (Import). He did not stop the vehicle whereupon the Detaining Officer alongwith the help of police staff apprehended him near College Surya World at a distance of 3 Kms and brought him back at the ICC. On further enquiry by the Detaining Officer, the appellant disclosed that he was not in possession of invoice/G.R. in respect of the goods loaded in the vehicle. The Detaining Officer after opening the back door of the vehicle noticed that the driver was transporting the taxable goods without any documents with an intention to evade the tax. Accordingly, the goods were detained and notice was issued to the driver. Since the driver was not available at the ICC, therefore, the notice was later on served upon Shri Jagmohan Singh (owner of the goods) and the case was forwarded to the Designated Officer who also issued the notice to the Jagmohan Singh appellant In the mean time, he directed the Detaining Officer to conduct physical verification of the goods and determine the value thereof. The Detaining Officer on physical verification of the goods recovered the following GRs:-

(1) GR No.13259, 13251, 13263, 13262, 13261, 13260, 13258, 13/57, 13256, 13255, 13254, 13230, 13229, 13228, 13227, 13226, 13725, 13224 covered by challan No.948, dated 24.2.2016 of M/s Shune Punjab Cargo, Shop No. 127, Akal Market, Ludhiana.

(2) GR No. 4437, 4436, 4435, 3057, 3056, 3054, covered by challan No.676, dated 23.2.2016 of M/s A.S. Cargo, Gali Rupa Mistri Kuona, Kartar Singh, No. 1257 Opp. Ladu Patang Ki Gali, Ludhiana.

Apart from recovery of the above mentioned GRs and Challans, loose slips without any name of the consignor/consignee were also recovered mentioning the confidential code such as 1220/2, 1223/2, 1202/1 etc for the delivery of goods, to the respective purchasers. The item wise details, of goods packed, was prepared an separate sheets and to determine the valuation thereof, the quotations of .he respective items were procured from the local market. On the basis of rates prevalent in the market pertaining to a particular item, the valuation was determined in the presence of witnesses S/Shri Tarlochan Singh and Dharminder Singh, by

Excise and Taxation Officer and ETIs posted at the ICC on separate sheets duly signed by all concerned. As per details prepared, the goods loaded are:-

(i) 3985 pieces of Jeans of different Brands i.e. 'Defend, Wintage', 'Being Human', 'Diesel', 'Do DIU told', 'Levis G Star', 'ACE Tommy', 'Calvin;, Filla', 'GAS', 'JACK & John', 'IEEZEE JANT and 'Wrangler';
(ii) Items with secret codes in brackets such as computer parts, RAMs;
(iii) Electrical goods (1202/4);
(iv) shoes (1203/2);
(v) Car Parts (1223/2);
(vi) Perfume (4445/1);
(vii) Eye Lenses (13259/5 and 3054/10) were also being transported in the vehicle. It is not possible to give the detail of each and every item.

3. As the goods loaded in the vehicle were taxable at different rates, therefore, the detail of goods was prepared taxwise. As such, the value of goods, rates leviable, and tax element involved were found as under:-

S.No.	Value of the Goods	Rate of tax leviable	Tax element involved
1.	Rs.26,76,811/-	6.05%	Rs. 1,61,947/-
2.	Rs.7,18,600/-	9.35%	Rs.67,189/-
3.	Rs.33,477/-	14.30%	Rs.4,787/-
4.	Rs. 1,51,400/-	15.95%	Rs. 17,768/-
Total	Rs.35,40,288/-		Rs.2,51,691/-

4. Apart from the recovery of the above mentioned GRs and challans, loose slips without any name of the consignor/consignee were also recovered. On receipt of the report and after holding enquiry, the Designated Officer vide his order dated 11.3.2016 imposed penalty to the tune of Rs. 20,21,835/-.

5. The appeal filed by the appellant was dismissed on 18.4.2016, hence this second appeal.

6. It is not in dispute that the appellants are not registered dealers, it is also undisputed that the goods being brought by the appellants were meant for trade and were not covered by the bills or invoices, undisputedly, the goods were taxable in the State of Punjab, therefore the goods loaded in the vehicle were certainly liable to tax at different rates. The Designated Officer prepared the inventory containing the value of the goods, rate of tax leviable and tax element involved. The total value of the goods as per the department came to be Rs.35,40,288/- over which the tax to the tune of Rs.2,51,691/- was payable. However, no actual purchaser or the seller of the goods came forward to claim the goods at the rates as determined by the department.

7. To the contrary, the counsel for the appellant has contended that the value of the goods has been exaggerated and fixed at the price more than the actual value. The First appellate Authority did not consider the evidence lead by the appellants for determining the actual value of the goods. The Excise and Taxation Officer did not conduct any independent enquiry to ascertain the value of the goods in question. The total value of the goods, according to the appellants, is not more than ten lacs, therefore, the department, at the most, could charge penalty after determination of the actual value of the goods.

