SGA
LAW OFFICES

Issue 7
1st April 2017

"Taxes, after all, are dues that we pay for the privileges of membership in an organized society. "

— Franklin D. Roosevelt

NOMINAL INDEX

NEWS OF YOUR INTEREST

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News From Court Rooms

MADRAS HC : TN VAT : Unless the liability attains finality through legal process i.e. except through procedure established by law the respondents have no right to demand the tax. The VAT liability cheques could not have been given voluntarily. First respondent is directed to return the petitioner's cheques. (***Muneeswari Traders – December 2, 2016***)

CESTAT, HYDERABAD: Service Tax : The main contractor has discharged the service tax liability and the same has been informed to the department by the appellant. Demand not sustainable. (***East Coast Engineering Co. – 3rd February, 2017***).

CESTAT, HYDERABAD : CENVAT Credit : Whether the CENVAT credit is admissible on MS items and MS beams when used for the fabrication of parts/component/accessories of capital goods? Appellants have been able to establish that without fabrication of such parts, accessories, components of capital goods it is not able to carry out the process of manufacture as these capital goods are integral for carrying out the manufacturing activity. Credit is admissible on said items. Impugned order is set aside and the appeal is allowed. (***Maruti Ispat and Energy P Ltd. – November 3, 2016***).

CESTAT, MUMBAI : Service Tax : Where assessee was recipient of service and could have availed CENVAT credit for service tax paid under reverse charge mechanism, no penalty could be imposed on assessee under section 73. (***Cadbury India Ltd. – January 11, 2017***).

SC : Sales Tax : 'Audit Objections' raised by an audit team of Auditor General can be construed as 'information'. If information was given by the audit team to the Assessing Authority that a part of turnover has escaped assessment and the authority was satisfied that reasonable ground exists to believe that a part of the turnover of the appellant-Company has escaped assessment, in that case it can re-open the assessment. However, if there was direction issued by Audit Team to re-open assessment and assessing authority was not satisfied from that information, then the re-assessment order was invalid and without jurisdiction. (***Larsen & Toubro Ltd. – March 21, 2017***).

CESTAT, MUMBAI : Cenvat credit: Ownership is not criteria for allowing credit on capital goods; only criteria is that capital goods should be installed in factory of assessee and used in manufacture of final product. (***Tata Motors Ltd. – January 20, 2017***).

P&H HC : Punjab VAT : Sections 29(2), 56 & Rule 48 - Assessment proceedings along with demand & penalty under VAT Act sent through email without any certified copy of order and without serving notice of the same under Central Sales tax Act, is invalid and hence warrants re-adjudication.(***Ricela Health Foods Ltd. – February 15, 2017***).

CESTAT, NEW DELHI : Service Tax: Where activities of the appellants were known to Department since 2005, show-cause proceedings initiated in year 2009 by invoking extended period of limitation were barred by limitation. (***Amway India Enterprises P Ltd. – February 6, 2017***).

CESTAT, AHMEDABAD : CENVAT Credit : CENVAT credit availed by assessee on inputs, value of which was shown to have been written off, under category of 'other income', in their books of account. Adjudicating authority denied Cenvat credit. There was no basis for denying Cenvat credit once quantity of inputs received in factory against those invoices had been used in or in relation to manufacture of final product cleared on payment of duty. (***Trichem Enterprises P Ltd. – December 28, 2016***).

ALLAHABAD HC : UP VAT :Transfer of stock was not backed by Form-F. Once a statutory presumption is drawn regarding sale in the absence of Form-F and the assessee has not been able to put forth any material which may have been responsible for non-submission of Form-F demand of tax is confirmed and Revenue's appeal allowed. (***Krishna Collector – March 21, 2017***).

CESTAT, MUMBAI : CENVAT credit - The assessee is a manufacturer and availed cenvat credit in respect of ST on the mobile phones, insurance policies and guest house maintenance. ST paid on insurance premium of motor vehicle owned by company, accidental policy of the employee and the guest house maintenance are related to the over all manufacturing activity of the company and are input services. The impugned order is set aside. (***India Tube Mills and Metal Industries Ltd. – 26-10-2016***)

SGA
LAW OFFICES

Issue 7
1st April 2017

SUBJECT INDEX

UNDER SECTION 14 OF CENTRAL SALES TAX ACT 1956 – DOES NOT FALL UNDER CATEGORY OF DECLARED GOODS – UNCLASSIFIED ITEMS – TAXABLE UNDER RESIDUAL ENTRY - **HEMLA EMBROIDERY MILLS PVT. LTD.** 60

ENTRIES IN SCHEDULE – NON-WOVEN FABRIC - CLARIFICATION – NON WOVEN FABRIC-CLARIFICATION SOUGHT REGARDING RATE OF TAX – NON WOVEN FABRIC IS NOT TEXTILE AS IT DOES NOT INVOLVE WEAVING PROCESS – THUS, IT IS NOT CLASSIFIABLE UNDER ENTRY 51 OF SCHEDULE B OF THE ACT – IT IS NOT EXEMPTED AND IS LIABLE TO BE TAXED @12.5% - *ENTRY 51, 52 OF SCHEDULE B HVAT ACT, 2003* - **JASCH PLASTICS** 56

ENTRIES IN SCHEDULE– EMBROIDED CLOTH – DECLARED GOODS – RATE OF TAX – COTTON FABRIC, MANMADE FABRIC AND WOVEN FABRICS OF WOOL – EMBROIDERY IN PIECE, IN STRIPS OR IN MOTIFS – BASE FABRICS OF WOOL, COTTON AND MANMADE FABRIC COVERED BY ENTRY 58.05 OF CENTRAL EXCISE TARIFF ACT – TAXABLE AS DECLARED GOODS – **HEMLA EMBROIDERY MILLS PVT. LTD.** 60

INPUT TAX CREDIT – BOGUS PURCHASES – ITC DISALLOWED ON GROUND SO PURCHASES MADE FROM FIRM WHOSE RC STOOD CANCELLED – MATTER REMITTED BY TRIBUNAL TO INVESTIGATE IF GOODS ACTUALLY MOVED FROM SELLER TO BUYER CONSIDERING MOVEMENT OF VEHICLES WITH CONCERNED NUMBERS – VEHICLES FOUND NON-EXISTENT THEREBY RAISING OF DEMAND BY AETC – APPEAL BEFORE TRIBUNAL- DOCUMENTS FOUND INGENUINE AS GR AND VAT INVOICE FOUND IN SAME WRITING – ABSENCE OF ALLEGED TRANSPORT COMPANIES – KK FORMS PRODUCED TO PROVE TRANSACTION FOUND INCORRECT – SELLING DEALER NEVER APPEARED DESPITE BEST EFFORTS OF DEPARTMENT AS SUMMONS COULD NOT BE SERVED DUE TO NON EXISTENCE OF FIRM – NO KANDA PARCHI TO PROVE PURCHASES PRODUCED – ALL FACTS INDICATING CONNIVANCE AND COLLUSION WITH THE SELLING FIRM – APPEAL DISMISSED – *SECTION 13 OF PVAT ACT, 2005* - **SIBIA RICE MILLS VS STATE OF PUNJAB** 40

INTEREST – DIRECTION TO DEPARTMENT – INTEREST CLAIMED BY PETITIONER AMOUNTING TO RS 75 LACS ON ACCOUNT OF DELAYED PAYMENT OF REFUND FOR THE ASSESSMENT YEARS IN QUESTION – DEPARTMENT CONTENDS THE AMOUNT PAYABLE TO BE MUCH LOWER AMOUNT – WRIT FILED – DEPARTMENT IS DIRECTED TO DECIDE THE AMOUNT PAYABLE AND PAY THE SAME BY THE DATES SPECIFIED IN THE ORDER – ALSO, THE BASIS OF CALCULATION OF INTEREST IS TO BE COMMUNICATED TO THE DEPARTMENT – WRIT DISPOSED OF – *SECTION 43 OF HGST ACT, 1973* - **GOODYEAR INDIA LTD. VS STATE OF HARYANA AND OTHERS** 34

INTEREST – REVISION – PERIOD FOR LEVY OF INTEREST – REVISION OF ASSESSMENT ORDER-DEMAND RAISED ON ACCOUNT OF REFUND GRANTED AT EXCESS RATE OF 5% INSTEAD OF 4% - INTEREST LEVIED FROM DATE OF ASSESSMENT ORDER INSTEAD OF DATE OF PASSING OF REVISIONAL ORDER – APPEAL FILED CHALLENGING LEVY OF INTEREST – HELD: EXCESS AMOUNT CARRY FORWARD COULD HAVE BEEN ADJUSTED TOWARDS DEMAND CREATED BY REVISIONAL AUTHORITY- INTEREST COULD NOT HAVE BEEN LEVIED AS EVEN AFTER ADJUSTMENT, EXCESS CARRY FORWARD WAS LEFT – ALSO, INTEREST IS LEVIABLE FROM DATE OF ORDER OF REVISIONAL AUTHORITY AND NOT FROM AN EARLIER DATE IN CASE DEMAND IS FIRST CREATED BY REVISIONAL AUTHORITY- APPEAL PARTLY ALLOWED SETTING ASIDE LEVY OF INTEREST – *SECTION 32 OF PVAT ACT, 2005* - **MAA BHAGWATI RICE MILLS VS STATE OF HARYANA** 49

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – ESCAPE ROUTE - GOODS VEHICLE INTERCEPTED – INVOICE AND GR PRODUCED - ADMISSION REGARDING

ESCAPE ROUTE MADE BY OWNER AND DRIVER – PENALTY IMPOSED U/S 51 OF PVAT ACT – APPEAL BEFORE TRIBUNAL – ROUTE TAKEN BY DEALER FACTUALLY FOUND TO BE AN ESCAPE ROUTE – ADMISSION BY OWNER EVEN AFTER 10 DAYS OF DETENTION COULD NOT HAVE BEEN MADE UNDER PRESSURE – S 51(7) IS APPLICABLE AS MANDATORY PROVISION OF REPORTING AT ICC U/S 51(2) NOT COMPLIED WITH – CONTENTION THAT C FORM WOULD BE GIVEN TO SELLING DEALER OF HARYANA EVENTUALLY LEADING TO ACCOUNTING OF TRANSACTION IN BOOKS IS IRRELEVANT – PENALTY UPHELD AND APPEAL IS DISMISSED – *S. 51(7) OF PVAT ACT, 2005* - **R.D. ENTERPRISES VS STATE OF PUNJAB** 36

REASSESSMENT – AUDIT OBJECTION BIHAR FINANCE ACT – SECTION 19 - POWER OF AUDIT TEAM – WHETHER SATISFACTION OF ASSESSING AUTHORITY IMPORTANT FOR REASSESSMENT - ASSESSMENT FOR THE APPELLANT COMPANY FINALIZED IN 1996 ALLOWING EXEMPTION ON GOODS CONSUMED DURING WORKS CONTRACT EXECUTION – REASSESSMENT DISALLOWING CLAIM SUBSEQUENT TO INFORMATION GIVEN BY AUDIT TEAM REGARDING WRONGLY ALLOWED CLAIM – ORDER OF REASSESSEMENT UPHELD BY HIGH COURT – APPEAL BEFORE SUPREME COURT – HELD: REASSESSMENT CAN BE DONE ON THE BASIS OF INFORMATION GIVEN BY AUDIT TEAM PROVIDED THE ASSESSING AUTHORITY IS SATISFIED THAT THE TURNOVER HAS ESCAPED ASSESSMENT – IN THIS CASE , MATTER DEALT BETWEEN THE AUDIT TEAM AND ASSESSING AUTHORITY NOT INDICATIVE OF SATISFACTION ON PART OF OFFICER TO REOPEN ASSESSMENT – REASSESSMENT APPEARED TO HAVE BEEN DONE ON MERE DIRECTION OF AUDIT TEAM AND NOT ON PERSONAL SATISFACTION OF THE AUTHORITY CONCERNED SO AS TO INVOKE S. 19 – APPEAL ACCEPTED SETTING ASIDE ORDER OF REASSESSMENT – *SECTION 19 OF BIHAR FINANCE ACT, 1981* - **LARSEN & TOUBRO LTD. VS STATE OF JHARKHAND AND ORS.** 6

