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Issue 18
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" Solar power is the last energy resource that isn't owned yet--nobody taxes the sun yet."

– Bonnie Raitt

NOMINAL INDEX

NOTIFICATION AND ACT

HARYANA

NEWS OF YOUR INTEREST

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News From Court Rooms

CCEST NEW DELHI : Central Excise : Mixing various Low manganese and High manganese scraps into homogeneous product as per customer specifications, which results into 'blended metal scrap', amounts to manufacture and the same is classifiable under Heading 72044900. ***(T.T. Recycling Management India (P.) Ltd., - July 15, 2016)***.

SC: Andhra Pradesh VAT : Where assessee was engaged in business of computer education and training and it entered into a contract with Government of Andhra Pradesh for imparting computer education in High Schools including leasing of computer hardware, software and connected accessories on BOOT basis and High Court held that contract was a works contract, SLP filed against judgment and order of High Court was to be granted leave. ***(NIIT Ltd. – July 25, 2016)***.

DELHI HC: Service Tax : Before arresting an assessee under service tax, Department must prima facie adjudicate demand and also grant hearing to assessee. However, in case of habitual tax-evaders, arrests may be made straightaway, but, subject to review of past conduct and only after recording prima facie view as to how assessee is a habitual tax-evader. ***(Makemytrip (India) (P.) Ltd. – September 1, 2016)***.

SC: Central Sales Tax : Iron and steel products, which were used in execution of works contract for reinforcement of cement, continued to remain as iron and steel products at point of accretion in works contract and, therefore, chargeable to tax at rate of 4 per cent prescribed under section 15. ***(Smt. B Narasamma – August 11, 2016)***.

C CE&ST, NEW DELHI : Service Tax : Where only service of Clinical Research is provided then such service would not be taxable under the Act in light of Rule 3 of the Place of Provision of Services (POP) Rules, 2012 as the applicant renders said services to its customers and the place of provision is located outside India. ***(Steps Therapeutics Ltd. – July 12, 2016)***.

SC: The Supreme Court has held that the value of the work entrusted to the sub-contractors or payments made to them shall not be taken into consideration while computing total turnover for the purposes of Section 6-B of the Karnataka Sales Tax Act. The Court further observed that the ratio laid down in State of Andhra Pradesh & Ors. v. Larsen & Toubro Limited & Ors. applies in this case as much as it was in that case. It was noticed that Section 4(7) of the Andhra Pradesh Act indicated that the taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works. ***(Larsen & Toubro Limited Vs. Additional Deputy Commissioner Of Commercial Taxes & Anr. CIVIL APPEAL No. 2956 OF 2007 dt:- 05/09/2016)***

MADRAS HC : TN VAT : Cheques given by the petitioner to Enforcement Wing Officials during inspection got dishonoured. In the absence of any assessment even provisional, demand of interest on such amounts under Section 24(3) is without jurisdiction. ***(S K Decorations – August 10, 2016)***.

CESTAT, MUMBAI : Service Tax : Inclusion of reimbursement of expenses paid directly to the hotels and rent-a-cab operators, cannot by any stretch of imagination be considered as an amount to be paid or payable to the foreigners who rendered the services of management consultancy as the hotel and rent-a-cab has already discharged their tax liability. Service tax demand on such reimbursements set aside. ***(Tata Quality Management Services - July 14, 2016)***.

CCE&ST, NEW DELHI: Service Tax : No differentiation made on Government and Non-Government railway for providing exemption. Exemption available on construction of railway siding for private parties. ***(Steadfast Corporation Ltd. – July 15, 2016)***.

CCE&ST, NEW DELHI: Service Tax : Taxability of services provided in relation to outbound shipment and inbound shipment - the agreement entered in on on principal to principal basis and not as agent of said airline/shipping line - place of provision of said service will not be location of service provider (as intermediary). ***(Global Transportation Services P Ltd. – July 22, 2016)***.

CESTAT, CHENNAI: CENVAT credit: Registration is mere technical formality to bring the taxpayer to the fold of law without curtailment of the right of the taxpayer to be subject to other provisions of law which grants benefit. CENVAT credit is admissible to the extent verifiable from records. ***(Viswanathan Constructions P Ltd. – July 27, 2016)***.

SC: UP VAT : Bitumen and bitumen emulsion are one and the same commodity. Revenue's appeal dismissed. ***(AR Thermosets P Ltd. – September 6, 2016)***.

CESTAT, NEW DELHI : Service Tax : Whether the toll tax collected by the appellants at the toll plaza under an agreement with MCD would call for payment of Service Tax on the amount retained by them under the category of Business Auxiliary Services? Held no. ***(Bans Sands TTC – August 11, 2016)***

CESTAT, CHANDIGARH : Central Excise : 50% of the Sales Tax collected by the appellants from the customers was not paid to the State Sales Tax authorities. Hence, the Sales Tax not so paid/payable to the State is liable to be included in the value for the purpose of Central Excise Duty. ***(Honda Motorcycles & Scooters India P Ltd. – August 5, 2016)***.

CESTAT, MUMBAI: Service Tax : Refund claim was made by a proprietorship firm, whereas the Service Tax which refund was sought for was paid by proprietor. Since proprietor and proprietorship firm are not separate legal entities, refund allowed**.** ***(A K Associates – August 18, 2016)***.

SC: Central Excise: In case of manufacture of medicines on job-worker basis, 'manufacturer' would be such 'job-workers/loan-licensee' and not 'raw material supplier/licensor/brand-owner' as per whose instructions said goods are manufactured.

Assessable value of goods manufactured on job-work basis would be a sum total of cost of raw material, labour charges and profit of job-workers. Revenue's appeal dismissed. ***(Intas Pharmaceuticals Ltd. – February, 26, 2016)***.

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SUBJECT INDEX

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 2650 OF 2016

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COMMISSIONER OF COMMERCIAL TAX
Vs
A.R. THERMOSETS (PVT.) LTD.

DIPAK MISRA AND PRAFULLA C. PANT, JJ.

6th September, 2016

HF ▶ Assessee

Emulsified Bitumen would be covered under the Entry of Bitumen and taxable @4%.

ENTRIES IN SCHEDULE – CLASSIFICATION OF GOODS – BITUMEN – EMULSIFIED BITUMEN – ENTRY 'BITUMEN' HAS BEEN USED IN THE SCHEDULE WITHOUT ANY STIPULATION OR CLASSIFICATION – WOULD INCLUDE ANY PRODUCT WHICH SHARES THE COMPOSITION IDENTITY AND IN COMMON PARLANCE TREATED AS BITUMEN – BITUMEN EMULSION COVERED BY THE ENTRY 'BITUMEN' – PROCESSING OF BITUMEN DOES NOT CHANGE ITS CHARACTER, COMPOSITION OR USAGE – BITUMEN EMULSION IS NOTHING BUT BITUMEN IN LIQUID FORM AND HENCE TAXABLE @ 4%.

RULES OF INTERPRETATION – ENTRIES IN SCHEDULE – RESIDUAL ENTRY – ITEM COVERED BY SPECIFIC ENTRY BY ADOPTING LIBERAL CONSTRUCTION – RESORT CANNOT BE MADE TO THE RESIDUAL ENTRY – ITEMS TO BE TAXED UNDER SPECIFIC ENTRY.

RULES OF INTERPRETATION – ENTRIES IN SCHEDULE - END USER TEST – NOT CORRECT TO SAY THAT IN NO CASE CAN THE END USE OR FUNCTION OF THE GOODS BE RELEVANT IN THE QUESTION OF CLASSIFICATION.

The Respondent –Assessee manufactures "Bitumen Emulsion" and filed an application before the Commissioner, Commercial Tax, UP under Section 59 of VAT Act seeking clarification about the rate of tax applicable to the sales of "Bitumen Emulsion". The Commissioner of Trade Taxes held that "Bitumen Emulsion" is an unclassified commodity and therefore leviable to tax @ 12.5% under the Residual Entry. Feeling aggrieved, an appeal was filed before the Tribunal who dismissed the same. Assessee approached the High Court who allowed the appeal holding that mixing of some material would not amount to manufacture resulting in change of commodity on the basis of judgment of Commissioner of Central Excise Bangalore vs Osnar Chemicals Pvt. Ltd., (2012)2 SCC 282 and held it to be covered under the entry of 'Bitumen'. Revenue being aggrieved, filed an Appeal before the Supreme Court. Held:

Entry in question uses the word 'Bitumen' without any further stipulation. Therefore, it would include any produce which shares the composition identity and in common and commercial parlance is treated as "Bitumen" and can be used as "Bitumen". When the three tests vis identity, common parlance and end use, are applied to the goods in question, i.e. bitumen emulsion, there is no doubt that it would be covered by the Entry "Bitumen". "Bitumen Emulsion" matches the entry as it is only one of the varieties of Bitumen. Even if it is processed Bitumen it has not changed composition, commercial identity or its use as it performs the same function as Bitumen. Emulsification only eases and provides proficiency to the use of application of Bitumen. Hence in popular and commercial sense, Bitumen Emulsion is nothing but Bitumen which is in liquid form and is user friendly. There is nothing in the Entry to show that it is required to be given a restrictive and a narrow meaning.

In this regard, another aspect also needs to be noted. The Revenue does not rely upon any other Entry under which Bitumen Emulsion can be taxed as it relies upon the residual Entry which would only include goods which cannot be covered under any other Entry in the Schedule on the application of the threefold criteria. Resort to the residual entry can only be made where even on liberal construction, specific entry cannot cover the goods in question. Unless the Revenue can establish that the goods in question can by no conceivable process of reasoning by brought under any of the tariff items, resort cannot be made to the residuary Entry. When the word 'Bitumen' has been used as a generic expression, it would be erroneous not to cover a product that is only a type or form of 'Bitumen' and retains all its essential characteristics and treat it as commercial by the residuary Entry by some kind of ingenuous reasoning. Taking it outside the purview of specific entry is incorrect.

It would not be correct to say that in no case can the end use or the function of the goods would be relevant in the question of classification. In the matter of classification "composition test" is important test and the end user test would only apply if the Entry says so. In the present case, composition test as well as commercial or common parlance tests are also applied in addition to the end use test. Accordingly, it is held that view expressed by High Court is absolutely flawless and the appeal is accordingly dismissed.

Cases referred:

- *CST v. Ashok Grah Udyog Kendra Private Ltd. (2004) UPTC 1827*
- *CST v. Bechu Ram Kishori Lal (1976) 36 STC 236*
- *Indodan Milk Products v. Commissioner Sales Tax (1974) 33 STC 381*
- *Commissioner of Central Excise, Bangalore v. Osnar Chemical Private Limited (2012) 2 SCC 282*
- *Sonebhadra Fuels v. Commissioner, Trade Tax, U.P., Lucknow (2006) 7 SCC 322*
- *N. Eswari v. K. Swarajya Lakshmi (2009) 9 SCC 678*
- *State of Maharashtra v. Bradma of India Limited (2005) 2 SCC 669*
- *Collector of Central Excise, Shillong v. Wood Craft Products Ltd. (1995) 3 SCC 454*
- *Hindustan Poles Corpn. v. Commissioner of Central Excise, Calcutta (2006) 4 SCC 85*
- *Commercial Taxes Officer v. Jalani Enterprises (2011) 4 SCC 386*
- *Collector of Customs and others v. Kumudam Publications (P) Limited and others (1998) 9 SCC 339*
- *Indian Tool Manufacturers v. Asstt. Collector of Central Excise, Nasik and others (1994) Supp (3) SCC 632*
- *Commissioner of Central Excise, Cochin v. Mannampalakkal Rubber Latex Works (2007) 217 ELT 161 (SC)*
- *Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh and another (1981) 3 SCC 578*
- *Allied Bitumen Complex (India) Private Limited v. Collector of Central Excise, Calcutta – 1 (1997) 90 ELT 374 (Tribunal)*
- *SR Projects Limited v. Commissioner of Commercial Taxes (2013) 63 VST 49 (Kar)*
- *M.P. Agencies v. State of Kerala (2015) 7 SCC 102*

Present: ***For Petitioner(s):***

Advocates: Mr. Pawan Shree Agarwal, Mr. Abhinav Malik, Mr. Ravi Prakash Mehrotra

For Respondent(s):
Senior Advocates: Mr. Kavin Gulati
Other Advocates: Mr. Avi Tandon, Mr. Rohit Sthalekar, Mr. Santosh K. Gupta, Mr. T. Mahipal

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DIPAK MISRA, J.

1. In this appeal, by special leave, the Revenue has called in question the legal sustainability of the judgment and order passed by the High Court of Judicature at Allahabad in Commercial Tax Revision no. 1156 of 2009 preferred by the assessee-respondent under Section 11 of the U.P. Trade Tax Act, 1948 (for brevity, 'the 1948 Act') read with Sections 81 and 58 of the VAT Act, 2008 (for short, 'the VAT Act') whereby the learned Single Judge has allowed the revision negativing the stand put forth in opposition by the State to the stance highlighted by the assessee.

2. The facts on which the controversy rests is in a narrow compass. The respondent manufactures "bitumen emulsion". It filed an application before the Commissioner, Commercial Taxes, Lucknow, U.P. under Section 59 of the VAT Act seeking a clarification about the rate of tax applicable to the sales of bitumen emulsion. The Commissioner of Commercial Taxes, vide order dated 23.1.1999 opined that bitumen emulsion is an unclassified commodity and, therefore, is excisable to tax at the rate of 12.5% as it would fall under the residuary Entry.

3. Being aggrieved by the order dated 23.1.1999, the respondent preferred Appeal No. 6 of 2009 under the VAT Act before the Tribunal Commercial Taxes, U.P., Lucknow (for short 'the tribunal') which was heard by the Full Bench. It was contended before the tribunal by the assessee- appellant therein that bitumen as a commodity is taxed at 4% under Serial no. 22 Part A of Schedule II to the VAT Act and bitumen is found in solid state and to bring it in the liquid form, water is added to it and very little quantity is used in the process. Elaborating the said submission, it was urged that when bitumen is available in the liquid form, it is known as bitumen emulsion and is commonly known as bitumen when it is available in the solid form; and both the commodities are understood in the same manner in the commercial world and the end use is the same and, therefore, the rate of tax to be determined has to be the same as prescribed for bitumen.

4. Be it stated, as per Notification No. 100 dated 15.1.2000 issued under the erstwhile U.P. Trade Tax Act, 1948, bitumen was taxed at 20%. Under the VAT Act, bitumen has been classified under Part A of Schedule II and the tax leviable is 4%. Before the tribunal, the assessee-appellant produced reports from Harcourt Butler Technical Institute, Kanpur to bolster the stand that there is no difference between the two commodities and they are to be categorised as one item, if common parlance test is applied. To buttress the submissions, the assessee relied upon ***CST v. Ashok Grah Udyog Kendra Private Ltd. (2004) UPTC 1827***, ***CST v. Bechu Ram Kishori Lal (1976) 36 STC 236***, and ***M/s Indodan Milk Products v. Commissioner Sales Tax (1974) 33 STC 381***. The tribunal referred to one of its earlier decisions in appeal no. 17 of 2000 decided on 3.4.2009 and on the basis of reasons ascribed therein dismissed the revision.

5. The dissatisfaction caused by the said adjudication, constrained the assessee to approach the High Court in Commercial Tax Revision no. 1156 of 2009. The High Court formulated the point in issue which reads as follows:-

> *"Whether the Bitumen and Bitumen Emulsion are one and the same commodity for the purposes of interpretation of Entry No. 22 Schedule II Part A of the U.P.*

Value Added Tax Act, 2002 as was originaly enacted i.e. upto enforcement of notification no. 2758 dated 29.9.2008?

6. The learned Single Judge took note of the various technical materials from the Government approved laboratory which had been brought before the tribunal, and opined that the controversy had not been appositely appreciated by the tribunal, for the materials clearly establish that bitumen and bitumen emulsion is the same thing. The High Court analysed the concept of end use, i.e. the end result of bitumen emulsion and came to hold that bitumen emulsion makes the bitumen easily usable in its emulsified form and both the items are used in the construction of road, etc. It further opined that the identity, commercial character and use of both the things are the same, though the tribunal, despite having the material before it, proceeded to record findings otherwise. That apart, the High Court took note of the decision of this Court in ***Commissioner of Central Excise, Bangalore v. Osnar Chemical Private Limited (2012) 2 SCC 282*** and ultimately ruled that it could not be said that mixing of some material would amount to manufacture unless it results in a change when the commodity concerned cannot be recognised as an original commodity but rather new and distinct article emerges having different commercial use and identity. On the basis of the aforesaid analysis, the High Court allowed the revision and set aside the orders of the forums below.

7. We have heard Mr. Pawan Shree Agarwal, learned counsel for the appellant and Mr. Kavin Gulati, learned senior counsel along with Mr. Avi Tandon, learned counsel for the respondents.

8. Criticising the view of the High Court, it is submitted by Mr. Agarwal that it has erred in opining that bitumen in its emulsified form also remains bitumen. He has drawn inspiration from the language used in Section 2(t) of the VAT Act to structure the submission that in the process of conversion, manufacturing takes place. It is his further argument that the decision in ***Osnar Chemical Private Limited*** (supra) is not applicable to the present controversy as the said decision was rendered in the context of the Central Excise Act, 1944 whereas the lis herein hinges on the definition of manufacturing. For the said purpose, he has relied upon the authority in ***Sonebhadra Fuels v. Commissioner, Trade Tax, U.P., Lucknow (2006) 7 SCC 322***. Learned counsel for the Revenue contends that when the view expressed by the lower authorities is neither perverse nor arbitrary, the High Court in exercise of its revisional jurisdiction should not have interfered with the findings and for the said purpose he has commended us to the authority in ***N. Eswari v. K. Swarajya Lakshmi (2009) 9 SCC 678***. Mr. Agarwal has canvassed that the intention of the legislature, as is manifest, is to charge a particular rate of tax on bitumen and it remotely does not conceive of bitumen emulsion and the Court should not enlarge the scope of legislation or the intention of it by adding a word to the term in the statute, which is not permissible, for a taxing statute has to be understood what is clearly stated therein and not what is intended to be said.

9. Mr. Gulati, learned senior counsel appearing for the assessee in support of the view expressed by the High Court would contend that four principles relating to interpretation of entries and taxing statute are required to be considered in the present case. According to Mr. Gulati, they are (a) plain meaning to be given to the taxing provision; (b) burden to prove classification in a particular Entry is always on the Revenue; (c) any ambiguity has to be resolved in favour of the assessee; and (d) resort to residuary Entry is to be taken as a last measure. He would put forth that in the instant case, the Revenue, prior to taxing the respondent under the residuary Entry, did not place any evidence before the Commissioner or the tribunal to show that the emulsified bitumen is not covered by the expression bitumen as found in Entry 22 of Part A of Schedule II to the VAT Act. It is urged by him, whether the activity of mixing water with bitumen amounts to manufacture under Section 2(t) of the VAT Act is wholly irrelevant for deciding the issue at hand. It is, according to Mr. Gulati, where

goods are purchased on paying tax and process thereafter is undertaken, a question often arises as to whether such process amounts to manufacture or not, and if it amounts to manufacture, then it would enable the department to levy tax again as the commodity in different, a new one, for the purposes of this Act and the tax can be imposed as a single point levy again, but in the case at hand, that is not the situation. Learned senior counsel further submits that every process involved in the manufacture of a commodity does not relate to manufacture of a new product as the end product continues to retain the character of the original product. According to him, solely because some process has been carried out, it cannot be held that a new product has come into existence. Expatriating the said submission, it is put forth that the process of heating on high degree temperature and then adding water to it to obtain emulsified bitumen does not alter the basic nature of bitumen but only brings a change in physical appearance of the product. He has heavily relied on ***Osnar Chemical Private Limited*** (supra) to highlight that bitumen would include bitumen emulsion.

10. The principal controversy, as we perceive, is "whether "bitumen emulsion" is covered within Entry 22 of Schedule II of the VAT Act which only refers to "bitumen". According to Academic Press Dictionary of Science and Technology, "bitumen" means:-

> *"Bitumen Geology and naturally occurring flammable substance mainly of a mixture of hydrocarbons such as petroleum or asphalt.*
>
> *Materials 1. Originally, a type of asphalt occurring naturally in Asia Minor. 2. Any similar black, sticky mixture of hydrocarbons occurring naturally or pyrolytically in the atmosphere and completely soluble in carbon disulfide: obtained mainly from natural oxidized petroleum products or from a petroleum distillation process."*

11. The McGraw-Hill Concise Encyclopedia of Science & Technology (Third Edition) defines "bitumen" as under:-

> *"Bitumen A term used to designate naturally occurring or pyrolytically obtained substances of dark to black color consisting almost entirely of carbon and hydrogen with very little oxygen, nitrogen, and sulphur. Bitumen may be of variable hardness and volatility, ranging from crude oil to asphaltites and is largely soluble in carbon disulfifde."*

12. The above definitions when appreciated clearly show that they expressively define the word "bitumen" as a commodity and explain its chemical composition, colour or appearance and qualities and the process by which it comes into existence.

13. Bitumen emulsion, as per Indian standards ICS 293.08.0.20 published by the Bureau of Indian Standards is a destruction of very fine particles in an aqueous medium. Harcourt Butler Technological Institute, Kanpur, in its report dated 11.4.2008 states that:-

> *"The components derived from fractional distillation of petroleum, at various temperature levies, are (I) Gas (II) Naphtha, (III) Kerosene, (IV) Diesel and lubricating oil, (V) Bitumen and furnace oil, and (VI) residue. This bitumen is known as penetration grade bitumen because the specification, by which it is designated, is obtained from the penetration test. There could be two other forms of Bitumen: Namely (I) Emulsion and (II) Cutback. In the emulsion, bitumen is in the suspension from as small globules in water, whereas in cutback, the bitumen is dissolved in suitable solvent. In bituminous construction, the choice between penetration grade bitumen and the bitumen emulsion is made depending upon the factors like, weather conditions, availability, economy and available construction time."*

14. The said report discussing about its composition explicates:-

> *"Bitumen is basically a hydrocarbon with 10% by weight of atoms of sulphur, nitrogen and oxygen, attached to hydrocarbon molecules. The carbon content in bitumen is 80-87%. Three basic components of bitumen are (I) asphaltene, (II) maltene and (III) carbine. The chemical bonds in bitumen are weak and break when heat is applied. When it is cooled, it comes back to its original structure, but not necessarily the same as before."*

15. The said report has further proceeded to state that emulsion is a two phase system consisting of two immiscible liquids, one being dispersed as finite globules in the other. In bitumen emulsion, bitumen globules are suspended as emulsion in water with the help of emulsifiers, which are used to stabilize the emulsion. Emulsifiers break into ions and charge the bitumen particles. Charged particles repel each other and the suspension remains stable and this stability remains as long as water does not evaporate, freeze or emulsifier does not break.

16. About the characterization of the bitumen, report states:-

> *"Bitumen materials have certain characteristics such as (I) waterproofing (II) durability, (III) resistance to strong acids and (IV) cementing properties. At normal temperature, bitumen is semi-solid and takes time to flow. At higher temperatures, it behaves like a viscous liquid, whereas at very low temperature, is brittle as glass. Bitumen is believed to behave 'viscoelastically' at the standard operating temperature at highways."*

17. According to the report when a state of liquefaction is achieved and the same is constant for a longer period, it can be used under diverse moisturic conditions and has a very wide range of applications such as surface dressing of low volume roads, curing purposes base for high volume roads, surface dressing, tack coat, premix carpets, soil stabilization, etc. The report has clearly stated that the use of bitumen is because of its characteristics which includes cementing properties. Be it noted, the use of both bitumen and bitumen emulsion is similar, that is, surface dressing, tack coat, premix carpets, soil stabilization, etc. The concluding remarks of the report is extracted below:-

> *"Bitumen and Emulsion are two forms of bituminous binders which serve some common purposes in road construction and maintenance. Bitumen and emulsion are selected for various applications depending upon some parameters like weather conditions, availability of material, economic aspects and availability of construction time. Bitumen needs preheating whereas emulsion is ready to use. It has been observed from previous studies that the physical properties of the emulsion after natural sun drying are almost similar to that of bitumen as the water present. In the binder evaporates and makes the matrix harder as obtained with the bitumen. It may, therefore, be concluded that bitumen and emulsion may be treated at par as far as their significance for application. In their respective area is concerned."*

18. A reading of the aforesaid definitions and the scientific text clearly reveal that bitumen in its original form is solid but melts when heated, for it is used in molten stage. There is no difficulty to appreciate that bitumen emulsion comes into existence when bitumen is treated with emulsifiers and other chemicals to attain a liquid form. It has a huge advantage and add benefit because it is not to be heated and detained in its liquid form and has better stability and thus, saves time and cost components. That apart, it ensures its use at the stage of application. Needless to say it is comparatively less hazardous. Bitumen consists of four forms of variants, namely, solid bitumen, polymer bitumen, crumbler rubber modified bitumen and bitumen emulsion. The stand of the Revenue is that the word "bitumen" must be conferred a

narrow meaning for the reason that the legislature has not thought it appropriate to use the prefix or suffix like "all", in all forms or of all kinds. It may be immediately clarified that bitumen is a generic expression which would include different types of bitumen. Revenue, however, as stated earlier, intends to apply it restrictively. The said submission has a fundamental fallacy. Entry 22 does not exclude or specify that it would not include bitumen of all types and varieties. This is not the principle or precept applied to interpret the entries under the Schedule of the Act. We will be deliberating in detail on the said aspect at a later stage. Prior to that, we would like to advert to certain other aspects.