8. Having heard the rival contentions and having gone through record of the case, it transpires that the parties are not at variance regarding payment tax and penalty but much

dispute has been raised over the value of the goods at which .he appellants purchased from their vendors. The appellant has given the value of the goods as under:-

Description of Goods	Quantity	Actual Rate	Actual Value	Justification
Jeans	3900 Pcs	130 Per pc	507000	Copies of invoices from various Delhi based Traders who regularly sell jeans at these rates alongwith copies of ICC forms showing valid import of these goods at similar rates.
Tops and T-Shirts	Bulk	40 to 60 per piece	To be valued on exact number of pieces.	Copies of invoices from various Delhi based Traders who regularly sell these items at the this rate alongwith copies of ICC forms showing valid import of these goods at similar rates.
Eye Lenses	Bulk	16/- per pair and 17/- per pair	To be valued on exact number of pieces	Copies of invoices from various Delhi based supplier clearly showing rates of lens pairs.
Computer H/Disks and other accessories	Bulk	As per quotations	To be valued on exact number of pieces	Hard disks are not fresh and dates can be verified from the pieces also to ascertain the truth as old and new items rates are different in such a way that rate of scrap and brand new goods cannot be the same. Quotations from Delhi based supplier who regularly supply these type of items to various retailers and whole sellers in Punjab and other parts of the country.
Electronic items chargers, speakers, wires etc.	Bulk	As per quotations	To be valued on exact number of pieces.	Quotations from Delhi based supplier who regularly supply these types of items to various retailers and whole sellers in Punjab and other parts of the country.
Tools cutter etc.	3 Qtl aprox	55 to 80 per Kg.	As per exact weight	All the material is not brand new but major part of tools is used ad old imported also from Kabarias brought after exact sorting by them. Quotations from different suppliers of these items at

				Delhi who regularly supply these items at given rates.

9. Despite the repeated queries raised by the Tribunal to the Excise and Taxation Officer present before him, he failed to point out as to the manner and method which was adopted and what procedure was followed for determining the value of the goods.

10. Admittedly, Section 46-A of the Punjab Value Added Tax Act was not invoked before imposition of penalty, thus the determination of the price has rendered, the order, passed by the Designated Officer as well as the First Appellate Authority, as void abinitio. The Deputy Excise and Taxation Commissioner also appears to have over stepped his jurisdiction while holding, on one side, that the appellant had not conformed to the requirement as provided under section 62 (5) of the Act and on the other side, he is entertaining the appeal and deciding the same on merits.

11. Thus while examining the case from all the angles, the Tribunal is of the opinion that before imposition of the penalty, the Designated Officer should have determined the price of the goods and tax involved there over and then imposed the penalty.

12. Resultantly, this appeal is accepted, impugned orders are set-aside and the case is sent back to the Designated Officer with a direction to determine the price and impose the penalty accordingly in the terms of the aforesaid order.

13. Since the goods are still in custody of the department, therefore, the department is directed to deal with and dispose off the goods at the earliest in accordance with law in order to save them from being damaged or perished.

———

SGA
LAW OFFICES

NOTIFICATION (Punjab)

NOTIFICATION REGARDING EXCLUDING SHODDY YARN FROM ADVANCE TAX

PUNJAB GOVT. GAZ. (EXTRA). JUNE 7, 2016
(JYST 17, 1938 SAKA)

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

NOTIFICATION

The 6th June, 2016

No. S.O.46/P.A.8/2005/S.6/2016.- Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 6 of the Punjab Value Added Tax Act, 2005, (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.90/P.A.8/2005/S.6/2013, dated 4th October, 2013, on and with effect from the 1st day of April, 2016, namely:-

AMENDMENT

In the said Notification, in serial No. 4, in the existing entry given under column 'Name of Goods', for the bracket and words "(Including cotton yarn)'', the brackets and words "including cotton yarn (excluding shoddy yarn)" shall be substituted.

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

PUBLIC NOTICE (Punjab)

E-PAYMENT FACILITY UNDER PVAT ACT 2005 & CST ACT 1956 EXTENDED TO LUXURY TAX AND ENTERTAINMENT TAX

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION

PUBLIC NOTICE

01-June-2016

Kind Attention: Dealers/Charted Accountants/Lawyers/Other Stakeholders

The Department of Excise & Taxation is happy to inform all the concerned that e-payment facility, which had been made available for Registration under PVAT Act 2005 & CST Act 1956 earlier, has now been extended to include Luxury Tax and Entertainment Tax Registrations also.