REVIEW – MAINTAINABILITY OF – REVIEW APPLICATION FILED CONTENDING THAT SOME GROUNDS HAD ESCAPED ATTENTION OF TRIBUNAL – CONTENTION RAISED THAT TRIBUNAL ERRED IN HOLDING IT AS AN INTERSTATE SALE AND DID NOT CONSIDER THAT TAKING OF DIFFERENT ROUTE/ LONGER ROUTE COULD NOT BE A GROUND OF IMPOSITION OF PENALTY – HELD: BOTH CONTENTIONS ARE UNTENABLE AND DO NOT PERMIT REVIEW- APPLICATION IS MERITLESS – APPLICATION DISMISSED – *SECTION 36 OF HVAT ACT, 2003* -**JAGDAMBA TIMBERS PVT. LTD. VS STATE OF HARYANA** 47

TAX DEFERMENT – CALCULATION METHOD - BENEFIT OF TAX DEFERMENT/ CONCESSION SCHEME AVAILED – DEDUCTION OF 50% OF TOTAL TAX ALLOWED BY ASSESSING AUTHORITY FOLLOWED BY ALLOWING REBATE UNDER HGST ACT AS PER THE SCHEME – REVISIONAL AUTHORITY FOLLOWING A DIFFERENT METHOD ALLOWED NO DEDUCTION UNDER HGST ACT BUT ALLOWED DEDUCTION UNDER CST ACT AFTER ADJUSTING EXCESS TAX PAID UNDER HGST ACT THEREBY CREATING ADDITIONAL DEMAND – APPEAL FILED CHALLENGING THE METHOD OF CALCULATION OF REVISIONAL AUTHORITY – HELD: METHOD FOLLOWED BY ASSESSING AUTHORITY IS RIGHT IN VIEW OF RULE 28C (5)(a) OF RULES WHILE REVISIONAL AUTHORITY IS WRONG – ENTIRE TAX AMOUNT BEFORE ADJUSTING REBATE HAS TO BE TAKEN INTO ACCOUNT AND TAX PAYABLE INCLUDING TAX COMPONENT TO BE CONVERTED INTO SUBSIDY IS TO BE CONSIDERED FOR PURPOSE OF CALCULATION OF BENEFITS – APPEAL ACCEPTED – *RULE 28C(5)(a) OF HGST RULES, 1975* - **RMI METALS PVT. LTD. VS STATE OF HARYANA** 52

SGA
LAW OFFICES

Issue 7
1st April 2017

SUPREME COURT OF INDIA

Go to Index Page

CIVIL APPEAL NO. 5390 OF 2007

LARSEN & TOUBRO LTD.
Vs
STATE OF JHARKHAND AND ORS.

MADAN B. LOKUR AND R.K. AGRAWAL

21st March, 2017

HF ▶ *Assessee*

Reassessment based on information given by the audit team is permissible only if the assessing authority is satisfied that reasonable grounds exist to reopen assessment.

REASSESSMENT – AUDIT OBJECTION BIHAR FINANCE ACT – SECTION 19 - POWER OF AUDIT TEAM – WHETHER SATISFACTION OF ASSESSING AUTHORITY IMPORTANT FOR REASSESSMENT - ASSESSMENT FOR THE APPELLANT COMPANY FINALIZED IN 1996 ALLOWING EXEMPTION ON GOODS CONSUMED DURING WORKS CONTRACT EXECUTION – REASSESSMENT DISALLOWING CLAIM SUBSEQUENT TO INFORMATION GIVEN BY AUDIT TEAM REGARDING WRONGLY ALLOWED CLAIM – ORDER OF REASSESSEMENT UPHELD BY HIGH COURT – APPEAL BEFORE SUPREME COURT – HELD: REASSESSMENT CAN BE DONE ON THE BASIS OF INFORMATION GIVEN BY AUDIT TEAM PROVIDED THE ASSESSING AUTHORITY IS SATISFIED THAT THE TURNOVER HAS ESCAPED ASSESSMENT – IN THIS CASE , MATTER DEALT BETWEEN THE AUDIT TEAM AND ASSESSING AUTHORITY NOT INDICATIVE OF SATISFACTION ON PART OF OFFICER TO REOPEN ASSESSMENT – REASSESSMENT APPEARED TO HAVE BEEN DONE ON MERE DIRECTION OF AUDIT TEAM AND NOT ON PERSONAL SATISFACTION OF THE AUTHORITY CONCERNED SO AS TO INVOKE S. 19 – APPEAL ACCEPTED SETTING ASIDE ORDER OF REASSESSMENT – *SECTION 19 OF BIHAR FINANCE ACT, 1981*

Facts

The Appellant company is involved in construction business. It had been filing its returns under Bihar Finance Act and CST Act. For the assessment year 1991-92 , an assessment order dated 24/1/1996 was passed allowing exemption of Rs 3 Crores Approx. being the amount of goods consumed by the appellant company during the course of execution of works contract.

An audit team audited the order of assessment and found that the claim was not allowable as the appellant had not submitted form IX C which were mandatory. This was conveyed to Assessing Authority.

Reassessment was made and additional demand was raised. The order of Reassessment was upheld by High court. Thus, an appeal is filed before Supreme Court. The point that has to be considered is that whether on 'information' given by audit team of Auditor General, the assessing authority was satisfied that reasonable ground exists to believe that a part of the turnover of the appellant company has escaped assessment within the meaning of S. 19 of the State Act based on which assessing officer can reopen the assessment.

Held:

1. *The word 'information in the section is of the widest amplitude and should not be construed narrowly. It comprehends not only information from external sources but also discovery of new facts available in the record of assessment not previously noticed. Assessment proceedings can be reopened if the audit objection points out the factual information already available in records and that it was overlooked or not taken into consideration.*
2. *On the basis of information received and if the assessing officer is satisfied that reasonable ground exists to believe, then in that case the power of assessing authority extends to reopening of assessment.*
3. *In this case, as per the matter dealt between audit team and assessing authority, it is clear that the assessing authority was of opinion that as the goods had not been transferred to appellant company but had been consumed, it does not come under purview of taxation. This indicates that the assessing officer was not satisfied on the basis of information given by audit team that any turnover of appellant company has escaped assessment so as to invoke S 19 of State Act.. It also appears that the notice for reassessment was issued on direction of audit team and not on personal satisfaction of assessing authority which is not permissible by law.*

The order passed by DETC as well as High court is set aside. The appeal is allowed.

Cases referred:

- *Indian & Eastern Newspaper Society, New Delhi vs. Commissioner of Income Tax:, New Delhi (1979) 4 SCC 248*
- *Bhimraj Madanlal vs. State of Bihar and Another (1984) 56 STC 273*
- *Usha Sales (Pvt.) Ltd. vs. The State of Bihar (1985) 58 STC 217*
- *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam vs. Thomas Stephen & Co. Ltd. Quilon (1988) 2 SCC 264.*
- *Commissioner of Income Tax vs. P.V.S. Beedies Pvt. Ltd. (1998) 9 SCC 272*
- *Anandji Haridas and Co. (P) Ltd. vs. S.P. Kasture and Others AIR 1968 SC 565*
- *Commissioner of Customs, Mumbai vs. Virgo Steels, Bombay and Another (2002) 4 SCC 316*
- *Supreme Pa.per Mills Limited vs. Assistant Commissioner, Commercial Taxes, Calcutta and Others (2010) 11 SCC 593*
- *Chatturam & Ors. vs. CIT, Bihar AIR 1947 FC 32*
- *Commissioner of Income Tax, U.P., Lucknow vs. Gurbux Rai Harbux Rai (1971) 3 SCC 654*
- *Phool Chand Bajrang Lal and Another vs. Income Tax Officer & Another (1993) 4 SCC 77*

Present: For Appellant(s): Mr. Pravin H. Parekh, Sr. Advocate
Other Advocates: Mr. Sameer Parekh, Mr. Sumit Goel, Ms. Rukhmini Bobde, Ms. Ritika, For M/s. Parekh & Co.

For Respondent(s): Mr. Amarendra Saran, Sr. Advocate
Other Advocates: Mr. Somesh Jha, Mr. R.K. Ojha, Mr. Anil K. Jha

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R.K. AGRAWAL, J.

1. The present appeal has been filed against the final judgment and order dated 17.11.2006 passed by the Division Bench of the High Court of Jharkhand at Ranchi in W.P. (T) No. 2630 of 2006 whereby the High Court dismissed the petition filed by M/s Larsen & Toubro Ltd.-the appellant -Company while upholding the order dated 27.02.2006 passed by the Deputy Commissioner, Commercial Taxes, Urban Circle, Jamshedpur.

2. Brief facts:

(a) The appellant-Company, having its registered office at Mumbai, is a public limited company and is involved in manufacturing, trading, leasing and construction business throughout the country. At the relevant time, the appellant-Company was involved in the execution of civil work contracts for its client, viz., Tata Iron & Steel Company Ltd. (TISCO) and had been filing its returns under the Bihar Finance Act, 1981 (hereinafter referred to as 'the State Act') and also under the Central Sales Tax Act, 1956 (hereinafter referred to as 'the Central Act') in the Commercial Taxes Department, Urban Circle, Jamshedpur.

(b) For the Assessment Year (AY) 1991-92, the appellant-Company filed returns under the State Act. However, the assessment proceedings in relation to the above period, i.e., AY 1991-92 was completed in the year 1996 and an assessment order dated 24.01.1996 was passed by the assessing authority.

(c) After the assessment proceedings, an audit team of the Auditor General, Bihar, audited the assessment order dated 24.01.1996 and found that the dealer was allowed exemption of Rs. 3,12,47,916/-, being the amount of goods consumed by the appellant-Company during the course of execution of works contract. The appellant-Company claimed that such goods were purchased on payment of tax but no declaration in Form IX-C along with other evidence was submitted whereas the production or declaration of Form IX-C was mandatory, hence, the claim was not allowable and the said fact was conveyed to the assessing authority.

(d) On 28.09.2000, the office of Commissioner of Commercial Tax, Urban Circle, Jamshedpur, served a show cause notice to the appellant-Company to state as to why tax should not be levied on it for the amount of Rs. 3,12,47,916/- which was wrongly exempted from being taxed under the provision of the State Act.

(e) After affording an opportunity of hearing to the appellant-Company, a re-assessment order dated 27.02.2006 was passed by the Deputy Commissioner, Commercial Taxes, Urban Circle, Jamshedpur whereby an additional demand of Rs. 35,72,475/- was created against the appellant-Company. f) Being aggrieved by the re-assessment order dated 27.02.2006, the appellant-Company preferred a writ petition being W.P. (T) No. 2630 of 2006 before the High Court. A Division Bench of the High Court, vide order dated 17.11.2006, dismissed the petition filed by the appellant -Company while upholding the order dated 27.02.2006 passed by the Deputy Commissioner, Commercial Taxes, Urban Circle, Jamshedpur.

