SGA
LAW OFFICES

Issue 10
16th May 2017

"Inflation is the one form of taxation that can be imposed without legislation."
— Milton Friedman

NOMINAL INDEX

ORDER & NOTIFICATION

HARYANA

NEWS OF YOUR INTEREST

Edited by

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

News From Court Rooms

BOMBAY HC : Service Tax: The Tribunal has not agreed with the contention of the Revenue that in this case the suppression of facts intended to evade payment of duty was established. That was not held to be established on account of the position in the law, and, secondly, because the assessee did not suppress anything from the revenue. This court found no substantial question of law and devoid of merits. Revenue's appeal dismissed. ***(Seed Infotech Ltd. – April 3, 2017).***

KERALA HC : Kerala VAT : Merely for the reason of the Tribunal having not disposed of the appeal and stay has not been vacated, there cannot be automatic recovery of VAT. ***(L Satheek – January 11, 2017).***

CESTAT, NEW DELHI : Service Tax : The appellants, an advertising agency and a being a pure agent, is not liable to pay service tax on amount payable to media companies on behalf of their clients. The commission received by the appellant only would be chargeable to service tax. ***(Adbur P Ltd. – April 26, 2017).***

T & AP HC : Telangana VAT : Levy of VAT on sale of Business. AO was completely wrong in thinking that the sale of a business as a whole is taxable simply because such a sale also involves a sale of several items used in the course of business. ***(Paradise Food – April 18, 2017)***

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ALLAHABAD HC : CENVAT Credit : There is no statutory requirement of registration of assessee as a condition precedent or eligibility condition for claiming refund; refund claim of cenvat credit paid on input services could not be rejected on ground of non-registration of assessee. Revenue's appeal dismissed. ***(Atrenta India P Ltd. – August 30, 2016).***

BOMBAY HC : Sales Tax : Where notice was served at correct address of assessee and it came back with endorsement that assessee received it but refused to accept the same. It amounts to sufficient and adequate service of notice within meaning of Bombay Sales-tax Rules, 1959. Revenue's appeal upheld. ***(Sunil Haribhau Pote – March 21, 2017).***

CESTAT, NEW DELHI : Service Tax : The assessee shall not be liable to service tax on the amount claimed by them from their clients towards reimbursable expenditure with reference to arranging transport of cement to customers from their storage premise. The transport documents nowhere indicates the name of the assessee. Hence, such amounts are not to be included in the assessable value to determine the tax liability under C&F Agency service. ***(Shri Maheshwari Mills – February 2, 2017).***

CESTAT, MUMBAI : CENVAT credit : The appellant, MSM Satellite (Singapore) Pte. Ltd. was registered under Service Tax Registration for providing taxable output service viz. Broadcasting Service. It had been availing Cenvat credit under the Cenvat Credit Rules, 2004 in respect of inputs services used for providing broadcasting services. The Adjudicating authority denied Cenvat credit on ground that services were provided by MSM Singapore therefore MSM India had neither provided any service nor was required to obtain registration and was also not required to pay any service tax and hence not entitled for availment of Cenvat Credit. Since services being provided and also being consumed in India, therefore place of provision was India only. Hence, service tax registration obtained by MSM Satellite (Singapore) Pte. Ltd. in India was absolutely in order and services being received in India were per se taxable and government was legally required to collect service tax on such services which it had collected. Hence Indian entity would be entitled to Cenvat Credit ***(MSM Satellite (Singapore) Pte. Ltd. – March 31, 2017)***

CESTAT, ALLAHABAD : CENVAT credit : Assessee, engaged in manufacture of sugar and molasses, was eligible to claim cenvat credit on various items like Plates, Shape & Section, MS Angles, used as inputs for repair and maintenance of capital goods, which were further used in their factory for manufacture of excisable goods. ***(DSM Sugar – March 16, 2017).***

CESTAT, NEW DELHI : Service Tax : Whether renting of goods, namely air-conditioners and generators fall under the definition of Business Support Services? Held: Assessee is no-way connected to business establishment for running the business of client and is only supplying equipment on rental basis. Providing of equipment on rent, per se cannot be called business support service. service tax demand under such category of service in the case of appellant cannot be sustained. ***(Paradise Investments – March 7, 2017)***.

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16th May 2017

PUNJAB & HARYANA HIGH COURT

CWP NO. 6175 OF 2010

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THE STATE OF HARYANA
Vs
LIMTOFIT PVT. LTD. AND ANOTHER

S.J. VAZIFDAR, C.J. AND ANUPINDER SINGH GREWAL, J.

8th May, 2017

HF ▶ Revenue

State has a right to file appeal before Tribunal against order of First Appellate Authority.

APPEAL – TRIBUNAL – APPEAL BY STATE – WHETHER MAINTAINABLE – PENALTY IMPOSED BY AETO – FIRST APPEAL FILED BY ASSESSEE ALLOWED AND PENALTY DELETED – SECOND APPEAL BEFORE TRIBUNAL FILED BY STATE HELD NOT MAINTAINABLE AS NO SPECIFIC PROVISION GRANTING SUCH RIGHT – ON WRIT BY STATE BEFORE HIGH COURT – MERELY CONFERMENT OF SPECIFIC POWER TO FILE APPEAL AGAINST REVISIONAL ORDER DOES NOT MEAN THERE IS NO RIGHT TO FILE APPEAL BY STATE AGAINST FIRST APPEAL ORDER – IMPUGNED ORDER OF TRIBUNAL SET ASIDE – MATTER RESTORED BACK TO TRIBUNAL FOR DISPOSAL ON WRITS – *SECTION 39 OF HGST ACT, 1973.*

Facts

Penalty was imposed by the Assessing Authority. An appeal was filed by the Respondent-Assessee before JETC u/s 39 (1)(a) of the Act which was allowed by an order dated 30.5.2000. The order of AETO was set aside. The petitioner- state filed an appeal against the order of JETC before Tribunal which was held not maintainable. The petitioner filed an application for review u/s 41 which was also dismissed. Thus, a writ is filed to consider whether state is entitled to file an appeal u/s 39(2).

Held:

We are unable to agree with the line of reasoning adopted in both the orders of the Tribunal. Section 40(1) confers upon the Commissioner the power of revision. The Commissioner is enti11ed on his own to call for the record of any case pending before or disposed of by the officers mentioned therein or by any assessing authority or appellate authority other than the Tribunal. That, however, is a separate and independent power from the right of appeal conferred by section 39(2). The mere existence of a power of revision under section 40 does not imply that there is no right of appeal. Further, merely because there is a right of appeal under section 39(7) against an order passed in revision under section 40(2), it does not follow that the State does not have a right of appeal under section 39(2). As we mentioned earlier, the

power of revision is separate and distinct from the right to appeal. It fo11ows, therefore, that the right to appeal against a revisional order does not take away the right of appeal which is otherwise conferred by the Act.

In the circumstances, the petition is allowed. The impugned orders of the Tribunal are set aside. The appeal before the Tribunal shall stand restored to file and shall be disposed of on merits.

Present: Ms. Mamta Singla Talwar, DAG, Haryana, for the petitioner
Mr. K.L. Goyal, Senior Advocate with
Mr. Sandeep Goyal, Advocate, for the respondents

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S.J. VAZIFDAR, CHIEF JUSTICE

1. The petitioners have challenged the order of the Tribunal dated 12.08.2005 dismissing their appeal under section 39(2) of the Haryana General Sales Tax Act, 1973, as being not maintainable and an order dated 30.11.2007 dismissing their application for a review thereof.

2. In view of the limited question involved, it is not necessary to set out the facts in detail. It is sufficient to note only a few facts.

The Assistant Excise and Taxation Officer-cum-Assessing Authority (AETO), Panchkula, by an order dated 30.12.1998, imposed a penalty of Rs.65,500/- under section 37(6) of the Act. The order was passed on account of the petitioner's vehicle having allegedly been found to have been unloaded in the respondents/assessees' premises without the requisite documents. The documents were found in the name of another party. It was accordingly held that the goods were at the respondents/assessees' premises without the necessary documents and the consignment was, therefore, treated as being without the necessary documents.

3. The respondents/assessees' filed an appeal against this order before the Joint Excise & Taxation Commissioner (JETC) under Section 39(1)(a) of the Act which was allowed by an order dated 30.05.2000. The order of the AETO was quashed and set aside.

The petitioner filed an appeal against the order of the JETC which was disposed of by the impugned order dated 12.08.2005. It was held that the appeal was not maintainable.

The petitioner filed an application for review under section 41 of the Act against the order dated 12.08.2005. This application was also dismissed by the impugned order dated 30.11.2007.

"CHAPTER -VII

APPEAL, REVISION, REVIEW AND REFUND

SECTION-39

[APPEAL]

(1) An appeal from every original order, including an order under Section 40, passed under this Act or the rules made thereunder shall lie;-

(a) if the order is made by an assessing authority, officer incharge of a check-post or barrier or an officer below the rank of a Deputy Excise and Taxation Commissioner, to the Deputy Excise and Taxation Commissioner or such other officer as the State Government may by notification, appoint;

(b) if the order is made by the Deputy Excise and Taxation Commissioner, or any other officer not below the rank of a Deputy Excise and Taxation Commissioner to the Commissioner or such other officer as the State Government, may by notification, appoint;

(c) if the order is made by the Commissioner, to the Tribunal.

(2) An order passed in appeal by the Deputy Excise and Taxation Commissioner or the officer appointed by the State Government under Clause (a) of Sub-section (1) or by the Commissioner or the officer appointed by the State Government under Clause (b) of that sub-section shall be further appealable to the Tribunal.

(3) The appellate authority shall not for the first time, receive in evidence on behalf of any dealer in any appeal, any account, register, record or document unless for reasons to be recorded in writing, he considers, that such account register, record or documents is genuine and that the failure to produce the same before the authority below was for reasons beyond the control of the dealer.

(4) Every order passed by the Tribunal on appeal under Sub-section (2) shall, subject to the provisions of Section 42, be final.

(5) No appeal sha11 be entertained unless it is filed within sixty days from the date of the order appealed against and the appellate authority is satisfied, that the amount of tax assessed and the penalty and interest, if any, recoverable from the person has been paid;

Provided that the said authority, if satisfied that the person is unable to pay the whole of the amount of tax assessed, or the penalty imposed, or the interest due, he may, if the amount of tax and interest admitted by the appellant to be due has been paid, for reasons to be recorded in writing, entertain the appeal and may stay the recovery of the balance amount subject to the furnishing of a bank guarantee or adequate security in the prescribed manner to the satisfaction of the appellate authority.

Provided further that in the case of an appeal against any order which has to be communicated by the appropriate authority to the appellant, the period of sixty days sha11 commence from the date of receipt of the copy of the order by the appellant and in the case of an appeal against any order made under this Act, the time spent in obtaining the certified copy of the order shall be excluded in computing the period of sixty days.

(6) Subject to regulations made by the Tribunal under Sub-section 10 of Section 4 and subject to such rules of procedure as may be prescribed in relation to an appellate authority other than the Tribunal, an appellate authority may pass such order on appeal as it deems to be just and proper, including an order enhancing the amount of tax or penalty or interest or a 11 under this Act.

(7) An assessing authority may challenge in appeal before the Tribunal, the order of the officer on whom the State Government has conferred the powers of the Commissioner under Sub-section (2) of Section 40, within one year from the date of the order appealed against. (See rule 55 to 58 & 61).

SECTION 40

[REVISION]

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

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

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

Provided further that the assessee or any other person shall have no right to invoke the revisional powers under this sub-section.

2. The State Government may by notification, confer on any other officer the powers of the Commissioner under sub-section(1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.

3. No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard. (See rule 60)."

5. The question that falls for our consideration is whether the State of Haryana is entitled to file an appeal under section 39(2). In our view, it is. Section 39(2) does not confer the right of appeal only in favour of the assessee. It does not limit the right of appeal to any particular person or party. There is nothing in the scheme of the Act that persuades us to read a Limitation to this effect into sub-section (2) of section 39. If the Legislature intended restricting the right of appeal to assessees, it would have provided so expressly. We do not even read such an intendment into sub-section (2) of section 39.

6. The Tribunal in both the impugned orders came to conclusion that the appeal was not maintainable by reading section 39(7) with section 40. In the main order dated 12.08.2005, it was held that the AETC could act to revise the order of the JETC under section 40(1). It was observed that the Legislature did not provide for an appeal at the instance of the State against an order which could be corrected in revision by the revisional authority under section 40(1). By the order on the review application, the Tribunal stated that it was concerned only with whether there was any irregularity or impropriety or mistake apparent on the face of the main order passed by the Tribunal. It was observed that it was clear from a reading of the provisions of the Act that it was only under section 39(7) that the State has the power to file an appeal against the orders of the revisional authority and since the order appealed against was not passed by the revisional authority the State has no right to file an appeal against the order of the JETC.

7. We are unable to agree with the line of reasoning adopted in both the orders of the Tribunal. Section 40(1) confers upon the Commissioner the power of revision. The Commissioner is entitled on his own to call for the record of any case pending before or disposed of by the officers mentioned therein or by any assessing authority or appellate authority other than the Tribunal. That, however, is a separate and independent power from the right of appeal conferred by section 39(2). The mere existence of a power of revision under

section 40 does not imply that there is no right of appeal. Further, merely because there is a right of appeal under section 39(7) against an order passed in revision under section 40(2), it does not follow that the State does not have a right of appeal under section 39(2). As we mentioned earlier, the power of revision is separate and distinct from the right to appeal. It fo11ows, therefore, that the right to appeal against a revisional order does not take away the right of appeal which is otherwise conferred by the Act.

8. In the circumstances, the petition is allowed. The impugned orders of the Tribunal are set aside. The appeal before the Tribunal shall stand restored to file and shall be disposed of on merits.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 1 OF 2017

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INTERNATIONAL CARS AND MOTORS LTD.
Vs
STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL AND RAMENDRA JAIN, JJ.

1st May, 2017

HF ▶ Revenue

Mere excuse that driver was unaware of location of ICC is not sufficient to prove bonafides in case relating to Penalty U/s 51 of PVAT Act.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS CARRIED IN A VEHICLE OTHERWISE NOT USED FOR CARRYING GOODS – GOODS DETAINED – PENALTY IMPOSED FOR NOT REPORTING AT ICC – CONTENTION RAISED THAT DRIVER WAS NOT CONVERSANT WITH THE ICC AND SKIPPED IT - AFFIDAVIT SUBMITTED IN THIS REGARD – EARLIER TRANSACTIONS CARRIED THROUGH THE SAME ROUTE – GOODS VEHICLE NOT USED IN THIS CASE BUT A PASSENGER VEHICLE USED – CLEAR INDICATION OF ATTEMPT TO EVADE TAX – FINDINGS OF TRIBUNAL NOT FOUND TO BE ILLEGAL OR PERVERSE- MERE EXCUSE THAT DRIVER DID NOT KNOW THE LOCATION OF ICC NOT ENOUGH – PENALTY UPHELD – *S. 51 OF PVAT ACT, 2005*

Facts

The Appellant Assessee is engaged in manufacturing and sale of multiutility vehicles in H.P. it has a branch in Hoshiarpur. As per the order received it had sold goods to buyer company dispatched in an Innova car. The driver had missed the ICC. The goods were detained and penalty was imposed u/s 51. Aggrieved by the orders of DETC and Tribunal, an appeal is filed before High court contending that there was no attempt to evade tax.

Held:

It has been held by Tribunal that the assessee had placed reliance on the affidavit of the driver who had admitted that he had crossed ICC without generating the information at ICC. It was not the first transaction and even prior to that goods were taken through that way. Mere excuse that driver did not know location of ICC is unacceptable.

Further, goods were carried through a vehicle not used for carrying goods.

The Appellant has not been able to show any illegality or perversity in the findings of fact recorded by Tribunal. The appeal is dismissed.

Present: Mr. G.R Sethi and Mr. Varun Chadha, Advocates
for the appellant-assessee.

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AJAY KUMAR MITTAL, J.

1. The appellant-assessee has filed the instant appeal under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, " the Punjab VAT Act) against the order dated 21.10.2016, Annexure A.9, passed by the Value Added Tax Tribunal, Punjab, Chandigarh (in short, "the Tribunal")in Appeal No. 528 of 2015, claiming following substantial questions of law:-

(a) *"Whether on the facts and in the circumstances of the case, AETC, ICC (Exports), Shambu is competent Designated Officer to impose penalty under Section 51 of the PVAT Act, 2005?*

(b) *Whether on the facts and in the circumstances of the case, penalty under Section 51(6)/51(7)(c) has been rightly imposed when there was no attempt to evade the tax and the substituted sub-section was made effective from 15.11.2013 particularly when the sale invoices furnished were true and genuine?*

(c) *Whether on the facts and in the circumstances of the case, it was imperative for the Hon'ble Tribunal to have noticed, considered and determined the written submissions made before the Enquiring Officer, Affidavit of driver and other documents produced before him?*

(d) *Whether in the facts and in the circumstances of the case, the impugned order is liable to be set aside when the material on the record has not been considered?"*

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant-assessee, a company, is engaged in the manufacture and sale of multi-utility vehicles (Rhino brand) at Amb District Una, Himachal Pradesh. It has a branch at Hoshiarpur which is registered as a taxable person under the Punjab VAT Act and the Central Sales Tax Act, 1956 (C.S.T. Act). On 7.10.2008, the appellant company sold parts worth t 8217/- to M/s Natasha Automobiles Private Limited as per their order received on the internet. On 8.10.2008, the company sold one engine of multi-utility vehicle (Rhino) valuing t 2,03,544/- to the same company. Both the sales were on credit against 'C' forms and the payments were received through banks. Due to urgency of purchasing company, the goods covered by both the invoices were dispatched by an hired Innova Car. The driver was entrusted with both the invoices for the goods and form XXXVIII received from the buyer company with the instructions to get the sale invoices recorded at ICC, Shambhu. The driver of the Car being not conversant missed export ICC and reached Toll Tax collection center. At the ICC (Exports), Shambhu there was no erected boom barrier. There was no entrance gate on the side of the road wherein the office was setup. He was not stopped or any signal to stop was made at ICC. He enquired from the policeman standing nearby at Toll Plaza at ICC. The driver and the policeman both reached ICC voluntarily. He parked the car near the gate and voluntarily produced invoices dated 07.10.2008 and 08.10.2008. The Detaining Officer detained the vehicle and the Enquiring Officer imposed penalty of t 1,05,881/- vide order dated 22.10.2008. The appellant company is maintaining computerized system of accounts and the sales invoices in question were computer generated invoices. In this system, the moment an invoice is generated from computer, it is simultaneously posted in the various heads of accounts including the account of the purchasing party. The Central Sales Tax leviable was duly charged in the invoices and debited to the party account. Thus, there was no question of any attempt to evade

or avoid C.S.T. which was already charged and deposited in due course. M/s Natasha Automobiles Private Limited is an old customer of the appellant company. Total sales worth t 62,64,914/- were made to them from 01.04.2008 to 10.10.2008 against 'C' forms and due tax was paid. Sales worth t 5,39,128.31 were made by branch at Hoshiarpur and sales worth t 57,25,785.69 were made from Amb, District Una, Himachal Pradesh. Aggrieved by the penalty order, the assessee company filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals) (DETC[A]). Vide order dated 30.04.2015, Annexure A.8, the DETC (A) dismissed the appeal filed by the assessee. Still not satisfied, the assessee filed an appeal before the Punjab VAT Tribunal. Vide order dated 21.10.2016, Annexure A.9, the Tribunal dismissed the appeal. Hence, the instant appeal by the appellant-company.

