SGA
LAW OFFICES

Issue 12
16th June 2017

"The wisdom of man never yet contrived a system of taxation that would operate with perfect equality. "

— Andrew Jackson

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NOTIFICATION

NEWS OF YOUR INTEREST

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SUBJECT INDEX

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SUPREME COURT OF INDIA

CIVIL APPEAL NOs. 6468 -6469 OF 2017

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PARLE AGRO (P) LTD.
Vs
COMMISSIONER OF COMMERCIAL TAXES

A.K. SIKRI AND ASHOK BHUSHAN, JJ.

9th May, 2017

HF ▶ Assessee

Appy Fizz is a fruit juice based drink and not Aerated branded Soft Drink and therefore taxable @ 12.5% under Kerala Value Added Tax Act, 2003

ENTRIES IN SCHEDULE – CLASSIFICATION OF GOODS – APPY FIZZ – FRUIT JUICE BASED DRINKS – AERATED BRANDED SOFT DRINKS – STATE GOVT. ISSUING NOTIFICATION FOR LEVY OF LOWER RATE OF TAX ON FRUIT JUICE BASED DRINKS – ITEM SOLD BY ASSESSEE COVERED BY SAID ENTRY – AMENDMENT IN ENTRIES MADE IN 2008 – REVENUE SOUGHT TO COVER APPY FIZZ UNDER THE ENTRY "AERATED BRANDED SOFT DRINK" - "APPY FIZZ" COVERED UNDER ITEM 5, ENTRY 71 AS FRUIT JUICE BASED DRINK AND HENCE TAXABLE @ 12.5%. - *SECTION 6(1)(a) AND 6(1)(d) OF KERALA VALUE ADDED TAX ACT, 2003*

INTERPRETATION OF STATUTE – CLASSIFICATION OF GOODS – SCIENTIFIC AND TECHNICAL WORD – EXPERT OPINION AND SCIENTIFIC AND TECHNICAL MEANING OF THE WORD CAN BE LOOKED INTO BESIDES COMMON AND COMMERCIAL PARLANCE TO FIND OUT THE REAL IMPORT OF THE ENTRY - *SECTION 6(1)(a) AND 6(1)(d) OF KERALA VALUE ADDED TAX ACT, 2003*

INTERPRETATION OF STATUTE – NOSCITUR A SOCIIS – ENTRY CONTAINS SIMILAR PRODUCTS MENTIONED IN OTHER ITEMS OF ENTRY – FRUIT JUCE BASED DRINK – WOULD BE SIMILAR TO THE GOODS FRUIT JUICE, FRUIT CONCENTRATE, FRUIT SQUASH, FRUIT SYRUP AND FRUIT PULP – DOCTRINE OF 'NOSCITUR A SOCIIS' APPLICABLE. - *SECTION 6(1)(a) AND 6(1)(d) OF KERALA VALUE ADDED TAX ACT, 2003*

M/s Parle Agro (P) Ltd. is a dealer engaged in manufacturing and sale of fruit juice based drink known as 'Appy Fizz'. Upto the year 2007, the said item was being classified as taxable @ 12.5% under Entry 71 of Notification issued under Section 6(1)(d) of the Act. Upto that time, Section 6(1)(a) of the Act provided for levy of tax on "Aerated Branded Soft drink" @ 20%.

In the year 2007, there was no change in Section 6(1)(a) and "Aerated Branded Soft drink" continued to be taxable @ 20%. However, in exercise of powers given under Section 6(1)(d),

the State Govt. had issued Notification amending Entry 71 excluding the specific mention to fruit juice based drinks in the List of goods taxable @ 12.5% but still had a residual entry providing for levy of 12.5% tax on products similar to fruit juice, fruit concentrates, fruit squash, fruit syrup and fruit pulp.

One of the distributors of the appellant company was assessed to tax for sale of Appy Fizz @ 20%. The appeal filed by said assessee was also dismissed up to Tribunal. Even the High Court dismissed the said appeal and the SLP filed against said order before Supreme Court was withdrawn.

Subsequent to the withdrawal of SLP, the assessee was issued Assessment notice for the year 2009 upto 2015 proposing classification of `Appy Fizz' under the category of "Aerated Branded Soft drink" falling under Section 6(1)(a) of the Act. The assessee sought clarification of product "Appy Fizz" by moving an Application under Section 94 of the Act claiming that the item in question is fruit juice based drink on which the tax liability would be 12.5%. The assessee also filed necessary relevant expert opinion and certificates etc. to substantiate its claim. Simultaneously, the assessee also approached Kerala High Court seeking directions to the Commissioner of Commercial Taxes to decide its Application for clarification within specified time and in the meanwhile proceedings initiated by Assessing Authorities be kept in abeyance. The said writ petition was accepted by Single Judge and it was directed that clarification be decided within a period of one month and in the meanwhile further proceedings in various notices be kept in abeyance. The intra-Court Appeal filed by the State before the Division Bench was also dismissed and the order of Single Judge was affirmed.

Even though State challenged the order of Division Bench before Supreme Court but in the meanwhile decided the clarification moved by appellant assessee under the directions of Kerala High Court and held that goods in question are "Aerated Branded Soft drink" and thus taxable @ 20% falling under Section 6(1)(a). The appeal filed by assessee against the said clarification was dismissed by Kerala High Court. Against the said order, the assessee filed SLP before the Supreme Court.

From the pleadings and submissions of the parties, the main issues which arise for consideration in these appeals are summarised as under:

(1) What is inter-relation between Section 6(1)(a) and Section 6(1)(d) of Act, 2003?

(2) What is scope and ambit of Item 5 of Entry 71 as amended

(3) Whether common parlance test is the only test to be applied for understanding the different entries under Section 6(1)(a) and Section 6(1)(d)

(4) Principle of Noscitur a Sociis

(5) Whether the Division Bench of Kerala High Court in M/s. Trade Lines can preclude the Committee of Joint Commissioners to examine the materials filed by the appellant along with Clarification Application under Section 94.

(6) Whether CESTAT decision dated 18.03.2008 has any relevance with regard to the classification of product in question?

(7) Whether decision and opinion of Food Safety Authorities on the product in question were relevant?

(8) Whether the Committee of Joint Commissioners as well as the High Court has rightly discarded technical and expert opinion relied by the appellant ?

(9) Conclusions.

The Supreme Court decided the aforesaid issues as under:

Issue Nos. 1 and 2

State Government has provided for levy of tax on certain goods under Section 6(1)(a) at a higher rate and all such goods are those which are hazardous to health or environment. Under Section 6(1)(d), the State Govt. is empowered to notify a list of goods which are taxable @ 12.5% which do not fall under Section 6(1)(a) or 6(1)(c).

Prior to 01.04.2007, the item "Aerated Branded Soft drink" was mentioned in Section 6(1)(a) and exercising its powers under Section 6(1)(d), the State Govt. had issued a Notification and Entry 71 contained "fruit pulp or fruit juice based drink with HSN Code 2202.90.20". When fruit juice based drinks were covered by Entry 71, the State Govt. knew that fruit juice based drinks were not covered by Section 6(1)(a) as it could not have issued any Notification under Section 6(1)(d) if these were already covered. There is no substantial change in Section 6(1)(a) w.e.f. 1.4.2007 and "Aerated Branded Soft drink" continued to be taxable @ 20%. However, in the Notification issued under Section 6(1)(d), Entry 71 was amended wherein specific reference to fruit juice based drinks was excluded but in the category of all other beverages and fruit choices, it was provided that similar other products not specifically mentioned under any other Entry, list or in any other schedule would also be included. Since fruit juice based drink was never part of "Aerated Branded Soft drink" as mentioned in section 6(1)(a), the said item would be covered under the residual clause of Entry 71 of the Notification issued under Section 6(1)(d).

Issue No. 3

"Rules of interpretation" as contained in Appendix to Schedule of Act, 2003 would be applicable for interpretation of items mentioned in the Schedule but the same would not be applicable for a Notification issued under Section 6(1)(d). However, principles contained in such rules of interpretation may apply. It, therefore, implies that besides the rules of interpretation mentioned in the Apendix, the applicability of other rules of interpretation cannot be ruled out. Hence in the appropriate case, apart from common parlance test or commercial test, any other test can be applied for interpretation of the commodities included in Section 6(1)(a). The word "aerated" is scientific and technical word used under different statutes and the scientific and technical meaning of word "Aerated" can be looked into for finding out the real import of the Entry. Both the High Court and Committee of Joint Commissioners discarded the evidence of technical and scientific meaning of the word. The appellant has rightly relied on the technical evidence brought on the record which indicate that use of carbon di oxide to the extent of 0.6% was only for the purpose of preservative in packaging the commodity and the product was thermal process and carbon di oxide was added as preservative.

Issue No. 4

A clear reading of Entry 71 alongwith Item 5 in the Notification issued under Section 6(1)(d) shows that doctrine of noscitur a sociis is fully attracted. Therefore clause 5 of Entry 71 has to take colour and meaning form the other items included in Entry 71. Item No. 5 is thus, wide enough to take into its ambit fruit juice based drink which has been overlooked by the Committee of Joint Commissioners and High Courts while passing the impugned order.

Issue No. 5

In view of the clear directions by the High court, the authority for clarification could not have relied upon the Revisional order passed by High Court simpliciter and should have considered the entire issue based upon the submissions made by assessee alongwith necessary certificates and evidence in this regard.

Issue No.6:

Even though the order of CESTAT did not conclude the controversy in favour of the Appellant but fact that the CESTAT did not hold the product to be under the "aerated water" was a factor

which necessitated a more deeper consideration by the High Court to find out as to whether the product is 'aerated branded soft drink' or not. The High Court in its judgment found that the product charged with air or carbon dioxide was an aerated drink. From the manufacturing process which was on the record, it is clear that carbon dioxide to the extent of 0.6 percent was added as preservative. Technical note submitted on behalf of the appellant clearly mentioned that use of carbon dioxide was only as a preservative of 'Appy Fizz'.

Issue Nos. 7 and 8

It is further relevant to note that Revenue has not filed any material on the record either before the Clarification Authority or before the High Court in support of its view that product is covered under Section 6(1)(a) that is 'aerated branded soft drink'. This Court in several cases has observed that onus to prove that particular goods fall in particular tariff item is on the Revenue. In this context, in the judgment of this Court in Hindustan Ferodo Ltd. vs. Collector of Central Excise, Bombay, 1997(89) ELT 16(SC), in paragraph 3 it was laid down:

> *"3. It is not in dispute before us, as it cannot be, that the onus of establishing that the said rings fell within Item 22F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed."*

We, thus, conclude that orders of Food Safety Authority and expert opinion regarding process of manufacture relied by the appellant were relevant materials and Clarification Authority and High Court erred in law in discarding these materials.

Issue No. 9

The item Appy Fizz would thus be fruit juice based drink being covered by Item 5 of Entry 71 in the Notification issued under Section 6(1)(d) and would never be treated to be included in "Aerated Branded Soft drink". If it was to be included in "Aerated Branded Soft drink", then such an item could not have been included in the product mentioned in Entry 71 even before 01.04.2007. Therefore, the item in question would be taxable @ 12.5%.

Insofar as appeal filed by the State against the order of Division Bench of Kerala High Court giving directions for decision of clarification is concerned, the same is in accordance with law and, therefore, the appeal filed by the State deserves to be dismissed.

Present: ***For Petitioner(s)*** *Mr. K.K. Venugopal, Sr.Advocate; Mr. Arvind P. Datar, Sr. Advocate; Ms. L. Charnya, Advocate; Mr. Aditya Bhattacharya, Advocate; Mr. Premjit Nagendran, Advocate; Ms. Ashwati Balraj, Advocate; Mr. Dharmadhikari, Advocate; Mr. Victor Das, Advocate; Ms. Lalita Phadke, Advocate; Mr. M. P. Devanath,Advocate; Mr. Ramesh Babu M. R.,Advocate*

For Respondent(s)*: Mr. Jaideep Gupta, Sr.Advocate; Mr. G. Prakash,Advocate; Mr. Jishnu M.L., Advocate; Ms. Priyanka Prakash, Advocate; Ms. Beena Prakash, Advocate; Mr. Manu Srinath, Advocate; Ms. Anindita M., Advocate; Mr. K.K. Venugopal, Sr.Advocate; Mr. Arvind P. Datar, Sr. Advocate; Ms. L. Charnya, Advocate; Mr. Aditya Bhattacharya, Advocate; Mr. Premjit Nagendran, Advocate; Ms. Ashwati Balraj, Advocate; Mr. Dharmadhikari, Advocate; Mr. Victor Das, Advocate; Ms. Lalita Phadke, Advocate; Mr. Rajesh Kumar,Advocate*

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ASHOK BHUSHAN, J.

1. Leave granted.

2. The issues raised in these appeals being inter-related have been heard together and the appeals are being disposed of by this common judgment.

3. Civil Appeals arising out of SLP(C) Nos. 14697-98 of 2016 are being treated as leading case, the facts of which case shall be noted in detail for deciding these cases.

4. Civil Appeals arising out of SLP(C) Nos. 14697-98 of 2016 and SLP(C) No. 9467 of 2016 are between the same parties whereas Civil Appeals arising out of SLP(C) Nos.24460-61 of 2016 have been filed by different appellants.

Civil Appeals arising out of SLP(C) Nos. 14697-98 of 2016

5. The appellant-M/s. Parle Agro (P) Ltd. is a dealer engaged in fruit juice based drink known as 'Appy Fizz' which has obtained certificate of registration under Kerala Value Added Tax Act, 2003 (hereinafter referred to as "Act, 2003"). The appellant was classifying the product as fruit juice based drink under Entry 71 of the notification issued under Section 6(1)(d) of Act, 2003 till 2007 and was paying @ 12.5% VAT. One M/s. Trade Lines (a distributor of appellant Company) was assessed by the authorities under the Act, 2003 holding that M/s. Trade Lines is liable to pay tax @ 20% on the product. M/s. Trade Lines filed OT Revision No.114/2013 in the High Court of Kerala against the order passed by Kerala Value Added Appellate Tribunal dismissing the appeal. The High Court vide its judgment and order dated 17th November, 2014 dismissed the revision upholding the order passed by the Assessment Officer and the First Appellate Authority. Special Leave Petition was filed by M/s. Trade Lines against the judgment of Kerala High Court which was, however, permitted to be withdrawn by order dated 19th January, 2 015 of this Court. On 4th August, 2015 the assessment notices were issued to the appellant for Assessment Year 2009-15 proposing classification of 'Appy Fizz' under Section 6(1)(a)of the Act, 2003 as "aerated branded soft drink" and tax liability @ 20% . After receipt of the notices appellant filed an application dated 24th August, 2014 under Section 94 of the Act, 2003 seeking clarification of product 'Appy Fizz'. In the clarification application the appellant claimed that product 'Appy Fizz' had rightly been clarified as 'fruit juice based drink' and which has tax liability of 12.5%. Along with the clarification application appellant has filed certificates and expert opinions. Writ Petition No.26279/2015 was filed by the appellant before Kerala High Court seeking direction to the Commissioner of Commercial Taxes to consider and pass order on the application for clarification within a specified time and the proceedings initiated by the Commissioner of Commercial Taxes by different notices be kept in abeyance. Learned Single Judge by its judgment and order dated 31st August, 2015 disposed of the writ petition directing the Commissioner of Commercial Taxes to consider and pass orders on the clarification application within a period of one month from the date of receipt of the judgment and liberty was given to the appellant to produce all material on which it intends to place reliance to substantiate its clarification with regard to the classification of the product, further proceedings in various notices were kept in abeyance. The Assistant Commissioner and Commissioner of Commercial Taxes filed a writ appeal against the judgment of the learned Single Judge before Division Bench of the Kerala High Court. The Division Bench of Kerala High Court vide its judgment dated 5th October, 2015 dismissed the writ appeal by affirming the decision of the learned Single Judge.

6. After the above judgment of the Division Bench dated 5th October, 2 015, the Committee of Joint Commissioner passed the clarification order dated 6th November, 2015 classifying the product as 'aerated branded soft drinks', at the rate of 20%. Against the order passed under Section 94 of Act, 2003, the appellant filed O.T. Appeal No.7 of 2015 in the Kerala High Court. The Division Bench by its judgment and order dated 5th February, 2016 dismissed the appeal filed by the appellant upholding the order dated 6th November, 2015. A review application was also filed by the appellant to review the judgment dated 5th February, 2016 which has been dismissed on 23rd March, 2016.

7. Civil Appeals arising out of SLP(C)No.14697-98 of 2016 have been filed against the aforesaid order dated 5th February, 2016 and the review order dated 23rd March, 2016 by the appellant.

Civil Appeal arising out of SLP(C)No.9467 of 2016

8. The Assistant Commissioner (Assessment) and the Commissioner of Commercial Taxes have filed this appeal challenging the judgment dated 5th October, 2015 by which writ appeal filed by the Assistant Commissioner(Assessment) and another against the direction of the learned Single Judge dated 31st August, 2015 has been dismissed.

Civil Appeals arising out of SLP(C)Nos.24460-61 of 2016

9. M/s. We Six Traders Etc.Etc. is a dealer in fruit juices and other drinks manufactured by M/s. Parle Agro (P) Ltd. Assessment Commissioner has issued notices for assessment years 2010-11 to 2013-14 and April to June 2015 proposing to classify the product 'Appy Fizz' as 'aerated branded soft drink' @20% VAT. After the judgment of the High Court dated 5th February, 2016 in the case of M/s. Parle Agro (P) Ltd. order of assessment was issued against which the assessee filed appeal before Kerala Value Added Tribunal in which appeal the Tribunal directed the assessee to deposit 30% as pre-condition to hear the matter on merits. The assessee filed writ petition in the High Court challenging the aforesaid order passed by the Tribunal on the stay petition. The assessee submitted before the High Court that against the judgment of the High court dated 5th February, 2016 in the case of M/s. Parle Agro (P) Ltd. SLP has already been filed, hence, the assessee should not have been called to remit the entire amount. The High Court vide its judgment and order dated 14th July, 2016 disposed of the writ petition directing the demand made in the above cases shall remain stayed till disposal of the appeals on condition of assessee depositing 50% of the amount involved. Civil Appeals arising out of SLP(C)Nos. 24460-61 of 2016 have been filed against the aforesaid judgment and order of the Kerala High Court dated 14th July, 2016.

10. We have heard Shri K.K. Venugopal, learned senior counsel for the assessee. Shri Jaideep Gupta, learned senior counsel has appeared for the Revenue.

11. Shri K.K. Venugopal, learned senior counsel, submits that both High Court and Committee of Commissioners erred in not classifying the product of 'Appy Fizz' under Entry 71 of S.R.O.No.119 of 2008. Classification of the product as 'aerated branded soft drinks, excluding soda' under Section 6(1)(a) is not the correct classification. It is submitted that the Revenue itself till 2007 has classified the product under Entry 71 with tax liability of 12.5%. He submits that judgment of Division Bench of Kerala High Court in M/s. Trade Lines cannot be binding precedent since the said judgment was rendered in the revision proceedings in which appellant was not a party and the revision proceedings were confined to the assessment order on the basis of facts on the record of that case. Prior to 2007 the product was covered under Entry 71. When in 2008 Entry 71 was amended, there was no amendment to the schedule under Section 6(1)(a). He submits that had the intention of the legislation was to pick up the certain products earlier covered under Entry 71 and place them in Schedule under Section 6, then entry 'aerated branded soft drinks, excluding soda' which earlier did not cover the said product, would also have been amended at the same time. He submits that if prior to 2007, 'Appy Fizz' could not be considered as an 'aerated branded soft drink' then there is no identifiable logic that the product would be so covered after 2007. Especially, there was no indication that the said product had been removed/ejected from Entry 71 after the amendment in 2007.

12. Further, he submits that common parlance test which has been applied by the High Court is not the correct test to determine the classification to include the product, as entries under the VAT Act are technical or scientific in nature. Soft drinks under Kerala VAT would be those drinks that are synthetic whether or not aerated. The product in question is not a synthetic product. It contains more than 10% fruit juice. It is fruit juice based drink and not covered by Section 6(1)(a). A fruit juice based drink is more akin to fruit juice than soft drink. Sub-clause (5) of Entry 71 covers similar other products not specifically mentioned under any

other entry in this list or any other schedule. The product is fully covered under alone entry. He further submits that Food Safety Authorities have recognized the product as a 'fruit drink'.

13. Shri Venugopal has placed reliance on the order dated 18.03.2008 of the Customs, Excise and Service Tax Appellate Tribunal where classification of the product was upheld as 'fruit based drink' and the Revenue's appeal was dismissed by this Court on 18th July, 2009. Shri Vanugopal further submits that neither the Committee of Commissioners nor the High Court has adverted to the technical evidence and certificate filed by the appellant along with proceedings under Section 94 of Act, 2003. The scientific evidence fully proved that products do not undergo aeration or carbonation; the product is thermally processed with CO2 which help in preserving the Apple Juice concentrate which is otherwise perishable in nature. The certifications fully proved the product as 'Thermally processed fruit juice based drink'.

14. Learned counsel further submitted that products which are covered under Section 6(1)(a) are all those products which are dangerous to health. They have deliberately been included on higher tax slab of 20% and lower tax slab on the products under Entry 71 was with object to promote the products under Entry 71.

15. Shri Jaideep Gupta, learned senior counsel, appearing for the State of Kerala refuting the submissions of Shri K.K. Venugopal contends that High Court has rightly held that product is an 'aerated branded soft drink' within the meaning of Section 6(1)(a). He submits that after deletion of Entry 71(4) by S.R.O.No.119 of 2008 which provided "Fruit pulp or fruit based drink", it was clear indication of the legislation that the 'fruit based drinks' are out of Entry 71 and have to be covered into 'aerated branded soft drinks' under Section 6(1)(a). He submits that it is not disputed that 'Appy Fizz' is a branded drink and further it is aerated by CO2, hence, it is aerated drink. He submits that amendment of Entry 71 by S.R.O.No.119 of 2008 made the legislative intent clear and the High Court has rightly relying on the said amendment has held that product is not covered under Entry 71 and is liable to tax @ 20% under Section 6(1)(a). Learned counsel for the respondent, further, submits that CESTAT ruling has no relevance with regard to the classification under Act, 2003, since, the CESTAT ruling considered the different headings under Central Excise Tariff Act, 1975 which is not relevant. Learned counsel submitted that under the Rules of interpretation as contained in the Act, 2003, the product being not covered with any of HSN number common parlance or commercial parlance test has rightly been applied by the High Court. Under the common parlance even if the product contained more than 10% fruit concentrate it is a soft drink as commonly known and tax liability @ 20% has rightly been imposed.