(g) Aggrieved by the order dated 17.11.2006, the appellant-Company has preferred this appeal by way of special leave.

3. Heard the arguments advanced by Mr. Pravin H. Parekh, learned senior counsel for the appellant-Company and Mr. Amarendra Saran and Mr. Ajit Kumar Sinha, learned senior counsel for the respondent-State and perused the records.

Point for consideration:

4. The only point for consideration before this Court is whether on the information given by the audit team of the Auditor General, Bihar, the Assessing Authority was satisfied that reasonable ground exists to believe that a part of the turnover of the appellant-Company has escaped assessment within the meaning of Section 19 of the State Act based on which the assessing officer can re-open the assessment?

Rival contentions:

5. Learned senior counsel for the appellant-Company contended that an 'audit objection' cannot be construed as 'information' within the meaning of Section 19 of the State Act, based on which the assessing officer can change his opinion and re-open the assessment. The 'audit objection' relates to tax levied on turnover relating to 'consumables' wherein there is no sale/deemed sale involved. Consumables by its very nature are goods used for own consumption. The assessment order dated 24.01.1996 rightly records the said fact.

6. Learned senior counsel further contended that the original assessment order specifically considered whether purchase tax is to be paid under the State Act on the disputed items and the same was decided in negative and hence taxing the items later on is a mere change of opinion by the Assessing Authority on the very same set of facts that were available on the date of passing the assessment order dated 24.01.1996.

7. Learned senior counsel further contended that non-filing of Form IX-C under Section 11 of the State Act read with Rule 12 of the Bihar Sales Tax Rules, 1983 (hereinafter referred to as 'the Rules') does not attract the levy in the facts of the present case as the goods are used for 'own consumption' and there is no sale or 'deemed sale' of the said goods involving a transfer of property in the said goods to anybody.

8. It was further contended that Section 19 of the State Act read with Rule 20 and Form XIV of the Rules specifically requires the satisfaction of the Prescribed Authority regarding requirement of re-assessment before the issuance of the notice in this regard. The initiation of the re-assessment proceedings and the subsequent re-assessment order dated 27.02.2006 are illegal as there was no satisfaction on the part of the Prescribed Authority about existence of reasonable grounds to believe that turnover has escaped assessment. Hence, the same are liable to be set aside.

9. Learned senior counsel further contended that it is relevant to note the circumstances under which the appellant-Company was unable to produce the relevant records. The assessment year (AY) in question is 1991-92. The assessment order in relation to the same was passed on 24.01.1996. The show cause notice proposing to re-open the assessment was served on the appellant-Company on 28.09.2000 which was replied in detail by the appellant-Company vide letter dated 13.11.2000. Thereafter, for a period of five years, there was no communication from the side of the respondents and the appellant-Company, under the bonafide belief that the letter dated 13.11.2000 had satisfied the requirements of show cause notice, forwarded all the records to their dumping yards at Chennai. Learned senior counsel contended that owing to the above circumstances the failure of the appellant-Company to produce the aforesaid records was not at all willful.

10. Learned senior counsel finally contended that the order of re-assessment dated 27.02.2006 is illegal and the assessment proceedings cannot be re-opened on the basis of audit objection, as the same does not amount to 'information' as contemplated under Section 19 of the State Act. The impugned order amounts to change of opinion on the same set of facts and law which were available even at the time of passing the order of assessment.

11. In support of the above contentions, learned senior counsel has relied upon the following decisions, viz., ***M/s Indian & Eastern Newspaper Society, New Delhi vs. Commissioner of Income Tax:, New Delhi (1979) 4 SCC 248, Bhimraj Madanlal vs. State of Bihar and Another (1984) 56 STC 273, Usha Sales (Pvt.) Ltd. vs. The State of Bihar (1985) 58 STC 217 and Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam vs. M/s Thomas Stephen & Co. Ltd. Quilon (1988) 2 SCC 264.***

12. Per contra, learned senior counsel for the respondent-State submitted that the assessing authority has not revised the assessment on the basis of the audit report only rather it had satisfied itself before revising and the same can be seen from the fact that it had rejected part of the audit opinion and applied its mind before passing the order impugned.

13. Learned senior counsel for the respondent-State further submitted that the 'audit objection' in the present case is an 'information' within the meaning of Section 19 of the State Act and the competent authority has rightly re-assessed the turnover and demanded legally payable valid tax which was escaped. He further submitted that the word 'information' used in the Section is of the widest amplitude and comprehends variety of factors including information from external sources of any kind including discovery of new facts or information available in the record of assessment not previously noticed or investigated.

14. Learned senior counsel for the respondent-State submitted that if there is obvious mistake apparent on the face of the record of assessment, that record itself can be a source of information, if that information leads to a discovery or belief that there has been an escape of assessment. He finally submitted that there is no illegality in the re-assessment order dated 27.02.2006 as well as in the order dated 17.11.2006 passed by the High Court and the claim of the appellant-Company is liable to be rejected.

15. In support of his submissions, learned senior counsel has relied upon the following decisions, viz., ***Commissioner of Income Tax vs. P.V.S. Beedies Pvt. Ltd. (1998) 9 SCC 272, Anandji Haridas and Co. (P) Ltd. vs. S.P. Kasture and Others AIR 1968 SC 565, Commissioner of Customs, Mumbai vs. Virgo Steels, Bombay and Another (2002) 4 SCC 316, Supreme Pa.per Mills Limited vs. Assistant Commissioner, Commercial Taxes, Calcutta and Others (2010) 11 SCC 593 and Chatturam & Ors. vs. CIT, Bihar AIR 1947 FC 32***.

Discussion:

16. In the instant case, an audit team of the Auditor General, audited assessment order dated 24.01.1996 and found that the dealer was allowed an exemption of Rs. 3,12,47,916/- being the amount for goods consumed by the appellant-Company during the course of execution of works contract. It is the claim of the appellant-Company that those goods were purchased on payment of tax but no declaration in Form IX-C along with other evidence was submitted. The same fact was brought to the notice of the assessing authority which in furtherance thereof issued a show cause notice to the appellant-Company. The production of Form IX-C was held to be mandatory and the claim of the appellant-Company was disallowed and an order of re-assessment dated 27.02.2006 was passed by the competent authority for an additional amount of tax of Rs. 35,72,475/- after following the due procedure of law.

17. The point arises for consideration is as to whether an 'audit objection' can be construed as 'information' within the meaning of Section 19 of the State Act based on which the assessing officer was satisfied that reasonable grounds exist to believe that any part of the turnover of the appellant-Company had escaped assessment under Section 19 of the State Act.

18. Learned senior counsel for the appellant-Company argued that it is mere a change of opinion which resulted in re-assessment order and is not information as contemplated under Section 19 of the State Act. Learned senior counsel for the respondent-State submitted that 'audit objection' in the present case is definitely 'information' within the meaning of Section 19 and the High Court has rightly uphold the re-assessment order dated 27.02.2006.

19. In view of the above, it is relevant to quote Section 19 of the Bihar Finance Act, 1981 which is as under:-

> *"19.* ***Turnover of registered dealer escaping assessment*** *- (1) If upon information which has come into his possession, the prescribed authority is satisfied that reasonable grounds exist to believe that any turnover of a registered dealer or a dealer to whom grant of registration certificate has been refused under the third proviso to sub-section (2) of Section 14, in respect of any period has, for any reason, escaped assessment or any turnover of any such dealer or a dealer assessed under sub-section (5) of Section 17 has been under-assessed or assed at a rate lower than that which was correctly applicable or any deductions therefrom has been wrongly made, the prescribed authority may, subject to such rules may, be made by the State Government under this part, and –*
>
> *(a) Within eight years from the date of the order of the assessment or reassessment where the said authority has reasons to believe that the dealer has concealed, omitted or failed to disclose willfully the particulars of such turnover or has furnished incorrect particulars of such turnover and thereby returned figures below the reason amount,*
>
> *(b) Within eight years' from the date of the order of the assessment or reassessment in any other case.*
>
> *Serve on the dealer a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 17 and proceed to assess or reassess the amount of tax due from the dealer in respect of such turnover, and the provisions of this part shall, so far as may be, apply accordingly as if the notice under this sub-section was a notice under sub-section (2) of Section 17:*
>
> *Provided that the amount of tax shall be assessed or re-assessed after allowing such deductions as were permissible during the said period and at rates at which it would have been assessed had the turnover not escaped assessment or full assessment, as the case may be.*
>
> *Explanation: - Production before the prescribed authority of accounts, registers or documents from which material facts could, with due diligence, have been discovered by the said authority, will not necessarily amount to full disclosure within the meaning of this section.*
>
> *(2) (a) The prescribed authority shall, in a case falling under clause (a) of sub-section (1), direct that the dealer shall pay by way of penalty a sum not exceeding three times but not less than an amount equivalent to the amount of tax which is or may be assessed on the escaped turnover.*
>
> *(b) The penalty imposed under clause (a) shall be in addition to the amount of tax which is or may be assessed on the escaped*

turnover, and the order imposing penalty may precede the assessment of escaped turnover.

(c) For determining the amount of penalty under clause (a), where the penalty precedes assessment under clause (b) the prescribed authority shall quantify the amount of suppression and tax thereon provisionally in the prescribed manner.

(d) No order shall be passed under this sub-section without giving the dealer an opportunity of being heard in the prescribed manner.

3) Any assessment or reassessment made and any penalty imposed under this section shall be without prejudice to any action which is or may be taken under section 49."

Sub-Section (1) of Section 19 very clearly prescribes that the competent authority, upon information, if satisfied that reasonable ground exists to believe that any turnover of a registered dealer or a dealer to whom grant of registration certificate has been refused in respect of any period has, for any reason, escaped assessment or any turnover of any such dealer assessed under sub-Section (5) of Section 17 has been under-assessed or assessed at a rate lower than that which was correctly applicable, may, within eight years from the date of order of assessment, proceed to assess or reassess the amount of tax in respect of such turnover.

20. For ready reference, the relevant portion of the assessment order dated 24.01.1996 is also extracted hereunder:-

"The Company has used the following work under its Tender work on its level and if we separate the both, then it is like this.

Camp equipments	*Rs.*	*227301.00*
Electric goods for work site	*Rs.*	*773223.00*
Electrode Welding Cable and Accessories	*Rs.*	*871294.00*
Fuel & Lubricants	*Rs.*	*3189205.00*
General Consumables	*Rs.*	*2945086.00*
(Handgloves) contenvest		
Oxygen & D.A. Gas	*Rs.*	*21223.00*
Plywood for Shuttering	*Rs.*	*2826674.00*
Safety Appliances	*Rs.*	*408392.00*
Spares	*Rs.*	*8232442.00*
Staging Materials	*Rs.*	*3888798.00*
Shuttering & Walk-way (For Timber)	*Rs.*	*4191982.00*
Tools and Tackles	*Rs.*	*3672296.00*
Total	*Rs.*	*3,12,47,916.00"*

21. It is also pertinent to understand the meaning of the word 'information' in its true sense. According to the Oxford Dictionary, 'information' means facts told, heard or discovered about somebody/something. The Law Lexicon describes the term 'information' as the act or process of informing, communication or reception of knowledge. The expression 'information' means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or having a bearing on the assessment. We agree that a mere change of opinion or having second thought about it by the competent authority on the same set of facts and materials on the record does not constitute 'information' for the purposes of the State Act. But the word "information" used in the aforesaid Section is of the widest amplitude and should not be construed narrowly. It comprehends not only variety of factors including information from external sources of any kind but also the discovery of new facts or information available in the record of assessment not previously noticed or investigated. Suppose a mistake in the original order of assessment is not discovered by the Assessing Officer, on further scrutiny, if it came to the notice of another assessor or even by a subordinate or a superior officer, it would be considered as information disclosed to the incumbent officer. If the mistake itself is not extraneous to the record and the informant gathered the information from the record, the immediate source of information to the Officer in such circumstances is in one sense extraneous to the record. It will be information in his possession within the meaning of Section 19 of the State Act. In such cases of obvious mistakes apparent on the face of the record of assessment, that record itself can be a source of information, if that information leads to a discovery or belief that there has been an escape of assessment or under-assessment or wrong assessment.