19. At the very inception, we think it absolutely seemly to state that the nature and composition of the product or the good and the particular entity in the classification table is important. Matching of the good with the Entry or Entries in the Schedules is tested on the basis of identity of the goods in question with the Entry or the contesting entries and by applying the common parlance test, i.e., whether the goods as understood in commercial or business parlance are identical or similar to the description of the Entry. Where such similarity in popular sense of meaning exists, the generic entity would be construed as including the goods in question. Sometimes on certain circumstances the end use test, i.e., use of the good and its comparison with the Entry is applied.

20. The Entry in question uses the word "bitumen" without any further stipulation or qualification. Therefore, it would, in our opinion, include any product which shares the composition identity, and in common and commercial parlance is treated as bitumen and can be used as bitumen. When we apply the three tests, namely, identity, common parlance and end use to the goods and the Entry in question, bitumen emulsion would be covered by the Entry bitumen. It is worthy to note that bitumen emulsion matches the Entry as it is only one of the varieties of bitumen. Bitumen emulsion is processed bitumen, but the process has not changed its composition, commercial identity or its use. Bitumen emulsion is regarded and performs the same function as bitumen. As a result of processing, neither the primary character nor the composition is lost. Emulsification only eases and provides proficiency to the use of application of bitumen. Hence, in popular and commercial sense, bitumen emulsion is nothing but bitumen, which is in liquid form and is user friendly.

21. It is perceivable that the legislature has used the word "bitumen" and treated it as a separate entity. As we notice, it has not indicated that this was done with the intention and purpose to exclude some type or variety of bitumen. All bitumen products, which share and have common composition and commercial entity, and meet the popular parlance test, is, therefore, meant to be covered by the said Entry. In the instant case, even the end use test is satisfied. There is nothing in the Entry to suggest and show that the Entry is required to be given a restrictive and a narrow meaning.

22. In this regard, another aspect needs to be noted. The Revenue does not rely upon another Entry under which bitumen emulsion can be taxed. The Revenue relies upon the residuary Entry which would only include goods, which cannot be covered under any other Entry in the schedule on application of the three-fold criteria. In the ***State of Maharashtra v. Bradma of India Limited (2005) 2 SCC 669,*** the Court had observed that the general principle is that specific Entry would override a general Entry. Referring to the decisions in the case of ***Collector of Central Excise, Shillong v. Wood Craft Products Ltd. (1995) 3 SCC 454***, it has been ruled that resort can be made to a residuary heading only when by liberal construction the specific Entry cannot cover the goods in question. Referring to Entry No. 90 in the said case, which covered tabulating, calculating, cash registering, indexing and data processing, etc, other than computer machines, it was held that the words did not contain words of limitation and would cover every species of cash registering machines, irrespective of their mode of operation. In the absence of any limitation or qualification as to the different kind of cash

registering machines, there was no reason for such qualification and limit the Entry to a particular kind of cash registering machine. However, computers had been specifically excluded and were separately dealt with in Entry 97(a). The assessee, who was manufacturing electronic cash registers would, therefore, be covered by Entry 90 and not by the Entry relating to computers. A similar opinion has been expressed in ***Hindustan Poles Corpn. v. Commissioner of Central Excise, Calcutta (2006) 4 SCC 85*** stating that residuary Entry is made to cover only those category of goods which clearly fall outside the ambit of the main Entry. The opinion proceeds further to state that unless the Revenue can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items, resort cannot be made to the residuary Entry.

23. In this context, reference to the authority in ***Commercial Taxes Officer v. Jalani Enterprises (2011) 4 SCC 386*** would be profitable. While dealing with the question of sales tax/VAT under the Rajasthan Sales Tax Act, it was held that if from records it was established that the product in question could be brought under a specific Entry, then there was no reason to take resort to the residuary Entry. Revenue cannot be permitted to travel to the residuary Entry when a product can be covered under a specific Entry.

24. In the present context, when the word "bitumen" has been used as a generic expression, it would be erroneous not to cover a product that is only a type or form of bitumen and retains all its essential characteristics, and treat it as covered by the residuary Entry by some kind of ingenuous reasoning. Taking it outside the purview of the specific Entry is incorrect.

25. At this juncture, we may refer to certain pronouncements commended to us by the learned counsel for the appellant. In ***Collector of Customs and others v. Kumudam Publications (P) Limited and others (1998) 9 SCC 339***, while adverting to the issue of classification it has been held that it would not be correct to say that in no case can the end use or function of the goods be relevant in the question of classification, as was held in ***Indian Tool Manufacturers v. Asstt. Collector of Central Excise, Nasik and others (1994) Supp (3) SCC 632***. The decision in ***Commissioner of Central Excise, Cochin v. Mannampalakkal Rubber Latex Works (2007) 217 ELT 161 (SC)*** emphasizes and holds that in the matters of classification, "composition test" is important test and the "end user test" would only apply if the Entry says so. We have referred to the aforesaid authorities for sake of completeness only because we have applied the "composition test" as well as the "commercial or common parlance" test in addition to the "end use test".

26. Reliance placed by the Revenue on the decision in the case of ***Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh and another (1981) 3 SCC 578***, is of no assistance, for in the context of the particular notification it was held that aluminium ingots, billet, roll products, extrusion, etc. would not be covered by the exemption, which was granted to all kinds of minerals, ore, metals or alloys, including sheets and circles used in the manufacture of brasswares and scraps. In this context, referring to Section 3A of the U.P. Sales Tax Act and the notification as applicable, it was held that the earlier notifications issued from time to time would show that the expression "metal" had been employed with reference to metal in its primary sense. The principle laid down in the said authority is in the context in issue and is based upon the schematic arrangement indicated and specified in the notification under consideration therein. That apart, the said decision also emphasizes that a word describing a commodity in a sales tax statute should be interpreted according to its popular sense and words of everyday use must be construed not in their scientific or technical sense, but as understood in common parlance.

27. We have also been commended to a judgment of the Customs, Excise and Service Tax Appellate Tribunal in ***Allied Bitumen Complex (India) Private Limited v. Collector of***

Central Excise, Calcutta – 1 (1997) 90 ELT 374 (Tribunal), which holds that conversion of bitumen into bitumen aqueous emulsion amounts to manufacture. Per contra, the respondent-assessee has relied on judgment of the Karnataka High Court in ***SR Projects Limited v. Commissioner of Commercial Taxes (2013) 63 VST 49 (Kar)]***. However, it is not necessary to dilate on the said aspect for there is a distinction between what can be regarded as manufacture under the Excise Act and what is the sale or transfer of property in goods under the Sales Tax Act and the Value Added Tax Act. In ***M.P. Agencies v. State of Kerala (2015) 7 SCC 102***, it has been held that the decisions under the Excise Act may have some play and relevance, but the question of manufacture by itself would not be per se relevant under the Sales Tax or Value Added Tax Act. Thus, there is a distinction between what is exigible to tax under the excise law and the incidence of tax when the legislation relates to sales or value added tax. What is relevant is the classification. In this context, the verdict in Osnar Chemical Private Limited (supra) is significant. The said authority refers to two other variants of bitumen, namely, polymer modified bitumen and crumbled rubber modified bitumen which are created by the process of mixing of polymer and additive to bitumen. It has been held that the aforesaid processes result in improvement of the quality of bitumen and there is no change in the characteristics or identity of bitumen so as to transform bitumen into a new product having an identity, characteristic and use. It has been ruled therein that there is a fallacy in the argument raised by the Revenue that bitumen per se would only include its solid hard form which melts at high temperature and not bitumen emulsion. The two varieties and types carry the same composition, do not differ in character and have the same commercial identity i.e. bitumen. That apart, the use or end use test is also satisfied.

28. In view of the aforesaid analysis, we find the view expressed by the High Court to be absolutely flawless and, accordingly, we concur with it. Our concurrence with the view of the High Court entails dismissal of the appeal and, accordingly, it is so directed. There shall be no order as to costs.

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 2956 OF 2007

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LARSEN & TOUBRO LIMITED
Vs
ADDITIONAL DEPUTY COMMISSIONER OF COMMERCIAL TAXES & ANR

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

5th September, 2016

HF ▶ Assessee

Turnover relating to the payments made to sub-contractor would not be part of turnover of main contractor for calculating liability of turnover tax.

WORKS CONTRACT – TURNOVER TAX – SUB-CONTRACTOR- WHETHER WORK ENTRUSTED TO SUB-CONTRACT IS PART OF TURNOVER OF THE CONTRACTOR FOR LEVY OF TURNOVER TAX – TAX LEVIABLE ONLY ON THE TURNOVER IN WHICH THERE IS TRANSFER OF PROPERTY IN GOODS – TAX LEVIABLE ONLY IN THE HANDS OF SUB-CONTRACTOR – WORK ENTRUSTED TO SUB-CONTRACTOR OR PAYMENTS MADE TO THEM NOT TO BE CONSIDERED WHILE COMPUTING TOTAL TURNOVER – APPEAL ALLOWED. - *SECTION 2(1)(t), 2(1)u-1), 2(1)(u-2), 2(1)(v), SECTION 5B, SECTION 6B OF KARNATAKA SALES TAX ACT, 1957*

Assessee is doing the business of engineering and contractors and is executing the projects. Part of these works are assigned to sub-contractors who are also registered with the Department and have submitted the Returns and paid tax for the execution of works contract in their individual capacity. Assessee contended while filing Returns that since the transfer of property involved in execution of such contracts has already been taxed in the hands of sub-contractors, the appellant cannot be taxed again as there can be only one taxable event for the purpose of Article 366(29A)(b) of the Constitution of India. The contention of the assessee was negatived up to High Court and it was held that assessee would be liable to pay turnover tax on the works contract which would include even the works entrusted to sub-contractors. On appeal before the Supreme Court, held:

The total amount paid or payable to the dealer is as consideration for "Transfer of Property in Goods" which is involved in execution of works contract, is to be treated as "Total Turnover". Total turnover can therefore be only in respect of those goods where the property has been transferred and it becomes a necessary event. The amount paid to the sub-contractor is not for the transfer of property in goods as the taxable event is the incorporation of goods in the works. The provision of Andhra Pradesh Act are similar to the present proposition and therefore the judgment of the Court in the case of ***State of Andhra Pradesh vs Larsen & Toubro, (2008)9 SCC 191*** *applies with full force to the present case. Accordingly, the value of work entrusted to the sub-contractors or payments made to them shall not be considered while computing total*

turnover for the purposes of section 6B of the Karnataka Act. The appeals filed by the assessee are allowed.

Cases referred:

- *State of Andhra Pradesh & Ors. v. Larsen & Toubro Limited & Ors. [(2008) 9 SCC 191]*
- *The State of Madras v. Gannon Dunkerley & Co. (Madras) Limited [AIR 1958 SC 560]*
- *Builders' Association of India & Ors. v. Union of India & Ors. [(1989) 2 SCC 645]*

Present: For Petitioner(s):

Senior Advocate: Mr. N. Venkataraman,

Other Advocates: Mr. Sanand Ramakrishnan, Mr. Rajeev Mishra, Mr. D.P. Mohanty, Ms. Sanjana Ramachandran, Mr. Abhiram Naik, M/s. Parekh & Co.

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

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A.K. SIKRI, J.

1. Same parties are entangled in these three appeals which arise out of the provisions of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the 'Karnataka Act'). Two appeals are preferred by the assessee, viz. Larsen & Toubro Ltd., and one appeal is filed by the Revenue, i.e. the Sales Tax Department of Karnataka.

2. The assessee is doing the business of engineers and contractors and in this process it, *inter alia,* executes projects under contracts with public sector undertakings, local bodies as well as the Union and the State Governments, besides private sector. The assessee is registered under the Karnataka Act and files its returns for payment of sales tax thereunder. The contracts which are secured by the assessee are the works contracts and a part thereof is generally assigned to sub-contractors. For example, in Civil Appeal No. 2956 of 2007, the assessee had secured a contract to construct an indoor stadium styled *'Sree Kanteerava Indoor Stadium'* in Bengaluru and the assessee assigned the work of finding their own materials and laying foam concrete to M/s. Lloyd Insulation (India Limited). This sub-contractor was registered with the Deputy Commissioner of Commercial Taxes, Assessment-IX City Division, Bengaluru, and accordingly it had submitted returns and paid taxes for the execution of the works contract and was duly assessed under Sections 5-B and 6-B of the Karnataka Act. A certificate dated April 10, 1998 to that effect had been marked before the authorities. Likewise, returns are filed by the assessee as well on regular basis. In the course of the assessment, the assessee submitted that the sub-contractors were the parties who executed the works contract and since the transfer of property involved in such execution had already been taxed, the appellant cannot be taxed again under Section 6-B of the Karnataka Act there being only one taxable event for the purpose of Article 366(29A)(b) of the Constitution of India. In nutshell, it was the submission of the assessee that value of the work entrusted to the sub-contractor could not be taken into account while computing total turnover of the assessee for the purpose of taxation under the Karnataka Act. This submission of the assessee was, however, negatived by the Assessing Officer as well as the Karnataka Appellate Tribunal. In the revision filed under Section 23 of the Karnataka Act, the appellant raised the following questions:

i. Is the assessee liable to turnover tax under Section 6-B of the Karnataka Sales Tax Act, 1957 on the payment made to the sub-contractor in spite of the fact that the sub-contractor had declared the turnover and paid taxes?

ii. Since the payment made to the sub-contractor does not amount to

turnover within Section 2(i)(v) of the Karnataka Sales Tax Act, 1957, can such payment be part of total turnover as per Section 2(1)(u-2) of the Karnataka Sales Tax Act, 1957?

The High Court decided the aforesaid questions against the assessee and thereby affirmed the view taken by the Appellate Tribunal which resulted in dismissing the revision petition of the assessee vide judgment dated February 03, 2006. This judgment is the subject matter of challenge in Civil Appeal No. 2956 of 2007, which pertains to the Assessment Year 1997-1998.

3. Likewise, for the Assessment Year 2002-2003 (Civil Appeal No. 2318 of 2013), the assessee has been meted out the same treatment whereby the work awarded to the sub-contractors, who are the registered dealers and have paid sales tax in respect of the works undertaken by them, has been added in the total turnover of the assessee for the purposes of levying tax. However, here the matter is remanded to the Assessing Officer for ascertaining the liability of the assessee under Section 5-B as well as Section 6-B of the Karnataka Act in respect of total turnover of the assessee.

4. On the other hand, outcome of the proceedings in respect of the Assessment Year 19992000 (Civil Appeal No. 7241 of 2016) has taken a U-turn. For this Assessment Year, though the Assessing Officer as well as the Appellate Tribunal had included the cost of work awarded to the sub-contractors, the High Court has held that value of the work awarded to the subcontractors cannot be included for computing the total turnover of the assessee and has, thus, allowed the revision petition preferred by the assessee. Against that order, the Revenue is in appeal.

5. The aforesaid brief resume of the three appeals makes it clear that the question of law involved in all these three cases is the same, though the two sets of judgments of the High Court are contrary to each other.

6. It may be pointed out at this juncture itself that in the case of this very assessee same question of law had arisen, *albeit* in the context of Andhra Pradesh Value Added Tax Act, 2005 (hereinafter referred to as the 'Andhra Pradesh Act'). This Court has decided the issue in its judgment known as ***State of Andhra Pradesh & Ors.*** *v.* ***Larsen & Toubro Limited & Ors. [(2008) 9 SCC 191]*** (hereinafter referred to as 'Andhra Pradesh judgment'). The question of law is answered in favour of the assessee. Taking aid of the said judgment, the assessee has argued that the instant appeals should be decided in its favour. On the other hand, plea of the Revenue is that that view taken by the High Court, which is in favour of the Revenue, is the correct view and should be maintained having regard to the provisions of the Karnataka Act. The endeavour of the Revenue is to demonstrate that the provisions of the Andhra Pradesh Act are materially different than that of the Karnataka Act and, therefore, the judgment in the Andhra Pradesh case need not be followed. Before adverting to the aforesaid judgment of this Court, it would be advisable to take note of the various provisions of the Karnataka Act.

7. For our purposes, definitions of *'sale', 'taxable turnover', 'total turnover'* and *'turnover'* are material, which are reproduced below:

> *"2(i)(t) "Sale" with all its grammatical variation and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or plede) by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration, and includes, -*
>
> *(i) a transfer otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration;*

> *(ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;*
>
> *xx xx xx*
>
> *2(i)(u-1) "Taxable turnover" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the gods into the territory of India;*
>
> *(u-2) "Total turnover" means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India;*
>
> *(v) "Turnover" means the aggregate amount for which goods are bought or sold, or supplied or distributed or delivered or otherwise disposed of in any of the ways referred to in clause (t) by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or other valuable consideration."*

8. Since we are dealing with the sales tax under the Karnataka Act, obviously the said tax is on *'sale'*. *'Sale'* is defined as transfer of the property in goods by one person to another in the course of trade or business for consideration and it, *inter alia*, includes a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. Thus, even in respect of works contract whenever there is a transfer of property in goods, that is deemed as *'sale'*.

9. An essential element to constitute a transaction as 'sale' is the transfer of property in goods. Aggregate amount for which the goods are bought or sold, or supplied or distributed or delivered or otherwise disposed of, in any of the ways referred to under Section 2(t), by a dealer is treated as *'turnover'* within the meaning of Section 2(v) of the Karnataka Act. There are two variants of this turnover known as *'taxable turnover'* and *'total turnover'*, the definitions whereof are already reproduced above. *'Total turnover'* is defined as aggregate turnover in all goods of a dealer at all places of business in the State. However, from this aggregate turnover, certain deductions are permissible under the provisions of the Karnataka Act and when those deductions are allowed from the total turnover, we get *'taxable turnover'* on which a dealer is liable to pay tax.

10. Section 5-B of the Karnataka Act is the charging section in respect of execution of the works contract and it reads as under:

> *"***5-B Levy of tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of works contracts -** *Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-section (3-C) of Section 5, but subject to sub-section (4), (5) or (6) of the said section, every dealer shall pay for each year, a tax under this act on his taxable turnover of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract mentioned in column (2) of the Sixth Schedule at the rates specified in the corresponding entries in column (3) of the said Schedule."*

11. There is a levy of turnover tax as well, which is provided under Section 6-B of the Karnataka Act. At the relevant time, this provision was in the following form:

> *"***6-B Levy of Turnover Tax. -** *(1) Every registered dealer and every dealer who is liable to get himself registered under sub-section (1) and (2) of Section 10 whose total turnover in a year is not less than the turnovers specified in the said sub-sections, whether or not the whole or any portion of such turnover is liable to tax under any other provisions of this Act, shall be liable to pay tax. –*
>
> *(i) at the rate of one and half per cent of the total turnover, if the total turnover is not more than one thousand lakh rupees in a year; or*
>
> *(ii) at the rate of three per cent of the total turnover, if the total turnover is more than one thousand lakh rupees in a year;*
>
> *Provided that the rate of tax payable for any year shall be at one and half per cent on the turnovers up to one thousand lakh rupees and at three per cent on the turnovers exceeding one thousand lakh rupees, if, the total turnover in the year immediately preceding that year was not more than one thousand lakh rupees."*

12. On a plain reading of Sections 5-B and 6-B of the Karnataka Act, it can be seen that Section 5-B deals with levy of tax on transfer of property in goods involved in the execution of the works contract. It is, thus, a special provision made for imposing sales tax on works contract and tax is payable on *'taxable turnover of transfer of property in goods'*. Additionally, in those cases where total turnover of a registered dealer in an year is not less than the turnover specified in sub-sections (1) and (2) of Section 10, such a dealer is liable to pay tax at the rate specified in Section 6-B of the Karnataka Act.

13. The question for determination is: for calculating the turnover for the purpose of payment of turnover tax under Section 6-B of the Karnataka Act, whether payments made to subcontractor are to be included while calculating the total turnover?

14. Mr. N. Venkatraman, learned senior counsel appearing for the appellant/assessee, made a fervent plea for not including such payments made to the sub-contractor, as component of total turnover, because of the reason that the sales tax is payable on the transfer of property and the *'turnover'* also meant aggregate amount for which goods are bought or sold, etc. Therefore, transfer of property in goods was the necessary concomitant in ascertaining the sale and, thus, in the process calculating the turnover/total turnover. It was submitted that there was no sale of goods involved in the execution of a works contract as in such contracts the property does not pass as movables. Tracing the history of works contract, the learned senior counsel submitted that in the case of ***The State of Madras*** *v.* ***Gannon Dunkerley & Co. (Madras) Limited [AIR 1958 SC 560],*** while speaking of a building contract, this Court held that the property in goods involved in the execution of a works contract does not pass as movables but on the theory of accretion on the principle *quicquid plantatur solo, solo cedit,* i.e. whatever is attached to the soil, becomes part of it. The Constitution (Forth-Sixth Amendment) Act, 1982 inserted Article 366(29-A)(b) to neutralise the judgment in **Gannon Dunkerley & Co.** only to the extent that an indivisble contract was deemed to be divisible and did not undo the principle. He argued that this Court, interpreting Article 366(29-A)(b) in ***Builders' Association of India & Ors.*** *v.* ***Union of India & Ors. [(1989) 2 SCC 645]****,* reiterated that in a works contract property in goods passes out as movable but on the theory of accretion. It was further submitted that the property passes by accession just once which, by a fiction, is taxed as a sale. The Article also identifies the transferor and transferee effecting the deemed sale and deemed purchase. The taxable person

is the contractor executing the works contract so that the main contractor, who assigns the work to another person to execute the work, cannot be a transferor, nor any property in goods vest in the main contractor, when the contract is executed by a subcontractor.

15. Proceeding further, by taking the aforesaid line of argument, the learned senior counsel submitted that if the point of view of the Revenue is accepted, it would amount to double taxation inasmuch as sub-contractors were also registered dealers who had paid sales tax under the Karnataka Act and by including the payments made to them in the total turnover of the assessee, tax was sought to be levied on the same amount all over again. On the aforesaid premise, the learned senior counsel for the assessee submitted that precisely this argument in law has been accepted by this Court in the Andhra Pradesh judgment. He referred to the discussion contained in the said judgment *in extenso.*

16. Mr. K.N. Bhat, learned senior counsel appearing for the Revenue, per contra, heavily relied upon the reasoning given by the High Court in the judgment which has taken the view in favour of the Revenue. He submitted that one had to keep in mind the distinction between Section 5-B and Section 6-B of the Karnataka Act by pointing out that when it comes to levy of turnover tax, it speaks of *'total turnover',* whereas tax payable under Section 5-B is on the *'taxable turnover'.* He submitted that since we are concerned with the levy of tax under Section 6-B of the Karnataka Act, total turnover becomes relevant and, therefore, the value of the work entrusted to the sub-contractors is includible at the hands of the assessee. He further submitted that the High Court was right in pointing out that sales tax is leviable at a single point, whereas turnover tax is leviable at a multi-point, both at the hands of the main contractor and sub-contractor and, therefore, the question of double taxation does not arise.

17. After bestowing our due consideration to the respective submissions, we find that the position taken by the assessee has to prevail, which appears to be meritorious. This result follows even from the bare perusal of the Karnataka Act and Rules. For this purpose, it becomes important to refer to clause (c) of sub-Rule (1) of Rule 6 of the Karnataka Sales Tax Rules, 1957. Rule 6 deals with determination of total and taxable turnover and clause (c) reads as under:

> *"***6. Determination of total and taxable turnover. -** *(1) The total turnover of a dealer, for the purposes of the Act, shall be the aggregate of. –*
>
> *xx xx xx*
>
> *(c) the total amount paid or payable to the dealer as the consideration for transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract; and includes any amount paid as advance to the dealer as a part of such consideration.*
>
> *xx xx xx"*

18. What is significant is that total amount paid or payable to the dealer as a consideration for *'transfer of property in goods',* which is involved in execution of the works contract, is to be treated as 'total turnover'. This Rule, thus, specifically restricts the total turnover in respect of those goods, alone, where the property has been transferred. Thus, transfer of property in goods, becomes necessary event and unless there is a transfer of property, the amount paid is not to be included in the total turnover. The amount paid to the sub-contractor is not for transfer of property in goods. When matter is examined from this angle, the ratio laid down by this Court in the Andhra Pradesh judgment clearly applies inasmuch as in that case also the Court noticed that Section 4(7) of the Andhra Pradesh Act indicated that the taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods

are incorporated in the works. The Court held that the value of the goods which constitute the measure for the levy of tax is the value of goods at the time of the incorporation of the goods in the works. The Court further found that same was the position contained in Rule 17(1)(a) of the Andhra Pradesh Value Added Tax Rules, 2005.