3. We have heard learned counsel for the appellant-assessee.

4. A perusal of the order dated 21.10.2016, Annexure A.9, passed by the Value Added Tax Tribunal, Punjab shows that with regard to substantial question No. (a) whether Assistant Excise and Taxation Commissioner (AETC) ICC (Exports), Shambhu is competent Designated Officer to impose penalty under Section 51 of the Punjab VAT Act, no such argument was raised by the appellant-company before the Tribunal. Thus, no finding has been recorded by the Tribunal on this issue. With regard to substantial questions of law (b) to (d), findings of fact have been recorded by the Tribunal. It has been categorically recorded by the Tribunal that the assessee had placed reliance on the affidavit of Mr. Sarabjit Singh, driver who was driving the vehicle at the relevant time. He himself had admitted through his affidavit that he had crossed the ICC without generating the information. It was further recorded that it was not the first transaction and even prior to that, the goods were being taken through that way. Thus, the mere excuse that the driver did not know about the location of the ICC, was not accepted. Further, the goods were carried away through a vehicle which was not used for carrying the goods. Consequently, the Tribunal rightly concurred with the findings recorded by the authorities below and dismissed the appeal filed by the appellant-assessee. The relevant findings recorded by the Tribunal read thus:-

> *"Arguments heard. Record perused.*
>
> *The appellant was carrying excisable goods in an Innova Car and not in a goods carrier. The appellant has placed reliance on the affidavit of Sarabjit Singh, Driver who was driving the car at that time but this affidavit goes against the appellant, because he has admitted through his affidavit that he had crossed the ICC without generating the information. The mere excuse, that he did not know about the location of the ICC, does not help the case of the appellant as even according to the company, it was not first transaction and even prior to that, they were taking the goods through that way. On pemsal of the statement of accounts, it transpires that they passed through that way even on 30.09.2008 and 07.10.2008 and prior to that also, they were frequently passing through the said highway. In these circumstances, the appellant can't be said to have no knowledge of the location of the ICC, the said excuse is nothing but a device to get rid of the charges against him. The intention of the appellant to avoid the tax is further strengthened from the fact that the goods were carried away through a vehicle which was not used for carrying the goods.*
>
> *Having perused both the orders passed by the authorities below, the same appear to be well founded and well reasoned and do not call for any interference at my end."*

5. Learned counsel for the appellant has not been able to show any illegality or perversity in the findings of fact recorded by the Tribunal on questions (b to d). Thus, no substantial question of law arises and the appeal stands dismissed.

PUNJAB VAT TRIBUNAL

APPEAL NO. 12 OF 2014

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SOMA ENTERPRISES LTD.
Vs
STATE OF PUNJAB

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

6th April, 2017

HF ▶ Assessee

Profit on labour is admissible as deduction where gross loss is converted into Gross Profit on redrafting of Trading Account.

WORKS CONTRACT – TURNOVER – DEDUCTIONS – PROFIT ON LABOUR – GROSS LOSS SHOWN BY ASSESSEE – ASSESSMENT MADE – CERTAIN DEDUCTIONS NOT ALLOWED – GROSS LOSS CONVERTED INTO GROSS PROFIT – ASSESSING AUTHORITY ALLOWED PROPORTIONATE PROFIT ON LABOUR – REVISIONAL AUTHORITY DISALLOWED THE SAME IN REVISION AS NO PROFIT CLAIMED IN RETURNS – ON REVISION BEFORE TRIBUNAL – PROFIT ON LABOUR ADMISSIBLE DEDUCTION – GROSS LOSS CONVERTED INTO PROFIT BY ASSESSING AUTHORITY – PROFIT ON LABOUR CAN NOT BE DISALLOWED – ADDITION DELETED – *SECTION 2(zg) OF PVAT ACT, 2005 AND RULE 15(4) OF PVAT RULES, 2005*

WORKS CONTRACT – RATE OF TAX – GOODS TRANSFERRED VS. GOODS PURCHASED – TAX IMPOSABLE ON GOODS TRANSFERRED – RATIO OF TURNOVER TO BE ADOPTED FOR LEVY OF DIFFERENT RATES OF TAX ON THE BASIS ON GOODS TRANSFERRED AND NOT GOODS PURCHASED – ORDER OF REVISIONAL AUTHORITY SET ASIDE TO THIS EXTENT - *SECTION 2(zg) OF PVAT ACT, 2005 AND RULE 15(4) OF PVAT RULES, 2005*

WORKS CONTRACT – TAX ELEMENT – CONTRACT AT A FIX PRICE INCLUDING TAXES – ENTIRE TAX LEVIED BY ASSESSING AUTHORITY TO BE DEDUCTED FROM TURNOVER AS PER RULES – DISALLOWANCE OF DEDUCTION OF TAX ELEMENT FROM GROSS TURNOVER BY REVISIONAL AUTHORITY NOT JUSTIFIED – *RULE 15(1)(h) OF PVAT RULES, 2005*

WORKS CONTRACT – INPUT TAX CREDIT – GOODS DEEMED TO BE SOLD AT LOSS – ITC REVERSED – GROSS LOSS CONVERTED INTO PROFIT AFTER REDRAWING TRADING ACCOUNT – REVERSAL NOT JUSTIFIED – ORDER SET ASIDE – *SECTION 13 OF PVAT ACT & RULE 21(2-A) OF PVAT RULES, 2005.*

Assessment of the dealer who is a works contractor was framed on 16.4.2012 by Assistant Excise and Taxation Commissioner Patiala. The refund claim of Rs.12,64,32,658/- was reduced to Rs.11,35,17,208/-. In this process the entire trading account was redrawn and deductions were allowed accordingly.

Assessment order was taken up for revision by Additional ETC which was later on transferred to Excise and Taxation Commissioner. Excise and Taxation Commissioner calculated an additional demand of Rs.15,47,39,169/- including interest and penalty.

The Assessee filed revision before Tribunal and assailed the order on the following issues

a) The Revisional authority was not justified in disallowing proportionate profit on labour allowed by Assessing Authority when on redrawing of trading account gross loss was converted into gross profit.

b) The Revisional authority was not justified in changing the ratio of turnover for applying different tax rates on the basis of goods purchased instead of goods transferred in the execution of works contract.

c) The Revisional authority was also not justified in denying the reduction of tax element included in the sale price which is specific deduction allowed under Rule 15(1)(h).

d) The Ld. Revision authority was not justifying in applying Rule 21(2A) for reversal of input tax credit by presuming that goods have been sold at a loss.

e) Imposition of penalty and interest is not justified in the circumstances of the case.

The Tribunal accepting the revision petition held:

1) The Assessee while filing the returns had claimed certain expenses as direct expenses and thus deductible from gross turnover of works contract. This lead to gross loss while framing trading account. Assessing Authority framed the assessment and rejected certain expenses as to be indirect expenses and thereby taking it out of trading account. This resulted into gross loss being converted into gross profit on redrafting of trading account. The said gross profit was to be proportionately calculated on goods as well as services which was duly done by Assessing Authority. The Revisional Authority had wrongly rejected the claim of profit on labour on the premise of the said amount being not claimed by the assessee. Once the Revisional authority had accepted the redrafted trading account in so far as this allowance of deduction is concerned, the proportionate profit as a result of such exercise would be definitely admissible as deduction as per various pronouncement and Rule 15.

2) The Assessing Authority had applied the different rates of tax on the proportionate turnover calculated on the basis of goods transferred in execution of works contract. The Revisional Authority had however disturbed the said ratio by applying the ratio on the basis of goods purchased during the year. Such a recourse is not admissible under the law as tax has to be paid on the basis of goods transferred in the execution of works contract and not on the basis of goods purchased during year. The application of ratio on the basis of purchases is thereof totally unjustified and the order of Revisional authority to that extent is liable to be set aside.

3) It is an admitted fact that contract was awarded to the assessee on a lump sum fixed price and is deemed to be including all type of taxes, duties and tariffs etc. Therefore the amount of valuable consideration paid or payable to the assessee would be deemed to include the tax component and while calculating the tax liability, tax fraction amount is liable to be deducted. For this purpose there is a specific deduction available under Rule 15(1)(h) of the rules. The assessee is therefore allowed the said deduction from its turnover.

4) *While filing the returns the Assessee had reversed an ITC of Rs.65,51,025/- on three accounts. Firstly reversal was made on account of inter-state branch transfer of the goods. Secondly reversal was made for sale of high speed diesel sold to sub contractors at a loss under Rule 21(2A). Balance amount was reversed from ITC in relation to the goods involved in the deemed sale showing gross loss in the composite trading account. After the redrafting of trading account no ITC was reversed on account of deemed sales made at a loss. The Revisional authority had not only maintained the said reversal of ITC but had also made a further reversal of Rs.65,51,025/- which lead to double reversal of ITC on account of branch transfers and on account of sale of diesel at a loss. The said reversal of ITC on two occasions is unwarranted and therefore is quashed. Further once it is held that goods were not sold at a loss then no reversal for deemed sale under Rule 21(2A) was also required.*

5) *Since the demand in entirely has been quashed no discussion on issue of penalty and interest payable on the demand raised is required. Consequently demand of penalty and interest is also quashed.*

Case referred:

- *Gannon Dunkerley & Co. & Ors vs. State Of Rajasthan & Ors , (1993) 88 STC 204*
- *Ahluwalia contracts (1) Ltd. Vs. The State of Punjab (2011) 38 PHT 79 (PVT)*
- *Larsen & Toubro Limited & Anr vs. State of Karnataka & Anr delivered on 26 September, 2013*

Present: Sh. K. L. Goyal, Sr. Advocate alongwith Sh. R.K. Malhotra, Advocate counsel for the Revisionist.
Mr. N.K.Verma, Sr. Dy. Advocate General for the State.

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

1. This revision/petition is directed against the order dated 1.8.2014 passed by the Excise and Taxation Commissioner-cum-Revisional Authority, Punjab Chandigarh (herein referred as the Revisional Authority) U/s 65 (1) of the Punjab Value Added Tax Act, 2005 (herein referred as the Act of 2005) revising the assessment framed for the year 2010-11 by the Assistant Excise and Taxation Commissioner, District Patiala on 16.4.2012, whereby the latter had reduced the refund payable to the petitioner from Rs. 12,64,32,658/- to Rs.11,35,17,208/-.

2. M/s Soma Enterprises Ltd. is a company (herein referred as the petitioner) and is a taxable person registered under the Punjab Value Added Tax Act, 2005 and the Central Sales Tax Act, 1956 having TIN 03302046685. The company is engaged in the execution of the civil works contracts, mainly for construction of Roads, Bridges and Dams etc.

3. The present revision petition relates to the assessment year 2010-11 and pertains to the branch located in the State of Punjab where the principle place of its business is located at G.T. Road Village Basantpura, Tehsil Rajpura.

4. National Highway Authority of India had launched a project of six laning of NH-1, G.T. Road's stretch from Panipat (Haryana) to Jalandhar (Punjab) for a total road distance of 291 kilometres to be built by the contactor on B.O.T basis. This project was awarded to M/s Soma Isolux NH One Tollway Private Ltd., but later on, the aforesaid firm further entered into agreement with the C.J.V. M/s Isolux Corsan India Engineering & Construction Private Ltd. and M/s Soma Enterprise Ltd. The C.J.V. further awarded the project to the Company (petitioner) who under took to complete the work.

5. During the period running from 1.4.2010 to 31.3.2011 the road construction work was under progress. This project was being executed through its own work force as also through sub contractors who were assigned particular activity, as part of such execution. Various materials were purchased for use in the execution of this work. These purchases as well as the goods including capital goods assets received from other branches, besides the sales of some materials to sub-contractors etc., were duly recorded in the books of account and other related records being maintained for this area. The company, in addition of the execution of the contract, had also conducted resale of various materials amounting to Rs.62,22,02,998/-to its sub-contractors. The above project was partly completed upto 31.3.2011. The contractees for the work done, during the year 2010-11, had paid amounts totalling to Rs.6,13,65,59,851/-. Based on these details the company furnished the annual statement in form VAT-20 showing the excess credit of Rs. 12,64,32,658/- and claimed refund of the said amount, however, the Designated Officer, Patiala before issuing the refund proceeded to scrutinize the return U/s 29 (2) of the Act.

6. Relevant record/books of account/evidence were produced before him during the proceedings in support of various claims and deductions. Further details, as called for, had also been provided. The A.E.T.C.-cum-Designated Officer, after examining the books of account and other record/information called for during the proceedings, had redrafted the Trading Account, as in his opinion certain expenses were in the nature of indirect expenses, had quantified the net direct expenses relating to the labour and services component at Rs.3,25,23,58,563/-, as against Rs.3,85,57,88,708/- claimed by the company. It included amounts paid to sub-contractors. The taxable turnover was determined by him by applying Rule 15 (4) and 15 (5) of the Punjab Value Added Tax Rules, 2005 and by further bifurcating those deemed sales value for taxation at different tax rates on the basis of different class of materials consumed. The assessment had been finalized by him vide orders dated 16.4.2012, wherein the tax was calculated by applying the 'Tax Fraction' as provided in Rule 15 (1) (h) of the Rules, ibid. This had resulted in less amount refundable to the company at Rs.11,35,17,208/-. Consequently, the refund of Rs.11,35,17,208/-, was granted by the Competent Authority on 25.4.2012.

7. However, being dissatisfied with the order passed by the Designated Officer dated 16.4.2012, the Additional Excise and Taxation Commissioner, Punjab initiated the revisional proceedings which were later on taken up by the Excise and Taxation Commissioner, Punjab, Chandigarh against the petitioner. In the said proceedings the Revisional Authority, vide his order dated 1.8.2014, revised the order thereby it rejected the refund to the tune of Rs.4,54,44,690/- and created additional demand of Rs. 15,47,39,169/- including the interest of Rs. 1,84,05,099/- U/s 32 (3) and penalty of Rs. 9,08,89,380/- U/s 56 of the Act. The Excise and Taxation Commissioner, Punjab, (Revisional Authority) while passing the impugned order, dropped following allegations levelled against the petitioner for the valid reasons:-

1. That as per TDS certificates total receipt of work done was Rs.4,75,02,05,508/- and TDS amounting to Rs.19,00,08,220/- was claimed, whereas the Designated Officer has taken the figure of work done for Rs.4,62,00,02,553/- only, which resulted in to under assessment of turnover to the tune of Rs. 13,02,02,955/-.
2. The Designated Officer has allowed the deductions of Rs.19,01,72,129/- on account of labour and service as brought forward from the previous year but not reflected in the trading account which resulted into under the assessment.

8. The Revisional Authority, however, upheld the other three charges framed against him which are reproduced as under :-

(a) That as per annual statement in form VAT-20, the petitioner had claimed and availed the deductions of Rs.3,85,57,88,708/-, but the Designated Officer allowed deductions amounting to Rs.3,25,23,58,563/- and disallowed the deductions amounting to Rs.60,34,30,145/-. The output tax was required to be calculated on the disallowed amount of deductions resulting into creation of additional demand and reduction of the amount of refund claimed but the same has not been done resulting into loss to the Government exchequer.

(b) That the Designated Officer has allowed the deductions of Rs.13,70,44,064/- on account of profit on deductions U/r 15 (4) whereas as per trading account, there was a loss to the tune of Rs.110,17,26,686/-. This deduction has been worked out on the basis of reworked/ reconstructed trading account which is not possible allowable even under the income Tax Act. The trading account, balance sheet duly audited by the Chartered Accountant & submitted before the concerned department cannot be changed. The petitioner with a motive to obtain an in-genuine refund submitted the forged and fabricated documents and the same was accepted by the Designated Officer.

(c) The petitioner declared the purchases of material to the tune of Rs. 3,14,61,88,175/- and opening stock was Rs.1,47,02,89,527/- whereas closing stock is declared as Rs.75,15,73,828/- and as such the petitioner has consumed the material as sales and in the execution of works contract to the tune of Rs.3,86,49,03,924/- whereas the assessment has been framed by the Designated Officer on Rs.317.19 crores which also include sale of material Rs.62.22 Cr. and as such under assessed.

9. Consequently, the Revisional Authority rejected the refund and created the aforesaid demand vide order dated 1.8.2014. Now, the petitioner is before the Tribunal in revision against the said order.

10. The issues involved in the revision petition to be determined by the Tribunal are reproduced as under:-

1. While determining the taxable turnover in a works contract what would be the amount of deduction admissible on account of labour and services?
2. Rate of tax wise bifurcation of deemed sales involved in works contract executed by the petitioner itself.
3. Application of 'tax fraction'.
4. Reversal of input tax credit.
5. Whether it is a fit case for awarding penalty and interest against the petitioner.

11. Now I am taking the issue wise findings returned by the Excise and Taxation Commissioner and the contentions raised by the counsel for the parties.

Issue No.(i) Permissible deductions on account of labour and services:-

12. While deciding issue No.l, the Revisional Authority had held that the Designated Officer committed serious irregularity and illegality as he was not competent to redraft the trading account and also could not allow the deduction on account of labour and service. On the basis of redrafted trading account Eventually, the Revisional Authority determined the amount

of deduction at Rs.1,73,58,01,265/- after disallowing deduction on account of gross profit to the extent of Rs.13,70,44,064/-.

13. The learned counsel for the petitioner, in order to assail the findings recorded against the petitioners on the aforesaid issue No.l, has raised the following contentions:-

(a) That the re-drafting of Trading Account at the end of 'Assessing Officer' (A.E.T.C.), during the original assessment proceedings in the instant case, was warranted in law, as it was required for determining the amounts deductible towards labour and services u/r 15(4) of the Rules, Ibid. It is a case where the Assessing Officer had in his opinion held certain expenses (details enclosed as Annexure-I) (*Note:- This annexure was submitted by the petitioner alongwith his submissions*) as in the nature of 'Indirect Expenditure' and not as 'Direct Expenditure' as claimed by the applicant. As per the accounting principles, for drafting a 'Trading Account' only direct expenses are considered and the 'Indirect Expenses' always form part of the Profit and Loss Account.

(b) That the Ld. Officer has gravely erred in ignoring the judgment of Hon'ble VAT Tribunal, Punjab, in the case reported as (2011) 38 PHT 79(PVT) M/s. Ahluwalia Contracts (I) Ltd. Vs. the State of Punjab, even after the above judgment, with specific reference to observations of the Hon'ble Tribunal in Para 8 of the judgment, had been brought to his notice by way of written submissions dated 15.10.2013.

Issue No. (ii) Tax bifurcation:-

14. Qua rate of Tax wise bifurcation of deemed sales involved in the works contract executed by petitioner itself, the Revisional Authority disputed the basis of this bifurcation as applied by the Designated Officer and revised it to that according to the percentage wise proportion of the goods falling in a particular tax rate slab purchased during the year irrespective of its actual consumption in the works contract executed during the year.

Accordingly, the bifurcation of the deemed sales was revised so as to apply tax rate of 13.75% on 24% of total deemed sales, tax rate of 5.5% on 54% of total deemed sales and tax rate of 4% on 22% of total deemed sales.

15. On this issue No. (ii), the counsel for the petitioner has made the following submissions:-

(a) The reference by Ld. E.T.C. to the judgments of Hon'ble Supreme Court in the cases reported as Larsen and Toubro vs. State of Karnataka and K. Raheja Vs. State of Karnataka, is totally misplaced. On perusal of the assessment order, it is reflected that the taxability of materials used in the execution of contract was never under dispute, rather the registration had been sought and granted to meet with legal obligation of paying taxes on the deemed sale value of materials used in the execution of contract.'