22. There are a catena of judgments of this Court holding that assessment proceedings can be reopened if the audit objection points out the factual information already available in the records and that it was overlooked or not taken into consideration. Similarly, if audit points out some information or facts available outside the record or any arithmetical mistake, assessment can be re-opened.

23. In P.V.S. Beedies (supra), this Court has held as under:-

> ***"3.*** *We are of the view that both the Tribunal and the High Court were in error in holding that the information given by internal audit party could not be treated as information within the meaning of Section 147(b) of the Income Tax Act. The audit party has merely pointed out a fact which has been overlooked by the Income Tax Officer in the assessment. The fact that the recognition granted to this charitable trust had expired on 22-9-1992 was not noticed by the Income Tax Officer. This is not a case of information on a question of law. The dispute as to whether reopening is permissible after audit party expresses an opinion on a question of law is now being considered by a larger Bench of this Court.* ***There can be no dispute that the audit party is entitled to point out a factual error or omission in the assessment. Reopening of the case on the basis of a factual error pointed out by the audit party is permissible under law.*** *In view of that we hold that reopening of the case under Section 147(b) in the facts of this case was on the basis of factual information given by the internal audit party and was valid in law. The judgment under appeal is set aside to this extent."*

(emphasis supplied)

24. Similarly, in ***Commissioner of Income Tax, U.P., Lucknow vs. M/s Gurbux Rai Harbux Rai (1971) 3 SCC 654***, this Court has held as under:-

> *"6. Section 15 of the Act provides that if in consequence of definite information which has come into the possession of the Excess Profits Tax Officer he discovers that profits of any chargeable accounting period have escaped assessment, etc., he may at any time serve a notice containing all or any of the requirements which may be included in a notice under Section 13 and may proceed to assess or reassess the amount of such profits liable to excess profits*

tax. The power so conferred can be exercised in the course of the original assessment or reassessment. It is essential, according to the law laid down by this Court, that before any action can be taken or an order made under Section 10-A there should be a proceeding which should be pending for assessment or reassessment of excess profits tax"

"7. On the first question the submission of Mr M.C. Chagla for the assessee is that there was no definite information which had come into possession of the Tax Officer from which it could be said that he had discovered that profits of the relevant chargeable accounting period had escaped assessment. We are unable to agree. The Appellate Assistant Commissioner had made an order on October 10, 1947, in the proceedings relating to the assessment of income tax of the assessee that there had been only a partial partition in respect of the movable property business of Gurbux Rai. That was certainly an information which came into the possession of the Excess Profits Tax Officer not because of any change of opinion by himself but because of the decision of the Appellate Assistant Commissioner in the income tax proceedings. ***This Court has consistently held that the Income Tax Officer would have jurisdiction to initiate proceedings under Section 34(1) (b) of the Income Tax Act, 1922, which is in pari materia with Section 15 of the Act if he acted on information received from the decision of the superior authorities or the court even in the assessment proceedings. (See R.B. Bansilal Abirchand Firm v. CIT and Assistant Controller of Estate Duty, Hyderabad v. Nawab Sir Osman Ali Khan Bahadur, H.E.H. The Nizam of Hyderabad and others.*** *It has next been urged that the alleged object of having a partial partition, namely, of reducing the liability to excess profits tax had never been examined by the Appellate Assistant Commissioner in the income tax proceedings and therefore it could not be said that there had been escapement of income as a result of information derived from his order. The Appellate Assistant Commissioner apparently did not go into that question because the proceedings before him related to assessment of income tax. Section 10-A of the Act is a special provision which deals with the transactions designed to avoid or reduce liability to excess profits tax. The information which came into possession of the Excess Profits Tax Officer of partial partition having been effected was relevant for the purpose of Section 15 and once he had initiated proceedings under that section he was perfectly competent and had jurisdiction to examine for the purpose of Section 10-A whether partial partition had been effected for avoidance or reduction of liability to excess profits tax. The first question, therefore, should have been answered against the assessee and in favour of the Revenue."*

(emphasis supplied)

25. In ***M/s Phool Chand Bajrang Lal and Another vs. Income Tax Officer & Another (1993) 4 SCC 77*** this Court has held as under:-

"25..... He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information ....."

26. The contention whether finding the information from the very facts that were already available on record amounts to information for the purpose of Section 19 of the State

Act, it would be sufficient to refer to a judgment of this Court in ***Anandjiharidas & Co. vs. S.P. Kasture AIR 1968 SC 565*** wherein it was held that a fact which was already there in records doesn't by its mere availability becomes an item of "information" till the time it has been brought to the notice of assessing authority. Hence, the audit objections were well within the parameters of being construed as 'information' for the purpose of section 19 of the State Act.

27. The expression 'information' means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or after bearing on the assessment. We are of the clear view that on the basis of information received and if the assessing officer is satisfied that reasonable ground exists to believe, then in that case the power of the assessing authority extends to re-opening of assessment, if for any reason, the whole or any part of the turnover of the business of the dealer has escaped assessment or has been under assessed and the assessment in such a case would be valid even if the materials, on the basis of which the earlier assessing authority passed the order and the successor assessing authority proceeded, were same. The question still is as to whether in the present case, the assessing authority was satisfied or not.

28. At this stage, we deem it appropriate to reproduce the matter dealt with between the audit team and the assessing authority which led to the initiation of re-assessment proceedings under Section 19 of the State Act which is as under:-

"Part-II

Section – 'A'

Para 1. Non levy of purchase tax	*Rs. 24,19,385.31*
Name of the dealer Construction Jamshedpur	*M/s Larsen & Toubro Ltd., ECC Group, Jamshedpur*
Registration No.	*JU 848 ®*
Nature of Business	*Works Contract*
Asstt. Year	*1991-92*
Date of Order	*24.01.1996*
G.T.O. Determined Less: Sale of tax paid goods	*Rs. 17,57,01,372.00*
	Rs. 1,31,75,779.63
	Rs. 16,25,25,592.37
Less: Works done by sub-contractor	*Rs. 27,17,304.00*
Less: Labour charges and overhead charges	*Rs. 15,98,08,208.37*
	Rs. 11,91,66,742.38
	Rs. 4,06,41,465.99
Tax was levied	
@ 4% on Rs. 17,48,096.90	*Rs. 69,923.00*
@ 8% on Rs. 1,96,71,099.14	*Rs. 15,73,678.93*
@ 9% on Rs. 1,45,34,488.10	*Rs. 13,08,103.92*
@ 10% on Rs. 2,048.00	*Rs. 204.80*
@ 11% on Rs. 4,82,125.70	*Rs. 53,033.86*
@ 12% on Rs. 42,03,608.15	*Rs. 5,04,432.97*
	Rs. 35,09,387.36
Add: Tax @ 1% on Rs. 5,55,08,612.25	*Rs. 5,55,086.12*
	Rs. 40,64,473.48
Surcharge @ 10% on Rs. 39,94,549.60	*Rs. 3,99,454.00*
	Rs. 44,63,928.44
Penalty U/S 16 (8)	*Rs. 920.00*
	Rs. 44,64,848.44

The Scrutiny of assessment order revealed that the dealer was allowed exemption of Rs. 11,91,66,742.38 on account of labour charges and overhead charges claimed as detailed below:

Labour Charges	*Rs. 7,02,77,549.00*
Overhead charges	*Rs. 1,87,15,545.00*
Goods consumed in course of execution of work	*Rs. 3,12,47,916.00*
	Rs.12,02,41,010.00

Out of the above claim, a sum of Rs. 10,74,267.62 to us disallowed as below:

Tax paid claim disallowed	*Rs. 3,50,698.37*
Recovery of cement taxable	*Rs. 2,20,972.50*
Amount of plant hire charges	*Rs. 5,02,596.75*
	Rs.10,74,267.62

The dealer had furnished the statement of material utilized in the contract work and goods consumed for own use. Scrutiny of assessment order revealed that the dealer was allowed exemption on Rs. 3,12,47,916.00 being the amount of goods consumed or used itself in course of execution of work, details of which were discussed in the assessment order. It had been stated by the assessing authority that such goods were purchased on payment of tax, but no declaration in form IX C along with other evidences were kept on record. Production of declaration form in IX C was mandatory one and hence the claim was not allowable.

The entire materials received from outside the State or purchased within the State without payment of tax was normally leviable to tax at specified rates under section 12 of B.F. Act 1981. Under section 4 of the Act ibid, every dealer liable to pay under section 3 of the Act, if otherwise disposes the goods in any manner other than by way of sale in the State was also liable to purchase tax. In this connection a reference to the judgement of Hon'ble Karnataka High Court and duly confirmed by the Hon'ble Supreme Court in the case of Chevvabbo Vs. State of Karnataka (1986) 62 STG 194 Se) is invited ..... Disposal of goods in this section (Similar to those Karnataka) was clarified as transfer of title over the goods otherwise than sale, included gifts, own use or consumption section 4 of the Act (B.F. Act) is similar to section 7 A of Tamil Nadu General Court in the case of the State of Tamil Nadu Vs. M.K. Kandaswami (1975 36 STC 191) where it was held that (1) this Section is a separate charging provision in the Act and is not subject to section 3 and (ii) brings to tax goods, the sale of which would normally have been taxed at the same point or other in the State but could not be taxed even due to destroying them or other reasons. Thus the purchase tax was leviable on goods consumed for own use. Since cost price/purchase price was reflected as value of goods consumed for own use of the dealer, the tax at the rate specified in section 12 of the Act ibid was leviable. In this case, even if same charges like Electrodes, Welding Cables, welding appliances, fuel and lubricants, oxygen and P.A. Gas safety, safety appliances valued at Rs. 44,90,114.00 was not considered as taxable, the consumable goods worth Rs. 2,67,57,802.00 attracted levying of tax at specified rates.

The case may please be re-examined in the light of above observation and levying of purchase tax amounting to Rs.24,19,385.31 (including additional tax and surcharge) as calculated below may be considered under intimation to audit.

S.No.	*Name of Goods*	*Purchase value of goods*	*Rate applicable*	*Non-levy of purchase tax*
1.	*Camp Equipment, general consumable, plywood for shuttering spares and staying material*	*Rs. 1,81,20,301.00*	*8%*	*Rs. 14,49,624.08*

2.	*Electrical Goods and Timber*	*Rs. 49,65,205.00*	*12%*	*Rs. 5,95,824.60*
3.	*Tools & Tackles*	*Rs. 36,72,296.00*	*4%*	*Rs. 1,46,891.84*
				Rs.21,92,340.52
				Rs. 20,454.48
	Addl. Tax @ 1% on 20,45,448.68			*Rs.22,12,795.00*
				Rs. 2,06,590.31
				Rs.24,19,385.31
	Surcharge @ 10% on 20,65,903.16			

The use of fuel and lubricants may please be bifurcated and value of lubricants only may be levied to tax.