16. Learned counsel for the parties have placed reliance on various cases which shall be referred to while considering the submissions in detail.

17. We have considered the submissions made by the learned counsel for the parties and perused the records.

18. From the submissions of learned counsel for the parties and the pleadings of the parties following are the main issues which arise for consideration in these appeals:

(1) What is inter-relation between Section 6(1)(a) and Section 6(1)(d) of Act, 2003?

(2) What is scope and ambit of Item 5 of Entry 71 as amended ?

(3) Whether common parlance test is the only test to be applied for understanding the different entries under Section 6(1)(a) and Section 6(1)(d)?

(4) Principle of Noscitur a Sociis.

(5) Whether the Division Bench of Kerala High Court in M/s. Trade Lines can preclude the Committee of Joint Commissioners to examine the materials filed by the appellant along with Clarification Application under Section 94.

(6) Whether CESTAT decision dated 18.03.2008 has any relevance with regard to the classification of product in question ?

(7) Whether decision and opinion of Food Safety Authorities on the product in question were relevant ?

(8) Whether the Committee of Joint Commissioners as well as the High Court has rightly discarded technical and expert opinion relied by the appellant ?

(9) Conclusions.

19. Before we proceed to consider the submissions of the learned counsel for the parties, it is necessary to look into the statutory scheme and the relevant entries prior to amendment by Value Added Act, 2003 provides for levy of tax on sale or purchase of goods. Section 6(1)(a) which is relevant for the present case as existed before 1st April, 2007, was as follows:

"6(1)(a) in the case of goods specified in the [Second, and Third Schedules] at the rates specified therein and at all points of sale of such goods within the State (and in the case of goods specified below at the rate of twenty percent, at all points of sale of such goods within the State, namely:-

Sl.No.	*Description of goods*	*HSN Code*
(1)	*(2)*	*(3)*
1.	*Aerated Drinks*	*2201.10.10*
	(1) Mineral Water	***
	(2) Packaged drinking water	*2202.10*
	(3) Branded soft drinks, excluding soda	*8415*
2.	*Air conditioners*	
3.	*Building Materials*	

20. The State by various notifications under Section 6(1)(d) has notified list of goods taxable at the rate of 12.5%. Entry 71 which is relevant for the present case as notified by the State as existing prior to amendment by the S.R.O.No.119 of 2008 is as follows:

"71. Non-alcoholic beverages and their powders, concentrates and tablets including (I) aerated water, soda water, mineral water, water sold in sealed containers or pouches (ii) fruit juice, fruit concentrate, fruit squash, fruit syrup and fruit cordial [x x x] (v) other non-alcoholic beverages; not failing under any other entry in this List or in any of the Schedule.

(1) Water not containing added sugar or other sweetening matter; [x x x]

(b) Aerated water

(2) Water containing added sugar or other sweetening matter. 2201.10.20

(3) *Fruit juices and vegetables juices, unfermented and not containing added spirit, whether or not containing added sugar of other sweetening matter* *2009*

(4) *Fruit pulp or fruit juice based drinks* *2202.90.30*

(a) Sharbat 2106.90.11; (b) other *2106.90.19*

(б) Beverages containing milk 2202.90.30

20. The words "(iii) soft drinks of all varieties" omitted by S.R.O. No. 543/2007 dated 20-6-07 published in Kerala Extraordinary No.1167 dt. 21.6.07

21. Omitted by S.R.O. No.543/2007 dt, 20-6-07 published in Kerala Gazette Extraordinary No.1167 dt.21-6-2007. Prior to the omission it read as under:

"(a) Mineral water 2201.10.10" "

21. Now, we come to Section 6(1)(a)(d) which exists as on date as:

"6. Levy of tax on sale or purchase of goods

(1) Every dealer whose total turnover for a year is not less than ten lakhs rupees and every importer or casual trader or agent of a non-resident dealer, or dealer in jewellery of gold, silver and platinum group metals or silver articles or contractor or any State Government, Central Government or Government of any Union Territory or any department thereof or any local authority or any autonomous body or any multi-level marketing entity, their distributor and/or agent engaged in multi-level marketing, whatever be his total turnover for the year, shall be liable to pay tax on his sales or purchases of goods as provided in this Act. The liability to pay tax shall be on the taxable turnover,-

(a) in the case of goods specified in the Second and Third Schedules at the rates specified therein and at all points of sale of such goods within the State and in the case of goods specified below, mentioned in column (4), at all points of sale of such goods within the States namely;

S.No.	*Description of Goods*	*HSN Code*	*Rates of Tax in percentage*
(1)	*(2)*	*(3)*	*(4)*
1.	*Cigars, Cheroots, cigarillos and cigarattes, of tobacco or of tobacco substitutes*	*2402*	*[30]*
2.	*Aerated branded soft drinks, excluding soda*	***	*20*
3.	*[Carry bags made of plastic including polypropylene, which have a vest type self carrying feature to carry commodities]*	***	*20*
[3A.	*Disposable plates, cups and leaves, made of plastic 3[including Styrofoam and Styrofoam sheets]*	***	*20]*

[3B.	*Printed banners, hoardings and leaflets of Poly Vinyl Chloride/Polyethylene and other plastic sheets]*	***	*20]*
4.	*Pan Masala*	*2106. 90.20*	*22.5*
5.	*Churna for pan*	*2106. 90.20*	*22.5*
6.	*Pan chutney*	***	*22.5*
7.	*Other manufactured tobacco and manufactured tobacco substitutes homogenized or reconstituted tobacco; tobacco extracts and essences*	*2403*	*22.5*

Explanation: The 'Rules of Interpretation of the Schedules' appended to the Schedules of this Act shall apply to the interpretation of the HSN codes mentioned in this clause.

xxx xxx xxx xxx

(d) in the case of goods not falling under clause (a) or (c) at the rate of 14.5% at all points of sale of such goods within the State, Government may notify a list of goods taxable at the rate of 14.5%;"

22. A legislative history of Section 6(1)(a) clearly indicates that Section 6(1)(a) always covered 'aerated branded soft drinks' excluding soda' with tax liability of 20%.

23. By S.R.O.No.119 of 2008 Entry 71 has been substituted by another Entry. Entry 71 after amendment by S.R.O.No.119 of 2008 w.e.f. 1st April, 2007 is as follows:

"NON-ALCOHOLIC BEVERAGES AND THEIR POWDERS, CONCENTRATES AND TABLETS IN ANY FORM INCLUDING;

(1) Aerated water, soda water, Mineral water, water sold in sealed containers or pouches.

(2) Fruit juice, fruit concentrates, fruit squash, fruit syrup and pulp, and fruit cordial.

(3) Soft drinks other that aerated branded soft drinks.

(4) Health drinks of all varieties.

(5) 'Similar other products not specifically mentioned under any other entry in this list or any other schedule'."

24. As noted above the application was filed by the appellant under Section 94 of Act, 2003 on 24th August, 2 014 which has been decided by the Committee of Joint Commissioner by order dated 6th November, 2015. Section 94 of the Act, 2003 is as follows:

"Section 94. Power of Authority to issue clarification.- *(1) If any dispute arises, otherwise than in a proceedings before any appellate or revisional authority or in any court or tribunal, as to whether, for the purpose of this Act, -*

(a) any person is a dealer; or

(b) any transaction is a sale; or

(c) any particular dealer is required to be registered; or

(d) any tax is payable in respect of any sale or purchase, or if tax is payable, the point and the rate thereof; or

(e) any activity carried out in any goods amounts to or results in the manufacture of goods; such dispute an authority consisting of three officers in the rank of Joint Commissioner or Deputy Commissioner nominated by the Commissioner on application by a dealer or any other person.

(1A) If the dispute relates to the tax rate of a commodity, the details of the first seller, or the manufacturer of such goods in the State, as the case may be, shall be furnished by the applicant and they shall be made necessary parties to such application.

(2) The Authority shall decide the question after giving the parties to the dispute a reasonable opportunity to put forward their case and produce evidence and after considering such evidence and hearing the parties. Pass orders within three months or within such time as may be extended by the Commissioner. The Commissioner may considering the fact in issue decide whether such orders have prospective operation only.

... ...
... ...''

25. We, thus, have to examine the classification of product in the light of provisions of Section 6(1)(a) and Entry 71 as existing after 1st April, 2007.

Issue Nos.1 and 2

26. We consider both the issues together. According to Section 6(1) liability to pay tax shall be on the taxable turnover of every dealer as enumerated in sub-clause (a) to sub-clause (f). Sub-clause (a) provides that in the case of goods specified in the Second and Third Schedules tax shall be liable to be paid at the rate specified therein at all points of sale of such goods within the State. Sub-clause (a) further provides that in the case of goods specified in sub-clause (a) tax liability shall be at rate of specified in column (4). Sub-clause (a) contains chart which includes Sl.No., Description of goods, HSN Code and Rate of tax in percentage. The rate of tax as mentioned in in Section 6(1)(a) is 20% or more. The goods enumerated in Section 6(1)(a) are tobacco based goods, pan masala, other manufactured tobacco and manufactured tobacco substitutes. Other category contains plastic goods and goods made of polypropylene, Chloride/ Polyethylene and other plastic sheets. All goods enumerated in Section 6(1)(a) by the Legislature itself indicates that higher rate of tax has been fixed for those goods which are harmful for environment and health. Aerated branded soft drinks, excluding soda is also in the company of the above goods described in Section 6(1)(a). Section 6(1)(a) also refers to Schedule I, Schedule II and Schedule III. Tax in Schedule I is exempted and rate in Schedule II is 1% whereas rate of tax in Schedule III is 5% in contrast to legislative policy in fastening tax liability at very high level on goods under Section 6(1)(a) is thus clear and categorical. Those goods which are not congenial to health and environment are charged with higher tax level, which is the purpose and object clear from the legislative scheme.

27. Now we come to Section 6(1)(d). Section 6(1(d) empowers the State to notify a list of goods which are taxable at the rate of 12.5% (at present at 14.5%) which does not fall under clause (a) and (c). The delegated legislative power of issuing notification to the State Government is thus restricted and can be exercised only when goods do not fall under Section

6(1)(a) or Section 6(1)(c). The State of Kerala exercising its delegated legislative power has issued notification under Section Section 6(1)(d).

28. Now, we proceed to examine the legislative history of both Section 6(1)(a) and Entry 71 and the legislative changes effected from time to time. Prior to substitution of Section 6(1)(a) by Kerala Finance Act, 2007 w.e.f. from 1st April, 2007. Section 6(1)(a) read as follows:

> *"(a) in the case of goods specified in the [Second, and Third Schedules] at the rates specified therein and at all points of sale of such goods within the State (and in the case of goods specified below at the rate of twenty percent, at all points of sale of such goods within the State, namely:-*

Sl.No.	*Description of goods*	*HSN Code*
(1)	*(2)*	*(3)*
1.	*Aerated Drinks*	*2201.10.10*
	(1) Mineral Water	***
	(2) Packaged drinking water	*2202.10*
	(3) Branded soft drinks, excluding soda	*8415*
2.	*Air conditioners*	
3.	*Building Materials*	

29. The aerated branded soft drinks, excluding soda were always covered under Section 6(1)(a)and prior to 1st April, 2007 it bears HSN Code 2201.10.10. Entry 71 Item 4 also reads as "fruit pulp or fruit juice based drinks with HSN Code 2202.90.20". When fruit juice based drinks were covered under Entry 71 the State Government knew that fruit juice based drinks were not covered by Section 6(1)(a). Applicability of the power of State to issue notification under Section 6(1)(d) arises only when goods were not covered by Section 6(1)(a). Fruit juice based drinks, thus, were never treated as 'aerated branded soft drinks' which was the understanding of State of Kerala while issuing notification under Section 6(1(d). Had fruit juice based drinks were also to be covered by aerated branded soft drinks, there was no occasion for subordinate legislative authority, i.e., the State Government, to include such products in notification under Section 6(1)(d).

30. Now, we come to Entry 71 which was substituted by S.R.O. No.119 of 2008 dated 24.1.2008 w.e.f. 01.04.2007, which is to the following effect:

> *"71. Non-alcoholic beverages and their powders, concentrates and tablets in any form including:*
>
> *(1) aerated water, soda water, mineral water, water sold in sealed containers or pouches;*
>
> *(2) Fruit juice, fruit concentrates, fruit squash, fruit syrup and pulp and fruit cordial;*
>
> *(3) Soft drinks other than aerated branded soft drinks;*
>
> *(4) Health drinks of all varieties;*
>
> *(5) Similar other products not specifically mentioned under any other entry in this list or in any other Schedu*les."

31. A bare perusal of Entry 71 as above indicates that the Entry covers non-alcoholic beverages and their powders, concentrates and tablets in any form including - Item No.2

contains fruit juice, fruit concentrates, fruit squash, fruit syrup and pulp and fruit cordial. Soft drinks other than aerated branded soft drinks are included in Item No.3. Health drinks of all varieties are included in Item No.4 and similar other products not specifically mentioned under any other entry in this list or in any other Schedules were included in Item No.5. The Entry of fruit juice based drinks got subsumed in the residuary entry and the amendment by S.R.O. No.119 of 2008 did not change or affect the character and content of the products which were included in Entry 71.

Issue No.3

32. The High Court while interpreting the entries under Section 6(1)(a) and Entry 71 of the notification S.R.O.No.119 of 2008 had applied common parlance test. The High Court has also relied on Rules of Interpretation as contained in the Appendix to Schedule to Act, 2003. From the Appendix following Rule of Interpretation was extracted:

> ***"RULES OF INTERPRETATION OF SCHEDULES***
>
> *The commodities in the schedules are allotted with Code Numbers, which are developed by the International Customs Organization as harmonized System of Nomenclature (HSN) and adopted by the Customs Tariff Act, 1975. However, there are certain entries in the schedules for which HSN Numbers are not given. Those commodities which are given with HSN Number should be given the same meaning as given Customs Tariff Act, 1975. Those commodities, which are not given with HSN Number, should be interpreted, as the case may be, in common parlance of commercial parlance. While interpreting a commodity, if any consistency is observed between the meaning of a commodity without HSN Number and the meaning of a commodity with HSN Number, the commodity should be interpreted by including it in that entry which is having the HSN Number."*

33. Applying the common parlance test, the High Court has concluded that product in question is covered by 'aerated branded soft drink'. Strictly speaking the Rule of Interpretation which is given in the Appendix to Act, 2003, are the Rules of Interpretation of Schedules that is Schedule Nos.I, II and III. Thus, for interpretation of any item in the Schedule, Rules of Interpretation as given in the Appendix are applicable. The items which fall for consideration in the present case is Item No.6(1)(a) as well as Entry 71 of S.R.O. No.119 of 2008 issued in exercise of power under Section 6(1)(d), which are the entries which are not mentioned in the Schedule. One more provision which is relevant to notice is the explanation to Section 6(1)(a). The explanation to Section 6(1) (a) provides as follows:

> *"Explanation: The 'Rules of Interpretation of the Schedules' appended to the Schedules of this Act shall apply to the interpretation of the HSN codes mentioned in this clause."*

34. Although the above Explanation applies the Rules of Interpretation of the Schedules to the interpretation of the HSN codes mentioned in Section 6(1)(a) but Explanation does not say anything about the items where HSN code is not there. The Rules of Interpretation of the Schedules, thus, directly are not attracted with regard to the interpretation of the entry which does not mention with HSN code in Section 6(1)(a) although principle contained in such Rules of Interpretation may apply. Had the legislation intended the Rules of Interpretation of the Schedules should be made applicable both to the interpretation of the Schedules or those commodities which are not given with HSN code, the Rules of Interpretation of Schedules should have been in toto made applicable for interpretation of clause (a) of Section 6(1). Thus, common parlance test or commercial test which are to be applied on the commodities in the Schedules which are not given with HSN code is directly not applicable under Item 6(1)(a),

hence, applicability of other Rules of Interpretation which were required to be applied is not ruled out. Hence, in the appropriate case apart from common parlance test or commercial test any other test can be applied for interpretation of the commodities included in Section 6(1)(a) apart from those which are given HSN code.

35. The principle of statutory interpretation with regard to a word in taxing statutes are well established. This Court in ***Porritts & Spencer (Asia) Ltd. vs. State of Haryana, 1979(1) SCC 82***, has laid down following in paragraph 6:

> *"6 Where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature."*

36. This Court had also occasion to interpret the entries in taxing statute which has also technical meaning. In this context, reference is made to judgment of this Court reported in ***Collector of Akbar Badruddin Jiwani vs. Collector of Customs, 1990(47)ELT 161***, the Court had occasion to consider a term as occurring in Tariff Item No.25.15 of Appendix I-B, Schedule 1 to the Import (Control) Order, 1955. The Court held commercial nomenclature or trade understanding inapplicable to the term. While considering the aforesaid case the Court had occasion to consider several earlier cases of this Court. Following was stated in paragraphs 36,37,40,41,42, 43:

> *"**36.** In deciding this question the first thing that requires to be noted is that Entry 25.15 refers specifically not only to marble but also to other calcareous stones whereas Entry 62 refers to the restricted item marble only. It does not refer to any other stones such as ecaussine, travertine or other calcareous monumental or building stone of a certain specific gravity. Therefore, on a plain reading of these two entries it is apparent that travertine, ecaussine and other calcareous monumental or building stones are not intended to be included in 'marble' as referred to in Entry 62 of Appendix 2 as a restricted item. Moreover, the calcareous stones as mentioned in ITC Schedule has to be taken in scientific and technical sense as therein the said stone has been described as of an apparent specific gravity of 2.5 or more. Therefore, the word 'marble' has to be interpreted, in our considered opinion, in the scientific or technical sense and not in the sense as commercially understood or as meant in the trade parlance. There is no doubt that the general principle of interpretation of tariff entries occurring in a text (sic tax) statute is of a commercial nomenclature and understanding between persons in the trade but it is also a settled legal position that the said doctrine of commercial nomenclature or trade understanding should be departed from in a case where the statutory content in which the tariff entry appears, requires such a departure. In other words, in cases where the application of commercial meaning or trade nomenclature runs counter to the statutory context in which the said word was used then the said principle of interpretation should not be applied. Trade meaning or commercial nomenclature would be applicable if a particular product description occurs by itself in a tariff entry and there is no conflict between the tariff entry and any other entry requiring to reconcile and harmonise that tariff entry with any other entry.*
>
> ***37.** In Union of India v. Delhi Cloth & General Mills1 the question arose as to how the term "refined oil" occurring in the tariff was to be construed. There was no competition between that tariff entry with any other, nor was there any need to reconcile and harmonise the said entry with any*

other provision of the tariff. This Court, therefore, considered the term "refined oil" by applying the commercial meaning or trade nomenclature test and held that only deodorised oil can be considered to be refined oil. This Court also referred to the specification of "refined oil" by the Indian Standards Institution and held that:

> *"This specification by the Indian Standards Institution furnishes very strong and indeed almost incontrovertible support for Dr Nanji's view and the respondents' contention that without deodorisation the oil is not "refined oil" as is known to the consumers and the commercial community. "*
>
> *... ... ...*

40. *It may be pointed out that this Court has clearly and unequivocally laid down that it is not permissible but in fact it is absolutely necessary to depart from the trade meaning or commercial nomenclature test where the trade or commercial meaning does not fit into the scheme of the commercial statements. This Court referring to the observation of Pullock, B. in Grenfell v. Inland Revenue Commissioner—observed: (quoted at SCR p. 724)*

> *"that if a statute contains language which is capable of being construed in a popular sense such statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words 'popular sense', that sense which people conversant with the subject matter with which the statute is dealing would attribute to it." But "if a word in its popular sense and read in an ordinary way is capable of two constructions, it is wise to adopt such a construction as is based on the assumption that Parliament merely intended to give so much power as was necessary for carrying out the objects of the Act and not to give any unnecessary powers. In other words, the construction of the words is to be adapted to the fitness of the matter of the statute."*

41. *The court has also referred to the observation of Fry, J. in Holt & Co. v. Collyer. The observation is: "If it is a word which is of a technical or scientific character then it must be construed according to that which is its primary meaning, namely, its technical or scientific meaning*

Referring to the above decisions this Court held that:

> *"[W]hile construing the word 'coal' in Entry I of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute being one levying a tax on goods must in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance."*

42. *This Court in K.V. Varkey v. Agricultural Income Tax and Rural Sales Tax Officer specifically declined to apply the popular or commercial meaning of 'Tea' occurring in the sales tax statute holding that the context of the statute required that the technical meaning of 'a product of plaint life' required to be applied and therefore green tea leaves were tea even though they might not be tea as known in the market.*

> ***43.*** *In Cannanore Spinning and Weaving Mills Ltd. v. Collector of Customs and Central Excise, Cochin this Court held that the word 'hank' occurring in a Central Excise Notification could not be interpreted according to the well settled commercial meaning of that term which was accepted by all persons in the trade, inasmuch as the said commercial meaning would militate againstthe statutory context of the said exemption notification issued in June 1962. The word 'hank' as used in the notification meant a 'coil of yarn' and nothing more."*

37. In the cases as noted above this Court departed from construing the entry from its normal commercial meaning but had adopted a technical or scientific meaning. Ultimately, in paragraph 53 of this judgment, the Court gave the technical and scientific meaning to the entry and common parlance and commercial parlance test was not adhered to:

> *"**53.** It is apparent from all these reports that the calcareous stone of specific gravity of 2.5 is not marble technically and scientifically. The finding of the Appellate Tribunal is, therefore, not sustainable. It is, of course, well settled that in taxing statue the words used are to be understood in the common parlance or commercial parlance but such a trade understanding or commercial nomenclature can be given only in cases where the word in the tariff entry has not been used in a scientific or technical sense and where there is no conflict between the words used in the tariff entry and any other entry in the Tariff Schedule."*

38. In the present case, the Entry 2 under Section 6(1)(a) uses the word 'aerated'. Thisis scientific term and has been repeatedly used in different statutes including the Central Excise Tariff and different HSN codes also uses the term 'aerated'. The word 'aerated' is scientific and technical word used under different statutes and the scientific and technical meaning of the word 'aerated' can be looked into for finding out the real import of the Entry.

39. In view of the above, we are of the opinion that common parlance and commercial parlance test was not the only test which could have been applied for interpreting the entries in items mentioned in Section 6(1)(a) and the entries which contain scientific and technical word were also to be looked into in technical and scientific meaning. Both the High Court and the Committee of Joint Commissioners discarded the evidence of technical and scientific meaning of word. The appellant has rightly relied on the technical evidence brought on the record which indicate that use of carbon dioxide to the extent of 0.6 per cent was only for the purpose of preservative in packaging the commodities and the product was thermally processed and carbon dioxide was added to as the preservative.

