SGA
LAW OFFICES

Issue 6
16th March 2016

NOMINAL INDEX

NOTIFICATION

NEWS OF YOUR INTEREST

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News From Court Rooms

DELHI HC : Delhi VAT : Where Assessing Authority by an order passed under section 60(2)(f) had sealed three premises of assessee on account of failure to produce records as demanded by notice issued under section 59 and thereafter he by an order passed under section 60(4) required assessee to deposit Rs. 600 crores as a condition for de-sealing of said premises, impugned orders were unsustainable in law. *(Larsen and Toubro Ltd. – February 3, 2016).*

DELHI HC : Delhi VAT : Where Assessing Authority by an order passed under section 60(2)(f) had sealed three premises of assessee on account of failure to produce records as demanded by notice issued under section 59 and thereafter he by an order passed under section 60(4) required assessee to deposit Rs. 600 crores as a condition for de-sealing of said premises, impugned orders were unsustainable in law. *(Larsen and Toubro Ltd. – February 3, 2016).*

CESTAT, MUMBAI : Service Tax : The assessee was acting as intermediary for postal department. The Adjudicating Authority held that assessee was liable for service tax on commission received from postal department. If service tax was paid by assessee, same shall be available as cenvat credit to postal department, therefore, since postal department was discharging service tax, it was an exercise of revenue neutral and for this reason demand did not exist against assessee. *(Dinesh M Kotian – January 7, 2016)*

CESTAT, MUMBAI: Cenvat credit : When the premises was occupied by the appellant and day-to-day repairs and maintenance are carried out in that premises then obviously the said services i.e. repair, maintenance, etc., are received and used by the tenant only and not by the landlord. Refund allowed. *(Sitel India Ltd. – February 9, 2016)*

CESTAT, NEW DELHI :

Central Excise: Brand name or trade name has a wider connotation and registration under Trademarks Act is not mandatory under CE Act, 1944. Hence, use of even unregistered marks of customers would lead to denial of SSI-exemption. *(Kusum Foundry & Metal Works P Ltd. – February 1, 2016).*

KARNATAKA HC :

Service Tax : Revenue could not show any provision under Rule 5 of Cenvat Credit Rules which provides for condition precedent for registration of the service provider. Refund cannot be denied. *(Tavant Technologies India P Ltd. – February 19, 2016).*

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SUBJECT INDEX

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 2506-2511 OF 2016

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STATE OF PUNJAB & ORS.
Vs
SHREYANS INDUS LTD. ETC.

T.S. THAKUR, C.J.I., A.K. SIKRI, AND R. BANUMATHI, JJ.

4th March, 2016

HF ▶ Assessee

Order for extending period for framing of assessment cannot be passed after expiry of limitation period.

ASSESSMENT – LIMITATION – EXTENSION OF PERIOD FOR FRAMING ASSESSMENT – NOTICE FOR FRAMING OF ASSESSMENT WAS SERVED AFTER EXPIRY OF LIMITATION PERIOD OF THREE YEARS – OBJECTION RAISED BY ASSESSEE CONTENDING THAT NO EXTENSION ORDER SERVED – SUBSEQUENTLY, EXTENSION ORDER ISSUED POST EXPIRY OF LIMITATION PERIOD FOR FRAMING ASSESSMENT – APPEAL ACCEPTED BY HIGH COURT RELYING ON JUDGMENTS PASSED BY KARNATAKA AND GUJRAT HIGH COURTS WHEREBY IT WAS HELD THAT COMMISSIONER OUGHT TO EXTEND THE PERIOD WITHIN THE LIMITATION PERIOD – APPEAL BEFORE SUPREME COURT BY REVENUE – HELD: ESSENCE OF PROVISIONS OF KARNATAKA ACT AND GUJRAT ACT ARE SAME THEREBY APPROVING APPLICABILITY OF THE JUDGMENTS RELIED UPON BY HIGH COURT TO THE PRESENT CASE – VALUABLE RIGHT ACCRUES TO ASSESSEE AFTER EXPIRY OF LIMITATION PERIOD - RIGHT OF DEPARTMENT GETS EXTINGUISHED AFTER LAPSE OF LIMITATION PERIOD – THEREFORE, ORDER OF EXTENSION HAS TO BE PASSED BEFORE EXPIRY OF LIMITATION PERIOD- *S. 11(10) OF PGST ACT, 1948*

Facts

For the assessment years 2000-01, 2001-02, 2002-03 and 2003-04, a notice was sent after expiry of three years for assessment of returns filed. The assessee – respondent raised an objection contending that assessment notice could not be issued after expiry of three years. However, the officer passed orders dated August 17, 2007 granting extension of time. The Tribunal dismissed the appeal holding that the commissioner could extend the period u/s 11(10) of the Act after expiry of the said period. Relying on the judgment passed by the Karnataka High Court and Gujrat High court, the Punjab and Haryana High court held that once the period of limitation expires, the immunity from subjecting itself to the assessment sets in and right to make assessment gets extinguished. Therefore, commissioner is debarred from extending the period of limitation in the present case. Thus, appeals have been filed by revenue

before the Supreme Court contending that the judgments followed by High court are not applicable.

Held:

The essence of provisions in Karnataka Act or Gujrat Act is the same as in Punjab Act. It was observed in Bharat Heavy Electricals Ltd case that upon lapse of period of limitation prescribed, the right of the department to assess an assessee gets extinguished and this extension confers a valuable right on the assessee. This dicta is applicable in the present case as well. Thus, time cannot be extended once assessment has become time barred and a valuable right has accrued to the assessee. The provision of S. (10) has to be interpreted in such as way that it is equitable to both the parties. The order passed by High court is upheld and appeals filed by revenue are dismissed.

Cases referred:

- *Bharat Heavy Electricals Ltd. v. Assistant Commissioner of Commercial Taxes (,INT-I), South Zone, Bangalore and others* (2006) 143 STC 10
- *Javer Jivan Mehta v. Assistant Commissioner of Sales Tax (Appeal)* (1998) 111 STC 199.
- *D.V. Paul v. Manisha Lalwani* (2010) 8 SCC 546
- *Commissioner of Income Tax, Jullundur v. Ajanta Electricals* (1994) 5 SCC 182
- *Hindustan Steelworks Construction Ltd. v. C. Rajasekhar Rao* (1987) 4 SCC 93

Present:	**For Petitioner(s)**	Mr. A.K. Ganguli,Sr.Advocate Mr. Nikhil Nayyar,AAG Mr. Kuldip Singh,Advocate Mr. Jagjit Singh Chhabra,Advocate
	For Respondent(s) (SLP 13237-38/10, 31488/09, 1672/10& 5076-5077/11)	Mr. Sandeep Goyal,Advocate Mr. Pawan Shree Agrawal,Advocate Mr. Rishab Singla,Advocate Mr. Jas Karan Singh,Advocate For M/s Suresh A. Shroff & Co.
	(SLP 21712-717/09 & SLP 35619-620/09)	Mr. Atishi Dipankar,Advocate
	(SLP 27807-808/10 27813-2784/10 & 27874/10)	Mr. Annam D. N. Rao,Advocate Mr. Annam Venkatesh,Advocate Mr. Sudipto Sircar,Advocate Ms. Ankita Chadha,Advocate Mr. M. P. Devanath,Advocate Mr. Abhishek Anand,Advocate

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A.K. SIKRI, J.

Leave granted.

2. In these appeals, the judgment which is impugned is passed by the High Court of Punjab & Haryana. The issue involved in these appeals is identical which pertains to the interpretation that is to be accorded to sub-section (10) of Section 11 of Punjab General Sales Tax Act, 1948 (hereinafter referred to as the "Act"). It is for this reason that all these appeals were heard together and can conveniently be disposed of by one common judgment. Since SLP (C) Nos. 21712-21717 of 2009 was taken as the lead case, for understanding the nature of lis that is involved, the factual narration can be addressed from the said appeal.

3. In these appeals, we are concerned with Assessment Years 2000-01, 2001-02, 2002-03 and 2003-04. Obviously, assessment in respect of these Assessment Years was to be made under the said Act. The assessee had filed quarterly returns in respect of the aforesaid Assessment Years. In terms of Section 11(3) of the Act, time-limit for completing the assessment provided therein is three years from the end of the year. Accordingly, assessments were to be made by 30th April, 2004 for the Assessment Year 2000-01, 30th April, 2005 for the Assessment Year 2001-02, 30th April, 2006 for the Assessment Year 2002-03 and 30th April, 2007 for the Assessment Year 2003-04. It is an admitted case that no assessment was made in respect of any of these Assessment Years by the aforesaid stipulated dates.

4. The Assessing Officer, however, sent notices to the respondent- assessee in Form ST-XIV for the aforesaid Assessment Years, i.e., after the expiry of three years. The assessee took an objection that these notices were sent beyond the period of assessment and, therefore, it was not permissible for the Assessing Officer to issue notice after the expiry of three years and carry on with the assessment proceedings.

5. We may point out that under Section 11(10) of the Act, the Commissioner is empowered to extend the period of three years for passing the order of assessment for such further period as he may deem fit, after recording in writing the reasons for extending such period. When the objection was taken by the assessee that the notices were time barred, the Excise and Taxation Commissioner, Patiala passed orders dated August 17, 2007 granting extension of time. Reason given for extension of time was that the case of the assessee for the year 1999-2000 was pending with the Tribunal. This order of extension was challenged by the respondent along with the order of assessment passed by the Assessing Officer. The Tribunal, however, dismissed the appeal of the assessee vide its orders September 13, 2007 holding that since there was a power of extension conferred upon the Commissioner under Section 11(10) of the Act, the Commissioner was within his powers to extend the period. The contention of the assessee was that though there was a power of extension, such a power could be exercised only within the limitation prescribed. In other words, it was contended that when the normal period of limitation for passing assessment order by the Assessing Officer was three years, as per Section 11(3) of the Act, the power to extend the period could be exercised within the said period of three years and not after the expiry of limitation period. This plea of the assessee was rejected by the Tribunal.

6. The assessee took up the matter further by filing appeals before the High Court. Here, the assessee has succeeded in its submission as the High Court of Punjab and Haryana vide impugned judgment dated September 26, 2008 has held that once the period of limitation expires, the immunity from subjecting itself to the assessment sets in and the right to make assessment gets extinguished. Therefore, when the period of limitation prescribed in the Act for passing the assessment order expires, thereafter, the Commissioner is debarred from exercising his powers under sub-section (10) of Section 11 of the Act and cannot extend the period of limitation for the purposes of assessment. This order is assailed by the Revenue in the instant appeals before us.

7. It would also be pertinent to note, at this stage, that while arriving at the aforesaid conclusion, the Punjab and Haryana High Court has placed heavy reliance upon the view taken by a Division Bench of Karnataka High Court in ***Bharat Heavy Electricals Ltd. v. Assistant Commissioner of Commercial Taxes (,INT-I), South Zone, Bangalore and others*** (2006) 143 STC 10 which judgment of Karnataka High Court, in turn, refers to similar view taken by Gujarat High Court in ***Javer Jivan Mehta v. Assistant Commissioner of Sales Tax (Appeal)*** (1998) 111 STC 199. Thus, three High Courts have taken identical view, namely, though power to extend time of three years for a further period of passing the assessment is there with the

Commissioner, the same has to be exercised before the expiry of normal period of three years and not subsequent there to.

8. As the submissions of the parties on either side would be better understood once the relevant statutory provision is noted, it would be apposite to reproduce the provisions of Section 11 of the Act, which are as follows:

> *"11. Assessment of tax. - (1) If the Assessing Authority is satisfied without requiring the presence of dealer or the production by him of any evidence that the returns furnished in respect of any period are correct and complete, he shall pass an order of assessment on the basis of such returns* ***within a period of three years from the last date prescribed for furnished the last return in respect of such period.***
>
> *(2) If the Assessing Authority is not satisfied without requiring the presence of dealer who furnished the returns or production of evidence that the returns furnished in respect of any period are correct and complete, he shall serve on such dealer a notice in the prescribed manner requiring him, on a date and at place specified therein, either to attend in person or to produce or to cause to be produced any evidence on which such dealer may rely in support of such returns.*
>
> *(3) On the day specified in the notice or as soon afterwards as may be, the Assessing Authority shall, after hearing such evidence as the dealer may produce, and such other evidence as the Assessing Authority may require on specified points,* ***[pass an order of assessment within a period of three years from the last date prescribed for furnishing the last return in respect of nay period.]***
>
> *(4) If a dealer having furnished returns in respect of a period, fails to comply with the terms of notice issued under sub-section (2), the Assessing Authority shall, [within a period of three years from the 1st date prescribed for furnishing the last return in respect of such period, pass an order of assessment to the best of his judgment.]*
>
> *(5) If a dealer does not furnish returns in respect of any period by the last date prescribed the assessing authority shall within a period of five years from the last date prescribed for furnishing the return in respect of such period and after giving the dealer a reasonable opportunity of being heard, pass an order of assessment to the best of his judgment.*
>
> *(6) IF upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration, the Assessing Authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to access, to the best of his judgment the amount of tax, if any, due from the dealer in respect of such period and all subsequent periods and in case where such dealer has willfully failed to apply for registration, the Assessing Authority may direct that the dealer shall pay by way of penalty, in addition to the amount so assessed, in addition to the amount so assessed, a sum not exceeding one and a half times that amount.*
>
> *(7) The amount of any tax, penalty or interest payable under this Act shall be paid by the dealer in the manner prescribed, by such date as may be specified in the notice issued by the Assessing Authority for the purpose and the date so*

specified shall not be less than fifteen days and not more than thirty days from the date of service of such notice:

Provided that the Assessing Authority may, with the prior approval of the Assistant Excise and Taxation Commissioner, Incharge of the District extend the date of such payment or allow payment by instalments against an adequate security or bank guarantee.