(b) The 'Taxable Turnover' relating to deemed sales primarily illegally determined at Rs.2,69,40,29,159/-, has been wrongly bifurcated under different tax rates, overlooking the actual percentage of different materials so consumed in the execution of contract. The goods are taxable only at the time of its incorporation in the execution of works contract as has been prescribed in section 8 (2-A) of the act. The wrong bifurcation has resulted in bringing to tax such goods which were still lying in stocks at the end of financial year.

(c) Since the Ld. ETC, during the Revisional proceedings, had never raised the issue relating to, bifurcation of 'Taxable Turnover, as originally worked out by the 'Assessing Officer' before taking it as illegal and improper, therefore, he erred in returning findings without forming any such ground.

Issue No.(iii) Tax fraction:-

In the original assessment order, the designated officer, while calculating the tax payable on a taxable turnover, had applied tax fraction as the taxable turnover was supposed to be including tax payable on it. But, the ETC-cum Revisional Authority denied it when the order was revised.

16. With regard to third issue of Application of Tax Fraction, the learned counsel for the petitioner has submitted that the Ld. Excise and Taxation Commissioner has further erred in subjecting to tax, the deemed sales (illegally determined at higher amount) by not applying the 'Tax Fraction' as per the mandate of law contained in Rule 15(l)(h) of the Rules, ibid. No reason for not applying the 'Tax Fraction' as applied/allowed by the Assessing Officer while framing original assessment has been recorded in the impugned order. The denial of application of 'Tax Fraction' is also illegal as the Id. ETC, during the revisional proceedings, had never raised any objection to the application of tax fraction as allowed by the Assessing Officer.

Issue No.(iv) Reversal of Input Tax credit:-

17. On this issue, the facts are that Reversal of input tax credit in the annual statement filed by the applicant, an amount of Rs 65,51,025/- was reversed from the input tax credit (in short, `ITC') available to him, on the issues of branch transfers, sale of high speed diesel at loss to the sub-contractors and deemed sales at gross loss. But, in original assessment order, an ITC of Rs.3,47,679/- and of Rs.28,11,910 were reversed on account of inter-state branch transfer of goods and sale of high speed diesel at loss, and the deemed sales were held as sold on gross profit, as per the re-drafted trading account and hence, no ITC was reversed on this account. But the Revisional Authority, while revising the original assessment order, reversed the amounts of Rs.3,47,679/-and Rs.28,11,910 on the issues of branch transfer of goods and in addition, an amount of Rs.65,51,025 was also reversed from the ITC available to the petitioner.

18. On this issue, the learned counsel for the petitioner has argued as under:-

(a) The Ld. Excise and Taxation Commissioner has erred in reversing the 'Input Tax Credit' at Rs.65,51,025/-.

(b) In the instant case, the deemed sales have been determined during the original assessment as well as during the revisional proceedings at value higher than the purchase value.

(c) Further, the 'Input Tax Credit' in respect of the sales of 'Diesel' at loss, as well as against 'Branch Transfers', separately reversed in the amount of Rs.28,11,910/- & Rs.3,47,679/-, constitute part of amount so reversed at Rs.65,51,025/, resulting in double reversal thereof.

(d) The above action, without prejudice to the above submissions, is against the law as at no stage of proceedings, the Revisional Authority had taken note of this issue for disallowance/reversals of 'Input Tax Credit' in addition to what had been done by the 'Assessing Officer'.

19. As regards the penalty issue, it is observed that the Excise and Taxation Commissioner-cum-Revisional Authority imposed a penalty to the tune of Rs.9,08,89,380, u/s 56 of the Act on account of wrongly availing of refund to the tune of Rs 4,54,44,690/-.

20. The contentions raised by the Ld. Counsel for the petitioner are as follows:-

21. That the Ld. Officer has exceeded his jurisdiction in invoking Sec. 56 of the Act, ibid, for initiating penalty proceedings at this revisional stage for the following reasons:-

(a) No penalty had been imposed by the Assessing Officer during the original assessment proceedings.

(b) The Revisional Authority is not competent to initiate such action in the absence of penal action during original assessment proceedings which were the subject matter of revision.

(c) The action of imposition of penalty is in defiance of the law clearly laid down by the Hon'ble Punjab and Haryana High Court in the cases reported as [1996] 103 STC 128(P&H)-State of Haryana vs. Dasaunda Singh Waryam Singh and [2007] 10 VST 253 (P&H)-Chaudhary Tractors vs. State of Haryana.

22. Lastly, the Excise and Taxation Commissioner-cum-Revisional Authority also charged an interest, u/s 32(3) of the Act, of Rs.1,84,05,099/-. @1.5% per month, for 27 months on the alleged wrongly availing of refund of Rs.4,54,44,690/-.

23. As regards interest, it has been submitted that Ld. Counsel for the petitioner that the Ld. Excise and Taxation Commissioner has also erred in invoking the provisions of Sec. 32 of the Act, ibid and in charging the interest there-under or the amount of refund alleged to have been taken in excess.

24. In the end, the counsel has prayed that for the aforesaid reasons, the impugned order being bad in the eye of law and not based on the facts may be quashed.

25. To the contrary, the learned Senior Deputy Advocate General, appearing on behalf of the respondent has submitted that the original assessment order had rightly been revised by the Excise and Taxation Commissioner-cum- Revisional Authority, after affording due opportunity to the applicant and after taking into account all of his contentions. But the learned Senior Deputy Advocate General has not rebutted the detailed arguments put forth by the counsel for the petitioner and only re-iterated the stand taken by the Excise and Taxation Commissioner-cum- Revisional Authority in its order on the issues involved in the case.

26. Having heard the Id. Counsel for the parties and perused the record of the case, the Tribunal finds merit in the contentions raised by the counsel for the appellant.

27. On the minute examination of the original assessment order passed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, Patiala and the revisional order passed by the Excise and Taxation Commissioner-cum-Revisional Authority, Punjab, it is found that in the original assessment order, deduction on account of labour & services had been worked out as follows:

Total amount of direct expenses	Rs. 173,58,01,265/-
Add proportionate profit on labour services, @ gross profit on gross work executed by Soma itself	Rs. 13,70,44,064/-
Add amount of labour & services b/f from the year 2009-10	Rs. 19,01,72,129/-

Total amount of deduction allowed on account of labour & services	Rs. 206,30,17,458/-

28. The Revisional Authority, while revising the original assessment order, rejected a deduction amounting to Rs.13,70,44,064/-allowed by the Designated Officer, which was allowed, on account of a proportionate profit on labour & services, @ gross profit on gross work executed by the petitioner himself. All the other constituents of the total amount of deduction, allowed on account of labour & services allowed by the Assistant Excise and Taxation Commissioner-cum-Designated officer, were accepted by the Excise and Taxation Commissioner-cum-Revisional Authority. Accordingly, the taxable turnover was increased by an amount of Rs 13,70,44,064/-.

Section 2(zu) of the Act defines works contract as:

> *"2(zu) "works contract" includes any agreement for carrying out, for cash, deferred payment or other valuable consideration, building construction, manufacturing, processing, fabrication, erection, installation, fitting out, improvement, modification, repairs or commissioning of any movable or immovable property."*

29. Sale is defined in section 2(zf) of the Act, which reads as follows:

> *"2(zf) "sale" with all its grammatical or cognate expressions means any transfer of property in goods for cash, deferred payment or other valuable consideration and includes -*
>
> *(i) transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;*
>
> *(ii) transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;*
>
> *(iii) delivery of goods on hire-purchase or any system of payment by instalments;.*
>
> *(iv) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;*
>
> *(v) supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;*
>
> *(vi) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating) where such supply or service is for cash, deferred payment or other valuable consideration; and*
>
> *(vii) every disposal of goods referred to in Explanation (4) to clause (t) of this section;*
>
> *and such transfer, delivery or supply of any goods shall be deemed to be a sale of these goods by the person making the transfer, delivery or supply to a person to whom such transfer, delivery or supply is made, but does not include a mortgage, hypothecation, charge or pledge."*

30. Therefore, sale also includes transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

Sales price is defined in section 2(zg) of the Act, which says:-

> *"2(zg) "sale price" means the amount of valuable consideration received or receivable by a person for any sale made including any sum charged on account of freight, storage, demurrage, insurance and any sum charged for anything done by the person in respect of the goods at the time of or before the delivery thereof;*
>
> ***Explanation*** *-*
>
> *(1) In relation to the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract, 'sale price' means such amount as is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour and other charges incurred and profit accrued other than in connection with transfer of property in goods for such execution. Where such labour and other charges are not quantifiable, the sale price shall be the cost of acquisition of the goods and the margin of profit on them plus the cost of transferring the property in the goods and all other expenses in relation thereto till the property in such goods, whether as such or in any other form, passes to the contractee and where the property passes in a different form, it shall include the cost of conversion.*
>
> *(2) In relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable to a person for such delivery.*
>
> *(3) In relation to the transfer of right to use any goods for any purpose (whether or not for a specified period), the valuable consideration received or receivable for such transfer.*
>
> *(4) The amount of duties levied or leviable on goods under the Central Excise and Salt Act, 1944 (1 of 1944), or the Customs Act, 1962 (52 of 1962), or the Punjab Excise Act, 1914 (1 of 1914), shall be deemed to be part of the sale price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.*
>
> *(5) Sale price shall not include tax paid or payable to a person in respect of such sale.*

31. In line with the definition of sale, there are rules 15(4) & 15(5) of Punjab Value Added Tax Rules, 2005, which are depicted as under:-

> *"15(4) The value of the goods, involved in the execution of a works contract, shall be determined by taking into account the value of the entire works contract by deducting there-from the components of payment, made towards labour and services, including —*
>
> *(a) labour charges for execution of the works;*
>
> *(b) amount paid to a sub-contractor for labour and services;*
>
> *(c) charges for planning, designing and architect's fees;*
>
> *(d) charges for obtaining for hire, machinery and tools used for the execution of the works contract;*

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

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

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

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

"15 (5) The amounts deductible under sub clauses (c).to (h) of sub rule (4), shall be determined in the light of the facts of a particular case on the basis of the material produced by the contractor."

32. On this matter, there is judgment by the Hon'ble Supreme Court, in ***Gannon Dunkerley & Co. & Ors vs. State Of Rajasthan & Ors , (1993) 88 STC 204***, in which it has been held as follows:-

"45. Keeping in view the legal fiction introduced by the Forty Sixth Amendment whereby the works contract which are entire and indivisible into one for sale of goods and other for supply of labour and services, the value of the goods involved in the execution of a works contract on which tax is leviable must exclude the charges which appertain to the contract for supply of labour and services. This would mean that labour charges for execution of works [item no (i)] amounts paid to a sub-contractor for labour and services [item No. (ii)], charges for planning, designing and architect's fees [item No. (iii)], charges for obtaining on hire or otherwise machinery and tools used in the execution of a works contact [item No. (iv)], and the cost of consumables such as water, electricity, fuel etc. which are consumed in the process of execution of a works contract [item No. (v)] and other similar expenses for labour and services will have to be excluded as charges for supply of labour and services. The charges mentioned in item No. (vi) cannot, however, be excluded. The position of a contractor in relation to a transfer of property in goods in the execution of a works contract is not different from that of a dealer in goods who is liable to pay sales tax on the sale price charged by him from the customer for the goods sold. The said price includes the cost of bringing the goods to the place of sale. Similarly, for the purpose of ascertaining the value of goods which are involved in the execution of a works contract for the purpose of imposition of tax, the cost of transportation of the goods to the place of works has to be taken as part of the value of the said goods. The charges mentioned in item No. (vii) relate to the various expenses which form part of the cost of establishment of the contractor. Ordinarily the cost of establishment is included in the sale price charged by a dealer from the customer for the goods sold. Since a composite works contract involves supply of materials as well as supply of labour and services, the cost of establishment of the contractor would have to be apportioned between the part of the contract involving supply of materials and the part involving supply of labour and services. The cost of establishment of the contractor which is relatable to supply of labour and services cannot be included in the value of the goods involved in the execution of a contract and the cost of establishment which is relatable to supply of material involved in the execution of the works contract only can be included in the value of the goods. Similar apportionment will have to be made in respect of item No.(viii) relating to profits. The profits which are relatable to the supply of materials can be included in the value of the

goods and the profits which are relatable to supply of labour and services will have to be excluded. This means that in respect of charges mentioned in item nos. (vii) and (viii), the cost of establishment of the contractor as well as the profit earned by him to the extent the same are relatable to supply of labour and services will have to be excluded. The amount so deductible would have to be determined in the light of the facts of a particular case on the basis of the material produced by the contractor. The value of the goods involved in the execution of a works contract will, therefore, have to be determined by taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would cover:

a) Labour charges for execution of the works;

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

c) charges for planning, designing and architect's fees;

d) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;

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

f) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;

g) other similar expenses relatable to supply of labour and services;

h) profit earned by the contractor to the extent it is relatable to supply of labour and services;

The amounts deductible under these heads will have to be determined in the light of the facts of a particular case on the basis of the material produced by the contractor."

33. Now I revert back to examine the definition of sale price, in this regard, it is observed that vide Explanation (1) in section 2(zg) of the Act, it has been clearly mentioned that 'sale price' means such amount as is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour and other charges incurred and profit accrued other than in connection with transfer of property in goods for such execution.

34. In Rule 15(4) (h), it has again been said that while determining the value of the goods, involved in the execution of a works contract, the profit earned by the contractor to the extent, it is relatable to the supply of labour and, services will form the part of deduction, from the value of the entire works contract, as the charges towards labour and services. Rule 15(5) also provides, that the amounts deductible under sub clauses (c) to (h) of sub rule (4), 'shall be determined in the light of the facts of a particular case on the basis of the material produced by the contractor. The same view was taken by the Hon'ble Supreme Court, in case ***Gannon Dunkerley & Co. & Ors vs. State of Rajasthan & Ors, (1993) 88 STC 204***. It may further be mentioned that the aforesaid judgment exhaustively lays down the principles forming the basis for the determination of deemed sales involved in a works contract. The definition of sale price in the Act in regard to the sale price of the property in goods transferred in the execution of a works contract and the Rules 15 (4) and 15(5) of the Punjab Value Added Tax Act Rules for arriving at the taxable turnover of deemed sales involved in a works contract are in accordance

with the said principles evolved by the Hon'ble Supreme Court in case of ***Gannon Daunkerley & Co. & Ors vs. State Of Rajasthan & Ors*** (supra).

35. As per the legal position as envisaged above, it is evident that the profits which are relatable to the supply of materials are to be included in the value of the goods and the profits which are relatable to supply of labour and services will have to be excluded from the value of the goods involved in the execution of a contract. That is, the value of the goods involved in the execution of a works contract will, therefore, have to be determined by taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would also cover the profit earned by the contractor to the extent it is relatable to supply of labour and services.

36. Now coming to the issue of quantification of the profit which was relatable to supply of labour and services in the execution of the works contract by the petitioner. The trading account submitted by the petitioner before the assessing officer, was a composite trading account, in which individual gross profit was not worked out as relatable to each type of sale made by the petitioner. That is, gross profit earned on the sub-contracted part of the contract, on direct sale of material by Soma to its sub-contractors, or on deemed sale of the goods transferred in the execution of the works contract, etc was not separately determined by the petitioner in the trading account. Further, while calculating the value of the goods transferred in the execution of the works contract, the direct expenses always form the part of deduction on account of labour and services and the indirect expenses do not form the part of such deduction. There were certain expenses, amounting to Rs.60,34,30,145/- which were considered by the petitioner as direct expenses in the trading account and hence, while calculating the value of the goods transferred in the execution of the works contract, claimed deduction, qua those expenses, from the value of the works contract, as it formed a part of the charges towards labour and services. The Designated Officer, while framing the assessment had not rejected the incurring of the aforesaid certain expenses, but considered those expenses as indirect expenses and hence, those expenses formed a part of profit and loss account. Accordingly, the gross profit as calculated by the petitioner was got affected on this aspect also and hence, it had to be re-worked for the purpose of determining the profit which was relatable to the supply of labour and services incurred in the works contract executed by the petitioner itself. The so determined gross profit will enhance the value of the goods transferred in the works contract which in turn, will be beneficial to the Revenue as well as the amount of deduction towards labour and services. The re-calculation of gross profit, after legitimate adjustments, is also supported by the judgment of this Tribunal in ***M/s Ahluwalia contracts (1) Ltd. Vs. The State of Punjab (2011) 38 PHT 79 (PVT)***. Accordingly, the re-drafted trading account was employed only as a device, to determine the amount of profit relatable to the supply of labour and services, in the works contract executed by the petitioner itself and hence, no irregularity or illegality was committed by the assessing officer on that issue in the assessment order. The Para no.57 of the judgment of the Supreme Court in ***M/S Larsen & Toubro Limited & Anr vs. State of Karnataka & Anr delivered on 26 September, 2013***, confirming the Supreme Court judgment in K. Raheja v. State of Karnataka, as quoted by the Revisional Authority in its revisional order, had been wrongly interpreted and applied by the Revisional Authority while adjudicating the impugned issue as the quoted, para 57 of the judgments only says that the tax is payable on the transfer of property in goods (whether as goods or in some other form). The petitioner has not contested this aspect.

37. Therefore, there was no ground for rejecting the deduction, amounting to Rs.13,70,44,064/-, from, the value of the works contract executed, by the petitioner itself, as allowed by the Designated Officer, on account of the profit which was relatable to the supply of labour and services, and hence, as a result, enhanced taxable turnover in the revision of order

passed by the Revisional Authority was also un-justified and hence, demand raised on this issue is quashed.

38. Now comes the next issue relating to the basis of bifurcation of the deemed sale involved in the works contract into different tax rate slabs. Accordingly, I retrace the definition of sale as envisaged in Section 2(zf)(ii) of the Act, and of sale price as envisaged in Section 2(zg), Explanation (1). In case of a works contract, the sale means the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract and the sale price is the amount of valuable consideration received or receivable on account of the property in goods transferred as a result of execution of the works contract. The Hon'ble Supreme Court, in ***Gannon Daunkerley & Co. & Ors vs State Of Rajasthan & Ors, (1993) 88 STC 204*** , also held that the value of the goods, which are transferred in the execution of works contract are to be taxed and not the goods, which are yet to be incorporated or transferred to the contractee as a result of the execution of the works contract.

39. It obviously leads to the conclusion that the bifurcation of the taxable turnover of deemed sales involved in the execution of a works contract must be done according to the rate of tax applicable to, and to the extent of, the goods transferred to the contractee in the execution of a works contract, and not so on the basis of the goods purchased, which also includes goods, not yet transferred or incorporated in the execution of the works contract.

40. Accordingly, the Revisional Authority wrongly changed the basis of bifurcation of taxable turnover of deemed sales into different tax rates, from that on the basis of goods transferred in the execution of the works contract to that on the basis of purchases of goods made during the year. It led to an unjustified tax burden on the petitioner, and since it has no legs to stand, the demand raised on this issue in the revisional order passed by the Revisional Authority is rejected.

41. Further, the Revisional Authority denied the application of 'tax fraction', which was allowed, in the original assessment order, passed by the designated officer, while calculating the tax payable on a taxable turnover. The Revisional Authority was not correct in doing so.