Issue No.4: Principle of 'Noscitur a Sociis'

40. The appellants before the Committee of Commissioners as well as High Court have pleaded that Entry 71 Item 5 mentioned "similar other products not specifically mentioned under any other entry in this list or any other schedule", was required to be considered in the light of commodities as included in other items mentioned in Entry 71. It was submitted that 'Appy Fizz' which a fruit juice based drink is more akin to other commodities included in the Entry 71 other than that which was included in Section 6(1)(a). In interpreting Item 5 of Entry 71 the doctrine of 'noscitur a sociis' is fully attracted. ***Justice G.P.Singh*** in 'Principles of Statutory Interpretation, 14th Edition, has explained the 'noscitur a sociis' in the following words:

> ***"(b) Noscitur a Sociis***
>
> *The rule of construction noscitur a sociis as explained by LORD MAC-MILLAN means: "The meaning of a word is to be judged by the company it*

> *keeps". As stated by the Privy Council: "It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them". It is a rule wider than the rule of ejusdem generis; rather the latter rule is only an application of the former. The rule has been lucidly explained by GAJENDERAGADKAR, J., in the following words: "This rule, according to MAXWELL, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sence analogous to a less general. The same rule is thus interpreted in Words and Phrases." "Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim ejusdem generis." In fact the latter maxim "is only an illustration or specific application of the broader maxim noscitur a sociis'. It must be boren in mind that noscitur a sociis, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied."*

41. This Court in Pardeep Aggarbatti Vs. State of Punjab, 1997 (96) E.L.T. 219(S.C.), considering Entry 16 of Schedule A of Punjab General Sales Tax Act, 1948, in paragraph 9 has laid down following:

> *"9. Entries in the Schedules of Sales tax and Excise statutes list some articles separately and some articles are grouped together. When they are grouped together, each word in the Entry draws colour from the other words therein. This is the principle of noscitur a sociis."*

42. Applying the aforesaid principle of construction of 'noscitur a sociis' on Entry 71, it is clear that clause 5 of Entry 71 has to take colour and meaning from the other items included in Entry 71. Item 5 of Entry 71 uses the words "similar other products not specifically mentioned under any other entry in this list or any other schedule". Thus, the products which are to be covered under Item No.5 are similar other products. When Item No.2 of the Entry 71 that is fruit juice, fruit concentrates, fruit squash, fruit syrup and pulp, and fruit cordial and item No.4 that is health drinks of all varieties, are kept in mind the fruit juice based drink shall fall in Item No.5. Both High Court and Committee of Commissioners overlooked this principle while interpreting item No.5 of Entry 71.

Issue No.5

43. The appellant in application under Section 94 of the Act, 2003 filed several materials, expert opinions and pleadings for classifying the product in question. The Committee of Commissioners although in its order has noted several contentions raised by the appellant but the Committee of Commissioners mainly relying on the judgment of Division Bench of Kerala High Court in OT Revision No.114 of 2013-M/s. Trade Lines finalised the assessment by levying tax on the product 'Appy Fizz' at the rate of 20% against which M/s. Trade Lines has filed an appeal which was dismissed and thereafter Revision was filed in the High Court and the High Court dismissed the Revision affirming the assessment made at the rate of 20% tax. Proceeding under Section 94 of Act, 2003 is a separate and specific proceeding. In the present case when the appellant has filed application under Section 94 the

judgment of Division Bench in ***M/s. Trade Lines*** was already rendered and in a writ petition filed by the appellant learned Single Judge has issued a direction on 31st August, 2015 for deciding the application under Section 94. The direction issued by the learned Single Judge to decide the application was challenged by the Revenue before the Division Bench and the Division Bench contending that Single Judge ought not to have issued the direction since the matter had been decided in the High Court in M/s. Trade Lines (supra). The Division Bench rejected the said contention and dismissed the writ appeal on 15th October, 2 015 and in paragraph 4 of the judgment has dealt with the judgment of M/s. Trade Lines to the following effect:

> *4....The so-called revisional order passed by this Court in yet another case would not also have the efficacy of depleting the jurisdiction of the authority under Section 94 of the KVAT Act to issue clarification. The very purpose of the provision in the form of Section 94 and clothing authority with power to make different nature of considerations to conclude such issues, necessarily, show that no revisional order of this Court in an earlier proceedings could conclude the issues which could be considered in an application for clarification by the competent authority under Section 94 of the KVAT Act."*

44. The order passed by the Division Bench in M/s. Trade Lines was a case of assessment of another assessee which decision was based on the materials brought on the record by the said assessee and could not have precluded the appellant from filing the application under Section 94 and when the Division Bench by its judgment of 5th October, 2015 dismissed the appeal of the Revenue, the Committee of Commissioners ought to have followed the observation given by the Division Bench in paragraph 4 quoted above. Thus, we are of the view that the judgment of the Division Bench of Kerala High Court in M/s. Trade Lines did not conclude the issue and the Committee of Commissioners was not absolved from its duty of deciding the same in accordance with the materials brought on the record by the appellant and although the Committee noticed all the pleadings and contentions but mainly relying on the ruling of M/s. Trade Lines dismissed the clarification application which cannot be sustained.

Issue No.6.

45. Appellant had relied on the order of CESTAT dated 18.03.2008 reported in 2008 (226) ELT 194 (Tribunal-Delhi) which was in appeal filed by the Commissioner of Central Excise, Bhopal against the M/s. Parle Agro Pvt. Ltd. regarding classification of the same product 'Appy Fizz' and the order passed by the Commissioner(Appeals) whereby it was held that product 'Appy Fizz' is classifiable under sub-heading No.22029020 of Central Excise Tariff on the ground that the product is fruit juice based drink. Revenue challenged the order on the ground that the same is classifiable under sub-heading No.22021010 of Central ExciseTariff as 'aerated water'. The Tribunal vide its judgment dated 18.03.2008 dismissed the appeal. The order in paragraph 5 has referred to relevant sub-heading No.220210 and 22029020 on which Revenue had relied is to the following effect:

"2202 10	*Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured:*
22029020	*Fruit pulp or fruit juice based drinks "*

46. The Revenue has contended that product in question is aerated. The contention of the Revenue was noted in paragraph 3 of the judgment which is to the following effect:

> *"3. The contention of the Revenue is that the Commissioner (Appeals) has ignored the chemical examiner's report and Ministry of Food and Processing Industries opinion and which was on record and Ministry of Food and*

Processing Industries opinion and which was on record and held in favour of the respondents. The contention of the Revenue is that since the product in question is aerated, therefore, is classifiable as flavoured aerated water. The Revenue also relied upon the HSN Explanatory notes in support of their claim."

47. The above contention was rejected by the CESTAT and following was held in paragraph 6:

"6. The Revenue relied upon HSN Explanatory Notes of Chapter 22. WE find that our tariff is not fully aligned with the HSN Explanatory Notes. In the HSN Explanatory Notices there are two sub-headings under Heading No.2202 one is "water including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured" and second is in respect of others. Whereas Central Excise Tariff under Sub-heading No.2202 there are specific headings in respect of soya milk, drinks etc. As per the Central Excise Tariff, the waters; including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured are classifiable under sub-heading No.2202.10. The drinks based on fruit juice are specifically classifiable under Heading No.22029020 of the Tariff. In the present case, there is no dispute regarding the contents of the product. Revenue is not disputing the certificate given by the Ministry of Food and Processing Industries, New Delhi rather they are relying it in the ground of appeal, and as per the certificate, the product in question contains 23% of apple juice, therefore, we find no infirmity in the impugned order. The appeal is dismissed."

4**8.** The Revenue had also filed Civil Appeal No.5354 of 2008 against the order of CESTAT which was dismissed by this Court on 8th July, 2009 affirming the order of CESTAT.

49. The judgment of CESTAT and the order of the Supreme Court were specifically relied by the appellant before the High Court. The High Court without giving cogent reason has refused to rely on the said adjudication. It may be said that the adjudication by the CESTAT was with regard to the HSN Code which found place in Central Excise Tariff Act. The competent entry under which CESTAT authorities were to adjudicate regarding the product has already been extracted "Fruit pulp or Fruit juice based drink" on which CESTAT had ruled that product is not included in aerated water and was included in entry as fruit juice based drink. The product was not held to be aerated water was a relevant fact to be considered even though in the entries under the Act, 2 003, now there are no HSN Codes mentioned.

50. Even though the order of CESTAT did not conclude the controversy in favour of the Appellant but fact that the CESTAT did not hold the product to be under the "aerated water" was a factor which necessitated a more deeper consideration by the High Court to find out as to whether the product is 'aerated branded soft drink' or not. The High Court in its judgment found that since the product charged with air or carbon dioxide was an aerated drink. From the manufacturing process which was on the record, it is clear that carbon dioxide to the extent of 0.6 percent was added as preservative. Technical note submitted on behalf of the appellant clearly mentioned that use of carbon dioxide was only as a preservative of 'Appy Fizz'.

Issue Nos.7 & 8

51. The appellant had been granted the licence to manufacture the product under Fruit Products Order 1955. The appellant has been labelling the product as 'Fruit Drink' under the Food Safety and Standards (Food Safety & Standards and Food Additives) Regulations, 2011. The statutory regulations require that beverages must contain minimum of 10% fruit juice to be

called a Fruit Drink. Regulation 2.3.10 of 2011 Regulations described as 'Thermally Processed/Fruit Beverages/ Fruit Drink ready to serve Fruit Beverages to the following effect:

> *"2.3.10: Thermally Processed Fruit Beverages/Fruit Drink/ Ready to Serve Fruit Beverages*
>
> 1. *Thermally Processed Fruit Beverages/Fruit Drink/ Ready to Serve Fruit Beverages (Canned, Bottled, Flexible Pack And /Or Aseptically Packed) means an unfermented but fermentable product which is prepared from juice or Pulp/Puree or concentrated juice or pulp or sound mature fruit. The substances that may be added to fruit juice or pulp are water, peel oil, fruit essences and flavours, salt, sugar, invert sugar, liquid glucose, milk and other ingredients appropriate to the product and processed by heat, in an appropriate manner, before or after being sealed in a container, so as to prevent spoilage.*
> 2. *The product may contain food additives permitted in these regulations including Appendix A. The product shall conform to the microbiological requirements given in Appendix B. The product shall meet the following requirements:-*
>
> *(i) Total Soluble Solid (m/m) Not less than 10.0 percent*
>
> *(ii) Fruit Juice content (m/m)*
>
> *(a) Lime/Lemon ready to serve beverage Not less than 5.0 percent*
>
> *(b) All other beverage/drink Not less than 10.0 percent*
>
> *... ....''*

52. It is on the record that the contents of food product of 'Appy Fizz' are more than 10%. In Section 94 proceedings the appellant has filed letter of the Government of India dated 28.03.2005 containing the "Subject : Opinion for the product as 'Appy Fizz'". In the letter the Government stated the following:

> *"This is with reference to your letter No. KS-DEL-PAL dated 4th March, 2005 on the above mentioned subject. There are three categories of products specified under the Fruit Products Order, 1955 which are relevant to your products.*
>
> *1. Ready to serve beverages including aerated waters containing Fruit Juice. The product should contain a minimum of 10% of fruit juice. The product is commonly known as fruit drink.*
>
> *2. Flavored sweetened aerated waters. The product which contains less than 10% of ..sic.. & vegetable extractives is included in this category. The product is commonly known as soft drink such as Pepsi Cola, Coca Coin etc.*
>
> *3. Sweetened aerated mixtures containing fruit juice or bits. The product should contain a maximum of 10% of fruit juice or pulp or bits. This category of product technically is same as at serial no.1."*

53. Thus, according to the Government of India, Ministry of Food Processing Industries the product containing 10% of fruit juice are commonly known as fruit drinks. The appellant has also filed the order of 19th August, 2 015 issued by the Food Safety and Standards Authority of India, Ministry of Health & Family Welfare where following permission was

granted by Food Safety and Standards Authority of India, Ministry of Health & Family Welfare by order dated 19th August, 2015:

> *"It is to inform you that you are now allowed to Manufacture, Store and Sale the product 'Appy Fizz' in pet bottles under the category 2.3.10 i. e. Thermally Processed Fruit Beverages/Fruit Drink/Ready to serve Fruit Beverages of Food Safety and Standards (Food Product Standards & Food Additives) Regulations, 2011 with name of the food item as Fruit Pulp or Fruit Juice based Drinks for which you are already holding a license."*

54. The Committee of the Joint Commissioners while deciding the application under Section 94 has noted the aforesaid orders passed by the Food Safety Authorities which were relied by the appellant but it discarded the above said orders and opinion relying on the order passed by the Kerala High Court in the case of M/s. Trade Lines decided on 17.11.2014 and held that the product is taxable at the rate of 20% as per Sl.No.2 of Section 6(1)(a).

55. What is the process for manufacture in accordance with the Food Safety and Standards Act, 2011 and the Regulations framed therein and what is the nature and characteristic of the product which has been licensed to be manufactured to the appellant cannot be said to be an irrelevant factor while examining the nature and contents of the product. Whether the product is an aerated branded soft drink or can be covered by residuary of clause (5) of Entry 71 is a question on which the manufacture licence, orders issued by Food Safety and Standards Authority of India were relevant facts which were although cited before the Committee of Joint Commissioners but were brushed aside relying on the Kerala High Court's order in M/s. Trade Lines. We, thus, are of the opinion that the manufacture licence dated 19th August, 2015 granted to appellant and the opinion of the Government of India, Ministry of Food Processing Industries dated 28.03.2005 were relevant for finding the nature of the product of the appellant for the purpose of classification and the Committee of Joint Commissioners as well as High Court erred in not adverting to and considering the aforesaid material.

56. The appellant has also before the Committee of Commissioners produced the technical certificates. The Food Safety and Standards (Food Products Standards & Food Additives) Regulations, 2011 in clause 2.3.10 deals with thermally processed fruit beverages/fruit drink ready to serve fruit beverages which has already been extracted above. The appellant has filed a certificate dated 11.06.2015 from the Institute of Chemical Technology. It is useful to refer to the above certificate which is to the following effect:

"INSTITUTE OF CHEMICAL TECHNOLOGY

ICT/FET/USA/1590

June 11, 2015

TO WHOMSOEVER IT MAY CONCERN

Technical opinion on the product
Appy Fizz manufactured by
PARLE AGRO PVT LTD.

Appy Fizz is a fruit product manufactured using apple juice concentrate as a fruit juice source. The ingredients declared on the label include Water, Sugar, Apple Juice concentrate, Carbon dioxide(290), malic acid, citric acid, preservatives(sodium benzoate, potassium metabisulphite and potassium, sorbate), ascorbic acid and added nature identical flavouring substances and natural colour. The juice content of APPY FIZZ is 12.7% m/m and Total solids

content is 13%. The product is manufactured under FSSAI licence category - Ready to Serve fruit beverage/drink.

The manufacturing process involves the following steps:-

1. *Addition of all the ingredients to treated water, except carbon dioxide and making a batch.*
2. *Thermal Process (Pasteurization) of the product at 950 C for 30 seconds and cooling to 40 C.*
3. *Purging Carbon dioxide gas into the product.*
4. *Filing the product into bottles/cans followed by sealing/seaming.*
5. *Filed bottles/cans are then passed through warmer to increase the temperature to room temperature followed by labeling and coding.*

The technical opinion is given with considering following two points:

POINT NO. 1:

Technical Opinion on why the category of the product should be FSSAI(Food Product Standards and Food Additives) Regulations, 2011chapter 2.3.10(Thermally processed Fruit Beverages/Fruit drink/Ready to serve fruit beverage)

- *It is made from apple juice concentrate.*
- *It compiles with respect to the juice content and solids content percentage which is more than 10% required as per the 2.3.10.*
- *It mentions CONTAINS APPLE JUICE on the label.*
- *It is thermally processed beverage. It has substances mentioned ..sic.. other ingredients appropriate to the product.*
- *After the Thermal processing ready ..sic.. as required in 2 Carbon Dioxide is purged in beverage FRUITS preservation to environment which prevent spoilage life.*

POINT NO. 2:

Technical Opinion on why the category of the product should NOT be classified under FSSA (Food Product Standards as Food additives) Regulation, 2011 chapter 2.3.30 (Carbonated Fruit beverage / drink) OR 2.10.6.1 (Carbonated Fruit beverage/drink) OR 2.10.6.1 (Carbonated Water)

- *APPY FIZZ is not a synthetic carbonated wate.*
- *APPY FIZZ contains reconstituted natural apple juice made from apple juice concentrate.*
- *APPY FIZZ is thermally processed (Pasteurization).*
- *Thermal process is not mentioned in 2.3.30 and 2.10.6.1*
- *APPY FIZZ are not contain artificial sweeteners/caffeine as allowed in 2.10.6.1.*

Carbon dioxide(INS 290/E 290) is mentioned as a Packing gas/propellant/carbonating agent/preservative/foaming agent by CODEX ALIMENTATIRUs and its use is allowed as per GMP.

Carbon dioxide along with other preservatives help in extending the shelf life of the product as the product is filed in PET bottles/cans and is not filled aseptically.

Conclusion:

In view of the above mentioned points, I am of the opinion that the APPY FIZZ is a THERMALLY PROCESSED FRUIT BEVERAGE/READY TO SERVE FRUIT BEVERAGE complying with category 2.3.10 as per FSSAI Regulations, 2011 despite having carbon dioxide as an ingredient which is used for preservation purpose only. This opinion is purely based on scientific and technical information however ICT will not be part of any court conflicts.

Sd/-11.6.2015
Dr. Uday S. Annapure,
Associate Professor,
Dept. of Food Engineering & Technology,
Institute of Chemical Technology Matunga, Mumbai-400 019."

57. The above technical opinion clearly mentioned that carbon dioxide is used for preservation purpose only. Before the Committee of Commissioners the entire process of manufacture of the product was explained along with all relevant orders and certificates of Food Safety Authorities. It was stated that the Experts in their opinions and certifications have mentioned that product is commercially and technically distinct from products which have classified as 'aerated branded soft drinks'. The certifications which were relied by the appellant indicate that in the case of 'Appy Fizz' the product does not undergo aeration or carbonation; the product is thermally processed with CO2 which help in preserving the Apple Juice concentrate which is otherwise perishable in nature.

58. In the application which was filed for clarification, which has been brought on the record at page 138-Annexure P-13, in paragraph 3.1 elaborate process of manufacture was mentioned.

59. Other relevant materials which were part of the clarification application were mentioned in clause 6 which are to the following effect:

"VI. OTHER RELEVANT MATERIAL

(a) *Technical opinion dated 28.02.2005 issued by the authority under Fruit Processing Order, 1955 i.e. Director Food & Vegetable Processing Industry working as licensing officer under Fruit Product Order 1955 in ministry of Food Processing Industries, Government of India.(Copy of the said certificate is enclosed herewith as Exhibit H)*

(b) *Permission given for manufacture, storage and sale of product to the factory at Varanasi issued by Central Licensing Authority having their office at Lucknow under letter dated19.08.2015 confirming the classification of product "Appy Fizz" under category 02.03.2010 i.e. Fruit Juice based Drink and also held that we are already holding a license. (Copy of the said letter is enclosed herewith as Exhibit I)*

(c) *Technical expert opinion issued by Professor Dr. Uday S. Annapure dated 11.06.2015 classifying the said product as ready to serve Fruit beverage falling under the category of 02.03.2010 of FSSAI Regulation 2011 and specifically stated that "Appy Fizz" is not Carbonated Water. Exhibit J.*

(d) Technical Note and Photographs explaining the use of impregnated Carbon Dioxide for the purpose of preservation as well as for the strengthening the wall of PET bottles due to expansion of Carbon Dioxide from inside providing the strength to wall of PET bottle during the transit so as to withstand with the handling hazards while delivering the product to remote area. Note and photocopies are enclosed herewith as Exhibit K and L Colly.

(e) Classification of the product "Appy Fizz" has been recognized by a legislative body of Kerala Government based on the white paper issued by empowered committed of state Finance Minister while introducing the White Paper on 17.01.2005 and has issued the Original Notification SRO 82 of 2006 dated 21.01.2006 and classified the product based on Central Excise Tariff which inter-alia is based on HSN at Entry no.71 Sr. No.4 as Fruit Juice Based Drink. Copy of the said Notification and White Paper is enclosed herewith as Exhibit M and Exhibit N Colly.

(f) The said classification under Entry No.71 sr.No.4 of the product under Kerala VAT remained in Entry No.71 at Sr.5 despite the substitution brought by Notification SRO 119 of 2008 dated 24.01.2008. (Copy of the said Notification is enclosed herewith as Exhibit O)

(g) The Kerala VAT dept. had raised an issue regarding the classification of the product Appy Fizz in 2009. However, the Company had explained the reason as to why the product Appy Fizz has been classified as a fruit juice based drink. The said explanation of the company has been accepted and no order has been passed by the KVAT Department, accepted assessment order passed by assessing officer Exhibit P.

(h) The said assessment orders have attained the finality being not challenged by the department.

(i) As per sub-section(1A) of Section 94 of Kerala VAT Act, 2003 which inter-alia contemplates that if the dispute relates to tax rate of a commodity the details of first seller or the manufacturer of such goods in the state as the case may be shall be furnished by the applicant. Accordingly, we are submitting sales tax Assessment order under Tamilnadu VAT Act since the manufacturer is located in Tamilnadu, Exhibit Q. Hence, the said party may please be made a necessary party.

(j) The issue of classification of the product "Appy Fizz" is decided by Hon'ble Kerala High Court in case of other dealer namely Trade Lines. However, Hon'ble Kerala High has decided that in Revision and the facts of our case are totally different and therefore, as per the settled law the decision is binding only when the facts are same and not when the facts are different and therefore, in our case the facts which are totally different were not subject matter of consideration before Hon'ble High Court."

60. The above materials which were filed by the appellant before the Clarification Authority were relevant materials for understanding the manufacture process and the nature and contents of ultimate product. The expert authority and its opinion which were relied by the appellant were required to be adverted to both by the Clarification Authority as well as by the High Court and we are of the opinion that expert opinion and materials have been erroneously discarded.