SGA
LAW OFFICES

PUBLIC NOTICE (Punjab)

E-RETURN FILING FACILITY UNDER PVAT ACT 2005 & CST ACT 1956 EXTENDED TO LUXURY TAX AND ENTERTAINMENT TAX

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION

PUBLIC NOTICE

10-June-2016

Kind Attention: Dealers/Charted Accountants/Lawyers/Other Stakeholders

The Department of Excise & Taxation is happy to inform all the concerned that e-return filing facility, which had been made available for the returns under PVAT Act 2005 & CST Act 1956 earlier, has now been extended to include Luxury Tax and Entertainment Tax Returns also.

SGA
LAW OFFICES

CIRCULAR (Haryana)

CRITERIA REGARDING SELECTION OF CASES FOR SCRUTINY ASSESSMENT UNDER THE HVAT ACT, 2003 AND THE CST ACT, 1956 FOR THE ASSESSMENT YEAR 2014-15

From

Excise and Taxation Commissioner,
Haryana.

To

1. All the Joint Excise and Taxation Commissioners (Range),
2. All the Deputy Excise and Taxation Commissioners (ST),

In the State of Haryana.

Memo No. 781/ST-6,
Panchkula, dated the 24-05-2016

Subject: **Criteria regarding selection of cases for scrutiny assessment under the HVAT Act, 2003 and the CST Act, 1956 for the assessment year 2014-15.**

Memo

The criteria for the selection of cases for scrutiny assessment for the year 2014-15 has been approved by the State Government. Under rule 27(2) of the Haryana Value Added Tax Rules, 2003 the following cases will be selected for scrutiny assessment under the new criteria.

1. U/r 27(1)(i), cases having GTO exceeding Rs. 10 cr. in a year
2. U/r 27(1)(ii), cases having claim of ITC exceeding Rs.25 lacs in a year.
3. U/r 27(l)(iii), cases for claim of refund exceeding Rs.5 lacs in a year.
4. U/r 27(1)(iv), cases where inter state trade and commerce or in the course of export of goods out of the territory of India or in the course of import of goods into territory of India or goods exported out of the State cumulatively or individually, gross turnover is Rs. 2.50 cr. or more than Rs. 2.50 cr. under the CST Act, 1956 in a year.
5. U/r 27(1)(v), all cases of industrial units availing any tax concession under clause (d) of sub-section (2) of Section 61 till such units are subject to relevant provisions of Haryana General Sales Tax Rules, 1975.

6. U/r 27(l)(vii), where there is a mismatch of sale, purchase or consignment with the accounts of the other dealers to the transactions.

7. U/r 27(1)(ix), cases based on definite intelligence about evasion of tax where on definite information it is discovered that there is evasion or avoidance of tax by such dealers. Such cases shall be taken up for scrutiny assessment with the prior approval of the DETC (ST) incharge of the district.

8. U/r 27(1)(x), 1% cases of total registered dealers in the State shall be selected randomly for scrutiny assessment through computer at the Head Office.

9. U/r 27(1)(xi), the following cases of different trade/ trades shall be taken up for scrutiny assessment under this criteria:-

   a) Mines and quarry contractors and stone crushers, whose turnover is Rs.75 lacs; or more than 75 lacs in a year.

   b) All builders and developers in the State;

   c) Works contractors having turnover more than Rs.5 cr.

   d) All cotton ginning mills;

   e) All processing units of dyeing, printing and embroidery;

   f) All hot mix plants;

   g) All Ready Mix Concrete (RMC) dealers;

   h) All Rice shellers having annual turnover exceeding Rs. one crore;

   i) The traders selling goods at concessional rate of tax under the CST Act after purchasing goods from within the State leviable to tax at general rate i.e. @ 12.5 % or higher rate i.e. more than @ 12.5%;

   j) Dealers exclusively dealing in biri and cigarette;

   k) All automobile dealers;

   l) All liquor dealers liable to pay tax including L-4/ L-5 licensees.

   m) All e-commerce dealers

   n) All ply board manufacturers other than those covered by lumpsum scheme.

2. Petrol pump dealers whose total purchase and sales are within the State of Haryana, shall not be taken up for scrutiny assessment.

3. While selecting the cases under the above scrutiny criteria, a scrutiny case, which has been selected under one criteria, would not fall under any other criteria.

4. The above criteria be circulated among all the ETO-cum-Assessing Authorities/ward officers working under your jurisdiction for compliance.

Addl. Excise and Taxation Commissioner (T),
for Excise and Taxation Commissioner, Haryana.