42. Section 2(zg), Explanation (5) of the Act says that the sale price shall not include tax paid or payable to a person in respect of such sale. The rules 15(1) (h) of the Punjab Value Added Tax Rules, 2005 states that in order to determine the taxable turnover of sales, a person, shall also deduct from his gross turnover of sales, a sum, to be calculated by applying a tax fraction in case it is included in the gross turnover. On the combined reading of the section 2(zg), explanation (5), Rules 15(l)(h)and 15(4) of Punjab Value Added Tax Rules, 2005, the dear inference which can be drawn is that if taxable turnover is including tax, then a tax fraction has to be applied in order to arrive at the correct tax liability.

43. The para 8 of the written agreement in respect of the contract awarded to Soma/appellant states that "the contract price is a lump sum fixed price, and will not be adjusted save as expressly provided herein and includes any and all direct, indirect and ancillary charges and costs of whatsoever nature, all profit, license, royalty and other fees, the cost of all spare parts, accessories, consumable materials and special tools to be provided hereunder and taxes, duties, tariffs, fees, penalties, levies, export insurance premiums, export license fees and other charges relating to or arising out of this agreement and the design and execution of the works and, in each case, all deductions and withholdings therefor," therefore the amount of valuable consideration paid or payable to the applicant for the execution of the works contract also included the tax component and hence, while calculating the tax liability on the taxable turnover of deemed sales involved in the execution of the works contract by the petitioner, the tax fraction was correctly applied by the assessing officer in his assessment order. The Revisional Authority failed to appreciate the legal position on this issue and wrongly denied the

application of the 'tax fraction' in calculating the tax liability of the petitioner. Accordingly, the contention of the petitioner is accepted. The demand raised on this issue is also quashed.

44. On the other issue, the contention is that in the revisional order passed by the Revisional Authority an amount of Rs 65,51,025/- was reversed from the input tax credit available to the applicant, in addition to the reversal made by the assessing officer while passing the original assessment order. The learned counsel for the petitioner has opposed this additional reversal from the ITC.

45. In regard to the availability of Input tax credit (in short, 'ITC'), the following are the relevant sections of the Act, as existed in the relevant year

> *"13. (1) A taxable person shall be entitled to the input tax credit, in such manner and subject to such conditions, as may, be prescribed, in respect of input tax on taxable goods, including capital goods,- purchased by him from a taxable person within the State during the tax period:*
>
> > *Provided that such goods are for sale in the State or in the course of inter-State trade or commerce or in the course of export, or for use in the manufacture, processing or packing of taxable goods for sale within the State or in the course of inter-State trade or commerce or in the course of export:*
> >
> > > *Provided further that a taxable person shall be entitled to partial input tax credit in any other event, as may be provided in this section in such manner and subject to such conditions as may be prescribed:*
> > >
> > > > *Provided further that if, purchases are used partially for the purposes specified in this sub-section and the taxable person is unable to identify the goods used for such purposes, then the input tax credit shall be allowed proportionate to the extent, these are used for such purposes, in the prescribed manner:*
> > > >
> > > > > *Provided further that input tax credit in respect of purchase tax paid or payable by a taxable person under section 19, shall be allowed subject to the conditions laid therein.*
>
> *(2) Input tax credit shall be allowed only to the extent by which the amount of tax paid in the State exceeds four percent on purchase of goods-*
>
> *(a) sent outside the State other than by way of sale in the course of inter-state trade or commerce or in the course of export out of territory of India; and*
>
> *(b) used in manufacturing or in packing of taxable goods sent outside the State other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India."*

46. The manner of reversal of ITC on account of the inter -state branch transfer of good§, where the identification of goods is not possible, which is the case at present, is given in Rule 24 of the Punjab Value Added Tax Rules, 2005, as existed at the relevant time, which says as follows:-

> *"24. Input tax credit where identification of goods is not possible:-*

(1) Where a taxable person has used the goods purchased, partially for taxable sales, but is unable to maintain accounts as provided in rule 23, and the sales by him, includes sale of tax free goods and taxable goods or consignment or branch transfers, then it shall be presumed that the goods so purchased during the tax period, have been used in proportion of turnover of sales of tax free goods, taxable goods and consignment or branch transfers of the tax period or return period and accordingly input tax credit shall be claimed in that proportion. Input tax credit shall be apportioned for tax-free and taxable sales as follows namely : -

$$\frac{IT \times T}{GT+BT}$$

Explanation : "IT" is the total amount of input tax for the period less reverse tax:

"T" is the total turnover of sales of taxable goods made in the tax period or return period including zero rated sales, inter-state sales and value of branch/consignment transfers but excluding the tax amount.

"GT" is the gross turnover of sales (including inter-state sales) during the tax period or return period but excluding the tax amount.

"BT" is the total value of consignment or branch transfers of taxable goods in the course of inter-state trade or commerce made in the tax period/return period.

(2) In respect of the goods, specified in sub-sections (2) and (3) of section 13 of the Act, input tax shall be considered only to the extent by which the amount of tax paid in the State exceeds four per cent and where a person makes branch transfers, the above amount of input tax credit shall be further reduced by a sum calculated in accordance with the following formula namely : —

$$\frac{IP \times BT \times 4}{}$$

Explanation : "IP" is the purchase price of the goods excluding the tax amount in respect of which ITC is considered above.

"GT" is the gross turnover of sales (including inter-state sales) during the tax period or return period but excluding the tax amount.

"BT" is the total value of consignment or branch transfers of taxable goods in the course of inter-state trade or commerce made in the tax period or return period."

47. Further, the Rule 21(2-A) of the Punjab VAT Rules, 2005, which embodies the provisions for reversal from the ITC on account of sale of goods at loss, reads as follows:-

" 21(2-A): Input tax credit shall be allowed to a taxable person to the extent of tax payable on the resale value of goods or sale value of manufactured/ processed goods, where such goods by the taxable person, are sold at a price,-

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

(ii) Lower than cost price in the case of manufactured /processed goods;

and in such cases, the balance input tax credit (ITC) shall be reversed by the taxable person;

PROVIDED THAT the provisions of this-sub-rule shall not apply in cases where the sale has been made at a price lower than the purchase price in pursuance of the administered prices of the oil companies, that is to say, Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited, Bharat Petroleum Corporation Limited and HPCL Mittal Energy Limited."

48. The sub-rule (2-A) of Rule 21 was inserted into the Punjab VAT Rules, 2005 w.e.f. Nov.9, 2010 vide notification no.GSR.37/ P.A.8/ 2005/ S.70/ Amd.(31)/2010 dated the 8th November, 2010. That is it was applicable for a limited period out of the year 2010-11.

49. In the annual statement filed by the petitioner, an amount of Rs.65,51,025/- was reversed from the ITC available to him. The reversal amount of Rs.65,51,025/- comprised of the reversal amount of Rs 3,47,679/- on account of inter-state branch transfers of goods, as per the provision of Section 13(2) of the Act and Rule 24(2) of the Punjab VAT Rules; of Rs 28,11,910/- due to sale of high speed diesel at loss to the sub-contractors, under the provisions of Rule 21 (2-A) of Punjab VAT Rules and the balance amount of Rs.33,91,436/- was also reversed from the ITC in relation to the goods involved in the deemed sales, seeing the gross loss in the composite trading account which contained all categories of sales. In the composite trading account, gross profit or loss was not worked out on any individual category of sale, 'and particularly on the sale part constituting the deemed sales involved in the works contract executed by the petitioner itself, which was necessary in order to find out whether the goods involved in the execution, by the petitioner itself, of the works contract incurred gross profit or loss. But, in the original assessment order, the deemed sales were held as sold on gross profit, as per the re-drafted/re-worked trading account and hence, no ITC was reversed on this account. Therefore, in the original assessment order, an ITC of Rs 3,47,679/- and of Rs 28,11,910 only were reversed on account of inter-state branch transfer of goods and sale of high speed diesel at loss, respectively. Subsequently, the Revisional Authority, while revising the original assessment order, reversed from ITC, the amounts of Rs 3,47,679/- and Rs 28,11,910/- on account of inter-state branch transfer of goods and sale of high speed diesel at loss respectively and in addition an amount of Rs 65,51,025/- was also reversed from the ITC available to the petitioner. This led to doubly reversal of ITC , in the amounts of Rs 3,47,679/- on account of branch transfers and Rs 28,11,910/- on account of sale of diesel at loss, and in addition, reversal of an amount of Rs.33,91,436/- on account of deemed sales, assuming to be sold at loss, was also made from the ITC.

50. As a result of the assessment made by the AETC-cum-designated officer, the excess ITC, which was refundable to the petitioner, was reduced from Rs.12,64,32,658/- to Rs.11,35,17,208/-, for the assessment year 2010-11. The assessing officer had disallowed the benefits availed by the petitioner which were not due to him, but at the same time, allowed the legitimate benefits due to the petitioner. As pointed out in earlier the discussions, as per the genuinely re-worked trading account relatable to only the works contract part which was self-executed by the petitioner, there was a gross profit earned by the petitioner, on deemed sales involved in the works contract, and hence, it can be safely said that the goods involved in the deemed sales were not sold at loss and hence, as per Rule 21(2-A), no reversal was needed from the ITC available to the petitioner on the goods involved in the works contract executed by the petitioner itself. Therefore, the assessing officer had rightly determined the amounts of reversals to be made from the ITC available to the petitioner. Accordingly, the additional reversal to the extent of Rs.65,51,025/- made in the revisional order passed by the Revisional Authority was unjustified and hence, demand raised due to this issue is also quashed.

51. As an upshot of the aforesaid discussions, this revision petition/is accepted. The entire demand raised in the revisional order passed by the Excise and Taxation Commissioner-cum-Revisional Authority, is quashed. Since demand has been quashed, therefore, no

discussion on the issue of penalty and interest payable on the demand raised is required. Consequently demand of interest and penalty are also quashed.

52. Pronounced in the open court.

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HARYANA TAX TRIBUNAL

STA NO. 77-84 OF 2012-13

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K.K. ORGANICS PVT. LTD.
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SACHIN JAIN, MEMBER

21st April, 2017

HF ▶ Assessee

Framing of assessment for the period falling under HGST Act would be governed by limitation provided under HVAT Act.

LIMITATION - ASSESSMENT ORDER – ASSESSMENT YEAR 1999-2000 TO 2002-03 – ASSESSMENT ORDERS PASSED IN 2008 – ORDERS UPHELD ON MERITS BY FIRST APPELLATE AUTHORITY – SECOND APPEAL FILED CONTENDING ASSESSMENT ORDERS TO BE TIME BARRED – HELD: ASSESSMENT ORDER PASSED FOR FIRST TIME AFTER WITHDRAWL OF TAX EXEMPTION IN FEBRUARY 2008 – CASE COVERED BY EARLIER JUDGMENT IN THE CASE OF FRIGO GLASS INDIA (P) LTD. ORIGINAL ASSESSMENT ORDERS OUGHT TO HAVE BEEN PASSED EARLIER DURING EXEMPTION PERIOD – RE ASSESSMENT COULD HAVE BEEN DONE AFTER TAX EXEMPTION STOOD WITHDRAWL – THUS, ORIGINAL ASSESSMENT ORDERS NOT BEING PASSED DURING CURRENCY OF TAX EXEMPTION PERIOD DO NOT BRING IMPUGNED ORDERS WITHIN LIMITATION PERIOD – APPEAL ACCEPTED – *SECTION 28 OF HGST ACT, 1973; SECTION 15& 61 OF HVAT ACT, 2003.*

LIMITATION – CONDONATION OF DELAY – APPEAL – ASSESSMENT ORDERS PASSED – WRIT FILED AGAINST THE IMPUGNED ASSESSMENT ORDERS – RELEGATED TO AVAIL REMEDY OF APPEAL – SLP FILED ALSO DISMISSED – FIRST APPEAL FILED CONSEQUENTLY – APPEAL DISMISSED ON GROUNDS OF DELAY – SECOND APPEAL FILED – DELAY ON ACCOUNT OF FILING OF WRIT AND SLP OUGHT TO HAVE BEEN CONDONED – APPEAL ACCEPTED – *SECTION 33 OF HVAT ACT, 2003.*

For assessment years 1999-2000 to 2002-03, the assessment orders dated 29/4/08 were passed. The assessee filed writ against the orders which was disposed of relegating the assessee to avail alternative remedy. The assessee filed SLP before Supreme court which was also dismissed vide order dated 22/1/2010. Subsequently, appeals were filed against the assessment orders in 2010. The said appeals have been dismissed being time barred and against merits. Thus, second appeal is filed.

Held:

1) *The delay should have been condoned as the assessee was availing the remedy of writ and SLP in meantime. The first appellate authority has observed that the assessee could have simultaneously filed writ and filed appeal is not sustainable as both remedies cannot be availed together. Therefore, the delay is condoned.*

2) *Contention that on withdrawl of tax exemption under Rule 28B vide order dated 6/2/2008, the assessment orders were passed and were not beyond limitation is unacceptable. The original assessment orders ought to have been passed during currency of tax exemption period but were not passed.Thus, limitation period for passing original assessment orders even during currency of tax exemption period had expired without passing of any assessment orders.*

   If assessment orders were passed during that period when exemption prevailed, on subsequent withdrawl reassessment orders could have been passed. Consequently, subsequent withdrawl of tax exemption would not bring the impugned orders within limitation.

   Therefore, all assessment orders are barred by limitation and are set aside.

   The appeal of the appellant assessee is allowed.

Present: Mr. Sandeep Goyal, Advocate Counsel for the applicant.
Sh. S.K, Saini, JD (L) for the State

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. These are eight second appeals STA 77 to 84 of 2012-13 filed by the same assessee M/s K.K. Organics Pvt. Ltd; Vill Doha, Jhirka, Mewat for assessment years 1999-2000 to 2002-03. For each assessment year, there are two appeals i,e. one under the local Act i.e. Haryana General Sales Tax Act, 1973 (in short, the HGST Act) / the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act) and the other under the Central Sales Tax Act, 1956 (in short, the CST Act).

2. Assessing Authority, Mewat passed separate assessment' orders all dated 29-04-2008 for the four assessement years in question. The assessee filed Writ Petition CWP No. 5859 of 2009 in Hon'ble High Court of Punjab & Haryana against all the said assessment orders. Hon'ble High Court vide order dated 20-04-2009 disposed of the writ petition by relegating the assessee to avail the remedy of appeal. The assessee filed Special Leave Petition (SLP) in Hon'ble Supreme Court to challenge the said order. The Hon'ble Supreme Court dismissed the SLP vide order dated 22-01-2010. Thereafter, the assessee filed eight first appeals in March, 2010 against the assessment orders dated 29-04-2008. The said first appeals have been dismissed by first Appellate Authority, Faridabad by four separate orders dated 13-06-2012 holding the first appeals to be time-barred, and also on merits. Hence these second appeals by the assessee.

3. We have heard Counsel for the appellant and State Representative and perused the case files.

4. Counsel for the appellant contended that all the assessment orders are barred by limitation because the same were passed after the expiry of limitation period of three years for making assessment as provided under the HVAT Act, which came into force on 01-04- 2003 and, therefore, limitation period of three years for making assessment for any assessment year upto the year 2002-03 under the HGST Act ended 31-03-2006, Reliance has been placed on

decision dated 13-02-2017 of the Tribunal in STA nos, 1062 to 1069 of 2014- 15 M/s Frigo Glass India Pvt. Ltd; Gurgaon V/s State of Haryana. As regards first appeals being time barred, it was submitted that the first appeals were filed within a reasonable period after dismissal of appellant's SLP by the Hon'ble Supreme Court.

5. State Representative contended that the assessee-appellant had been granted tax exemption under rule 28-B of the Haryana General Sales Tax Rules, 1975 (in short, the HGST Rules) and the said exemption was withdrawn by Lower Level Screening Committee by (LLSC) vide order dated 06-02-2008 and immediately thereafter, the Assessing Authority passed impugned assessment orders dated 29-04-2008 and the same are, therefore, not barred by limitation.

6. We have carefully considered the matter. Firstly, dealing with the issue of first appeals being barred by limitation, we find that the appellant had filed Writ Petition to challenge the impugned assessment/orders but the Writ Petition was disposed of by Hon'ble High Court by relegating the assessee to the remedy of appeal. The assessee filed SLP in Hon'ble Supreme Court and after dismissal of SLP, the assessee filed first appeals without delay. In these circumstances, the first appeals should not have been dismissed as time barred and the delay, if any in filing the first appeals, should have been condoned because in the meantime, the assessee was availing the remedy of Writ Petition in Hon'ble High Court and remedy of SLP in hon'ble Supreme Court. The first Appellate Authority has observed that after dismissal of Writ Petition by Hon'ble High Court, the assessee could have simultaneously filed SLP as well as first appeals. This observation of the first Appellate Authority cannot be sustained because the assessee could not have availed of both the remedies simultaneously. With dismissal of SLP, order of Hon'ble High Court relegating the assessee to the remedy of appeal stood upheld and accordingly the assessee filed the first appeals. Consequently, we condone the delay, if any in filing the first appeals.

7. On merits, the instant second appeals have to be allowed because the impunged assessment orders are time barred. This issue is fully and directly covered in favour of the assessee-appellant by the case of M/s Frigo Glass India Pvt.Ltd. (supra).

8. Contention of State Representative based on withdrawal of tax exemption under rule 28 B of the HGST Rules by LLSC vide order dated 06-02-2008 does not bring the impugned assessement orders, dated 29-04-2008 within limitation. State Representative fairly conceded that even before withdrawal of tax exemption, assessment orders had to be passed by the Assessing Authority even during the currency of tax exemption period, but were not so passed. Thus limitation period for passing the original assessment orders, even during currency of tax exemption period, had expired without passing of any such assessment orders. The position could be different if assessment orders had been passed within limitation period during the currency of tax exemption period. In that event, on subsequent withdrawal of tax exemption from retrospective date, re-assessment orders could have been validly passed. However, in the instant cases, even original assessment orders, during currency of tax exemption period, were not passed within the limitation period. Consequently, subsequent withdrawal of tax exemption would not bring the impugned assessment orders within limitation.

9. We, therefore, conclude that all the impugned orders of the Assessing Authority are barred by limitation and are, therefore, set aside. Consequently, all the impugned orders dated 13-06-2012 of the first Appellate Authority dismissing the eight first appeals of the assessee are also set aside. All the present eight appeals stand allowed accordingly.

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HARYANA TAX TRIBUNAL

STA NO. 360 OF 2013-14

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SPL INDUSTRIES LTD.
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SACHIN JAIN, MEMBER

21st April, 2017

HF ▶ Assessee

Tax on sale of used cars is leviable as per schedule 'G' and not @ 12.5%.

RATE OF TAX – SALE OF USED CAR – SCHEDULE G – FIX RATE OF TAX – ASSESSING OFFICER LEVIED TAX AT GENERAL RATE – APPEAL BEFORE TRIBUNAL – ASSESSEE NOT ENGAGED IN SALE AND PURCHASE OF CARS – CARS USED FOR PURPOSE OF BUSINESS – SUCH SALE COVERED BY SCHEDULE 'G' OF ACT – LUMPSUM TAX PAYABLE – APPEAL ALLOWED – *SECTION 45 & SCHEDULE G OF HVAT ACT, 2003.*

Facts

The assesee is engaged in business of manufacture and export of readymade garments. It had purchased a car for self use. Tax was levied on sale of this car after the assesee had used it. As per entries 2(a) and 2(b) of HVAT Act, fixed amount of tax is leviable on sale of pre-owned cars as per the capacity of its engine. The appellant had paid tax accordingly. However, the authorities have levied tax @ 12.5% treating it as an unclassified item. Hence, an appeal is filed.