61. It is further relevant to note that Revenue has not filed any material on the record either before the Clarification Authority or before the High Court in support of its view that product is covered under Section 6(1)(a) that is 'aerated branded soft drink'. This Court in several cases has observed that onus to prove that particular goods fall in particular tariff item is on the Revenue. In this context, in the judgment of this Court in Hindustan Ferodo Ltd. vs. Collector of Central Excise, Bombay, 1997(89) ELT 16(SC), in paragraph 3 it was laid down:

> *"3. It is not in dispute before us,as it cannot be, that the onus of establishing that the said rings fell within Item 22F lay upon the Revenue. The Revenue led no evidence. The onus was not discharged. Assuming therefore, that the Tribunal was right in rejecting the evidence that was produced on behalf of the appellants, the appeal should, nonetheless, have been allowed."*

62. We, thus, conclude that orders of Food Safety Authority and expert opinion regarding process of manufacture relied by the appellant were relevant materials and Clarification Authority and High Court erred in law in discarding these materials.

Issue No.9 : CONCLUSION

63. While referring to Section 6(1)(a) and Section 6(1)(d) we have already noticed that the power of the State Government to issue notification under Section 6(1)(d) arises "in the case of goods not falling under clause (a) or (c)". After enactment of Act, 2003 Section 6(1)(a) from the very beginning included 'aerated branded soft drink'. The inclusion of fruit juice based drinks in Entry 71 clearly proved that fruit juice based drinks were never treated to be included in 'aerated branded soft drinks'. Had fruit juice based drinks were also included in 'aerated branded soft drinks', the State could not have exercised its power under Section 6(1)(d) to include such products in Entry 71. Whether after amendment of Entry 71 by S.R.O. No.119 of 2008 something which was earlier included in Entry 71 shall now stand transferred to Section 6(1)(a) is the question to be answered. Even though Entry 71 has been amended but there is no amendment in Entry 2 of Section 6(1)(a), so as to include something not included in Section 6(1)(a). By S.R.O. No.119 of 2008, residuary entry by Item No.5 is added which is "similar other products not specifically mentioned under any other entry in this list" which is potent enough to include fruit juice based drinks and it is clear that fruit juice based drinks are subsumed in Item No.5 of Entry 71 after its amendment. We have already observed that items which have been grouped under Section 6(1)(a) are all those items where higher tax slab has been fixed looking into the nature of the goods. It is well settled that all tobacco based goods which are now included in Item No.6(1)(a) are dangerous to health, the use of the plastic, polythene etc. which have also adverse effect on the health and environment. In contrast to 'aerated branded soft drinks' which are included in Section 6(1)(a), health drinks of all varieties are included in Entry 71 as amended. Aerated branded soft drinks which are referred to in Section 6(1)(a) cannot be drinks which are health drinks. Fruit juice based drinks can be regarded as health drinks as compared to other aerated branded soft drinks like pepsi cola, coka cola, etc. We are, thus, of the opinion that the appellant has successfully proved by relevant scientific and technical materials that the product in question that is 'Appy Fizz' is a commodity which is fully covered by Item No.5 of Entry 71 as amended by S.R.O. No.119 of 2008. The High Court discarded scientific and expert opinion with regard to manufacturing process and contents of the product. The orders of Food Safety Authority were also discarded which were relevant for considering the nature and contents of product. The adjudication by CESTAT was relevant at least on the aspect that the 'Appy Fizz' is not aerated which was also discarded by the High Court as well as by the Committee of the Commissioners. In view of the aforesaid discussion, we are of the considered opinion that the appellant has successfully proved from the materials brought on the record that the product 'Appy Fizz' was required to be classified

under Item No.5 of the Entry 71 as amended with tax liability at 12.5% after amendment by S.R.O. No.119 of 2008 (now at the rate of 14.5%).

64. Now, coming to the appeal arising out of SLP(C)No. 9467 of 2016. The appeal has been filed by the Revenue challenging the judgment of learned Single Judge and Division Bench by which direction was issued to the Committee of the Commissioners to decide the application filed by the appellant under Section 94 of Act, 2003. Learned Single Judge has issued directions dated 31st August, 2015 directing the Commissioner of Commercial Taxes to pass orders on the clarification application. The appellant was also given liberty to produce all material, on which the appellants intend to place reliance to substantiate their contention with regard to the classification of the product in question. In writ petition filed by the Revenue before the Division Bench, the Division Bench affirmed the order and while referring sub-section (4) of Section 94 stated following:

> *"Sub-section(4) of Section 94 states that where any question arises from any order already passed or any proceedings recorded under the KVAT Act, or any earlier law, no such question shall be entertained for determination under Sub-section (1) . Insofar as the issue raised by the respondent through the application before the authority is concerned, there is no order that has already been passed or there is no proceedings recorded as against it which could be treated as a final one. All what has been done is the issuance of notice as noted above as a proposal in relation to the assessment proceedings. The so-called revisional order passed by this Court in yet another case would not also have the efficacy of depleting the jurisdiction of the authority under Section 94 of the KVAT Act to issue clarification. The very purpose of the provision in the form of Section 94 and clothing authority with power to make different nature of considerations to conclude such issues, necessarily, show that no revisional order of this Court in an earlier proceedings could conclude the issues which could be considered in an application for clarification by the competent authority under Section 94 of the KVAT Act."*

65. The Division Bench did not commit any error in dismissing the appeal and observing that no revisional order of this Court in an earlier proceedings could conclude the issues which could be considered in an application for clarification by the competent authority under Section 94 of Act, 2003. We do not find any error in the judgment of the learned Single Judge as well as of Division Bench and this appeal deserves to be dismissed.

66. Now coming to Civil Appeals arising out of SLP(C)Nos.24460-61 of 2016. These appeals have been filed by the assessee against an order of learned Single Judge by which order the learned Single Judge disposed of the writ petition by following orders:

> *"Accordingly, these writ petitions are disposed of in the following manner:*
>
> *(i) The demand made in the above cases shall remain stayed till disposal of the appeals, on condition of the petitioners depositing 50% of the amount involved.*
>
> *(ii) The petitioners are granted four weeks time to remit the amount.*
>
> *(iii) The Appellate Authority shall endeavour to dispose of the appeal as expeditiously as possible."*

67. The learned Single Judge has noted about the pendency of SLP(C)Nos.14697-98/2016 in this Court where classification of the product was under challenge. By this judgment we are also disposing of the Civil Appeals arising out of SLP(C) Nos.14697-14698 of 2016. Further proceedings in case of the assessee that is M/s. We Six Traders Etc.Etc. has to

be, thus, concluded in accordance with our decision in Civil Appeals amount deposited in pursuance of the interim order of the High Court dated 14th July, 2016 shall abide by the consequential orders to be passed in the proceedings against the assessee. We, thus, do not find it necessary to interfere with the order dated 14th July, 2016 of the learned Single Judge and the Civil Appeals are disposed of with direction that in proceedings against the assessee consequential orders shall be passed including an adjustment of the amount deposited, if necessary, as per our judgment in Civil Appeals arising out SLP(C)Nos.14697-14698 of 2016.

In the result

(1) Civil Appeals arising out of SLP(C)Nos.14697-14698 of 2016 are allowed, judgment of the Division Bench as well as order passed in the Review Application are set aside. OT Appeal filed by the appellant is allowed and the order passed by the Committee of Joint Commissioners dated 06.11.2015 is set aside. It is declared that product of the appellant 'Appy Fizz' is required to be classified as under Item No.5 of Entry 71 as amended by S.R.O. No.119 of 2008.

(2) Civil Appeal arising out of SLP(C)No.9467 of 2016 is dismissed.

(3) Civil Appeals arising out of SLP(C)Nos.24460-61 of 2016 are disposed of directing the proceedings against the assessee be decided in the light of our judgment in Civil Appeals arising out of SLP(C)Nos.14697-14698 of 2016 and necessary consequential orders be passed accordingly.

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 4491 OF 2016

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EUROTEX INDUSTRIES AND EXPORTS LIMITED & ANR.
Vs
STATE OF MAHARASHTRA & ANR.

A.K. SIKRI AND ABHAY MANOHAR SAPRE, JJ.

8th May, 2017

HF ▶ Revenue

Retrospective operation of the Validation Act cannot be struck down as constitutionally invalid if the State Legislature always intended to provide for proportionate benefits of incentives right from the beginning.

EXEMPTION – EXEMPTED UNIT – MAHARASHTRA VAT ACT (LEVY, AMENDMENT AND VALIDATION) ACT, 2009 - PACKAGE OF SCHEME OF INCENTIVES PROVIDING FOR PROPORTIONATE BENEFIT OF THE INVESTMENT MADE BY EXISTING UNITS – THE TERM "PROPORTIONATE" DELETED FROM SCHEME – ADMINISTRATIVE CIRCULAR ISSUED FOR ALLOWING THE PROPORTIONATE BENEFIT ONLY INSTEAD OF BENEFIT ON THE ENTIRE TURNOVER – CIRCULAR STRUCK DOWN BY TRIBUNAL BEING WITHOUT AUTHORITY OF LAW – ORDER OF TRIBUNAL UPHELD BY HIGH COURT – LEGISLATURE INTRODUCING SECTION 41BB OF BOMBAY SALES TAX ACT 1959 PROVIDING FOR PROPORTIONATE INCENTIVE PRESCRIBED BY STATE GOVT. – NO RULES PRESCRIBED – SIMILAR PROVISION INCORPORATED IN MAHARASHTRA VAT ACT AS SECTION 93 W.E.F. 1.4.2005 – UNITS ENJOYING BENEFITS ON ENTIRE TURNOVER IN ABSENCE OF PRESCRIPTION OF RULES – SECTION 93 AMENDED IN 2009 WITH RETROSPECTIVE EFFECT FROM 1.4.2005 PROVIDING FOR PROPORTIONATE BENEFIT ONLY AND THE METHOD OF SUCH CALCULATION – CONSTITUTIONAL VALIDITY OF SUCH PROVISION CHALLENGED BEFORE HIGH COURT TO THE EXTENT OF RETROSPECTIVE OPERATION – CONSTITUTIONAL VALIDITY UPHELD – ON CHALLENGE BEFORE SUPREME COURT – STATE LEGISLATURE IS COMPETENT TO ENACT THE LAWS WITH RETROSPECTIVE EFFECT – INTENT OF STATE LEGISLATURE IS TO ALLOW PROPORTIONATE BENEFITS RIGHT FROM BEGINNING – RETROSPECTIVE AMENDMENT IS ONLY TO CURE DEFECT IN THE IMPLEMENTATION OF SUCH INTENTION – ACT CANNOT BE STRUCK DOWN ON THE GROUND OF INABILITY TO PASS ON THE BURDEN OF TAX TO THE CONSUMER – CONSTITUTIONAL VALIDITY OF SECTION 93 AMENDED BY 2009 ACT WITH RETROSPECTIVE EFFECT UPHELD. - *SECTION 8(4), 93 AND 93A OF MAHARASHTRA VAT ACT, 2002. SECTION 41BB OF BOMBAY SALES TAX ACT, 1959; MAHARASHTRA VAT ACT (LEVY, AMENDMENT AND VALIDATION) ACT, 2009*

Petitioners had laid challenge to the constitutional validity of Maharashtra VAT Act (Levy, Amendment and Validation) Act, 2009 insofar as it sought to amend the provisions of Maharashtra VAT Act 2002 with retrospective effect from April 1, 2005.

State of Maharashtra in order to encourage and ensure industrialisation in the backward and under-developed areas, introduced Package Schemes of Incentives to the industrial units for setting up industries in such areas. The latest of such schemes was notified on 7th May 1993. The Scheme provided for grant of certain benefits not only to the new units but also to the existing units based upon acquisition of new fixed assets by them on a proportionate basis of their turnover. In the year 1994, the word "proportionate" was deleted from the Scheme of 1993. As a result, the acquisition of new fixed assets could be considered for incentives if the acquisition was not less than 25% of the gross fixed capital investment.

On January 17, 1998, a Trade Circular was issued by Commissioner of Sales Tax stipulating that under the 1993 Scheme, incentives would be given in proportion to the expansion capacity of the total capacity or the investment ratio of new fixed capital investment to the total gross fixed capital investment after the expansion/investment and not on the entire production of an eligible unit covered under such category. Maharashtra Sales Tax Tribunal vide its judgment rendered in the year 2001 held that the aforesaid Circular was not validly issued as an administrative circular could not be issued which was contrary to 1993 Scheme which was statutory in nature. This order of Tribunal was upheld by the High court and it attained finality.

To overcome this difficulty, the Legislature brought an amendment to Bombay Sales Tax Act, 1959 with insertion of Section 41BB. Through this new section, the State Govt. provided for grant of proportionate incentives which were to be prescribed by the State Govt. by framing rules in this behalf. However, no such rules were framed.

In the year 2002, VAT Act was enacted replacing the Sales Tax Act which came into force on April 1, 2005. Similar to Section 41BB, the State Legislature had incorporated section 93 in MVAT Act providing for proportionate incentives to an eligible unit. The Rules were still not framed.

The aforesaid provision was later on retrospectively amended in the year 2009 providing for the proportionate incentives to the units by providing for the formalities in the Section itself. Simultaneously, section 93A had been inserted to provide that section 93 shall apply to all the eligible units to whom Eligibility Certificates and Certificates of Entitlement have been issued under any of the Package Scheme of Incentives. Section 5 of the Amending Act contained a validation clause to overcome the difficulties arising out of the earlier court/Tribunal orders.

The retrospective operation of sub-sections (1A) and (1B) of Section 93 of VAT Act were made subject matter of challenge before the High court. The High court upheld the retrospective operation of said amendment to be permissible on the ground that it was in the nature of valid legislation and such a legislation can be passed by the legislature with retrospective effect, more so, when the Legislature is empowered to enact the laws retrospectively.

The order of High court was challenged before Supreme Court. The Supreme Court repelling the contention of petitioners upheld the order of High Court and retrospective operation of amended provisions. It was

HELD:

It has been contended by the petitioners that even though there is no denial to the fact that Legislature is competent to enact the laws retrospectively but the retrospective amendment in question does not seek to remove the ambiguity or correct a cause of invalidity, but, in a sense, it seeks to impose a fresh levy of tax. It has been argued that the sole purpose of amendment made from retrospective effect was to neutralise the effect of earlier judgment of Bombay High Court. We are unable to accept the aforesaid submissions and find that High court has proceeded to deal with this aspect of the matter in a correct perspective. High Court has observed that Section 41BB of Bombay Sales Tax Act was introduced in the year 2001

introducing the concept of proportionality. It contained a legislative mandate in the form of restrictions to the extent that notwithstanding anything contained in any Package Scheme of Incentives, the eligible unit holding an Eligibility Certificate shall be eligible to draw benefits only on that part of its turnover of sales and purchases as would be arrived at by applying the ratio which was to be prescribed by the State Govt. The legislative intent behind the aforesaid provision was clear, i.e. to allow the benefit only on proportional basis. Similar provision was contained in Section 93(1) of MVAT Act. It is the implementation of this statutory provision where the Govt. erred. Though the Govt. carried out its intent by issuing Circular dated 17.01.1998, but the method and manner of doing the same was faulty. Because of this legal infirmity, the Circular was set aside by the High court. It is this defect which was sought to be cured by amending the statutory provision itself by making the said amendment retrospectively.

Once we find that from the very beginning, the statutory scheme itself provided for proportionate incentive and this legislative intent was expressed even in the Objects and Reasons, it cannot be said that there was no provision of this nature prior to 2009 and such a provision was inserted for the first time in the year 2009.

The High Court had earlier quashed the Circular issued by the Govt. as the law required the proper mode was to effectuate the provision by way of framing the rules. This is the basis of judgment and it is this basis which has been taken away by the legislative amendment retrospectively. In these circumstances, it cannot be said that intention was to nullify the judgment of the court. Clear intention was to rectify the earlier error committed by the executive. in not implementing the legislative intent in the form of subordinate legislation i.e. statutory rules and trying to achieve the same by administrative action.

The argument regarding not being able to pass on the burden of tax on to the consumer is also untenable. A series of judgments rendered by Supreme Court have authoritatively pronounced that the fact the dealer upon whom the tax is imposed is not in a position to pass on tax on the consumer, is of no relevance to the competence of the Legislature.

Resultantly, finding no merit in any of these appeals, we find that High Court has appropriately dealt with the issue upholding the validity of impugned amendment. As a result, these appeals fail and are dismissed with costs.

Present: ***For Appellant(s)*** *Mr. C.U. Singh, Sr. Advocate; Mr. Arjun Harkauli, Advocate; Mr. A.K. Ganguli, Sr. Advocate; Mr. Nikhil Nayyar, Advocate; Mr. Dilip C. Daga,, Advocate; Mr. N. Sai Vinod, Advocate; Ms. Smriti Shah, Advocate; Mr. Divyanshu Rai, Advocate; Mr. S. Ganesh, Sr. Advocate; Mr. Prasanth P., Advocate; Mr. Balbir Singh, Sr. Advocate; Mr. Rupinder Sinhman, Advocate; Mr. Abhishek Baghel, Advocate; Mr. Rajesh Kumar, Advocate; Mr. R.K. Srivastava, Advocate; Mr. Rahul Chitnis, Advocate; Ms. Ramni Taneja, Advocate; Mr. Anil Shrivastav, Advocate*

For Respondent(s) *Mr. Aniruddha P. Mayee, Advocate; Mr. Nishant Ramakantrao Katneshwarkar, Advocate; Mr. Arpit Rai, Advocate*

******

A.K. SIKRI, J.

1. These appeals arise from the judgment of the Bombay High Court dated June 10, 2013 by which the High Court has dismissed a batch of writ petitions wherein challenge was laid to the constitutional validity of the Maharashtra Value Added Tax (Levy, Amendment and Validation) Act, 2009 which amended certain provisions in the Maharashtra Value Added Tax Act, 2002 (for short, the 'MVAT Act') with retrospective effect from April 01, 2005. The High

Court has based its judgment by referring to various judgments of this Court which held that Legislature has the power to enact prospectively as well as retrospectively. The appellants do not, and in fact cannot possibly, have any objection at all with this proposition. However, they argue that the High Court has failed to appreciate the effects and consequences and the practical impact of the retrospective amendment on the industrial units which had, in response to the State Government's Scheme, made huge investments in the most extremely backward areas of Maharashtra and which were led to believe that they were entitled to claim exemption from Value Added Tax (for short, 'VAT') on 100% of their production and accordingly did not recover any VAT from their customers. According to them, the effect and consequence of this amendment was that, with retrospective effect from April 01, 2005, industrial units which had made capital investments in very backward areas in the State of Maharashtra and which were earlier entitled to claim VAT exemption benefit on the entire production of their respective industrial units, had their exemption benefit substantially curtailed, being limited to, only a portion of the total production of the unit due to the aforesaid retrospective amendment.

2. It is in this backdrop the issue is as to whether retrospective amendment in the MVAT Act stands the test of constitutionality and is valid in law. Following factual background need to be noted in order to understand the exact nature of controversy and the decisions which are taken by the appellants on the one hand and the respondent on the other.

3. In order to encourage and ensure industrialisation in the backward and underdeveloped areas, Government of Maharashtra had introduced package schemes of incentives to the industrial units for setting up industries in such areas. First scheme in this process is known as the 'Package Scheme of Incentives' which was introduced in the year 1964. Then came few amended Schemes in the subsequent years. On September 30, 1988, yet another new Package Scheme of Incentives for the period between October 01, 1988 to September 30, 1993 was promulgated with a view to rationalise the scope, scale and mode of release of incentives and accelerate the dispersal of industries from the developed areas of the State to underdeveloped regions. This was notified with effect from May 07, 1993, with which this case relates to.

4. The object of the Scheme was to achieve a dispersal of industries outside the Bombay Thane - Pune belt and to attract them to the underdeveloped and developing areas of the State, particularly, regions away from Bombay Thane - Pune belt. Paragraph 3.8(1)(i) (c) of the Scheme provides as follows:

> *"3.8 Gross Fixed Capital Investment -*
>
> *(1) Gross Fixed Capital Investment shall mean and include, in the case of -*
>
> *(i) New Fixed Assets - The value of new Fixed Assets acquired at site and paid for:*
>
> *Explanation -*
>
> *(a) xx xx xx*
>
> *(b) xx xx xx*
>
> *(c) Any acquisition of new Fixed Assets outside the project scheme accepted by the Implementing Agency can be considered for the purposes of proportionate incentives during residual eligible period provided such acquisition is not less than 25% of the Gross Fixed Capital Investment at the end of the previous financial year of the Eligible Unit."*

5. By Government Resolution (GR) dated July 06, 1994, paragraph 3.8(I)(i)(c) was amended and substituted by deleting the word 'proportionate' from the Scheme of 1993. As a

result, it was stipulated that an acquisition of new fixed assets outside the project scheme accepted by the Implementing Agency could be considered for incentives other than special capital incentives if the acquisition was not less than 25% of the gross fixed capital investment. However, for the purposes of sales tax benefits, the quantum of entitlement would be limited to 75% of that admissible to a new unit. Existing units were also entitled to benefits of the clause.

6. Notwithstanding the deletion of the word 'proportionate‘ in the 1993 Scheme, on January 17,1998, Trade Circular was issued by the Commissioner of Sales Tax, which stipulated that under the 1993 Scheme incentives would be given in proportion to the expansion capacity to the total capacity or the investment ratio of new fixed capital investment to the total gross fixed capital investment after the expansion/investment and not on the entire production of an eligible unit covered under such category. Vires of this Circular were challenged by filing writ petitions in the High Court. While these writ petitions were pending, the Maharashtra Sales Tax Tribunal, in its judgment dated March 17, 2001, held that the aforesaid Circular was not validly issued as such an administrative circular could not be issued, which was contrary to the 1993 Scheme, as amended, since such a Scheme was statutory in nature. It may be mentioned that the aforesaid order of the Tribunal was subsequently upheld by the High Court and it attained finality. To overcome this difficulty, the Legislature brought amendment to the Bombay Sales Tax Act, 1959 with the insertion of Section 41BB. This provision reads as under:

"41BB.- Proportionate incentives to an Eligible Unit in certain contingencies. -

(1) Notwithstanding anything to the contrary contained in any Package Scheme of Incentives, any Eligible Unit, to whom the Eligibility Certificate has been granted, shall be eligible to draw the benefits in the current year or in any year, whether preceding or succeeding the date of commencement of Section 12 of the Maharashtra Act 22 of 2001, only on that part of its turnover of sales or purchases as may be arrived at by applying the ratio as may be prescribed by the State Government to the total turnover of sales and purchases of the said unit in that year and different ratios may be prescribed for different classes of dealers and different schemes.

(2) The benefits availed of by an Eligible Unit in contravention of sub-section (1), if any, shall be and shall be deemed to have been withdrawn and such unit shall be liable to pay tax in respect of the turnover of sales and purchases in excess of the turnover arrived at under sub-section (1) and accordingly any benefit which is withdrawn shall be recovered as arrears of tax as provided in sub-section (3).