19. It is not in dispute that the facts and the issue involved were identical, i.e. the assessee had assigned parts of the construction work to sub-contractors who were registered dealers. These sub-contractors had purchased goods and chattels like bricks, cement and steel and, where necessary, supply and erect equipments such as lifts, hoists, etc. The materials were brought to the site and they remain the property of the sub-contractor. The site was occupied by the sub-contractor and the materials were erected by the sub-contractor. In this backdrop, after taking note of some provisions of the Andhra Pradesh Act, the Court explained the legal position in the following manner:

> *"16. By virtue of Article 366(29-A)(b) of the Constitution, once the work is assigned by the contractor (L&T), the only transfer of property in goods is by the sub-contractor(s) who is a registered dealer in this case and who claims to have paid taxes under the Act on the goods involved in the execution of the works. Once the work is assigned by L&T to its sub-contractor(s), L&T ceases to execute the works contract in the sense contemplated by Article 366(29-A)(b) because property passes by accretion and there is no property in goods with the contractor which is capable of a retransfer, whether as goods or in some other form.*
>
> *17. The question which is raised before us is whether the turnover of the sub-contractors (whose names are also given in the original writ petition) is to be added to the turnover of L&T. In other words, the question which we are required to answer is whether the goods employed by the sub-contractors occur in the form of a single deemed sale or multiple deemed sales. In our view, the principle of law in this regard is clarified by this Court in Builders' Assn. of India as under: (SCC p. 673, para 36)*
>
> > *"36 ... Ordinarily unless there is a contract to the contrary in the case of a works contract, the property in the goods used in the construction of a building passes to the owner of the land on which the building is constructed, when the goods or materials used are incorporated in the building." (emphasis supplied by us)*
>
> *18. As stated above, according to the Department, there are two deemed sales, one from the main contractor to the contractee and the other from sub-contractor(s) to the main contractor, in the event of the contractee not having any privity of contract with the sub-contractor(s).*
>
> *19. If one keeps in mind the abovequoted observation of this Court in Builders' Assn. of India the position becomes clear, namely, that even if there is no privity of contract between the contractee and the sub-contractor, that would not do away with the principle of transfer of property by the sub-contractor by employing the same on the property belonging to the contractee. This reasoning is based on the principle of accretion of property in goods. It is subject to the contract to the contrary. Thus, in our view, in such a case, the work executed by a sub-contractor, results in a single transaction and not as multiple transactions. This reasoning is also borne out by Section 4(7) which refers to the value of goods at the time of incorporation in the works executed. In our view, if the argument of the Department is to be accepted, it would result in plurality of deemed sales which would be contrary to Article 366(29-A)(b) of the*

> *Constitution as held by the impugned judgment of the High Court. Moreover, it may result in double taxation which may make the said 2005 Act vulnerable to challenge as violative of Articles 14, 19(1)(g) and 265 of the Constitution of India as held by the High Court in its impugned judgment."*

This *raison d'etre* shall apply, in full force, while answering the question even in the context of the Karnataka Act.

20. We, therefore, hold that the value of the work entrusted to the sub-contractors or payments made to them shall not be taken into consideration while computing total turnover for the purposes of Section 6-B of the Karnataka Act. As a consequence, the two appeals which are filed by the assessee are allowed and the appeal preferred by the Revenue is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

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PUNJAB & HARYANA HIGH COURT

U.V.R.NO. 7 OF 2010

FERTICHEM COTSPIN LTD.
Vs
STATE OF PUNJAB AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

31st August, 2016

HF ▶ Assessee

In the absence of any specific findings regarding sale of DEPB in Punjab, the order of Revisional authority is set aside and matter is remanded back.

REVISION – COMMISSIONER – SALE OF DEPB – ASSESSEE RECEIVING DEPB AT CHANDIGARH OFFICE AND SOLD IT FROM CHANDIGARH TO THE BUYERS LOCATED AT CALCUTTA AND DELHI – PAYMENTS ALSO RECEIVED AT CHANDIGARH – GOODS NEVER ENTERED IN THE STATE OF PUNJAB – REVISIONAL AUTHORITY LEVIED THE TAX HOLDING IT TO BE A LOCAL SALE IN PUNJAB – TRIBUNAL AFFIRMED THE ORDER – ON REVISION BEFORE THE HIGH COURT – NO SPECIFIC FINDING HAS BEEN RECORDED BY THE REVISIONAL AUTHORITY AS WELL AS TRIBUNAL THAT THE GOODS IN QUESTION WERE SOLD BY THE PETITIONER FROM ITS CHANDIGARH OFFICE TO THE BUYERS LOCATED IN THE STATES OUTSIDE THE STATE OF PUNJAB - MATTER REMANDED BACK TO THE REVISIONAL AUTHORITY FOR RECORDING FINDING AS REGARDS THE BUYERS OF DEPB SOLD BY THE PETITIONER FROM ITS CHANDIGARH OFFICE AND THEREAFTER EXAMINE CONSEQUENCES THEREOF – CASE REMANDED. - *SECTION 21(1) OF PGST ACT, 1948*

The petitioner having its Registered Office at Chandigarh is running a factory in Derabassi in Punjab State. For the Assessment year 2002-03, the assessment was framed and the amount of tax calculated was adjusted from the exemption limit as the assessee was an exempted unit. The petitioner received DEPB which is a tradable commodity at Chandigarh office and sold it to the buyers located at Calcutta and Delhi. Even the payment was received at Chandigarh and the goods never entered State of Punjab. Revisional Authority took up the matter in suo motu revision and levied the tax. The order was upheld by the Tribunal. On revision before the High Court, Held:

The specific finding was required to be recorded by the Revisional authority as well as by the Tribunal regarding sale of goods in question by petitioner from its Chandigarh office to the buyers located in the States outside the State of Punjab. It is relevant for assumption of jurisdiction to assess the transactions under the Act as no notice has been issued to revise the order under the CST Act 1956. Accordingly, the impugned orders are set aside and the matter is remitted back to the Revisional authority for recording findings as regards the buyers of the DEPB sold by the petitioner from its Chandigarh office and thereafter examine the consequences thereof. Revisional petition disposed of.

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.
Mr. Jagmohan Bansal, Additional Advocate General, Punjab

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RAJESH BINDAL, J.

1. The assessee has filed the present petition raising the following substantial questions of law arising out of the order dated 5.3.2009 passed by the VAT Tribunal, Punjab (for short, the Tribunal') in Revision No. 1 & 2 of 2008-09:-

> *"(i) Whether the Ld. Tribunal has erred in law in declaring the sale of DEPB licenses, made by Chandigarh Head Office of Petitioner outside the Punjab State, as sales made in Punjab State merely because the DEPB licences were received on account of sale proceeds made for the goods manufactured in Punjab State?*
>
> *If the answer to the said Question is in negative:*
>
> *(ii) Whether such proceeds of sales on account of DEPB licences, earned on account of sales of cotton yarn exported outside India, is to be set off, from the exemption limit, given in Exemption Certificate issued under the PGST (D&E) Rules, 1991?*
>
> *(iii) Whether on the facts and circumstances of the case, it was a case of mere escaped turnover and on that basis pointed out by the Audit, no Revisional proceedings could have been initiated?*
>
> *(iv) Whether the Revisional proceedings initiated after the expiry of three years from the last date of filing of the return as provided in Section 11(3) of the PGST Act 1948 are liable to be declared void being without jurisdiction?"*

2. Learned counsel for the petitioner submitted that the petitioner is a company having its registered office at Chandigarh and its factory at Dera Bassi (Punjab). The assessment of the petitioner-company for the year 2002¬03 was framed by the assessing authority vide assessment order dated 28.9.2004. Whatever amount of tax was assessed, the same was adjusted against the limit, for which the petitioner had been granted exemption from payment of tax. During the year in question, the petitioner had received DEPB, which is a tradable commodity on 16.8.2001 at Chandigarh office. The petitioner-company even received import/export licence at the Chandigarh address of the petitioner-company. The DEPB, which is a tradable commodity was sold by the petitioner from its Chandigarh office to the buyers located at Calcutta and Delhi and even the payment was also received at Chandigarh. The goods never entered in the State of Punjab. Despite the fact that the authorities under the Punjab General Sales Tax Act, 1948 (for short, 'the Act'), had no jurisdiction to assess the transaction of sale of DEPB from Chandigarh office of the petitioner-company to the buyers located in different States, not in Punjab, suo moto notice under Section 21 of the Act was issued on 8.1.2008 seeking to reassess the tax on the same under the Act. It was duly replied to by the petitioner raising the issue of jurisdiction of the Commissioner to bring the transaction to tax, inter alia, on the ground that the goods were not taxable under the provisions of the Act and secondly, the transaction was in the course of inter-state trade from Chandigarh. Despite these facts the revisional authority ignoring the provisions of the Act as well as the settled principles of law, levied the tax. The order was upheld by the Tribunal in revision filed by the petitioner.

3. The submission of learned counsel for the petitioner was that in view of Section 29 of the Act, the State had jurisdiction to levy tax only on the sale or purchase of goods, which takes place within the State of Punjab. The situs of sale in the case in hand being from Chandigarh to the States situated outside the State of Punjab, the transaction was not liable to tax, especially treating it to be local sale within the State of Punjab, whereas the material on record clearly suggested that it was a transaction in the course of inter-state trade, as all the buyers were located in different States outside the State of Punjab. He further submitted that despite the contention regarding the transaction being in the course of inter-state trade from Chandigarh and the buyers being outside the State of Punjab, neither the revisional authority nor the Tribunal has considered this aspect. No notice under the Central Sales Tax Act, 1956 had been issued.

4. On the other hand, learned counsel for the State submitted that transaction had rightly been taxed, as admittedly DEPB is a tradable commodity leviable to tax. The petitioner-company merely had its registered office at Chandigarh, DEPB and the import licence, which were sold by it, were received as a result of goods manufactured and exported from the facility available in the State of Punjab. The petitioner is not a registered dealer at Chandigarh and it had not paid any tax on the transaction anywhere. However, he did not dispute the fact that the aspect as to whether the goods were sold to the buyers located outside the State of Punjab has not been examined by any of the authority and further that the notice for revision was issued under the provisions of the Act only.

5. After hearing learned counsel for the parties, we are of the view that the specific finding was required to be recorded by the revisional authority as well as the Tribunal on the issue raised by the petitioner that the goods in question were sold by the petitioner from its Chandigarh office to the buyers located in the States outside State of Punjab. It is relevant for the purpose as to whether the Commissioner could get jurisdiction to assess the transaction under the Act. It is not in dispute that no notice had been issued to the petitioner for seeking to revise the order under the Central Sales Tax Act, 1956.

6. Considering the aforesaid aspects, the impugned orders passed by the authorities are set aside. The matter is remitted back to the revisional authority for recording finding as regards the buyers of the DEPB sold by the petitioner from its Chandigarh office and thereafter examine the consequence thereof. The revisional authority shall issue notice to the petitioner for appearance in the month of October, 2016.

7. The revision is disposed of accordingly.

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SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CWP NO. 14861 OF 2016

HANS RAJ AND SONS
Vs
STATE OF PUNJAB AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

26th August, 2016

HF ▶ Assessee

Provisional Assessment framed after expiry of six months is barred by limitation and thus, quashed.

PROVISIONAL ASSESSMENT – LIMITATION – INSPECTION MADE ON 12.10.2015 IN THE PREMISES OF PETITIONER – NOTICE POINTING OUT DISCREPANCIES ISSUED ON 27.11.2015 – PROVISIONAL ASSESSMENT FRAMED ON 30.5.2016 - ASSESSMENT COULD BE FRAMED WITHIN A PERIOD OF SIX MONTHS FROM THE DATE OF DETECTION – SIX MONTHS EXPIRED EVEN IF PERIOD IS TAKEN FROM THE DATE OF NOTICE ON 27.5.2016 – PROVISIONAL ORDER OF ASSESSMENT BEYOND THE PERIOD OF SIX MONTHS – ORDER DESERVES TO BE QUASHED – DEPARTMENT PERMITTED TO FRAME THE REGULAR ASSESSMENT - *SECTION 30 OF THE PUNJAB VAT ACT 2005*

The business premises of the petitioner was inspected by the officials of Excise and Taxation Department on 12.10.2015. A Notice pointing out the discrepancies in books of accounts of petitioner was issued on 27.11.2015. The provisional assessment could be framed within six months from the date of detection. However the assessment is framed on 30.5.2016. On writ petition before the High Court, held:

Period of six months would expire on 27.5.2016 even if the six months are considered from the date of issuance of notice. Hence it is beyond the period of six months as provided under section 30. No extension was either sought or granted by the Commissioner for framing provisional assessment. Since the order is barred by limitation, the same deserves to be quashed. Quashing of an order, however, will not affect the regular assessment proceedings of the petitioner by considering the same material. The petition stands disposed of.

Present: Mr. Sandeep Goyal, Advocate for the petitioner.
Mr. Jagmohan Bansal, Addl. A.G., Punjab

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RAJESH BINDAL, J.

1. The petitioner has approached this Court praying for quashing the provisional assessment order dated 30.05.2016 passed by the Excise and Taxation Officer-Cum-Designated Officer, Barnala(Annexure P-11) against the petitioner.

2. Learned counsel for the petitioner submitted that in terms of the provisions of Section 30 of the Punjab Value Added Tax Act, 2005 (in short 'the Act'), provisional assessment could be framed within a period of 6 months from the date of detection of evasion of tax. The submission is that the inspection of the premises of the petitioner was carried out on 12.10.2015. The notice pointing out the discrepancies in the books of accounts of the petitioner was issued on 27.11.2015. The provisional assessment could finally be framed within a period of six months therefrom even if that date is taken as the date on which the department, found out that there was evasion of tax by the petitioner.

3. On the other hand, learned State counsel submitted that no doubt notices were initially issued to the petitioner, however, the petitioner continued delaying the proceedings and final notice was issued on 18.04.2016. The order of assessment passed was within six months therefrom, hence, not beyond limitation.

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

5. The fact that the business premises of the petitioner was inspected on 12.10.2015, is not in dispute. Though the petitioner claimed that it received notice on 27.11.2015 (Annexure P-3) under Section 30 of the Act proposing to frame provisional assessment however in reply to the petition, the stand of the respondents is that firstly the petitioner was directed to appear on 15.10.2015. When the petitioner did not appear till 18.10.2015, fresh notice was issued for 26.10.2015 and the case was adjourned thereafter on a number of occasions, before notice was issued on 27.11.2015 for 07.12.2015. The provisional order of assessment was passed on 30.05.2016.

Section 30 of the Act reads as under:-

> *"30 Provisional Assessment - (1) Notwithstanding anything contained in section 29, where fraud or willful neglect has been committed with a view to evade or avoid the payment of tax or due tax has not been paid or a return has not been filed by or on behalf of a person, the designated officer may, for the reasons to be recorded in writing, make provisional assessment for any period to determine the tax liability so evaded, avoided or unpaid:*
>
> > *Provided that tax liability of such a person shall be assessed finally after he files his return in the prescribed manner.*
>
> *(2) The provisional assessment under sub-section (1) shall be made within a period of six months from the date of detection. The Commissioner may, however, for reasons to be recorded in writing, extend the period by another six months in a particular case referred to him by the designated officer."*

6. A perusal of the aforesaid provision shows that the Designated Officer has been empowered to make provisional assessment of a dealer, for the reasons to be recorded in writing, where, he inter-alia finds that there is an intention to evade tax. The provisional assessment is to be framed within a period of six months from the date of detection. The Commissioner may, for the reasons to be recorded in writing, extend the said period by another six months in a particular case, referred to him by the designated officer.

7. After the inspection of the business premises of the petitioner on 12.10.2015, show cause notice dated 27.11.2015 was issued to the petitioner for appearance on 7.12.2015. It has been mentioned that certain discrepancies have been found in the books of accounts of the petitioner, which were seized at the time of inspection and subsequently produced by the petitioner before 27.11.2015, after the inspection was carried out. The notice reads as under:-

> *"Regarding the aforesaid subject you are being informed that your firm was inspected on 12.10.2015. The firm submitted its trading account till 30.09.2015 in which the closing stock was of Rs.1,01,29,529/-. The stock which was given by the firm and on the basis of rate, the stock which was found in the shop valuing Rs.27,33,805/-. There is a difference of Rs.73,95,724/-. During the inspection of purchases it has been found that the firm has made certain local purchases. To verify the same, your case has been fixed for 07.12.2015 in order to frame provisional assessment u/s 30 of the Punjab VAT Act, 2005 for the period from 01.04.2015 to 30.09.2015. You are hereby being directed to appear before the undersigned on 07.12.2015 with all the account books sale and purchase vouchers in Room No. 44, 2nd Floor, Mini Secretariat, Barnala at 11 A.M.*
>
> *It is pertinent to mention here that in case of non appearance on the aforesaid date and time your case would be decided ex-parte and you would be subjected to penalty amounting to Rs.10,000 u/s 60 of Punjab VAT Act, 2005."*

8. A perusal of the aforesaid notice shows that the alleged evasion of tax was referred to by the Designated Officer while issuing notice on 27.11.2015. In terms of the provisions of Section 30(2) of the Act, the provisional assessment could be framed within a period of six months from the date of detection. If the period is taken from the date of notice, six months period expired on 27.05.2016. However, the provisional order of assessment was passed on 30.05.2016, beyond the period of six months. It is not the case of the department that any extension was either sought by the Designated Officer or granted by the Commissioner for framing the provisional assessment.

9. Considering the fact that the provisional assessment has been framed after a period of six months from the date, evasion was allegedly detected, the order deserves to be quashed.

10. Ordered accordingly.

11. However, quashing of the order in question will not affect the regular assessment proceedings of the petitioner, may be considering the same material.

12. The petition stands disposed of.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 17108 of 2016

SADBHAV ENGINEERING LTD.
Vs
STATE OF HARYANA AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

26th August, 2016

HF ▶ Assessee

Stay on encashment of Bank Guarantee during the pendency of appeal before the 1st appellate authority as interest of Revenue are secured.

APPEAL - SECURITY FURNISHED – ATTACHMENT OF BANK ACCOUNT – APPEAL PENDING BEFORE THE 1ST APPELLATE AUTHORITY – INTEREST OF THE REVENUE SECURED – WRIT PETITION – STATE ASSURED THAT BANK GUARANTEE FURNISHED BY THE PETITIONER DURING PENDENCY OF APPEAL SHALL NOT BE ENCASHED – DIRECTIONS WOULD BE ISSUED TO THE BANK FOR RELEASE OF ATTACHMENT OF BANK ACCOUNT OF THE PETITIONER – WRIT PETITION DISPOSED OF – *SECTION 33 OF HVAT ACT, 2003.*

Petitioner approached the High Court with a prayer that during the pendency of its appeal before the 1st appellate authority against the order of assessment, the Bank guarantee, furnished in terms of demand raised, should not be encashed. It was further prayed that respondents be directed to release the Bank Account which has been attached vide communication dated 23.7.2016 as interest of the Department is secured. State, on instructions from the ETO, stated that during the pendency of appeal, Bank Guarantee would not be encashed. Further directions would be given to the Bank for release of attachment of Bank Account of the petitioner Writ petition disposed of in terms of stand taken by the State Counsel.

Present: Mr. Avneesh Jhingan, Advocate for the petitioner.
Mr. Ankur Mittal, Addl. AG Haryana.

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RAJESH BINDAL, J.

1. The only prayer made by the petitioner is that during the pendency of the appeal filed by it before the Haryana Tax Tribunal (for short 'the Tribunal') against the order of revisional authority, the Bank guarantee furnished, in terms of the demand raised, should not be encashed.

2. Learned counsel for the petitioner submitted that the respondents be directed to release the bank account, which was attached vide communication dated 25.07.2016, as the interest of the department is secured.

3. Learned counsel for the State on instructions from Dr. V.K.Shastri, ETO, Sirsa, who appeared in Court on 24.08.2016 in another CWP No. 17140 of 2016, filed by the petitioner, stated that during the pendency of the appeal before the Tribunal, the bank guarantee furnished by the petitioner shall not be encashed. He further submitted that the necessary direction shall be issued to the bank releasing the attachment of the bank account of the petitioner.

4. In view of the fair stand taken by learned counsel for the State, the present petition is disposed of accordingly.

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SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CUSAP NO. 13 OF 2014

PEE JAY INTERNATIONAL
Vs
COMMISSIONER OF CUSTOMS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

7th September, 2016

HF ▶ Assessee

Assessee is entitled to the benefits of DEPB purchased from exparte by it even if such DEPB has been procured by exported on the basis of forged documents.

CUSTOMS ACT – PURCHASE OF DEPB – USE FOR DISCHARGE OF DUTY BY THE APPELLANT BEING IMPORTER – SUBSEQUENTLY DEPB FOUND TO HAVE BEEN OBTAINED ON THE BASIS OF FORGED DOCUMENTS – BENEFIT CANNOT BE DENIED TO THE PURCHASER OF DEPB UNLESS HE IS PARTY TO THE FRAUD COMMITTED BY EXPORTER – APPEAL ALLOWED – ORDERS SET ASIDE.

Assessee purchased one DEPB licence from M/s Beni Exports, Jalandhar which was utilised for discharging duty liability of goods imported by the appellant. Department, on finding that DEPB obtained by M/s Beni Exports, Jalandhar which was purchased by the appellant, was obtained by use of certain forged documents, cancelled the same. Duty was demanded from the appellant-assessee on the ground that DEPB had been cancelled. The said demand was affirmed by the Tribunal. On appeal before the High Court, held:

There is specific finding recorded by 1st appellate authority and the Tribunal that appellant was not party to the fraud with the seller of DEPB. DEPB was found to be a genuine document though obtained by the seller on the basis of forged documents to which the appellant was not a party. Following the judgment of Punjab and Haryana High Court in the case of Vallabh Design Products, 219 ELT 73 (P&H), Commissioner of Customs vs Leader Valves, 208 ELT 349 (P&H), Commissioner of Customs Amritsar v Fertichem India, (Customs Appeal No. 23 of 2006); Commissioner of Customs Amritsar vs Dee Bee Marketing Pvt. Ltd.,(Customs Appeal No. 4 of 2009) and M/s Gheru Lal Bal Chand vs State of Haryana and another, 2011(4) PLR 440, it is held that since the appellant is not party to the fraud committed by the exporter, the benefit of DEPB Scrip cannot be denied to it which was a valid document at the time of its purchase. The appeal is allowed and the orders passed by lower authorities are set aside.

Cases referred:

- *Commissioner of Customs (Imports), Bombay v. Hico Enterprises, 2008 (228) ELT 161 (SC)*
- *Commissioner of Customs, Amritsar v. Vallabh Design Products, 2007 (219) ELT 73 (P&H)*
- *Commissioner of Customs v. Leader Valves Ltd., 2007 (218) ELT 349 (P&H)*
- *Commissioner of Customs, Amritsar v. Fertichem India, CUSAP No. 23 of 2006, decided on 27.1.2009*

- *Commissioner of Customs (Preventive) Amritsar v.Deebee Marketing Pvt. Ltd., CUSAP No. 4 of 2009, decided on 21.4.2009*
- *Gheru Lal Bal Chand v. State of Haryana and another, 2011(4) PLR 440*
- *Bench of the Tribunal in Binani Cement Ltd. v. Commissioner of Customs, Kandla, 2010 (259) ELT 247 (Tri.-Ahmd.)*
- *Division Bench judgment of this Court in Friends Trading Co. v. Union of India, 2011 (267) ELT 33 (P&H)*
- *Munjal Showa Limited v. Commissioner of Customs and Central Excise (Delhi (IV) Faridabad, 2009 (246) ELT 18 (P&H)*
- *Commissioner of Customs (Preventive) v. Aafloat Textiles India Private Limited and others, (2009) 11 SCC 18*

Present: Mr. Jagmohan Bansal, Advocate for the appellant.
Mr. Sharan Sethi, Advocate for the respondent in CUSAP No. 13 of 2014 and
Mr. Amit Goyal, Advocate for the respondent in CUSAP No. 14 of 2014.

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RAJESH BINDAL, J.

1. This order will dispose of two appeals bearing CUSAP Nos. 13 and 14 of 2014, as common questions of law and facts are involved.

2. However, the facts have been extracted from CUSAP No. 13 of 2014.

3. The assessee is in appeal against the order dated 21.10.2013 passed in Appeal No. 619 of 2006-Cus., by Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal') raising the following substantial questions of law:

> *"(a) Whether duty can be demanded from an importer who is not a party to fraud committed by an exporter?*
>
> *(b) Whether demand against the appellant is sustainable when demand against identically situated persons has already been dropped?*
>
> *(c) Whether extended period of limitation can be invoked, in view of various judgments of this Hon'ble Court?*
>
> *(d) Whether impugned order is perverse and contrary to record ?"*

4. Learned counsel for the appellant submitted that the appellant purchased one DEPB scrip No. 3010006203 dated 10.10.2000 from M/s Beni Exports, Jalandhar. The same was utilised for discharging duty liability on goods imported by the appellant vide Bills of Entry dated 12.10.2000 and 19.10.2000. The department finding that DEPB obtained by M/s Beni Exports, Jalandhar, which was purchased by the appellant, was obtained by using certain forged documents, cancelled the same. Thereafter, show cause notice was issued to the appellant proposing to recover the benefit of duty payment availed of by the appellant on the basis of that DEPB. The contention of the appellant is that when DEPB was purchased by it and the date on which it was utilised for payment of duty, it was a valid scrip, hence, the appellant cannot be made liable for any action. The department may take action against the person, who got DEPB issued by submitting forged documents. The adjudicating authority confirmed the demand. The order was upheld in appeal by the first appellate authority as well as the Tribunal.