Held:

Admittedly, the present assesee is not engaged in sale and purchase of cars. The car was purchased for own use. Thus, sale of old car was fully covered by the said entries 2(a) and 2 (b) of schedule G. Thus, the appeal is allowed and additional tax levied is set aside.

Present: Sh.Rishab Singla, Advocate Counsel for the Applicant.
Sh. S.K. Saini, JD (L) for the State

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. This is second appeal by assessee M/s SPL Industries Ltd., Faridabad.

2. The assessee-appellant is engaged in business of manufacture and export of readymade garments besides job work on fabrics. The dispute in this appeal relates to the rate of tax leviable on sale of old cars by the assessee-appellant who had purchased the said cars as

new cars for self use and sold the same as old cars after self use. The appellant admittedly is not in the business of sale and purchase of new or old cars.

3. As per notification dated 06.09.2006 issued by State Government, entries 2(a) and 2(b) were added to schedule-G to the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act). According to said entries, fixed amount of tax under the HVAT Act is leviable on sale of pre-owned cars. The amount of tax is Rs. 3000/- per car having engine capacity not exceeding 1000cc as per entry 2(a) where as the tax amount is Rs. 5000/- per car having engine capacity exceeding 1000cc as per entry 2(b). The appellant paid fixed amount of tax accordingly on sale of its old cars. However, the Authorities below have levied tax @ 12.5% treating it as unclassified item.

4. M/s Lease Plan India Ltd., Gurgaon sought clarification under section 56(3) of the HVAT Act from the State Government regarding aforesaid entries 2(a) and 2(b) of schedule G inserted by notification dated 06.09.2006. The said dealer was engaged in the business of purchase and sale including leasing of motor vehicles to various corporate houses on transfer of right to use basis. State Government issued clarification vide memo dated 17.06.2008 that new cars purchased by the said dealer and sold to users on lease basis is not sale of pre-owned cars within the meaning of aforesaid entries 2(a) and 2(b) and, therefore, rate of tax on the sale of said cars is leviable @12.5% as leviable on sale of new cars. The said clarification was upheld by this Tribunal in appeal preferred by the said dealer against the said clarificatory order, vide decision dated 27.07.2009 reported as (2009) 34 PHT 638 (HTT) Lease Plan India Ltd; Gurgaon V/s State of Haryana.

5. We have heard counsel for the appellant and State Representative and perused the case file.

6. Counsel for the appellant contended that the aforesaid clarificatory order and decision of the Tribunal in the case of Lease Plan India Ltd; (Supra) are not applicable to the present case because the assessee-appellant is not a dealer engaged in the business of sale and purchase of new or old cars. It was submitted that the assessee-appellant purchased the new cars for self use and after self use, sold the same as pre-owned cars and, therefore, fixed tax amount as per aforesaid entries 2(a) and 29b) is leviable depending on the engine capacity of the cars and the tax was paid accordingly. Reliance has been placed on decision of the Tribunal in Subhash and Co, Kurukshetra V/s State of Haryana (2010) 36 PHT 388 (HTT). On the other hand, State Representative relied on the aforesaid clarificatory order and the case of Lease Plan India Ltd (supra) and contended that tax has been rightly levied @ 12.5% by the Authorities below.

7. We have carefully considered the matter. We find force in contention of counsel for the appellant. Aforesaid clarificatory order and the case of Lease Plan India Ltd; (Supra) are completely distinguishable on facts because the said dealer was engaged in the business of purchase and sale of cars. The dealer after purchasing new cars sold the same as such to corporate houses on lease basis and thus it was sale of new cars. Admittedly the present assessee-appellant was not engaged in the purchase and sale of new or old cars. The appellant purchased the new cars for self use and after self use, sold the same as old cars. Thus the sale of cars by the assessee-appellant was sale of pre-owned cars fully covered by aforesaid entries 2(a) and 2(b) of schedule G to the HVAT Act. This issue is also directly covered in favour of the assessee-appellant by the case for Subhash & Co. (Supra) wherein also the aforesaid clarificatory order and the case of Lease Plan India Ltd; (supra) were considered and distinguished for the aforesaid reasons.

8. Resultantly, this appeal is allowed and impugned orders of both the Authorities below to the extent of creation of additional tax demand on sale of cars are set-aside.

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HARYANA TAX TRIBUNAL

STA NO. 283 OF 2011-12

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S.N. BROTHERS PVT. LTD.
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

11th April, 2017

HF ▶ Assessee

Notice sent at closed unit of assessee before passing of impugned order is not a valid service of notice where revenue is aware of Residential Address.

NOTICE – NATURAL JUSTICE – TAX EXEMPTION WITHDRAWN BY HLSC – APPEAL FILED CONTENDING NO OPPORTUNITY PROVIDED TO APPELLANT BEFORE PASSING OF ORDER – HELD: NOTICE BEFORE PASSING OF IMPUGNED ORDER WAS SENT TO CLOSED PREMISES OF APPELLANT – AUTHORITY WELL AWARE OF CLOSURE OF UNIT – FAILURE TO SEND NOTICE AT REGISTERED ADDRESS IN DELHI DESPITE INFORMATION OF THE NEW ADDRESS – NOTICE OUGHT TO HAVE BEEN SENT AT DELHI ADDRESS – VIOLATION OF NATURAL JUSTICE – APPEAL ALLOWED - MATTER REMANDED TO HLSC FOR FRESH DECISION – *RULE 28-C OF HGST RULES, 1975*

Facts

Tax exemption of the assessee was withdrawn by HLSC under rule 13(a) of Rule 28-C of HGST Rules, 1975.The appellant has contended that it was not given an opportunity of being heard before withdrawl as the notices was sent at its closed premises and the authority was well aware that the said premises was shut. The notice could have been sent at the registered office address of assessee but was not sent by the authorities. Thus, an appeal is filed challenging the impugned order on grounds of violation of natural justice.

Held:

Admittedly, the authorities were aware that the assessee had already sold the factory. Inspite that, notices were sent there. It is also clear that the authorities were aware of Delhi address because the impugned order which was undelivered was immediately sent at Delhi address. However, no notice was sent at Delhi address. Thus, the appellant remained unpresented before HLSC.

The notice of opportunity of being heard may now be served on the counsel on behalf of assessee and it would be a valid service of notice. The appeal is allowed and matter is remanded to HLSC for fresh decision.

Present: Sh. Sandeep Goyal, Advocate Counsel for the Applicant.
Sh. S.K. Saini, JD(L) for the State

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. This is appeal by assessee M/s S.N. Brothers Pvt. Ltd., Sonepat assailing order dated 23-01-2012 of the Higher Level Screening Committee (HLSC) thereby withdrawing tax concession of the assessee under sub-rule 13 (a) of rule 28-C of the Haryana General Sales Tax Rules, 1975 (in short, the HGST Rules).

2. We have heard counsel for appellant and State Representative and perused the case file.

3. Tax concession under rule 28-C of the HGST Rules was granted to the assessee-appellant by HLSC for the period from 01-04-2003 to 23-01-2012 modified to the period from 30-10-2000 to 30-10-2009. Manufacturing Unit of the assessee-appellant was closed/sold in the year 2005-006. It was alleged to be violation of the conditions of tax concession. On this ground, the tax concession has been withdrawn.

4. Counsel for the appellant inter alia contended that notices for appearance before HLSC were issued at the factory address which had already been closed/sold by the assessee-appellant and, therefore, the assessee did not receive any notice. It was pointed out that the Authorities were already aware that the assessee had already closed/sold the unit and were also aware of the registered office address of Delhi of the assessee, but inspite thereof, no notice was sent at the said address. In this context, it was elaborated that even the impugned order dated 23-01-2012 was initially sent at the factory address and was received back undelivered and then it was sent to the assessee-appellant at Delhi address vide memo dated 03-02-2012 which was duly received by the assessee and thereupon this appeal was filed on 13-03-2012. It was thus canvassed that the impugned order has been passed without affording opportunity of hearing to the assessee-appellant although it was mandatory under the HGST Rules as well as in view of the principles of natural justice and, therefore, the impugned order is vitiated. State Representative contended that the notices were sent at the factory address and last notice was also pasted at the said premises and, therefore, there was no violation of the HGST Rules or the principles of natural justice.

5. We have carefully considered the matter. It is admitted position that the Authorities were well aware since the year 2007 that the assessee-appellant had already closed/sold the factory. Inspite thereof, notices before passing the impugned order were sent/pasted at the factory premises. However, it emerges that the Authorities were also aware of registered office address of Delhi of the assessee-appellant because after the impugned order sent at factory address was received undelivered, it was immediately thereafter sent at Delhi address vide memo dated 03-02-2012. The Authorities thus were already aware of the said address of the assessee-appellant. However, no notice before passing the impugned order was sent to the assesses appellant at the address of Delhi. Thus the assessee-appellant remained unrepresented before the HLSC. The assessee- appellant was thus deprived of the opportunity of hearing before passing the impugned order although it was mandatory to provide opportunity of hearing to the assessee-appellant under the HGST Rules as well as ih view of the principles of natural justice. Consequently, the impugned order stands vitiated and has to be set aside on this short ground and the matter has to be remanded to the HLSC for fresh decision.

6. Counsel for the appellant has stated that notice for opportunity of hearing may now be served on him (the counsel) on behalf of the assessee-appellant by HLSC and it will be valid service of notice on the assessee-appellant. It is ordered accordingly.

7. Resultantly, this appeal is allowed. Impugned order dated 23-01-2012 of HLSC withdrawing the tax concession of tax assessee-appellant is set aside and the matter is remanded to HLSC for fresh decision in accordance with law. We have not expressed any opinion on merits.

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HARYANA TAX TRIBUNAL

STA NO. 65 TO 68 OF 2015-16

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COLT INTERNATIONAL
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

8th March, 2017

HF ▶ Revenue

No further time is granted to assessee for producing declarations forms as they were neither produced before any authorities below nor before Tribunal.

DECLARATION FORMS – DEMAND RAISED ON ACCOUNT OF NON PRODUCTION OF DECLARATION FORMS - FIRST APPEAL DISMISSED – APPEAL BEFORE TRIBUNAL PRAYING FOR MORE TIME TO PRODUCE THE REQUISITE FORMS – HELD: STATUTORY FORMS YET NOT IN POSSESSION OF ASSESSEE – NEITHER EVER PRODUCED BEFORE AUTHORITIES BELOW – SUBMISSION UNACCEPTABLE AFTER 12 YEARS OF PASSING OF ASSESSMENT ORDERS – APPEAL DISMISSED.

Facts

A demand was raised as the assessee failed to produce the requisite documents and declarations. An appeal was filed before first appellate authority which was also dismissed. Hence, an appeal is filed before tribunal praying for more time to produce the declaration forms.

Held:

The submission cannot be accepted as the assessee has not produced declaration forms even before assessing authority and the first appellate authority. Even before Tribunal, it has not produced them.

Even after 12 years of passing of assessment orders, the assessee has not produced the requisite declarations. Therefore, further time cannot be given. The appeals are dismissed.

Present: Sh. Rajiv Agnihotri, Advocate Counsel for the appellant
Sh. N.K. Gupta, J.D.(L) for the State

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. By this common order, we are disposing of four appeals STA nos. 65 to 68 of 2015-16 filed by the same assessee M/s. Colt International, Faridabad-two appeals pertain to assessment year 2001-02 and the remaining l two appeals relate to assessment year 2002-03. For each assessment year, one appeal is under the Haryana Value Added Tax Act/Haryana General Sales Tax Act, 1973 (in short, the Local Act) and the other appeal is under the Central Sales Tax Act, 1956 (in short, the Central Act).

2. Assessing Authority created additional demands under both the local and the Central Acts in both the assessment years because the assessee failed to produce the requisite and statutory documents and declarations. Four first appeals preferred by the assessee have been dismissed by first Appellate Authority, Faridabad vide two orders dated 02-12-2014, Hence these second appeals by the assessee.

3. We have heard counsel for the appellant and State Representative and perused the case files.

4. Counsel for the appellant submitted that more time should be granted to the assessee for production of the declaration forms. The submission can not be accepted because the assessee did not produce the declaration forms not only before the Assessing Authority but also before the first Appellate Authority. Even before this Tribunal, the assessee-appellant has not produced the same. Orders of the Assessing Authority are of February, 2005 and May -2005 for assessment years 2001-02 and 2002-03 respectively. Thus even after lapse of 12 years from the dates of assessment orders and lapse of almost 15 years and 14 years from the close of the assessment years the assessee has not been able to produce the requisite declaration forms. In these circumstances, the question of granting further time to the assessee-appellant to produce the requisite declaration forms and other documents does not arise.

5. Resultantly, we find no infirmity much less illegality In the impugned orders of the Authorities below. Hence all these four appeals are dismissed.

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HARYANA TAX TRIBUNAL

STA NO. 756 OF 2014-15

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JAI BHARAT ENTERPRISES
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SACHIN JAIN, MEMBER

9th March, 2017

HF ▶ Assessee

Appellate Authority should have granted more time to furnish 'C' forms when it had granted similar relief under HVAT Act, 2003.

APPELLATE AUTHORITY – CONTRADICTORY ORDERS – ASSESSMENT ORDER PASSED - TWO APPEALS FILED AGAINST ASSESSMENT ORDER UNDER HVAT ACT AND UNDER CST ACT BEFORE THE FIRST APPELLATE AUTHORITY – APPEAL ALLOWED UNDER HVAT ACT PERMITTING OPPORTUNITY TO PRODUCE VAT C-4 FORMS AND TAX INVOICES – APPEAL DISALLOWED UNDER CST ACT ON THE SAME DATE DEPRIVING OPPORTUNITY TO PRODUCE C FORMS – APPEAL FILED AGAINST CONTRADICTORY ORDERS PASSED BY FIRST APPELLATE AUTHORITY – NO REASON FOUND BY TRIBUNAL TO PASS SUCH ORDERS – APPEAL ALLOWED GRANTING OPPORTUNITY TO APPELLANT TO PRODUCE C FORMS – MISCONDUCT OF CONCERNED OFFICER TAKEN INTO ACCOUNT AND COMMISSIONER DIRECTED TO TAKE ACTION AGAINST THE SAME – *SECTION 8(3) OF CST ACT, 1956 & RULE 12 OF CST (R&T) RULES, 1957*

Facts

Due to non production of Vat C 4 forms, tax invoices, the ITC claim was disallowed. Also, concessional rate of tax was denied due to shortage of C forms. Two appeals were filed i.e under HVAT Act and under CST Act. First appellate authority allowed first appeal under HVAT Act and remanded the matter to assessing authority to allow production of documents. However, the appeal filed before the same authority under CST Act was dismissed, though decided on the same date against the same assesee with respect to the common assessment order. Hence an appeal is filed before Tribunal.

Held:

There was no reason to deny similar opportunity to the assesee to produce C forms in appeal under CST Act. The prayer for opportunity to produce declarations seems genuine.
The conduct of appellate authority in passing two contradictory orders on the same date in two appeals of the same assessee under HVAT Act and CST act against a common order is taken in to account. The ETC is directed to take an action against the concerned officer in this regard.

The appeal is allowed and matter is remanded to assessing authority for deciding afresh after considering C forms.

Present: Sh. Rajiv Agnihotri, Advocate, Counsel for the appellant.
Sh. M.L. Sharma, District Attorney, for the State.

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. This is second appeal by assessee M/s Jai Bharat Enterprises, Faridabad.

2. Assessing Authority, Faridabad (West) vide ex-parte assessment order dated 29-03-2012 created additional demand under the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act) by disallowing input tax credit (ITC) claim of the assessee due to non-submission of VAT-C-4 certificates and Original bills/ Tax Invoices and also created additional demand under the Central Sales Tax Act, 1956 (in short, the CST Act), apparently by denying concessional rate of tax due to non-production of C- Forms. The assessee file two appeals against the said order appeal no. FDW/59/VAT/18.06.2012 under the HVAT Act and appeal No. FWD/ 60/CST/18.06.2012 under the CST Act. First Appellate Authority, Faridabad vide order dated 03-02-2014 allowed the first appeal under the HVAT Act and remanded the case to the Assessing Authority for fresh decision by giving opportunity to the assessee to produce original tax invoices and VAT C-4 certificates and to allow ITC claim after due verification of the said documents. At the same time, the first Appellate Authority, Faridabad vide order of same date (3-02-2014) dismissed the first appeal under the CST Act by declining the prayer of the assessee appellant for grant of opportunity to produce declarations in form-C by remanding the case to the Assessing Authority. Hence the present second appeal relating to demand under the CST Act.

3. We have heard counsel for the appellant and District Attorney for the State and perused the case file.

4. Counsel for the appellant contended that the first Appellate Authority has passed contradictory orders on the same date in the two first appeals of the assessee against a common assessment order of the Assessing Authority. It was argued that the first Appellate Authority allowed the appeal under the HVAT Act and remanded the case to the Assessing Authority for fresh decision after giving opportunity to the assessee to produce the Original Tax invoices and VAT-C-4 certificates, but similar opportunity was denied to the assessee appellant by the first Appellate Authority in appeal under the CST Act, although prayer was made by the assessee appellant in the appeal under the CST Act also before the first Appellate Authority to give opportunity to produce declarations in C-form. Counsel for the appellant prayed that for opportunity be given to the assessee to produce declarations in C-form before the Assessing Authority.

5. On the other hand, District Attorney for the State defended the impugned orders.

6. We have carefully considered the matter. We have also perused the impugned order of the first Appellate Authority challenged in this appeal and order dated 03-02-2014 of the first Appellate Authority in first appeal of the assessee under the HVAT Act, copy whereof has been given today in Court by counsel for the appellant.

7. Perusal of both these orders reveals that the first Appellate Authority has passed contradictory orders in two appeals of the assessee on the same date against a single ex-parte order of the Assessing Authority. When the first Appellate Authority gave opportunity to the assessee-appellant to produce original Tax invoices and VAT-C-4 certificates in support of its ITC claim in appeal under the HVAT Act, there was no reason to deny similar opportunity to

the assessee to produce declarations in C-form in appeal under the CST Act. In these circumstances, we find the prayer of counsel for the appellant for grant of opportunity to produce the said declarations to be genuine and the same deserves to be accepted.

8. Before parting with the order, we are constrained to strongly deprecate the conduct of the first Appellate Authority in passing two contradictory orders on the same date in two appeals of the same assessee under the HVAT Act and the CST Act against a common order of the Assessing-Authority. A copy of this order be sent the Additional Chief Secretary to Government of Haryana, Excise and Taxation Department and the Excise and Taxation Commissioner, Haryana along-with copies of both the orders dated 03.02.2014 of the first Appellate Authority, Faridabad for taking appropriate action against the concerned Officer in accordance with law and also for taking appropriate steps to avoid recurrence of such situation in future.

9. For the reasons aforesaid, this appeal is allowed. Impugned orders of both the Authorities below under the CST Act are set aside and the case under the CST Act is also remanded to the Assessing Authority, Faridabad (West) for fresh decision in accordance with law after giving reasonable opportunity to the assessee to produce declarations in C-form and after considering the same.