(3) For recovery of arrears of tax as provided in sub-section (2), the Commissioner shall require the unit, by order in writing, to pay the tax, interest and penalty on such turnover on which the benefits are not available and serve on the dealer notice of demand accordingly:

Provided that, no order under this section shall be passed without giving the dealer a reasonable opportunity of being heard.

Explanation. - For the purposes of the provisions contained in section 41BA and 41BB the terms "Existing Unit, Eligible Unit, Implementing Agency, Eligibility Certificate and Certificate of Entitlement' shall have the same meaning as provided in the relevant Package Scheme of Incentives."

It would, however, be pertinent to mention that though Section 41BB provided for grant of proportionate incentives, it could be as prescribed by the State Government by framing rules in this behalf. However, no rules were ever framed.

7. This provision clearly introduced the concept of proportionality, which is also clear from the Statement of Objects and Reasons accompanying the Introduction of that Bill, categorically stipulating that the Act was being amended 'to restrict grant of incentives in proportion to the goods manufactured in the expansion units located in the backward areas of the State.

8. In the year 2002, VAT regime was introduced and the State of Maharashtra also enacted the MVAT Act thereby replacing the Bombay Sales Tax Act, 1959. It came into force on April 01, 2005. Section 8(4) of the MVAT Act empowers the State Government to provide for an exemption from payment of the whole of the tax in respect of any class or classes of sales of goods effected by a unit holding a Certificate of Entitlement, as defined in Section 88, to whom incentives are granted under any Package Scheme of Incentives, by way of exemption from payment of tax. Section 93 of the MVAT Act deals with proportionate incentives to an Eligible Unit in certain contingencies. Sub-section (1) thereof, as it originally stood, reads as under:

> *"93. Proportionate incentives to an Eligible Unit in certain contingencies. - ratio as may be prescribed by the State Government to the total turnover of sales and purchases of the said unit in that year and different ratios may be prescribed for different classes of units and different schemes.*
>
> *xx xx xx"*

9. It is this provision which has been amended retrospectively by the Amendment Act of 2009 and is the bone of contention. The amended provision now reads as under:

> *"(1) Notwithstanding anything to the contrary contained in any Package Scheme of Incentives, any Eligible Unit, to whom the Eligibility Certificate and Certificate of Eligibility have been granted at any time before or after the appointed day, on account of increase in the production capacity or, as the case may be, acquisition of new fixed capital assets, shall be entitled to draw the benefits in any year, only on that part of its turnover of sales or purchases as may be arrived at by applying the provisions of sub-section (1A) to the total turnover of sales and purchases of the said unit in that year.*
>
> *(1A) In case where the Eligible Unit has, -*
>
> *(a) maintained separate accounts of sales and purchases and is able to identify the sales and purchases pertaining to the increase in the production capacity or, as the case may be, the said eligible investment, then the portion of the turnover eligible for benefits will be decided solely on the basis of such identification;*
>
> *(b) not maintained separate accounts of sales and purchases and is not able to identify the sales and purchases in relation to increase in the production capacity or, as the case may be, the said eligible investment, then such benefits shall be calculated after applying the formulae in sub-clause (i) or, as the case may be, sub-clause (ii) given as under:*
>
> *(i) In case where there in increase in production capacity, then for the Package Scheme of incentives for 1988 or, as the case may be, Package Scheme of Incentives for 1993, the formulae shall be as below:*

$$Eligible\ Turnover = \frac{Turnover\ x\ Increase\ in\ production\ capacity}{Total\ production\ capacity\ after\ such\ increase}$$

(ii) in case where there is no increase in production capacity, then for the Package Scheme of Incentives for 1993, the formulae shall be as below:

$$Eligible\ Turnover = \frac{Turnover\ x\ New\ Fixed\ Capital\ Investment}{Total\ gross\ fixed\ capital\ investments}$$

(1B) When the eligible turnover comprises of multiple finished products, then,-

(a) the production capacity of each of the finished products shall be separately considered in determining the corresponding eligible turnover, and

(b) eligible turnover shall relate to those products on which the eligible investment has made impact and when eligible investment does not add to production capacity, then it shall apply to all the finished products."

Simultaneously, Section 93A has been inserted to provide that Section 93 shall apply to all the Eligible Units, to whom Eligibility Certificates and Certificates of Entitlement have been issued under any of the Package Schemes of Incentives; if such certificates have been issued on or before the appointed day (1 April 2005), then from the appointed day and in any other case, from the date of effect mentioned in such Civil certificates.

10. Section 5 of Amending Act 22 of 2009 contains a validation and savings provision which is as follows:

"5(1) Notwithstanding anything contained in any judgment, decree or order of any Court or Tribunal to the contrary, any assessment, review, levy or collection of tax in respect of sales or purchases effected by any dealer or person, or any action taken or thing done in relation to such assessment, review, levy or collection under the provisions of the Maharashtra Value Added Tax Act, 2002 (hereinafter in this section referred to as "the Value Added Tax Act"), before the date of the commencement to the Maharashtra Value Added Tax (Levy, Amendment and Validation) Act, 2009 (hereinafter referred to as "the said Act"), shall be deemed to be valid and effective as if such assessment, review, levy or collection or action or thing had been duly made, taken or done under the Value Added Tax Act, as amended by the said Act, and accordingly,-

(a) all acts, proceedings or things done or taken by the State Government or by any officer of the State Government or by any other authority in connection with the assessment, review, levy or collection of any such tax, shall, for all purposes, be deemed to be, and to have always been done or taken in accordance with law;

(b) no suit, appeal, application or other proceedings shall lie or be maintained or continued in any Court or before any Tribunal, officer or other authority, for the refund of any tax so paid, and

(c) no Court, Tribunal, officer or other authority shall enforce any decree or order directing the refund of any such tax.

(2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing a person,-

(a) from questioning in accordance with the provisions of the Value Added Tax Act, as amended by the said Act, any assessment, review, levy or collection of tax referred to in sub-section (1), or

(b) from claiming refund of any tax paid by him in excess of the amount due from him by way of tax under the Value Added Tax Act, as amended by the said Act.

(3) Nothing in the Value Added Tax Act, as amended by the said Act shall render any person liable to be convicted of any offence in respect of anything done or omitted to be done by him, before the commencement of the said Act, if such act or omission was not an offence under the Value Added Tax Act but for the amendments made by the said Act; nor shall any person in respect of such act or omission be subject to a penalty greater than that which could have been imposed on him under the law in force immediately before the commencement of the said Act."

11. As pointed out in the beginning itself, it is only the retrospective operation of sub-sections (1), (1A) and (1B) of Section 93 of the MVAT Act which is the subject matter of challenge.

12. The High Court has brushed aside the challenge holding the retrospective operation of the said amendment to be permissible on the ground that it was in the nature of a valid legislation and such a legislation can be passed by the Legislature with retrospective effect, more so when the Legislature is empowered to enact the laws retrospectively.

13. Mr. S. Ganesh, learned senior counsel, submitted that chronology of events stated above clearly establishes that the State Government and the tax authorities led all industrial units to a bona fide belief, during the relevant period from 2005 to 2009, that the benefit of VAT exemption would be available in respect of the entire production of the industrial unit and not merely a proportionate part thereof. These industrial units were, therefore, disabled and prevented from recovering any VAT on any part of their production, as that would have been illegal and would in fact have constituted a criminal offence. If the same amendment had been made in the year 2005 itself, the industrial units would have availed of the VAT exemption benefit over a longer period of time and from 2005 onwards would have recovered from their customers VAT on an appropriate proportion of their total production. He argued that the only reason or justification given by the respondents for the retrospective amendment is that the State Government was losing a considerable amount of revenue. This is only because a huge amount of capital investment was made in the extremely backward areas of Maharashtra in response to the State Government's Incentive Scheme. The State Government, thus, fully realised all its objectives and goals under the Incentive Scheme. To then do a somersault and make a significant reduction of the Scheme benefits is entirely unfair, arbitrary and unreasonable. Further, the twin effects of the retrospective amendment are that, first, the industrial units are permanently denied a portion of the exemption benefit to which they are entitled by reason of the capital investment made by them, though the exemption period has years to go before it lapses. Secondly, the industrial units are permanently denied of any opportunity to recover the amount of VAT from their customers only because they were disabled and effectively prevented from recovering it in the relevant period. It is, therefore, submitted that the retrospective amendment is arbitrary, unreasonable and oppressive and, therefore, violates the appellant's fundamental rights under Articles 14 and 19(1)(g) of the Constitution.

14. He argued that where the Government has created the situation which makes it illegal or impossible for a manufacturer/dealer to recover sales tax/VAT from its customers, then no demand for amount of tax can be raised, as held in West Bengal Hosiery Association &

Ors. v. State of Bihar & Anr., (1988) 4 SCC 134 and British Physical Lab India Ltd. v. State of Karnataka & Anr., (1999) 1 SCC 170. In this behalf, he pointed out that throughout the period 2005 to 2009, the appellant and other industries covered by the said exemption, were entitled to claim sales tax exemption benefit on the entire turnover of their respective expanded undertakings, only because no Rule was framed by the State Government, firstly under Section 41BB of the Sales Tax Act and thereafter under Section 85 of the VAT Act. Consequently, the appellant and other industries were effectively disabled and prohibited from recovering sales tax or VAT on any part of their turnover. In fact, if the appellant recovered sales tax on any part of its turnover from its customers, the appellant would have been guilty of a criminal offence under the VAT Act. It is the respondents who are completely responsible for this state of affairs, which could have been put an end to forthwith by merely framing a Rule under Section 41 BB or Section 93. Accordingly, the appellant availed tax exemption on 100% of the turnover of its expanded undertaking and passed on the benefit of exemption to the appellant's customers. In the process, the appellant exhausted its entire tax exemption benefit calculated at 130% of its total fixed capital investment, long before the expiry of the appellant's 15 year exemption period which ended only in 2015. Immediately after exhausting its sales tax exemption benefit limit, the appellant started recovering VAT from its customers and paying over the same to the tax authorities.

15. The learned senior counsel also argued that the exact effect and impact of the impugned retrospective amendment made in 2009 with effect from April 01, 2005 needs to be clearly understood, as under:

(a) The total exemption benefit to which a manufacturer was entitled was, in any event, limited to 130% of the total eligible Fixed Capital Investment in the expansion, which could be availed of over a long period of 15 years. The effect of the retrospective amendment is that an undertaking which had already availed of the exemption benefit on 100% of its turnover will, as a result of the retrospective amendment, forfeit absolutely a slice of its exemption benefit entitlement, for no fault committed by it at all.

(b) If the said amendment had been made on April 01, 2005 itself (by the simple method of issuing a Rule under Section 93), then the appellant would have availed of tax exemption only on the proportionate portion of its turnover and would have recovered VAT on the balance (taxable) portion of its turnover. As a consequence of the impugned retrospective amendment, the appellant is permanently denied not only a slice of its exemption entitlement (based on its capital investment) but also denied permanently the opportunity to recover VAT from its customers on that proportion of its turnover which is taxable.

(c) There is no warrant or justification at all for the said double adverse impact on all the industries in question. All of them, including the appellant, have duly carried out everything that was expected of them under the prevailing law. They made huge capital investments in the most backward districts of the State of Maharashtra and added significantly to the production and turnover of their undertakings and, thereby, greatly expanded the tax base of the State of Maharashtra.

(d) Counsel for the State of Maharashtra gave no explanation or justification at all for the retrospective amendment except to say that it was for correction of an error or anomaly, which, as already pointed out, was an unstateable argument.

16. Mr. Anil Shrivastav, learned counsel who appeared in Civil Appeal No. 4499 of 2016 additionally argued that the retrospective amendment vide Amendment Act 2009 does not seek to remove an ambiguity or to correct a cause of invalidity but, in essence, seeks to impose a fresh levy of tax on the appellant for the first time, which is unreasonable and arbitrary and is, therefore, liable to be struck down as being ultra vires the Constitution of India. His submission in this behalf was that the High Court failed to consider that the sole purpose of the amendment made from retrospective effect was to neutralize the effect of the judgment dated July 27, 2009 and the orders dated October 13, 2008 and June 19, 2009 of the Bombay High Court, which was not permissible. He also submitted that Legislature cannot legislate with the sole object of neutralising or over-ruling the decision of the Court. Another submission of Mr. Shrivastav was that vested rights were created in favour of the appellant and also Doctrine of Promissory Estoppel was applicable in the present case and these aspects precluded the Legislature to make the amendment retrospectively. He referred to number of judgments on the aforesaid propositions.

17. Other counsel, appearing in remaining appeals adopted the above arguments.

18. Learned counsel for the State refuted the aforesaid submissions of the counsel for the appellants and pleaded that well reasoned judgment of the High Court does not require to be interfered with. He argued that from the very beginning, the legislative intent was to allow benefit under Package Scheme of Incentives only on proportionate basis which was reflected in Section 41BB of the Sales Tax Act as well as Section 93 of the MVAT Act. Under these Sections, the State Government was required to formulate the modality for proportionately restricting the grant of benefits under a Package Scheme of Incentives by prescribing the ratio for computing the part of the turnover of sales and purchase of a unit eligible for such benefits. He pointed out that though no Rules prescribing this ratio were framed by the State Government, instead the Commissioner of Sales Tax issued administrative circular dated January 17, 1998 in this behalf which was quashed by the Courts as impermissible on the ground that 'in the absence of any provision under the 1993 scheme and alternatively, in the absence of any ratio prescribed by the State Government by framing Rules, it was not open to the Deputy Commissioner of Sales Tax to direct the assessee to avail the incentives under the 1993 scheme in proportion to the production attributable to the newly acquired fixed assets.' Referring to the aforesaid quoted portion, learned counsel submitted that the High Court recognized the existence of the legislative intent to restrict the benefits but concluded that there was a lacuna/anomaly in effectuating that intent by not framing any Rules. It is for this reason VAT Act was amended in the year 2009 with retrospective effect to cure the aforesaid deficiency. According to the learned counsel, such a move was within the competence of State Legislature and very much permissible in law. He also referred to various judgments showing that not only Legislature is empowered to enact a law, including a fiscal statute, either prospectively or retrospectively, but Legislature is also empowered to nullify the effect of a judicial decision by changing the law retrospectively by removing the basis on which the decision was founded. The learned counsel emphasised that it is in the public interest to restrict the benefits given under a Package Scheme of Incentives in any year to the proportion of additional capital investment as this balances the burden of tax amongst various sectors and prevents an unsustainable drain of financial resources of the State. The Legislature in enacting the Validating Act has, in its wisdom, decided that the grant of benefits on a pro rata or proportionate basis is in public interest and subserves the objective of the Package Scheme of Incentives. The Validating Act not only carries out the intent and purpose of Section 93, as originally framed, but also subserves the underlying objectives of the Package Scheme of Incentives as a means of benefiting public interest as well as the State and safeguards against these objectives being nullified by the imposition of a huge financial loss on the State. Another submission of the counsel for the State was that a retrospective enactment cannot be impugned

on the ground that the retrospective levy did not afford any opportunity to the dealers to pass on the tax to consumers, as held in Hiralal Ratanlal v. State of Uttar Pradesh, (1973) 1 SCC 216.

19. Before dealing with the aforesaid contentions of the parties on either side, it would be apposite to traverse through the impugned judgment of the High Court in order to ascertain the reasons which have prevailed with the High Court in rejecting the arguments of the appellants herein.

20. A perusal of the judgment of the High Court would show that after capturing the essence of the Scheme of 1988, 1993 and statutory provisions in the form of Section 41BB of the Act and amendments thereto from time to time (which have already been stated by us above) and recording the submissions of the counsel for the parties on either side, the High Court dealt with the main issue, viz., 'validating legislation and retrospectivity'. After pointing out that the power to legislate on a subject which falls within the competence of legislature comprehends within its ambit, the enactment of laws with prospective as well as retrospective effect, the High Court also spelled out another legal principle, namely, where a law suffers from an infirmity which has been noted in the judgment of the High Court, it is permissible for the legislature to remedy the defect by curing the defect which has been found by the Court. This is known as legislation of validating nature, which is constitutionally permissible inasmuch as such validating law is in the nature of removing the defect or vice in the earlier legislation. The High Court thereafter referred to and quoted from various judgments on the aforesaid twin principles, namely, power of the legislature to enact a law prospectively as well as retrospectively AND also to pass a validating enactment. Thereafter, the High Court proceeded to discuss the contention of the appellants that the Amending Act of 2009, in substance, amounted to imposition of a new levy and the imposition of a fresh levy with retrospective effect was violative of Article 14 of the Constitution and repelled that contention after finding that legislative intent was given benefits only on that part of turnover of sales or purchases as may be arrived at by applying the ratio that may be prescribed by the Government. The Government did prescribe this ratio but chose wrong method by issuing administrative circular rather than issuing statutory notification in the form of rules. It is that which is achieved by the validating Act and therefore it was not a new levy.

21. The High Court has also discussed that the aforesaid kind of legislation would be in the nature of validating legislation inasmuch as the very basis of foundation of the earlier decision was sought to be undone.

22. With this we advert to the arguments advanced by the appellants. We have already taken note of those arguments. It is pertinent to point out that at the time of arguments, learned counsel for the appellants had accepted the legal proposition that the legislature is competent to enact the laws retrospectively. However, Mr. Anil Shrivastav has argued before us that the retrospective amendment does not seek to remove the ambiguity or correct a cause of invalidity but, in essence, it seeks to impose a fresh levy of tax. He has also argued that the sole purpose of amendment made from retrospective effect was to neutralise the effect of the earlier judgment of the Bombay High Court. We are unable to accept the aforesaid submissions and find that the High Court has proceeded to deal with this aspect of the matter in a correct perspective. While repelling the aforesaid contention, the High Court observed that Section 41BB of the Bombay Sales Tax Act was introduced into this statute in the year 2001. This provision was prefaced by a non-obstante provision which was to operate notwithstanding anything to the contrary contained in any Package Scheme of Incentives. This Section specifically provided that eligible unit would be entitled to draw benefits only on that part of its turnover of sales or purchases as may be arrived at by applying the ratio as that would be prescribed by the State Government to the total turnover of sales or purchases of the unit in

that year. Thus, Section 41 BB of the Act was not an enabling provision, but contained a legislative mandate in the form of restrictions to the effect that notwithstanding anything contained in any Package Scheme of Incentives, an eligible unit holding an eligibility certificate shall be eligible to draw benefits only on that part of its turnover of sales and purchases as would be arrived at by applying the ratio which was to be prescribed by the State Government. Therefore, legislative intent behind the aforesaid provision was clearly manifest i.e. to allow the benefit only on proportional basis. However, at the same time, it was left to the Government to prescribe the ratio on the basis of which only a part of the turnover of the sales and purchases would qualify for incentives. Likewise, when MVAT Act was enacted, identical provision as contained in Section 41BB of the Sales Tax Act, was incorporated in the form of Section 93(1) of MVAT Act. It is the implementation of this statutory provision where the Government erred. Though, the Government carried out that intention by issuing circular dated January 17, 1998 which provided for benefits only on that part of the turnover of sales or purchases of eligible unit by prescribing the ratio, the manner of doing the same was faulty. Instead of prescribing the same by way of Rules, which was the proper procedure, the purpose was sought to be accomplished by way of an administrative circular in imposing a ceiling on the utilization of incentives under the 1993 scheme in proportion to the production attributable to the newly acquired fixed assets. Because of this legal infirmity this circular was set aside by the High Court. According to the High Court, it is this defect which was sought to be cured by amending the statutory provision itself by making the said amendment retrospectively. On the aforesaid basis, the High Court rejected the contention of the writ petitioners that a new levy was imposed with retrospective effect.

23. It would be of relevance to emphasise that at the time of insertion of Section 41BB by amendment vide Amendment Act 22 of 2001, the Statement of Objects and Reasons accompanying the introduction of the Bill specifically stated that the purpose of the amendment was ‘to restrict grant of incentives in proportion to goods manufactured in the expansion units located in the backward areas of the States’. Thus, the legislative intent was manifest by inserting the said provision to provide the incentives to the eligible units on proportionate basis. Similar intention can clearly be discerned from the provisions of MVAT Act. We have already reproduced Section 93(1) of the said Act which specifically provides for ‘proportionate incentive to an eligible unit in certain contingencies’.

24. It would also be of significance to take note of relevant provisions in respect of Package Scheme of Incentives. Chapter XIV of the MVAT Act contains provisions in regard to the Package Scheme of Incentives. Section 88(a) defines the expression "Certificate of Entitlement” as a certificate issued by the Commissioner in respect of sales tax incentives under the relevant Package Scheme of Incentives. The expression "Eligibility Certificate” is defined in Section 88(c) to mean inter alia a certificate granted by SICOM or Director of Industries in respect of sales tax incentives under a Package Scheme of Incentives designed by the State Government. An eligible unit under clause (b) of Section 88 is defined to mean an industrial unit in respect of which an eligibility certificate is issued. The expression "Package Scheme of Incentives” under clause (e) of Section 88 includes the 1988 and 1993 schemes. Section 89(1) stipulates that where an eligibility certificate has been recommended to an eligible unit by the implementing agency under any Package Scheme of Incentives declared by the State Government, such eligible unit may apply for grant of a certificate of entitlement to the Commissioner. The Commissioner is empowered to grant a certificate of entitlement under sub-section (2) of Section 89 on being satisfied that the unit satisfies the requirements as may be prescribed. Section 90(a) stipulates that a certificate of entitlement would stand cancelled on the date on which: (i) The incentives including the cumulative quantum of benefits availed of exceed the monetary ceiling fixed for the eligible unit; or (ii) The period for which a certificate of entitlement was granted to an eligible unit expires; or (iii) The certificate of registration

granted to an eligible unit has been cancelled. Subsection (1) of Section 91 stipulates that where a certificate of entitlement has been granted to a unit under a Package Schemes of Incentives and such unit is entitled to receive benefits for any period which is to end after the appointed day, then notwithstanding anything contained in the scheme, benefits shall be availed of only in accordance with the Act, rules and notifications issued thereunder.

25. It is in the aforesaid backdrop/Scheme of things Section 93(1) follows providing for proportionate incentives. Once we find that from the very beginning the statutory scheme itself provided for proportionate incentive and this legislative intent was expressed even in the Objects and Reasons, it cannot be said that there was no provision of this nature prior to 2009 and such a provision was inserted for the first time in the year 2009.