SGA
LAW OFFICES

CIRCULAR (Haryana)

GRANT OF REGISTRATION CERTIFICATE UNDER HVAT ACT, 2003/CST ACT, 1956 WITHIN ONE WORKING DAY TO THE INDUSTRIAL UNITS BEING SET UP ON SELF OWNED PREMISES/LAND

From

The Excise & Taxation Commissioner,
Haryana, Panchkula.

To

All Jt. Excise & Taxation Commissioners (Range)
All Dy. Excise & Taxation Commissioners (ST/PGT),
In the State of Haryana.

Circular No. 950/ ST-1
Panchkula, dated 14-06-2016

Subject: Grant of Registration Certificate under HVAT Act, 2003/CST Act, 1956 within one working day to the Industrial Units being set up on Self Owned Premises / Land.

In order to facilitate the business and to enhance Ease of Doing Business in the State, the Excise and Taxation Department has decided to grant Registration Certificate under HVAT Act, 2003/CST Act, 1956 within one working day to the Industrial Units which are being set up on self owned premises/land. In order to avail the above facility of registration within one working day, the dealer shall submit the following documents in addition to the documents required under Rule 11(5) of the HVAT Rules 2003, alongwith the prescribed application:-

(i) Attested copy of the title deed of the business premises self owned by the propertior/Hindu Undivided Family/Firm/Company/Association of Persons/any of the Partners.

(ii) Bank Guarantee of Rs. 5 lacs each under the HVAT Act, 2003 and the CST Act, 1956, in favour of Assessing Authority.

2. On receipt of application complete in all respects alongwith supporting documents, for grant of registration, the Assessing Authority shall consider the application and if the application is found in order, will grant Registration Certificate on next working day.

3. All the Industrial Units which have been granted Registration Certificate within one working day, shall be monitored by the Assessing Authority at least for two succeeding quarters from the date of registration.

You are hereby directed to bring this to the notice of all the officers working under your jurisdiction for strict compliance.

Addl. Excise &-Taxation Commissioner (T),
for Excise & Taxation Commissioner, Haryana.

SGA
LAW OFFICES

CIRCULAR (Haryana)

TIMELINE FOR GRANT OF REGISTRATION CERTIFICATE/PERMISSION UNDER THE PUNJAB ENTERTAINMENT DUTY ACT, 1955/RULES 1956

From

The Excise 8& Taxation Commissioner,
Haryana, Panchkula.

To

All Jt. Excise & Taxation Commissioners (Range)
All Dy. Excise & Taxation Commissioners(ST/PGT),
In the State of Haryana.

Circular No. 541/PGT-I
Panchkula, dated 14.06.2016

Subject: Timeline for grant of Registration Certificate/Permission under the Punjab Entertainment Duty Act, 1955/Rules 1956.

In order to facilitate the business and to enhance Ease of Doing Business in the State, the timeline of 15 days has been Fixed for grant of registration/permission under section 10 of the Punjab Entertainment Duty Act, 1955, or Rule 8-A of the Punjab Entertainment Duty Rules, 1956. It is hereby directed that the competent authority shall dispose of the application for the grant of registration/permission within 15 days from the date of receipt of complete application in the office concerned.

You are hereby directed to bring this to the notice of all the officers working under your jurisdiction for strict compliance.

Addl. Excise & Taxation Commissioner (T),
for Excise & Taxation Commissioner,
Haryana.

SGA
LAW OFFICES

CIRCULAR (Haryana)

IMPLEMENTATION OF SINGLE ID SYSTEM.

From

The Excise & Taxation Commissioner,
Haryana, Panchkula.

To

All Jt. Excise & Taxation Commissioners (Range)
All Dy. Excise & Taxation Commissioners(ST/PGT),
In the State of Haryana.
Circular No. 940/ST-1
Panchkula, dated 14-06-2016

Subject: Implementation of Single ID System.

In order to facilitate the business and to enhance Ease of Doing Business in the State, the Excise and Taxation Department has developed and implemented Single ID system w.e.f. 01.06.2016 under the following Acts:

a) The Haryana Value Added Tax Act, 2$03
b) The Central Sales Tax Act, 1956
c) The Haryana Tax On Luxuries Act, 2007
d) The Punjab Entertainment Duty Act, 1955 (as applicable to Haryana)

Under this system, a dealer who is registered under multiple Acts, can make use of his Single ID i.e. VAT TIN for the purpose of login. He can switch the Act(s) from his dashboard if he intends to access to another Act under which he is registered.

You are hereby directed to guide/train the dealers regarding the use of Single ID System. Further, you are also directed to bring this to the notice of the officers working under your jurisdiction for compliance.

Addl. Excise & Taxation Commissioner (T),
for Excise & Taxation Commissioner, Haryana.

NOTIFICATION (Haryana)

REGARDING AMENDMENT IN SECTION 59A FOR MAKING ENABLING PROVISION FOR AMNESTY SCHEME.