On being pointed out in audit, it was stated that since the goods had not been transferred to contractee co-under the provisions of works contract, but it had been consumed and so it does not come under the purview of taxation. The reply is not tanable in view of the above judgements and hence the case needed to be reviewed."

(emphasis supplied)

29. From a perusal of the last paragraph of the aforementioned report of the audit party, it is clear that the Assessing Officer was of the opinion that as the goods had not been transferred to appellant-Company but had been consumed, so it does not come under the purview of taxation. In other words, the Assessing Officer was not satisfied on the basis of information given by the audit party that any of the turnover of the appellant-Company had escaped assessment so as to invoke Section 19 of the State Act. From the above, it also appears that the assessing officer had to issue notice on the ground of direction issued by the audit party and not on his personal satisfaction which is not permissible under law.

30. In view of the above discussion, we are of the considered view that the order dated 27.02.2006 passed by the Deputy Commissioner, Commercial Taxes, Urban Circle, Jamshedpur is without jurisdiction and the High Court was not right in dismissing the petition filed by the appellant-Company. We, therefore, allow the appeal and set aside the order dated 27.02.2006 passed by the Deputy Commissioner, Commercial Taxes, Urban Circle, Jamshedpur as well as the order dated 17.11.2006 passed by the Division Bench of the High Court of Jharkhand. However, the parties shall bear their own costs.

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SGA
LAW OFFICES

SUPREME COURT OF INDIA

Go to Index Page

CIVIL APPEAL NO. 7823 OF 2014

BHUWALKA STEEL INDUSTRIES LTD. & ANR.
Vs
UNION OF INDIA & ORS.

J. CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ.

24th March, 2017

HF ▶ Referred to Larger Bench

The question whether an assessee opting to pay duty u/r 96ZP(3) can opt out of Scheme to pay on the basis of Annual Capacity, is referred to Larger Bench

CENTRAL EXCISE ACT – ANNUAL CAPACITY OF PRODUCTION – ANNUAL PRODUCTION – DETERMINATION - HOT RE-ROLLING STEEL MILLS ANNUAL CAPACITY DETERMINATION RULES, 1997 – SECTION 3A CREATES LEGAL FICTION DECLARING THE ANNUAL PRODUCTION EQUAL TO ANNUAL CAPACITY OF PRODUCTION – RULE 5 SEEKS TO CONSIDER THE HIGHER PRODUCTION FOR THE EARLIER YEAR AS ACTUAL PRODUCTION – VALIDITY OF RULE CHALLENGED – RULE ONLY CREATES A PRESUMPTION – NOT A DEEMING PROVISION – NOTHING WRONG IN THE RULE AND IS WITHIN THE COMPETENCE OF THE GOVERNMENT – ASSESSEE ENTITLED TO OPT OUT OF SCHEME OF RULE 96ZP(3) AT ANY TIME – EARLIER JUDGMENTS TO THE EFFECT THAT ONCE A SCHEME IS AVAILED, THE ASSESSEE CANNOT GO BACK – EARLIER JUDGMENTS DEALT WITH RULE 96ZO(3) AND NOT RULE 96ZP(3) – BOTH RULES ARE NOT SIMILAR – MATTER NEEDS RE-EXAMINATION BY LARGER BENCH TO CONSIDER THE EARLIER JUDGMENTS OF SUPREME STEEL AND VENUS CASTINGS – MATTER TO BE PLACED BEFORE HON'BLE THE CHIEF JUSTICE FOR FURTHER ORDERS - *SECTION 3A OF CENTRAL EXCISE AND SALT ACT, 1944; RULE 5 OF HOT RE-ROLLING STEEL MILLS ANNUAL CAPACITY DETERMINATION RULES, 1997; RULE 96 ZO AND 96ZP OF CENTRAL EXCISE RULES 1944*

Facts

The Annual Capacity of Production (ACP) of the factories of the petitioner were determined by different orders under Rule 5 of Hot Re-rolling Steel Mills Annual Capacity Determination Rules, 1997 (1997 Rules, for short). The actual production of the factories for the financial year 1996-97 was more than the ACP determined. Accordingly, the ACP was deemed to be the same as the actual production for the financial year 1996-97 in view of the mandate contained under Rule 5 of the 1997 Rules. The appeals filed against said order were dismissed. Before the High Court, writ petitions were filed challenging Rule 5 of 1997 Rules on the ground that Rule is ultravires the authority conferred under Section 3A of the Act and being violative of Article 14 of the Constitution of India. The said writ petitions were dismissed and appeal was filed before Supreme Court.

Held:

It is correct that rule making authority cannot exceed the powers given to it under the statute and cannot deem something to be existing which actually does not if the parent Act does not deem it so. However, on a careful reading of Rule 5, it transpires that Rule 5 does not create a fiction but only creates a presumption. Whereas fiction assumes a situation which does not exist but legally assumes it so but in the case of presumption, the situation may or may not be existing factually. Such a presumption is not unknown to law and is in fact prevalent in law. Presumptions are rules of evidence whereas fictions cannot be rebutted by evidence to the contrary.

Section 3A of the Act authorises the Govt. to make rules for determining the ACP of the manufacturers. It is further declared that the ACP so determined shall be deemed to be the annual production of such goods by such factory. Once a fiction is created, it cannot be rebutted by evidence but where the presumption is created under the law, the same is rebuttable by evidence. The presumption drawn under Section 3A regarding Annual Production of manufacturer could be rebutted by adducing necessary evidence and it does not create a legal fiction. Rule 5 only recognises the possibility of an error in arriving at the ACP by applying the formula contained in Rule 3 of 1997 Rules.

But the benefit of Section 3A(4) i.e. the right to rebut the presumption regarding the Annual Production is denied to a sub-class of manufacturers falling under Rule 96ZP(3), which is otherwise available to all the assessees under sub-section (4) of Section 3A of the Act.

Determination of ACP is a one-time affair but an assessee is entitled to seek determination of actual production of his factory under Section 3A(4) if it is less than the ACP. This is a recurring opportunity available to the assessee from time to time as the scope of this determination is to determine amount of duty payable by assessee which obviously is not a one–time affair.

Whether such a statutory right is anyway curtailed by sub-rule 96ZP(3) of Central Excise and Salt Rules, 1994 (1994 Rules, for short) is required to be examined. Once an assessee has chosen to pay duty in terms of Rule 96ZP(3), he is compelled to pay duty calculated in accordance with the said rule for all times to come without regard to the actual production. This question requires examination.

It is possible that in a given case, an assessee has chosen to pay the duty under Rule 96ZP(3) but later on for various legitimate reasons, his production falls and he seeks re-determination of his ACP. If the option exercised by an assessee under Rule 96ZP(3) is held to be good for eternity, it would not only lead to illogical consequences but also to an unconstitutional collection of taxes without there being a taxable event. We do not see anything in Rule which prevents the assessee from opting out of the scheme of Rule 96ZP(3).

The respondents have placed reliance upon the judgment of Commissioner of Centrla Excise and Customs vs Venus Castings Ltd., 2000(4) SCC 206 and Union of India and others vs Supreme Steel and General Mills and others, 2001(9) SCC 645 and stated that question regarding vires of sub-rule (3) of Rule 96ZP of 1944 Rules is no more res-integra. Accoring to them, it has already bene held by this Court that an assessee who makes choice once to avail the scheme under sub rule (3) cannot go back on his choice.

In the aforesaid two cases, the court was dealing with Rule 96ZO(3) of 1944 Rules as neither the vires of Rule 96ZO(3) nor its interpretation actually fell for consideration of this Court in either of these cases. The scheme of both the Rules is not identical as there are broad similarities between the Rules but they are not identical. The only similarities between Rules 96ZO(3) and 96ZP(3) is that both the Rules seek to eliminate the benefit of the procedure under Section 3A(4) of the Act in cases of those assessees who choose to opt for levy and *collection of excise duty in accordance with sub-rule (3) which are exceptions to general Rules of levy and collection of duties provided under Rules 96ZO and 96ZP.*

For the reasons mentioned above, the two judgments, i.e. Venus Castings and Supreme Steels require a further examination apart from the fact that these judgments did not deal with vires of Rule 96ZP(3). Since the decision in the case of Supreme Steel is by a Bench of three Judges, it is deemed appropriate that this question of law be settled by a Bench of an appropriate strength. Matter be placed before Hon'ble the Chief Justice of India for further orders.

Cases referred:

- *Agricultural Market Committee v. Shalimar Chemical Works Ltd., (1997) 5 SCC 516*
- *Consolidated Coffee Ltd. & Another v. Coffee Board, Bangalore, (1980) 3 SCC 358*
- *Commissioner of Central Excise & Customs v. Venus Castings (P) Ltd., (2000) 4 SCC 206*
- *Union of India & Others v. Supreme Steels and General Mills & Others, (2001) 9 SCC 645*

Present: For Appellant(s): ***Advocates:*** Mr. Abhishek Anand, Mr. Aditya, Bhattacharya, Mr. Anandh K., Mr. Victor Das, Mr. M. P. Devanath, Mr. Yogendra

Mrs. Nalini Chidambaram ,Sr. Advocate
Mr. Vikas Mehta, Ms. Anushree Menon

For Respondent(s): Mr. K. Radhakrishnan, Sr. Advocate
Other Advocates: Mrs. Nisha Bagchi, Mr. H.R. Rao, Ms. Pooja Sharma, Mr. B. Krishna Prasad

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CHELAMESWAR, J.

1. These three appeals are factually interconnected and also raise a common question of law.

2. The appellants in Civil Appeal No.7823/2014 M/s. Bhuwalka Steel Industries Ltd. originally owned three (3) industrial units (Hot Re-rolling Steel Mills) located in the State of Karnataka. Subsequently, two of those units came to be acquired by the appellants in the other two appeals in this batch. Further details of the acquisition may not be relevant for the purpose of this judgment.

3. The production activity carried on by the three industrial units of these appellants is subject to levy of excise duty under the Central Excise & Salt Act, 1944 (hereafter 'THE ACT'). Section 3[1] of THE ACT is the basic charging section.

4. However, by the Finance Act, 1997, Section 3A[2] came to be introduced in THE ACT.

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[1] Section 3 insofar as it is relevant for the purpose of this judgment read at the relevant point of time:

> *"Section 3. Duties specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 to be levied.- (1) There shall be levied and collected in such manner as may be prescribed, -*
>
> *a) a duty of excise on all excisable goods which are produced or manufactured in India as, and at the rates, set forth in the First Schedule to the Central Excise Tariff Act, 1985;"*

[2] Ins. By Act 18 of 2008, sec. 79 (w.e.f. 10-5-2008). Earlier section 3A was inserted by Act 81 of 1956. sec. 2 (w.e.f. 22-12-1956) and was omitted by Act 58 of 1960, sec. 2 and Sch. I (w.e.f. 26-12-1960) and was again inserted by Act 26 of 1997, sec. 81 (w.e.f. 14-5-1997) and was amended by Act 10 of 2000, sec. 93 (w.e.f. 1-4-2000) and was again omitted by Act 14 of 2001, sec. 121 (w.e.f. 11-5-2001).