26. Coming to the argument of the appellants that the effect of 2009 amendment was to neutralise or overrule the decision of the Court, we do not find it to be so. The High Court has rightly analysed the earlier judgment of the Sales Tax Tribunal in Pee Vee Textiles case which was followed by the Division Bench of the High Court as well as its own earlier judgment in Mirc Electronics Limited case. It may be noted that the High Court in Pee Vee Textiles case recognised the fact, after going through the Statement of Objects and Reasons, explaining the purpose of Section 41BB in Sales Tax Act in the following words:

> *"30. ... 'it is clearly stated that the said section is introduced with a view to restrict grant of incentives in proportion to the goods manufactured in the expansion unit located in the backward areas of the State' ..."*

27. Thus, while rendering the judgment in the case of Pee Vee Textiles, the High Court accepted that the very intent behind Section 41BB of Sales Tax Act was to restrict grant of incentive in proportion to the goods manufactured in the expansion unit. Notwithstanding the same, the only reason for quashing the circular was that the effect of the aforesaid provision was given in the form of an administrative order, whereas the law requires that the proper mode was to effectuate the same by framing Rules. This is the basis of the judgment and it is this basis which has taken away by the legislative amendment retrospectively. In these circumstances, it cannot be said that intention was to nullify the judgment of the Court. Clear intention was to rectify the earlier error committed by the Executive in not implementing the legislative intent in the form of subordinate legislation i.e. statutory rules and, trying to achieve the same by administrative action.

28. Counsel for both the sides have cited many judgments on the subject of validating legislation. In fact, most of these judgments are common, which are referred to by both the sides. The attempt was to read the ratio of those judgments in their own way. However, once the factual premise becomes apparent, the law stated in these judgments clearly leans in favour of the respondent. Instead of referring to all these judgments, our purpose would be served by taking note of few such judgments which are directly applicable.

29. In Rai Ramkrishna v. State of Bihar, AIR 1963 SC 1667 which is a judgment of the Constitution Bench, the principle was explained in the following manner:

> *"The other point on which there is no dispute before us is that the legislative power conferred on the appropriate legislatures to enact law in respect of topics covered by the several entries in the three Lists can be exercised both prospectively and retrospectively. Where the legislature can make a valid law, it may provide not only for the prospective operation of the material provisions of the said law, but it can also provide for the retrospective operation of the said provisions. Similarly, there is no doubt that the legislative power in question includes the subsidiary or the auxiliary power to validate laws which have been found to be invalid. If a law passed by a legislature is struck down by the Courts*

> *as being invalid for one infirmity or another, it would be competent to the appropriate legislature to cure the said infirmity and pass a validating law so as to make the provisions of the said earlier law effective from the date when it was passed. This position is created as firmly established since the decision of the Federal Court in the case of United Provinces v. Atiqa Begum. 1940 FCR 110*
>
> *(emphasis added)''*

30. We would also like to quote the following passage from another Constitution Bench judgment in the case of Epari Chinna Krishna Moorthy v. State of Orissa , AIR 1964 SC 1581:

> *"10. ...The argument is, the power to grant exemption having been conferred on the State Government it was validly exercised by the State Government and though the legislature may withdraw such exemption, it cannot do so retrospectively. It is obvious that if the State Government which is the delegate of the legislature can withdraw the exemption granted by it, the legislature cannot be denied such right. But it is urged that once exemption was validly granted, the legislature cannot withdraw it retrospectively, because that would be invalidating the notification itself. We are not impressed by this argument. What the legislature has purported to do by S.2 of the impugned Act is to make the intention of the notification clear. Section 2 in substance declares that the intention of the delegate in issuing the notification granting exemption was to confine the benefit of the said exemption only to persons who actually produce gold ornaments or employ artisans for that purpose. We do not see how any question of legislative incompetence can come in the present discussion. And, if the State Government was given the power either to grant or withdraw the exemption, that cannot possibly affect the legislature's competence to make any provision in that behalf either prospectively or retrospectively. Therefore, there is no substance in the argument that the retrospective operation of S.2 of the impugned Act is invalid."*

In present case also, as seen earlier, the legislature had given power to the State Government to prescribe the ratio/proportion in which the benefit was to be given. The State Government acted thereupon, but exercised the power in a wrong manner. In order to achieve what was intended by the statutory provision, the State legislature itself remedied the situation by amending the Section retrospectively. The ratio of the aforesaid judgment, thus, squarely applies to the fact situation of the present case.

31. The law on validating legislation was again explained by this Court in Hiralal Ratanlal. In that case, Section 3-D of the U.P. Sales Tax Act, 1948 levied a single point tax on the turnover of first purchases made by a dealer in the case of foodgrains including cereals and pulses. A notification was issued providing for a levy on first purchases of foodgrains at a certain rate. The Appellant in that case was the dealer in split or processed foodgrains and dal. The legislature enacted validating legislation after a decision of the Allahabad High Court. This validating legislation was held to be a valid exercise of the legislature, in the following manner:

> *"...the amendment of the Act was necessitated because of the Legislature's failure to bring out clearly in the principal Act its intention to separate the processed or split pulses from the unsplit or unprocessed pulses. Further the retrospective amendment became necessary as otherwise the State would have to refund large sums of money. The contention that the retrospective levy did not afford any opportunity to the dealers to pass on the tax payable to the consumers, has not much validity. The tax is levied on the dealer; the fact that he is allowed to pass on the tax to the consumers or he is generally in a position*

to pass on the same to the consumer has no relevance when we consider the legislative competence."

32. We would also like to reproduce the following discussion from the judgment of this Court in Bakhtawar Trust v. M.D. Narayan, (2003) 5 SCC 298:

"25. ...it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be uprooted, thereby resulting in a fundamental change of the circumstances upon which it was founded.

26. Where a legislature validates an executive action repugnant to the statutory provisions declared by a court of law, what the legislature is required to do is first to remove the very basis of invalidity and then validate the executive action. In order to validate an executive action or any provision of a statute, it is not sufficient for the legislature to declare that a judicial pronouncement given by a court of law would not be binding, as the legislature does not possess that power. A decision of a court of law has a binding effect unless the very basis upon which it is given is so altered that the said decision would not have been given in the changed circumstances."

33. It may also be useful to refer to the judgment in the case of Indian Aluminium Co. v. State of Kerala, (1996) 7 SCC 637 wherein the Court culled out the principles laid down on this aspect by taking note of earlier judgments on the issue. We would like to reproduce the same:

"56. From a resume of the above decisions the following principles would emerge:

(1) The adjudication of the rights of the parties is the essential judicial function. Legislature has to lay down the norms of conduct or rules which will govern the parties and the transactions and require the court to give effect to them;

(2) The Constitution delineated delicate balance in the exercise of the sovereign power by the legislature, executive and judiciary;

(3) In a democracy governed by rule of law, the legislature exercises the power under Articles 245 and 246 and other companion articles read with the entries in the respective lists in the Seventh Schedule to make the law which includes power to amend the law.

(4) Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law permeates to fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded. The smooth balance built with delicacy must always be maintained;

(5) In its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made;

(6) The court, therefore, needs to carefully scan the law to find out; (a) whether the vice pointed out by the court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.

(7) The court does not have the power to validate an invalid law or to legalise impost of tax illegally made and collected or to remove the norm of invalidation or provide a remedy. These are not judicial functions but the exclusive province of the legislature. Therefore, they are not encroachment on judicial power.

(8) In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the legislature is competent to recover the invalid tax validating such a tax on removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the court or the direction given for recovery thereof.

(9) The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same."

34. The aforesaid judgment has been followed by this Court in Assistant Commissioner of Agricultural Income Tax & Ors. v. Netley 'B' Estate & Ors., (2015) 11 SCC 462.

To the same effect is the judgment of this Court in R.C. Tobacco (P) Ltd. v. Union of India, (2005) 7 SCC 725.

35. Adverting to the arguments of Mr. Ganesh, it may be mentioned at the outset that no such submissions were raised in the High Court. The thrust of the argument of Mr. Ganesh was that this amendment has rendered the industrial units disbelieved and prevented them from recovery of VAT on any part of their production. There has to be a factual foundation for such an argument. In any case, we do not find any merit in the argument. It was specifically pointed out by the learned counsel for the respondent that all these appellants have availed the proportionate benefit which was permissible under the statutory provision. The intention now is to claim benefit on the entire turnover of their respective expanded undertaking which was, in any case, not permissible. Furthermore, such an argument of not able to pass on the burden

on the consumer is untenable. Way back in the year 1961, a Constitution Bench of this Court in J.K. Jute Mills Co. Ltd. v. State of Uttar Pradesh, AIR 1961 SC 1534 laid down the following principle:

> *"(i) Where there is a sale of goods, the state legislature is competent to impose a tax and, subject to constitutional limitations, such a tax can be imposed even on sales which have taken place prior to the enactment:*
>
> *"But where the transaction is one of sale of goods as known to law, the power of the State to impose a tax thereon is plenary and unrestricted subject only to any limitation which the Constitution might impose, and in the exercise of that power, it will be competent to the legislature to impose a tax on sales which had taken place prior to the enactment of the legislation."*
>
> *(ii) Though ordinarily a sales tax is intended to be passed on to the buyer, the power of the legislature is not conditional on the burden being passed on:*
>
> *"It is no doubt true that a sales tax is, according to accepted notions, intended to be passed on to the buyer, and provisions authorising and regulating the collection of sales tax by the seller from the purchaser are a usual feature of sales tax legislation. But it is not an essential characteristic of a sales tax that the seller must have the right to pass it on to the consumer, nor is the power of the legislature to impose a tax on sales conditional on its making a provision for sellers to collect the tax from the purchasers. Whether a law should be enacted, imposing sales tax, or validating the imposition of sales tax, when the seller is not in a position to pas it on to the consumer, is a matter of policy and does not affect the competence of the legislature. This question is concluded by the decision of this court in Tata Iron & Steel Co. Ltd. v. State of Bihar, (1958) SCR 1355: (AIR 1958 SC 452)."*
>
> *(iii) The legislature has a plenary power, subject to constitutional limitations to enact a law which is prospective or retrospective:*
>
> *"The power of a legislature to enact a law with reference to a topic entrusted to it, is, as already stated, unqualified subject only to any limitation imposed by the Constitution. In the exercise of such a power, it will be competent for the legislature to enact a law, which is either prospective or retrospective."*

36. It would also be pertinent to point out that in R.C. Tobacco (P) Ltd. case, this Court authoritatively pronounced the fact that the dealer upon whom the tax is imposed is not in a position to pass on tax on the consumers, is of no relevance to the competence of the legislature. Following observations in this behalf may be noted:

> *"48. The petitioners who were admittedly in Group A have refuted this and contend that their relationship with the large cigarette companies was on a principal-to-principal basis and that under their agreements they alone would be liable to pay the excise duty now demanded by the respondents under Section 154.*
>
> *49. We are not in a position to determine the disputes raised. However, we cannot lose sight of the fact that although excise duty like other indirect taxes may be passed on to the customer of the goods under the law as it now stands, it*

> *is the manufacturer of the excisable goods to whom the Excise Authorities will look for payment. How the manufacturer will adjust its liability with its customers does not concern the respondents nor can they be asked to recover their dues from persons who may have ultimately taken over the responsibility to pay the excise duty as a result of an agreement with the manufacturer. (See in this connection State of Rajasthan v. J.K. Udaipur Udyog Ltd. [(2004) 7 SCC 673] SCC at p. 692.)"*

37. It would also be relevant to point out that in R.C. Tobacco (P) Ltd., this Court upheld recission of an exemption notification with retrospective effect as originally framed notification has not provided sufficient safeguards that would have ensured the achievement of the object underlying the policy of incentives. The Court held that it was permissible to rectify a defective expression of object of the policy by a retrospective amendment.

> *"26. The exemption notifications were issued under Section 5-A of the Central Excise Act, 1944 as a delegate of Parliament. In a cabinet form of Government, the executive is expected to reflect the views of the legislature. It would be impossible for the legislatures to deal in detail and cater to the innumerable problems which may arise in implementing a statute. When the power of subordinate legislation is conferred by Parliament in certain matters it can only lay down the policy and guidelines and expect that what is done by the executive is in keeping with such policy. It does of course retain control over its delegate and can exercise that control by repealing the action of the delegate. [Sita Ram Bishambhar Dayal v. State of U.P., (1972) 4 SCC 485 : 1974 SCC (Tax) 294 : (1972) 2 SCR 141; M.K. Papiah & Sons v. Excise Commr, (1975) 1 SCC 492 : 1975 SCC (Tax) 128] Consequently, if the executive has failed to carry out the object of Parliament, such control may be exercised by retrospectively enacting what the executive ought to have achieved*."

38. In view of the aforesaid factual and legal discussion, reliance by Mr. Ganesh on the judgments of this Court in West Bengal Hosiery Association & Ors. is totally untenable as they are not applicable in the context of this case.

39. We, thus, do not find any merit in any of these appeals as we find that High Court has appropriately dealt with the issue upholding the validity of the impugned amendment. As a result, these appeals fail and are dismissed with cost.

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HARYANA TAX TRIBUNAL

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STA 274 OF 2011-12, 344 OF 2013-14, 45 OF 2015-16, 107-108 OF 2016-17

PERFETTI VAN MELLE (I) PVT. LTD.
Vs
STATE OF HARYANA

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

SACHIN JAIN, MEMBER

17th May, 2017

HF ▶ Assessee

"Chlormint with Herbasol" and "Happydent White" are Ayurvedic Medicines/Drugs and taxable @ 4%/5% as per Schedule 'C' of HVAT ACT'

ENTRIES IN SCHEDULE – CLASSIFICATION OF GOODS – "CHLORMINT WITH HERBASOL" AND "HAPPYDENT WHITE" – AYURVEDIC MEDICINES – STATE GOVERNMENT ISSUING CLARIFICATION FOR A SIMILAR ITEM HOLDING IT TO BE AYURVEDIC MEDICINE – GOODS BEING MANUFACTURED UNDER A DRUG LICENSE ISSUED BY STATE – STATE AYUSH DEPARTMENT ALSO CONFIRMING THE ITEMS TO BE REGISTRED BY THEM AS DRUGS – ACTIVE INGREDIENTS OF PRODUCTS FOUND MENTIONED IN THE "AYURVEDIC PHARMACOPOEIA OF INDIA" – GOODS HELD TO BE DRUGS AND MEDICINES – COVERED BY ENTRY 25 SCHEDULE 'C' OF HVAT ACT – TAXABLE @ 4% OR 5% AS APPLICABLE DURING RELEVANT PERIOD – APPEALS ALLOWED – ORDERS OF LOWER AUTHORITIES QUASHED.

Appellant Dealer is a Manufacturer of "CHLORMINT WITH HERBASOL" and "HAPPYDENT WHITE". It Claimed that Such Goods are covered Entry 25 of Schedule 'C' of the Haryana Value Added Act 2003 and therefore liable for tax at Concessional Tax rate of 4% / 5% . The Authorities below treated the goods in question as Confectionary items/ products and levied the tax @ 12.5% applicable on unclassified items . On appeal before Tribunal:

Held :

State Govt. while issuing a clarification order in case of 'Halls Mentholyptus' has held the same as Ayurvedic Medicine. From the comparison chart it is clear that both the products involved in present case are on a better footing then the product 'Halls Mentholyptus' which has been held to be Ayurvedic Medicine as per aforesaid clarification order. Further High Court of Uttrakhand in the case of present Assessee appellant itself has held that both these products being manufactured by assessee under valid drug license are Ayurvedic Medicines and liable to be taxes at concessional rate. Licensing authority cum Director AYUSH , Haryana has also clarified that these two items are approved as proprietary Ayurvedic Medicines . Both the products of the Assessee - Appellant contain active ingredients of Ayurvedic Drugs as per

" Ayurvedic Pharmacopoeia of India " which is a scheduled book as per the the Drugs and Cosmetics Act , 1940

For the reasons aforesaid it is held that both the products manufactured and sold by assessee appellant are Ayurvedic Medicines and Drugs and are covered by entry 25 of Schedule 'C' OF HVAT ACT and are therefore liable for the tax at concessional Rate of 4%/5% as applicable during the relevant period. As a result appeals are allowed and the orders of the lower authority levying tax at the rate of 12.5% are set aside alongwith levy of interest on the additional demand of tax.

Present: Sh. G.P. Garg, Advocate Counsel for the appellant.
Sh. N.K. Gupta, J.D. (L) for the State.

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

1. By this common order, we are disposing of six appeals STA 274 of 2011-12, 344 of 2013-14, 45 of 2015-16, 107-108 of 2016-17 and 165 of 2012-13, remaining five appeals have been filed for different assessment years by the same assessee M/s Perfetti Van Melle (I) Pvt. Ltd., Gurgaon who manufactures and sells 'Chlormint with Herbasor and 'Happydent White', besides other products. STA 165 of 2012-13 has been filed by assessee M/s Shree Ganesh Enterprises, Gurgaon who sold Chlormint with Herbassol' during the assessment year 2006-07 in question. Hereinafter, M/s Perfetti Van Melle (I) Pvt. Ltd only shall be referred to as the assessee-appellant.

2. The issue raised in these appeals is as to whether the products 'Chlormint with Herbasol' and 'Happydent White' are covered by entry 25 of Schedule C to the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act) and, therefore, liable to be taxed at concessional tax rate of 4%/5% or whether the said products are confectionery items/products and, therefore, unclassified items, liable to be taxed at the rate of 12.5%. The Authorities below have levied tax at the rate of tax 12.5% on the sale of the aforesaid two items treating them as confectionery items/products and thus unclassified items.

3. We have heard counsel for the appellant and State Representative at considerable length and perused the case files including written submissions given by counsel for the appellant.

4. At the outset, it may be mentioned that counsel for the appellant submitted that of late, assessee-appellant has also started manufacturing and selling 'Happydent Wave' which is different from 'Happydent White' to which these cases relate. It was also submitted that 'Happydent Wave' is unclassified confectionery item and accordingly the manufacturer assessee is paying tax @12.5% on the sale thereof. In the present cases, we are thus concerned with 'Chlormint with Herbasol' and 'Happydent White'.

5. Large number of judgments have been cited by counsel for the appellant. We would not like to burden the present order by mentioning all those judgments herein. Suffice to mentioned that according to some judgments, precise or specific entry in a taxing statute has to be preferred over general or residuary entry. Some other judgments also relate to the principles of interpretation of taxing statutes. Some judgments pertain to some other products but have been relied on for the underlying principles laid down therein. Some judgments pertaining to these very two products of the assessee- appellant have also been produced which will be dealt with at appropriate stage. State Representative cited judgment of Hon'ble High court of Andhra Pradesh in the case of Balaji Agencies V/s Commissioner of Commercial Taxes, Hyderabad,

(1996) 102 STC 555 (AP) wherein entry of Andhra Pradesh General Sales Tax Act, 1957 was interpreted.

6. Before proceeding further, entry 25 of Schedule C to the HVAT Act is reproduced hereunder for ready reference:-

> *"Bulk drugs, drugs, medicines, vaccines, medicated ointments produced under drug licence, light liquid paraffin of IP grade, syringes, dressings, glucose-D, oral re-hydration salt, medical equipments/devices and implants."*

7. By amendment dated 22.8.2012, 'surgical tables and surgical lights used for surgery patient in the operation theaters' (not relevant for the present appeals) were also added in the aforesaid entry.

8. Claim of the appellants is that both the products in question are ayurvedic drugs and, therefore, fall within the purview of aforesaid entry 25. Stand of the State is that these products are confectionery items and not drugs and covered by aforesaid entry 25.

9. Under section 56 (3) of the clarificatory order vide letter dated 05.03.2010 on application of M/s Cadbury India Ltd., Gurgaon for its product "Halls Mentholyptus" holding it to be a medicine covered by aforesaid entry 25 in question. In the present cases, assessee-appellant has given comparison sheet of active ingredients of 'Halls' and both the products involved in these appeals as under:

- Use of Banking Soda (Sodium Bicarbonate) is not allowed in Chewing Gums as food additive, while Banking Soda (Sodium Bicarbonate) is one of the active ingredient in our Property Ayurvedic Medicine "Happydent White". For ready reference, annexure of table 13 of FASSAI Act has been attached.
- Department has admitted "Halls" as an Ayurvedic Medicines in view of the Clarification issued by Commissioner u/s 56(3) in the case of Cadbury India Ltd. for their product "Halls Mentholyptus".

10. From the aforesaid comparison chart, it is clear that both the products involved in the present cases are on a better footing than the product 'Halls' which has been held to be ayurvedic medicine as per aforesaid clarificatory order. Consequently in view of the said clarificatory order there remains no room for doubt that both the products of question are also Ayurvedic medicines/drugs fully covered by entry 25 question.

11. Hon'ble High Court of Uttrakhand in the cases of the present assessee-appellant itself has held vide order dated 28.07.2008 in Commercial Tax Revisions no. 17 to 20 of 2008 Commissioner, Trade Tax/Commercial Tax, Uttrakhand, Dehradun V/s M/s Prefetti Van Melle (I) Pvt. Ltd., Rishikesh that both these products being manufactured by the assessee under valid drug licence are ayurvedic medicines and liable to tax at concessional rate. In the present cases also, the said products are being manufactured by the assessee-appellant under valid drug licence (copy produced) issued by Competent Authority of Haryana state. Review application nos. 1007 to 1010 of 2008 filed on behalf of State in those cases were dismissed by Hon'ble High Court vide order dated 29.09.2008. Similar finding has been recorded in the cases of the assessee-appellant itself by J&K State Sates Tax (Appellate) Tribunal, Jammu vide order dated 03.01.2017 in appeal nos. 107 to 111/ST/T/J dated 26.06.2014 M/s Prefetti Van Melle India (P) Ltd., Jammu V/s Deputy Commissioner Commercial Taxes (Appeals), Jammu and Another, by Telangana Value Added Tax Appellate Tribunal, Hyderabad vide order dated 29.03.2016 in TAs nos. 719 and 720 of 2009, 226 and 227 of 2011 M/s Prefetti van Melle India Pvt. Ltd., Hyderabad V/s The State of Telangana, and by the Tamil Nadu Sales Tax Appellate Tribunal, Chennai by order dated 02.07.2007 in TA nos. 374 of 2003 and 426 of 2005 Tvl. Perfetti India

Ltd. (now known as Perfetti Van Melle India Pvt. Ltd.), Chennai V/s The State of Tamilnadu. In view of all these judgements also, there is no escape from the conclusion that both the products in the present cases are Ayurvedic medicine/drugs and are covered by entry 25 of Schedule C to the HVAT Act.