(8) If the tax assessed under this Act or any instalment thereof is not paid by any dealer within the time specified thereof in the notice of assessment or in the order permitting payment in installments, the Commissioner or any other person appointed to assist him under sub-section (1) of Section 3 may, after giving such dealer an opportunity of being heard, impose on him a penalty not exceeding in amount the sum due from him.

(9) Any assessment made under this section shall be without prejudice to any penalty imposed under this Act.

(10) The Commissioner, may for reasons to be recorded in writing, extends the period of three years, for passing the order of assessment for such further period as he may deem fit.

(11) Where the proceedings of assessment are stayed by an order of any court, the period for which such stay remains in force, shall not count towards computing the period of three years specified under this section for passing the order of assessment.

(12) The assessing authority may on his own motion, review any assessment order passed by him and such review shall be completed within a period of one year from the date of order under review."

(emphasis supplied)

9. A mere reading of the aforesaid provision would reflect that wherever return is filed by the assessee, assessment is to be made within a period of three years from the last date prescribed for furnishing the return in respect of such period. On the other hand, in those cases where return is not filed or any dealer, who is liable to pay the tax under the Act, does not get himself registered therein, the period of assessment prescribed is five years. We are not concerned with the alternate situation as in the instant appeals not only the assessees are registered dealers, they had also filed their returns regularly within the prescribed period and, therefore, assessments were to be completed within a period of three years from the last date prescribed for furnishing the returns, which is the normal period prescribed. At the same time, sub-section (10) of Section 11 gives power to the Commissioner to extend a period of three years. Interestingly, there is no upper limit prescribed for which the period can be extended, meaning thereby such an extension can be given, theoretically, for any length of time. This discretion is, however, controlled by obligating the Commissioner to give his reasons for extension, and such reasons are to be recorded in writing. Obviously, the purpose of giving reasons in writing is to ensure that the power to extend the period of limitation is exercised for valid reasons based on material considerations and that power is not abused by exercising it without any application of mind, or mala fide or on irrelevant considerations or for extraneous purposes. Such an order of extension of time, naturally, is open to judicial review, albeit within the confines of law on the basis of which such judicial review is permissible.

10. Be that as it may, the question before us is as to whether the power to extend time is to be necessarily exercised before the normal expiry of the said period of three years run out.

11. Mr. Ganguli, submitted that there is no such embargo or impediment provided in sub-section (10) of Section 11 mandating the Commissioner to pass an order of extension necessarily within the normal period of three years. He submitted that the word used in the aforesaid provision 'extension' of time is in contradistinction to the word 'deferment' which appears in the Karnataka Legislation. On that basis, he argued that it was inappropriate on the part of the High Court to refer to and rely upon the judgment of Karnataka High Court inasmuch as provision of law contained in the Karnataka Sales Tax Act is entirely different. He further submitted that since in Punjab Legislation, the expression used is 'extension of time', the Court was required to construe the provision keeping in mind the said language. Mr. Ganguli argued that a reading of meaning of expression 'deferment' and 'extension' of time as contained in Black's Law Dictionary will clearly bring out the difference.

- "defer, vb. 1. To postpone; to delay <to defer taxes to another year>"
- "deferment, n. 1. The act of delaying; postponement <deferment of a judicial decision>"

It was submitted that the expressions 'defer' and 'deferment' as can be seen from the above definitions, clearly contemplate postponement, which presupposes that the time period originally fixed is not extinguished. In other words, an action, which is deferred, (i.e. an action which is required to be completed within a specified time frame) can only be deferred of which the time so fixed has not expired.

It was submitted that, in contrast, Black's Law Dictionary defines the expression 'extension' as follows:

> *"Extension, n. 3. Tax. A period of additional time to file an income-tax return beyond its due date. 4. A period of additional time to take an action, make a decision, accept an offer, or complete a task"*

It was argued that the word 'extension has' varied meanings, dependent on the context in which it is used. The expression 'extension' in the context of surveillance orders, has been interpreted in the following manner:

> *"Where surveillance pursuant to order issued under Title III of Omnibus Crime Control and Safe Streets Act is of same premises, involves substantially same persons, and is part of same investigation, second Title III* ***surveillance order issued after expiration of first order is 'extension' of first order*** *for purposes of requirement of sealing of recordings, even if there is gap of time in between expiration of first order and entry of second."*
>
> *(Emphasis supplied)*

12. Mr. Ganguli also referred to the concept of extension as incorporated in Section 148 of the Code of Civil Procedure, 1908. He relied upon the judgment of this Court in ***D.V. Paul v. Manisha Lalwani*** (2010) 8 SCC 546. This Court in paragraph 26 of the said judgment held as under:

> *"26. Insofar as the first aspect is concerned Section 148 CPC, in our opinion, clearly reserves in favour of the court the power to enlarge the time required for doing an act prescribed or allowed by the Code of Civil Procedure. Section 148 of the Code may at this stage be extracted.*
>
> > *"148. Enlargement of time.— Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Code, the court may, it its discretion, from time to time, enlarge such period not*

> *exceeding thirty days in total, even though the period originally fixed or granted may have expired."*
>
> *A plain reading of the above would show that when any period or time is granted by the court for doing any act, the court has the discretion from time to time to enlarge such period even if the time originally fixed or granted by the court has expired. It is evident from the language employed in the provision that the power given to the court is discretionary and intended to be exercised only to meet the ends of justice."*

13. Mr. Ganguli further submitted that even in the context of taxation law, a similar reasoning has been adopted by the Court in ***Commissioner of Income Tax, Jullundur v. Ajanta Electricals*** (1994) 5 SCC 182. While interpreting Section 139(2) of the Income Tax Act, which empowered the Assessing Officer to grant an extension of time for filing of the return of income, upholding the power of the Income Tax Officer to extend the time for filing of the Income Tax return by the assessee even after the expiry of the

> *"9. In this context, the question whether a belated application could be regarded as valid or not has to be considered. As rightly pointed out by the Punjab and Haryana High Court while deciding these cases under Section 256(2) and by the Calcutta High Court in Sunderdas Thackersay & Bros.(137 ITR 646), there are no words of limitation in Section 139(2) to the effect that no application could be filed after the period allowed had expired. As we have stated earlier, it was a procedural provision. The limit of thirty days was not intended to be final as discretion was given to the ITO to extend that date. The ITO could have been called upon to exercise that discretion for proper reasons. No fetters were placed upon the discretion of the ITO as regards the number of times he could extend the date or the period for which he could extend it. It is conceded that repeated applications could be made within the time allowed, in view of the clear indication to that effect in Form No. 6, by the use of words "it has not been possible". If it was intended that the application for extension of time under Section 139(2) was to be made within the time allowed originally or within the extended time then the words "it has not been possible" were not at all necessary and the words "it is not possible" would have been sufficient. Though the rule cannot affect, control or derogate from the section of the Act, so long as it does not have that effect, it has to be regarded as having the same force as the section of the Act. If Section 139(2) is read along with Rule 13 and Form No. 6 it becomes clear that an application for extension could be made even after the period allowed originally or as a result of extension granted had expired. Keeping in mind the object of giving discretion to the ITO and the consequences that were to follow from not filing the return within time, we see no justification for reading into the section any limitation to the effect that no application could be made after the time allowed had expired. We see no good reason to construe the section so narrowly."*
>
> *(emphasis supplied)*

In that judgment, applying the principles contained in Section 148, CPC, it was remarked as under:

> *"10. We cannot accept the contention raised on behalf of the Revenue that the word 'extend' in the proviso to Section 139(2) implies that at the time of making the application the time allowed should not have expired. Though the Civil Procedure Code by itself does not apply to the proceedings under the Income Tax Act, we see no reason why a principle of procedure evolved for doing justice*

to a party to the proceeding cannot be called in aid to while interpreting a procedural provision contained in the Act. Section 148 of the Code provides that where any period is fixed or granted by the court for the doing of any act prescribed or allowed by the Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired. Various situations can be envisaged where a party to the proceeding is prevented by circumstances beyond his control from doing the required act within the fixed period. The assessee may be able to point out that because of a sudden death in the family or because of his sudden illness of a serious nature or because he had to leave for an outside place all of a sudden or because he could not return from outside in spite of his best efforts, or for other good reasons, as the case may be, he was not able to file the return within time……."

[Emphasis supplied]

14. Mr. Ganguli also drew sustenance from the Arbitration Act, 1940 which gave power to the Court to extend time. It was submitted that this Court has held in the matter of ***Hindustan Steelworks Construction Ltd. v. C. Rajasekhar Rao*** (1987) 4 SCC 93 that the Court has got the power to extend time even after the award has been given or after the expiry of the period prescribed from the award.

15. Mr. Ganguli re-emphasised that reliance upon the decision of Gujarat High Court in the impugned judgment was untenable as the provisions of Karnataka Sales Tax Act are totally different inasmuch as Section 12(6) of the Karnataka Act provided only 'deferment'. He submitted that even the judgment of Gujarat High Court in ***Javer Jivan Mehta*** case was distinguishable since that was also a case of exclusion of a period and the issue therein was the computation of period of limitation.

16. The aforesaid contentions were refuted by the learned counsel who appeared for assessees in these appeals. It was submitted that sub-section (10) of Section 11 states, in no uncertain term, that the assessment order is to be passed 'within a period of three years…..'. It was emphasised that the word 'within' was of significance. It was pointed out that before the year 1998, no period of limitation was prescribed and such a provision came to be inserted by way of amendment vide Act No. 12 of 1998 dated April 20, 1998 . It was further argued that sub-section (10) of Section 11 obligates the Commissioner to record reasons in writing while extending the period. It was submitted that this requirement of recording of reasons came up for consideration before Punjab & Haryana High Court and in a series of judgments, it is held that such an order of extension of time can be passed only after giving an opportunity of hearing to the assessee. The learned counsel referred to the following judgments of the High Court:

(i) ***State of Punjab, Through Assistant Excise and Taxation Commissioner, Bathinda v. M/s. Olam Agro India Ltd.*** (formerly Olam Export India Ltd.); decided by the Punjab & Haryana High Court on August 20, 2013.

(ii) ***State of Punjab v. M/s. Olam Agro India*** Ltd. ; Daily Order; Dismissed by the Supreme Court vide Oder dated May 08, 2015.

(iii) ***A.B. Sugars Limited v. The State of Punjab and others***; Decided by the Punjab & Haryana High Court on September 01, 2009.

17. It was also argued that conceptually there was no difference between 'deferment' and 'extension' insofar as it related to the issue at hand which is concerned with the point of time at which Commissioner is to exercise his powers. For that, the reasons given by Karnataka High Court as well as Gujarat High Court holding that such a power gets extinguished with the

expiry of normal period of limitation prescribed and, therefore, cannot be exercised after the limitation period were germane and relevant while construing the provisions of sub-section (10) of Section 11 of the Act as well and, therefore, those cases were rightly relied upon by the High Court in the impugned judgment.

18. In rejoinder, Mr. Ganguli refuted the aforesaid submissions of the learned counsel for the assessees. The arguments advanced by him was that the submission of the assessees that the Commissioner has to afford an opportunity of hearing to the dealer before extending the period of limitation does not arise in the present case as this was not the issue raised in the Courts below. He argued that the question to be decided in these appeals was as to whether the power under sub-section (10) of Section 11 of the Act could be exercised on the expiry of the period of three years and this question is not answered in the judgments referred to by the opposite party. He further submitted that it is a question of fact to be decided in each case as to whether assessee was entitled to such a right of hearing and, therefore, this issue could not be taken up for the first time in these appeals.

19. We have bestowed our serious considerations to the submissions made by the counsel who argued the matter.

20. We may say at the outset that though provisions of the Punjab Act are couched in different language from Karnataka Act or Gujarat Act, the essence of these provisions is same. As noticed above, insofar as scheme of Punjab Act is concerned, the assessment order is to be normally passed within a period of three years. At the same time, power is given to the Commissioner under Section 11(10) of the Act to extend the said period of three years. Once such an extension is given, the order is passed even beyond the period of three years. Significantly, no upper limit is fixed while giving such extension which means that the power can be exercised for extending the period for any length of time, subject however to the condition that the Commissioner is bound to record the reasons justifying such an extension. Obviously, when the Commissioner passes such an order and give reasons, not only he would have to justify his action of extending time but also the period by which the time is extended. In the Karnataka Legislation, the power is of 'deferment'. In that Legislation as well, the Assessment Order is to be passed within three years as sub-section (5) of Section 12 of Karnataka Sales Tax Act stipulates that no assessment shall be made after a period of three years from the date on which the return under sub-section (1) of that order is submitted by a dealer subject to two provisos mentioned therein. Sub-section (6) of Section 12 mentions as to how the period of limitation is to be computed and reads as under:

"(6) In computing the period of limitation for assessment under this Section,-

(a) the time during which the proceedings for assessment in question have been deferred on account of any stay order granted by any Court or any other authority shall be excluded;

(b) the time during which the assessment has been deferred in any case or class of cases by the Joint Commissioner for reasons to be recorded in writing shall be excluded."