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NOTIFICATION (Haryana)

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NOTIFICATION REGARDING EXEMPTION FROM LEVY OF VAT ON SOLAR DEVICES

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 8th May, 2017

No. 16 /ST-1/H.A. 6/2003/S.59/2017. - Whereas, the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 59 read with proviso to said sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following amendment in Schedule B appended to the said Act with immediate effect by dispensing with the condition of previous notice, namely:-

AMENDMENT

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

(i) in Schedule B, under columns 1 and 2, after serial number 46 and entry thereagainst, the following serial number and entries thereagainst shall be inserted, namely:-

"46A(i) Solar devices like solar lantern, solar home system, stand alone street lighting system, solar water heating system, solar water pumping system, solar cooker (box as well as dish type), solar charger/inverter.

(ii) Solar photovoltaic modules, solar collectors, solar dishes, its inverters or PCUs (Power Conditioning Units), energy meters and alternators purchased for the installation of solar power generation plants (both rooftop and ground mounted) in the State of Haryana.

(iii) Spare parts i.e. Solar photovoltaic modules, solar collections and solar dishes.".

(ii) in Schedule C, under columns 1 and 2, after serial number 75 and entry thereagainst, the following serial number and entries thereagainst shall be substituted, namely:-

"75 Renewable energy devices, components and spare parts thereof **except goods falling in serial number 46A of Schedule 'B'.''.**

SANJEEV KAUSHAL,
Additional Chief Secretary to Government, Haryana,
Excise and Taxation Department.

ORDER (Haryana)

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CRITERIA REGARDING SELECTION OF CASES FOR SCRUTINY ASSESSMENT UNDER THE HVAT ACT, 2003 AND THE CST ACT, 1956 FOR THE ASSESSMENT YEAR 2015-16 & 2016-17.

From

Excise and Taxation Commissioner,
Haryana.

To

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

Memo No. 1295 /ST-6,
Panchkula, dated the 03-05-2017

Subject: **Criteria regarding selection of cases for scrutiny assessment under the HVAT Act, 2003 and the CST Act, 1956 for the assessment years 2015-16 & 2016-17.**

Memo

The criteria for the selection of cases for scrutiny assessment for the years 2015-16 & 2016-17 has been approved by the State Government. The scrutiny cases will be selected for scrutiny assessment under Rule 27(2) of the Haryana Value Added Tax Rules, 2003 under below mentioned criteria for the years 2015-16 & 2016-17.

1. U/r 27(l)(i), cases having GTO of Rs. 25 cr. or exceeding Rs. 25 cr. in a year.
2. U/r 27(l)(ii), cases having claim of ITC of Rs. 35 lacs or exceeding Rs. 35 lacs in a year.
3. U/r 27(l)(iii), cases for claim of refund Rs. 10 lacs or more than Rs. 10 lacs in a year.
4. U/r 27(l)(iv), cases where inter state trade and commerce or in the course of export of goods out of the territory of India or in the course of import of goods into territory of India or goods exported out of the State cumulatively or individually, gross turnover is Rs. 5 cr. or more than Rs. 5 cr. under the CST Act, 1956 in a year.
5. U/r 27(l)(v), all cases of industrial units availing any tax concession under clause (d) of sub-section (2) of Section 61 till such units are subject to relevant provisions of Haryana General Sales Tax Rules, 1975.

6. U/r 27(l)(vii), where there is a substantial mismatch of sale, purchase or consignment with the accounts of the other dealers, to the transactions with the prior approval of DETC(ST) incharge of the District.
7. U/r 27(l)(ix), cases based on definite intelligence about evasion of tax where on definite information it is discovered that there is evasion or avoidance of tax by such dealers. Such cases shall be taken up for scrutiny assessment with the prior approval of the DETC (ST) incharge of the district.
8. U/r 27(l)(xi), the following cases of different trade/ trades shall be taken up for scrutiny assessment under this criteria:-
    a) Mines and quarry contractors and stone crushers, whose turnover is Rs. 1.50 Cr. or more than 1.50 Cr. in a year.
    b) All builders and developers in the State;
    c) Works contractors having turnover more than Rs. 5 cr.
    d) All cotton ginning mills;
    e) All processing units of dyeing, printing and embroidery;
    f) All hot mix plants;
    g) All Ready Mix Concrete (RMC) dealers;
    h) All Rice shellers having gross turnover of Rs. 2 Cr. or more than Rs. 2 Cr. under HVAT/CST Act in a year.
    i) Dealers exclusively dealing in biri, cigarette, Pan Masala and Gutka.
    j) All liquor dealers liable to pay tax including L-4/ L-5 licensees.
    k) All e-commerce dealers.
    l) All ply board manufacturers other than those covered by lumpsum scheme.
2. Petrol pump dealers whose total purchase and sales are within the State of Haryana shall not be taken up for scrutiny assessment.
3. While selecting the cases under the above scrutiny criteria, a scrutiny case, which has been selected under one criteria, would not fall under any other criteria.
4. The above criteria be circulated among all the ETO-cum-Assessing Authorities/ward officers working under your jurisdiction for compliance.

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

Endst. No. /ST-6, Panchkula, dated the

A copy is forwarded to the Addl. Chief Secretary to Government Haryana, Excise and Taxation Department for information.

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

Endst. No. /ST-6, Panchkula, dated the

A copy is forwarded to the following in the Head Office for information:-

1. All Addl. /Jt./Dy. Excise & Taxation Commissioners,

2. Joint Directors (Legal),

3. ST-2 with the directions to include in the circular for the year 2017-18 and also get the above criteria uploaded on departmental website.

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

ORDER (Haryana)

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GUIDELINES FOR SCRUTINY ASSESSMENT UNDER THE HVAT ACT, 2003 AND THE CST ACT, 1956 FOR THE ASSESSMENT YEAR 2015-16 & 2016-17.

From:

Excise and Taxation Commissioner,
Haryana.

To

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

Memo No. 1298 /ST-6,
Panchkula, dated the 03-05-2017

Subject: **Criteria regarding selection of cases for scrutiny assessment under the HVAT Act, 2003 and the CST Act, 1956 for the assessment years 2015-16 & 2016-17.**

Memo

The criteria for the selection of cases for scrutiny assessment for the years 2015-16 & 2016-17 has already been approved by the State Government and conveyed to you. As per proviso of Section 15(3) of the Act, no order shall be passed after the expiry of three years from the close of the year to which the assessment relates.

With the introduction of GST from 1st July 2017 in the country, it has become imperative to dispose of the pendency of cases under the HVAT/CST Acts at the earliest possible. It has been decided by the Govt that the disposal of scrutiny cases for the year 2014-15 shall be decided on or before 31st March 2018. The examination of returns i.e. deemed disposal of cases for the year 2015-16 shall be completed before 30th November, 2017. Further, the examination of returns i.e. deemed disposal of cases for the year 2016-17 may preferably be completed before 31st January, 2018 because the due date for filing of Annual Return i.e. R-2 for the year 2016-17 is 30th November, 2017. It is also advised that the scrutiny cases for the years 2015-16 and 2016-17 may preferably be decided by the Assessing Authorities on or before 30th June, 2018.

The above guidelines be brought to the notice of all the officers working under your supervision and control.

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

Endst. No. /ST-6, Panchkula, dated the

A copy is forwarded to the following for information:-

1. Additional Chief Secretary to Govt. Haryana Excise and Taxation Department.
2. Excise and Taxation Commissioner.
3. Addl. ETCs/Jt. ETCs/DETCs in the Head Office.

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

SGA
LAW OFFICES

NOTIFICATION (Central Government)

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THE TAXATION LAWS (AMENDMENT) ACT, 2017

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 5th May, 2017/Vaisakha 15, 1939 (Saka)

The following Act of Parliament received the assent of the President on the 04th April, 2017, and is hereby published for general information:—

THE TAXATION LAWS (AMENDMENT) ACT, 2017

No. 18 OF 2017

[*4th May*, 2017.]

An Act further to amend the Customs Act, 1962, the Customs Tariff Act, 1975, the Central Excise Act, 1944, the Central Sales Tax Act, 1956, the Finance Act, 2001 and the Finance Act, 2005 and to repeal certain enactments.

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

Short title and commence-ment.

1. (*1*) This Act may be called the Taxation Laws (Amendment) Act, 2017.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

CHAPTER I

CUSTOMS

Amendment of section 2.

52 of 1962.

2. In the Customs Act, 1962 (hereinafter referred to as the Customs Act), in section 2, in clause (*11*), after the words "the area of a Customs station", the words "or a warehouse" shall be inserted.

Insertion of new sections 108A and 108B.

3. In the Customs Act, after section 108, the following sections shall be inserted, namely:—

Obligation to furnish information.

"108A. (*1*) Any person, being—

(*a*) a local authority or other public body or association; or

(*b*) any authority of the State Government responsible for the collection of value added tax or sales tax or any other tax relating to the goods or services; or

(*c*) an income-tax authority appointed under the provisions of the Income-tax Act, 1961; 43 of 1961.

(*d*) a Banking company within the meaning of clause (*a*) of section 45A of the Reserve Bank of India Act, 1934; or 2 of 1934.

(*e*) a co-operative bank within the meaning of clause (*dd*) of section 2 of the Deposit Insurance and Credit Guarantee Corporation Act,1961; or 47 of 1961.

(*f*) a financial institution within the meaning of clause (*c*), or a non-banking financial company within the meaning of clause (*f*), of section 45-I of the Reserve Bank of India Act,1934; or 2 of 1934.

(*g*) a State Electricity Board; or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted, as the case may be, with such functions by the Central Government or the State Government; or 36 of 2003.

(*h*) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or 16 of 1908.

(*i*) a Registrar within the meaning of the Companies Act, 2013; or 18 of 2013.

(*j*) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988; or 59 of 1988.

(*k*) the Collector referred to in clause (*c*) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or 30 of 2013.

(*l*) the recognised stock exchange referred to in clause (*f*) of section 2 of the Securities Contracts (Regulation) Act, 1956; or 42 of 1956.

(*m*) a depository referred to in clause (*e*) of sub-section (*1*) of section 2 of the Depositories Act, 1996; or 22 of 1996.

(*n*) the Post Master General within the meaning of clause (*j*) of section 2 of the Indian Post Office Act, 1898; or 6 of 1898.

(*o*) the Director General of Foreign Trade within the meaning of clause (*d*) of section 2 of the Foreign Trade (Development and Regulation) Act,1992; or 22 of 1992.

(*p*) the General Manager of a Zonal Railway within the meaning of clause (*18*) of section 2 of the Railways Act,1989; or 24 of 1989.

(*q*) an officer of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934, 2 of 1934.

who is responsible for maintaining record of registration or statement of accounts or holding any other information under any of the Acts specified above or under any other law for the time being in force, which is considered relevant for the purposes of this Act, shall furnish such information to the proper officer in such manner as may be prescribed by rules made under this Act.

(*2*) Where the proper officer considers that the information furnished under sub-section (*1*) is defective, he may intimate the defect to the person who has furnished

such information and give him an opportunity of rectifying the defect within a period of seven days from the date of such intimation or within such further period which, on an application made in this behalf, the proper officer may allow and if the defect is not rectified within the said period of seven days or, further period, as the case may be, so allowed, then, notwithstanding anything contained in any other provision of this Act, such information shall be deemed as not furnished and the provisions of this Act shall apply.

(*3*) Where a person who is required to furnish information has not furnished the same within the time specified in sub-section (*1*) or sub-section (*2*), the proper officer may serve upon him a notice requiring him to furnish such information within a period not exceeding thirty days from the date of service of the notice and such person shall furnish such information.

Penalty for failure to furnish information return.

108B. Where the person who is required to furnish information under section 108A fails to do so within the period specified in the notice issued under sub-section (*3*) thereof, the proper officer may direct such person to pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such information continues.".

CHAPTER II

CUSTOMS TARIFF

51 of 1975.

Amendment of section 3.

4. In the Customs Tariff Act, 1975, in section 3,—

(*a*) in sub-section (*2*),—

(*i*) in clause (*ii*), for item (*a*), the following item shall be substituted, namely:—

"(*a*) the duty referred to in sub-sections (*1*), (*3*), (*5*), (*7*) and (*9*);";

(*ii*) in the proviso, in sub-clause (*b*), item (*ii*) shall be omitted;

(*b*) in sub-section (*6*), in clause (*ii*), for item (*a*), the following item shall be substituted, namely:—

"(*a*) the duty referred to in sub-sections (*5*), (*7*) and (*9*);";

(*c*) for sub-sections (*7*) and (*8*), the following sub-sections shall be substituted, namely:—

"(*7*) Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (*8*).

(*8*) For the purposes of calculating the integrated tax under sub-section (*7*) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of—

52 of 1962.

(*a*) the value of the imported article determined under sub-section (*1*) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (*2*) of that section, as the case may be; and

52 of 1962.

(*b*) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (*7*) or the cess referred to in sub-section (*9*).

52 of 1962.

(*9*) Any article which is imported into India shall, in addition, be liable to the goods and services tax compensation cess at such rate, as is leviable under section 8 of the Goods and Services Tax (Compensation to States) Cess Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (*10*).

(*10*) For the purposes of calculating the goods and services tax compensation cess under sub-section (*9*) on any imported article where such cess is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of— 52 of 1962.

(*a*) the value of the imported article determined under sub-section (*1*) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (*2*) of that section, as the case may be; and

(*b*) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (*7*) or the cess referred to in sub-section (*9*).

(*11*) The duty or tax or cess, as the case may be, chargeable under this section shall be in addition to any other duty or tax or cess, as the case may be, imposed under this Act or under any other law for the time being in force.

(*12*) The provisions of the Customs Act, 1962 and the rules and regulations made thereunder, including those relating to drawbacks, refunds and exemption from duties shall, so far as may be, apply to the duty or tax or cess, as the case may be, chargeable under this section as they apply in relation to the duties leviable under that Act.". 52 of 1962.

CHAPTER III

CENTRAL EXCISE

Amendment of section 2.

5. In the Central Excise Act, 1944 (hereinafter referred to as the Central Excise Act), in section 2,— 1 of 1944.

(*a*) in clause (*d*), for the words and figures "the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985", the words "the Fourth Schedule" shall be substituted; 5 of 1986.

(*b*) in clause (*e*) the words "other than salt" shall be omitted;

(*c*) in clause (*f*), in sub-clause (*ii*), for the words and figures "the First Schedule to the Central Excise Tariff Act, 1985", the words "the Fourth Schedule" shall be substituted. 5 of 1986.

Substitution of new section for section 3.

6. In the Central Excise Act, for section 3, the following section shall be substituted, namely:—

Duty specified in the Fourth Schedule to be levied.

"3. (*1*) There shall be levied and collected in such manner as may be prescribed a duty of excise to be called the Central Value Added Tax (CENVAT) on all excisable goods (excluding goods produced or manufactured in special economic zones) which are produced or manufactured in India as, and at the rates, set forth in the Fourth Schedule:

Provided that the duty of excise which shall be levied and collected on any excisable goods which are produced or manufactured by a hundred per cent. export-oriented undertaking and brought to any other place in India, shall be an amount equal to the aggregate of the duties of customs which would be leviable under the Customs

52 of 1962. Act, 1962 or any other law for the time being in force, on like goods produced or manufactured outside India if imported into India, and where the said duties of customs are chargeable by reference to their value, the value of such excisable goods shall, notwithstanding anything contained in any other provision of this Act, be determined in accordance with the provisions of the Customs Act, 1962 and the Customs Tariff 51 of 1975. Act, 1975.

Explanation 1.—Where in respect of any such like goods, any duty of customs leviable for the time being in force is leviable at different rates, then, such duty shall, for the purposes of this proviso, be deemed to be leviable at the highest of those rates.

Explanation 2.—For the purposes of this sub-section,—

(*i*) "hundred per cent. export-oriented undertaking" means an undertaking which has been approved as a hundred per cent. export-oriented undertaking by the Board appointed in this behalf by the Central Government in exercise of the powers conferred by section 14 of the Industries (Development and Regulation) 65 of 1951. Act, 1951, and the rules made under that Act;

(*ii*) "Special Economic Zone" shall have the meaning assigned to it in 28 of 2005. clause (*za*) of section 2 of the Special Economic Zones Act, 2005.

(*2*) The provisions of sub-section (*1*) shall apply in respect of all excisable goods which are produced or manufactured in India by or on behalf of the Government, as they apply in respect of goods which are not produced or manufactured by the Government.

(*3*) The Central Government may, by notification in the Official Gazette, fix, for the purposes of levying the said duty, tariff values of any articles enumerated, either specifically or under general headings, in the Fourth Schedule as chargeable with duty *ad valorem* and may alter any tariff values for the time being in force.

(*4*) The Central Government may fix different tariff values—

(*a*) for different classes or descriptions of the same excisable goods; or

(*b*) for excisable goods of the same class or description—

(*i*) produced or manufactured by different classes of producers or manufacturers; or

(*ii*) sold to different classes of buyers:

Provided that in fixing different tariff values in respect of excisable goods falling under sub-clause (*i*) or sub-clause (*ii*), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may be, the normal practice of the wholesale trade in such goods.".

Amendment of section 3A.

7. In the Central Excise Act, in section 3A, in *Explanation* 1, for the words and figures, 5 of 1986. "First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985", the words "Fourth Schedule" shall be substituted.

Insertion of new sections 3B and 3C. Emergency power of Central Government to increase duty of excise.

8. In the Central Excise Act, after section 3A, the following sections shall be inserted, namely:—

"3B. (*1*) Where, in respect of any goods, the Central Government is satisfied that the duty leviable thereon under section 3 should be increased and that circumstances exist which render it necessary to take immediate action, the Central Government may, by notification in the Official Gazette, amend the Fourth Schedule to substitute the rate of duty specified therein in respect of such goods in the following manner, namely:—

(*a*) in a case where the rate of duty as specified in the Fourth Schedule as in force immediately before the issue of such notification is nil, a rate of duty not exceeding fifty per cent. *ad valorem* expressed in any form or method;

(*b*) in any other case, a rate of duty which shall not be more than twice the rate of duty specified in respect of such goods in the Fourth Schedule as in force immediately before the issue of the said notification:

Provided that the Central Government shall not issue any notification under this sub-section for substituting the rate of duty in respect of any goods as specified by an earlier notification issued under this sub-section by that Government before such earlier notification has been approved with or without modifications under sub-section (*2*).

Explanation.—For the purposes of this sub-section, the term "form or method", in relation to a rate of duty of excise, means the basis, including valuation, weight, number, length, area, volume or any other measure, on which the duty may be levied.

(*2*) Every notification under sub-section (*1*) shall be laid before each House of Parliament, if it is in session, as soon as may be after the issue of the notification, and, if it is not in session, within seven days of its re-assembly, and the Central Government shall seek the approval of Parliament to the notification by a resolution moved within a period of fifteen days beginning with the day on which the notification is so laid before the House of the People and if Parliament makes any modification in the notification or directs that the notification should cease to have effect, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be, but without prejudice to the validity of anything previously done thereunder.

(*3*) Any notification issued under sub-section (*1*), including a notification approved or modified under sub-section (*2*), may be rescinded by the Central Government at any time by issuing notification in the Official Gazette.

Power of Central Government to amend Fourth Schedule.

3C. (*1*) Where the Central Government is satisfied that it is necessary so to do in the public interest, it may, by notification in the Official Gazette, amend the Fourth Schedule:

Provided that such amendment shall not alter or affect in any manner the rates specified in the Fourth Schedule at which the duties of excise shall be leviable on the goods specified therein.".

Amendment of section 38.

9. In the Central Excise Act, in section 38, after the word, figure and letter "section 3A", the word, figure and letter "section 3C" shall be inserted.

Insertion of a new section 38B.

10. In the Central Excise Act, after section 38A, the following section shall be inserted, namely:—

Savings of references to Chapter, heading, sub-heading and tariff item in Central Excise Tariff Act, 1985.