12. The Tribunal vide order dated 5.5.2013 sought clarification from the Licensing Authority-cum-Director, AYUSH, Haryana, Panchkula as to whether these two items are medicines under the Drugs and Cosmetics Act, 1940 and its Rules of 1945. The said Licensing Authority vide letter dated 13.05.2014 gave clarification that both these products are approved as Proprietary Ayurvedic Medicines of the assessee-appellant under licence no. 157-ISM(HR) in accordance with the Drugs and Cosmetics Act, 1940 and the rules thereunder. From this clarification of the competent expert authority also, it becomes manifest that both the items in question are Proprietary Ayurvedic Medicines and, therefore, covered by entry 25 in question.

13. Counsel for the appellants also rightly pointed out that ingredients of both the products are as per book on Ayurveda System mentioned in Schedule I to the Drugs and Cosmetics Act, 1940. At serial nos. 54C and 54D, 'Ayurvedic Pharmacopoeia of India' and 'Ayurvedic Pharmacopoeia of India and its parts' are mentioned. Appellants have produced copy of relevant extract of First Edition of 'The Ayurvedic Pharmacopoeia of India' Part-I Volume-VI of Government of India, Ministry of Health and Family Welfare, Department of AYUSH, New Delhi. Peppermint is active ingredient of both the products in question of the assessee-appellant. According to the aforesaid book, peppermint itself can be used as single drug with dosage of 10 to 30 mg. 'Happydent White' contains 8.66 mg of peppermint and 'Chlormint with Herbasol' contains 9.27 mg of peppermint. Besides it, tailparna/neelgiri tail is also important ingredient of ayurvedic formulations, according to the aforesaid book. The said ingredient is also contained in Happydent quantity of 2.8 mg. Thus both the products of the as contain active ingredient of ayurvedic drugs as per aforesaid book- which is a book of Government of India and Scheduled book as per Schedule I to the Drugs and Cosmetics Act, 1940.

14. Counsel for the appellants also submitted that the sale of these two products by the assessee-appellant comprises of only 0.1 to 0.3 percent of its gross turnover (GTO) in the relevant assessment years. This is subject to verification. However, if it is so, then it comprises very miniscule part of GTO of the assessee-appellant. Counsel for the assessee-appellant also submitted that right from the years 1995 to 2006-07, both these products of the assessee-appellant have been assessed as ayurvedic medicines.

15. Counsel for the appellants also referred to clarification issued by the Department of Indian System of Medicine and Homeopathy of Himachal Pradesh vide letter No. 5802 dated 20.04.2010 to the Assistant Excise and Taxation Commissioner, Solan (as sought by the letter) that both the products 'Chlormint' and 'Happydent' are covered under Proprietary Ayurvedic Medicine. Reference was also made to Certificate dated 16.03.2012 issued by the office of the Assistant Commissioner of Central Excise Division-Ill, Udyog Vihar, Gurgaon on the request of assessee-appellant that the assessee-appellant is clearing the goods 'Happydent White' and 'Chlormint with Herbasol' under Central Excise Tariff Head 30049011 from its manufacturing plant at Manesar Gurgaon i.e. in category of ayurvedic system medicines. Certificates from various hospitals/ayurvedic doctors have also been produced to show that these products are ayurvedic medicines. All these documents also support the claim of the appellants that both these medicine/drugs and, therefore, covered entry 25 conclusion is based on aforesaid scientific or technical opinion various experts in the field. The opinion of the Directorate of AYOSH, Haryana in favour of the assessee-appellant as noticed above is also of great relevance to adjudicate the issue in question.

16. A formulation containing ingredients mentioned in the authoritative text books on ayurvedic system would also fall in the category of ayurvedic medicines, as held in various judgements cited by counsel for the appellants. On the other hand, common parlance test, although relevant, is not always conclusive. Essence of ayurvedic medicine is derived from active ingredients. Percentage of active ingredients is immaterial. Some ayurvedic medicines can be sold across the counter even without doctor's prescription. Any product which prevents a disorder of human function would also come within the purview of 'drug' and would have curative value even if used as a preventive measure. Besides it, even if two views are possible, the one which favours the assessee should be adopted. Various judgments have been cited in support of these principles of law which also support the claim of the appellants.

17. State Representative reiterated the reasons recorded by the Authorities below in the impugned orders. It was submitted that the wrappers of the products do not claim that the products cure any disease and, therefore, these products cannot be said to be 'drugs' or 'medicines' falling in entry 25 in question. The contention cannot be accepted because the wrappers of both the products produced before us claim that these are Proprietary Ayurvedic Medicines.

18. It was also contented by State Representative that according to judgment of Hon'ble Supreme Court in the Ayurvedic Herbal Pvt. Ltd. V/s Commissioner of Central Excise "(2006) 145 STC 200 as mentioned in impugned order of the first Appellate Authority in STA 274 of 2011-12, there are two tests to determine whether a product is cosmetic or medicine; namely 'common parlance test', and whether the ingredients used in the product are mentioned in authorative text books of ayurveda. State Representative submitted that both the products in question fail both the aforesaid tests. The contention cannot be accepted because the ingredients used in these products are mentioned in authorative text books of ayurveda particularly in the Ayurvedic Pharmacopoeia of India' a book published by the department of AYUSH, Government of India, which is also mentioned in Schedule I to the Drugs and Cosmetics Act, 1940 as already noticed. Consequently aforesaid judgment of Hon'ble Supreme Court also supports the claim of the appellants. As regard^-common parlance test, the same, although relevant, is not by itself conclusive. Moreover, some people use 'Chlormint with Herbasol' in the case of soar throat also as medicine and, therefore, it cannot be said that the said product fails in common parlance test.

19. State Representative pointed out that even the wrapper of 'Happydent' mentioned it as proprietary confectionery product and, therefore, it is not ayurvedic medicine or drug and it has been rightly held as unclassified confectionery item. Counsel for the appellants, however, clarified that on the wrapper of 'Happydent White' (the product involved in these cases), the product is mentioned as Proprietary Ayurvedic Medicine and not as proprietary confectionery product. It was submitted that it is on the wrapper of Happydent Wave' (the product not involved in the present cases) that the product has been labelled as proprietary confectionery product and the assessee-appellant is already paying tax on the sale of the said product @12.5% as unclassified item. In this view of the matter, it is expressly made clear that the Assessing Authority may verify this claim of the assessee-appellant that it is paying tax @ 12.5% on the sale of 'Happydent Wave'. The present order shall have no applicability to the sale of said product. This order shall apply to only 'Chlormint with Herbasol' and 'Happydent White'.

20. State Representative also contended that 'Chlormint with Herbasol' has menthol to the extent of 0.11% and peppermint to the extent of 0.23% only and, therefore, this product cannot be said to be medicine or drug merely on account of said miniscule quantity of the said two active ingredients. The contention cannot be accepted because the quantity of active ingredients in ayurvedic drug formulation is immaterial as held in various judgments cited by counsel for the appellants. Besides it, even in the product 'Halls', the quantity of peppermint is

less than half of the quantity thereof in both the products of the assessee-appellant as per comparison chart reproduced hereinbefore, but still the product 'Halls' has been held to be ayurvedic medicine falling in entry 25 in question as per clarificatory order issued by the State Government vide letter dated 05.03.2010 as already mentioned. Consequently in the instant cases, the quantity of aforesaid ingredients in both the products of the assessee-appellant being more than double the quantity thereof in the product 'Halls', it cannot be said that these two products of the assessee-appellant are not ayurvedic medicines or drugs due to small quantity of the aforesaid ingredients therein.

21. For the reasons aforesaid, we find that both the products 'Chlormint with Herbasol' and 'Happydent White' manufactured and sold by the assessee-appellant are ayurvedic medicines/drugs covered by Entry 25 of Schedule C to the HVAT Act and are, therefore, liable to be taxed at concessional rate of 4% or 5% as applicable during the relevant period. The rate of tax on Schedule C items was 4% but it was increased to 5% w.e.f. 15.02.2010 vide notification dated 15.02.2010.

22. Counsel for the appellants also contended that Authorities below have also levied interest on additional tax demand in some assessment years, but interest is not leviable because the assessee- appellant had paid tax as per returns and interest could have been levied only if tax had not been paid as per returns. Reliance was placed on some judgments. This issue is of academic interest only in these cases because the appeals are being allowed regarding additional tax demand. However, the aforesaid contention cannot be accepted. Judgments cited by counsel for the appellants are not under the HVAT Act. On the other hand, section 14(6) of the HVAT Act provides that interest shall be payable if tax is not paid in accordance with provisions of this 'Act'. Thus interest becomes payble if the tax is not paid in accordance with the provisions of the HVAT Act even though the tax might have been paid according to returns.

23. For the reasons aforesaid, all these appeals are allowed and impugned orders of the Authorities below in all these appeals are set aside to the extent of levying tax @12.5% on sale of Chlormint with Herbasol' and Happydent White and it is held that tax on the sale of said products is leviable@ 4 % or 5% as applicable during the relevant period, because these two products are covered by entry 25 of Schedule C to the HVAT Act. Consequent levy of interest on the additional demand of tax to that extent in some assessment years also automatically stands quashed.

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NOTIFICATION

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ORDINANCE REGARDING SETTLEMENT OF INDIRECT TAX DUES

PART II

HARYANA GOVERNMENT
LAW AND LEGISLATIVE DEPARTMENT

Notification

The 15th June, 2017

No. Leg.24/2017.— The following Ordinance of the Legislature of the State of Haryana received the assent of the Governor of Haryana on the 13th June, 2017 and is hereby published for general information :-

HARYANA ORDINANCE NO. 1 OF 2017

THE HARYANA SETTLEMENT OF OUTSTANDING DUES ORDINANCE, 2017

AN

ORDINANCE

to provide for expeditious recovery of outstanding dues by way of settlement under various Acts by offering Settlement Scheme thereunder and matters connected therewith or incident thereto.

Promulgated by the Governor of Haryana in the Sixty-eighth Year of the Republic of India.

Whereas the Legislature of the State of Haryana is not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Haryana hereby promulgates the following Ordinance:-

Short title and Commencement.

1. (1) This Ordinance may be called the Haryana Settlement of Outstanding Dues Ordinance, 2017.

(2) It shall come into force on the date of its publication in the Official Gazette.

Definitions.

2. In this Ordinance, unless the context otherwise requires,-

(i) "Government" means the Government of the State of Haryana in the administrative department;

(ii) "outstanding dues" means any tax, interest, penalty or any other dues under any of the relevant Act, unpaid by a person, whether quantified or not, for the period upto the 31st March, 2017;

(iii) "relevant Act" means an Act mentioned in the Schedule;

(iv) "Schedule" means Schedule appended to this Act;

(v) "scheme" means a scheme, as notified by the Government under this Ordinance, containing such terms and conditions, as it may deem fit, for expeditious recovery of outstanding dues under any of the relevant Act.

Framing of scheme.

3. Notwithstanding anything to the contrary contained in the relevant Act or rules framed thereunder, the Government may, by notification in the Official Gazette, notify one or more scheme for settlement of outstanding dues and matters connected therewith or incidental thereto covering payment of tax, interest, penalty or any other dues under the relevant Act which related to any period upto the 31st March, 2017, subject to such conditions and restrictions, as may be specified in the scheme, covering period of limitation, rate of tax, tax, interest, penalty or any other dues payable by a person, importer, proprietor, owner, class of dealers, classes of dealers or all dealers.

SCHEDULE

Serial Number	Name of the Act
1	The Haryana General Sales Tax Act, 1973 (Haryana Act 20 of 1973) (Repealed)
2	The Haryana Value Added Tax Act, 2003 (Haryana Act 6 of 2003)
3	The Central Sales Tax Act, 1956 (Central Act 74 of 1956)
4	The Haryana Local Area Development Tax Act, 2000 (Haryana Act 13 of 2000) (Repealed)
5	The Haryana Tax on Entry of Goods into Local Areas Act, 2008 (Haryana Act 8 of 2008) (under litigation)
6	The Haryana Tax on Luxuries Act, 2007 (Haryana Act 23 of 2007)
7	The Punjab Entertainments Duty Act, 1955 (Punjab Act 16 of 1955)
8	The Punjab Passengers and Goods Taxation Act, 1952 (Punjab Act 16 of 1952) (Repealed)
9	The Punjab Excise Act, 1914 (Punjab Act 1 of 1914)

Chandigarh.
The 13th June, 2017

KAPTAN SINGH SOLANKI,
GOVERNOR OF HARYANA

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

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NOTIFICATION

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EXTENSION OF ALTERNATIVE TAX COMPLIANCE SCHEME FOR DEVELOPERS UPTO 28.06.2017

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 2nd June, 2017

No. 17 /ST-1/ H.A. 6/2003/S.59A/2017. In exercise of the powers conferred by section 59A of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following amendment in the Haryana Alternative Tax Compliance Scheme for Contractors, 2016, namely:-

Amendment

1. In the Haryana Alternative Tax Compliance Scheme for Contractors, 2016, (hereinafter called the said Scheme), in clause 4, for sub-clause (2), the following sub-clause shall be substituted, namely:-

   " (2) No input tax credit on purchase of goods shall be admissible to the contractor under this Scheme. I he 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 against the total amount due and payable under the Scheme. 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.".

2. In the said Scheme, after the existing clause 5, the following clause shall be inserted, namely:-

   "5A. Time period and conditions for new contractor opting the Scheme.-

   (i) The contractor who failed to opt for the Scheme within the period prescribed in clause 5 may opt for the Scheme by applying online in Form TC-I appended to the Scheme, to the concerned assessing authority, on or before 28th June, 2017, furnishing the details required therein, declaring his year-wise liability and the latest status of the assessment cases.

   (ii) A contractor opting for the Scheme under this clause shall pay a fee of rupees one lac alongwith Form TC-1. The contractor shall

also pay twenty five percent of the total amount due and payable under the Scheme alongwith interest at the rate of two percent per month for the period of delay to be computed from the time period provided in clause 6(1) and (2) of the Scheme. The contractor shall furnish proof of payments alongwith Form TC-1."

(iii) The restrictions and conditions will apply to the contractor opting the Scheme under clause 5A as if he has opted under clause 5 of the Scheme.".

3. In the said Scheme, in clause 6, after the existing sub-clause (2), the following sub-clause shall be inserted, namely:-

"(2A) A contractor paying his due instalment(s) on or before the 30th June, 2017 shall be allowed reduction by way of incentive at the rate of 2% per month or part thereof the amount payable from the date prescribed in sub clause (2) of the instalment(s) due. Since two instalments have become payable already, this incentive shall be applicable on the 3rd and 4th instalments under the Scheme, both for original applicant as well as any new applicant who may opt for the Scheme.".

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

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GOOD NEWS FOR INDIA INC AS GST COUNCIL MAY CONSIDER RAISING INPUT TAX CREDIT

NEW DELHI: India Inc., looking to scale down inventory ahead of the expected rollout of the goods and services tax (GST) on July 1 to overcome the tax credit problem, may have something to cheer about. The GST Council will consider raising input tax credit from the current 40% at its meeting on Saturday.

"There is a proposal to raise it... the council will take it up," said a government official. It could be pegged higher at 50-60%. According to the draft transition law, companies can get credit of up to 40% of their central GST liability against excise duty already paid on stocks lying with traders or retailers when GST is implemented.

This has prompted many in the consumer goods sector to cut down on inventory lying with distributors, dealers and stockists. Industry had lobbied the government and the GST Council on the issue seeking an increase.

The government is keen to ensure that transition to the new tax framework--which seeks to replace multiple central taxes such as central excise duty, services tax, cesses and state taxes including value added tax, central sales tax, octroy, entry tax with a single levy--be smooth for both businesses and consumers. "Possible loss of tax on transition stock is a key concern of the industry leading to de-stocking in many industries," said Pratik Jain, leader, indirect tax, PwC India.

Jain said if the percentage of deemed credit increased, it would be a big relief for industry, particularly where the GST rate on products is 28%. "It would minimise the impact on sales in the last month before introduction of GST," he said.

The draft transition rules had provided that credit would be given once the central GST has been paid on the supply and the applicant provided evidence of purchase of these goods. For those items that enjoyed exemption under excise duty, the same principle would apply.

The transition rules will be taken up by the GST Council at its meeting along with other crucial issues including setting the rate of gold and six other items including textiles, leather footwear, packaged foods and biscuits. Some states such as Kerala have proposed a 5% rate on gold while others want it pegged lower at 4%. The Centre is not inclined toward creating new slabs for items or going in for differential rates for the same goods. The council will also take stock of preparedness of the GST Network, the mechanism for implementing the anti-profiteering provision and rules for return forms

Courtesy: The Economic Times
3rd June, 2017

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GST COUNCIL CLEARS RULES, STATES AGREE TO JULY 1 ROLLOUT

The GST Council today cleared the pending rules, including transition provisions and returns, with all the states agreeing to July 1 roll out of the Goods and Services Tax.

"We were discussing the rules and (they) have been completed. Transition rules have been cleared and everybody has agreed for July 1 roll out," Kerala Finance Minister Thomas Isaac told reporters here.

The GST Council had last month fitted over 1,200 goods and 500 services in the tax brackets of 5, 12, 18 and 28 per cent.

Finance Minister Arun Jaitley chaired the 15th meeting of the GST Council which is scheduled to decide on tax rate of 6 items including gold, textiles and footwear.

Isaac's statement of all states agreeing to the July 1 rollout assumes significance as West Bengal Chief Minister Mamata Banerjee had said that her state will not roll out the new indirect tax regime in its present form.

Bengal Finance Minister Amit Mitra is however attending today's meeting.

Banerjee had said yesterday that her government would not support the new GST system in its present form and that her government would write to Jaitley for making changes to make it suitable for all the sections of the society.

"We will not support the GST in its present form. In its present form, it doesn't suit every section, especially the unorganised sector. They (Centre) have to rectify it... We have to continue with our fight to bring down the tax rates on certain products.

"Unless the rates are reduced, they will adversely impact the state's economy and employment," she had said.

As for the transition rules approved by Council, the industry had been demanding some relaxation of the provision of deemed credit.

The draft transition law provided that once GST is implemented a company can claim credit of up to 40 per cent of their Central GST dues for excise duty paid on stock held by businesses prior to the rollout.

Several dealers are choosing to wait and watch rather than buy and hold on to inventories. They have lobbied with the government seeking an increase in the credit limit.

Courtesy: The Economic Times
3rd June, 2017

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GST RATES FIXED: 3% TAX ON GOLD, 5% ON CLOTHES COSTING LESS THAN RS 1,000

Bidi to be taxed at 28% without cess; all states on board for rollout of the tax regime from July 1

The Goods and Services Tax (GST) Council on Saturday cleared the pending rules for the rollout of the new indirect tax regime from July 1. The include transition provisions and returns. All states have agreed to the July 1 rollout timeline. "Transition rules have been cleared and everybody has agreed for July 1 roll out," Kerala Finance Minister Thomas Isaac told said.

Finance Minister Arun Jaitley chaired the 15th meeting of the GST Council, where the rates of tax and cess on gold, biscuits, footwear and textiles were decided.

Finance Minister Arun Jaitley explained the math of GST rate. Here are the highlights:

- Packaged food items sold under registered trademarks to be taxed at 5 per cent.
- GST on Agri machinery fixed at 5 per cent
- GST on apparel below Rs 1,000 fixed at 5 per cent: Arun Jaitley
- A nominal rate of 0.25 imposed on rough diamond: Arun Jaitley
- 0 per cent tax on Jute: Arun Jaitley
- GST Council will set up committee to look into complaints regarding anti-profiteering clause, said Arun Jaitley
- Bidi to be taxed at 28% without cess. However Beedis are still under discussion, no proposal of cess for beedis: Arun Jaitley
- GST rate for gold fixed at 3 per cent: Arun Jaitley
- Gold, gems, jewellery to be taxed at 3 per cent: Arun Jaitley
- Footwear priced below Rs 500 to be taxed at 5%, the rest at 18%: Arun Jaitley
- Readymade garments to attract 12% GST; Yarn and fabric cotton 5 per cent: Arun Jaitley. (Natural yarn to be taxed at 5 per cent, man-made yarn at 18 per cent)
- GST on all biscuits to be 18%: Arun Jaitley
- Consumers might also see some hike in garment prices

The GST Council had last month fixed the rates for over 1,200 goods and 500 services -- at the slabs of 5, 12, 18 and 28 per cent.

Isaac's statement about all states agreeing to the July 1 rollout assumes significance as West Bengal Chief Minister Mamata Banerjee had earlier said her state would not roll out the new indirect tax regime in its present form.

West Bengal Finance Minister Amit Mitra, however, attending Saturday's meeting.

Banerjee had said on Friday that her government would not support the new GST system in its present form and that her government would write to Jaitley seeking changes to make the tax regime suitable for all the sections of the society.

"We will not support the GST in its present form. In its present form, it doesn't suit every section, especially the unorganised sector. They (Centre) have to rectify it... We have to continue our fight to bring down the tax rates on certain products.

"Unless the rates are reduced, they will adversely impact the state's economy and employment," she had said.

As for the transition rules approved by Council, the industry had been demanding some relaxation of the provision of deemed credit.

The draft transition law provided that once GST is implemented a company can claim credit of up to 40 per cent of their Central GST dues for excise duty paid on stock held by businesses prior to the rollout.

Several dealers are choosing to wait and watch rather than buy and hold on to inventories. They have lobbied with the government seeking an increase in the credit limit.

Courtesy: Business Standard
4th June, 2017

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BANKS NOT YET PREPARED FOR GST ROLL-OUT: IBA TO PARLIAMENTARY PANEL

NEW DELHI: With less than a month left for the rollout of the GST, the Indian Banks' Association (IBA) has informed a Parliamentary panel that lenders are not yet geared up for implementation of the new indirect tax regime.

"Since the GST will be operational from July 1, 2017, banks have to make lot of changes in their systems and other procedures. The preparedness of all banks for implementation of GST on July 1, 2017, is a question mark," the IBA has conveyed to the Parliamentary Standing Committee on Finance.

The IBA further said that several services by banks to customers are centralised while several others are localised. Banks will have to make changes in the existing infrastructure which would be a huge challenge for the banks.

The IBA had taken up the case for central registration, the association added.

Touted as the biggest taxation reform since independence, the GST will subsume central excise, service tax, VAT and other local levies to create a uniform market.

The new indirect sales tax is expected to boost the GDP growth by about 2 percentage points and check tax evasion.

The powerful GST Council, comprising representative of Centre and states, has recommended a four-tier tax structure -- 5, 12, 18 and 28 per cent for goods and services.

On top of the highest slab, a cess will be imposed on luxury and demerit goods to compensate the states for revenue loss in the first five years of GST implementation.

All the states have agreed for the roll out of the new indirect tax regime from July 1.