5. While referring to the order passed by the first appellate authority, learned counsel for the appellant submitted that a specific finding has been recorded that there was no material on record to show that the appellant abetted or connived with exporter to fraudulently obtain DEPB scrip. The appellant had purchased freely transferable DEPB scrip in bonafide manner. The Tribunal also recorded a finding that there are no allegations of misrepresentation or fraud,

collusion or suppression of facts on the part of the appellant/importer. He further submitted that on the basis of the aforesaid finding recorded in favour of the appellant, penalty was set aside. In case, the appellant had been afforded opportunity of hearing before cancellation of DEPB granted to the person, from whom he had purchased, the appellant could have raised legal issues to defend the case as ultimately on account of cancellation of DEPB, which was issued to a third party, from whom the appellant had purchased the same, the appellant cannot be made to suffer. It was a bonafide purchase for consideration. Relying upon the judgment of Hon'ble the Supreme Court in ***Commissioner of Customs (Imports), Bombay v. Hico Enterprises, 2008 (228) ELT 161 (SC)***, this court in ***Commissioner of Customs, Amritsar v. Vallabh Design Products, 2007 (219) ELT 73 (P&H)***; ***Commissioner of Customs v. Leader Valves Ltd., 2007 (218) ELT 349 (P&H)***, ***CUSAP No. 23 of 2006—Commissioner of Customs, Amritsar v. Fertichem India, decided on 27.1.2009***; ***CUSAP No. 4 of 2009—Commissioner of Customs (Preventive) Amritsar v. M/s Deebee Marketing Pvt. Ltd., decided on 21.4.2009*** and ***M/s Gheru Lal Bal Chand v. State of Haryana and another, 2011(4) PLR 440***, it was submitted that in case the benefit under DEPB purchased by a person for consideration had been utilised before it was cancelled, the importer cannot be made liable for any action. Action can be taken against the person who committed fraud. He further submitted that in the case of the appellant, DEPB itself was not a forged document. He further submitted that even the larger ***Bench of the Tribunal in Binani Cement Ltd. v. Commissioner of Customs, Kandla, 2010 (259) ELT 247 (Tri.-Ahmd.)*** held the same opinion.

6. On the other hand, learned counsel for the respondent, while referring to a ***Division Bench judgment of this Court in Friends Trading Co. v. Union of India, 2011 (267) ELT 33 (P&H)*** (hereinafter referred to as ***Friends Trading Co.'s*** case 1 (supra), submitted that all the issues sought to be raised by the appellant were considered therein and it was opined that buyer of DEPB from the person who had obtained the same by submitting forged documents, is also liable. Earlier order passed by this court in ***Munjal Showa Limited v. Commissioner of Customs and Central Excise (Delhi (IV) Faridabad, 2009 (246) ELT 18 (P&H)*** was referred to, where on the principle of "buyer be ware", purchaser of DEPB was held liable as it was his duty to ascertain whether the scrip being purchased by it was forged or not. In the case in hand, the appellant as well could have made enquiry from the department. There is nothing on record to suggest that the appellant ever made any enquiry. The order passed by the Tribunal does not call for any interference. No substantial question of law arises.

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

8. The facts, which are not in dispute are that the appellant purchased DEPB Scrip No. 3010006203 dated 10.10.2000 from M/s Beni Exports, Jalandhar. It was utilised to discharge duty liability on the goods imported by the appellant vide Bill of Entries dated 12.10.2000 and 19.10.2000. More than one year thereafter, Director General of Foreign Trade cancelled DEPB issued to M/s Beni Exports, Jalandhar vide order dated 24.10.2001. As a result thereof, the appellant was issued show cause notice dated 14.11.2002 for withdrawing the benefits already availed of on the basis of DEPB purchased by the appellant. After considering the reply filed by the appellant, the adjudicating authority vide order dated 24.5.2005 confirmed demand of the customs duty and the special additional duty, benefit of which was availed of by the appellant on the basis of DEPB purchased by it from M/s Beni Exports, Jalandhar. In addition, it was held that the goods imported by the appellant were liable for confiscation, however, as the goods were not available, having already been cleared for home consumption, redemption fine of Rs. 1,00,000/- was imposed in lieu of confiscation. Personal penalty on the appellant was also imposed. In appeal filed by the appellant against the aforesaid order before the Commissioner (Appeals), the demand of duty was confirmed, however, penalty was set aside. The Commissioner (Appeals), while setting aside the penalty, recorded the following findings:

> *"As regards to imposition of penalty of Rs. 4,85,453/- and Rs. 30,000/- on the appellant No. 1 and 2 under Section 114A and Section 112 of the Act respectively, I find that there is nothing on record to prove in any way that they have abetted or connived with the exporters to fraudulent obtain the DEPB scrips. However, it is on record that the appellants had purchased the freely transferable DEPB scrips in the bona fide manner and utilised the same towards exemption of duty."*

9. The appellant filed further appeal before the Tribunal. Even the revenue also preferred appeal against the order passed by the Commissioner (Appeals). One Member of the Tribunal opined that the appeals were liable to be dismissed applying the principle of "buyer be ware". However, another Member opined that the appeal filed by the assessee was required to be allowed, whereas the revenue's appeal was meritless. The matter was referred to be considered by third Member on difference of opinion. After the matter was considered by third Member, the appeal filed by the appellant as well as the department were rejected. The department was raising the issue regarding levy of penalty, whereas the appellant was concerned about the demand of duty, as penalty had been set aside.

10. In ***Vallabh Design Products'*** case, (supra), this court dismissed the appeal filed by the revenue involving identical issue finding that the importer therein was not a party to the fraud and there was categoric finding that he had purchased DEPB from the open market in bonafide belief of its being genuine. Reliance was placed upon an earlier judgment of this Court in Leader Valves Ltd.'s case (supra). There also, similar findings were recorded.

11. The same view was later followed in Fertichem India and ***M/s Deebee Marketing Pvt. Ltd.'s*** cases (supra).

12. The judgment of this Court in ***Munjal Showa Limited's case*** (supra) is distinguishable on facts as in that case, transfer release advices issued against DEPB scrip were forged and even DEPBs were also forged. There was no finding recorded by the Tribunal or the authorities in that case that the assessee acted bonafide. The earlier judgments of this court in ***Vallabh Design Products*** and ***Leader Valves Ltd.'s*** cases (supra) were distinguished while recording that the importer in those cases had acted bonafide. Paragraph 15 thereof is extracted below:

> *"15. We may also make a brief reference to the judgments of this court in **Vallabh Design Products** (supra) and **Leader Valves Ltd.** (supra), wherein a finding was clearly recorded that the importer had acted bona fide which finding was affirmed."*

13. In ***Friends Trading Co.'s*** case 1 (supra), the assessee's appeal was dismissed while relying upon the earlier judgment of this court in ***Munjal Showa Limited's*** case (supra) specifically noticing that the Tribunal in that case had recorded a finding that bonafides had not been established by the assessee, hence, the assessee was not entitled to place reliance upon the judgment of this court in ***Leader Valves Ltd.'s*** case (supra). In ***Friends Trading Co. v. Union of India, 2010 (254) ELT 652 (P&H)***, the earlier judgment in Munjal Showa Limited's case (supra) was followed.

14. In ***Commissioner of Customs (Preventive) v. Aafloat Textiles India Private Limited and others, (2009) 11 SCC 18*** as well, it was found that special import licences on the basis of which the buyer had claimed the benefit were, in fact, forged documents. It was under these circumstances, the maxim "caveat emptor" was applied. In cases, where scrip itself is forged, the fact could be found out in case the buyer seeks to verify this from the office issuing the scrip. However, it is not possible in a case where the scrip is genuine, but for the purpose of issuance thereof, the party concerned may have used some forged documents.

15. A similar issue was considered by a Division Bench of this Court in ***M/s Gheru Lal Bal Chand's c***ase (supra). It was a case, where under Haryana Value Added Tax Act, 2003, a purchasing dealer is entitled to get input tax credit on production of a statutory form. The claim was sought to be denied by the department while holding that the statement made in the form was not correct as the selling dealer had not paid the tax, for which the certificate was issued. This court opined that liability can be fastened on a person, who either acts fraudulently or is a party to the collusion or connivance with the offender. Genuineness of the certificate can be examined by the authority. In case of falsity, action should be taken against the selling dealers, except in the case of plea of fraud, collusion or connivance between the parties. Relevant paras thereof are extracted below:

> *"25. In legal jurisprudence, the liability can be fastened on a person who either acts fraudulently or has been a party to the collusion or connivance with the offender. However, law nowhere envisages to impose any penalty either directly or vicariously where a person is not connected with any such event or an act. Law cannot envisage an almost impossible eventuality. The onus upon the assessee gets discharged on production of Form VAT C-4 which is required to be genuine and not thereafter to substantiate its truthfulness by running from pillar to post to collect the material for its authenticity. In the absence of any malafide intention, connivance or wrongful association of the assessee with the selling dealer or any dealer earlier thereto, no liability can be imposed on the principle of vicarious liability. Law cannot put such onerous responsibility on the assessee otherwise, it would be difficult to hold the law to be valid on the touchstone of articles 14 and 19 of the Constitution of India.*
>
> *26. The rule of interpretation requires that such meaning should be assigned to the provision which would make the provision of the Act effective and advance the purpose of the Act. This should be done wherever possible without doing any violence to the language of the provision. A statute has to be read in such a manner so as to do justice to the parties. If it is held that the person who does not deposit or is required to deposit the tax would be put in an advantageous position and whereas the person who has paid the tax would be worse, the interpretation would give result to an absurdity. Such a construction has to be avoided.*
>
> *27. In other words, the genuineness of the certificate and declaration may be examined by the taxing authority, but onus cannot be put on the assessee to establish the correctness or the truthfulness of the statements recorded therein. The authorities can examine whether the Form VAT C-4 was bogus and was procured by the dealer in collusion with the selling dealer. The department is required to allow the claim once proper declaration is furnished and in the event of its falsity, the department can proceed against the defaulter when the genuineness of the declaration is not in question. However, an exception is carved out in the event where fraud, collusion or connivance is established between the registered purchasing dealer or the immediate preceding selling registered dealer or any of the predecessors selling registered dealer, the benefit contained in Form VAT C-4 would not be available to the registered purchasing dealer. The aforesaid interpretation would result in achieving the purpose of the rule which is to make the object of the provisions of the Act workable, i.e., realization of tax by the revenue by legitimate methods."*

16. In the case in hand, as has already been noticed above, there is a specific finding recorded by the first appellate authority and even by the Tribunal that the appellant was not

party to the fraud with the seller of DEPB. DEPB was found to be a genuine document, though obtained by seller by producing some forged documents, to which the appellant was not a party.

17. In view of our aforesaid discussion, we find merit in the present appeals. The same are allowed. First substantial question, as referred to in para No. 3 is answered in favour of the assessee and against the revenue and as a consequence, there is no requirement to deal with other questions.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 17834 OF 2016

NUCHEM OILS PVT. LTD.
Vs
STATE OF HARYANA AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

31st August, 2016

HF ▶ Assessee

No recovery can be effected during the pendency of appeal before the Tribunal as no Tribunal is functioning.

APPEAL – TRIBUNAL – NO PRESIDING OFFICER IN TRIBUNAL – APPLICATION FOR STAY FILED – NOT ADJUDICATED – RECOVERY BEING SOUGHT TO BE MADE – CONCESSION GRANTED BY EXCISE AND TAXATION COMMISSIONER THAT NO RECOVERY WOULD BE MADE ON FURNISHING OF SURETY BOND IN TERMS OF SECTION 33(5) OF THE ACT – WRIT DISPOSED OF – NO RECOVERY TO BE MADE FOR THE DEMAND IMPUGNED BEFORE THE TRIBUNAL ON FURNISHING OF SURETY BOND - *SECTION 33OF HVAT ACT, 2003*

Petitioner had approached the High Court to seek stay of recovery as neither the appeal nor stay application filed before the Tribunal was taken up for hearing for the reason that no Presiding Officer has been appointed in the Tribunal. Ld. State counsel on instructions from the Excise and Taxation commissioner agreed that in case the petitioner complies with the requirements of Section 33(5) regarding furnishing of Surety Bond, then no steps shall be taken for recovery of demand impugned before the Tribunal. In the stand taken by Ld. Counsel for the State, no steps be taken for recovery of the demand impugned before the Tribunal in case the petitioner furnishes Surety Bond in terms of the provisions of Section 33(5).

Case referred:

- *Amar Nath Aggarwal Investments (P) Ltd. Vs. State of Haryana and others, C.W.P. No. 25336 of 2015*

Present: Mr. Sandeep Goyal, Advocate for the petitioner.
Mr. Ankur Mittal, Addl. AG Haryana.

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RAJESH BINDAL, J.

1. The only grievance of the petitioner is that though he had filed statutory appeal before Haryana Tax Tribunal (for short, 'the Tribunal'), however, neither the appeal nor stay application filed along with that appeal is being taken up for hearing for the reason that there is no Presiding Officer appointed in the Tribunal.

2. Learned counsel for the State on instructions from Shyamal Mishra, IAS, Excise and Taxtation Commissioner, Haryana, submitted that in case the petitioner complies with the conditions laid down in Section 33 (5) of the Haryana Value Added Tax, 2003 (hereinafter referred to as "the Act"), regarding furnishing of surety bonds pertaining to the disputed demand, no steps shall be taken for recovery of the demand impugned before the Tribunal. He further referred to the earlier order dated 02.02.2016 passed by this Court in C.W.P. No. 25336 of 2015 titled as ***M/s Amar Nath Aggarwal Investments (P) Ltd. Vs. State of Haryana and others***, under similar situation.

3. Learned counsel for the petitioner submitted that the petitioner has already furnished surety bonds.

4. After hearing learned counsel for the parties, the present petition is disposed of in terms of the stand taken by learned counsel for the State that no steps shall be taken for recovery of the demand impugned before the Tribunal, in case the petitioner furnishes surety bonds in terms of provisions of Section 33 (5) of the Act.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 48 OF 2013

JASCH PLASTICS INDIA LTD.
Vs
STATE OF HARYANA

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

7th September, 2016

HF ▶ Assessee

Rexene Cloth – are covered under Entry 51 and Entry 54 of Schedule B of Haryana VAT Act and hence tax-free.

ENTRIES IN SCHEDULE – CLASSIFICATION OF GOODS - LEATHER CLOTH/COATED FABRIC/TEXTILE FABRIC – ENTRY 51 OF SCHEDULE B – ENTRY 54 OF SCHEDULE B OF HARYANA VAT ACT – ITEM MANUFACTURED BY ASSESSEE IS TEXTILE AND HENCE COVERED BY ENTRY 51 OF SCHEDULE-B – EVEN UNDER ENTRY 54, THE CONDITION OF PAYMENT OF ADDITIONAL EXCISE DUTY IN LIEU OF SALES TAX IS NOT APPLICABLE ON THE ITEM MANUFACTURED BY ASSESSEE - BENEFIT AVAILABLE TO THE ASSESSEE UNDER THAT ENTRY AS WELL – ITEM HELD TAX-FREE BEING COVERED UNDER SCHEDULE-B AND NOT TAXABLE - *ENTRY 51 AND 54 OF SCHEDULE-B OF HARYANA VAT ACT, 2003*

The appellant is a manufacturer of leather cloth/coated fabric/textile fabric, which is also known as Rexene cloth. The appellant sought clarification from the Financial Commissioner and Principal Secretary to the govt. Under Section 56(3) of Haryana VAT Act on the issue as to whether the product being manufactured by the appellant is covered under Entry 51 of Schedule-B of the Act and hence tax-free. The Financial Commissioner opined that the product being manufactured by the appellant falls in Entry 54 and not in Entry 51 of Schedule-B of the Act and hence liable for tax. The appeal was filed before the Tribunal which was dismissed by majority of 3:2. On appeal before the High Court, held:

The product being manufactured by the appellant, viz. Coated fabric, which is also known as leather cloth (Rexene falls in the term 'textile') and is therefore covered by Entry 51 of Schedule-B. The colon used in Entry 54 of Schedule B severes the two parts of Entry and the later part is not applicable to the first part. Accordingly, the condition of the payment of additional excise duty is not applicable on the Rexene cloth being manufactured by the appellant and therefore it is very much covered under Entry 54 also and there is no condition of levy of additional excise duty in lieu of sales tax thereon.

Resultantly, it is held that the item in question is a textile and covered under Entries 51 and 54 and therefore no tax is payable on this item under the Haryana VAT Act 2003.

Cases referred:

- *Porritts & Spencer (Asia) Ltd. v. State of Haryana, 1978 (42) STC 433*
- *Commissioner, Sales Tax, U. P. , Lucknow v. Laxmi Leather Cloth Industries Pvt. Ltd., 2008 (11) VST 79*

- *Commissioner of Sales Tax v. Ashok Elastic Works, (1971) 28 STC 743 (All)*
- *Delhi Cloth & General Mills Co. Ltd. v. State of Rajasthan and others, (1980) 6 ELT 383 (SC)*
- *Filterco and another v. Commissioner of Sales Tax, Madhya Pradesh and another, 1986(24) ELT 180*
- *Dr. M. K. Salpekar v. Sunil Kumar Shamsunder Chaudhari and others, AIR 1988 SC 1841*
- *Telecom District Engineer and another v. Pramesh Agrawal and another, 1997(1) MPLJ 173*
- *Rajinder Singh etc. v. Kultar Singh and others, AIR 1980 P&H 1*
- *Vishal Surgical Equipment Co. v. The Drug Controller General of India and another, 184(2011) DLT 343*
- *Collector of Central Excise, Baroda v. Indian Petro Chemicals, 1997(92) ELT 13 (SC)*
- *H.C.L, Limited v. Collector of Customs, New Delhi, 2001(130) ELT 405 (SC)*
- *Share Medical Care v. Union of India, 2007 (209) ELT 321 (SC)*
- *Sidhart Overseas, Panipat v. State of Haryana. (2010) 35 PHT 512*
- *Excise and Taxation Commissioner, Haryana v. Orient Electrical Insulation Private Ltd., (2006) 145 STC 471*
- *State of Maharashtra v. Bradma of India Ltd., (2005) 2 SCC 669;*
- *Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited, (2009) 12 SCC 419*
- *Commercial Taxes Officer v. Jalani Enterprises, (2011) 4 SCC 386*
- *Shamrao V. Parulekar and others v. District Magistrate, Thana, Bombay and others, AIR 1952 SC 324*
- *Saraswathi Chemicals, Vijayawada v. State of A.P., 2001(6) Andh LD 301*
- *Hotel Asoka v. Commercial Tax Officer, 2007(4) KLT 718*
- *Commissioner, Sales Tax v. Arora Material Store, (1982) 51 STC 235*
- *Omvik Electronics Pvt. Ltd. v. Commissioner of Sales Tax, (1980) UPTC 912*
- *Jamshed N. Guzdar v. State of Maharashtra and others, (2005) 2 SCC 591*
- *Aswini Kumar Ghose v. Arbinda Bose, AIR 1952 SC 369*

Present: Mr. Puneet Agrawal Advocate for the appellant.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

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RAJESH BINDAL, J.

1. This order will dispose of a bunch of appeals bearing VATAP Nos. 76 of 2012, 48, 50, 51, 53 and 54 of 2013, involving identical issue.

2. The facts have been taken from VATAP No. 48 of 2013.

3. The assessee is in appeal against the order dated 3.1.2013 passed by Full Bench of Haryana Tax Tribunal (for short, 'the Tribunal') in Sales Tax Appeal Nos. 70 and 107 of 2012-13.

4. The appeal was admitted for determination of the following substantial questions of law:

> *"(i) Whether punctuation mark strategically placed by the Legislature inEntry 54 of Schedule B to the Haryana Value Added Tax Act, 2003, can be ignored by the Tribunal is justified in holding that entry 54 is a one continuous entry and that the condition of levy of Additional Duty of excise is applicable even to the first part of entry 54?*
>
> *(ii) Whether a ground which was not taken before for want of cause of action can be raised when such cause of action arises and therefore whether the Tribunal is justified in concluding that entry 54 is one continuous entry merely because the said issue was never raised by anyone earlier?*
>
> *(iii) Whether an assessee can claim exemption under another entry (entry 51) when exemption of VAT is denied under one entry of Schedule B to the Haryana VAT Act, 2003, especially when the assessee's product clearly and undisputedly falls within the ambit of this another Entry as well ?*

(iv) Whether exempting Entry 54 of the Schedule B can be interpreted like taxing provision i.e. what is not covered therein is taxable ?

(v) Whether exempting entries of Schedule B of the Haryana VAT Act, 2003 are dependent on each other, when no such qualification, express or implied, has been provided by the legislature ?"

5. The appellant in the present case is a private limited company. It is claimed that it is engaged in the business of manufacture of leather cloth/coated fabric/textile fabric, also known as rexine cloth. The appellant sought clarification from the Financial Commissioner and Principal Secretary to the Government of Haryana, Department of Excise and Taxation under Section 56(3) of the Haryana Value Added Tax Act, 2003 (for short, 'the Act'), on the issue as to whether the product being manufactured by the appellant is covered under Entry 51 of Schedule B of the Act. The Financial Commissioner, vide memo dated 28.6.2012, opined that the product being manufactured by the appellant falls in Entry 54 and not in Entry 51 of Schedule 'B' of the Act, hence, liable for taxation. The appellant preferred appeal before the Tribunal. The matter was considered by the Full Bench, consisting of Chairman and four Members, as required under Section 54 of the Act and by majority of 3:2, rejected the appeal filed by the appellant. It is how the matter is before this court.

Arguments of the appellant

6. Learned counsel for the appellant submitted that the issue sought to be raised by the appellant has not been properly considered either by the Financial Commissioner or the Tribunal. In fact, the minority view expressed by the Tribunal had rightly appreciated the issue. While deciding the issue raised by the appellant, the Financial Commissioner had wrongly referred to the earlier clarification dated 17.11.2011 given in the case of M/s H.R. Polycoats Pvt. Ltd., Bahadurgarh, where the issue raised was only regarding the rate of tax and not as to whether PVC leather cloth/coated fabric/textile fabric, generally known as PVC leather cloth or rexine cloth falls in Entry 54 of Schedule 'B' of the Act, hence, exempted from taxation. The Tribunal, in its majority view, had opined that rexine cloth being manufactured by the appellant is an aberration of textile and is a product distinct in terms of its uses, hence, cannot be termed as textile falling in Entry 51 of Schedule 'B' of the Act.

7. It was further submitted that another issue, which has not been properly appreciated by the Tribunal, was that there is no bar in claiming benefit under different entries, if the product manufactured by an assessee is covered under two entries. Even if, as the Tribunal opined, the product of the appellant falls in Entry 54 of Schedule 'B' of the Act, but still the same is in two parts. The condition of leviability of additional excise duty in lieu of sales tax is not applicable on the product being manufactured by the appellant. The observation by the Tribunal that clarification was earlier sought by M/s H.R. Polycoats Pvt. Ltd. and that order was upheld by the Tribunal earlier, hence, the issue could not be raised again is totally wrong for the reason that first of all, there is no estoppel against the appellant to raise a legal issue, which may not have been raised by the party earlier seeking clarification. Secondly, the issue regarding exemption from payment of tax, item being in one of the entries of Schedule 'B', was not raised by that assessee. The only issue on which clarification was sought, was the rate of tax. The minority view of the Tribunal had rightly opined that the item being manufactured by the appellant falls in Entry 51 of Schedule 'B' of the Act and not in its exception clause, hence, entitled to exemption from payment of tax.

8. First raising an argument on the issue whether the goods manufactured by the appellant is a textile, the court was apprised of the process of manufacturing. It was submitted that cotton textile is either coated with PVC/PU or it is laminated with that. In the process of coating on the cotton textile, solution of PVC powder and plasticizer is prepared. It is then pasted on the cotton textile and after passing the same through heated chamber, the final

product is ready. The object is only to give it more strength and life, make it esthetically good and easy for cleaning. In the process of heating, another process is also followed, in which a film of the required thickness of the aforesaid solution is prepared on a paper and then the same is placed on the textile. It is a continuous process. Final product is ready after it is passed through heated chamber. Different processes are followed as per the requirement, as in the first process some of the properties of PVC/PU when poured on the cotton textile in liquid position, are transferred to the textile, hence, makes it harder, whereas in the second process, the final product remains soft. In the process of lamination, a ready film of PVC/PU is pasted on the cotton textile and passed through a heated chamber. The final product is sold in rolls running into different length and width, as per requirement of the customers.

9. As to whether the product being manufactured by the appellant, namely, leather cloth is a textile or not, hence, falling in Entry 51 of Schedule 'B' of the Act, learned counsel for the appellant referred to dictionary meaning of term "leather cloth", as given in Dictionary of Textiles by Louis Harmuth, fashion editor of "Women's Wear", 1915 Fairchild Publishing Company, New York. "Leather Cloth" has been defined to mean "1. a heavy woolen fabric made in England; 2. stout, coarse cotton fabric, covered with a varnish layer, grained and finished to resemble leather." With coating, the textile does not change its character, rather, it remains a textile. The coating merely gives it more strength or makes it water proof. Even if it may become a different marketable commodity. Entry 51 in Schedule 'B' of the Act covers all varieties of cotton, woollen or silken textiles, the same being in wider term will include the product manufactured by the appellant. He further referred to the material from Handbook of Technical Textiles, which mentions the technical textiles and the process of manufacturing thereof. The definition of "textile" as given in Encyclopedia Britannica Article was referred to, which mentions various finishing processes of textile, but still retaining the same in the category of textile.