21. Clause (b) of sub-section (6) indicates that Joint Commissioner, in appropriate cases, may pass an order for deferment of Assessment Order to be passed by the Assessing Authority and once such an order is passed, that period has not to be counted while computing the period of limitation. Significantly, this provision also mandates the Joint Commissioner to record reasons for deferring the orders of assessment. In essence, therefore, the purport and objective behind the provisions in Punjab Act as well as in Karnataka Act remains the same. By making any order of deferment under sub-section (6) of Section 12 of Karnataka Sales Tax Act, the Joint Commissioner is, in fact, achieving the same purpose of granting more time to the

Assessing Officer to pass the Assessment Order. Same is the purpose behind sub-section (11) of Section 10 of the Punjab Act. In view thereof, it may not be appropriate to go into the nuanced distinction between "deferment" and "extension" as per the definitions contained Black's Law Dictionary in the given situation, which is dealt with in the instant appeals.

22. Even otherwise, it is important to understand the ratio laid down in the judgment of Karnataka High Court in ***Bharat Heavy Electricals Ltd.*** (supra). The issue in the said case before the Karnataka High Court was as to whether the power to pass a deferment order is to be exercised even after the expiry of the period of limitation which was answered in the negative. The reasons given in support of this conclusion are as follows:

> *"...Deferment of assessment has the effect of enlarging the period of limitation which did not expire by the time the deferment order is contemplated to be passed. When once the period of limitation expires, the immunity against being subject to assessment sets in and the right to make assessment gets extinguished. Resort to deferment provisions does not retrieve the situation. There is no question of deferring assessment which has already become time-barred. The provision for exclusion of time in computing the period of limitation of deferment of assessment is meant to prevent further running of time against the Revenue if the limitation had not expired."*
>
> *(emphasis supplied)*

23. It was also observed that upon the lapse of the period of limitation prescribed, the right of the Department to assess an assessee gets extinguished and this extension confers a very valuable right on the assessee.

24. If one is to go by the aforesaid dicta, with which we entirely agree, the same shall apply in the instant cases as well. In the context of the Punjab Act, it can be said that extension of time for assessment has the effect of enlarging the period of limitation and, therefore, once the period of limitation expires, the immunity against being subject to assessment sets in and the right to make assessment gets extinguished. Therefore, there would be no question of extending the time for assessment when the assessment has already become time barred. A valuable right has also accrued in favour of the assessee when the period of limitation expires. If the Commissioner is permitted to grant the extension even after the expiry of original period of limitation prescribed under the Act, it will give him right to exercise such a power at any time even much after the last date of assessment. In the instant appeals itself, when the last dates of assessment were 30th April, 2004, 30th April, 2005, 30th April, 2006 and 30th April, 2007, order extending the time under Section 11(10) of the Act were passed on August 17, 2007, August 17, 2007, August 17, 2007 and May 25, 2007 respectively. Thus, for the Assessment Year 2000-2001, order of extension is passed more than three years after the last date and for the Assessment Year 2001-2002, it is more than two years after the last date. Such a situation cannot be countenanced as rightly held by the High Court. When the last date of assessment in respect of these Assessment Years expired, it vested a valuable right in the assessee which cannot be lightly taken away. As a consequence, sub-section (11) of Section 10 has to be interpreted in the manner which is equitable to both the parties. Therefore, the only way to interpret the same is that by holding that power to extend the time is to be exercised before the normal period of assessment expires. On the aforesaid interpretation, other arguments of Mr. Ganguli lose all significance. Argument of learned senior counsel for the appellants based on Section 148 of the CPC would be of no consequence. This Section categorically states that power to enlarge the period can be exercised even when period originally fixed has expired. Likewise, reliance upon Section 139(2) of the Income Tax Act is misconceived. That provision is made for the benefit of the assessee which empowers the Assessing Officer to grant an extension of time for filing of the return of income and, therefore,

obviously will have no bearing on the issue at hand. Moreover, this Court in ***Ajantha Electricals's*** case (supra), which is relied upon by the learned counsel for the appellant, held that the time can be extended even after the time allowed originally has expired on the interpretation of the words "it has not been possible" occurring in Section 133(2) of the Act. The Court, thus, opined that the aforesaid expression would mean that the time can be extended even after original time prescribed in the said provision has expired. Same is our answer to the argument of Mr. Ganguli predicated on Section 28 of the Arbitration Act, 1940 as that provision was in altogether different context.

25. We, thus, do not find any error in the impugned judgments of Punjab and Haryana High Court and as a consequence, dismiss all these appeals. Parties are, however, left to bear their own cost.

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PUNJAB & HARYANA HIGH COURT

VATAP 48 OF 2015

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KAMAL TRADING COMPANY
Vs
STATE OF PUNJAB AND ANOTHER

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

23rd February, 2016

HF ▶ Revenue

Original documents allegedly lost in transit by driver produced 20hours after detention by appellant indicate attempt to evade tax.

PENALTY – ROAD SIDE CHECKING/ CHECK POST – ATTEMPT TO EVADE TAX -ESCAPE ROUTE- GOODS IN TRANSIT – ESCAPE ROUTE TAKEN BY DRIVER- GOODS DETAINED ON GROUNDS OF INGENUINE DOCUMENTS – PENALTY IMPOSED – APPEAL BEFORE FIRST APPELLATE AUTHORITY AND TRIBUNAL DISMISSED HOLDING THAT ORIGINAL DOCUMENTS WERE PRODUCED 20HOURS AFTER DETENTION BY APPELLANT WHICH WERE ALLEGEDLY LOST IN TRANSIT BY DRIVER- CONTRADICTORY STATEMENT ON PART OF APPELLANT – NO ACCOUNT BOOKS PRODUCED BEFORE AUTHORITIES BELOW – CONCURRENT FINDINGS RECORDED BY AUTHORITIES BELOW NOT SHOW TO BE PERVERSE OR ILLEGAL – APPEAL DISMISSED – *S. 51 OF PVAT ACT*

Facts

The appellant is engaged in the resale of pulses in Kharar (Punjab). It imported bags of dal from Delhi to sell in Kharar. The driver did not stop the vehicle at Banur ICC. The vehicle was chased and stopped. Goods were detained for not being covered with documents required. No account books were produced. Thus, penalty was imposed u/s 51(7)© of the Act. First appeal was dismissed. On appeal before Tribunal, it was held that the documents were furnished 20 hours later after detention and no account books were produced. Hence, an appeal is filed before High court contending that no opportunity of hearing was given to appellant

Held:

Concurrent findings have been recorded by lower authorities. As per the findings of Tribunal, it is categorically recorded that the goods were being transported without genuine documents and the driver had tried to escape from ICC but was apprehended. Regarding the plea given by appellant that the documents were lost in transit, it is observed that that if it were factually so, the driver ought to have reported to the appellant and should have stopped the vehicle. Also no account books were produced and documents were produced 20 hours later after detention. The appellant has not been able to show any perversity or illegality with the concurrent findings of the authorities below. The view taken by Tribunal is plausible one. The appeal is dismissed.

Present: Mr. Surjit Singh Chauhan, Advocate for the appellant.

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AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the appellant-assessee under section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") against the order dated 30.3.2015, Annexure A.l passed by the Punjab VAT Tribunal (in short, "the Tribunal") upholding penalty of t 2,84,600/- under section 51(7)(c) of the Act, claiming following substantial questions of law:-

i) Whether production of documents relating to the goods produced after 20 hours of detention is not lawful when as per provisions of Section 5l(7)(c) of the Act ibid, the detaining officer is under legal obligation to allow 72 hours to the owner of the goods to prove the genuineness of the transaction before him in his office?

ii) Whether the VAT Tribunal was justified in upholding the levy of penalty for non reporting at the ICC when in a number of cases it has been held that mere non reporting at ICC is not a good ground for levy of penalty under section 51 (7)(c) of the Act ibid unless attempt to evade tax is proved beyond doubt?

iii) Whether respondent No.2 was justified to levy a penalty on the same day of receiving the report of the detaining officer overlooking the principle of natural justice and without giving an opportunity of being heard and production of account books to the appellant?

iv) Whether respondent No.2 was justified to levy a penalty only on the basis of statement of driver without conducting any enquiry as provided under section 51(7)(c) of the Act ibid to prove an attempt to evade tax by the appellant?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee is a firm. It is engaged in the business of resale of pulses and other karyana goods at Kharar, (Punjab). It is registered under the PVAT Act and the Central Sales Tax Act, 1956 (in short, "the CST Act"). It has been filing its returns regularly with the appropriate authority at Mohali and paying the tax in accordance with the relevant statutory provisions. The assessee imported 207 quintals of mixed dal (pulses) from M/s Atma Ram Om Parkash Grain Merchants and Commission Agents, 2746, 1st floor, Naya Bazaar, Delhi. The goods were covered by GR No.2338 dated 11.9.2008 of Dashmesh Carriers from Delhi to Kharar. The driver of the vehicle was not familiar with the route. Having paid toll tax at the toll plaza at Ghaggar on the border of Punjab and Haryana, the driver did not know about the ICC Banur and failed to stop the vehicle there for generation of Form VAT XXXVI. The two police officials from the ICC, Banur overtook the vehicle about half a kilometer beyond the ICC and directed the driver to take the vehicle to ICC. The Excise and Taxation Inspector on duty asked the driver to produce bill and GR pertaining to the goods under transport. The driver produced bill No.3650 dated 11.9.2008 for Rs. 5,69,200/- issued by the Delhi dealer and GR No.2338 dated 11.9.2008 of Dashmesh Carriers from Delhi to Kharar. The Taxation Inspector refused to take the documents on record and made out a case that the goods were not covered by any bill of sale or GR as required under section 51(2) of the PVAT Act. The goods were detained by the Excise and Taxation Inspector on duty under section 51(6) (b) of the PVAT Act and notice was issued to the owner for 13.8.2014 to produce proper and genuine documents. Representative of the appellant-assessee alongwith the counsel appeared before the detaining officer on the said date and produced the bill and the GR in custody of the driver. Thereafter, the detaining officer forwarded the case to the ETO-cum-

Designated officer for taking necessary action under section 51(7)(c) of the PVAT Act. Notice under section 51(7) of the PVAT Act was issued to the assessee for production of account books and to show cause as to why penalty under section 51(7)(c) of the PVAT Act be not imposed. According to the appellant-assessee, though notice was issued by respondent No.2 for 18.9.2008, the case was decided on 13.9.2008, thus denying the opportunity to the appellant to produce account books and other evidence to prove the genuineness of the documents submitted before the detaining officer. The detaining officer levied penalty of Rs. 2,84,600/- under section 51(7)(c) of the PVAT Act being 50% of the value of goods. Aggrieved by the order, the appellant filed appeal before the Deputy Excise and Taxation Commissioner-cum-Joint Director (Appeals). Vide order dated 6.11.2012, Annexure A.3, the appeal was dismissed. The appellant filed appeal before the Tribunal on the ground that no enquiry had been conducted by respondent No.2 before levying penalty under section 51(7)(c) of the PVAT Act. According to the assessee, the goods were detained on 12.9.2008 while the penalty was imposed on 13.9.2008 without affording any opportunity to it to produce account books and to prove the genuineness of the transaction. The Tribunal vide order dated 30.3.2015, Annexure A.l dismissed the appeal on the ground that the documents were furnished 20 hours after detention and no account books were produced. Hence the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the appellant.

4. The solitary issue that arises for consideration in this appeal is as to whether the assessee was liable for penalty under section 51(7)(c) of the PVAT Act for attempting to evade tax.

5. Concurrent findings have been recorded against the asssessee by the authorities below. After examining the evidence on record and hearing both the sides, it has been categorically recorded by the Tribunal in its order dated 30.3.2015, Annexure A.l that the assessee had been transporting the goods without the genuine documents and the driver tried to escape from the ICC barrier, Banur but he was apprehended and the goods were detained. If the driver had lost the documents in transit, as alleged, he could have informed the assessee and stopped the vehicle which he did not. Nothing could be shown by the learned counsel for the appellant-assessee except to urge that opportunity of hearing was not provided to it. The said contention was negated by the fact that in response to the notice issued to the assessee, two Advocates Mr. Varinder Gupta and Mr. Dharam Singh appeared on behalf of the assessee before the authorities and explained that the goods were purchased from Delhi but the documents of purchases and GR were lost in transit at Delhi. They also failed to produce the account books. Further, the documents were produced later on by the counsel for the assessee after 20 hours of detention. The relevant findings recorded by the Tribunal read thus:-

> *"4. Allegedly the goods were purchased from Delhi. The documents of the purchase and GR were lost in transit at Delhi therefore not produced. The driver rather than making efforts to search the documents try to escape without stopping the truck at the ICC. The documents were produced later on by the counsel for the appellant after 20 hours of detention. Though the case of the appellant is that the original documents handed over to the driver were lost in transit but the record reveals that the appellant had produced the original documents before the Assistant Excise and Taxation Commissioner. Had the documents were lost then the appellant had not produced the original documents and only copies thereof would have been produced. Thus it is established that the appellant has been transporting the goods without the genuine documents and the driver of the appellant try to escape the eyes of ICC but he was apprehended and the goods were detained. If the driver had lost the*

said documents in transit then he would have immediately informed the appellant and stopped the vehicle but that was not so done. The story set up by the appellant appears to be an afterthought. Since the driver had not stopped the vehicle voluntarily at the ICC despite the red signal therefore the inference would be drawn that he had no genuine documents with him and had intention to evade tax.