PART-I
HARYANA GOVERNMENT
LAW AND LEGISLATIVE DEPARTMENT

Notification

The 20th April, 2016

No. Leg. 10/2016.— The following Act of the Legislature of the State of Haryana received the assent of the Governor of Haryana on the11th April, 2016 and is hereby published for general information :—

HARYANA ACT NO. 7 OF 2016

THE HARYANA VALUE ADDED TAX (AMENDMENT) ACT, 2016

AN

ACT

further to amend the Haryana Value Added Tax Act, 2003.

Be it enacted by the Legislature of the State of Haryana in the Sixty-seventh Year of the Republic of India as follows:-

1. This Act may be called the Haryana Value Added Tax (Amendment) Act, 2016. Short title

2. For section 59A of the Haryana Value Added Tax Act, 2003, the following section shall be substituted, namely:— Substitution of section 59A of Haryana Act 6 of 2003

> **"59A. Amnesty Scheme.-**Notwithstanding anything to the contrary contained in this Act and rules framed thereunder, the Government may, by notification in the Official Gazette, notify amnesty scheme covering payment of tax, interest, penalty or any other dues under the Act relating to any period, subject to such conditions and restrictions, as may be specified therein, covering tax, rates of tax, period of limitation, interest, penalty or any other dues payable by a class of dealers or classes of dealers or all dealers.".

3. (1) The Haryana Value Added Tax (Amendment) Ordinance, 2016 (Haryana Ordinance No. 1 of 2016), is hereby repealed. Repeal and savings.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under this Act.

KULDIP JAIN,
Secretary to Government Haryana,
Law and Legislative Department.

SGA
LAW OFFICES

NOTIFICATION (Haryana)

NOTIFICATION REGARDING AMENDMENT IN RULES 11,13, AND 14 OF HVAT RULES, 2003

HARYANA GOVERNEMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 25th May, 2016

No. 15/ST-1/H.A. 6/2003/S.60/2016. - Whereas the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 60 read with the proviso to said sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following rules further to amend the Haryana Value Added Tax Rules, 2003, namely:-

1. These rules may be called the Haryana Value Added Tax (Second Amendment) Rules, 2016.

2. In the Haryana Value Added Tax Rules, 2003 (hereinafter called the said rules), in rule 11, -

(i) in sub-rule (5), for clause (i), the following clause shall be substituted, namely:-

"(i) proof of deposit of five hundred rupees in the appropriate Government treasury on account of registration fee;";

(ii) for sub-rule (6), the following for sub-rule shall be substituted, namely:-

"(6) In case any deficiency is noticed by the assessing authority, he shall issue a notice to the applicant within five days from the receipt of the application to remove the deficiency within a further period of five days. In case the applicant fails to remove the deficiency within the stipulated period, the application shall be liable to be rejected." ;

(iii) for sub-rule (7), the following sub-rule shall be substituted, namely:-

"(7) When the appropriate assessing authority, after making such enquiry as he may think necessary, is satisfied that the applicant is a bonafide dealer, and has correctly given the requisite information that he has deposited the registration fee in full in the Government treasury, he shall furnish the security if demanded under section 12 and that the application is in order, he shall **within fifteen days of the date of receipt of**

application register the dealer and shall issue to him a certificate of registration in Form VAT-G1 which shall be valid from the date of receipt of the application for registration by the assessing authority or from the date of commencement of the liability to pay tax whichever is later.".

3. In the said rules, in rule 13,-

(i) for the sign "." existing at the end, the sign ":" shall be substituted; and

(ii) the following proviso shall be added, namely:-

"Provided that the assessing authority shall dispose of the application for amendment in registration certificate within fifteen days of the date of receipt of the said application alongwith the supporting documents in the office concerned.".

4. In the said rules, in rule 14,-

(i) in sub rule (1), for the sign "." existing at the end, the sign ":" shall be substituted ; and

(ii) the following proviso shall be added, namely:-

"Provided that the assessing authority shall dispose of the application for cancellation of registration certificate within fifteen days of the date of receipt of the said application alongwith the supporting documents in the office concerned.".

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

SGA
LAW OFFICES

NOTIFICATION (Haryana)

NOTIFICATION REGARDING HARYANA AMNESTY SCHEME, 2016 FOR DEALERS AFFECTED DURING RESERVATION AGITATION IN THE MONTH OF FEBRUARY, 2016

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 27th May, 2016

No.16 /ST-1/H.A.6/2003/S.59A/2016. - In exercise of the powers conferred by section 59A of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby notifies a Scheme namely**, the Haryana Amnesty Scheme, 2016 for dealers affected during reservation agitation in the month of February, 2016** to provide relief in respect of tax, interest, penalty or other dues payable under the Act, for the period from the 1st January, 2016 to 31st March, 2016, to such affected dealers, subject to the conditions and restrictions as specified hereunder:-

Scheme

Short title

1. This scheme may be called the Haryana Amnesty Scheme, 2016 for the dealers affected during reservation agitation in the month of February, 2016.