10. A scheme prepared by the Government of India, namely, "Benefits available under Technology Upgradation Fund Scheme" was referred to, where it is provided that manufacturing chain in textile industry starts right from ginning of cotton till the clothing stage. The appellant, being eligible, got benefit under the scheme. The definition of "cotton fabric", as provided under Section 14 (ii-a) of the Central Sales Tax Act, 1956 was referred to, which provides that cotton fabric is what is covered under different entries of Central Excise Tariff Act, 1985, as mentioned in the Section. Heading 59.03 has been mentioned. Undisputedly, the product being manufactured by the appellant is covered under that entry. Section 14(vii) of the Central Sales Tax Act, 1956 was also referred to which contains the product as mentioned in heading 59.03 of the Central Excise Tariff Act, 1985 in the category of man-made fabric.

11. It was further submitted that the aforesaid definition as provided for in the Customs Act, 1962 and Central Excise Tariff Act, 1985 were referred to by Hon'ble the Supreme Court in ***M/s Porritts & Spencer (Asia) Ltd. v. State of Haryana, 1978 (42) STC 433***, wherein dryer felt was opined to be textile.

12. The judgment of Allahabad High Court in ***Commissioner, Sales Tax, U. P. , Lucknow v. Laxmi Leather Cloth Industries Pvt. Ltd., 2008 (11) VST 79*** was referred to, where the issue under consideration was as to whether "leather cloth" being textile is exempted from taxation. It was opined therein that leather cloth is merely a cotton coated fabric and in the trade circle, it is known as textile. Another judgment of Allahabad High Court in ***Commissioner of Sales Tax v. Ashok Elastic Works, (1971) 28 STC 743 (All)*** was referred to, where the issue was as to whether "Dori fita" is textile or not. The answer was in favour of the assessee. The judgment of Hon'ble the Supreme Court in ***Delhi Cloth & General Mills Co. Ltd. v. State of Rajasthan and others, (1980) 6 ELT 383 (SC)*** was cited where rayon tyre cord fabric was held to be textile. The judgment of Hon'ble the Supreme Court in ***Filterco and***

another v. Commissioner of Sales Tax, Madhya Pradesh and another, 1986(24) ELT 180 was relied upon, where compressed woollen felt, being manufactured by the assessee, was held to be cloth, hence, textile.

13. As regards the contention that the product being manufactured by the appellant falls in Entry 54 of Schedule 'B' of the Act, but still exempted from taxation, learned counsel for the appellant submitted that Entry 54 of Schedule 'B' of the Act is in two parts. First part mentions leather cloth and inferior or imitation leather cloth ordinarily used in book binding, whereas the second part mentions rubber used tissue or synthetic water tissue or synthetic water-proof fabrics whether single textured or double textured and book binding cotton fabrics. The condition that additional excise duty in lieu of sales tax is leviable is applicable only on the products mentioned in second part. The type of goods mentioned in two parts are altogether different. The same are separated by "colon", hence have to be given meaning accordingly.

14. The definition of "colon" as contained in Collins *English Gem Dictionary* was referred to. It means break in sentence. In Oxford Language Reference, "colon" was referred to state that it can be used to separate two sharply contrasting and parallel statements. In 1911 Classic Encyclopedia, "colon" has been defined to mean a short clause longer than the "comma", hence a mark (:) in punctuation, used to show a break in construction greater than that marked by semicolon (;) and less than that marked by a full stop. The judgment of Hon'ble the Supreme Court in ***Dr. M. K. Salpekar v. Sunil Kumar Shamsunder Chaudhari and others, AIR 1988 SC 1841*** was referred to in support of the argument that "colon" puts a break in sentence. Reliance was also placed upon judgment of Madhya Pradesh High Court in ***Telecom District Engineer and another v. Pramesh Agrawal and another, 1997(1) MPLJ 173*** and a Full Bench judgment of this Court in ***Rajinder Singh etc. v. Kultar Singh and others, AIR 1980 P&H 1*** on the same issue. If both the parts of Entry 54 of the Act are read together and the condition regarding leviability of additional duty of excise in lieu of sales tax is held to be applicable on both of them, that means the "colon" provided in the entry is otiose. It is settled that every word and punctuation mark in a statute has to be given its true meaning. There are no surplusages in an Act. The reason assigned by the Tribunal that the matter was never argued in this manner will not estop the appellant to raise a legal issue. Mere understanding of a provision or a clause in a particular manner will not debar an assessee to raise the legal issue. There is no estoppel against a statute. In support of this argument, reliance was placed upon the judgment of Delhi High Court in ***Vishal Surgical Equipment Co. v. The Drug Controller General of India and another, 184(2011) DLT 343***.

15. Another contention of learned counsel for the appellant is that if a product falls in two or three different entries, the entry giving maximum benefit to an assessee can be invoked by him. In case, an assessee does not get benefit under a specific entry, on account of non-fulfilment of conditions laid down therein, if the benefit is admissible in general entry, the same can be claimed. In support of the plea reliance was placed upon judgments of Hon'ble the Supreme Court in ***Collector of Central Excise, Baroda v. Indian Petro Chemicals, 1997(92) ELT 13 (SC); H.C.L, Limited v. Collector of Customs, New Delhi, 2001(130) ELT 405 (SC);*** and ***Share Medical Care v. Union of India, 2007 (209) ELT 321 (SC)***.

16. It was further submitted that if the product of the appellant does not fall in Entry 54 of Schedule 'B' of the Act, Entry 51 of the Act is in two parts and the product being textile, the appellant would get benefit of exemption. Entry 51 of Schedule 'B' of the Act is in two parts was opined by Full Bench of the Tribunal in ***Sidhart Overseas, Panipat v. State of Haryana. (2010) 35 PHT 512***.

17. The judgment in ***Excise and Taxation Commissioner, Haryana v. Orient Electrical Insulation Private Ltd., (2006) 145 STC 471*** relied upon by the Tribunal to opine against the appellant is distinguishable on facts as the product being dealt with therein was sleevings. Here

it is leather cloth, which is technical textile. He further submitted that classification and exemption are two different concepts. Classification comes at the first stage to find out as to whether a particular good falls in which entry. Then the issue regarding exemption comes in to find out whether the conditions laid down for exemption of a particular good from taxation are complied with or not.

Arguments of the State

18. On the other hand, learned counsel for the State submitted that the product being manufactured by the appellant is leather cloth/PVC cloth. Different products have been mentioned in different Entries from Sr. No. 51 to 54 of the Act in Schedule 'B' of the Act. If a product falls specifically in one entry only that entry, will have to be seen for the purpose of grant of exemption and none else. The product being manufactured by the appellant falls in Entry 54 of Schedule 'B' of the Act. Once the product of the appellant falls in Entry 54 of Schedule 'B' of the Act, it cannot claim that same falls in Entry 51 of Schedule 'B' of the Act as well. Earlier the benefit of exemption under Entry 54 of Schedule 'B' of the Act was available as the condition of levy of additional excise duty in lieu of sales tax was being fulfilled. Now with the abolition of that duty, the tax has become payable. It was so opined by the Financial Commissioner in the opinion earlier given in the case of ***M/s H. R. Polycoats Pvt. Ltd.'s*** case (supra). The additional duty was abolished w.e.f. 8.4.2011. The dispute regarding taxation started thereafter. In support of the plea, reliance was placed upon ***State of Maharashtra v. M/s Bradma of India Ltd., (2005) 2 SCC 669; Commissioner of Central Excise, Nagpur v. Shree Baidyanath Ayurved Bhavan Limited, (2009) 12 SCC 419;*** and ***Commercial Taxes Officer v. Jalani Enterprises, (2011) 4 SCC 386***.

19. As far as the judgment of Hon'ble the Supreme Court in ***Porritts & Spencer (Asia) Ltd.'s*** case (supra) is concerned, it was submitted that "dryer felts" dealt with therein was not one of the items provided for in the Schedule at that time, hence, interpretation thereof was required. Here the product being manufactured by the appellant is specifically mentioned in Entry 54 of Schedule 'B' of the Act. The judgment of this court in ***Orient Electrical Insulation Private Ltd.'s*** case (supra) was relied upon by the Tribunal. In that judgment, even the judgment of Hon'ble the Supreme Court in ***Porritts & Spencer (Asia) Ltd.'s*** case (supra) was considered. If the interpretation, as is sought to be given by the appellant, is accepted, that would defeat the legislative intent.

20. It was further submitted that the condition of levy of additional excise duty in lieu of sales tax is applicable on all the goods mentioned in Entry 54 of Schedule 'B' of the Act and is not limited to the second part thereof. It is evident from the different language used in Entries 51 and 54 of Schedule 'B' the Act. The interpretation of an entry will not depend on use of a punctuation mark which, in the present case is "colon", as the real intent has to be seen. In support of the argument, reliance was placed upon ***Shamrao V. Parulekar and others v. District Magistrate, Thana, Bombay and others, AIR 1952 SC 324; Saraswathi Chemicals, Vijayawada v. State of A.P., 2001(6) Andh LD 301*** and ***Hotel Asoka v. Commercial Tax Officer, 2007(4) KLT 718***. Further, it was submitted that real test for determination of character of any good for the purpose of taxation is common parlance test, namely, how the people in trade and market understand the same and not with its technical meaning, but the appellant has sought to argue with reference to technical meaning of the term "textile", whereas in market, the product being manufactured by the appellant, is not known as textile, rather, leather cloth/PVC cloth.

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

Discussions

22. In the present bunch of appeals, the matter has come to this court against the order passed by the Full Bench of the Tribunal, where by majority opinion, the clarification as rendered by the Financial Commissioner on an application filed by the appellant was upheld. The clarification regarding taxation was sought by the appellant by filing application under Section 56 (3) of the Act on the following issue:

> *"Whether the product being manufactured by the applicant which is technically known as "Coated Fabric" and in common parlance known as "Rexin" falling under Central Excise Tariff Heading 5903 is covered under entry 51 of Schedule B appended to the Haryana Value Added Tax Act, 2003."*

23. In our opinion, the issues, which arise for consideration by this court are:

(1) *Whether the product being manufactured by the applicant which is technically known as "Coated Fabric" and in common parlance known as leather cloth/"Rexin" falling under Central Excise Tariff Heading 5903 is covered under Entry 51 of Schedule B appended to the Haryana Value added Tax Act, 2003 ?*

(2) *If the goods manufactured by the appellant fall in Entry 54 of Schedule 'B' of the Act, whether condition of leviability of additional excise duty in lieu of sales tax is applicable thereon ?*

(3) *If a particular goods fall in two different entries, whether it is open for the dealer to invoke any of the entries, which is more beneficial ?*

25. The appellant in the present case is registered with Central Excise Department. The product manufactured is described in heading 5903 of the Central Excise Tariff Act, 1985 for the purpose of levy of excise duty.

26. Entries 18 to 21 of Schedule B of the Act as existing after the amendment, as substituted vide notification dated 17.4.2003 and Entries 51 to 54 of Schedule B of the Act, as existing after the amendment, as substituted vide notification dated 30.6.2005, are reproduced hereunder:

"Entries 18 to 21 as substituted vide notification dated 17.4.2003

Sr. No.	Description of goods	Exceptions and conditions
1	2	3
XX	XX	XX
18.	All varieties of cotton, woolen or silken textile including rayon, artificial silk or nylon but not including such carpets, druggets, woolen durrees, cotton floor, durrees, rugs and all varieties of dryer felts on which additional excise duty in lieu of sales tax is not levied.	XX
19.	All varieties of textiles covered by item 18 on which knitting and embroidery work has been done.	On which additional Excise Duty in lieu of sales tax is levied.
20.	Such varieties of canvas cloth tarpaulines and similar other products manufactured with cloth	On which additional Excise Duty in lieu

	as base as per manufactured in textile mills, powerloom factories and processing factories but not including transmission belts.	of sales tax is levied
21.	Leather cloth and inferior or imitation leather cloth ordinarily used in book binding: rubber used tissue or synthetic water tissue or synthetic water-proof fabrics whether single textured or double textured and book-binding cotton fabrics.	On which additional Excise duty in lieu of sales tax is levied.
XX	XX	XX

"Entries 51 to 54 as substituted vide notification dated 30.6.2005

Sr.No.	Description of goods	
xx	xx	xx
51.	All varieties of cotton, woollen or silken textiles including rayon, artificial silk or nylon but not including such carpets, druggets, woollen durrees, cotton floor durrees, rugs and all varieties of dryer felts on which additional Excise Duty in lieu of sales tax is not levied.	
52.	All varieties of textiles covered by item 51 on which knitting and embroidery work has been done provided additional Excise Duty in lieu of sales tax is levied on them.	
53.	Such varieties of canvas cloth tarpaulines and similar other products manufactured with cloth as base as are manufactured in textile mills, powerloom factories and processing factories (but not including transmission belts) provided additional Excise Duty in lieu of sales tax is levied on them.	
54.	Leather cloth and inferior or imitation leather cloth ordinarily used in book binding: rubber used tissue or synthetic water tissue or synthetic water-proof fabrics whether single textured or double textured and book-binding cotton fabrics provided additional Excise Duty in lieu of sales tax is levied on them.	
xx	xx	xx"

Question No. 1

27. Entry 51 of Schedule 'B' of the Act is in two parts with the condition of additional excise duty being applicable only for second part and not for the first part was held by the Full Bench of the Tribunal in ***Sidhart Overseas's*** case (supra), which was accepted by the State. This fact is not even disputed by learned counsel for the State before this court. The Full Bench of the Tribunal in the aforesaid order opined as under:

> *"38 Therefore, we set aside the impugned order and on true and correct construction of the entry hold that –*
>
> *(i) All varieties of cotton, woollen or silken textiles including rayon, artificial silk or nylon are part of the entry, so exempted goods; but*

(ii) such carpets, druggets, woollen durrees, cotton floor durrees, rugs and all varieties of dryer felts on which Additional Excise Duty in lieu of Sales Tax is not levied are not part of the entry, so are not exempted goods i.e. these are taxable goods."

28. In the case in hand, the appellant had sought clarification by filing application under Section 56(3) of the Act to the Financial Commissioner. The Financial Commissioner opined that PVC coated fabric commonly known as leather cloth/ rexin is covered under Entry 54 of Schedule 'B' of the Act. The relevant parts thereof are extracted below:

"On a plain reading of the above entries it is clear that the product in question i.e. PVC coated fabric or rexin does not fall in Entry 52 or 53. Further Entry 54 includes leather cloth, synthetic water proof fabrics whether single textured or double textured and book binding cotton fabrics. Under this entry these products are tax exempted provided AED in lieu of sales tax is levied on them. That means if no AED is levied then these products are taxable under the Act. So far as the status of AED is concerned the same has undergone change after the passing of the Finance Act, 2011 as the Government of India has omitted the entries relating to textile falling in the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and thus there remains no AED in lieu of Sales Tax on Textile resulting into an understanding that the Textile falling under Entry 54 of Schedule B is taxable under the Act. Thus presently the items falling under Entry 54 are taxable under the Act. On a similar issue while issuing clarification to ***M/s H. R. Polycot Private Limited, Bahadurgarh****, it is clearly opined that PVC coated fabric or commonly also known as rexin cloth falling under Central Excise Tariff Heading 5903 is covered under Entry 54 of the Schedule B of the Act and thus liable to tax. The PVC coated fabric stated to be manufactured and sold by the applicant under central excise tariff heading 5903 is nothing but the same as clarified in the above clarification falling under Entry 54 of Schedule B of the Act.*

So far as the contention of the applicant that his product falls in Entry 51 relating to all varieties of cotton, woolen or silken textiles including rayon, artificial silk or nylon that carries no weight as and when the product of the applicant specially falls in Entry 54 so the support of a general entry cannot be taken by him. The decision of the Hon'ble Apex Court taken support of by the applicant does not help him in his case as there is specific and clear Entry 54 covering the product manufactured by the applicant and hence the applicant's contention that the product falls in Entry 51 is not correct and devoid of any merit.

In the light of the above, it is clarified that PVC coated fabric commonly known as rexin is taxable under the Haryana Value Added Tax Act, 2003 being covered Entry No. 54 of Schedule B and the same being declared goods falling under clause (vii) of Section 14 of the Central Sales Tax Act, 1957 is liable to tax accordingly."

29. A bare perusal of the aforesaid opinion shows that the claim of the appellant that the product manufactured by it falls in Entry 51 of Schedule 'B' the Act was rejected on the ground that it specifically falls in Entry 54 of Schedule 'B' of the Act, hence, there being specific entry, the general entry cannot be invoked. The view of the Financial Commissioner was endorsed by majority opinion of the Tribunal. The dissenting view was recorded by two out of five members of the Tribunal. The opinion expressed by them was that PU/PVC coated fabric manufactured by the appellant is exempt being part of Entry 51 of Schedule 'B' of the Act. Entry 51 of

Schedule 'B' the Act is an independent entry and not dependent on Entry 54 of Schedule 'B' of the Act or any other entry in the Schedule.

30. ***In M/s Porritts & Spencer (Asia) Ltd.'s*** case (supra), the issue under consideration before Hon'ble the Supreme Court was whether "dryer felts" manufactured by the assessee therein was within the category of "all varieties of cotton, woollen or silken textiles" as specified in Item 30 of Schedule 'B' of the Punjab General Sales Tax Act, 1948. Schedule B in the aforesaid Act specified the goods, which were exempted from taxation. The opinion expressed by Hon'ble the Supreme Court was that "dryer felts" are textile, as is commonly known. Relevant part therefrom is extracted below:

> *"... There is such phenomenal advance in science and technology, so wondrous is the variety of fabrics manufactured from materials hitherto unknown or unthought of and so many are the new techniques invented for making fabric out of yam that it would be most unwise to confine the weaving process to the warp and woof pattern. Whatever be the mode of weaving employed, woven fabric would be 'textiles'. What is necessary is no more than weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric. Moreover a textile need not be of any particular size or strength or weight. It may be in small pieces or in big rolls; it may be weak or strong, light or heavy, bleached or dyed, according to the requirement of the purchaser. The use to which it may be put is also immaterial and does not bear in its character as a textile. .... A textile may have diverse uses and it is not the use which determines its character as textile.*
>
> *..... It is true that our minds are conditioned by old and antiquated notions of what are textiles and, therefore, it may sound a little strange to regard 'dryer felts' as 'textiles'. But it must be remembered that the concept of 'textiles' is not a static concept. It has, having regard to newly developing materials, methods, techniques and processes, a continually expanding content and new kinds of fabric may be invented which may legitimately, without doing any violence to the language, be regarded as 'textiles'.... The character of a fabric or material as textile does not depend upon the use to which it may be put. The uses of textiles in a fast developing economy are manifold and it is quite common now to find 'textiles' being used even for industrial purposes. If we look at the Customs Tariff Act, 1975, we find in chapter 59 occurring in section XI of the First Schedule that there is a reference to "textile fabrics" and textile articles, "of a kind commonly used in machinery or plant' and clause (4) of that chapter provides that this expression shall be taken to apply, inter alia, to "woven textile felts...." of a kind commonly used in paper-making or other machinery....". This reference in a statute which is intended to apply to imports made by the trading community clearly shows that 'dryer felts' which are 'woven textile felts.... of a kind commonly used in paper-making machinery' are regarded in common parlance, according to the sense of ordinary traders and merchants, textile fabrics. We have, therefore, no doubt that 'dryer felts' are 'textiles' within the meaning of that expression in item 30 of Schedule 'B'."*

31. The issue was later on considered by Hon'ble the Supreme Court in ***Delhi Cloth and General Mills Co. Ltd.'s*** case (supra), where the issue under consideration was whether 'rayon tyre cord fabric' was rayon fabric covered by Item 18 of the Schedule providing for exempted goods under Rajasthan Sales Tax Act, 1954. The opinion was in favour of the assessee.

32. A similar issue came up for consideration before Allahabad High Court in ***Laxmi Leather Cloth Industries Pvt. Ltd.'s*** case (supra), where the issue was as to whether leather

cloth is textile or not, hence, exempted from payment of tax. Allahabad High Court in the aforesaid judgment, besides relying upon the judgments of Hon'ble the Supreme Court in ***M/s Porritts & Spencer (Asia) Ltd.'s*** case (supra) and ***Delhi Cloth and General Mills Co. Ltd.'s*** case (supra) referred to earlier judgment of Allahabad High Court in ***Commissioner, Sales Tax v. Arora Material Store, (1982) 51 STC 235***, where a cotton fabric base impregnated with preparations of cellulose derivatives or other artificial plastic materials, was held to be cotton fabric and ***Omvik Electronics Pvt. Ltd. v. Commissioner of Sales Tax, (1980) UPTC 912***, where fused collars and shoulder straps were held to be cotton fabric, opined that leather cloth is a cotton coated fabric. It is one of the varieties of cotton fabric, hence, falls under 'textile'.

33. The judgment of this court in ***Orient Electrical Insulation Private Ltd.'s*** case (supra) is distinguishable for the reason that the issue under consideration in that judgment was whether sleevings, which were in circular form, manufactured by the assessee therein, which is a kind of insulation material to be used in electric motors was textile or not. While noticing the process of manufacture and other judgments of Madras and Gujarat High Courts dealing with the same product, this court opined that sleevings manufactured by the assessee therein cannot be termed to be textile.

34. The process for manufacture of coated fabric by the appellant is noticed in the order of the Tribunal in the following terms:

> *"(i) PVC resin paste is prepared which is coated on a paper which is called 'release paper'.*
>
> *(iii) A cotton fabric is pasted on the release paper.*
> *(iv) This is passed through a heated oven and the resin paste due to the process of heating is coated on the textile fabric.*
> *(v) The release paper is removed and the final product so manufactured is called 'PVC Coated Fabric'."*

35. If considered in the light of the aforesaid judgments of Hon'ble the Supreme Court and Allahabad High Court, as referred to above, it can be opined that the product being manufactured by the appellant, namely, coated fabric also known as leather cloth/rexin falls in the term 'textile'.

Question No. (2)

36. It is the admitted case of the parties that the goods manufactured by the appellant fall in Entry 54 of Schedule 'B' of the Act. The issue is as to whether the condition regarding leviability of additional excise duty in lieu of sales tax is applicable. To address the issue, we need to analyse the entry first. The same has been reproduced in paragraph No.26 above.

37. The contention raised by learned counsel for the appellant was that the Entry is in two parts divided by a 'colon'. The condition regarding levy of additional excise duty in lieu of sales tax is applicable for the goods mentioned in second part. The effect of colon, the punctuation mark used in the Entry is to be examined. The stand of the department was that the goods manufactured by the appellant being leather cloth fall in Entry 54 of Schedule 'B' of the Act and the condition regarding levy of additional excise duty in lieu of sales tax was applicable. As the levy of additional excise duty in lieu of sales tax on leather was abolished vide Finance Act, 2011 and the appellant, not fulfilling that condition, will not be entitled to claim that the goods are tax free.

38. However, the issue is required to be examined from a different angle, especially considering the manner the goods had been mentioned in Schedule 'B', as notified on 17.4.2003, and as substituted vide notification dated 30.6.2005. A perusal of Entries 18 to 21 in notification dated 17.4.2003, which are similar with reference to the goods mentioned in Entries

51 to 54 of the Act, as substituted in Schedule B, vide notification dated 30.6.2005, shows that these had been mentioned in different manner. In the notification dated 17.4.2003, there were three columns, namely, Sr. No., description of goods and third being "exceptions and conditions", whereas in the notification dated 30.6.2005, substituting Schedule B, there are only two columns, namely, Sr. No. and description of goods. The exceptions and conditions, which were separately mentioned in the notification dated 17.4.2003 were part of the description of goods itself. Entry 18 of the Act in the notification dated 17.4.2003 is identical to Entry 51 of Schedule 'B' of the Act in notification dated 30.6.2005. No special exceptions and conditions were mentioned in that entry, whatever was required was mentioned in the column of description of goods itself. If we see Entry 21 of Schedule 'B' of the Act in the notification dated 17.4.2003, while mentioning all the goods in the column of description of goods, in the column of exceptions and conditions, it was mentioned that "on which additional excise duty in lieu of sales tax is levied". This would necessarily mean that condition of levy of additional excise duty in lieu of sales tax was applicable on all the goods mentioned in the column of description of goods under Entry 21 in notification dated 17.4.2003.

39. Schedule 'B' was substituted vide notification dated 30.6.2005. The Entries, which were at Sr. Nos. 18 to 21 of Schedule 'B' of the Act, were given new Sr. Nos. 51 to 54 of Schedule 'B' of the Act. There was no change in the manner Entry 18 was incorporated vide notification dated 30.6.2005. There was a change in the manner the exceptions and conditions were provided against the goods mentioned in Entries 52 and 53 of Schedule 'B' of the Act in the notification dated 30.6.2005, comparable to Entries 19 to 21 in the notification dated 17.4.2003. The language as used in Entries 52 and 53 of Schedule 'B' of the Act does not make any change in intent, however, Entry 54 of Schedule 'B' of the Act needs to be analysed with reference to the words used therein and the punctuation mark.