5. The pulses are a taxable commodity in the State of Punjab therefore the appellant was obliged to carry the goods with the genuine documents relating to the goods. The contention of the appellant that the transaction was shown in Form VAT 15 for the period from 1.7.2008 to 30.9.2008 and the fact about its purchase was reflected in the relevant statement in Form VAT 19, therefore, there could be no evasion of tax is without any merit. The return of the above period was furnished at the end of the month of October 2008. The bill in respect of consignment was produced after a gap of about 20 hours.

6. In such circumstances, it was possible to incorporate the entry regarding the transaction in their books of account."

6. Learned counsel for the appellant-assessee has not been able to show any illegality or perversity in the concurrent concurrent findings recorded by the authorities below. The view taken by the Tribunal is a plausible view and we find no error therein. Thus, no substantial question of law arises. The appeal stands dismissed.

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PUNJAB & HARYANA HIGH COURT

VATAP 2 OF 2016

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CONELL BROS. CO. (INDIA) PVT. LTD
Vs
STATE OF PUNJAB

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

19th February, 2016

HF ▶ Appellant

Delay in filing of appeal due to death of concerned representative of company condoned.

APPEAL – CONDONATION OF DELAY – DISMISSAL OF FIRST APPEAL – ORDER RECEIVED BY REPRESENTATIVE OF COMPANY –DUE TO DEMISE OF THE REPRESENTATIVE APPEAL COULD NOT BE FILED BEFORE TRIBUNAL – STEPS FOR FILING TAKEN IMMEDIATELY AFTER SUCCESSOR TO REPRESENTATIVE TOOK OVER THE CHARGE – CONSEQUENTLY DELAY OF 124 DAYS IN FILING APPEAL BEFORE TRIBUNAL- DELAY NOT CONDONED – APPEAL BEFORE HIGH COURT – EXPLANATION REGARDING DEATH OF CONCERNED REPRESENTATIVE FOUND PLAUSIBLE – ABSENCE OF MALAFIDES ON PART OF APPELLANT – APPEAL ACCEPTED – DELAY CONDONED AND MATTER REMANDED TO TRIBUNAL FOR HEARING – *S.64 OF PVAT ACT, 2005*

Facts

Penalty u/s 51(7)(b) of the PVAT act was imposed on the appellant. First appeal was dismissed vide order dated 4/6/2013. The said order was received by the representative of the company on 14/8/2013. Before the appeal could be filed, the representative expired. The successor who took over the charge was immediately directed to take steps to file the appeal. In this way filing of appeal was delayed before Tribunal by 124 days. The Tribunal dismissed the appeal on grounds of delay. Hence, an appeal is filed before the High court.

Held:

The explanation tendered regarding death of representative who was dealing with the matter seems to be a plausible one. No malafide intention can be made out on part of appellant-assessee. The delay is thus condoned. The matter is remanded to Tribunal to hear the appeal.

Present: Mr. Avneesh Jhingan, Advocate for the appellant-assessee.
Mr. Jagmohan Bansal, Addl.A.G.Punjab with Ms. Sudeepti Sharma, DAG, Punjab.

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AJAY KUMAR MITTAL, J.

CM No.973 CII of 2016

1. This is an application under Section 5 of the Limitation Act, 1963 for condonation of delay of 45 days in filing the appeal.

2. Notice of the application was given to the respondent. For the reasons stated in the application and after hearing learned counsel for the parties, the delay of 45 days in filing the appeal is condoned. CM stands disposed of.

VATAP No.2 of 2016

3. This appeal has been preferred by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") against the order dated 13.8.2015, Annexure A.6 in STA No.25 of 2014, claiming following substantial questions of law:

"i) Whether in the facts and circumstances of the case, the delay in filing the appeal ought to have been condoned by the Tribunal?

ii) Whether in the facts and circumstances of the case, the reasonable cause should have been liberally construed by the Tribunal while dealing the application for condonation of delay?

iii) Whether in the facts and circumstances of the case, the delay of 124 days should have been condoned as the same occurred because of the death of the representative of the company?

iv) Whether in the facts and circumstances of the case, the order Annexure A.6 is contradictory and perverse?"

4. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant sold frozen lemon concentrate to M/s Epicu Agro Products Pvt. Limited, Village, Mohra, Ambala vide invoice dated 28.4.2009. The goods were transported through M/s MP Bombay Transport Careers, Mumbai. As per instructions of the buyer, the goods were consigned to M/s Snowman Frozen Foods Limited, Village Ganna Pind, Phillaur with whom the buyer had agreement. The transaction was against Form C and 2% CST was charged. The said goods were detained at ICC on the ground that neither M/s Epicu Agro Products Pvt. Limited nor M/s Snowman Frozen Foods Limited was registered in Punjab. Ultimately, penalty of Rs. 12,19,335/- was imposed under Section 51(7) (b) of the PVAT Act vide order dated 22.5.2009, Annexure A.2. Aggrieved by the order, the assessee filed appeal before the Deputy Excise and Taxation Commissioner (Appeals) [DETC(A)]. Vide order dated 4.6.2013, Annexure A.3, the DETC(A) dismissed the appeal. The said order was received on 14.8.2013 by Vinod Kumar Grover, representative of the company who was dealing with the matter. Before the appeal could be filed in the Tribunal, Mr. Grover expired on 8.10.2013. Mr. Rajesh Chhabra took over the charge on the demise of Mr. Grover. In this way, there was delay in filing the appeal. Ultimately, the appeal was filed alongwith an application for condonation of delay of 124 days before the Tribunal. Vide order dated 13.8.2015, Annexure A.6, the Tribunal dismissed the appeal on the ground of delay. Hence the instant appeal by the assessee.

5. We have heard learned counsel for the parties.

6. After perusing the averments made in the grounds of appeal, the impugned order dated 13.8.2015, Annexure A.6, passed by the Tribunal and hearing learned counsel for the parties, we find that the appeal before the Tribunal against the order of DETC(A) could not be filed in time due to the death of the representative of the company dealing with the matter. When the charge was taken over by another person, immediately thereafter, steps for filing of appeal before the Tribunal were taken. There was no malafide intention on the part of the

appellant-assessee. The explanation tendered by the appellant-assessee appears to be plausible. Thus, the delay of 124 days in filing the appeal before the Tribunal is condoned. The impugned order dated 13.8.2015, Annexure A.6 passed by the Tribunal is set aside. Consequently, the matter is remanded to the Tribunal to hear the appeal after hearing learned counsel for the parties in accordance with law. The appeal stands disposed of accordingly.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 3 of 2016

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SAHIB STEEL INDUSTRIES
Vs
STATE OF PUNJAB

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

27th January, 2016

HF ▶ Revenue

Penalty u/s 51 of PVAT Act is upheld in the absence of any invoice to prove goods were bought from the alleged firm.

PENALTY – ATTEMPT TO EVADE TAX – CHECK POST/ ROAD SIDE CHECKING - GOODS IN TRANSIT ALLEGEDLY PURCHASED FROM FIRM A FOR SALE TO ANOTHER FIRM APPREHENDED BY MOBILE WING – STATEMENT OF DRIVER REGARDING THE GOODS HAVING BEEN PURCHASED FROM ANOTHER FIRM B RECORDED- PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL DISMISSED ON GROUNDS THAT GOODS WERE PURCHASED FROM FIRM B FOR APPELLANT'S SISTER CONCERN WHICH FACTUALLY HAPPENED TO BE AT ONE AND SAME PLACE – NO AFFIDAVIT OF DRIVER, ACCOUNT BOOKS AND INVOICE OF SELLING FIRM SHOWN BEFORE RELEASE OF GOODS – ALLEGED TRANSACTION BY SISTER CONCERN FOUND TO FALSE – PENALTY UPHELD BY HIGH COURT ON THE BASIS OF CONCURRENT FINDINGS RECORDED BY LOWER AUTHORITIES REGARDING ATTEMPT TO EVADE TAX – *S.51 (7)(B) OF PVAT ACT*

Facts

It was alleged that Iron goods purchased by the appellant from Firm A were in transit for sale to another firm within the state of Punjab. The goods were detained on the ground that they were purchased from firm B as stated by the driver. Therefore, penalty was imposed on the basis of statement of driver. First appeal was dismissed. On appeal before Tribunal it was held that these goods were purchased from firm B without any invoice and were to be sold to sister concern of the appellant firm which happened to be at one and same place. Thus, attempt to evade tax was concluded. An appeal is filed before High court.

Held:

No account books or invoice was shown by appellant before release of goods. No affidavit of driver was shown. A false invoice regarding transaction by sister concern was shown as concluded by Tribunal. All the authorities have concurrently recorded that there was an attempt to evade tax. The appeal is dismissed.

Case relied upon:

- *Krish Pack Industries v. State of Punjab (2006) 28 PHT 27 (P&H)*

Present: Mr. Kumar Vishav Aggarwal, Advocate for the appellant.

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AJAY KUMAR MITTAL, J.

1. Delay of 26 days in refiling the appeal is condoned.

2. This appeal has been filed by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 13.8.2015 (Annexure P-6) passed by the Value Added Tax Tribunal, Punjab (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

i) Whether the order passed by the Ld. Tribunal is not perverse, as same has been passed without any evidence on record?

ii) Whether enquiry officer is not required to take any action against the firm who is saying that they have sold the goods without bill?

iii) Whether the version/statement of driver can be believed? If yes, then whether same is upto satisfaction of detaining officer?

iv) Whether books/bills and documents have duly been verified by the authorities, before imposing any penalty?

v) Whether the impugned order is in violation of rules of natural justice and is otherwise sustainable in law?

3. Briefly stated, the facts for adjudication of the present appeal as narrated therein are that the appellant sold the Iron Goods (MS Bar) to M/s Sahib Steel International, Mandi Gobindgarh on 1.3.2007 vide invoice No.488 dated 1.3.2007 (Annexure P-1) for Rs.3,49,954/- which were purchased from M/s R.K. Steel Rolling Mills, Khanna vide bill dated 1.3.2007 for a sum of Rs.3,46,758/-. The truck bearing registration No. PB-23E-7996 carrying the said goods was detained by the Excise and Taxation Officer, Alour Khanna while loading other goods from some other units from whom M/s Sahib Steel International purchased the goods. The detaining officer detained the goods on the ground that the driver of the truck had told that 10 MT of goods were loaded from M/s AB Steel Mill. The Excise and Taxation Officer instead of taking any action against M/s Satpal Mankoo Steel issued a show cause notice dated 1.3.2007 (Annexure P-2) to the appellant. The Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana vide order dated 14.3.2007 (Annexure P-3) imposed a penalty of Rs. 1,04,986/- under Section 51(7)(b) of the Act upon the appellant. Feeling aggrieved, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana Division, Ludhiana who vide order dated 26.10.2012 (Annexure P-4), copy of which was sent to the appellant on 4.3.2013, dismissed the appeal. Against the order, Annexure P-4, the appellant filed an appeal on 8.4.2013 (Annexure P-5) before the Tribunal. The Tribunal vide order dated 13.8.2015 (Annexure P-6) dismissed the appeal. Hence, the present appeal.

4. Learned counsel for the appellant submitted that all the authorities have not looked into the documents on record to return a finding that any attempt of evasion was made or the documents were not genuine. It was urged that the penalty has been levied by treating the transaction to be ingenuine solely on the basis of the statement of the driver of the vehicle which is legally unsustainable. In support of his contention, learned counsel for the appellant has relied upon the judgment of this Court in ***Krish Pack Industries v. State of Punjab (2006) 28 PHT 27 (P&H)***.

5. We have heard learned counsel for the appellant.

6. The owner of the goods got the goods released on 5.3.2007 without producing any invoice or other account books before the detaining officer. No explanation was furnished before the Assistant Excise and Taxation Commissioner for not producing the account books

or the so called invoice of R.K. Steel Rolling Mills and the other documents including the affidavit of the driver dated 9.3.2007. Accordingly, the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana vide order dated 14.3.2007 (Annexure P-3) imposed a penalty of Rs.1,04,986/- under Section 51(7)(b) of the Act. Against the order, Annexure P-3, the appellant filed an appeal and the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana sustained the order of the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana and dismissed the appeal vide order dated 26.10.2012 (Annexure P-4). On further appeal, the Tribunal vide order dated 13.8.2015 (Annexure P-6) dismissed the appeal holding that the goods were actually purchased from M/s Satpal Manku Steel Industries without any invoice to evade tax. A false invoice had been shown regarding the transaction by sister concern whereas the goods were purchased from M/s Satpal Manku Steel Industries without any payment of tax and without invoice. The conclusion recorded by the Tribunal reads thus:-

> *"In these circumstances, it appears that the goods were actually purchased from M/s Satpal Manku Steel Industries without any invoice, obviously in order to evade the tax. When the truck was apprehended then the owner of the goods manipulated the document regarding the purchase of goods from M/s R.K. Steel Rolling Mills. It may further be observed that the premises of M/s Sahib Steel Industries, Motia Khan, Mandi Gobindgarh i.e. appellant and the consignee firm M/s Sahib Steel International, Motia Khan, Mandi Gobindgarh are at one and the same place. A false invoice has been shown regarding the transaction by sister concern when actually the goods were purchased from M/s Satpal Mankoo Steel Industries without payment of tax and without invoice. Thus, it is a clear cut case of attempt to evade the tax falling within the purview of Section 51(7)(b) of the Punjab Value Added Tax Act, 2005."*

7. The appellant had failed to produce any document before the Assistant Excise and Taxation Commissioner, Ludhiana in response to the notice issued to it. All the authorities have concurrently recorded that there was an attempt to evade the tax.