"38B. Notwithstanding the repeal of the Central Excise Tariff Act, 1985 by sub-section (*1*) of section 174 of the Central Goods and Services Tax Act, 2017, any reference to the Chapter, heading, sub-heading or tariff item, as the case may be, in the First Schedule to the said Act or in any rules or regulations made thereunder, or in any notification, circular, order or instruction issued thereunder, shall mean a reference to the Chapter, heading, sub-heading or tariff item, as the case may be, in the Fourth Schedule.". 5 of 1986.

Substitution of new Schedule for Third Schedule.

11. In the Central Excise Act, for the Third Schedule, the Schedule specified in the First Schedule shall be substituted.

Insertion of Fourth Schedule.

12. In the Central Excise Act, after the Third Schedule, the Schedule specified in the Second Schedule shall be inserted.

CHAPTER IV

CENTRAL SALES TAX

74 of 1956.

13. In the Central Sales Tax Act, 1956 (hereinafter referred to as the Central Sales Tax Act), in section 2,— Amendment of section 2.

(*a*) clause (*c*) shall be omitted;

(*b*) for clause (*d*), the following clause shall be substituted, namely:—

'(*d*) "goods" means—

(*i*) petroleum crude;

(*ii*) high speed diesel;

(*iii*) motor spirit (commonly known as petrol);

(*iv*) natural gas;

(*v*) aviation turbine fuel; and

(*vi*) alcoholic liquor for human consumption;'.

14. In the Central Sales Tax Act, section 14 shall be omitted. Omission of section 14.

15. In the Central Sales Tax Act, section 15 shall be omitted. Omission of section 15.

CHAPTER V

MISCELLANEOUS

16. In the Finance Act, 2001, in the Seventh Schedule,— Amendment of Seventh Schedule to Act 14 of 2001.

(*a*) except tariff items 2402 20 10, 2402 20 20, 2402 20 30, 2402 20 40, 2402 20 50, 2402 20 90, 2402 90 10, 2403 11 10, 2403 19 10, 2403 19 21, 2403 19 29, 2403 19 90, 2403 91 00, 2403 99 10, 2403 99 20, 2403 99 30, 2403 99 40, 2403 99 50, 2403 99 60, 2403 99 90 and 2709 00 00 and the entries relating thereto, all other heading, sub-heading, tariff items and entries relating thereto shall be omitted;

(*b*) for tariff item 2709 00 00 and the entries relating thereto, the following tariff item and entries shall be substituted, namely:—

(1)	(2)	(3)	(4)
"2709 20 00	Petroleum Crude	Kg.	Rs. 50 per tonne''.

17. In the Finance Act, 2005, in the Seventh Schedule, tariff item 2106 90 20 and the entries relating thereto shall be omitted. Amendment of Seventh Schedule to Act 18 of 2005.

18. (*1*) The enactments specified in the third column of the Third Schedule are hereby repealed to the extent specified in the fourth column thereof. Repeal and savings of certain enactments.

(*2*) Notwithstanding the repeal under sub-section (*1*), such repeal shall not—

(*a*) affect any other law in which the repealed enactment has been applied, incorporated or referred to;

(*b*) affect the validity, invalidity, effect or consequences of anything already done or suffered or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing under the repealed enactment;

(*c*) affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in or from any enactment hereby repealed;

(*d*) revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.

(*2*) The mention of particular matters in sub-section (*1*) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals. 10 of 1897.

Collection and payment of arrears of duties.

19. Notwithstanding the repeal of the enactments specified in the Third Schedule, the proceeds of duties levied under the said enactments immediately preceding the date appointed under sub-section (*2*) of section 1,—

(*i*) if collected by the collecting agencies but not paid into the Reserve Bank of India; or

(*ii*) if not collected by the collecting agencies,

shall be paid or as the case may be, collected and paid into the Reserve Bank of India for being credited to the Consolidated Fund of India.

THE FIRST SCHEDULE

(*See* section 11)

"THE THIRD SCHEDULE

[*See* section 2 (*f*) (*iii*)]

NOTES

1. In this Schedule, "heading", "sub-heading" and "tariff item" mean respectively, a heading, sub-heading and tariff item in the Fourth Schedule.

2. The rules for the interpretation, the Section, Chapter Notes and the General Explanatory Notes of the Fourth Schedule shall apply to the interpretation of this Schedule.

Sl.No.	Heading, Sub-heading or Tariff item	Description of goods
1.	2402 20 10 to 2402 20 90	All Goods
2.	2403 99 10, 2403 99 20, 2403 99 30	Chewing tobacco and preparations containing chewing tabacco
3.	2403 99 90	Pan masala containing tobacco".

THE SECOND SCHEDULE

(*See* section 12)

"THE FOURTH SCHEDULE

[*See* section 2 (*d*) and 2 (*f*) (*ii*)]

General Rules for the interpretation of this Schedule

Classification of goods in this Schedule shall be governed by the following principles:

1. The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Sections or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions.

2. Any reference in a heading—

(*a*) to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled;

(*b*) to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

3. When by application of clause (*b*) of rule 2 or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:—

(*a*) the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods;

(*b*) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to clause (*a*), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable;

(*c*) when goods cannot be classified by reference to clause (*a*) or clause (*b*), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

5. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub-headings and any related sub-heading Notes and, *mutatis mutandis*, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of this rule, the relative Chapter Notes also apply, unless the context otherwise requires.

General Explanatory Notes

1. Where in column (2) of this Schedule, the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "--", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-". Where the description of an article or group of articles is preceded by "---" or "----", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-" or "--".

2. The abbreviation "%" in column (4) of this Schedule, in relation to the rate of duty, indicates that the duty on the goods to which the entry relates shall be charged on the basis of the value of the goods fixed, defined or deemed to be, as the case may be, under or in sub-section (*2*), read with sub-section (*3*) of section 3 or section 4 or section 4A of the Central Excise Act, 1944, the duty being equal to such percentage of the value as is indicated in that column.

1 of 1944.

Additional Notes

In this Schedule,—

(*1*) The expression,—

(*a*) "heading", in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;

(*b*) "sub-heading", in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;

(*c*) "tariff item" means a description of goods in the list of tariff provisions accompanying either eight-digit number and the rate of the duty of excise, or eight-digit number with blank in the column of the rate of duty;

(*2*) The list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;

(*3*) In column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics;

(*4*) "….." against any goods denotes that Central Excise duty under this Schedule is not leviable on such goods.

List of Abbreviations used

Abbreviations	For
1. kg.	Kilogram
2. Tu	Thousand in number

SECTION IV

TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES

NOTE

In this Section, the expression "unit container" means a container, whether large or small (for example, tin, can, box, jar, bottle, bag or carton, drum, barrel or canister) designed to hold a predetermined quantity or number.

Chapter 24

TOBACCO AND MANUFACTURED TOBACCO SUBSTITUTES

NOTES

1. In this Chapter, "brand name" means a brand name, whether registered or not, that is to say, a name or a mark, such as a symbol, monogram, label, signature invented words or any writing which is used in relation to a product, for the purpose of indicating, or so as to indicate, a connection in the course of trade between the product and some person using such name or mark with or without any indication of the identity of that person.

2. In relation to products of heading 2401or 2402 or 2403, labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to ‘‘manufacture’’.

3. In this Chapter, "Pan masala containing tobacco", commonly known as ‘‘gutkha’’ or by any other name, included in tariff item 2403 99 90, means any preparation containing betel-nuts and tobacco and any one or more of the following ingredients, namely:—

(*i*) lime; and

(*ii*) kattha(catechu),

whether or not containing any other ingredients, such ascardamom, copra and menthol.

SUB-HEADING NOTE

For the purposes of sub-heading 2403 11, the expression "water pipe tobacco" means tobacco intended for smoking in a water pipe and which consists of a mixture of tobacco and glycerol, whether or not containing aromatic oils and extracts, molasses or sugar, and whether or not flavoured with fruit. However, tobacco-free products intended for smoking in a water pipe are excluded from this sub-heading.

SUPPLEMENTRY NOTES

For the purposes of this Chapter:

(*1*) "tobacco" means any form of tobacco, whether cured or uncured and whether manufactured or not, and includes the leaf, stalks and stems of the tobacco plant, but does not include any part of a tobacco plant while still attached to the earth.

(*2*) "cut-tobacco" means the prepared or processed cut-to-size tobacco which is generally blended or moisturised to a desired extent for use in the manufacture of machine-rolled cigarettes.

(*3*) "smoking mixtures for pipes and cigarettes" of sub-heading 2403 10 does not cover " Gudaku".

Tariff item	Description of goods	Unit	Rate of Duty
(1)	(2)	(3)	(4)
2401	**Unmanufactured Tobacco; Tobacco Refuse**		
2401 10	- *Tobacco, not stemmed or stripped* :		
2401 10 10	--- Flue cured virginia tobacco	kg.	64%
2401 10 20	--- Sun cured country (natu) tobacco	kg.	64%
2401 10 30	--- Sun cured virginia tobacco	kg.	64%
2401 10 40	--- Burley tobacco	kg.	64%

(1)		(2)	(3)	(4)
2401 10 50	---	Tobacco for manufacture of biris, not stemmed	kg.	64%
2401 10 60	---	Tobacco for manufacture of chewing tobacco	kg.	64%
2401 10 70	---	Tobacco for manufacture of cigar and cheroot	kg.	64%
2401 10 80	---	Tobacco for manufacture of hookah tobacco	kg.	64%
2401 10 90	---	Other	kg.	64%
2401 20	-	*Tobacco, partly or wholly stemmed or stripped* :		
2401 20 10	---	Flue cured virginia tobacco	kg.	64%
2401 20 20	---	Sun cured country (natu) tobacco	kg.	64%
2401 20 30	---	Sun cured virginia tobacco	kg.	64%
2401 20 40	---	Burley tobacco	kg.	64%
2401 20 50	---	Tobacco for manufacture of biris	kg.	64%
2401 20 60	---	Tobacco for manufacture of chewing tobacco	kg.	64%
2401 20 70	---	Tobacco for manufacture of cigar and cheroot	kg.	64%
2401 20 80	---	Tobacco for manufacture of hookah tobacco	kg.	64%
2401 20 90	---	Other	kg.	64%
2401 30 00	-	Tobacco refuse	kg.	50%
2402		**Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes**		
2402 10	-	*Cigars, cheroots and cigarillos, containing tobacco*:		
2402 10 10	---	Cigar and cheroots	Tu	12.5% or Rs. 4006 per thousand, whichever is higher
2402 10 20	---	Cigarillos	Tu	12.5% or Rs. 4006 per thousand, whichever is higher
2402 20	-	*Cigarettes, containing tobacco*:		
2402 20 10	---	Other than filter cigarettes, of length not exceeding 65 millimetres	Tu	Rs. 1280 per thousand
2402 20 20	---	Other than filter cigarettes, of length exceeding 65 millimetres but not exceeding 70 millimetres	Tu	Rs. 2335 per thousand
2402 20 30	---	Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimetres or its actual length, whichever is more) not exceeding 65 millimetres	Tu	Rs. 1280 per thousand
2402 20 40	---	Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimetres		

(1)	(2)	(3)	(4)
	or its actual length, whichever is more) exceeding 65 millimetres but not exceeding 70 millimetres	Tu	Rs. 1740 per thousand
2402 20 50	--- Filter cigarettes of length (including the length of the filter, the length of filter being 11 millimetres or its actual length, whichever is more) exceeding 70 millimetres but not exceeding 75 millimetres	Tu	Rs. 2335 per thousand
2402 20 90	--- Other	Tu	Rs. 3375 per thousand
2402 90	- *Other*:		
2402 90 10	--- Cigarettes of tobacco substitutes	Tu	Rs. 3375 per thousand
2402 90 20	--- Cigarillos of tobacco substitutes	Tu	12.5 % or Rs. 4006 per thousand whichever is higher
2402 90 90	--- Other	Tu	12.5% or Rs. 4006 per thousand whichever is higher
2403	**Other manufactured tobacco and manufactured tobacco substitutes; "Homogenised" or "Reconstituted" tobacco; Tobacco extracts and essences**		
	- *Smoking tobacco, whether or not containing tobacco substitute in any proportion;*		
2403 11	-- *Water pipe tobacco specified in Sub-heading Note to this Chapter:*		
2403 11 10	--- Hukkah or gudaku tobacco	kg.	60%
2403 11 90	--- Other	kg.	60%
2403 19	-- *Other*		
2403 19 10	--- Smoking mixtures for pipes and cigarettes	kg.	360%
	--- Biris:		
2403 19 21	---- Other than paper rolled biris, manufactured without the aid of machine	Tu	Rs. 12 per thousand
2403 19 29	---- Other	Tu	Rs. 80 per thousand
2403 19 90	--- Other	kg.	40%
	- *Other*:		
2403 91 00	-- "Homogenised" or "reconstituted" tobacco	kg.	60%
2403 99	-- *Other*:		
2403 99 10	--- Chewing tobacco	kg.	81%
2403 99 20	--- Preparations containing chewing tobacco	kg.	60%

(1)	(2)	(3)	(4)
2403 99 30	--- Jarda scented tobacco	kg.	81%
2403 99 40	--- Snuff	kg.	60%
2403 99 50	--- Preparations containing snuff	kg.	60%
2403 99 60	--- Tobacco extracts and essence	kg.	60%
2403 99 70	--- Cut-tobacco	kg.	Rs. 70 per kg.
2403 99 90	--- Other	kg.	81%

SECTION V

MINERAL PRODUCTS

CHAPTER 27

MINERAL FUELS, MINERAL OILS AND PRODUCTS OF THEIR DISTILLATION; BITUMINOUS SUBSTANCES; MINERAL WAXES

NOTES

1. References in heading 2710 to "petroleum oils and oils obtained from bituminous minerals" include not only petroleum oils and oils obtained from bituminous minerals, but also similar oils, as well as those consisting mainly of mixed unsaturated hydrocarbons, obtained by any process, provided that the weight of the non-aromatic constituents exceeds that of the aromatic constituents.

However, the references do not include liquid synthetic polyolefins of which less than 60% by volume distils at 300ºC, after conversion to 1,013 millibars when a reduced-pressure distillation method is used.

2. In relation to lubricating oils and lubricating preparations of heading 2710, labelling or relabelling of containers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer, shall amount to "manufacture".

3. In relation to natural gas falling under heading 2711, the process of compression of natural gas (even if it does not involve liquefaction), for the purpose of marketing it as Compressed Natural Gas (CNG), for use as a fuel or for any other purpose, shall amount to "manufacture".

SUB-HEADING NOTE

For the purposes of sub-heading 2710 12, "light oils and preparations" are those of which 90% or more by volume (including losses) distil at 210ºC (ASTM D 86 method).

SUPPLEMENTARY NOTES

In this Chapter, the following expressions have the meanings hereby assigned to them:—

(*1*) "motor spirit" means any hydrocarbon oil (excluding crude mineral oil) which has its flash point below 25ºC and which either by itself or in admixture with any other substance, is suitable for use as fuel in spark ignition engines. "Special boiling point spirits (tariff items 2710 12 11, 2710 12 12 and 2710 12 13)" means light oils, as defined in sub-heading Note 4, not containing any anti-knock preparations, and with a difference of not more than 60ºC between the temperatures at which 5% and 90% by volume (including losses) distil;

(*2*) "natural gasoline liquid (NGL)" is a low-boiling liquid petroleum product extracted from Natural Gas;

(*3*) "aviation turbine fuel (ATF)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS : 1571:1992:2000;

(*4*) "high speed diesel (HSD)" means any hydrocarbon oil conforming to the Indian Standards Specification of Bureau of Indian Standards IS: 1460:2000;

(*5*) for the purposes of these additional notes, the tests prescribed have the meaning hereby assigned to them:—

(*a*) "Flash Point" shall be determined in accordance with the test prescribed in this behalf in the rules made under the Petroleum Act, 1934; 30 of 1934.

(*b*) "Smoke Point" shall be determined in the apparatus known as the Smoke Point Lamp in the manner indicated in the Indian Standards Institution Specification IS: 1448 (p. 31)-1967 for the time being in force;

(*c*) "Final Boiling Point" shall be determined in the manner indicated in the Indian Standards Institution Specification IS: 1448 (p.18)-1967 for the time being in force;

(*d*) "Carbon Residue" shall be determined in the apparatus known as Ramsbottom Carbon Residue Apparatus in the manner indicated in the Indian Standards Institution Specification IS: 1448 (p. 8)-1967 for the time being in force;

(*e*) "Colour Comparison Test" shall be done in the following manner, namely:—

(*i*) first prepare a five per cent. weight by volume solution of Potassium Iodine (analytical reagent quality) in distilled water;

(*ii*) to this, add Iodine (analytical reagent quality) in requisite amount to prepare an exactly 0.04 normal Iodine solution;

(*iii*) thereafter, compare the colour of the mineral oil under test with the Iodine solution so prepared.

Tariff item	Description of goods	Unit	Rate of Duty
(1)	(2)	(3)	(4)
2709	**Petroleum oils and oils obtained from bituminous minerals, crude.**	Kg.	…..
2709 10 00	- Petroleum oils and oils obtained from bituminous minerals	Kg.	…..
2709 20 00	- Petroleum crude		Nil
2710	**Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils**		
	- *Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations, other than those containing biodiesel and other than waste oil*		

(1)	(2)	(3)	(4)
2710 12	-- *Light oils and preparations*:		
	--- *Motor spirit (Commonly known as petrol)*:		
2710 12 11	---- Special boiling point spirits (other than benzene, toluol) with nominal boiling point range 55-115 °C	Kg.	14%+Rs. 15.00 per litre
2710 12 12	---- Special boiling point spirits (other than benzene, toluene and toluol) with nominal boiling point range 63-70 °C	Kg.	14%+Rs. 15.00 per litre
2710 12 13	---- Other Special boiling points spirits (other than benzene, benzol, toluene and toluol)	Kg.	14%+Rs. 15.00 per litre
2710 12 19	---- Other	Kg.	14%+Rs. 15.00 per litre
2710 12 20	--- Natural gasoline Liquid	Kg.	14%+Rs. 15.00 per litre
2710 12 90	--- Other	Kg.	14%+Rs. 15.00 per litre
2710 19	-- *Other*:		
2710 19 10	--- Superior Kerosene oil (SKO)	Kg.	…..
2710 19 20	--- Aviation turbine Fuel (ATF)	Kg.	14%
2710 19 30	--- High speed diesel (HSD)	Kg.	14%+Rs. 15.00 per litre
2710 19 40	--- Light Diesel oil (LDO)	Kg.	…..
2710 19 50	--- Fuel oil	Kg.	…..
2710 19 60	--- Base oil	Kg.	…..
2710 19 70	--- Jute batching oil and textile oil	Kg.	…..
2710 19 80	--- Lubricating oil	Kg.	…..
2710 19 90	--- Other	Kg.	…..
	- *Waste oil:*		…..
2710 20 00	Petroleum oils and oils obtained from bituminous minerals (other than crude) and preparations not elsewhere specified or included, containing by weight 70% or more of petroleum oils or of oil obtained from bituminous minerals, these oils being the basic constituents of the preparations, containing biodiesel, other than waste oils	Kg.	…..
2710 91 00	– Containing Polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs) or polybrominated biphenyls (PBBs)	Kg.	…..
2710 99 00	-- Other	Kg.	…..
2711	**Petroleum gases and other gaseous hydrocarbons**		
	- *Liquefied:*		
2711 11 00	-- Natural gas	Kg.	14%

(1)		(2)	(3)	(4)
2711 12 00	–	Propane	Kg.	…..
2711 13 00	–	Butane	Kg.	…..
2711 14 00	–	Ethylene, propylene, butylene and butadiene	Kg.	…..
2711 19 00	–	Other	Kg.	…..
	-	*In gaseous state:*		
2711 21 00	–	Natural gas	Kg.	14%
2711 29 00	–	Other	Kg.	…..