40. Much stress was laid at the time of arguments by learned counsel for the appellant on the punctuation mark colon used in Entry 54 of Schedule 'B' of the Act. Colon has been defined as "break in sentence" [Collins *Gem Dictionary*]; "it can be used to separate two sharply contrasting and parallel statements" [*Oxford Language Reference*]; "the character (:), used to separate parts of a sentence that are complete in themselves and nearly independent, often taking the place of a conjunction" [*Webster International Dictionary Vol. I*]; "the punctuation mark (:), used to indicate a distinct clause of a sentence" [*The Chambers Dictionary 12th Edition*]. He also referred to Full Bench judgment of this Court in ***Rajinder Singh's case*** (supra), wherein while considering Entry 3 of List II of the Constitution of India, this Court opined as under:

> *"List II-State List*
>
> *3. Administration of justice; constitution and organisation of all Courts, except the Supreme Court and the High Court; officers and servants of the High Court; procedure in rent and revenue courts; fees taken in all courts except the Supreme Court.*
>
> *xx* *xx* *xx*
>
> *I am afraid, I find myself unable to agree with this contention of the learned counsel. After the words 'Administration of Justice' in entry 3, there is a semi-colon and this punctuation cannot be discarded as being inappropriate. The punctuation has been put with a definite object of making this topic as distinct and not having relation only to the topic that follows thereafter. If the punctuation of semi-colon is taken to be inappropriate, then the entry may read 'Administration of Justice constitution and organisation of all Courts, except the Supreme Court and the High Court". Apparently, this would appear not only to be an absurd reading but also would make the language both faulty and*

> *ungrammatical. Hence, I find no escape from the conclusion that 'Administration of Justice' occurring in entry 3 is a distinct topic."*

41. The aforesaid judgment was referred with approval by a Constitution Bench of Hon'ble the Supreme Court in ***Jamshed N. Guzdar v. State of Maharashtra and others, (2005) 2 SCC 591***. An earlier judgment of Hon'ble the Supreme Court in ***Aswini Kumar Ghose v. Arbinda Bose, AIR 1952 SC 369*** was also referred to, wherein it was opined that when a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to the punctuation.

42. In ***Telecom District Engineer and another's*** case (supra), the effect of semi-colon, a punctuation mark, was under consideration. The provision reads as under:

> *"(e) to restrain any auction intended to be made or, to restrain the effect of any auction made by the Government; or to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished."*

43. It was opined that use of punctuation mark semi-colon in the later part of the provision has the effect of making disjunctive with the earlier part, hence, the condition as laid down was applicable only for the later part and not the earlier part. Relevant paragraph thereof is extracted below:

> *"In view of the fact that in between the 1st part i.e. "to restrain any auction intended to be made or," and the 2nd part i.e. "to restrain the effect of any auction made by the Government;" there is comma, after the word or, but subsequent to the second part i.e. restrain the effect of any auction made by the Government, there is a semi-colon, the effect of which is disjunctive to the third part. Thus, the requirement of furnishing of adequate security relates to the third part. In view of this, the argument of the learned counsel for the appellant is sans substance and is rejected."*

44. Once a punctuation mark has a specific meaning, it has to be given effect to. It cannot be treated as otiose. Meaning thereby, there is a break in sentence at that stage. It is also evident from a plain reading of the entry itself, which uses the word 'and' in between "leather cloth" & "inferior or imitation leather cloth ordinarily used in book binding". Thereafter, punctuation mark "colon" has been used, which is followed by other types of goods mentioned therein by using the word 'or' therein and finally using the word 'and' with a condition that additional excise duty in lieu of sales tax is levied on them. In case, there is a break in sentence, then certainly the condition of levy of additional excise duty in lieu of sales tax will not be applicable to the goods mentioned in the first part thereof. The entry can be read as "leather cloth and inferior or imitation leather cloth ordinarily used in book binding" and "rubber used tissue or synthetic water tissue or synthetic water-proof fabrics whether single textured or double textured and book-binding cotton fabrics provided additional Excise Duty in lieu of sales tax is levied on them". The manner in which the entry was there before substitution w.e.f. 30.6.2005 is also supportive of this view, as in the entry as existed earlier, all the goods had been mentioned in a different column, whereas the condition of levy of additional excise duty was mentioned in different column. In that situation, even a break in the sentence may not be important as all the goods mentioned in the entry were required to comply with exceptions and conditions as provided. The observation made by the Tribunal in the order that the matter was never argued in that line is merely to be discarded for the reason that there is no estoppel against the statute. The manufacturers of these products were satisfied as they were being granted exemption from payment of tax. The issue arose only after the additional excise duty in lieu of sales tax was abolished.

45. As leather cloth, which is manufactured by the appellant, is specifically mentioned in Entry 54 of the Act and that no condition of levy of additional excise duty in lieu of sales tax is applicable thereon, in our opinion, the appellant will be entitled to benefits arising therefrom.

46. In view of answer to first two questions, as referred to in paragraph No. 24, we do not deem it appropriate to consider the issue regarding choice of an assessee to opt for any of the entry in which the goods may fall, which may be more beneficial to the assessee, as in that event, even the principle that special will exclude general may have also to be considered.

47. In view of our aforesaid discussion, questions No. (1) and (2) are answered in favour of the assessee. Question No. (3) is not required to be dealt with, in view of answer to questions No. (1) and (2).

48. The appeals are disposed of accordingly.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 71 OF 2016

PURVA ALLOYS & PRODUCTS
Vs
STATE OF PUNJAB AND ORS.

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

8th September, 2016

HF ▶ Assessee

Condition of pre-deposit under Punjab VAT act is not mandatory and the appellant authority can waive it in some suitable and deserving cases.

APPEALS – PRE-DEPOSIT – TRIBUNAL DISMISSING THE APPEAL FOR WANT OF DEPOSIT OF 25% OF THE TAX, INTEREST AND PENALTY – APPEAL BEFORE HIGH COURT – CONDITION HELD NOT MANDATORY – IN SUITABLE CASES, THE APPELLATE AUTHORITY CAN WAIVE THE CONDITION – JUDGMENT OF PSPCL FOLLOWED – ORDER SET ASIDE – MATTER REMITTED TO APPELLATE AUTHORITY FOR FRESH ADJUDICATION - *SECTION 62(5) OF PUNJAB VAT ACT, 2005*

Appeal filed by assessee was dismissed by 1st appellate authority for not complying with the conditions of Punjab VAT act regarding pre-deposit of 25% of the total demand. Appeal filed against that order was dismissed by Tribunal holding the deposit mandatory. Feeling aggrieved, an appeal was filed before the High Court. Following the judgment of PSPCL, the matter was remitted back to the appellate authority holding that condition is not mandatory and in deserving cases, waiver can be granted.

Case referred:

- *Punjab State Power Corporation Limited vs. The State of Punjab and others, CWP No.26920 of 2013, decided on 23.12.2015*

Present: Mr. Varun Chadha, Advocate for the appellant.
Mr. Jagmohan Bansal, Addl. A.G., Punjab

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RAJESH BINDAL, J.

1. The present appeal has been filed raising the following substantial questions of law, arising out of the order dated 29.09.2015 (Annexure A-5) passed by the Value Added Tax Tribunal, Punjab (for short, the Tribunal) in Appeal No.256 of 2014 :-

> *"(i) Whether on the facts and circumstances of the case, both the authorities below were justified in dismissing the appeals of the appellant by holding*

the condition of pre deposit of 25% as mandatory for the entertainment of appeal?

2. Learned counsel for the appellant submitted that the issue regarding the power of the Appellate Authority, for grant of stay, during the pendency of the appeal was gone into by a Division Bench of this Court in ***CWP No.26920 of 2013 titled 'Punjab State Power Corporation Limited vs. The State of Punjab and others' decided on 23.12.2015***, wherein, it has been opined that the Appellate Authority has the authority to grant interim stay.

3. The aforesaid judgment was delivered after the Tribunal had passed the impugned order upholding the order of the Adjudicating Authority directing the appellant to deposit 25% of the demand raised, whereas, as per the aforesaid judgment of this Court, the Appellate Authority has the power to grant interim stay and deposit of 25% of the demand was not mandatory.

4. The aforesaid proposition of law is not disputed by the learned counsel for the State. However, he stated that the State has preferred Special Leave Petition against the judgment of this Court.

5. After hearing learned counsel for the parties, the impugned order dated 18.02.2014 (Annexure A-4) and the order dated 29.09.2015 (Annexure A-5), are set aside. The matter is remitted back to the Deputy Excise & Taxation Commissioner (Appeals), Ludhiana Division, Ludhiana for fresh consideration of the stay application in terms of the judgment of this Court in ***Punjab State Power Corporation Limited's*** case (supra).

6. The appeal is disposed of accordingly.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 59 OF 2014

MAHASHIV PROMOTERS PVT LTD.
Vs
THE STATE OF HARYANA AND ANOTHER

CWP. NO. 8436 OF 2014

EMKAY TRADING CO
Vs
STATE OF HARYANA & ORS

CWP. NO.14681 OF 2014

HARYANA PRADESH BRICK KILN OWNERS ASSOCIATION
Vs
STATE OF HARYANA & ORS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

8th September, 2016

HF ▶ Assessee

No additional tax/surcharge can be levied on lumpsum dealers under Haryana VAT Act

ADDITIONAL TAX – SURCHARGE – COMPOSITION DEALER – LUMPSUM – WHETHER SURCHARGE LEVIABLE ON LUMPSUM CONTRACTORS/DEALERS – LEVY OF ADDITIONAL TAX UNDER SECTION 7A IS ON "TAXABLE TURNOVER" – NO TAXABLE TURNOVER DETERMINED FOR COMPOSITION DEALERS – TAX RELATED TO CAPACITY OR PRODUCTION OR OTHER MEASURES – IN ABSENCE OF TAXABLE TURNOVER FOR COMPOSITION DEALER, NO SURCHARGE/ADDITIONAL TAX CAN BE RECOVERED UNDER HARYANA VAT ACT. SECTION 7A, SECTION 9 OF HARYANA VAT ACT, 2003.

The Appellant is a Works Contractor who had opted for lumpsum tax under Section 9 of Haryana VAT Act 2003. The tax is payable on the valuable consideration at the rate fixed by State Govt. Assessee filed its Returns for the year 2010-11 and while framing the assessment, the Additional Tax was also calculated on the gross receipts under Section 7A. Feeling Aggrieved, the appeals were filed before the 1st Appellate Authority and the Tribunal which were dismissed. Appeal was filed before the High Court. Held:

Section 7A of VAT Act is the additional charging section which levies Additional Tax on "Taxable Turnover" of a dealer in addition to section 3 which is the primary charging section. In the case of a composition dealer, a lumpsum amount is payable in lieu of tax payable under the Act which is to be calculated on production capacity, gross receipts or any other measure. Rules have been prescribed for calculation of lumpsum tax for different categories of lumpsum

dealers like works contractor, plywood manufacturers, brick kilns, lottery dealers and retailers etc. Except for retailers, the taxable turnover is not required to be determined in any of such cases as a simplified method of calculation of lumpsum has been prescribed under the Act and the Rules. For the levy of tax, the essential components of tax are to be present and in absence of even one event, the levy of tax would fail. Since in the present case, there is no determination of Taxable Turnover, the levy of Additional Tax under Section 7A is not sustainable and therefore the impugned orders are set aside and the appeal is allowed.

The circular issued by the Excise and Taxation Commissioner dated 14.1.2014 for the levy of Additional Tax on the basis of Tribunal judgment is also set aside.

Case referred:

- *Bhima Jewellery Vs. Assistant Commissioner (Assessment), Kerala and another, (2014) 71 VST 110 (SC*
- *State of Uttar Pradesh and others Versus Systematic Conscom Limited, 2013 STPL (Web) 219 SC*
- *South India Corporation Ltd. Vs. Commercial Tax Officer, Coimbatore and others (2001) 124 STC 654 (Madras)*
- *Taher Ali Industries and Projects (P) Ltd. Versus State of Tamil Nadu and another, (2012) 47 VST 155 (Madras)*
- *Sarojini Tea Co. (P) Ltd. Versus Collector of Dibrugarh, Assam and another, (1992) 2 Supreme Court Cases 156*
- *Hoshiarpur Large and Medium Industries Association and others Versus State of Punjab and another, 2002(2) PLR 697*
- *Hoechst Pharmaceuticals Ltd, and another Versus State of Bihar and others, 1983(4) SCC 45*
- *Jindal Poly Films Ltd. Versus Commissioner of Central Excise, Meerut-II, 2006(198) ELT 3*
- *Govind Saran Ganga Saran v. Commissioner of Sales Tax and others, (1985) 60 STC 1 (SC)*
- *Commissioner of Income Tax Versus Vatika Township Private Ltd., 2015(1) SCC 1*
- *Mathuram Agrawal v. State of M. P. (1999) 8 SCC 667*
- *National Mineral Development Corporation Limited Vs. State of M.P. and another, 2004 (6) SCC 281*

Present: Mr. Sandeep Goyal, Advocate
for the appellant (in VATAP No. 59 of 2014) and
for the petitioner (in CWP No. 14681 of 2014).

None for the petitioner (in CWP No. 8436 of 2014)

Ms. Mamta Singla Talwar, DAG Haryana.

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RAJESH BINDAL, J.

1. This order will dispose of VAT Appeal No. 59 of 2014, CWP Nos. 8436 and 14681 of 2014.

Facts of VAT Appeal No. 59 of 2014:

2. The assessee is in appeal before this Court impugning the order passed by the Haryana Tax Tribunal (for short 'the Tribunal'), upholding levy of surcharge on the amount of lump sum tax paid by the appellant on the works contract. The appellant in the present case is a dealer registered under the Haryana Value Added Tax Act, 2003 (for short 'the VAT Act') and is carrying on business as works contractor.

Facts in CWP No. 8436 of 2014:

3. The assessee has filed the present petition impugning the order of assessment dated 27.11.2013 passed by the Assessing Authority levying surcharge on the tax payable on lump sum basis on the works contract. The petitioner is carrying on the business as works contractor.

Facts in CWP No. 14681 of 2014:

4. The petition has been filed by Haryana Pradesh Brick Kiln Owners Association (Regd.) impugning the circular dated 14.1.2014 issued by the Excise and Taxation Commissioner, Haryana, referring to the order passed by the Tribunal in STA No. 485 of 2012-13 in the case of M/s Mahashiv Promoters (P) Limited, Rohtak Vs. State of Haryana, (this order of the Tribunal is subject matter of challenge in VATAP No. 59 of 2014) specifying that the surcharge is leviable and be collected from the lump-sum composition dealers availing benefit of lump sum payment of tax except the retailers.

5. As the legal issue involved in all the cases is identical, the detailed facts are being taken from VATAP No. 59 of 2014.

6. The assessee has filed the present appeal against the order dated 8.10.2013 passed by the Tribunal in STA No. 485 of 2012-13, raising the following substantial questions of law:

(i) *Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in upholding the levy of additional tax as surcharge leviable on the taxable turnover even in the case of works contractor who has opted for lump sum tax?*

(ii) *Whether on the facts and in the circumstances of the case, the Haryana Tax Tribunal was justified in upholding the levy of interest?*

Arguments of Appellant

7. Learned counsel for the appellant submitted that the appellant is working as a works contractor duly registered under the provisions of the VAT Act. For the assessment year 2010-11, the appellant filed its quarterly return on statutory Form VAT-R6, as the appellant had opted for payment of lump-sum tax. The case of the appellant was taken up in scrutiny and vide order dated 13.9.2012, the assessment was framed calculating the amount of tax payable on the gross receipts, in addition surcharge was also levied including interest. Aggrieved against the order, the appellant preferred appeal before the Joint Excise and Taxation Commissioner (Appeal) Rohtak, who vide order dated 22.1.2013 dismissed the same by passing a totally non-speaking order. Still aggrieved, the appellant preferred appeal before the Tribunal, which was dismissed vide order dated 8.10.2013. It is the aforesaid order of the Tribunal which has been impugned before this Court raising the substantial questions of law as have been referred to above.

8. Learned counsel for the appellant argued that Section 3 of the VAT Act which is the charging section provides for incidence of tax. The tax is to be calculated on the taxable turnover determined in terms of the provisions of Section 6 of the VAT Act at the rates of tax provided for in Section 7 of the VAT Act. Section 9 of the VAT Act provides for payment of lump sum in lieu of tax payable under the Act by way of composition. Section 7A of the VAT Act provides for levy of additional tax. A plain reading of Section 7 A of the VAT Act shows that it provides for levy of additional tax in the nature of surcharge on the taxable turnover of a dealer calculated at the rate of 5% of the tax payable by him. Reference was made to Rule 46 of the Haryana Value Added Tax Rules, 2003 (for short 'the Rules') providing for general provisions in respect of lump-sum dealers. Reference was also made to the Rules 47 to 52 of the Rules applicable for different types of dealers who can opt for payment of lump-sum tax.

9. Elaborating the arguments, learned counsel for the appellant contended that Section 9 of the VAT Act, which provides for payment of tax in lump-sum clearly mentions that such amount is payable 'in lieu of tax payable under the Act'. This will include all types of taxes payable under the Act. Even Section 7A of the VAT Act under which additional tax has been

levied is also a tax. Hence, there cannot be any further demand of tax from the appellant beyond the composition amount as determined in the Rules. He further submitted that in the case of the contractors and for that matter in none of the cases, where payment of tax in lump sum has been provided for except the retailers, there is determination of taxable turnover. In the cases of contractors, the tax is payable on gross receipts, which includes labour component also, whereas in the other types of cases, such as, brick-kiln, halwai, lottery dealer, ply-board manufacturer etc., the same is payable in terms of capacity. The mere fact that there is exclusion of retailers, one of the category in which case lump-sum payment of tax is permissible, shows that the intent of the levy is in those cases where taxable turnover can be determined. In support of the plea reliance was placed upon ***Bhima Jewellery Vs. Assistant Commissioner (Assessment), Kerala and another, (2014) 71 VST 110 (SC); State of Uttar Pradesh and others Versus Systematic Conscom Limited, 2013 STPL (Web) 219 SC; South India Corporation Ltd. Vs. Commercial Tax Officer, Coimbatore and others (2001) 124 STC 654 (Madras) and Taher Ali Industries and Projects (P) Ltd. Versus State of Tamil Nadu and another, (2012) 47 VST 155 (Madras).***

10. The judgment of Hon'ble the Supreme Court in ***Sarojini Tea Co. (P) Ltd. Versus Collector of Dibrugarh, Assam and another, (1992) 2 Supreme Court Cases 156*** was referred with reference to the meaning of term 'surcharge', which is a kind of tax.

Arguments of State

11. On the other hand, learned counsel for the State submitted that a plain reading of Section 7A of the VAT Act shows that the tax, which is in the form of additional tax or surcharge, is to be calculated on the tax payable under the VAT Act. It has not been levied or to be calculated on the taxable turnover, as is sought to be argued by counsel for the appellant. She further argued that the provision starts with a non-obstante clause, meaning thereby, it overrides all other provisions of the VAT Act, hence, has to be given its true meaning. The exception has been carved out in the section is only for retailers, who opted for payment of lump-sum tax. Section 9 of the VAT Act, which provides for payment of lump-sum tax on composition in lieu of the tax payable under the VAT Act in fact takes care of the tax generally levied on the regular dealers which is the tax payable under Section 3 of the VAT Act. The surcharge levied under Section 7A of the VAT Act is over and above.

12. The judgment of Hon'ble the Supreme Court in ***Bhima Jewellery's*** case (supra) was distinguished referring to the provisions under consideration there. In that case, additional tax was leviable with reference to tax, which was payable under specific sections. It did not include the section under which lump-sum tax was payable. She referred to a Division Bench judgment of this Court in ***Hoshiarpur Large and Medium Industries Association and others Versus State of Punjab and another, 2002(2) PLR 697*** where vires of Sections 30-AA of the Punjab General Sales Tax Act, 1948 providing for levy of surcharge was upheld. Reference was also made to judgment of Hon'ble the Supreme Court in ***M/s Hoechst Pharmaceuticals Ltd, and another Versus State of Bihar and others, 1983(4) SCC 45,*** defining the term 'surcharge' which amounts to tax. The Judgment of Hon'ble the Supreme Court in ***M/s Jindal Poly Films Ltd. Versus Commissioner of Central Excise, Meerut-II, 2006(198) ELT 3***, was cited dealing with the non-obstante clause. Reference was made to assessment order passed in the case of the appellant, wherein taxable turnover had been determined.

Reply by Appellant

13. In response, learned counsel for the appellant submitted that all the words used in Section 7A of the VAT Act have to be given their true meaning. Words "levied and collected on the taxable turnover" cannot be held to be surplus. The judgment of this Court in Hoshiarpur Large and Medium Industries Association's case (supra), is distinguishable, as in that case vires of Section imposing surcharge was under challenge. It was further submitted that even as per

the understanding of the department, there was no surcharge payable on the tax payable by the dealers opting for lumpsum payment. Though the amendment was carried out in the VAT Act by adding Section 7A therein, w.e.f 2.4.2010, however, no surcharge was demanded from the dealers. Even the circular was issued by the Excise and Taxation Commissioner on 14.E2014 only after the order was passed by the Tribunal on 8.10.2013, which is subject matter of appeal before this Court.

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

Discussions

15. As per the scheme of the VAT Act, Section 3 is a charging section, which provides for levy of tax on sale of goods within the State. The tax is to be calculated on the taxable turnover. The taxable turnover is to be determined in accordance with the provisions of Section 6 of the VAT Act. Rates of tax have been specified in Section 7 thereof.

16. Section 7A was added subsequently w.e.f. 2.4.2010 providing for charging of additional tax. Sections 7A and 9 of the VAT Act, relevant to the controversy, are extracted below:

> ***"7A. Levy of Additional Tax:-***
>
> *1. Notwithstanding anything contained in this Act, there shall be levied and collected on the taxable turnover of a dealer registered under this Act, other than a retailer in lump-sum composition with the department, an additional tax, in the nature of surcharge, which shall be calculated at the rate of five percent of the tax, payable by him:*
>
> > *Provided that the aggregate of tax and the surcharge payable under this Act, shall not exceed in respect of the goods, declared to be of special importance in inter-State trade or commerce under Section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), the rate fixed under Section 15 of that Act.*
>
> *2. Except as otherwise provided in sub-section (1), the provisions of this Act shall, so far as may be, apply in relation to the additional tax leviable under sub-section (1), as they apply in relation to the tax leviable under any other provision of this Act.*
>
> ***9. Payment of lump sum in lieu of tax***
>
> *(1) The State Government may, in the public interest and in subject to such conditions as it may deem fit, accept from any class of dealers, in lieu of tax payable under this Act, for any period, by way of composition, a lump sum linked with production capacity or some other suitable measure of extent of business, or calculated at a flat rate of gross receipts of business or gross turnover of purchase or of sale or similar other measure, with or without any deduction therefrom, to be determined by the State Government, and such lump sum shall be paid at such intervals and in such manner, as may be prescribed, and the State Government may, for the purpose of this Act in respect of such class of dealers, prescribe simplified system of registration, maintenance of accounts and filing of returns which shall remain in force during the period of such composition.*
>
> *(2) No dealer in whose case composition under sub-section (1) is in force, shall issue a tax invoice for sale of goods by him and no dealer to*

whom goods are sold by such dealer shall be entitled to any claim of input tax in respect of the sale of the goods to him.

(3) A dealer in whose case composition under sub-section (1) is made and is in force may, subject to such restrictions and conditions, as may be prescribed, opt out of such composition by making an application containing the prescribed particulars in the prescribed manner to the assessing authority, and in case the application is in order, such composition shall cease to have effect on the expiry of such period after making the application as may be prescribed."

17. Rule 46 of the Rules provides for general provisions in respect of lump-sum dealers. Rules 47 to 52 of the Rules deal with different kinds of dealers, who can opt for payment of lump sum tax. The amount of tax and the manner of calculation thereof has been provided for in the Rules. The relevant provisions thereof are extracted below:

"47. Lump sum scheme in respect of brick-kiln owners.