"Section 3A. Determination of annual capacity of production of the factory for levy of Excise duty.— *(1) Notwithstanding anything contained in Section 3, where the Central Government, having regard to the nature of the process of manufacture or production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant, is of the opinion that it is necessary to safeguard the interest of revenue, specify, by notification in the Official Gazette, such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section.*

(2) Where a notification is issued under sub-section (1), the Central Government may, by rules, provide for determination of the ***annual capacity of production****, or such factor or factors relevant to the annual capacity of production of the factory in which such goods are produced, by the Commissioner of Central Excise and such* ***annual capacity of production*** *shall be deemed to be the annual production of such goods by such factory:*

Provided that where a factory producing notified goods is in operation only during a part of the year, the production thereof shall be calculated on proportionate basis of the annual capacity of production.

(3) The duty of excise on notified goods shall be levied, at such rate as the Central Government may by notification in the Official Gazette specify, and collected in such manner as may be prescribed:

Provided that, where a factory producing notified goods did not produce the notified goods during any continuous period of not less than seven days, duty calculated on a proportionate basis shall be abated in respect of such period if the manufacturer of such goods fulfils such conditions as may be prescribed.

(4) Where an assessee claims that the ***actual production*** *of notified goods in his factory is lower than the production determined under sub-section (2), the Commissioner of Central Excise shall, after giving an opportunity to the assessee to produce evidence in support of his claim, determine the* ***actual production*** *and redetermine the amount of duty payable by the assessee with reference to such* ***actual production*** *at the rate specified in sub-section (3).*

(5) Where the Commissioner of Central Excise determines the ***actual production*** *under sub-section (4), the amount of duty already paid, if any, shall be adjusted against the duty so redetermined and if the duty already paid falls short of, or is in excess of, the duty so redetermined, the assessee shall pay the deficiency or be entitled to a refund, as the case may be.*

(6) The provisions of this section shall not apply to goods produced or manufactured,—

(i) in a free-trade zone and brought to any other place in India; or
(ii) by a hundred per cent export-oriented undertaking and allowed to be sold in India.

Explanation 1. – For the removal of doubts, it is hereby clarified that for the purposes of Section 3 of the Customs Tariff Act, 1975 (51 of 1975), the duty of excise leviable on the notified goods shall be deemed to be the duty of excise leviable on such goods under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), read with any notification for the time being in force.

> *Explanation 2. – For the purposes of this section the expressions "free trade zone" and "hundred per cent export-oriented undertaking" shall have the meanings assigned to them in section 3." [emphasis supplied]*

Section 3A authorised the identification of a certain class of goods and levy and collection of excise duty on such goods otherwise than in accordance with the scheme of levy and collection contemplated under Section 3 of THE ACT. It appears from the language of Section 3A, Parliament believed that manufacturers of certain classes of goods are evading payment of excise duty. It authorised the Government of India to identify the goods, the manufacturers of which are resorting to evasion of excise duty. Section 3A(1) stipulated that such identified goods are to be notified in the Official Gazette (hereafter "NOTIFIED GOODS"). Section 3A(3) as it stood at the relevant point of time stipulated that the Central Government may by a notification in the official gazette specify the rate of duty to be levied on NOTIFIED GOODS and the method and manner of the collection thereof.

In other words, notwithstanding the prescription of the rates of duty pursuant to Section 3 and the procedure for the assessment of duty liability and the mode of collection of such assessed duty, Government of India is authorised under Section 3A to prescribe different rates of duty and different modes of assessment and collection of duty on the NOTIFIED GOODS.

Under sub-section (2), the Government of India was authorised to make rules providing for either the determination of the "annual capacity of production" (hereafter ACP) or 'the factors relevant to the ACP' of the factory in which NOTIFIED GOODS are produced. The determination of the ACP is required to be made by the "Commissioner of Central Excise". It further declared that a factory where ACP is determined shall be presumed to annually produce the NOTIFIED GOODS equivalent in quantum to its ACP.

Sub-section (4) stipulates that in a case where an assessee "claims that the **actual production** of his factory is lower than" the ACP, the assessee is entitled to seek the determination of the **actual production** of the NOTIFIED GOODS in "his factory" by adducing appropriate evidence. Upon such claim being made, the Commissioner of Central Excise is required to determine the **actual production** of the assessee's factory and also "redetermine the amount of duty payable by the assessee with reference to such **actual production**".

5. Admittedly, the goods manufactured by the three appellants fall under the same class and described under the Excise Tariff Act as "non-alloy steel hot re-rolled products" and they were NOTIFIED GOODS at the relevant point of time.

6. In exercise of the powers conferred under Section 3A(2) of THE ACT, a set of Rules came to be framed by the Government of India w.r.t. the goods manufactured by the appellants before us known as the Hot Re-Rolling Steel Mills Annual Capacity Determination Rules, 1997 (hereafter "RULES of 1997") under a notification dated 1.8.1997. Initially, the said notification contained four Rules for "determining the annual capacity of production of a factory" with the aid of "hot-Re-Rolling Mill".

7. A month later, on 30.8.1997, Rule 5 which is the bone of contention in the present case came to be inserted in the said rules:

> *"5. In case, the annual capacity determined by the formula in sub-rule (3) of rule 3 in respect of a mill, is less than the **actual production** of the mill during the financial year 1996-97, then the annual capacity so determined shall be deemed to be equal to the **actual production** of the mill during the financial year 1996-97." [emphasis supplied]*

The true meaning and purport of the rule shall be examined later.

8. It is also necessary to take note of the fact that a set of Rules known as Central Excise Rules, 1944 were framed by the Government of India in exercise of the power conferred under various provisions of the Central Excise Act, 1944. Rule 96ZP of the said rules prescribes an elaborate procedure to be followed by the manufacturers of 'Non-Alloy Steel Hot Re- rolled products" falling under various heads of the Excise Tariff Act, 1985. The said Rule occurs in Chapter XI of the Rules of 1944. Chapter XI was inserted in the Rules w.e.f. 01.08.1997.

9. Section 3A(3) authorised the Central Government to specify the rate at which the central excise duty is leviable on NOTIFIED GOODS by notification. Obviously, it is in exercise of the power under Section 3A(3), Rule 96ZP was made prescribing a fixed rate of duty per metric tonne on the goods manufactured by the appellant. It provides for the levy of excise duty at different rates on the goods falling under the same description at Rs.400/- and Rs.300/- per metric tonne respectively under Rule 96ZP(1) and (3) depending upon the assessee's choice regarding the time of the payment of duty. Rule 96ZP seeks to levy the excise duty at a concessional rate of Rs.300/- per metric tonne.

10. Rule 96ZP prescribes a levy not on the basis of the value of the specified goods but on the quantum of production. It further authorises the levy and collection of duty at different rates depending upon the mode of payment of the duty chosen by the manufacturer. In other words, Rule 96ZP creates two classes of manufacturers of the goods falling within the sweep of the Rule, though both the classes of manufacturers produce goods of the same description. One class who choose to pay the duty on monthly basis (falling under sub-rule (3)) and the other class paying duty in a manner otherwise specified under the various other sub-rules of Rule 96ZP.

11. Undisputedly, Rule 96ZP is applicable to the products of the appellants herein. It is sufficient for our purpose to note that under Rule 96ZP(1)[3], the manufacturer of the goods falling under the ambit of Rule 96ZP is required to debit an amount calculated at the rate of Rs.400/- per metric tonne on the "non-alloy steel hot re-rolled products" at the time of the clearance of the goods from his factory. Under paragraphs I and II of Rule 96ZP(1), the manner of payment of the duty so debited is stipulated. For example, for the period commencing from 1st September, 1997 to 31st March, 1998, a manufacturer is required to pay by 31st March 1998 a total amount calculated at the rate of Rs.400/- per metric tonne on the ACP of his factory. The full details of the other paragraphs of sub- rule (1) may not be necessary for the purpose of this judgment.

12. Under sub-Rule (3)[4], a manufacturer is given an option to pay the duty in 12 equal monthly instalments. It further stipulates that if a manufacturer chooses to pay the duty on monthly basis, the same shall be calculated at the rate of Rs.300/- per metric tonne multiplied by the ACP of the factory. Each instalment is payable on or before the 10th of each succeeding

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[3] Rule 96ZP(1) A manufacturer of non-alloy steel hot re-rolled products falling under sub-heading Nos. …………… of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), shall debit an amount calculated at the rate of Rs. 400/- per metric tonne at the time of clearance of ….products ….from his factory ….subject to the condition that the total amount of duty liability shall be calculated and paid in the following manner :-

[4] Rule 96ZP(3) Notwithstanding anything contained elsewhere in these rules, a manufacturer may, in the beginning of each month from 1st day of September, 1997 to the 31st day of March, 1998 or any other financial year, as the case may be, and latest by the tenth of each month, pay a sum equivalent to one-twelfth of the amount calculated at the rate of Rs.300/- multiplied by the annual capacity in metric tonnes, as determined under sub- rule (3) of rule 3 of the Hot Re-rolling Mills Annual Capacity Determination Rules, 1997, and the amount so paid shall be deemed to be full and final discharge of his duty liability for the period from the 1st day of September, 1997 to the 31st day of March, 1998, or any other financial year, as the case may be, subject to the condition that the manufacturer shall not avail of the benefit, if any, under the proviso to sub-section (3) or under sub-section (4) of the section 3A of the Central Excise Act, 1944 (1 of 1944).

month. In other words, sub-rule (3) provides for the levy of a concessional rate of excise duty on manufacturers who are willing to opt for a scheme of making the payment of tax on a monthly basis instead of postponing the payment till the end of the year as prescribed under sub- rule (1). However, sub-rule (3) also imposes a limitation on those manufacturers who opt for the benefit of a reduced rate of duty by disabling them from availing the benefit of the procedure contemplated in sub-section (4) of Section 3A of THE ACT – that is disputing the correctness of the determination of the ACP of the factory made under the RULES of 1997.

13. It is in this background of the provisions of law, these appeals are required to be decided.

14. In all these appeals, the ACP of the concerned factories was determined by different orders. Obviously the ACP so determined was less than the **actual production** of each one of the factories for the financial year 1996-97. Therefore, the ACP was "deemed" to be the same as the **actual production** for the financial year 1996-1997 in view of the mandate contained under Rule 5 of the RULES of 1997.

15. Aggrieved by the determination of the ACP each of the appellants pursued multiple legal proceedings:

1. They appealed to the CESTAT;
2. They invoked the authority of the Commissioner of Central Excise under sub- section (4) of Section 3A; and
3. Simultaneously, they filed writ petitions challenging the validity of the abovementioned Rule 5 in the Karnataka High Court.

16. The writ petitions came to be dismissed by the judgment dated 07.12.2005 of the learned Single Judge of the Karnataka High Court. Aggrieved, the appellants herein carried the matter by way of an intra- court appeal to a Division Bench of the Karnataka High Court. By the judgment under appeal, a Division Bench of the Karnataka High Court dismissed the appeals. Hence these appeals.

17. The validity of Rule 5 of the RULES of 1997 is challenged both before the High Court and before us on two grounds:

1. That the Rule is *ultra vires* the authority conferred under Section 3A of THE ACT; and
2. That the Rule is violative of Article 14 of the Constitution of India.

Because the Rule creates two classes of manufacturers:-

(i) whose ACP is determined to be more than their **actual production** in the financial year 1996-97.

(ii) Whose ACP is determined to be less than their **actual production** for the financial year 1996-97; and

imposes an irrational tax burden on the 2nd of the abovementioned two classes of manufacturers falling within the ambit of the RULES of 1997.