8. The judgment in **Krish Pack Industries's case (supra)** does not come to the rescue of the appellant in light of the sufficient evidence to show that there was clear attempt on the part of the appellant to evade tax. Accordingly, finding no merit in the instant appeal, the same is hereby dismissed.

9. There is a delay of 14 days in filing the appeal. CM No. 1696-CII of 2016 has been filed for condonation of 14 days' delay in filing the appeal. Since the appeal has been dismissed on merits, no further orders are required to be passed in the application for condonation of delay in filing the appeal and the same is disposed of as such.

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PUNJAB VAT TRIBUNAL

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APPEAL NO 300 OF 2014

TATA TELE SERVICES LTD.
Vs
STATE OF PUNJAB

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

9th February, 2016

HF ▶ Assessee

In case of undisputed clerical error made by appellant in returns, fresh assessment is to be made after rectification of mistake instead of framing de novo assessment.

ASSESSMENT – REMAND – CLERICAL ERROR – VAT 20 FILED BY APPELLANT – DEMAND RAISED DUE TO CLERICAL ERROR IN THE FORM – APPEAL FILED BEFORE DETC – ASSESSING AUTHORITY DIRECTED TO FRAME DE NOVO ASSESSMENT INSTEAD OF ORDERING FOR RECTIFICATION OF CLERICAL ERROR – APPEAL BEFORE TRIBUNAL AGAINST THE REMAND ORDER – DIRECTION ISSUED TO ASSESSING AUTHORITY TO CONSIDER THE ERROR IN VAT 20 BEFORE FRAMING ASSESSMENT INSTEAD OF FRAMING DE-NOVO ASSESSMENT – APPEAL ACCEPTED PARTIALLY - *S.29, S. 62 OF PVAT ACT, 2005*

Facts
A demand was raised by the assessing authority. On appeal before DETC, it was ordered that the Designated officer would frame de novo assessment. An appeal was filed against the order of DETC contending that there was a clerical error in form VAT 20 which should have been ordered to be rectified instead of remitting for denovo assessment.

Held:
It is undisputed that there was a mistake in VAT 20 due to which demand was created and it was in the notice of the First Appellate Authority. Thus, the appeal is partially accepted by directing the assessing authority to frame fresh assessment after considering Form Vat 20 and not De-Novo Assessment and hearing the appellant.

Present: Mr. K.L. Goyal, Sr., Advocate alongwith Mr. Rishabh Singla, Advocate Counsel for the appellant.
Mr.N.D.S. Mann, Addl. Advocate General for the State.

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

1. The case relates to the Assessment year 2009-10. The Annual statement was filed on time, however, on scrutiny, the Designated Officer vide his order dated 5.5.2014 created additional demand of Rs. 15,48,150/-. The appellant preferred the appeal against the said order

which was accepted and the case was remitted back to the Assessing Authority for framing denovo assessment after giving proper opportunity to the appellant assessee to correct his clerical mistake within two months from the receipt of certified copy of this order.

2. The counsel for the appellant has urged that the Assessing Authority fell in error in directing the Designated Officer to frame denovo assessment but the limited direction to frame the assessment after providing opportunity to the assessee to correct the mistake could be imparted.

3. To the contrary counsel for respondent urged that the department was fully competent to frame the denovo assessment.

4. Arguments heard. Record perused.

5. The Ld. Counsel for the appellant has submitted that actually the appellant while furnishing form VAT-20 has shown the figure of interstate sales to the time of Rs.1,25,26,167/- in the column of tax element in the sales. Whereas, the said figure was to be mentioned in the column/heading (d) under the interstate sale of part A of VAT-20, however, this figure was duly shown in column III of the head "calculation under CST Act" in VAT-20. It was further argued that the appellant has duly deposited the tax on VAT and CST liability amounting to Rs.73,00,678/- less ITC for Rs.23,996/- and CST liability of Rs.3,14,517/-. However, the Designated Officer taking figures, as they were, created additional demand. As such the mistake deserved to be rectified by the Designated Officer by calling for the correct VAT-20. The appellant had also furnished VAT-20 on 10.11.2010 and again on 4.2.2014 but the said mistake was not corrected and fresh assessment was not framed.

6. The department admitted that the demand was created due to the mistake in the form VAT-20. The First Appellate Authority had also noticed that there was no mistake in all the VAT-15S and account books but the mistake was in VAT-20. The counsel for the appellant has urged that in the aforesaid circumstances, the First Appellate Authority was not correct in ordering the denovo assessment, but the mistake could be rectified after considering the form VAT-20 filed by the appellant. I agree to this contention and observe that it is a fit case where the Designated Officer could be directed to consider the Form VAT-20 dated 10.11.2010 and 4.2.2014 and then to frame the assessment.

7. Resultantly, I partly accept this appeal, set-aside the impugned order with the modification that the Assessing Authority would frame the fresh assessment after considering the form VAT-20, dated 10.11.2010 and 4.2.2014 and also providing opportunity to the appellant of being heard. The appellant is directed to appear before the Designated Officer on 1.4.2016.

8. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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Misc. (Rest.) Application No.23 of 2015

EVAM CONSTRUCTION PVT. LTD.
Vs
STATE OF PUNJAB

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

18th January, 2016

HF ▶ Assessee

Matter remitted as core issue not adjudicated upon by the lower authorities.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS PURCHASED FROM SELLING FIRM – INVOICE ISSUED IN FAVOUR OF FIRM B – DOCUMENTS PRODUCED AT ICC- GOODS DETAINED ON ACCOUNT OF GOODS BEING ROUTED TO AN UNREGISTERED FIRM IN PUNJAB- APPELLANT COMPANY CONTENDED THAT IT HAD A CONTRACT WITH FIRM B FOR WHICH IT PLACED AN ORDER ON SELLING FIRM FOR DELIVERY OF GOODS -BILL RAISED IN FAVOUR OF FIRM B AS APPELLANT COMPANY'S REGISTRATION CERTIFICATE UNDER AMENDMENT – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL – PENALTY ORDER OBSERVED TO HAVE BEEN PASSED WITHOUT TOUCHING CORE ISSUES – OPPORTUNITY OF BEING HEARD NOT GIVEN TO APPELLANT AS CONTENDED – MATTER REMITTED TO DESIGNATED OFFICER TO PASS A SPEAKING ORDER – APPEAL ACCEPTED - *S. 51(7)(b) OF PVAT ACT, 2005*

Facts:

Goods were purchased from Firm A and an invoice was issued by that firm in favour of Firm B. The goods were in transit and were detained on account of their being routed to an unregistered firm in Punjab. It was submitted by the appellant company that these goods were ordered by it and the consignor was asked to send them vide invoice in favour of firm B as the appellant had entered into a contract of furnishing of the mall of firm B and also because its own registration certificate was to be amended. However, penalty was imposed concluding an attempt to evade tax. On dismissal of first appeal an appeal is filed before Tribunal.

Held:

It is observed that exparte order for imposing penalty was passed without touching core issues. The appellant has pleaded that he was not served properly and was deprived of an opportunity of being heard. The case is thus remitted back to the Designated officer for passing a speaking order.

Present: Mr. Alok Krishan, CA for the appellant.
Mr. Manjit Singh Naryal, Additional Advocate General for the State.

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

1. This appeal is directed against the order dated 22.2.2013 passed by the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Patiala Division, Patiala (herein referred as First Appellate Authority) dismissing the appeal against the order dated 22.1.2010 passed by the Assistant Excise and Taxation Commissioner, ICC, Shamboo (Import) District Patiala imposing a penalty to the tune of Rs.2,43,696/- U/s 51 (7) (b);of the Punjab Value Added Tax Act (herein referred as the Act, 2005).

2. On 8.1.2010, Puran Singh, driver, while driving vehicle No. PB- 08AR-6130 loaded with various Kitchen fixtures, reached the ICC Shamboo, presented the following documents:-

(1) Invoice No. 783, dated 7.1.2010 issued by M/s Kumar Equipment (India) Delhi in favour of M/s Pind Balluchi Celebration Mall, Amritsar for Rs.8,12,655/- and

(2) GR. No.286, dated 7.1.2010 issued by M/s Sumit Tempo Transport Service for the transportation of goods from Delhi to Amritsar.

3. Actually, the invoice as referred to above, does not bear the name of the consignee/consignor, but the admitted facts are that the said invoice no.783 dated 7.1.2010 was issued by M/s Kumar Equipment (India) New Delhi in favour of M/s Pind Balluchi Celebration Mall, Amritsar.

4. On scrutiny of the documents, it came to light that the consignee was not holding any registration number under Punjab Vat Act or CST Act. The goods were finding way to an unregistered firm in Punjab for which the driver could not submit any explanation. The detaining officer forwarded the case to the Designated Officer, who further issued notice to the owner of the goods.

5. On 14.1.2010, Shri Sunil Madan, Director and Sh.Gaurav Matta, Assistant Manager of the appellant company appeared and submitted that the appellant company is the owner of the goods and it was holding TIN No.03432043364. The company had entered into a contract with M/s AIPL, Amritsar for furnishing of site at Celebration Mall, Amritsar and it had made a request for amendment of the registration certificate issued to them. The appellant had placed the order for supply of the kitchen equipment with the consignor. However, they had got the bill raised in favour of M/s Pind Balluchi Celebration Mall, Amritsar.

6. After submission of the explanation, the appellant company did not appear before the designated officer. As such the designated officer while observing that the bill was got issued in favour of Pind Balluchi Celebration Mall, Amritsar with an intention to evade the tax. EVAM Construction Pvt. Ltd. had under taken the contract for construction of Pind Balluchi Celebration Mall Amritsar and it further gave the contract to M/s AIPL Amritsar for this purpose, as such it is established that the goods were got billed in favour of M/s Pind Balluchi Celebration Mall Amritsar with the intention to evade the tax. The appeal filed by the appellant was dismissed, hence this second appeal.

7. The counsel for the appellant has contended that there was no intention to evade the tax.

8. To the contrary, the State counsel has urged that since the contract was given to M/s EVAM Construction Pvt. Ltd., Mohali by M/s Pind Balluchi Celebration Mall Amritsar and the appellant was to deliver the Trunkey Project as per agreement and the intention of the appellant was to keep the goods out of the books account.

9. Having gone through the impugned orders, it transpires that an exparte order for imposing penalty was passed without touching the core issues. Neither the Assessing Officer nor the Assessing Authority took pains to pass the speaking order and did not touch the issue

with regard intention to evade the tax. The appellant has pleaded that he was not properly served, therefore he was deprived of an opportunity of being heard , under these circumstances, both the parties did not dispute for sending the case back to the Designated Officer for passing a speaking order.

10. Resultantly, this appeal is accepted, impugned order is set-aside and the case is remitted back to the Designated Officer to pass a speaking order. The appellant is directed to appear before the Designated Officer on 1.3.2016

11. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 416 & 417 OF 2015

BHARAT STEELS
Vs
STATE OF PUNJAB

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

9th February, 2016

HF ▶ Assessee

Matter is remitted back on the basis of non speaking order being passed by First Appellate Authority upholding the penalty.

APPEAL – NON SPEAKING ORDER – PENALTY – PENALTY IMPOSED FOR NON COMPLIANCE OF S. 51 (2)&(4) OF THE ACT – DISMISSAL OF FIRST APPEAL WITHOUT CONSIDERING FACTS, CIRCUMSTANCES AND EVIDENCE – APPEAL BEFORE TRIBUNAL – MATTER REMITTED TO PASS A SPEAKING ORDER – *S.51(7), 51(2) AND 51(4) OF THE ACT*

Facts
Penalty u/s 51 was imposed as the appellant had not fulfilled the requirement u/s 51(4) of the Act and had not generated the transaction despite e-ICC facility available to him. First appeal was dismissed by the Ld. DETC without going into the facts and circumstances of the case and without any evidence. Thus, an appeal is filed before Tribunal.

Held:
The order of first appellate authority is passed with a predetermined mind and is non speaking. Therefore, appeal is accepted and matter is remitted to decide the same by passing a speaking order.

Present: Mr. T.L. Jindal, Advocate counsel for the appellant.
Mr. N.K. Verma, Sr. Dy. Advocate General for the State.