Definitions

2. (1) Unless the context otherwise requires, for the purposes of this scheme,-

"affected dealer" means any registered dealer under the Act, who has been affected during reservation agitation in the State in the month of February, 2016, and considered entitled to compensation by the appropriate authority or committee designated or constituted for this purpose by the Government.

(2) Words and expressions not defined, but used in this scheme shall have the same meaning as assigned to it under the Act.

Submission of application

3. The affected dealer shall apply in Form appended to the scheme to the appropriate assessing authority, within sixty days from the date of the notification of the scheme in the Official Gazette or from the date of being considered entitled to compensation by the designated authority or committee, whichever is later, furnishing the details required therein.

Constitution of committee

4. A committee consisting of two senior most Excise and Taxation Officers (other than the concerned Assessing Authority) and the concerned Assessing

Authority posted in the district shall examine each application and make report within thirty days of the receipt of the application, to the concerned Deputy Excise and Taxation Commissioner (ST).

The Deputy Excise and Taxation Commissioner (ST), where he has reasons to believe that the information provided by the affected dealer in the application is incomplete or incorrect in material particulars, he may, for reasons to be recorded in writing, serve a notice upon the affected dealer directing him to show cause as to why his application should not be rejected. Thereafter, the Deputy Excise and Taxation Commissioner (ST) shall pass an appropriate order on the application, within a period of fifteen days from the date of issuance of notice.

The Deputy Excise and Taxation Commissioner (ST) shall accept the application which has been found in order or where the deficiency has been removed after notice.

Objects of Scheme

5. (i) The tax payable by an affected dealer covered under this scheme on the turnover of goods sold by him under the Haryana Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956 during February, 2016 shall stand waived off. The quantum of such tax shall be intimated by the affected dealer to the appropriate assessing authority in the application form:

Provided that in case the committee constituted for examining the application of the affected dealer is unable to ascertain the quantum of tax on goods sold during the month of February, 2016 from the account books of the affected dealer, the relief of tax waiver allowed under the scheme shall not exceed the average monthly tax payable under the Haryana Value Added Tax Act, 2003 (6 of 2003) and Central Sales Tax Act, 1956 (Central Act 74 of 1956), during the period 1st April, 2015 to 31st December, 2015.

(ii) The affected dealer shall be exempted under sub-section (6) of section 14 of the Haryana Value Added Tax Act, 2003 and under sub-section (2) of section 9 of the Central Sales Tax Act, 1956 read with Section 14(6) of the Act for non payment of tax on the turnover of goods sold during the months of January, 2016 and March, 2016 provided such tax is paid by the 31st July, 2016.

(iii) An affected dealer who has failed to use the goods purchased for specified purpose against declaration in form D-1 due to damage, destruction or loss of such goods during the reservation agitation in February, 2016, shall get immunity from penalty under sub-section 5 of section 7 of the Haryana Value Added Tax Act.

(iv) An affected dealer who failed to use the goods purchased for specified purpose against declaration in form 'C' due to damage, destruction or loss of such goods during the reservation agitation in February, 2016, shall get immunity from penalty under section 10A of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

(v) In the case of an affected dealer, who has lodged claim before the designated authority or committee, the time for submission of returns for the period 1st January, 2016 to 31st March, 2016 is extended upto 31st July, 2016.

(vi) An affected dealer covered under this scheme shall be entitled to claim input tax credit even in respect of the goods which have been damaged, destroyed or

lost during the reservation agitation in the State in the month of February, 2016.

(vii) The amount received as compensation from the appropriate authority or committee designated or constituted for this purpose by the government or insurance claim received from any insurance company, by the affected dealer, shall not be considered as valuable consideration towards the goods damaged, destroyed or lost during the reservation agitation.

6. (1) Nothing contained in this scheme shall be construed as conferring any benefit,concession or immunity other than the benefit, concession or immunity granted under this scheme. **Removal of Doubts**

(2) In case of any doubt or dispute arising out of the Scheme, the decision of the Excise and Taxation Commissioner, Haryana thereon shall be final.