18. We shall first deal with the submission that Rule 5 of the RULES of 1997 is ultra vires Section 3A of THE ACT. It is argued that Rule 5 creates a fiction when it stipulates:

> *"… the annual capacity so determined shall be deemed to be equal to the* ***actual production*** *of the mill during the financial year 1996-97."*
>
> *[emphasis supplied]*

19. According to the appellants, Section 3A(2) of THE ACT itself creates a fiction for the purpose of determining the ACP while authorizing the Government of India to make rules for the determination of ACP. Therefore, the RULES cannot prescribe a further fiction. The appellants placed heavy reliance for this proposition on a judgment of this Court reported in ***Agricultural Market Committee v. Shalimar Chemical Works Ltd.***, (1997) 5 SCC 516.

20. On the other hand, it is argued by the respondent that Rule 5 though textually appears to be creating a fiction, in substance, it only stipulates a factor relevant for determination of ACP and, therefore, is clearly *intra vires*.

21. To determine the issue, it is required to examine the scheme of Section 3A of THE ACT, the relevant Rules framed thereunder and the mischief which Parliament sought to control while enacting Section 3A. In the context, we must keep in mind the general scheme of THE ACT.

22. Section 3 of THE ACT, as it existed at the relevant point of time authorised the levy and collection of a duty of excise on all excisable goods which are produced or manufactured in India. The expression "excisable goods" is defined under Section 2(d) of THE ACT. At the relevant point of time, it read as follows:

> *"Section 2(d). "excisable goods" means goods specified in the First Schedule and the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as being subject to a duty of excise and includes salt;"*

The rates of duty for the various classes of goods are stipulated from time to time under the Central Excise Tariff Act, 1985. Section 4 of THE ACT stipulated the method and manner of determination of the value of the goods for the purpose of the determination of the duty liability of the manufacturers who manufacture or produce goods which are chargeable to duty w.r.t. their value.

23. Determination of the quantum of the goods manufactured is an essential exercise for collecting the excise duty, because the taxable event for levy and collection of excise duty is the manufacture or production of goods. Therefore, the need to determine the actual quantum of the goods manufactured. The Act and the Rules made thereunder prescribe different methods for the determination of the quantum of production/manufacture of excisable goods undertaken by any person (manufacturer) for the purpose of determining the tax liability of such a person.

24. Parliament from time to time took notice of the fact that some of the manufacturers/producers of excisable goods are evading duty by suppressing the information of the quantum of **actual production**/manufacture of goods undertaken by them. Therefore, Section 3A was introduced which authorised a different mode of levy, assessment and collection of excise duty on NOTIFIED GOODS. Under the Scheme of Section 3A, the need to constantly monitor the actual quantum of NOTIFIED GOODS produced/manufactured is obviated by declaring that the ACP of factory is deemed to be the **annual production** of the factory for the purpose of levy and collection of excise duty.

25. RULES of 1997 prescribed the procedure by which the ACP is to be determined. Rule 3 prescribed a formula based on various factors mentioned therein for the determination of the ACP. The appellants have no grievance regarding the procedure stipulated for the determination of the ACP. Their only grievance is against Rule 5 which mandates that the ACP determined in accordance with Rule 3 be discarded in the circumstances mentioned under Rule 5.

26. The appellant submitted that Section 3A(2) creates a legal fiction by declaring that the **annual production** of factory in which NOTIFIED GOODS are produced is the same as that of the ACP of that factory. Rule 5 creates a further fiction which is not either authorised by Section 3A or permissible for a non-sovereign law making body making subordinate legislation in exercise of the delegated power conferred under a statute. We must make it clear that the appellants did not challenge the constitutionality of Section 3A(2).

27. The appellants placed heavy reliance on paragraph 28 of ***Agricultural Market Committee.***

> *"28. The Government to whom the power to make rules was given under Section 33 and the committee to whom power to make bye-laws was given under Section 34 widened the scope of "presumption" by providing further that if a notified agricultural produce is weighed, measured or counted within the notified area, it shall be deemed to have been sold or purchased in that area. The creation of legal fiction is thus beyond the legislative policy. Such legal fiction could be created only by the legislature and not by a delegate in exercise of the rule-making power. We are, therefore, in full agreement with the High Court that Rule 74(2) and Bye-law 24(5) are beyond the scope of the Act and, therefore, ultra vires. The reliance placed by the assessing authority as also by the appellate and revisional authority on these provisions was wholly misplaced and they are not justified in holding, merely on the basis of weighment of "copra" within the notified area committee that the transaction of sale took place in that market area."*

28. The argument of the appellants with respect to Rule 5 appears to be two-fold: (i) a legal fiction (deeming provision) can only be created by legislation but not by subordinate legislation; and (ii) even otherwise a fiction created by the subordinate legislation cannot be in contravention of the provisions of the parent enactment[5].

29. We are in total agreement with the principle laid down by this Court in paragraph 28 of ***Agricultural Market Committee***.

30. However, the question in this case is – whether Section 3A(2) and/or Rule 5 really create fictions. To understand the same, the context and purpose of Section 3A and Rule 5 is required to be examined. The Scheme and purpose of Section 3A is already examined at para 20. Rule 5 stipulated that if the ACP determined in accordance with the preceding four Rules is less than the actual production of a particular assessee for the financial year 1996-1997, the authority determining the ACP is required to abandon the figure of ACP arrived at by

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[5] Rule 5 was challenged on the following grounds: - (Written Submissions of the appellant)

A . Section 3A (2) deems the **annual production** capacity as the actual production and the manufacturer has to pay duty on the **annual production** capacity without reference to actual production.

But Rule 5 introduces a further deeming that the 1996-97 production shall be deemed to be actual production if the 1996-97 production is higher than the production capacity determined as per rule 3.

A subordinate legislation cannot introduce a deeming provision and that too contrary to the deeming provision in the plenary legislation. The statutory presumption under Section 3A is of a limited character and being a fiscal legislation has to be strictly construed in the sense that any factory which is not contemplated by the Act cannot be taken into consideration to raise a presumption for levy of excise duty. Being a delegated legislation the delegate which has been authorised to make subsidiary rules has to work within the scope of the Act or the policy laid thereunder. The delegate under the grab of making rules cannot legislate on the field covered by the Act and has to restrict itself to the mode of implementation of the Act". The creation of the legal fiction under Rule 5 is beyond scope of the legislative policy to levy excise duty on certain notified goods on the capacity of production determined under the formula specified in rule 3. Such legal fiction can be created only by a legislature and not by a delegate in exercise of rule making power. Also Section 3A (2) only authorises the Central government to make rules providing for determination of the annual capacity of production or such factor relevant to the annual capacity of production. The section 3A(2) does not authorize the Central government to create further legal fiction on the annual capacity of production which is exclusively within the domain of the legislature. Thus the legal fiction created in rule 5 that in case the annual capacity determined by the formula in sub rule 3 of rule 3 in respect of a mill, is less than the actual production of the mill during the financial year 1996-97, then the annual capacity so determined shall be deemed to be equal to the actual production of the mill during the financial year 1996-97 is beyond the scope of the delegate and is therefore liable to be declared ultra vires, arbitrary violative of article 14, unconstitutional and bad in law.

Reference may be made to (1997) 5 SCC 516 employing the procedure contained in Rules 1 to 4 and adopt the **actual production** achieved by the assessee for the financial year 1996-97[6] to be the ACP of that assessee.

31. The words "shall be deemed to be" occurring in both Section 3A(2) and Rule 5 appear to create a fiction. But in our opinion, on a true and proper construction (as rightly argued by the respondent) they do not create a legal fiction. In ***Consolidated Coffee Ltd. & Another v. Coffee Board, Bangalore***, (1980) 3 SCC 358, it was held: (page 371, para 11)

> *"... the word "deemed" is used a great deal in modern legislation in different senses and it is not that a deeming provision is every time made for the purpose of creating a fiction. A deeming provision might be made to include what is obvious or what is uncertain or to impose for the purpose of a statute an artificial construction of a word or phrase that would not otherwise prevail, but in each case it would be a question as to with what object the legislature has made such a deeming provision. In **St. Aubyn v. Attorney-General,** 1952 AC 15, 53 : (1951) 2 All ER 473, 498, Lord Radcliffe observed thus:*
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> *"The word "deemed" is used a great deal in modern legislation. Sometimes it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is, in the ordinary sense, impossible."*

In our opinion, Section 3A(2) only embodies a rule of evidence which command the department to presume certain facts. Such presumptions are not unknown to law. Section 114[7] of the Indian Evidence Act, 1872 enacts a rule of evidence which requires a court to presume the existence of any fact which the Court thinks likely to have happened regard being had to common course of natural events etc. The presumption created under Rule 5 is similar to the one contained in illustration (d)[8] to Section 114 of the Evidence Act.

32. There is a clear distinction in law between a legal fiction and presumption[9]. "A distinction commonly taken between the fiction and the legal presumption runs something as follows: A fiction assumes something which is known to be false; a presumption (whether conclusive or rebuttable) assumes something which may possibly be true. This distinction is regarded as being reinforced, as it were, in the case of the rebuttable presumption because such a presumption assumes a fact which *probably* is true."[10] "Presumptions are closely related to

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[6] The relevance of the financial year 1996-97 in the context of the RULES is that the RULES are made and brought into force with effect from the 1st of August, 1997. The financial year 1996-1997 is the financial year immediately preceding the making of the RULES of 1997.

[7] Section 114. Court may presume existence of certain acts:- The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

[8] Illustration (d) – That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or state of things usually cease to exist, is still in existence.

[9] *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik & Another*, (2014) 2 SCC 576. "We must understand the distinction between a legal fiction and the presumption of a fact. Legal fiction assumes existence of a fact which may not really exist. However, a presumption of a fact depends on satisfaction of certain circumstances. Those circumstances logically would lead to the fact sought to be presumed. Section 112 of the Evidence Act does not create a legal fiction but provides for presumption." (Para 18)

[10] Fullet, L.L., *Legal Fictions*, Illinois Law Review (Vol. XXV No.4, December 1930)

legal fictions … but they operate differently"[11]. "Fictions always conflict with reality, whereas presumptions may prove to be true"[12]. Legal fictions create an artificial state of affairs by a mandate of the legislature.

> *"… an assumption of fact deliberately, lawfully and irrebuttably made contrary to the facts proven or probable ……. with the object of bringing a particular legal rule into operation … the assumption being permitted by law …"*

They compel everybody concerned including the courts to believe the existence of an artificial state of facts contrary to the real state of facts. When a fiction is created by law, it is not open to anybody to plead or argue that the artificial state of facts created by law is not true, barring the only possible course if at all available is to question the constitutionality of the fiction. It is settled law that only sovereign legislative bodies can create legal fictions but not a subordinate law making body.

33. Whereas presumptions are rules of evidence for determining the existence or otherwise of certain facts in issue in a litigation. "Presumptions[13] were inferences which the judges were directed to draw from certain states of facts in certain cases, and these presumptions were allowed a certain amount of weight in the scale of proof; such a presumption and such evidence amounted to full proof, such another to half full, and so on."[14] Nothing is brought to our notice to say that a non- sovereign law making body can not make a rule of evidence containing a presumption. In our opinion, ***Agricultural Market Committee*** is not an authority for the proposition that a presumption cannot be created by subordinate legislation.