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

1. This order of mine shall dispose of two connected appeals No.416 and 417 of 2015 against the order dated 26.5.2015 passed by the Deputy Excise and Taxation Commissioner (A), Jaladhar Division, Jalandhar dismissing the appeal against the order passed by the Designated Officer imposing penalty. Since both the appeals involve the common question of law, therefore, these are decided together.

2. The case wise facts of these two appeals are enumerated as under:-

Appeal No. 416 of 2015

3. The Designated officer, Mobile Wing, Jalandhar vide order dated 2.7.2012 imposed a penalty of Rs.3,92,430/- under Section 51 (7) (b) of the Punjab Value Added Tax Act, 2005. On the grounds that the appellant had not fulfilled the requirement of the U/s 51 (4) of the Punjab Value Added Tax Act, 2005 and that he did not generate the transaction despite E-ICC facility available to him. The Deputy Excise and Taxation Commissioner (A), Jaladhar Division, Jalandhar vide order dated 26.5.2015 dismissed the appeal.

Appeal No. 417 of 2015

4. The Assistant Excise and Taxation Commissioner, Mobile Wing, Jalandhar vide order dated 3.6.2012 imposed a penalty to the tune of Rs.4,92,618/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005 for non compliance of Section 51 (2) & (4) of the Act.

5. The common question of law as raised by the counsel for the appellant is that the orders passed by the Deputy Excise and taxation Commissioner lack application of mind and he without scrutinizing and commenting over the merits of the submissions and examining the law points, dismissed the appeal by passing a non speaking order.

6. Arguments heard. Record perused.

7. Before any comments are made over the orders, it would be necessary to reproduce the relevant observations made by the Deputy Excise and Taxation Commissioner in both the above referred Appeals No. 416 & 417 of 2015 (similar observations were made in both the orders):-

> *"I have considered submissions made by both the parties. Record of the case has also been perused. I am not convinced with arguments advanced by the Id. Counsel. I hereby dismiss the appeal of the appellant and the order of the Designated Officer is up held."*

8. On perusal of the aforesaid observations made in both the appeals, it appears that the Deputy Excise and Taxation Commissioner had no idea of the facts, circumstances and evidence in both the cases, but he was pre-determined to dismiss both the appeals while passing a non speaking order on the same date i.e. 26.5.2015 which is not only ridiculous but tarnishes the image of the State hierarchy as established by the revenue to hear the aggrieved and apprise him of the reasons for not accepting his grievances.

9. Under these circumstances, it is obligatory on the part of the first Appellate Authority to pass an order accompanying the reasons for his decision, but he has failed to perform the obligation imposed upon him.

10. Resultantly, I accept the appeals, set-aside the impugned orders and remit the cases back to the First Appellate Authority to decide the same afresh by passing a speaking order after hearing both the parties. The appellant is directed to appear before the Deputy Excise and Taxation Commissioner on 10.3.2016. Copy of the order be placed on each file.

11. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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Misc.(Ref.) No.7 of 2013

GANPATI FOODS
Vs
STATE OF PUNJAB

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

9th February, 2016

HF ▶ Assessee

Merely not declaration at the ICC is not conclusive of attempt to evade tax when the accompanying documents are genuine.

PENALTY – CHECK POST / ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT – DOCUMENTS (INVOICE , GR , INSURANCE POLICY)PRODUCED – GR STAMPED AT ICC – DECLARATION NOT OBTAINED BY DRIVER AS REQUIRED U/S 51(2)&(4) OF THE ACT – CONSEQUENTLY, PENALTY IMPOSED SUSPECTING DOCUMENTS TO BE INGENUINE – APPEAL BEFORE HIGH COURT – MATTER REMITTED TO TRIBUNAL TO FIND GENUINENESS OF DOCUMENTS WITH A DIRECTION THAT ATTEMPT TO EVADE TAX NOT TO BE CONCLUDED MERELY ON BASIS OF NOT OBTAINING DECLARATION – DOCUMENTS OBSERVED TO BE GENUINE AS PER REPORT SOUGHT FROM THE OFFICER – THUS, PENALTY DELETED – APPEAL ACCEPTED – *S. 51(7)(C), 51(2) AND 51(4) OF PVAT ACT, 2005*

Facts

The goods were in transit from Haryana to Punjab. The driver produced the invoice and GR. The goods were detained on the ground that the driver had not made a declaration u/s 51(2)&(4) of the Act although the GR was stamped at ICC. Also, the genuineness of the documents was suspected. Penalty was imposed u/s 51(7)(c) of the Act. On appeal before High court, the matter was remitted back to Tribunal for fresh adjudication while observing that no conclusion can be drawn that declaration was not obtained with a view to evade tax unless the documents were rejected for being ingenuine. It was observed that Tribunal had not examined the authenticity of these documents (invoice, GR stamped at ICC, insurance policy) and concluded attempt to evade tax. On remand Tribunal.

Held:

As per the report prepared by the officer it transpires that the documents were genuine but were ignored on the ground that they were an afterthought. However, the high court has only directed to find the correctness of the documents to conclude there is no tax evasion. Thus, it is held that documents were genuine and shown and accounted for in the account books. The appeal is accepted and penalty is deleted.

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

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

1. This appeal is directed against the order dated 29.8.2008 passed by the First Appellate Authority, Ferozepur Division, Headquarter at Bathinda dismissing the appeal against the order dated 31.1.2008 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Bathinda imposing p malty of Rs.7,18,913/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005.

2. The factual background of the case is that when the driver driving the vehicle bearing No.RJ-13G-9202, while carrying the Rice Bran Oil from Nilokheri in Haryana reached near Bathinda for delivery of the same at Bathinda, he was intercepted by the Excise and Taxation Officer, Mobile Wing, Bathinda. On demand, he produced following documents:-

1. *Invoice No.1271, dated 28.1.2008 issued by M/s Ganpati Foods, Nilokheri in favour of M/s Bathinda Chemicals Ltd., Bathinda for Rs.14,37,825/-.*
2. *GR No.25785 dated 28.1.2008 of Ahemdgarh Tanker Transport, Ludhiana.*

3. On critical analyses of the documents, the detaining officer detected that the driver had not made the declaration as required U/s 5(2) (4) of the Punjab Value Added Tax Act while entering into State of Punjab and also suspected about the genuineness of the documents. Consequently, he detained the goods and the issued the notice to the owner through the driver, in response to which Sh. Ashok Kumar Goyal, partner of the appellant appeared before the Detaining Officer. When confronted with the evidence, he could not make any plausible explanation regarding non submission of the declaration at the ICC. Thereafter, the matter was forwarded, to the Designated Officer.

4. On receipt of the file, the Assistant Excise and Taxation Commissioner, Mobile Wing issued notice, in response to which Sh. Sanjay Kumar, Manager of the appellant firm appeared and harped for deciding the matter on that very day i.e. 31.1.2008. At this, the Designated Officer while observing that no declaration was made and there was a violation of Section 51 (2) & (4) of the Punjab VAT Act, imposed a penalty to the tune of Rs.7,18,913/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005 against the appellant.

5. Aggrieved by the order dated 31.1.2008, the appellant filed an appeal before the First Appellate Authority, Ferozepur Head Quarter at Bathinda which was dismissed vide order dated 29.8.2008. The appellant preferred the second appeal against the said order before the Punjab VAT Tribunal, but the VAT Tribunal, Punjab vide order dated 16.4.2009 affirmed the orders passed by the authorities and dismissed the appeal.

6. Still dissatisfied, the appellant again filed an appeal against the order dated 16.4.2009 passed by the Tribunal before the Hon'ble Punjab and Haryana High Court U/s 68 (2) of the Punjab VAT Act. Whereupon, the Hon'ble High Court vide order dated 19.9.2013 set-aside the order dated 16.4.2009 passed by the Punjab VAT Tribunal and remitted the case back to the Tribunal to decide the same afresh expeditiously in accordance with the directions as issued by it, after hearing both the parties. The relevant observations made by the Division Bench of the Hon'ble High Court are reproduced as under:-

"In the present case, there is a dispute about verification of documents accompanying the goods. Case of the appellant is that the goods in question were duly accompanied by the invoice. GR, statutory form VAT D.3 and the insurance policy. Further there was stamp of ICC at Shamboo on the GR. The driver out of ignorance being illiterate did not generate the declaration at the ICC. The Tribunal without examining the authenticity and veracity of these documents has on suspicion concluded that there was an attempt to evade tax on the part of the appellant. In view of the aforesaid document, no conclusion could be drawn that the declaration was not obtained with a view to evade tax unless the documents were rejected on the ground that they were not genuine. The Tribunal was required to have recorded definite finding whether these documents were genuine or not and there after adjudicate the matter."

7. From the perusal of the aforesaid observations made by the Division Bench in the case, one thing is clear that the Hon'ble Punjab and Haryana High Court was convinced that if the documents accompanying the goods are found to be genuine, then no conclusion could be drawn that the declaration was not obtained with a view to evade the tax particularly when the authority at the ICC had cleared the documents by stamping the same. As such, the Punjab and Haryana High Court imposed a duty upon the Tribunal to verify about the genuineness of the documents.

8. It would be pertinent to mention here that the appellant had produced the following documents at the time of checking:-

(1) Bill No.1271, dated 28.1.2008.
(2) GR No. 25785 with stamp Shamboo barrier Assessing Authority.
(3) Statutory form VAT-03 No. 4718952 issued by the Haryana Government.
(4) Insurance Policy Cover No.046451 issued by New India Assurance Company.

9. The following documents were produced by the appellant at the time of making verification:-

(i) Cash voucher Rs.3000/-be3ring Bill No. 1271.
(ii) Detail of crossing of tanker No. RJ12-G-9202 from Toll Plaza Shamboo.
(iii) Bathinda Chemicals Ltd., payment note.
(iv) HDFC bank account statement of M/s Ganpati Foods Karnal.
(v) Account Statement of M/s Bathinda Chemicals Ltd., Bathinda for 2007-08.
(vi) Account statement of M/s Bathinda Chemicals Ltd., Bathinda for 2008-09.
(vii) "C" Form of M/s Bathinda Chemicals Ltd. issued by Assessing Authority Bathinda.
(viii) Return Copy 4th Quarter M/s Ganpati Foods.
(ix) VAT R-2 of M/s Ganpati Foods.
(x) Copy of Assessment order for the year 2007-08 passed by Assessing Authority Karnal.

10. The counsel for the appellant has taken me through the GR No.25785, dated 28.1.2008 in order to show that when he reached the ICC Shamboo, he produced the documents including the GR issued by Ahmedgarh Tanker Transport, Ludhiana whereupon the authorities at Shamboo, instead of generating the goods at the ICC stamped on the GR by endorsing the transit to which the driver being illiterate felt satisfied and did not deem it necessary to generate Form VAT-XXXVI. Since, the authorities at ICC did not stop his truck and allowed it to pass

to enter into Punjab, then the driver may have considered the stamping to be sufficient acknowledgement and generation of goods at the ICC, may be, on account of some change in the process. However, the G.R. contains all the particulars including the name of the consignor and consignee detail of goods, approximate value and name of the driver carrying the goods, which tally with the invoice and other documents. In any case, since the Hon'ble High Court has required the Tribunal to find out about genuineness of the documents and has observed that if the documents are found to be genuine then no conclusion could be drawn that the declaration was not obtained with a view to evade tax. Keeping in mind this fact, the Tribunal, vide order dated 27.11.2014, sought the report of the Assistant Excise and Taxation Commissioner, Bathinda regarding the genuineness of the documents.

11. In response to the order dated 2.2.2015, the Assistant Excise and Taxation Commissioner submitted his report regarding the genuineness of the documents which reads as under :-

> *"Subject:- Report regarding Ganpati foods, Sandhir Road, Nelokheri (Karnal) Haryana.*
>
> *As directed by the Hon'ble VAT Tribunal Punjab, the account books, invoices and other documents of the consignor Ganpati foods, Sandhir Road, Nilokheri (Karnal) Haryana and the consignee M/s Bathinda Chemicals Ltd. Bathinda TIN No. 03071058430 were called for. The examination of the copy of the sale invoice retained by the consignor reveals that it tallies with the original copy of the invoice produced by the driver before the checking officer. The transaction of sale stands entered in the account books produced before me. It was first transaction with the consignee dealer during the year 2007-08 but there are a number of transactions after the invoice in question. The payment has been received through bank after the receipt of the goods by the consignee. The selling dealer has produced copy of Form No. VAT 03 bearing Sr. No.4718952 and pleaded that the goods were duly covered by the said form issued by the department in the State of Haryana. The fact has been verified from the department file, the form was produced by the driver at the time of checking. He has also pleaded that the goods were duly covered by the transit insurance cover note No. 193390, dated 28.1.2008, copy of the same is on the file. The dealer has also produced copies of VAT returns filed with the department and the transaction has been reflected in the return and the "C" Form has been received from the buyer i.e. M/s Bathinda Chemicals Ltd. Bathinda Tin No. 03071058430, copy placed on the file."*
>
> *The purchasing dealer M/s Bathinda Chemical Ltd. Bathinda TIN No. 03071058430 has produced copy of account of the consignor, the transaction is duly accounted for in the books of account and the payment has been sent thought bank. No irregularity could be detected from the account books produced.*
>
> *Submitted for further action please.*
>
> *Sd/-*
>
> *Assistant Excise & Taxation Commissioner,*
>
> *Bathinda.*

12. In the report dated 2.2.2015 as referred to above, the Assistant Excise & Taxation Commissioner, Bathinda verified the documents and found the same to be genuine. Since, the Tribunal had found that the said report was undated, therefore, it called for the explanation of the Assistant Excise & Taxation Commissioner, Bathinda, however, instead of submitting the explanation, the department submitted another report. Wherein the Assistant Excise & Taxation Commissioner, Bathinda recorded that though the goods are duly accounted for in the account books yet the same were an afterthought, as those documents were not produced at the relevant time. Since the appellant had not generated the information at the ICC, therefore, the owner must have made an attempt to evade the tax. There is also a third report on the file.