APPLICATION FORM

THE HARYANA AMNESTY SCHEME, 2016 FOR REGISTERED DEALERS AFFECTED DURING RESERVATION AGITATION IN FEBRUARY, 2016

(under clause 3 of the Scheme)

Serial Number				
1.	Name of the dealer			
	PAN			
	Mobile			
	E-mail id			
	SCO/Booth/Shop/Building/Flat/Floor No.			
	Sector/Area			
	City/Town/Village			
	Post Office			
	District			
	Pin Code			
	State			
2.	TIN			
	Date of Liability of TIN			
	Date of Validity of TIN			
3.	(a) Date on which application for compensation submitted to the designated authority or committee.(please attach copy of application)			
	(b) Date on which application for claim of compensation submitted to the insurance company (please attach copy of application)			
4.	**Amount of tax on turnover of goods sold during February 2016 (Please see clause 5(i))**			
	HVAT Act/CST Act	Amount of tax payable on Turnover of sales in February 2016 (In rupees)	Amount of tax payable on Turnover of sales during 1.4.2015 to 31.12.2015 (In rupees)	
	1	2	3	
	HVAT Act			
	CST Act			
	Total			
5.	**Amount of tax exempted from levy of interest under the HVAT Act and the CST Act (please see clause 5(ii))**			
	Period	Amount of tax required to be paid by 30.4.2016 under the HVAT Act. (period for payment of tax extended upto 31.7.2016) (In rupees)	Amount of tax required to be paid by 30.4.2016 under the CST Act. (period for payment of tax extended upto 31.7.2016) (In rupees)	Total (In rupees)

	1	2	3	4
	January 2016			
	March 2016			
6.	Value of stock of goods purchased from within state against Form 'D1' which the affected dealer claims to have been damaged, destroyed or lost during the reservation agitation in February 2016. (Please see clause 5(iii)) (In rupees)	Value of stock of goods purchased from outside the state against declaration in Form 'C', which the affected dealer claims to have been damaged, destroyed or lost during the reservation agitation in February 2016. (Please see clause 5(iv)) (In rupees)	Value of stock of goods purchased from within state after payment of tax (input tax), which the affected dealer claims to have been damaged, destroyed or lost during the reservation agitation in February 2016. (Please see clause 5(vi)) (In rupees)	
	1	2	3	

7.	**Amount of Claim lodged/received (please see clause 5(vii))**			
	Amount of claim for compensation lodged before the designated authority or committee (in rupees)	Amount of claim for compensation approved/ received from the designated authority or committee (in rupees)	Amount of insurance claim lodged before the insurance company	Amount of insurance claim approved/received from the insurance company
	1	2	3	4
	Note. Information in column 2 and 4 to be filled up if insurance claim/ compensation has been approved/received			

Declaration:

I _____ (give full name) son/daughter of _____ (give name of the father), resident of _____ (give complete residential address), hereby declare in the capacity of _____ (proprietor/partner/managing director/duly authorized signatory) of M/s _____ (give full **name of the business entity/dealer), having its business address at _____ (give complete address of the dealer) that the contents contained hereinabove are true and correct and that nothing has been concealed therein. I have applied for THE HARYANA AMNESTY SCHEME, 2016 FOR REGISTERED DEALERS AFFECTED DURING RESERVATION AGITATION IN FEBRUARY, 2016 after fully understanding the terms and conditions.**

Signature
(Name of the applicant)
Also affix Seal and stamp of the dealer

Place:
Date:

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

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

LUDHIANA EXCISE DEPARTMENT OFFICIALS INVOLVED IN MULTI-CRORE BOGUS BILLING SCAM, SAYS INDUSTRIAL BODY

The names of many officials of the excise department have cropped up several times in the past, but none of them were arrested. A few of them were suspended for some time, but later reinstated.

LUDHIANA: A multi-crore bogus billing scam is suspected to be flourishing in the city in collusion with excise and taxation department officials, allege industry experts. Thousands of firms in Ludhiana are freely indulging in bogus billing as there no concrete plan of action or crackdown by authorities.

Owing to a nexus between the excise department and industrialists, a system has set in where excise department officials conveniently provide adequate patronage to let the firms indulging in bogus billing operate unabated. The sheer inaction over the past five years has resulted in the department sitting over a Rs.15,000 crore bogus billing scam in Ludhiana and Mandi Gobindgarh areas, revealed sources.

Sources also revealed that the sheer inaction on the part of excise department officials can directly be attributed to their money minting prospects which would take a deep hit if they start penalising fraudulent firms indulging in bogus billing.

The department officials have been accused of making suitable arrangements to open dummy firms and thus indulge in bogus billing. With both the parties (excise department officials and industrialists) conveniently serving each others vested interests, the VAT refund of genuine firms to the tune of Rs.1,500 crore is lying pending for two years now.