Courtesy: The Economic Times
4th June, 2017

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GST'S IT BACKBONE FACES LITMUS TEST IN AUGUST

GST's IT backbone will face its first test in August when millions of invoices filed by businesses will be matched to ensure there is no "tax on tax" on transactions

New Delhi: The roll-out of the goods and services tax (GST) from 1 July on the back of information technology systems that will reduce human discretion and chances of corruption will face its first test in August, when millions of invoices filed by businesses and traders will be matched to ensure there is no "tax on tax" on transactions in a seamless market of 1.3 billion people.

Central and state governments, businesses and traders are racing against time to meet the 1 July-deadline despite calls from banks, small and medium enterprises (SMEs) and the West Bengal government for more time.

Federal indirect tax body, the GST Council chaired by finance minister Arun Jaitley, with members from state finance ministers and Union territories with legislature, on Saturday decided to stick to the July deadline and completed the fitting of commodities and services into various tax slabs.

Businesses have to upload invoices of their supplies made in July along with their returns by 10 August. The IT platform maintained by GST Network, the company that manages invoices, will process it and will allow the supplier and the recipient to reconcile their returns—a huge task which, if went wrong, could result in litigation. The supplier then has to file taxes collected from the recipient on those transactions by 20 August, on which credit will be given to the recipient.

"There, sure, will be teething problems in an enormous tax regime change such as this," an official of the GST Council said on condition of anonymity, adding that August will be a crucial month.

West Bengal finance minister Amit Mitra said on Saturday after the Council meeting that GST roll-out from 1 July will have "serious problems" and that there was no harm in delaying implementation by a month. So far, 21 states and two Union territories with legislatures have passed state GST laws. Eight more states have to pass respective state GST Bills.

The weakest link in the indirect tax system is small traders—the last point of sale. In the case of a large section of small traders, compliance of state-level value-added tax (VAT) at present is low, explained the official. VAT compliance comes down once goods move from a town serviced by a large dealer to a village or a remote area of small merchants. This experience is likely to continue for some time even after the transition to GST, under which any trader with above Rs20 lakh annual turnover—or roughly Rs5,500 sales per day—has to file returns and pay taxes. What adds to the compliance challenge among them is lack of awareness and lack of access to Internet.

Another member of the Council, who also requested anonymity, explained that businesses and traders, even if they do not claim tax credits, have the obligation to file returns and pay taxes, violation of which would warrant penal action.

Confederation of All India Traders, a traders' body with more than 60 million members, said on Sunday that 60% of the 57 million small businesses in the country are yet to adopt technology needed for become part of the GST system, which it called a "gigantic task."

For a smooth roll-out of GST, the remaining states have to pass respective state laws by 15 June, giving a fortnight for businesses to prepare, said Muralidharan, senior director, Deloitte in India. "Small businesses will need more help from the government than the others in making the transition to GST. Besides, an assurance from the government that there will be no penal action on procedural infraction in the first year of implementation will go a long way in addressing concerns of the tax payers," said Muralidharan.

News agency PTI reported on Sunday that Indian Banks' Association (IBA) has informed the parliamentary standing committee on finance chaired by M. Veerappa Moily that banks are not yet geared up for implementation of the new indirect tax regime.

Sahi Ali, a paint supplier from a Maoist- affected area in West Bengal said during a visit to the capital in April that getting e-billing system and gearing up for digital infrastructure seemed to be a cause of worry. "Most of the places face internet connectivity issues and the fear of Maoist attack is a major obstacle faced by the traders in our region," he said.

Experts said businesses and traders had voiced similar concerns when states shifted to VAT from sales tax in April, 2005.

Courtesy: LiveMint
5th June, 2017

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ARMED FORCES CANTEEN TO GET 50 PER CENT REFUND OF GOODS AND SERVICE TAX

MUMBAI: The Canteen Stores Department (CSD), which runs retail stores for India's defence forces, will get a refund of 50 per cent of the goods and services tax (GST) paid from the states and the Centre. This follows CSD having suspended orders this month to avoid tax payout disparities ahead of the goods and services tax (GST) that's set to be rolled out on July 1.

"CSD will pay full GST and 50 per cent of the total tax would be refunded by state and the Centre," union finance minister Arun Jaitley had said on Saturday after the GST Council meeting.

For most consumer product companies, CSD, also known as the Army Canteen, is the largest buyer, accounting for 5-7 per cent of volume. CSD had asked all depots to suspend orders in a May 31 letter. "In view of the GST implementation, LS (local supply) Orders to be placed for supplies during June 2017 are suspended till further orders," said the letter, which ET has seen. Local supply orders, or direct supplies, typically have deliveries scheduled 21days from the date of the order.

CSD's retail outlets have an annual revenue of more than Rs 14,000 crore.

The outlets sell 5,300 products ranging from biscuits and beer to shampoos to 12 million consumers comprising army, navy and air force personnel and their families as well as ex-servicemen and their kin. They have more than 600 suppliers that provide products such as toiletries and cosmetics, household goods, footwear and accessories, food items, stationery, electronics, consumer durables, liquor and vehicles.

Five years ago, FMCG companies took a sales hit of 5 per cent on average during temporary destocking at CSD due to renegotiation of terms of trade. Several companies have said that destocking of inventory is occurring across trade channels as the date of GST implementation draws closer.

Most food, home and personal care categories, including biscuits, toothpaste, soaps and hair oil, will be taxed at 18 per cent under GST compared with about 22 per cent in the current indirect tax structure of excise duty and value-added tax (VAT). However, detergent, shampoo and skin care will have a higher tax of 28 per cent. GST laws include an anti-profiteering clause requiring companies to pass on the benefits of lower taxes to the consumer.

Hindustan Unilever, at an analyst meet on Friday, said growth is likely to be impacted by temporary thinning of trade pipelines, but the company will compensate customers appropriately and is awaiting the final transition rules to further fine-tune its response.

HIGHER COMMISSIONS

To counter destocking by distributors, companies such as Colgate-Palmolive, Godrej, Hindustan Unilever and Dabur are giving out higher commissions to the trade to push stocks before July 1.

"We will be supporting our distributors and trade partners for smooth transition to GST by helping them liquidate their transition inventory, while ensuring that there's no loss of sale at the retail level," Dabur India Ltd chief financial officer Lalit Malik said.

Analysts said destocking is taking place to maintain compliance on transition stocks and that clarity is needed on the matter. "While CSD is an important channel for most FMCG companies, the impact can't be gauged as several companies are trying to convince the trade that they will take the hit on their books," said Edelweiss Securities senior vice president Abneesh Roy.

Consumer demand peaked in the March quarter, recording the highest sales growth in daily groceries, and home and personal products in the last two years, a Nielsen report indicated. The recovery followed a quarter of muted sales due to the currency swap in November that had curtailed the purchasing power of rural households using cash to buy shampoos, soaps, or packaged cookies.

"There will be no impact on consumption or actual demand due to GST but the trade might not push products as aggressively. So, we need to incentivise the trade to keep the growth momentum on," said B Krishna Rao, deputy marketing manager at Parle Products.

Courtesy: The Economic Times
5th June, 2017

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NO REASON TO DEFER JULY 1 GST ROLL-OUT, SAYS ARUN JAITLEY

NEW DELHI: Finance Minister Arun Jaitley on Monday said that the Goods and Services Tax (GST) is a simplified indirect tax regime and there is no reason to further postpone its targeted July 1 roll-out date.

"With all the procedural matters decided, registrations are taking place at a fast pace. Today I see no reason why we can't target July 1," Jaitley told CNBC TV18.

West Bengal Finance Minister Amit Mitra has raised serious doubts over the feasibility of GST roll-out from July 1, saying that the Goods and Services Tax Network (GSTN) was not ready to handle the large volumes of forms that would be received.

However, Jaitley said that other states' finance ministers did not share Mitra's view.

Negating any adverse impact of the GST on growth, Jaitley said there could be initial teething troubles but it would actually lead to expansion of assessee base and taxpayer base.

"There may be teething troubles initially...I don't think there would be any adverse impact on growth. Disruption will be there because we are switching to a new system. But I foresee assessee base and taxpayer base expanding," he said.

The GST Council has decided the tax rates for all the goods and services.The council's next meeting is scheduled for June 11 to discuss the various representations received for change of tax rates.

"The June 11 meeting is intended to be for undecided matters. Council is an accountable body. A lot of representations have come, which will also be discussed. But merely using the media for propaganda and putting pressure will not be entertained," he said.

Elucidating why a single tax rate structure was not feasible under the GST, Jaitley said that luxury, sin goods and food items, all could not be taxed at the same rate.

"It is a real system. It is not a complex system. You have a whole legacy of different products being taxed at different rates. If you had fixed one single rate and let us say the single rate had come to 14-15 per cent -- that seems to be the normal common sense -- then from tobacco to luxury cars to other sin products would all be 15 per cent and flour and rice would also be 15 per cent. It would be disastrous if we did that," the Finance Minister said.

"So we have taken all the food products which the common man uses, put them into zero, nil category. Similarly, in areas like clothing and footwear, which are again essential, we have seen the existing rate, allowed the equivalence principle to prevail, but for the more vulnerable sections -- a footwear below Rs 500 and an apparel below Rs 1,000, we have given a concessional rate, and for the others, we have all fitted them into one bracket instead of multiple brackets, which existed earlier," h ..

Social and economic realities of India should to be borne in mind, along with the tax paying ability of different sections, Jaitley said.

Courtesy: The Economic Times
5th June, 2017

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7 STATES YET TO PASS GST LAWS EVEN AS ROLLOUT DEADLINE NEARS

With less than a month left for GST rollout, seven states, including West Bengal, Tamil Nadu and Jammu & Kashmir, are yet to pass their legislations required for implementing the new indirect tax regime.

With less than a month left for GST rollout, seven states, including West Bengal, Tamil Nadu and Jammu & Kashmir, are yet to pass their legislations required for implementing the new indirect tax regime.

So far, 24 states and Union Territories, including Delhi, Odisha and Puducherry, have passed the State Goods and Services Tax (SGST) Act in their respective legislative assemblies.

However, seven states -- Meghalaya, Punjab, Tamil Nadu, Kerala, Karnataka, Jammu & Kashmir and West Bengal -- are yet to pass the SGST law. Baring Jammu & Kashmir where BJP is an alliance partner of PDP, all are non-BJP ruled states.

The government plans to roll out the Goods and Services Tax (GST), which will subsume 16 different taxes, from July 1. West Bengal wants the Centre to delay roll out of the GST by a month and the issue was raised by state Finance Minister Amit Mitra at the meeting of the GST Council last week.

Mitra said that implementation of the GST from July 1 will have "serious problems" as the IT infrastructure required to manage GST's returns and invoice uploading are not in place".

So far, GSTN has been able to do test drive on 200-300 companies in each state. Forms and rules have been changed in May.

The Union Finance Minister has to decide whether it should go ahead with the biggest fiscal reform when the IT preparedness is not 100 per cent," Mitra said.

As per the GST Constitutional amendment, all states have to pass SGST bills by September 15, 2017, failing which they will lose their taxation powers.

Courtesy: Money Control
5th June, 2017

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GST BRINGS DIWALI EARLY AS RETAILERS OFFER UPTO 40 PER CENT DISCOUNT

KOLKATA/MUMBAI: For shoppers of white goods, the singeing summer has brought a cool Diwali gift. Costly home appliances are now available at 20-40 per cent discounts, as electronic-goods retailers rush to clear their old inventories ahead of the July 1 rollout of the goods and services tax (GST) and minimize their losses.

Television-sets, refrigerators, air-conditioners and washing machines now have their price tags slashed. Discounts vary, depending on the life of the old stock and the cost price: Retailers say they would make a loss of about 6 per cent on unsold stock purchased before May, and about 14 per cent on one-yearold inventories, against which input credits cannot be availed.

The discounts are available even after the GST Council increased excise credit to 60 per cent from 40 per cent on the transitional stock during its last meeting on June 3.

The usual discount offered by the retailers is around 10-15 per cent on maximum retail price (MRP) and it will now significantly go up -about three-fold.

Even brands such as Samsung, Panasonic, Hitachi and VideoconBSE -4.93 % have come up with consumer promotional offers - gifts and extended warranties - to boost sales since retailers and distributors have stopped picking up stock to clear the existing inventory, two senior industry executives said.

"It's almost a mid-year Diwali for consumers in June, as most retailers will be doling out huge discounts to clear inventory before GST is rolled out. Retailers want to liquidate their entire stock as they cannot bear the load of the remaining 40 per cent central GST which will not be credited to them on unsold inventory," said Pulkit Baid, director at Great Eastern, which is one of the largest white goods retailers in the East.

Vijay Sales managing director Nilesh Gupta said every retailer would want to have the minimum stock by July. "While we are clearing stock on discounts, we are also losing money to do so. It's a onetime pain and July sales will be hit badly due to an early discounting this year," he said.

According to industry executives, some of the large consumer electronic retail chains are sadd led with old inventory of more than Rs 100 crore each. These would make a big dent on their margins, since the white-goods makers have come up with compensation schemes for unsold stock purchased only in May and June.

The old inventory would also include products that are on display on the shop floor, since several of them tend to be a year old and eventually sold to customers. A senior executive with a leading consumer electronics chain said the company is even sacrificing margins to clear out stock.

Prices of consumer electronics are set to go up by 3-5 per cent after GST due to increase in taxation. Mumbai's leading electronics retail chain, Kohinoor, is offering nearly 40 per cent discounts on goods kept on display. "Most of the goods on discount especially cellphones and LED TVs are end of the life models and we are treating them as a stock clearance. For other goods, the offers are a sign of desperation," said director Vishal Mewani.

The GST Council, in its last meeting Saturday, agreed to increase deemed credit to 60 per cent for products in the GST slab of 18 per cent and more. White goods, televisions, kitchen appliances and small appliances fall under the 28 per cent GST slab.

The Council also proposed allowing 100 per cent credit in case of highvalue items priced above Rs 25,000 based on the tracking of the product, even without documents detailing the actual payment of excise duty. However, the industry awaits clarification on the definition of tracking and whether it's on the MRP, base price, or market operating price.

Godrej Appliances business head Kamal Nandi said if the industry can avail benefit of 100 per cent credit, around 25 per cent of the stock will be covered, and the balance 75 per cent must be liquidated by trade. "Hence, the discount will continue at the retail end," he said.

Courtesy: The Economic Times
6th June, 2017

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LUXURY CAR SALES MAY SURGE AHEAD ON LOWER TAX RATE UNDER GST

NEW DELHI: Luxury car sales are back in the fast lane and manufacturers predict volume to grow in double digits in 2017, with goods and services tax providing an unexpected boost after a promising start to the year.

Sales of cars and SUVs priced between Rs 25 lakh and Rs 2 crore fell for the first time in 2016, with curbs on the sale of large diesel vehicles in and around Delhi in the first half of the year and demonetisation towards the end causing roadblocks. For 2017, industry insiders forecast sales to expand as much as 15%, outpacing the overall automotive industry where lobby group Society of Indian Automobile Manufacturers predicts volume to increase 7-9%.

While the jury is still out on the actual impact of GST on various sectors, for luxury carmakers it has already given a reason to celebrate.

Luxury vehicles now attract taxes as high as 55%, including central, state and city levies. The rate under GST, the all-encompassing indirect tax that will come into effect next month, will be 43%, including a 15% luxury cess. While this should theoretically make vehicles cheaper from July 1, companies cut prices by as much as Rs 11lakh immediately after the GST Council announced the rates late last month — a gamble to entice potential buyers who could otherwise wait for the GST rollout. The res ..

“We have seen a lot of consumer interest as we passed on the GST benefits to end-customers… There has been a substantial increase in queries,” said Roland Folger, MD at Mercedes-Benz India. “2016 was a year of disruption and lost opportunities. The first five months of the year (2017) have gone on according to plan and there is no reason so far why we can’t make up in 2017.”

The company, the leader in the luxury segment in the past two years, expects 2017 volume to grow in double digits over the 13,200 units it sold last year.

Mercedes-Benz’s German rival Audi, UK-based Jaguar Land Rover and Swedish carmaker Volvo also expect strong sales this year.

‘Comeback Imminent’

BMW declined to respond to ET’s queries.

Audi India head Rahil Ansari said based on the feedback the company has been getting from the market, “we do feel a comeback is imminent and growth may very well be in double digits”.

Audi cut prices by up to Rs 10 lakh on its India-made vehicles that will benefit from the introduction of GST. Ansari said the company has been witnessing strong demand even prior to the price decision and that it has picked further up in recent days.

“The benefits have been well-received and our dealers are experiencing higher footfalls and good conversions in sales,” said Ansari. Audi, which has lined up 10 launches for 2017, sees

huge potential here going ahead and expects India to be among its top 10 global markets in the next 10 years.

JLR, which announced price reductions up to 12% on a select stock of its five locally manufactured models, expects sales growth during the year to outpace the momentum seen in the overall industry on back of strong product interventions.

"GST is definitely promising to spin out good benefits. Vehicle prices will come down and help expand the segment," JLR India President Rohit Suri said. "We expect the industry to grow in double digits this year. We aim at outgrowing the industry."

Gaurav Vangaal, senior analyst on automotive forecasting at consultancy firm IHS Markit, said the price benefits being passed on by the companies will reflect on sales numbers for the year. "Given the momentum in the market, we will revisit the growth forecasts for the segment for the entire year," he added.

At the beginning of the year, IHS Markit had predicted the luxury car market in India to grow around 10% in 2017.

Volvo, which recently decided to commence assembly operations locally, is also bullish on the India market. "We expect Volvo to grow 25% (from 1,600 to 2,000 cars in CY 2017)," managing director Tom Von Bonsdorff said. "Growth for us will come from a combination of new product launches, new dealer openings and concentrated brand building efforts."

Courtesy: The Economic Times
7th June, 2017

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GSPS PUT UP BRAVE FACE AMIDST ROLL-OUT UNCERTAINTIES

GST Suvidha Providers (GSPs) are unlikely to be ready by July 1

GST Suvidha Providers (GSPs), the service providers who have the mandate to facilitate tax payers with registration, upload invoices and file returns under the new indirect tax regime, are unlikely to be ready with full suite of GST-ready packages and solutions by July 1, the date government plans to roll out GST across the country. The delay on their part is largely due to non-availability of full set of application programming interface (APIs), the essential technical specifications needed for developing GST-enabled software. According to industry estimates, the GST Network (GSTN), the IT backbone for the tax system, is yet to release 30-40 per cent of the APIs. Once the APIs are released to the service provider, applications are developed around these according to client specifications, then tested and implemented across IT systems.

"It typically takes four to five weeks to customise, test and implement a solution for a client once the full technical configurations are known," says Arun Gupta, a chartered accountant and tax consultant, who has been advising several small and medium enterprises on their GST-readiness. Gupta estimates that around 60 per cent of SMEs are yet to start the transitional process to the new indirect tax regime. IT industry players noted that the GSTN could release the APIs only after the bulk of final GST rules got the go-ahead from the GST Council in its June 3rd meeting.

The GSPs and Application Service Providers (ASPs) (those who develop the business software), however, are putting up a brave face. "I am sure GSTN has Plan B or Plan C in place," says Piyush Kumar, CEO, Taxmann Technologies, one of the 34-odd registered GSPs. Some GSPs concede that without the full-spec GST solution, its vendors and re-sellers are not able to install the software with their clients.

Some GSPs are still batting for additional time for implementation. "More time would help in getting awareness of the recently finalised rules down to the last mile systematically so that businesses can transition more smoothly," says Tejas Goenka, executive director, Tally Solutions. July is a rushed deadline whereas September would be more comfortable for everyone involved, he adds.

Some GSP players indicate that the broad objective of the government seems to ensure that the GST portal is ready by July 1 deadline to take the load of registration, filing of invoice and return. Following a phased approach, "the linking of the GSTN to GSPs may be pushed back by few weeks," added head of one of the GSPs.

Courtesy: Business Standard
8th June, 2017

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ELECTRONIC DOCUMENTS FOR GST TO BE READY BY MONTH-END

NEW DELHI: GST Network, the company putting in place the technology backbone for goods and services tax (GST), will be ready with revised forms and electronic documents for businesses to upload invoices by the end of the month, senior government officials said.

Readiness of GST is at the heart of the launch given that monthly returns have to be filed electronically through a three-stage process with all invoices to be submitted online and the reconciliation of all the documents done in the same manner before taxes are paid and credits given.

While there are apprehensions that GSTN will not be ready, especially after a revision in forms was necessitated due to a revised format, sources told TOI that the first priority was to be ready with the Excel sheet that will enable businesses to upload invoices on a daily basis. "It will be ready by the last week of June so that businesses can upload information on a daily basis and be prepared to file by the deadline," explained an officer.

The next step would be to be ready with the revised forms as the GSTN reckons that the first set of returns are to be filed only by August 10. "We will have 40 days from the time GST is launched on July 1 to be ready with the forms and we will do that well ahead of the deadline. Forms are ready, we only have to tweak them during the revision process," the officer explained. Similarly, the officer said that businesses need not worry about the quarterly returns because the first bunch will be required to be filed sometime in October.

On Friday, GSTN held a meeting with GST Service providers to allay apprehensions that it would be mandatory for everyone to use them. Small businesses such as shops and those in the business to consumer segment of the market have to file a five-line return and they do not need to attack invoices, which they can do on their own, said a GSTN official.

Even small entities that have business-to-business transactions can do so using the offline tool that GSTN has developed, which as the capability to deal with 19,000 invoices. "It is only larger players who need reconciliation of their invoices that may need so assistance. But it is not as if using GSPs is mandatory," the officer explained.

Courtesy: Times of India
11th June, 2017

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GOVERNMENT RULES OUT CENTRALISED REGISTRATION FOR BANKS UNDER GST

NEW DELHI: The government has ruled out centralised registration for banks under the goods and services tax (GST) and has mandated separate registration for each state they operate in.

Banks have been demanding a single centralised registration system, like at present, arguing that multiple registrations would create procedural and compliance problems. "They have no choice. They have some issues relating to registration, which will be resolved in due course," said a top finance ministry official.

At a meeting of finance ministry with the heads of public sector banks here on Monday, a separate session was held on issues related to GST. "We have eased some of their problems.

GST will be rolled out as per schedule from July 1," the official said.

Currently, banks as well as non-banking finance companies (NBFCs) with pan-India operations can discharge their service tax compliances through a single 'centralised' registration. But under GST, they would need to obtain a separate registration for each state where they operate.

But they have been allowed to submit a single invoice per state per month instead of multiple invoices for each transaction.

The GST Council has fixed an 18% tax rate under GST for financial services. Currently, these services are taxed at 15% and the hike in the tax rate means that individuals will have to pay Rs 3 more for every Rs 100 paid for banking transactions.

Courtesy: The Economic Times
13th June, 2017