13. On examination of all the reports, it transpires that the second report appears to have been filed just to plug the holes of the first report. Even otherwise, the second report can't be accepted. In so far as, the Assistant Excise & Taxation Commissioner, Bathinda made observations beyond the scope of the order passed by the Tribunal as well as the Hon'ble High Court. The officer was supposed tax give findings qua the correctness of the documents produced at the ICC. The documents so produced at the ICC i.e. invoice No.1271, dated 28.1.2008, GR No. 25785, dated 28.1.2008 VAT 03 and the Insurance Policy all the reports clearly indicate that the said documents were genuine. Even the other documents have also not been doubted but ignored only on the ground that those were after thought. As such the other observations made beyond the scope of the order passed by the Hon'ble High Court are bound to be ignored.

14. While going to the worst, the Hon'ble High Court, when has given findings to the effect that if the documents produced before the Detaining Officer are found genuine then it can't be said this is a case of evasion of tax, in this regard, after going through the reports and observations made by the Assistant Excise & Taxation Commissioner dated 2.2.2015, the subsequent report dated 29.2.2015 and the third report dated 10.12.2015. Conclusion could be drawn that the documents supporting the transaction were found to be genuine; shown and accounted for in the books of account. As such, the orders passed by the authorities below having been passed without application of mind are liable to be reversed.

15. Resultantly, I accept the appeal, set-aside the impugned orders and quash the order of penalty passed by the Designated Officer.

16. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 381 OF 2015

S.K. SINGLA & COMPANY
Vs
STATE OF PUNJAB

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

9th February, 2015

HF ▶ Revenue

A non speaking order can be corrected by way of remitting the matter.

REMAND – NON SPEAKING ORDER – INGENUINE PURCHASES NOT SPECIFIED WHILE DISALLOWING ITC – ON APPEAL BEFORE DETC, MATTER REMANDED FOR PASSING A SPEAKING ORDER – APPEAL AGAINST THE REMAND ORDER CONTENDING THAT THE FIRST APPELLATE AUTHORITY OUGHT TO HAVE ACCEPTED THE APPEAL INSTEAD OF REMANDING THE CASE – HELD: AN ORDER BEING NON SPEAKING DOESN'T NEED TO BE THROWN AWAY AS IT CAN BE RECTIFIED BY REMANDING – REMAND ORDER UPHELD - APPEAL DISMISSED - *S. 62 OF PVAT ACT, 2005*

Facts

The designated officer disallowed ITC on account of ingenuine purchases but it was not pointed out as to which purchases were discarded. An appeal was filed before DETC whereby it was held that the order is silent on what purchases are discarded. Thus the matter was remanded for passing a speaking order on merits. An appeal is filed before Tribunal contending that the DETC ought to have accepted the appeal instead of remanding the matter as the assessment order was non speaking.

Held:

That the order which indicates the reasons for imparting such order is valid. However, the same cannot be rejected merely on that ground and could be got corrected by way of remitting the case back with such direction. Thus, as it is not explained as to what purchases are discarded, the order of remand by the First Appellate Authority was valid. The appeal is dismissed.

Present: Mr. Kulbir Singh, Advocate Counsel for the appellant.
Mrs. N.D.S. Mann, Addl. Advocate General for the State.

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

1. This second appeal is against the remand order dated 13.5.2015 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana (herein referred as the First Appellate Authority) remitting the case back to the Assessing Authority for passing the speaking order while framing the assessment for the year 2010-11.

2.The main contention raised by the counsel for the appellant is that the demand was raised against the appellant on account of disallowing of the ITC on account of ingenuine purchases but the Excise and Taxation Officer- cum-Designated Officer has not pointed out as which purchases were discarded, therefore, the Excise and Taxation Officer should highlight the purchases which have been discarded by him while disallowing the ITC.

3. This point was also raised before the Deputy Excise and Taxation Commissioner(A) which was considered at length and he being oblivious of the fact that the order passed by the Excise and Taxation –cum-Designated Officer was non speaking, had remitted the case to the Designated Officer for passing a fresh self speaking order. The relevant observations made by the First Appellate Authority are reproduced as under:-

> *" I have heard both the sides and gone through the facts of the case and read over the order of the DO as well as the grounds of appeals in a careful manner. It has been noticed that the DO has not mentioned in his order whose purchase have been disallowed being, in genuine and why the ITC has been disallowed and order passed by the Designated Officer is self contradictory. So in view of the facts of the case and in the interest of the justice the case is remanded to the DO for passing fresh self speaking order on merit after giving the reasonable opportunity of being heard within two months.*

4. The counsel for the appellant has urged that since the order passed by the Designated Officer was non speaking, therefore, instead remitting the case back to the Designated Officer, the Deputy Excise and Taxation Commissioner should have accepted the appeal and quashed the order.

5. To the contrary Mr. N.D.S.Mann, Addl. Advocate General has urged that the incorrect orders which lack application of mind or are non speaking could be got rectified by issuing certain directions, instructions or guidelines, as such the order of remand passed by the Deputy Excise and Taxation Commissioner does not suffer from any illegality.

6. Arguments heard. Record perused.

7. The authorities under the Punjab VAT Tax Act, being quasi judicial in nature, are expected to pass reasoned and speaking orders which may convey the assessee the grounds for imposing tax, penalty or interest. These are the orders which place an obligation upon the appellant to pay heavy taxes and the mind of the officer can't be read by the higher authority regarding the reasons to pass an order unless such mind is expressed in the orders. Only that order, which would expose the mind of the officer indicating the reasons for imparting such order can be said to valid. Passing of the non speaking and unreasoned orders has become the order of the day regarding which the officers could be apprised and directed through some guidelines, directions and instructions for passing reasoned orders. At the same time, if an order is vague, unreasoned and non speaking qua some aspects of the cases. The same cannot be thrown in the dustbin merely on that ground and could be got corrected by way of remitting the case back with such direction. The counsel for the appellant has cited before me a judgment delivered by the Apex Court in case of Ashwin Kumar K. Patel Vs Upendra J. Patel decided on 11.3.1999 but the same is not applicable to the facts of the .present case. In this case, the Excise and Taxation Officer had discarded the ITC to the tune of Rs.46,273/-, but it was not explained as to what purchases were discarded, therefore, to my mind the order of remand by the First Appellate Authority was valid on all fours.

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

8. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 416 OF 2013

PIDILITE INDUSTRIES LIMITED
Vs
STATE OF PUNJAB

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

9th February, 2016

HF ▶ Revenue

No evidence to show that consignee firm is a sister concern of the consignor, thererby, leading to upholding of penalty on account of bogus stock transfer challan.

PENALTY – CHECK POST / ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – BOGUS CHALLAN – GOODS IN TRANSIT – STOCK TRANSFER CHALLANS PRODUCED – FIVE SHOWING GOODS BEING SENT BY APPELLANT TO SELF IN PUNJAB AND SIXTH SHOWING TRANSACTION WITH ANOTHER FIRM A – GOODS DETAINED ON ACCOUNT OF SIXTH CHALLAN BEING BOGUS AS CONSIGNEE'S TIN LOCKED EARLIER – EXPLANATION TENDERED THAT CONSIGNEE WAS A SISTER CONCERN AND THAT MISTAKE IN CHALLAN WAS ON ACCOUNT OF COMPUTER FAULT – APPEAL BEFORE TRIBUNAL – PRECEDING CHALLAN FROM SAME COMPUTER FOUND WITHOUT FLAW MEANING THEREBY THAT THE CHALLAN IN QUESTION OUGHT TO HAVE BEEN FLAWLESS TOO – NO EVIDENCE TO PROVE CONSIGNEE WAS A SISTER CONCERN – CHALLAN IN QUESTION OF HIGH VALUE UNLIKELY TO HAVE BEEN MADE BY MISTAKE – NO PREVIOUS TRANSACTION SEEN WITH THE CONSIGNEE IN LAST FIVE YEARS – APPELLANT SUSPECTED TO HAVE MADE SIXTH INVOICE COVERED BY SAME GR TO CREATE CONFUSION – PENALTY UPHELD – APPEAL DISMISSED – *S. 51(7)(B) OF PVAT ACT, 2005*

Facts

The goods were in transit from Bhiwandi to Zirakpur. Out of six invoices, five were issued to self at Punjab whereas the sixth invoice was issued by the appellant in favour of Parkh Marketing Ltd. Zirakhpur. All six invoices were covered by one GR. The goods were detained on the ground that the sixth invoice was bogus as the consignee dealer's TIN was locked and it had not shown any transaction previously. It was contended that the consignee company was appellant's associate company and had stopped its business in Punjab few years before. The goods were under stock transfer to their company whereas the name of consignee was recorded by mistake. Penalty was imposed u/s 51. An appeal is filed before Tribunal.

Held:

The contention that the mistake in challan was due to computer fault is unacceptable as the preceding challan was flawless. Therefore, mistake occurring in its successor challan could not have occurred otherwise it would have occurred in its preceding challan also since both challans were prepared from same computer.

The confusion is created by appellant so that the whole consignment is cleared and disputed consignment is looked over and cleared alongwith other consignments.

The TIN of consignee mentioned in sixth challan was locked and the challan was of heavy value. Since TIN was locked and said firm had stopped working since 2008, therefore, there was no reason to issue the invoice in favour of the said consignee. It is not proved that the consignee was associate of the appellant. No previous dealing has been observed being done with the consignee by the consignor in past five years which creates doubt. The later manipulation of the records by the company would be of no use and the same can't be used for excusing the earlier mischief made by the company.

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

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

1. This appeal has arisen out of the order dated 17.5.2013 passed by the Deputy Excise and Taxation Commissioner(A)-cum-Joint Director (Investigation), Patiala Division, Patiala (herein referred as the First Appellate Authority) dismissing the appeal against the order dated 7.6.2010 passed by the Excise and Taxation Officer-cum-Designated Officer, ICC, Jharmari imposing penalty to the tune of Rs.6,09,510/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005 (herein referred as the Act of 2005).

2. On 23.5.2010, the driver, had brought synthetic adhesive and art colours covered by six invoices, was coming from Bhiwandi to Zirakpur. Out of these six invoices, the five invoices were issued by M/s Pidilite Industries Ltd., Kalher Village, Bhiwandi to self at Zirakpur (Punjab), whereas the sixth invoice was issued by the appellant in favour of Parkh Marketing Ltd. Zirakpur, however all the six invoices were covered by one GR No. 197 when the driver reached ICC Jharmari, he produced the following documents regarding the sixth doubtful invoice:-

1. *Stock Transfer Chalian no. 715-495778 dated 10.5.2010 issued by M/s Pidilite Industries Limited, Durgesh Park, Kalher Village, Bhiwandi, in favour of Parekh Marketing Ltd., Zirakpur for Rs.13,93,165/-.*
2. *G.R.No.197 dated 10.5.2010 issued by M/s D.P.Goods Carriers, Bhiwandi for the transportation of goods from Bhiwandi to Zirakpur.*

3. On scrutiny by Detaining Officer, it was detected that the aforesaid stock transfer challan was bogus as the consignee dealer had not previously shown any transaction and its TIN Number was locked since earlier. The Detaining Officer impounded the goods for making verification about the genuineness of the aforesaid challan from the books of account of the dealer. When confronted with the facts, the driver could give no explanation about the said challan. After recording the statement of the driver, he issued notice to the owner of the goods and directed him to appear before the Designated Officer.

4. On 24.5.2010, the appellant appeared before the Designated Officer and claimed ownership of the goods. On 26.5.2010 Mr. Ranjit Kumar Chopra, Regional Accountant when confronted with the facts, made an explanation that M/s Parekh Marketing Ltd. holding TIN: 03941116685 was their associate company and it had stopped it business in Punjab since 2008. The goods were under stock transfer to their company whereas the name of Parekh Marketing Ltd. was recorded on the invoice by mistake.

5. On 1.6.2010, Mr.R.K.Chopra, Regional Accountant appeared through Shri Jagjit Singh, Advocate. The Counsel also reiterated the previous stand of the company and further

disclosed that M/s Parekh Marketing Ltd had applied for cancellation of its registration number. On 5.6.2010 Mr. R.K.Chopra submitted another explanation stating that the name of Parkh Marketing Ltd. was mentioned in the challan by mistake and now they had corrected the mistake in their system by replacing the name of the Parekh Marketing Ltd. And inserting the name of the appellant and issued the corrected challan.