(1) A brick kiln owner may, subject to other provisions of this rule, opt for payment of lump sum in lieu of tax payable under the Act by way of composition at the rates given in the Table below:-

Sr. No.	*Capacity of Kiln*	*Category*	*Lump sum tax payable in lieu of tax for the period 1-10-2005 to (30-9-2009)*
1	*2*	*3*	*4*
1	*Brick kiln of capacity of more than 33 number of Ghori*	*+A*	*Rs. 2,68,8007- plus Rs.9,360/- per additional ghori above 33 ghories*
2	*Brick-kiln of capacity of 28 to 33 number of Ghori*	*A*	*Rs.2,68,800/-*
3	*Brick kiln of capacity of 22 to 27 number of Ghori*	*B*	*Rs. 2,10,000/-*
4	*Brick kiln of capacity of below 22 number of Ghori*	*C*	*Rs.1,68,000/-*
5.	*Brick Kiln not fired during the year ending 30th September, 2010, in which stock in and outside the kiln as on 1st October, 2009 last, did not exceed five lakh bricks of all categories*	*D*	*Rs.42,000/-*
xx	*xx*	*xx*	*xx*

(4) A brick kiln owner liable to pay lump sum shall not be authorised to make purchase of goods at lower rate of tax under sub-section (2) of section 7 but he

may make purchase of goods on the authority of declaration(s) in Central Form C, which he shall disclose use of, at the time of applying for issue of declaration forms and in an annual return to be furnished in Form VAT-R8 within a month of the close of the year. He shall not be required to make use of declaration in Form VAT-D3 for carrying goods,

xx xx xx xx

48. Lump sum scheme in respect of lottery dealers.

(1) Every dealer engaged in the business of purchase or sale of lottery tickets of face value of less than seven rupees per ticket (hereinafter called the "lottery dealer") shall at his option pay lump sum in lieu of tax payable under the Act on the sale of such lottery tickets at the rates given below:-

S.No.	***Type of lottery***	***Lump sun payable in lieu of tax***
1	*Weekly Lottery*	*Rs.65,000 per draw*
2	*Monthly Lottery*	*Rs. 19 lakh per draw*
3	*Festival Lottery*	*Rs. 19 lakh per draw*
4	*Instant Lottery*	*Rs. 19 lakh per draw*

PROVIDED that no refund of any amount of lump sum already paid shall be made on account of reduction/omission of lump sum rates paid at the rates applicable before such reduction/omission.

xx xx xx xx

(6) A lottery dealer liable to pay lump sum may purchase lottery tickets for sale on the authority of declaration(s) in Central Form C, which he shall disclose use of at the time of applying for issue of forms and in quarterly returns to be filed in Form VAT-R9 within a month of the close of the quarter.

49. Lump sum scheme in respect of contractors

(1) A contractor liable to pay tax under the Act may, in respect of a works contract awarded to him for execution in the State, pay in lieu of tax payable by him under the Act on the transfer of property (whether as goods or in some other form) involved in the execution of the contract, a lump sum calculated at four per cent of the total valuable consideration receivable for the execution of the contract, by making an application to the appropriate assessing authority within thirty days of the award of the contract to him, containing the following particulars:-

(1) Name of the applicant contractor;

(2) TIN;

(Append application for registration, if not registered or not applied for registration);

(3) Name of the contractee;

(4) Date of award of the contract;

(5) Place of execution of the contract;

(6) Total cost of the contract;

(7) Period of execution,

and appending therewith a copy of the contract or such part thereof as relates to total cost and payments.

(2) The application shall be signed by a person authorised to make an application for registration. On receipt of the application, the assessing authority shall, after satisfying itself that the contents of the application are correct, allow the same.

(3) The lump sum contractor shall be liable to make payment of lump sum quarterly calculated at four per cent of the payments received or receivable by him during the quarter for execution of the contract. The payment of lump sum so calculated shall be made within thirty days following the close of the quarter after deducting therefrom the amount paid by the contractee on behalf of the contractor under section 24 for that quarter. The treasury receipt in proof of payment made and certificate(s) of tax deduction and payment obtained from the contractee shall be furnished with the quarterly return.

(4) The lump sum contractor shall file returns at quarterly intervals in Form VAT-R6 within a month of the close of the quarter and shall pay lump sum, if any, due from him according to such return after adjusting the amount paid under sub rule (4).

xx xx xx xx

50. Deleted.

51. Lump sum scheme in respect of ply-board manufacturers

(1) Subject to the other provisions of this rule, a ply-board manufacturer may, by exercising option in the manner given in sub-rule (6), at any time offer to make payment of lump sum in lieu of tax payable by him under the Act on sale of ply-board manufactured by him and waste products arising therefrom, at the rate(s) mentioned below:-

S. No.	***Press size***	***Rate of lump sum per press per annum***
1	*8' x 4' x 10*	*Rs. 9.00 lakh*
2	*8' x 4' x 7*	*Rs. 6.30 lakh*
3	*6' x 4' x 10*	*Rs. 6.75 lakh*
4	*6' x 4' x7*	*Rs. 4.73 lakh*
5	*4' x 4' x 10*	*Rs.3.21 lakh*
6	*4' x 4' x 7*	*Rs. 2.25 lakh*

Where an 8'x 4' x 10 press is designed to make 10 number ply-boards each measuring 8 feet by 4 feet i.e. 320 square feet ply-board in single operation and presses of other sizes are designed to make ply-board in the same proportion: PROVIDED that annual rate of lump sum in respect of press of any other size not tabulated above shall, if the press is designed to make ply- boards of size not exceeding 4' x 4' i.e. 16 square feet per piece be computed @ Rs.2008.93 per square feet else @ Rs.2812.50 per square feet, rounded off to nearest thousand in each case: PROVIDED FURTHER that lump sum for any additional press of the same or lower size shall be computed at one-half of the full rate tabulated above.

xx xx xx xx

(7) A ply-board manufacturer liable to pay lump sum may make use of declarations in Form VAT- D1 or in Central Form C for making purchase of goods at lower rate of tax or Central Sales Tax, as the case may be, for use in

manufacturing of goods for sale. He shall not be required to make use of declaration(s) in Form VAT-D3 for carrying goods. He shall be required to furnish quarterly returns in Form VAT-R11 within a month of the close of the quarter.

xx xx xx xx

52. Lumpsum scheme in respect of retailers

xx xx xx xx

(2) Subject to other provisions of this rule, a retailer, in whose case aggregate of purchases of taxable goods made, and value of goods received for sale, by him during the last year does not exceed (forty lakh rupees), may, at any time, opt for payment of lump sum, calculated in accordance with the provisions of sub-rule (4), by making an application in Form A given below and a retailer who makes an application for registration may also exercise such option by making an application in Form B given below simultaneously:

PROVIDED that a retailer who deals in aerated water/drinks or medicines shall not be eligible to opt for payment of lump sum.

xx xx xx xx

(4) The retailer whose application has been allowed (hereinafter referred to as the 'lump sum retailer') under the foregoing sub-rule shall furnish returns in Form VAT-R7 and shall pay lump sum at quarterly intervals within one month of the close of the quarter. The lump sum for a quarter shall be computed at the rate of 1% of the aggregate of purchases of taxable goods made from registered dealers in the State during the quarter subject to a minimum of Rs.900/- per month (or part thereof) plus lumpsum computed on the value of taxable goods purchased in the course of inter-State trade or commerce from outside the State during the quarter at the same rates as the rates of tax applicable if such goods were to be sold in the State:

PROVIDED that the lump sum retailer shall, within one month of his application having been allowed, pay a lump sum on the value of goods, not purchased in the State on payment of tax whether under the Act or the Act of 1973 or received or brought from outside the State, held in stock by him on the date of application, calculated at the rate of tax applicable on sale of such goods in the State:

PROVIDED FURTHER that purchase value of goods for the purpose of computing lump sum shall be the invoiced price including all taxes and charges shown in the invoice.

xx xx xx xx

(6) The lump sum retailer shall be authorised to make purchase of goods on declarations in Central Form C from outside the State but he shall not be authorised to make use of declaration in Form F. He shall be required to make use of declarations in Form VAT-D3 for carrying goods. He shall declare the use of both declarations in Central Form C and Form VAT-D3 in his returns."

18. A perusal of Section 9 of the VAT Act shows that the State Government has been authorized to accept from a class of dealers, in lieu of tax payable under the VAT Act, for any period, by way of composition, a lump-sum tax. It can be linked with production capacity or can be determined on the basis of other suitable measures related to the extent of business or

calculated at a flat rate of gross receipt of business or gross turnover of purchase or sale etc. The tax so determined has to be paid at such intervals as may be specified. The State is further entitled to provide for other conditions in the process. For the dealers, who opted for payment of lump sum tax, the Government is authorized to prescribe simplified system of registration, maintenance of accounts and filing of returns. A dealer, who may have opted for payment of lump sum tax, can opt out by making an application to that effect.

19. Rules 47 of the Rules provides for payment of lump sum tax by brick kiln owners by way of composition. The rate of tax prescribed has relation with the capacity of the kiln. He is required to file his annual return on Form VAT-R8. There are other restrictions also. Similarly Rule 48 of the Rules, prescribes for payment of lump sum tax in respect of lottery dealers. The rates have been prescribed with reference to types of lotteries such as, weekly, monthly, festival or instant lottery and the rates prescribed are per draw. In this case return is to be filed on statutory form VAT-R9.

20. Rule 49 of the Rules deals with lump sum payment of tax by the contractors. The tax is to be calculated at the rate of 4% of the total valuable consideration receivable for the execution of works contract, which may include even the component of labour. The returns are to be filed on statutory form VAT-R6. In Rule 51 of the Rules, lump sum tax payable by Ply Board Manufacturers has been specified. The calculation is as per size of press installed in the factory and the rates prescribed are per press/per annum depending on the size. The return is to be filed on statutory form VAT-R11.

21. Rule 52 of the Rules, which provides for payment of lump sum tax by the retailers, is little bit different as compared to other category of dealers, who can opt for payment of lump sum tax. Option for payment of lump sum tax can be exercised only by a dealer, whose aggregate of purchases of taxable goods made and the value of goods received for sale by him during the last year did not exceed Rs. 40 lacs. The retailer dealing in aerated water/drinks or medicines are not eligible to opt for payment of lump sum tax. They are required to file their returns on Form VAT-R7. The amount of tax payable by the retailers is to be computed @ 1% of the aggregate of purchases of taxable goods made from the registered dealers within the State during a quarter subject to a minimum of Rs. 900/- per month. In addition thereto, tax at the rates applicable on the taxable goods purchased in the course of inter-state trade or commerce from outside the state is leviable when these goods are sold in the State. This provision though provides for payment of lump sum tax, but the calculation thereof is at the rates of tax provided on the taxable turnover. Even for the sale of goods from the purchase of goods from outside the State when sold within the State, the tax is leviable at the rates provided under the VAT Act. Meaning thereby, the taxable turnover will have to be determined.

22. Section 7A of the VAT Act if analyzed starts with a non- obstante clause. It provides for

- levy and collection of tax is on the taxable turnover of a registered dealer,
- additional tax in the nature of surcharge,
- to be calculated at the rate of 5% of the tax payable by him,
- except in the cases of retailers opting for payment of lump sum tax.

23. In addition to Section 3 of the VAT Act, which is a charging Section providing for levy of tax under the VAT Act, Section 7A thereof is also charging Section for levy and collection of additional tax in the nature of surcharge on taxable turnover.

24. The issue regarding various components in the concept of taxation was considered by Hon'ble the Supreme Court in ***Govind Saran Ganga Saran v. Commissioner of Sales Tax and others, (1985) 60 STC 1 (SC)***. It was opined that four components are: (i) taxable event; (ii) taxable person; (iii) rate of tax and (iv) measure or value for which rate of tax is to be

applied. In the absence of any of the components, the levy may be struck down. The relevant paragraph thereof is extracted below:

> *"6. The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness ill the legislative scheme defining any of those components of the levy will be fatal to its validity."*

25. The same view was expressed by Hon'ble the Supreme Court in ***2015(1) SCC 1, Commissioner of Income Tax Versus Vatika Township Private Ltd***.

26. On interpretation of a statute, Hon'ble the Supreme Court in ***Mathuram Agrawal v. State of M. P. (1999) 8 SCC 667*** opined that it is only the plain language of the statute which is considered. Nothing is to be added or intended. The words can neither be added nor substituted or ignored. Relevant paragraph thereof is extracted below:

> *"In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter."*

27. In ***National Mineral Development Corporation Limited Vs. State of M.P. and another, 2004 (6) SCC 281*** the issue under consideration before Hon'ble the Supreme Court was as to whether despite there being levy under the charging section, the royalty could be demanded in the absence of rates, the answer was in negative.

28. Four components required for levy of additional tax are existing in the section. Such as:

> *(i) taxable event - the taxable turnover.*
> *(ii) taxable person - the dealer registered under the Act.*
> *(iii) rate of tax - @ 5%*
> *(iv) measure of tax - on the tax payable under the Act.*

29. As has already been noticed above, levy of tax under Section 7A of the VAT Act is on the taxable turnover. At the time of prescribing the rates instead of mentioning different rates of taxes for different commodities, it has been provided that its calculation shall be at the rate of 5% of the tax payable. A simplified method is adopted. Tax payable would mean that tax as calculated on the taxable turnover after it is determined in terms of Section 6 of the VAT Act, after application of rates as provided for under Section 7 of the VAT Act. Taxable event for levy of additional tax under Section 7A of the VAT Act is on taxable turnover, is also evident from the fact that the retailers opting for payment of lump sum tax have been excluded from the levy. As provided for in Rule 52 of the Rules, in the case of retailers, taxable turnover

is determined only then the amount of tax is calculated. Whereas in none of the other categories of the dealers opting for payment of tax on lumpsum basis, the taxable turnover is calculated. Unless in the case of a dealer taxable turnover is determined, the provision will not have application. As has already been noticed above in the case of Brick kiln owners, the amount of lump sum tax is related with the capacity of brick kiln. In the case of lump sum tax on lotteries, it has relation with type of lottery with reference to draw. In respect of contractors, the amount is calculated on the total valuable consideration receivable for the execution of the contract on the transfer of property with no reference to the sale of taxable goods only specifically. In a case of Ply Board manufacturers, the amount specified has relation with the size and number of the press installed in the factory.

30. One of the important component on taxation being missing namely taxable turnover in the case of dealers opting for payment of tax on lump sum basis, levy of additional tax thereon cannot be sustained.

31. In ***South India Corporation Ltd's*** case (supra) the issue under consideration before the Division Bench of Madras High Court was regarding levy of additional tax in terms of a separate Act enacted for the purpose, titled as Tamil Nadu Additional Sales Tax Act (for short 'the 1970 Act'), the existing Act being the Tamil Nadu General Sales Tax Act, (for short 'the 1959 Act'). Section 2 of the 1970 Act provided for levy of additional tax on the taxable turnover of a dealer as payable under the 1959 Act. The Court opined that under the general provisions of the 1959 Act, there is no difficulty in determination of taxable turnover of a dealer engaged in execution of works contract. However, in the case of a dealer, who had opted for payment of tax on lump sum basis, the amount of tax is not determined on the taxable turnover, but is determined with reference to the total value of works contract, in respect of which option was exercised. In the absence of determination of taxable turnover, additional sale tax was held to be not leviable. Claim for additional sales tax by treating contract value as taxable turnover was held to be not permissible. Relevant paras of the judgment are extracted below:

> *"15. As the additional tax is thus levied at the prescribed percentage on the taxable turnover of the dealer that percentage varying from 1.5 to 3 depending on the turnover of the assessee for the purpose of levy of this additional tax, the determination of the taxable turnover is crucial. Despite the declared intention to levy additional tax on the sale or purchase of goods, the tax levied under that Act having been linked solely to the taxable turnover, mere payment of tax under the principal enactment would not render the dealer liable for the additional sales tax unless taxable turnover of that dealer is determinable under the principal Act.*
>
> *16. While there is no difficulty in determining the taxable turnover of a dealer who is engaged in the execution of a works contract in cases where the tax is computed in terms of section 3-B of the Act, the determination of turnover of a dealer who has opted for payment of tax under section 7-C is not possible at all under the parent Act, as the amount computed under section 7-C is not an amount which is determined as tax on the taxable turnover, but is determined with reference to the total value of the works contract in respect of which option is exercised. As already noticed there is no provision in the Act which deems such a total contract value as total turnover.*
>
> *17. Turnover, as defined in the Act, is the aggregate of value of sales effected or purchase effected by the dealer. The works contract not only involves the transfer of goods but also involves the rendering of several services which cannot be subjected to tax under the Sales Tax Act. The consent given by the dealer under section 7-C for the levy of percentage of total contract value*

towards the tax otherwise payable under section 3-B cannot be stretched to include the payment of additional sales tax under any other enactment by treating the contract value as taxable turnover for the payment of tax under the Additional Sales Tax Act."

32. Amendment was carried out in Section 7C of the 1959 Act providing for payment of lump-sum tax by the works contractors defining the term 'taxable turnover' for the purpose of works contract. It was defined to mean total value of the contract executed as referred to in the Section. Vires of aforesaid amendment was challenged before Madras High Court in Taher Ali Industries and Projects (PI Ltd's case (supra! and the same was struck down. Section 7C of 1959 Act, reads as under:

"7C. Payment of tax at compounded rates by works contractor:-

(1) Notwithstanding anything contained in section 3B, every dealer referred to in item (vi) of clause (g) of section 2, may, at his option, instead of paying tax in accordance with section 3B, pay, either on the total value of each works contract or on the total value of all works contract, executed by him in a year, tax calculated at the following rate, namely:

(i)	*Civil works contract*	*Two percent of the total contract value of the civil works executed.*
(ii)	*All other works contracts*	*Four per cent of the total contract value of works executed."*

Amended definition of'Taxable turnover' reads as under:

"'Taxable turnover', for the purpose of this clause in respect of a dealer liable to pay tax under section 7C of the said Act for the financial years commencing on the 1st day of April 1993, shall be the total value referred to in the said section."

33. The Judgment of Hon'ble the Supreme Court in Bhima Jewellery's case (supra! is distinguishable as in that case normal tax was payable under Sections 5 and 5-A of the Kerala General Sales Tax Act, 1963, whereas compounded rates were prescribed under Section 7 thereof. Additional tax was levied under Section 5D of that Act therein only on the taxes payable under Section 5 and 5A of that Act. Hence, levy of additional tax on the compounded rates was held to be bad.

34. In Systematic Conscom Ltd's Case (supra), the facts were that the provision providing for composition of tax liability, further provided that in case there is any change in the rate of tax after the rates were agreed upon, there would be proportionate change in the lump-sum tax payable. Additional tax in that case having been levied in the form of a different tax namely State Development Tax, Hon'ble the Supreme Court opined that it cannot be termed as a change in rate of tax, rather levy of a new tax. Hence, proportionate change in the compounded rates was held to be not permissible. The judgment has no application in the facts of the case.

35. Division Bench judgment of this court in Hoshiarpur Large and Medium Industries Association's case (supra) is not applicable in the case in hand as the issue involved therein was regarding vires of Section 30-AA added in Punjab General Sales Tax Act, 1948 providing for levy of surcharge even on the dealers availing exemption from payment of tax. Surcharge otherwise was leviable under Section 5(1)(C) of 1948 Act. Vires thereof was upheld. The contention raised by learned counsel for the petitioner therein that it should be adjusted against the exemption limit was also rejected.

36. In the case in hand as referred to earlier, the incidence of tax under Section 3 of the VAT Act is on the taxable turnover. Section 6 of the VAT Act provides for calculation of taxable turnover. Rates of taxes have been provided for under Section 7 of the VAT Act. This is the normal procedure applicable in the cases of all the dealers, where for levy and collection of taxes, taxable turnover is determined and then tax is calculated at the rates provided in Section 7of the VAT Act. In the cases of some specified class of dealers, at their option the State is authorised to collect tax in lump sum in lieu of the tax payable under the VAT Act. In that process, taxable turnover is not to be determined except in the cases of retailers opting for payment of tax on lump sum basis. As Section 7A of the VAT Act provides for levy and collection of additional tax on taxable turnover, the cases where taxable turnover is not to be determined, the provisions will have no application. It is one of the ingredients for levy of tax. Calculation of tax is a subsequent stage.

37. For the reasons mentioned above, we find merit in the present appeal. The same is accordingly allowed. The substantial question of law No.(i), as referred to above, is answered in favour of the assessee and against the department, while opining that in the cases where no taxable turnover is to be determined, additional tax under Section 7 A of the VAT Act is not leviable. As a consequence thereof, the circular issued by the Excise and Taxation Commissioner, Haryana, dated 14.1.2014 Annexure-P4 in CWP No. 14681 of 2014, is set aside. The order of assessment dated 27.11.2013 (Annexure P-1) in CWP No.8436 of 2014 is set aside only to the extent of levy of additional tax and interest, if any, on alleged delayed payment thereof. Question No. (ii) does not survive.

Accordingly the writ petitions are also disposed of.

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SGA
LAW OFFICES

NOTIFICATION

NOTIFICATION REGARDING CONSTITUTION OF THE GOODS AND SERVICES TAX COUNCIL

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 15th September, 2016

S.O. 2957(E).-The following Order made by the President is published for general information:-

ORDER

In exercise of the powers conferred by article 279A of the Constitution, the President hereby constitutes the Goods and Services Tax Council consisting of the following members, namely:-

a) The Union Finance Minister … Chairperson

b) The Union Minister of State in charge of Revenue or Finance … Member

c) The Minister in charge of Finance or Taxation or any other Minister nominated by each State Government … Members

PRESIDENT
[F. No. 31011/09/2015-SO (ST)]
UDAI SINGH KUMAWAT, Jt. Secy.

SGA
LAW OFFICES

NOTIFICATION

THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 10th September, 2016

S.O. 2915(E).—In exercise of the powers conferred by sub-section (2) of section 1 of the Constitution (One Hundred and First Amendment) Act, 2016, the Central Government hereby appoints the 12th day of September, 2016 as the date on which the provisions of section 12 of the said Act shall come into force.

[F. No. 31011/09/2015-SO (ST)]
UDAI SINGH KUMAWAT, Jt. Secy.

SGA
LAW OFFICES

AMENDMENT IN ACT

THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 8th September, 2016

The following Act of Parliament received the assent of the President on the 8th September, 2016, and is hereby published for general information:—

THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016

[8th September, 2016.]

An Act further to amend the Constitution of India.

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

Short title and commencement

1. (*1*) This Act may be called the Constitution (One Hundred and First Amendment) Act, 2016.

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

Insertion of new article 246A.

2. After article 246 of the Constitution, the following article shall be inserted, namely:—

Special provision with respect to go ods and services tax.

"246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.".

Amendment of article 248.

3. In article 248 of the Constitution, in clause (1), for the word "Parliament", the words, figures and letter "Subject to article 246A, Parliament" shall be substituted.

Amendment of article 249.

4. In article 249 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.

Amendment of article 250.

5. In article 250 of the Constitution, in clause (1), after the words with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.

Amendment of article 268.

6. In article 268 of the Constitution, in clause (1), the words and such duties of excise on medicinal and toilet preparations" shall be omitted.

Omission of article 268A.

7. Article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted.

Amendment of article 269.

8. In article 269 of the Constitution, in clause (1), after the words "consignment of goods", the words, figures and letter "except as provided in article 269A" shall be inserted.

Insertion of new article 269A.

9. After article 269 of the Constitution, the following article shall be inserted, namely:—

Levy and collection of goods and services tax in course of inter-State trade or

"269A. (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.".

Amendment of article 270.

10. In article 270 of the Constitution,—

(*i*) in clause (1), for the words, figures and letter "articles 268, 268A and 269", the words, figures and letter "articles 268, 269 and 269A" shall be substituted;

(*ii*) after clause (1), the following clauses shall be inserted, namely:

"(1A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).

(1B) The tax levied and collected by the Union under clause (2) of article 246A and article 269A, which has been used for payment of the tax levied by the Union under clause (1) of article 246A, and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).".

Amendment of article 271.

11. In article 271 of the Constitution, after the words "in those articles", the words, figures and letter "except the goods and services tax under article 246A," shall be inserted.

Insertion of new article 279A.

12. After article 279 of the Constitution, the following article shall be inserted, namely:—

Goods and Services Tax Council.

"279A. (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely:—

(*a*) the Union Finance Minister…. …… Chairperson;

(b) the Union Minister of State in charge of Revenue or Finance …. Member;

(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government… ... Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(*a*) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

(*b*) the goods and services that may be subjected to, or exempted from the goods and services tax;

(*c*) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;

(*d*) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(*e*) the rates including floor rates with bands of goods and services tax;

(*f*) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

(*g*) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(*h*) any other matter relating to the goods and services tax, as the Council may decide.

(5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

(7) One-half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely: —

(*a*) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(*b*) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—

(*a*) any vacancy in, or any defect in, the constitution of the Council; or

(*b*) any defect in the appointment of a person as a Member of the Council; or

(*c*) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute—

(*a*) between the Government of India and one or more States; or

(*b*) between the Government of India and any State or States on one side and one or more other States on the other side; or

(*c*) between two or more States,

arising out of the recommendations of the Council or implementation thereof.".

Amendment of article 286.

13. In article 286 of the Constitution,—

(*i*) in clause (1), —

(*A*) for the words the sale or purchase of goods where such sale or purchase takes place", the words the supply of goods or of services or both, where such supply takes place" shall be substituted;

(*B*) in sub-clause (b), for the word "goods", at both the places where it occurs, the words "goods or services or both" shall be substituted;

(*ii*) in clause (2), for the words "sale or purchase of goods takes place", the words "supply of goods or of services or both' shall be substituted;

(*iii*) clause (3) shall be omitted.

Amendment of article 366.

14. In article 366 of the Constitution,—

(*i*) after clause (12), the following clause shall be inserted, namely: —

`(12A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;';

(*ii*) after clause (26), the following clauses shall be inserted, namely:—

`(26A) "Services" means anything other than goods;

(26B) "State" with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature;'.

Amendment of article 368.