THE THIRD SCHEDULE

(*See* section 15)

Year	No.	Short title of enactments	Extent of repeal
(1)	(2)	(3)	(4)
1947	24	The Rubber Act, 1947	Clause (*b*) of sub-section (*1*) of section 9 and section 12
1951	65	The Industries (Development and Regulation) Act, 1951	Section 9
1953	29	The Tea Act, 1953	Clause (*c*) of section 3, sections 25 and 26 and clause (*a*) of sub-section (*1*) of section 27
1974	28	The Coal Mines (Conservation and Development) Act, 1974	Sections 6, 7 and 8
1976	56	The Beedi Workers Welfare Cess Act, 1976	The Whole
1977	36	The Water (Prevention and Control of Pollution) Cess Act, 1977	The Whole
1982	3	The Sugar Cess Act, 1982	The Whole
1982	4	The Sugar Development Fund Act, 1982	Sub-section (*2*) of section 3
1983	28	The Jute Manufacturers Cess Act, 1983	The Whole
2004	23	The Finance (No. 2) Act, 2004	Section 93
2007	22	The Finance Act, 2007	Section 138
2010	14	The Finance Act, 2010	Chapter VII
2015	20	The Finance Act, 2015	Chapter VI
2016	28	The Finance Act, 2016	Chapters VI and VII

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GST COUNCIL'S SUB-PANEL TO FIX TAX RATES OF GOODS, SERVICES BY WEEKEND

GST council's rate fitment committee to discuss aligning all goods and services to different slabs in three-day meeting starting 4 May

New Delhi: The goods and services tax (GST) council's rate fitment committee will deliberate in the capital for three days starting 4 May to align all goods and services to different slabs and decide on bringing more items currently out of indirect taxation at central and state levels into the unified tax net.

A member of the committee, which comprises central and state tax officials, said on the condition of anonymity that the tax rate alignment will be more or less final at the end of the meeting.

"We shall do this exercise in such a way that there is little work left to be done or time required to be spent by the Council in giving its stamp of approval," said the person. The council is set to meet for two days from 18 May in Srinagar and approve the rates so that the tax reform can be rolled out from 1 July.

The goal the fitment committee is pursuing is to place goods and services into slabs that would match their closest effective tax rate at present. That would involve taking into account the reliefs given at present in the form of abatement—applying the tax rate on a partial value of the sale and the inefficiencies in the current tax system, especially on inter-state supplies, that increases effective tax outgo. The idea is to make the transition revenue neutral.

While services may be taxed at two slabs, 12% and 18%, goods are to be taxed at five different rates—5%, 12%, 18%, 28% and 28% plus cess. "There may be a special rate for gem and jewellery outside the other slabs, which could be anything between 2% and 5%. The GST Council will deliberate on this separately," revenue secretary Hasmukh Adhia said at a workshop on GST last week.

At the fitment committee meeting, officials will seek to bring more items into GST that currently enjoy central excise duty and state value added tax (VAT) exemptions. At present, around 99 items enjoy exemption from VAT, while about 250 items are exempted from central excise duty. Under the new regime, there will be a common list of GST exemptions, which are in the nature of essential items of everyday use like foodgrain.

This list of exemption is different from the five hydrocarbons temporarily kept out of GST and liquor that is constitutionally excluded as these would continue to be taxed by Union and state governments under central excise and state VAT laws (or state excise laws in the case of liquor).

Prime Minister Narendra Modi on Tuesday took stock of the steps taken by the finance ministry for a smooth rollout of GST and the anti-black money drive post demonetisation ban, PTI

reported. Finance minister Arun Jaitley and revenue secretary Hasmukh Adhia were present during the meeting, it said.

Courtesy: LiveMint
2nd May, 2017

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UP CABINET APPROVES IMPLEMENTATION OF GST

LUCKNOW: The Uttar Pradesh government today approved implementation of the Goods and Services Tax (GST) in the state and the same will be passed in the Assembly in the session commencing from May 15.

The decision in this regard was taken at the state cabinet meeting chaired by Chief Minister Yogi Adityanath here.

"The revenue of the state is likely to increase after implementation of the GST in the first session of this government," Cabinet Minister Suresh Kumar Khanna said.

"If there is any burden on the state exchequer due to implementation of the GST, the government will meet it for the next five years. Petroleum products will not be covered under the GST," he said.

The state cabinet also approved a new cabinet policy under which Group B officers will be transferred by their departmental heads and officers above this level will be transferred by the government.

"The limit of transfers will about 20 per cent and Divyangs will be excluded from it," the minister said.

On mining sector, the government has decided to constitute a district-level mining foundation as per the Centre's directives and money collected by it through royalties will be used for people's welfare and other works.

Courtesy: The Economic Times
2nd May, 2017

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GST BILL TABLED IN UTTARAKHAND ASSEMBLY

DEHRADUN: The Goods and Services Tax (GST) bill was tabled in Uttarakhand Assembly today during a special two-day session of the House convened for the purpose of passing the proposed legislation.

Introducing the bill in the Assembly, state Finance Minister Prakash Pant said its passage by the House was necessary in view of a uniform tax regime coming into force across the country from July 1.

As per the recommendation of the GST council, all state assemblies are required to pass the bill before July 1, when the GST comes into effect throughout the country.

GST, which will replace a plethora of central and state taxes, is a consumption based tax levied on sale, manufacture and consumption on goods and services at a national level.

Under it, C-GST will be levied by the Centre, S-GST by states and I-GST on inter-state supply of goods and services.

Different indirect taxes of central excise duty, central sales tax CST and service tax are to be merged with C-GST while S-GST will subsume state sales tax, VAT, luxury tax and entertainment tax.

Courtesy: NDTV
2nd May, 2017

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GST: RISING COST OF COMPLIANCE TO HURT SMES THE MOST

GST draft rules on various aspects aim to bring in more transparency; maintaining records of different entities involved in every transaction appears quite tedious

Drawing a stark comparison between incomes and expenditure of Indian citizens, finance minister Arun Jaitley in the Union budget speech implied that tax evasion is a serious problem in the county. He said, "The number of people showing income more than Rs50 lakh in the entire country is only 1.72 lakh. We can contrast this with the fact that in the last five years, more than 1.25 crore cars have been sold, and number of Indian citizens who flew abroad, either for business or tourism, is 2 crore in the year 2015. From all these figures we can conclude that we are largely a tax non-compliant society."

And the government intends to tackle this by the implementation of the goods and services tax (GST). While draft GST rules on various aspects aim to bring in more transparency; maintaining records of different entities involved in every transaction appears quite tedious. It also means higher cost of compliance.

Apart from that, working capital requirements for manufactures would soar too because both companies and distributors will have to pay GST at the time of dispatch of stock even if supplied to own warehouses, and subsequently claim credit on the input tax so paid. The input tax credit mechanism will entirely be online and real time. Therefore, it would pinch small and medium enterprises (SMEs) the most.

"The way the law is stated today, cost of compliance is not just going to go high; small and medium businesses are going to be in deep trouble. Linkage of input tax credit to payment of supplier tax is very dangerous for the small business community and therefore for a very large part of the economy," said Tejas Goenka, executive director at Tally Solutions.

Also, since uploading of each invoice has to be done on a regular basis, an accountant may have to be designated for this purpose, which small businesses may not be able to afford, added some tax experts.

For smooth transition, a slew of accounting and tax firms have been operating as licensed GST Suvidha Providers. They will help businesses to comply better with GST processes and depending on the kind of product or service for which assistance is required, charges will be levied. "The charges range from Rs500-5,000 depending on the kind of service and for small companies incurring such expenditure may hurt their margins. As far as service providers are concerned, decentralized registration will be an additional cost burden for them," said S.S. Gupta, editor at Taxmann.

According to a recent channel check by Edelweiss Securities Ltd, while large consumer goods companies are GST-ready with IT systems in place, the scenario with other stakeholders, i.e. distributors and wholesalers, is completely different. Many wholesalers are currently outside the tax bracket and a few are improving their margins solely by way of tax evasion, so some pushback is anticipated from their end, said the brokerage house.

But since wholesale constitutes 35-45% of overall trade in India, Edelweiss expects large consumer goods firms to encourage wholesalers to come into the organized sector. "This could push up overall distribution costs of companies, which in our view should not be more than 50-60 basis point and will be a one-time exercise as the same can be easily passed on to consumers," added the Edelweiss report.

While it remains to be seen to what extent tax evasion reduces in the GST era, compliance cost is sure to rise.

Courtesy: LiveMint
4th May, 2017

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LOW TRADER ENROLMENT, TECHNICAL GLITCHES MAY DELAY GST LAUNCH

BENGALURU: Lack of preparedness has cast a shadow on the rollout of the country's largest reform in taxation — Goods and Services Tax (GST). While the Centre has fixed July 1 as the deadline for the system's implementation, officials say it is likely to get delayed.

Karnataka fares the best in terms of preparedness, with 92% of the traders having registered for GST. Even Andhra Pradesh, Tamil Nadu and Gujarat have shown remarkable progress with more than 85% of the traders having enroled. The scenario in the rest of India, however, is grim — the national average for enrolment is 37%.

While July 1 is the Centre's self-imposed deadline, the final date for the launch according the constitutional amendment is September 16. "The scope of discussion on a delay is there since the actual deadline is September 16, while the Centre is chasing the July 1 target," said a senior official at the Central Board of Excise and Customs (CBES).

The first step towards implementation is to get traders registered under different tax systems like value added tax (VAT), central excise duty and service tax to migrate to the GST system.

While there has been considerable progress in the enrolment of VAT assesses, with 60 lakh of 92 lakh traders getting registered across the country, the enrolment of service tax and central excise duty assesses is not up to mark. Only 37.02% of the traders registered under service tax have signed up for GST; the figure for central excise duty is much lower at 18.9% (as on April 28).

What's worse, the portal for online registration has been closed due to technical glitches. The portal run by Goods and Services Tax Network (GSTN) says: "The enrolment process has closed with effect from May 1, 2017. The enrolment window will reopen at a later date for taxpayers who could not enrol themselves as well as those who enroled but did not sign the form. Keep watching this space for further announcement."

But traders rue the website wasn't working even before May 1. They were unable to upload data and generate the Application for Registration Number (ARN). Even the e-signature failed. "We have asked the Centre to postpone the GST rollout to September. Hasty implementation of a system which is touted to be a game changer will not help," said Praveen Khandelwal, secretary general, Confederation of All India Traders.

The Centre's move to link the Aadhaar number to the Personal Account Number (PAN) is also being blamed for the delay.

Prakash Kumar, chief executive officer of GSTN, said the enrolment process was closed since software testing was taken up. It will be resumed soon. "July 1 is not just an expected date; we are going to implement GST on that day," said Kumar.

Software not ready

While developers are busy testing the software required for enrolment on the GSTN portal, the software for filing of tax returns is still not ready. GST has three categories of tax — SGST levied by the state and CGST and IGST levied by the Centre. States need to have their own software for SGST and Karnataka has entrusted National Informatics Centre (NIC) with the task.

Apart from this, the Centre has formed a GST Suvidha Provider to develop software for individual traders. However, with the Centre yet to form rules and states yet to pass the GST Bill, the provider hasn't been able to develop the software.

The GST Council is scheduled to meet on May 18 and 19 and the classification of commodities under tax slabs of 0%, 5%, 12%, 18% and 28% is likely to be finalized, which is the final step required for the launch. "Meeting the July deadline is tough but not impossible," said Baswaraj Nalegave, additional commissioner, customs, central excise and service tax.

Karnataka well prepared

The assembly is expected to pass the GST Bill next month; officials say it is being translated into Kannada at present. The state is best prepared for the rollout, thanks to widespread awareness programmes the commercial tax department conducted in coordination with Federation of Karnataka Chambers of Commerce and Industries (FKCCI). "Karnataka started preparing even before the Parliament passed the GST Bill earlier this year," said BT Manohar, tax ..

GST Manthan 5K Run

The central excise and service tax department, Bengaluru zone, is organizing a GST Manthan 5k Run at 7am on Sunday in Cubban Park. Aimed at creating awareness about GST, the run will be flagged off by Kannada actor Shivarajkumar.

Courtesy: The Economic Times

6th May, 2017

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QUARTERLY FILING OF RETURNS NOT WORKABLE UNDER GST: ARUN JAITLEY

NEW DELHI: Finance Minister Arun Jaitley on Monday said that the quarterly filing of returns under the Goods and Services Tax (GST) was not workable for taxpayers above Rs 50 lakh turnover.

"For all tax payers it is not workable to have quarterly return because input tax credit has to be given every month," Jaitley said in a letter to All India Congress Committee general secretary Digvijaya Singh.

Only small taxpayers, whose turnover is below Rs 50 lakh per annum under the composition scheme, can avail of filing quarterly returns. But these will not be able to avail of input tax credit.

Singh in a letter to the Finance Minister questioned the requirement of submission of 37 forms in a year by a taxpayer under the GST, which would hamper the ease of doing business.

Currently the taxpayer needs to file only four forms in a year -- one every quarter.

"You (Jaitley) would agree that instead of reducing the number of returns you have increased it by nine times. Would it improve our global ranking in ease of doing business which your government has been promising," Singh wrote.

Jaitley noted that the taxpayer needs to file only his initial return on the 10th of every month, while the other returns on invoice matching and availment of input tax credit are auto-populated.

"The model of invoice matching for eligibility of input tax credit of the recipient has been adopted in the GST design after much deliberation in the GST Council. One of the most important advantages of adopting this model is for curbing the possible tax evasion on account of fake invoice frauds," Jaitley said.

"Though inward returns and monthly returns will be auto-populated, still the taxpayer will have to validate these details before submission and add additional information like GST paid under reverse charge mechanism, details of credit notes etc.," GST expert Pritam Mahure told IANS.

Further, putting onus on buyers (that vendor should file returns) to enable claim of input tax credit would be found cumbersome by small businesses, Mahure added.

Courtesy: The Economic Times

8th May, 2017

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GST SCHEDULED FOR JULY 1 ROLLOUT: ARUN JAITLEY

Hailed as the biggest tax reform since India's independence, GST will replace an array of central and state levies with a national sales tax, thereby creating a single market and making it easier to do business in the country.

The Goods and Services Tax (GST) is on schedule for implementation from July 1 and will not lead to any significant increase in prices of goods although cost of some services may see a marginal hike, Finance Minister Arun Jaitley said today.

Hailed as the biggest tax reform since India's independence, GST will replace an array of central and state levies with a national sales tax, thereby creating a single market and making it easier to do business in the country.

Addressing CII-Kotak investors' round table here, Jaitley said that the GST Council, headed by him and comprising representatives of all states, will in the next few days finalise the rates of tax for different goods and services and the country is on track to roll out the simplified indirect tax regime from July 1.

"The current indirect tax structure in India is fairly complicated...those who transacted in either goods or services would have to deal with multiple authorities.

"The whole country was divided into multiple markets. So a free movement of goods and services was not possible. Now, the idea of GST was that let there be just one tax in the country," Jaitley said.

He added that tax rates on goods may go down marginally under the new indirect tax regime while services may see some increase.

The GST Council, which had previously finalised a four- tier tax structure of 5, 12, 18 and 28 per cent, is scheduled to meet next week to put different commodities and services in the decided tax brackets.

Demerit and luxury goods will attract the peak tax rate plus a cess.

Tax rate closed to the existing incidence of total central and state levies will be chosen as the slab for a good or services.

"As far as goods is concerned, the tax is not likely to increase at all. If at all, it may marginally come down because of the cascading impact not being there and therefore, it is not likely to be inflationary.

"As far as services is concerned, obviously, they will go up marginally and therefore, there will be some impact on this. So, goods and services may react a little differently," Jaitley said.

Asked if GST would stoke inflation, he said: "I don't anticipate this to happen significantly. If at all, this may be a transient impact."

At a separate interactive session on 'India's Business Environment: Reforms and Opportunities' organised by CII, Indian Embassy and Japan Chamber of Commerce, he said after the Constitution was amended by Parliament and supporting legislations passed, state legislatures are approving the respective State GST law.

"Currently, that process is on. I see no difficulty in it," he said adding GST rules have been framed and tax rates will be fixed at the GST Council meeting on May 18 and 19.

Jaitley sees no problems in rolling out GST from July 1.

"Hopefully, from July 1, one of the largest tax reforms in India since Independence -- a simpler, more efficient and cleaner taxation system would be introduced in the country which itself would ease the very processes of doing business," he said.

At the investors' meet, he said there would be no cascading impact of tax on tax under GST.

"GST being a more efficient tax, evasion will become difficult. In the current system, there is large evasion," he said.

Jaitley said the constitutional amendment gives time till September 15 for introduction of GST but the target date has been kept at July 1.

"So, we have a cushion of two-and-a-half months but it looks like we will be able to begin on schedule," he said.

Also, a simple IT network has been put in place and there is no multiple forms for filing tax returns, he said.

GST would be a "transformational" system, he said, adding "there could be some small hiccups in the beginning but I think it's understandable. We will be able to get over this".

GST with a far more efficient system, Jaitley said, that will increase trade, tax collection and improve ease of doing business.

Courtesy: Money Control
8th May, 2017

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GST CLOUD HANGS OVER EXCISE MOP-UP AS DEALERS HOLD UP INVENTORIES

In view of uncertainty over tax rates under GST of as many as 6,000 products, dealers are choosing to wait and watch rather than buy and holding on to inventories

New Delhi: Excise collections may take a hit as dealers are refraining from purchasing goods from manufacturers as they are not sure about tax credits and rates under GST, which is slated for 1 July launch.

The GST council will meet on 18-19 May to decide on the rates, and officials said tax rates of as many as 6,000 products have to be decided.

In view of this uncertainty and also the transitory mechanism for availing of credit on tax paid prior to the GST kick-off, dealers are choosing to wait and watch rather than buy and holding on to inventories. This state of flux will have a direct bearing on excise collections during April-June, said experts.

PwC National Leader (indirect tax) Pratik Jain said that given the apprehension about the loss of credit in the case of transition stocks, there is an attempt to reduce the inventory level, which is impacting the sales of most consumer products in the current quarter.

"Therefore, excise duty collection this quarter may fall unless the government provides higher percentage of deemed credit (currently proposed at 40 per cent of CGST)," Jain said.

GST will subsume 10 different levies, including excise, service tax and VAT, and will create a unified market for seamless transfer of goods and services. The

GST council, comprising union and state finance ministers, has decided on a four-tier tax structure of 5, 12, 18 and 28%. Besides, for demerit and luxury goods, a cess will be levied on top of the peak rate. The cess will be used to compensate the states for revenue loss arising out of GST implementation.

The fitment committee comprising central and state officials has worked out tax rates on various goods and services and the report will be placed before the GST council at its 18-19 May meeting. Tax rate closest to the present incidence on a goods or service will be chosen with a view to keeping the shift from the present regime neutral for consumers.

The tax rates will be decided in a fashion to keep their impact on inflation as well as revenues to the government near neutral.

Courtesy: LiveMint

14th May, 2017