6. Ultimately, after hearing both the parties, the Designated Officer vide order dated 7.6.2010, observed that sixth challan being of heavy value could not be prepared in the name of M/s Parekh Marketing Ltd. by mistake. The GR was only one therefore the appellant in order to create confusion recorded their name in the GR as owner, of the goods. In case the goods had crossed the ICC then the same would have remained unaccounted and the govt. tax would have been evaded. Thus while holding that there was clear cut intention to evade the tax on the part of the appellant, the Designated Officer imposed penalty to the tune of Rs.6,09,510 U/s 51 (7) (b) read with Section 51 (12) of the Act 2005.

7. Feeling aggrieved, the appellant filed appeal before the First Appellate Authority who also dismissed the same.

8. Hence this second appeal.

9. Arguments heard. Record perused.

10. The counsel for the appellant has contended that actually the goods covered by stock transfer challan No. 715-495778, dated 10.5.2010 for Rs, 13,93,165/- are stock transfer from M/s Pidilite Industries Ltd., Bhiwandi to M/s Pidilite Industries Ltd., Zirakpur, Punjab. It is also reflected from the common GR bearing No. 197 that it was stock transfer of the goods covered by all the six challans by M/s Pidilite Industries Ltd., Bhiwandi to M/s Pidilite Industries Ltd., Zirakpur, Punjab. The appellant had transferred the goods through stock transfer challan No.715-495778 for Rs. 1393165/- 715-495779, dated 10.5.2010 for Rs.12,54,915.85/-, 745-284761, dated 9.5.2010 for Rs. 12,87,90/-, 745-284762, dated 9.5.2010 for Rs.23850, 756-732537, dated 8.5.2010 for Rs.0.00 and 715-495778, dated 10.5.2010 for Rs. 13,93,165/-. Out of this, the goods against stock transfer challan No. 715-495779, dated 10.5.2010 for Rs. 12,44,915.85/-, 745-284761, dated 9.5.2010 for Rs.1,28,790/- , 745-284762, dated 9.5.2010 for Rs.23,850/-, 756-732537, dated 8.5.2010 for Rs.0.00/- to the company itself. But by mistake the name of the consignee was mentioned as M/s Parekh Marketing Ltd., Zirakpur in challan No.725-495778, dated 10.5.2010 for Rs. 13,93,165/-. However, the goods receipt No. 197, dated 10.5.2010 (document of title) has been correctly made as it shows that goods were consigned by M/s Pidilite Industries Ltd., Bhiwandi to M/s Pidilite Industries Ltd., Zirakpur, Punjab. Lateron the fault, which occurred in stock transfer challan No. 715-495778, dated 10.5.2010, has also been corrected by the firm in its system.

11. Having heard this contention, I do not find myself in agreement to the same. There were two consignments dated 10.5.2010 which were challarn No.715-495778 and 715-495779. The challan No.715-495779 was prepared from the same computer after challan No. 715-495778. According to the appellant, the mistake occurred on account of the fault in the computer. Had it been so then same fault must have occurred in the challan No. 715-495779, but it did not so happen, as such, the inference would be drawn that it was a mischief intentionally caused in order to create confusion in the mind of the ICC Authorities with the impression that all the consignments would be cleared and the disputed consignment would be over looked and they would clear the consignment in question alongwith the other consignments. The goods covered by the consignment in question were of heavy value of Rs. 13,93,165/-. Since the TIN No. of Parekh Marketing Ltd. stood already locked and the said firm had stopped working since 2008, therefore, there was no reason to issue the invoice in the favour of M/s Parekh Marketing Ltd., Zirakpur. It is not proved that the M/s Parekh Marketing Ltd. was the associate company of the appellant. Rather, it appears that the appellant committed

the mischief knowing fully well that as there was only one GR which covered six consignments, therefore, the goods would to be unloaded certainly at one place i.e. M/s Pidilite Industries Ltd., Zirakpur, Punjab.

12. No documents have been proved on the record that Marketing Ltd. was a sister concern of the appellant, rather it is proved that he had independent TIN number to receive the goods on account of sale made by the appellant. It has rightly been recorded by the First Appellate Authority that since the appellant company had no dealings with Parkh Marketing Ltd. for the last five years, therefore, to issue consignment in its name creates a serious doubt. Since the TIN number of the firm stood already cancelled, therefore the issuance of the consignment in the name of such firm can't be unintentional rather it appears that the consignment was issued for keeping the goods out of the account books and also to evade the tax.

13. On conspectus of the entire evidence on the record, it appears that the company must have the intention to make misuse of the name of the said company while transporting the goods under the garb of the stock transfer. The later manipulation of the records by the company would be of no use and the same can't be used for excusing the earlier mischief made by the company.

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

15. Pronounced in the open court.

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NOTIFICATION

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REGARDING BHAGAT PURAN SINGH SEWA BIMA YOJANA

The enrolment of traders under the above mentioned scheme will commence from 8th March, 2016 in all the Districts. There are some instructions and guidelines to be followed before the start of enrolment.

Instructions/ Guidelines for Districts:

The insurance company team deputed in different districts would report the respective District-in-charge's office along with the enrolment kits on 8th March at 9:30 AM. All the nodal officers and the officers deputed for enrolment work must be present in the office by 9 AM. One of the insurance team members would demonstrate the entire process of enrolment and generation of smart card in AETC's office to test the working of the enrolment kit and to make aware all the members about the working of the software developed in order to avoid any further doubts. Then the departmental officers would approach their respective enrolment stations along with the insurance company team. The enrolment on 8th March would start at 11 AM to 5 PM but the timings for the enrolment from next day onwards would be 10 AM to 5PM.

At the enrolment station the beneficiary has to fill the enrolment forms and the officers would help in case of any assistance required by them.

The sample enrolment form has already been posted in the watsapp group.

The District-wise detail of insurance company teams would be mailed to the Districts and it is advised that before the enrolment day the nodal officers should contact the insurance company persons deputed in their District.

The AETCs and DETCs would monitor the enrolment process at the enrolment stations. Information to be shared with trade associations/advocates:

Since the enrolment has to start from 8th March, before that the district-in-charges should make sure that the date of start of the enrolment process and the timings are duly conveyed to the beneficiaries through trade union heads/ Bar/Accountants. It is advised to circulate the enrolment form amongst the trade associations/advocates through Watsapp group to help them convey it to the traders the information/documents they are required to carry while going for enrolment. It should be duly conveyed to the traders that it is mandatory for them to have their Aadhar card/ no. as it is an essential document for his enrolment under this scheme. The dependents of the beneficiary are not required to approach the enrolment stations, the beneficiary himself should carry his/her (dependent's) personal details/ Aadhar card, if available and the dependents would be covered under this scheme. If the Aadhar card no of the dependents is not available at the time of enrolment, in that case, if in future that dependent has to avail Health insurance benefits, the main beneficiary will have to accompany him or her for

the authentication of the card. But in case the Aadhar card no of the dependent is available at the time of enrolment, then his details would also be captured in the smart card and that dependent can avail health insurance benefits independently. Along with the Aadhar card the beneficiary is required to carry his Registration certificate and Ration card for the nodal officers to authenticate the identity of the beneficiary and his dependents. In case these documents are not available with him, then it will be the responsibility of the respective nodal officers to authenticate his identity from office records.

The policy inception date is 1st March, 2016 and would terminate on 31st October, 2016. The day the beneficiary is in possession of his smart card, he would be covered and eligible to avail benefits under all the three insurance covers. The beneficiary is required to pay Rs.30/- as registration fee at the time of enrolment.

Step by Step process of enrolment

1. Dealer arrives at enrolment station
2. He will be handed over the enrolment form.
3. After filling the requisite information dealer will hand over form to data operator.
4. Data operator will fill the TIN NO and system will reflect the detail of beneficiary /beneficiaries that are presaved in system.
5. After selecting the name of the person appearing before him, data operator will feed the family details.
6. Then dealer will be asked to put his thumb impression on the biometric sensor to get and match the details of his ADHAR card.
7. If found correct/verified photo of dealer will automatically get imported on screen as per adhaar details of dealer.
8. Dealer will get printed card of insurance scheme

SGA
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GST WILL INTEGRATE INDIAN ECONOMY, HELP ATTRACT FDI: ADB CHIEF TAKEHIKO NAKAO

NEW DELHI: ADB president Takehiko Nakao has pitched for roll out of the Goods and Services Tax saying that its introduction will integrate India as "truly one single economy" and help attract more foreign investments.

Lauding the Budget 2016-17 proposals on the farm sector, he also stressed upon the need for more reforms and pushing infrastructure development.

ADB chief in an interview to PTI further said that the growth in India will continue to exceed 7 per cent in the coming years while other global and Asian economies will undergo some kind of adjustment.

"We are now expecting that economy will continue to exceed 7 per cent in fiscal year 2016-17 and 2017-18 and we are now looking at the number again. The global economy and the Asian economy as a whole are in some form of adjustment," he said.

Commending various reform measures taken by the government, Nakao said the pending issue of GST can be done, and it will boost growth.

"For India to grow faster, FDI is important... For that purpose, Indian economy should be integrated as truly one single economy and...rationalisation of tax, the GST, as the government is seeking, is very important reform. I hope it can be successful," he said.

Finance Minister Arun Jaitley yesterday expressed the hope that the landmark Constitution Amendment Bill for implementing GST as well as the bankruptcy and insolvency bill will be passed in the second half of the Budget Session beginning April 20.

The government has taken many measures including increasing investment in infrastructure and higher ceiling for foreign direct investment as well as making efforts to improve the ease of doing business, he said.

Besides, he added that "the Budget proposal includes more investment in irrigation, agriculture sector. The identification number Bill is already passed and of course the Land Acquisition Law and also GST are waiting to get through Parliament."

When asked as to what more reforms government should pursue, he said: "One of the important agenda for India is to push infrastructure investment. They need to invest more in infrastructure. We are talking lot about the PPP but also it is important that government itself invest more and also they must invest more in health, eduction zone."

Land Acquisition is another area which requires reform, he said, adding that state governments can frame their own land acquisitions laws.

"Government needs to have more tax revenue to GDP ratio to do all these things. Tax to GDP ratio including state taxes can be larger. Of course, it's a difficult issue but I think government can play better role in those areas of infrastructure investment," he said.

Courtesy: The Times of India
14th March, 2016

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CABINET CUTS TAX ON AMBULANCES

CHANDIGARH: The Haryana Cabinet, which met under the chairmanship of Chief Minister Manohar Lal Khattar, here today approved the reduction in rates of one-time tax from 6 per cent to 2 per cent of the cost of vehicle to be charged from all ambulance owners.

The 4 per cent reduction in one-time tax will help to curtail financial burden on owners. This will also enable them to provide better ambulance facilities to patients. The owner of the ambulances will transport trauma patients free of cost, Education Minister Ram Bilas Sharma told the media here today.

Act amended

To ensure better utilisation of land owned by the government and entities owned by the government available in one or more contiguous revenue estates or villages for institutional, industrial or other development, the Cabinet today approved a proposal to amend the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.

The Act provides for consolidation of agricultural holdings, preventing fragmentation of land and assignment for reservation of land for common purposes in villages.

The need to amend the Act was felt as utilisation of land has changed due to its proximity to Delhi and there is pressure on the utilisation of land for institutional, residential and industrial purposes, besides agriculture.

VAT amendment

The Cabinet approved the amendment in Section 59-A of the Haryana Value Added Tax Act, 2003, to provide relief to registered dealers who suffered losses on account of goods destroyed or lost during the Jat agitation.

Courtesy: The Tribune
10th March, 2016

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TAX RELIEF FOR YARN INDUSTRY

BATHINDA: Reduction of VAT on cotton and other yarn from 6.05% to 3.63% in the state budget proposed on Tuesday has been welcomed by the cotton spinning industry, which had long been demanding it. Punjab has around 100 spinning mills, of which 10 mills with installed capacity of 1.5 lakh spindles had closed recently due to unfavourable tax regime. The industry hopes to get a level-playing field with the reduction of 2.4% VAT on yarn and compete with the spinning industry in neighbouring states.

The development though has no direct bearing on cotton ginning factories but it will provide some relief as demand for yarn will increase and spinning mills will increase cotton purchases, feel the ginners. In the wake of higher VAT in Punjab, the weaving industry preferred to purchase yarn from spinners from Himachal, UP and Uttrakhand.

"The spinning industry was facing tough times in Punjab due to higher VAT. The spinners from neighbouring states used to sell it at 2% VAT but with reduction in tax rates, the spinning industry will be able to compete," said Bathinda-based Indian Cotton Association Limited (ICAL) former president Rakesh Rathi.

Barnala-based Trident Group spokesperson Rupinder Gupta said, "Reduction in VAT will prove a big relief to Punjab-based spinning industry. Trident has spinning unit at Dhaula near Barnala.

"Cotton ginners were demanding various types of tax relaxations. The VAT reduction now though will not directly help them but it will definitely help in arrest the trend of flying off of the industry. The ginning factories in Punjab have reduced to nearly one hundred from 422 in 2003," said Cotton Ginning Factories Association president Bhagwan Bansal. He said that now the state government needed to call a meeting of all stakeholders solve the woes of industry and should make efforts to save it going the way Mandi Gobindgarh's steel industry had gone.

Courtesy: The Times of India
16th March, 2016