President of the Federation of Punjab Small Industries Association Badish Jindal said, "The names of many officials of the excise department have cropped up several times in the past, but none of them were arrested or convicted in those cases. A few of them were even suspended for some time and then reinstated afterwards. Currently, the department officials are probably the richest in the country as they have minted a money running into BADISH JINDAL, President of the Federation of Punjab Small Industries Association thousands of crores now. There is no punitive action against the fraudulent firms where officials have direct interests (greasing of palms by such firms) involved and firms which are depositing tax in a timely manner are subjected to unnecessary harassment, and let off only after they pay hefty bribe.

Jindal added that he had written to the Union ministry of home affairs requesting them to order an investigation in the multi-crore bogus billing scam by the CBI in 2011. But the excise department officials assured that they would be enquiring into the matter and take stringent action against the errant officials.

In a RTI (Right to Information) filed with the excise department in 2014 seeking information of number of bogus billing cases resolved so far and officials detained in such cases, department replied "NIL".

Former cabinet minister and renowned industrialist Satpal Gosain who pulled up the excise department over the issue of bogus billing scam several times in the past said, "I had submitted a list of five officials of excise department who were directly involved in several bogus billing scams running into crores of rupees.

Except for one official, four others were let off without any action against them. The fact that the inquiries are conducted by the department officials who themselves are part of bogus billing nexus ensures the defaulters are let off easily."

At present there are more than 1.5 lakh cases, of more than 32,000 firms, pending with the excise department. As per official figures by the excise department till 2010, the bogus billing scam figure was at Rs.10,000 crore but in the absence of crackdown on fraudulent firms, in a period of five years that figure has now touched Rs.20,000 crore now. Bogus billing scams are conducted primarily by steel, hosiery, yarn manufacturing firms and industry which use furnace oil as fuel.

JK Jain DETC (Deputy Excise and Taxation Commissioner) Ludhiana said, "I have already convened meetings with the department officials and starting next week, we would hold meetings with different industrial associations to work out modalities to curb bogus billing menace."

Courtesy: The Hindustan Times
13th June, 2016

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

ARUN JAITLEY MEETS STATE FMS ON GST: ALL STATES OPPOSE GST CAP, HIS MESSAGE TO CONGRESS

Cong wants rate ceiling specified; Govt hopes to push Bill in monsoon session

Tamil Nadu held out at a key meeting of state finance ministers Tuesday to roll out a nationwide goods and services tax (GST) regime next year and Union Finance Minister Arun Jaitley said its suggestions have been noted. He said states are unanimously against the idea of specifying a GST ceiling rate in the Constitution amendment Bill which the government hopes to push through in the monsoon session of Parliament.

A cap of 18 per cent on the GST rate is one of the three main demands of the opposition Congress which has made a strong pitch for the ceiling rate to be specified in the Bill itself.

The Bill is stuck in Rajya Sabha where the ruling coalition lacks numbers.

Courtesy: The Indian Express

15th June, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

INDIA INC HAILS MODEL GST LAW, EXPECTS ROLLOUT FROM NEXT FISCAL

NEW DELHI: With the Centre releasing the model GST law after evolving broader consensus with states, India Inc today hoped that the landmark indirect tax regime will come into effect from April next year.

The government has put up the model Goods and Services Tax (GST) legislation for public consultations and hopes to get the bill passed during the monsoon session of Parliament starting next month.

"We look forward to the positive movement and with these initiatives, it is expected that implementation of GST with effect from April 1, 2017 will become a reality," said CII Director General Chandrajit Banerjee.

The model GST law, which has 162 clauses and 4 schedule, was released by the government after a meeting of Empowered Committee of state Finance Ministers on the long awaited indirect tax reform.

Virtually all states have supported the idea of GST except Tamil Nadu which has "some reservations", said Finance Minister Arun Jaitley, who chaired the meeting. "Lot of hard work seems to have been put in for arriving at broader consensus with the states...Hectic times ahead for industry. All eyes on the monsoon session now for passage of the constitutional amendment bill," said Pratik Jain, Leader - Indirect Tax, PwC India.

The GST bill -- which will help create a single national sales tax to replace several state and central levies -- has already been approved by the Lok Sabha and is pending in the Rajya Sabha where the government doesn't have a majority. The main opposition party Congress has demanded certain changes in the bill.

Sachin Menon, Partner and Head, Indirect Tax at KPMG, in India said by endorsing the model GST law, the Empowered Committee of Finance Ministers have shown that they are committed to introduce GST in their states irrespective of political affiliations.

"The model GST bill will put an end to the never-ending disputes about taxability of works contracts and lease transactions, as the bill classify the same as service, irrespective of whether the transactions involve goods and services," he said. In his comment, Mahesh Jaising, Partner, BMR and Associates LLP, said the model GST indeed reflects that the government has been working in full force towards the implementation of the legislation.

Courtesy: The Economic Times

15th June, 2016