15. In article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures "article 162 or article 241", the words, figures and letter "article 162, article 241 or article 279A" shall be substituted.

Amendment of Sixth Schedule.

16. In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3), —

(*i*) in clause (c), the word "and" occurring at the end shall be omitted;

(*ii*) in clause (d), the word "and" shall be inserted at the end;

(*iii*) after clause (d), the following clause shall be inserted, namely:—

"(e) taxes on entertainment and amusements.".

Amendment of Seventh Schedule.

17. In the Seventh Schedule to the Constitution,

(*a*) in List I —Union List,—

(*i*) for entry 84, the following entry shall be substituted, namely:

"84. Duties of excise on the following goods manufactured or produced in India, namely: —

(*a*) petroleum crude;

(*b*) high speed diesel;

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

(*d*) natural gas;

(*e*) aviation turbine fuel; and

(*f*) tobacco and tobacco products.";

(ii) entries 92 and 92C shall be omitted;

(*b*) in List II—State List,—

(*i*) entry 52 shall be omitted;

(*ii*) for entry 54, the following entry shall be substituted, namely: —

"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";

(*iii*) entry 55 shall be omitted;

(*iv*) for entry 62, the following entry shall be substituted, namely: —

"62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.".

Compensation to States for loss of revenue on account of introduction of goods and services tax.

18. Parliament shall, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of five years.

Compensation to States for loss of revenue on account of introduction of goods and services tax.

19. Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

Power of President to remove difficulties.

20. (*1*) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood

immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of three years from the date of such assent.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

———

DR. G NARAYANARAJU,
Secretary to the Govt. of India.

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LAW OFFICES

NOTIFICATION (Haryana)

AMNESTY SCHEME - HARYANA ALTERNATIVE TAX COMPLIANCE SCHEME FOR CONTRACTORS 2016

Notification

Dated 12th September, 2016

No.19 /ST-1/H.A.6/2003/S.59A/2016 - Whereas, it is expedient for the recovery of tax, interest, penalty or other dues under the Haryana Value Added Tax Act, 2003 (6 of 2003), therefore, in exercise of the powers conferred by section 59A of the said Act, the Governor of Haryana hereby provides for an Amnesty Scheme namely, the Haryana Alternative Tax Compliance Scheme for Contractors, 2016, for the recovery of tax, interest, penalty or other dues payable under the said Act, for the period upto the 31st March, 2014, from such contractors and for such business as provided in the Scheme, subject to the conditions and restrictions as specified hereunder:-

Short title and application.

1. (1) This Scheme may be called the Haryana Alternative Tax Compliance Scheme for Contractors, 2016.

(2) It shall be applicable to the contractors who are registered or are required to be registered under the Act or the Central Sales Tax Act, 1956 (74 of 1956).

Definitions.

2. (1) For the purposes of this Scheme:-

(a) **"Act"** means the Haryana Value Added Tax Act, 2003 (6 of 2003);

(b) **"aggregate amount"** means revenue recognized as per audited financial statements of the relevant financial year or valuable consideration, whichever is higher**,** in relation to business;

(c) **"business"** means an act of construction of civil structures, flats, dwelling units, buildings, premises, complexes, commercial or otherwise, whether wholly or partly (either by the contractor himself or through an authorized person) for sale, and transfers them in pursuance of an agreement alongwith land or interest underlying the land to a buyer, where the value of land or interest underlying the land is included in the total consideration received or receivable;

(d) "**contractor**" means a dealer, registered or unregistered, who either himself or through a sub-contractor, is engaged in and undertakes the business;

(e) **"Form"** means a Form appended to this Scheme.

(2) Words and expressions used but not defined under this Scheme and defined in the Act, shall have the meanings respectively assigned to them under the Act.

Scope of Scheme.

3. (1) This Scheme shall apply to all contractors, whether they have or have not opted for lump sum scheme under rule 49 of the Haryana Value Added Tax Rules, 2003.

(2) This Scheme shall apply irrespective of the fact that assessments are pending or have attained finality or assessment orders are pending before any authority under the Act or any court of law at the time of applying for the Scheme.

(3) This Scheme once opted for a particular year shall be deemed to have been opted for upto the 31st March, 2014, and the contractor shall be liable to pay the amount as per this Scheme for each year up to the end of the period of the Scheme.

(4) This Scheme shall not abate the liability of any other dealer who is otherwise liable to pay the tax under the Act, but is not covered under this Scheme.

Computation of liability.

4. (1) A contractor opting under this Scheme shall pay year wise, in lieu of tax, interest or penalty arising from his business, by way of one time settlement, a lump sum amount **at the rate of one percent of the entire aggregate amount,** received/receivable for the business carried out during the year, without deduction of any kind. Further, a surcharge at the rate of five percent shall be charged on the amount so payable:

Provided that where the contractor has charged and collected tax from the buyers in any particular year and it exceeds the amount payable under this Scheme, then the amount of actual tax charged and collected during the year shall be the amount payable for that particular year under this Scheme.

(2) No input tax credit on purchase of goods shall be admissible to the contractor under this Scheme. The liability under this Scheme shall also be irrespective of the liability of the sub-contractor under the Act. However, if the tax, interest or penalty already paid by him during the year covered under this Scheme exceeds the lump sum amount payable as per sub-clause (1) of clause 4 above, the excess amount shall be adjusted in subsequent year. Any excess amount left after such adjustments shall neither be refunded nor allowed to be adjusted against any other tax liability on the expiry of this Scheme.

Form of Application

5. The contractor opting for this Scheme **shall apply online in Form TC-1** appended to the Scheme, to the concerned assessing authority within ninety days from the date of this notification, furnishing the details required therein, declaring his year-wise liability and the latest status of the assessment cases.

Payment of liability.

6. (1) The contractor shall calculate and declare his year-wise liability due under this Scheme in Form TC-1 and shall pay twenty-five percent of the total amount due and payable under the Scheme. The Contractor shall furnish proof of payment thereof alongwith Form TC-1.

(2) The balance seventy-five percent of the total amount due and payable under this Scheme shall be paid by the contractor in three equal quarterly installments, each payable within fifteen days of the end of the next quarter

without any interest. Failure to pay any of the installments in time shall attract interest at the rate of two percent per month for the period of delay, but this period of delay shall stand restricted to three months only and the contractor shall fully discharge his liability alongwith interest within this period of three months. In the event of default in making the payment, the option and the benefit already availed under this Scheme shall be liable to be withdrawn and the amount already paid shall stand forfeited. However, no order to this effect shall be passed by the assessing authority without affording a reasonable opportunity of being heard to the contractor.

(3) All liabilities of tax including interest and penalty under the Act accruing on the business for the financial year shall stand discharged once the amount payable under this Scheme is paid in full by the contractor.

Examination of Form TC-1.

7. (1) A committee consisting of two senior most Excise and Taxation Officers (other than the concerned assessing authority) and the concerned Assessing Authority posted in the district shall examine Form TC-1 within twenty-one days of the receipt of such Form and make report to the concerned Deputy Excise and Taxation Commissioner (ST) .

(2) The Deputy Excise and Taxation Commissioner (ST), where he has reasons to believe that the information provided by the contractor in Form TC-1 is incomplete or incorrect in material particulars, he may, for reasons to be recorded in writing, serve a notice upon the contractor directing him to show cause as to why his application should not be rejected or as to why he should not be required to pay the amount payable that remains unpaid or short paid as per provisions of this Scheme.

(3) The Deputy Excise and Taxation Commissioner (ST) shall pass an appropriate order, within a period of one month of the receipt of report from the committee. In case the Form is rejected, the amount paid by the contractor alongwith the Form shall be adjusted against his liabilities under the Act or refunded, as the case may be.

(4) The Excise and Taxation Commissioner may extend time period mentioned in sub-clauses (1) and (3) above in exceptional cases.

(5) The Deputy Excise and Taxation Commissioner (ST) shall accept the Form which has been found in order or where the deficiency has been removed after notice, the same shall be conveyed to the applicant. However, the acceptance shall be subject to withdrawal of all cases as per clause 8 of this Scheme.

Withdrawal of pending cases by the contractor.

8. (1) In the event of acceptance of the Form by the Deputy Excise and Taxation Commissioner, the contractor shall, within fifteen days of the date of acceptance, make an application to withdraw all appeals, writ petitions and/or cases pending before any Authority or Court of Law. Similarly, any Authority under the Act shall keep all proceedings against the contractor in abeyance and such pending cases on final payment of the entire liability shall become infructuous.

(2) In the event of failure of the contractor to withdraw the cases as above subsequent to the acceptance of his Form, his Form shall be deemed to have been rejected and the proceeding held in abeyance shall be finalized in accordance with law. The amount deposited by him under this Scheme shall stand forfeited:

Provided that the time period lost on account of proceedings under this Scheme shall be excluded in computing the period of limitation specified under the Act, to finalize the proceedings kept in abeyance under this Scheme.

Removal of doubts.

9. (1) Nothing contained in this Scheme shall be construed as conferring any benefit, concession or immunity on the contractor other than the benefit, concession or immunity granted under this Scheme.

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

Form TC-1

APPLICATION FORM FOR OPTING THE HARYANA ALTERNATIVE TAX COMPLIANCE SCHEME FOR CONTRACTORS, 2016

(see clause 5)

1	Name of the Dealer									
	PAN									
	Mobile									
	E-mail id									
	SCO/Booth/Shop/Building/Flat/Floor No.									
	Sector/Area									
	City/Town/Village									
	Post Office									
	District									
	Pin Code									
	State									
2	TIN (if registered)									
	Date of Liability of TIN									
	Date of Validity of TIN									
3	Date of Liability to pay tax under the Haryana Value Added Tax Act, 2003 (To be declared by the applicant on his own on the basis of his account books, if the dealer is not registered on the date of submission of this application)									
4	The Financial Year from which the Scheme is opted									
5	Financial Year	Gross receipts as per account books	Aggregate amount as per clause 4 (1) of the Scheme.	Liability @ 1% on amount shown in Column 3	Amount of tax charged/ collected from buyers (Please refer to proviso to clause 4 (1) of the Scheme)	Liability as per Column 4 or Tax charged as per Column 5, whichever is higher shall be reflected in this Column	Tax, Interest and penalty already paid voluntarily or otherwise in respect of business defined in the scheme (Please attach proof of payment)			
	(1)	(2)	(3)	(4)	(5)	(6)	(7A)	(7B)	(7C)	(7D)

	Total									

	*** The aggregate amount shown in column 3 shall be reconciled with the gross receipts as per account books shown in column 2 for each financial year. The reconciliation statement, audited financial statement and other documents if any shall be submitted.**
6	Total Liability under the Scheme (Total of Column 6 of Serial Number 5)
7	Add Surcharge @ 5% on above
8	Total Amount Payable
9	Less tax already paid (as per total of Column 7D of Serial Number 5)
10	Net Amount payable under the Scheme (8-9)
11	25% of the net Amount payable

12	Details of payment of 25%. (Please attach proof of payment)	Serial Number	Amount (in Rs.)	GRN/TR No	Date
		Total			

13	**Give year wise detail of all assessment cases from the first year from which the Scheme is opted upto 2013-14**							
	Financial Year (F.Y.)	Type of Case i.e. either of Assessment /Reassessment / Revision, whichever finalized on a later date to be mentioned. (where assessment has not been finalized, status be mentioned 'Pending').			Total Tax Liability determined in cases of column 2 (tax liability as per returns be mentioned where assessment is pending).			Provide the latest status of the order i.e. whether pending in Reassessment/ Revision / Appeal /Court of Law and if so, with whom pending (Court/Authority)
	(1)	(2)			(3)			(4)
		Type of Case	Date of order	Designation of Authority	Tax	Interest	Penalty	Total

14. Declaration:

I _____ (give full name) son/daughter of _____ (give name of the father), resident of _____(give complete residential address), hereby declare in the capacity of _____ (proprietor/partner/managing director/duly authorized signatory) of M/s _____ (give full name of the business entity/dealer), having its business address at _____ (give complete address of the dealer) that the contents contained hereinabove are true and correct and that nothing has been concealed therein. **The Haryana Alterative Tax Compliance Scheme for Contractors, 2016** has been opted after fully understanding the terms and conditions.

Signature
Place: (Name of the applicant)
Date: Also affix Seal and Stamp of the dealer

Anurag Rastogi,
Principal Secretary to Government, Haryana,
Excise and Taxation Department Chandigarh.

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NEWS OF YOUR INTEREST

16 STATES RATIFY GST BILL, READY FOR PREZ NOD

The government will seek Presidential assent for the landmark Constitution amendment Bill for GST as 16 states have ratified the legislation, Finance Minister Arun Jaitley said today. With Odisha approving the constitution amendment at a special assembly session today, 50% of the states have ratified the GST Bill.

"The requisite number of states has ratified the GST Constitution Amendment Bill and now it can go for Presidential assent," Jaitley tweeted.

Revenue Secretary Hasmukh Adhia said the government is ahead of schedule for implementation of GST. "Instead of 30 days kept for this (states' ratification), it is achieved in 23 days," he said in a tweet.

The government plans to roll out the new indirect tax regime from April 1, 2017. GST, the biggest tax reform since Independence, will create uniform market for seamless movement of goods and services with one tax rate.

Since Parliament passed the Constitution Amendment bill on August 8, as many as 16 states, starting with Assam, have ratified the bill. GST being a constitutional amendment requires 50% of state assemblies to ratify it.

The other states which have passed the legislation include Bihar (August 16), Jharkhand (August 17), Chhattisgarh (August 22), Himachal Pradesh (August 22), Gujarat (August 23), Madhya Pradesh and Delhi (August 24), Nagaland (August 24), Maharashtra, Haryana, Sikkim (August 29), Mizoram, Telangana (August 30), Goa (August 31) and Odisha (September 1).

After the Presidential assent, the government will notify the GST Council. Union Finance Minister will head the Council, which will comprise state Finance Ministers.

The GST Council will decide on the tax rate, cess and surcharges which are to be subsumed and also decide on the goods and services which would be exempted from the purview of the new indirect tax regime.

The states and the Centre are working overtime and talking to stakeholders to draft the Central GST, State GST and Integrated GST laws, which are to be passed in the Winter Session of Parliament in November.

The CGST and IGST will be drafted on the basis of the model GST law. The states will draft their respective State GST (SGST) laws with minor variation incorporating state-based exemption. The IGST law would deal with inter-state movement of goods and services. — PTI

Courtesy: The Tribune
2nd September, 2016

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NEWS OF YOUR INTEREST

GST TOP PRIORITY, TAX RATES TO COME DOWN: JAITLEY

According top priority to the implementation of GST, finance minister Arun Jaitley on Wednesday sounded confident on the tax rates coming down once the indirect taxation regime is put in place.

The challenges before the government, he said, is to put public sector banks back on track and continue to operationalise stalled infrastructure projects to further boost economic activity.

As regards the implementation of Goods and Services Tax from April next year, the Finance Minister said, "We look ahead, it's a very stiff target, we are running against time. I would certainly like to give it a try."

"It (GST) will the plug the leakages. In the long run it will probably stabilise the tax rate and move them down once effectively implemented," he added.

Speaking at the event, 'The Economist - India Summit 2016', Jaitley said the procedural formalities of collecting proceedings of all the states and sending it to the President for ratification are on.

Once the assent is granted by President Pranab Mukherjee, the constitution amendment bill will have to be notified.

After notification and constitution of the GST Council, he said, there are obviously some pending issues, which the council will have to resolve.

"If you ask me in terms of economic priorities even outside Parliament, I would say that certainly implementation of GST is the top priority, putting the bank on track is a very important priority and the stalled projects, a lot of them have been cleared and this process must continuously go on... I think these are the obvious priorities," Jaitley said.

Talking about state-owned banks, he said, India is not ready for their privatisation and present characteristics of PSU banks will continue except for IDBI Bank.

"We are trying to consolidate some of the banks, which may otherwise find it difficult in a competitive environment," he said.

Courtesy: Hindustan Times
7th September, 2016

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NEWS OF YOUR INTEREST

CABINET APPROVES CREATION OF GOODS AND SERVICES TAX COUNCIL, SECRETARIAT

Racing against time to meet the April 1, 2017, the deadline to implement the country-wide goods and services tax (GST), the cabinet on Monday approved the creation of the GST Council.

The council that is headed by finance minister Arun Jaitley is the main decision-making body, which will finalise the design of the GST, the rates, and help the Centre and states resolve sticky issues by November 22.

"We are geared up to put in place the administrative and IT set-up," revenue secretary Hasmukh Adhia said. Asked if the government is sticking to the April 1 deadline, he said: "So far, yes.... We will see how we proceed."

The GST Council will consist of finance minister, minister of state, in charge of the revenue department, and state finance ministers.

The council will hold its first meeting on September 22 and 23, an official statement said.

"The cabinet also decided to provide adequate funds to meet the recurring and non-recurring expenses of the GST Council Secretariat. The entire cost will be borne by the Centre. Officers of the state and central governments will be deputed at the GST Council Secretariat," the statement said.

"Now it is for the GST Council to thrash out all the issues within two months. We have set a limit of two months, from September 22 to November 22, to discuss and decide all major aspects. We'll have to see if that is feasible," Adhia said.

Adhia further said the council would be able to decide the GST rate, exemptions and threshold for inclusion in the CGST law before November 22.

The government is planning to introduce the GST legislations -- Central GST and Integrated GST -- in the winter session of Parliament in November.

Besides, the revenue secretary will be the ex-officio secretary to the GST Council, which will have the chairperson of the Central Board of Excise and Customs as a permanent invitee (non-voting). And the finance ministers of 29 states and two union territories will also be part of the council with voting rights.

Also, a post of additional secretary to the GST Council and four posts of commissioner (at the level of joint secretary to the Centre) have been created in the GST Council Secretariat.

The council will make recommendations to the union and the states on important issues related to the GST, such as the goods and services that may be subjected or exempted from GST, model GST laws, principles that govern the place of supply, threshold limits, GST rates, including the floor rates with bands, special rates for raising additional resources during natural calamities/disasters and special provisions for certain states.

While the Centre will have one-third of the votes in the GST Council, states together will have two-thirds of the votes. They will need a majority of three-fourths to adopt a resolution.

The central and the integrated GSTs will be drafted on the basis of the model GST law. The states will draft their respective state GST laws with minor variation incorporating state-based exemptions. The integrated GST law would deal with inter-state movement of goods and services.

Courtesy: Hindustan Times
12th September, 2016

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NEWS OF YOUR INTEREST

CENTRE, STATES MAY SHARE TAX DEPT OFFICIALS

The central board of excise and customs is planning a firstof-its-kind manpower-sharing exercise with states under the goods and services tax (GST) regime. The blueprint drawn up by the central government's indirect tax wing envisages employing state GST officials in the central tax evasion and intelligence wings on deputation. Similarly, the board also proposes to send central tax officials to the state GST administration, subject to the latter's approval. If implemented, it will truly indicate a movement towards cooperative federalism but may prove to be challenging given the current distrust between the tax authorities at different levels.

The Central Board of Excise and Customs (CBEC) is planning a first- of- its- kind man powersharing exercise with states under the goods and services tax (GST) regime.

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Similarly, the CBEC also proposes to send central tax officials to the state GST administration, subject to the latter's approval.

If implemented successfully, it will further aid the move towards cooperative federalism, but may prove to be a challenging task, given the current distrust between the tax authorities.

GST aims to remove barriers across states and unify the country into a common market. It will replace most of the indirect taxes levied by the centre and states, including excise duty, service tax, valueadded tax (VAT), entertainment tax, luxury tax and entry tax. It will also require massive coordination between the centre and the states as the tax base will now be unified.

To begin with, it is proposed that state commercial tax officers who have expertise in state VAT laws be deputed to the proposed Directorate General of Indirect Tax Intelligence, which will replace the Directorate General of Central Excise Intelligence in a GST regime and handle all economic frauds and offences related to taxation.

It is also proposed to have state officers on deputation in GST commissionerates that will be set up zone-wise.

With the restructuring of the CBEC also on the anvil because of the transition to GST, the board envisages sending excess staff to state administrations, subject to assent by states.

"We are discussing a number of steps on how the administration can be restructured. Increasing the cooperation with state tax authorities is also being discussed," said a finance ministry official who did not wish to be identified.

But this may be easier said than done.

There are still many points of disagreement between the centre and states.

While the states are seeking exclusive administrative control over traders with a revenue threshold of less than Rs1.5 crore, the centre is reluctant.

The latter also favours a threshold of Rs25 lakh for exempting traders from GST, while some states favour a lower Rs10 lakh threshold.

All these issues will be decided by the newly formed GST council, which will hold its first meeting next week.

"States will face a manpower shortage in the GST regime because they only administer the Vatlaws till now. The officers from the centre can be sent on deputation to the states," said S. D. Majumder, former chairman of the CBEC.

"Also, state government officials have no experience in dealing with services while the central tax authorities have experience in dealing with both goods and services," Majumder added.

Courtesy: Times of India
14th September, 2016

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NEWS OF YOUR INTEREST

PETROLEUM PRODUCTS TO ENTER UNDER GST REGIME TO FUEL BIG GAINS

NEW DELHI: Petroleum products, including crude and some intermediate products, could be taxed under the proposed goods and services tax (GST), a move that will reduce the imperfections in the new levy and also narrow the inflationary impact of the tax. A proposal favouring imposition of a modest tax on these products is being examined and is expected to be taken up by the newly constituted GST Council where the government will try and convince states of its merit.

The idea is to have some minimal tax of about 2-3 per cent so that seamless flow of credit is not broken and cascading is removed.

States have been opposed to a change in tax regime for petroleum goods, an easy way of quickly mopping up revenues if needed. But now thinking has veered around to having some minimal tax from the beginning as it could help in bringing down the overall tax rate and allow the industry to get credit.

The Arvind Subramanian committee has recommended a standard GST rate of around 18 per cent. There are concerns GST could stoke inflation. ET had reported some policymakers are in favour of rate as low as 16 per cent .

Tax at marginal rate would not hurt consumers much but will benefit industry in a big way.

"If the petroleum products are taxed at a GST rate which is equivalent to the input GST cost, the cascading of taxes would be mitigated and the final price of the products may reduce," said Bipin Sapra, partner, EY.

Credits to power, airlines sectors

Sapra said this will allow some credits to the sectors such as power, airlines, transport of goods and passengers, which will help in reducing the cost of these services. "There have been discussions on having some tax on petroleum products...," said a government official, adding that the final decision would rest with the GST Council.

This would be in addition to local state sales tax on these products. "This would reduce cascading to some extent and allow for some flow of credit," the official added. The committee headed by Chief Economic Adviser Arvind Subramanian, which had suggested revenue neutral rate in the 15-15.5per cent range with a lower rate of 12per cent anda standard rate of 18 per cent, had said its inclusion could make the industry more competitive.

"Bringing electricity and petroleum within the scope of the GST could make Indian manufacturing more competitive," the report had said.

The government has put implementation of GST, which seeks to replace plethora of central taxes including excise duty, service tax, cesses and state taxes such as value-added tax, octroi, entry tax with a single levy, on fast track and the newly set up GST Council will meet later this month to take a call on crucial issues.

Prime Minister Narendra Modi will also attend a presentation on the GST framework and issues connected with it on Wednesday.

Courtesy:The Economic Times
14 September, 2016

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HARYANA NOTIFIES VAT AT 1% FOR DEVELOPERS, CONTRACTORS

Spelling relief for apartment buyers in the state, the Haryana government has notified the value added tax (VAT) at the rate of 1% for real estate projects built till March 31, 2014.

The decision will not only make life easier for buyers but will also prompt developers to deposit VAT as a large number of them have challenged the Haryana excise and taxation department after notices were issued to them for payment.

A notification issued by Haryana government on September 12 states that the Haryana Alternative Tax Compliance Scheme for Contractors, 2016, is an amnesty scheme for the recovery of tax, interest, penalty or other dues payable under the Value Added Act, 2003, for the period up to March 31, 2014, and earlier. This means that the retrospective rate of payment of tax would be 1% and not the 4% or 5% as demanded by developers.

Haryana finance minister Capt Abhimanyu during the National National Real Estate Development Council (NAREDCO) Convention held in New Delhi on August 19 had assured developers to decide the VAT and fix the rate at 1%, said Parveen Jain, president, NAREDCO.

As per the scheme, the contractor or developer shall calculate and declare his year-wise liability under this scheme and shall pay 25% of the total amount due with the application. The balance 75% is to be paid in three quarterly instalments, each payable within 15 days of the end of the next quarter without interest.

A committee comprising two senior most excise and taxation officers and the assessing authority shall examine the application.

Samir Yadav, seputy excise and taxation commissioner, Gurgaon, said a contractor opting for this scheme shall apply online within 90 days from the date of notification. “This scheme will reduce litigation to a large extent and will also bring clarity about the payment of value added tax by developers,” Yadav said.

For consumers, the amnesty scheme means that they cannot be forced to pay 4 to 5% VAT, and in some cases even more.

In case, the buyers have paid VAT higher than 1%, then they will either be refunded or the amount will be adjusted towards purchase of property, said Jain.

“This decision has put to rest speculation and uncertainty. It will ensure an end to pending litigations... this decision shall generate more revenue for the government,” Jain said.

Courtesy: The Hindustan Times
15th September, 2016