34. Rules of evidence are the principles of law which command the courts or other bodies whose duty is to determine the existence or otherwise of certain facts. The Anglo saxon legal system recognises that facts could be established either by direct or circumstantial evidence. Presuming certain facts, if they are so commanded by law has always been recognised by our legal system to be one of the accepted processes for those bodies charged with the duty of collecting evidence. Therefore, law making bodies make provisions incorporating presumptions wherever they believe it appropriate. But such practices have well recognised qualifications and limitation. Section 114 of the Evidence Act embodies some of the basic principles of the law of presumptions and the limitations thereon. Technically, the

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[11] Del Mar, Maksymilian, Legal Fictions and *Legal Change*, International Journal of Law in Context (2013)

[12] Vermeer-Künzli, Annemarieke, As If: *The Legal Fiction in Diplomatic Protection*, European Journal of International Law (2007)

[13] Presumptions are of four kinds according to English law.

1. Conclusive presumptions. These are rare, but when they occur they provide that certain modes of proof shall not be liable to contradiction.

2. Presumptions which affect the ordinary rule as to the burden of proof that he who affirms must prove. He who affirms that a man is dead must usually prove it, but if he shows that the man has not been heard of for seven years, he shifts the burden of proof on his adversary.

3. There are certain presumptions which, though liable to be rebutted, are regarded by English law as being something more than mere maxims, though it is by no means easy to say how much more. An instance of such a presumption is to be found in the rule that recent possession of stolen goods unexplained raises a presumption that the possessor is either the thief or a receiver.

4. Bare presumptions of fact, which are nothing but arguments to which the Court attaches whatever value it pleases.

[14] Stephen, James Fitzjames, The Indian Evidence Act With An Introduction on the Principles of Judicial Evidence, (Calcutta, Thacker, Spink & Co.) Chapter IV p. 132

Evidence Act may or may not be applicable to every body charged with the responsibility of collecting evidence. But the principles underlying the provisions do constitute valuable guides. They are based on sound principles of jurisprudence deduced from the observation of human conduct, natural course of events and logic etc.

35. Presumptions are of two kinds, rebuttable and irrebuttable. Normally any presumption is rebuttable unless the legislature creates an irrebuttable presumption. It is a different question – whether an irrebuttable presumption could be created by a non-sovereign law-making body? That question has not been argued before us and, therefore, we do not examine that proposition.

36. Under the scheme of THE ACT, the actual quantum of production of an industry (manufacturer) is one of the essential factors for determining the tax liability of the manufacturer. Both Section 3A(2) and Rule 5 deal with the procedure for the determination of the quantum of production of a factory producing NOTIFIED GOODS. To determine the exact quantum of goods produced by any manufacturer, there are various possible ways:

1. Constant manual observation or account keeping is the most basic process by which the quantum of goods manufactured could be determined;
2. Adoption of a statistical measure for establishing the quantum of goods:

   The statistical method could be based on the consumption factors of either the raw material required for the production of the goods or the quantum of electrical or other energy utilized by the industry for manufacturing the goods etc.; and
3. By drawing an appropriate presumption having regard to the technical data relating to the machinery employed by the manufacturer etc.

37. Section 3A of THE ACT authorises the Government to make rules for determining the ACP of the manufacturers. It further declares that the ACP so determined "shall be deemed to be the **annual production** of such goods by such factory". In other words, sub-section (2) commands that a factory whose ACP is determined in accordance with the rules made thereunder must be believed to produce the same quantum of goods equal to the ACP for every succeeding year. The question is – whether such a declaration creates a legal fiction or only a presumption (rule of evidence)?

38. We have already noticed that by definition a "fiction always conflicts with the reality whereas presumption may be proved to be true". It therefore follows that there is no possibility of a fiction being rebutted by evidence. The belief flowing from Section 3A(2) regarding the **annual production** of a manufacturer could be rebutted by adducing evidence. Section 3A(4) provides for such rebuttal. Therefore, in our opinion, Section 3A(2) embodies only a rule of evidence (presumption) but does not create a legal fiction. The language employed by the draftsman is likely to mislead to a conclusion that a fiction is created. But on a true and proper construction of the entire Section 3A the only possible conclusion is that Section 3A(2) embodies only a presumption (rule of evidence).

39. Under the Scheme of the RULES OF 1997, the first four rules stipulated the procedure for determining the ACP of the manufacturers of the class to which the appellants belong, by adopting the third of the abovementioned three procedures (mentioned in para 36 supra). The lawmaker was conscious of the fact that the actual quantum of goods that can be manufactured in a factory does not solely depend on the ACP of the factory. It depends upon a number of other variable factors too. For example, though the machinery employed by a manufacturer has the technical capacity to produce a certain quantum (maximum production) of goods, in a given interval of time, the manufacturer may not always achieve the maximum production because of the non-availability of either the requisite energy to operate the factory or finance or raw-material etc. The first four rules of the RULE OF 1997 create a scheme of evidence by which a presumption (based on the technical specification of the manufacturers' machinery) of the possibility of a certain quantum of production is to be made. However, the lawmaker visualized that in certain cases such a process may lead to a conclusion that the ACP of a manufacturer is less than the **actual production** that was achieved by employing the same machinery at an earlier point of time - a conclusion inconsistent with the established factual data. Therefore, it is stipulated under Rule 5 that in such circumstances the ACP of the factory must be "deemed to be" equivalent to the **actual production** achieved in the financial year prior to the coming into force the RULES OF 1997. Rule 5 recognises the possibility of an error in arriving at the ACP by applying the formula contained in Rule 3. Because the formula itself is based on certain assumptions. Therefore, Rule 5 provides that the determination of the ACP made in accordance with the procedure contained in Rule 3 is liable for correction in some cases, in the circumstances indicated therein.

40. But the benefit of Section 3A(4) i.e. the right to rebut the presumption regarding the **annual production** is denied to a sub-class of manufacturers falling under Rule 96ZP(3)) who are also a part of a larger class falling under the Scheme of Rule 96ZP of the Central Excise Rules, 1944.

41. But for the declaration of sub-rule (3) of Rule 96ZP, an assessee whose ACP is determined in accordance with the Rule 3 of the RULES of 1997 would be entitled under sub-section (4) of Section 3A of THE ACT, to seek the determination of his **actual production** and the tax liability thereon.

42. The determination of the ACP is a one time affair. It appears from the factors indicated in the Rule 3 that the ACP would remain unaltered so long as there is no change in the machinery employed and the 'number of utilized hours" of the machinery remains constant. But the "number of utilized hours" could vary from time to time depending upon various factors, such as, the availability of electric power, capital or labour etc. Such variations could result in a situation that the **actual production** of the factory for any given interval of time is less than the ACP. Therefore, it is declared under Section 3A(4) that an assessee is entitled to seek determination of the **actual production** of his factory if it is less than the ACP.

43. In our opinion, such an opportunity provided under Section 3A(4) is a recurring opportunity available to the assessee from time to time. We reach this conclusion in view of the language of sub-section (4) more particularly "the Commissioner of Central Excise shall … determine the amount of duty payable by the assessee with reference to such **actual production** at the rate specified under Section 3". Obviously, the determination of amount of duty payable by the assessee is not a one time affair. Such a determination is to be made periodically. Therefore, the opportunity of placing evidence for the establishment of **actual production** for a period relevant for the assessment must be available to the assessee from time to time.

44. Whether such a statutory right is in any way curtailed by Rule 96ZP(3) of the Rules of 1944 is required to be examined. Rule 96ZP(3) is relevant in the context of the assessment of duty for those assessees who choose to opt for the payment of the excise duty on a monthly basis. The duty payable by such assessees would be Rs.300 x ACP in metric tonnes. Rule 96ZP(3) stipulates that an assessee seeking to avail the scheme (concessional rate of duty) under Rule 96ZP(3) is required to make application in the prescribed format. The Rule is silent about the point of time at which such an application is required to be made. But sub-rule (3) stipulates the time within which the duty is required to be paid, i.e., in the "beginning of each month" and "latest by the tenth of each month".

45. Whether an assessee who chooses once to pay duty in terms of Rule 96ZP(3) can be compelled to pay duty calculated in accordance with the said rule for all times to come without any regard to the **actual production**? is a question which requires examination.

46. It is possible that in a given case an assessee choosing at a given point of time to make payment of duty on monthly basis calculated in terms of sub-rule (3) but a few months later (for that matter even a month later), for various legitimate reasons, production may fall considerably below the ACP (of the assessees factory). It is possible, in some cases there can be total cessation of the manufacturing activity for reasons beyond the control of the assessee. If the option exercised by an assessee under Rule 96ZP(3) is held to be good for eternity it would not only lead to illogical consequences but also to an unconstitutional collection of taxes without there being a taxable event. We do not see anything in Rule which prevents the assessee from opting out of the Scheme of Rule 96ZP(3).

47. After availing the scheme for a month by paying the duty in advance, if the assessee ends up in a situation of not being able to produce the quantum of goods equivalent to 1/12 of his ACP, we see no reason which compels the assessee to continue the availment of concessional rate of duty (for the next month) on a quantum of production which he is unable to achieve. In our opinion the assessee must have an option to make the payment of duty in accordance with Rule 96ZP(1) at a higher rate but on the **actual production**. For those assessees who chose to pay the duty at higher rate in accordance with sub-rule (1) the benefit of section 3A(4) is available. The rule does not bar it. However the question remains how frequently the assessee is entitled to exercise such an option; whether it is annual or monthly is a matter which requires a further examination.

48. It is argued by the learned counsel for the respondent in view of the two judgments of this Court reported in ***Commissioner of Central Excise & Customs v. Venus Castings (P) Ltd., (2000) 4 SCC 206, Union of India & Others v. Supreme Steels and General Mills & Others, (2001) 9 SCC 645***, the question regarding the vires of sub-rule (3) of Rule 96ZP of the Central Excise Rules, 1944 is no more res-integra. It is also submitted by the respondent that this Court has already declared that the assessee who makes a choice once to avail the scheme under sub-rule (3) cannot go back on his choice[15].

49. In both the abovementioned cases, this Court was dealing with Rule 96ZO(3) of the Central Excise Rules, 1944. Neither the vires of Rule 96ZP(3) nor its interpretation actually fell for consideration of this Court in either of the abovementioned cases. However, in ***Venus Castings***, at para 9, a reference was made to Rule 96ZP and this Court observed that "Rules 96ZO and 96ZP provide for procedure to be followed by the manufacturer of ingots and billets and hot re-rolled products respectively. The scheme envisaged under these provisions is identical".

50. With utmost respect to the learned Judges, we find it difficult to accept the finding that the scheme of both the Rules is identical. There are broad similarities between the Rules but they are not identical and we shall point out and deal with the difference later.

51. In ***Venus Castings***, this Court held that both the abovementioned Rules contain scheme of "two alternative procedures to be adopted at the option of the assessee" and

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[15] Union of India & Others v. Supreme Steels and General Mills & Others, (2001) 9 SCC 645,

"Para 3. .. The manufacturer cannot opt twice during one financial year first choosing to pay in accordance with sub-rule 3 of Rule 96ZO and thereafter to switch over to actual production basis under Section 3A(4) of the Act, in case it is less than the duty payable under sub-rule 3 of Rule 96ZO. The said sub rule is quite clear that the option under it is available subject to the condition that once having opted for it, benefit if any under sub-s. (4) of Section 3A of the Central Excise Act, 1944 shall not be available. …"

concluded that "the manufacturers, if they have availed the procedure under Rule 96ZO(3) at their option, cannot claim the benefit of determination of **production capacity** under Section 3A(4) of the Act which is specifically excluded".

> *"11. … What can be seen is that the charge under the Section is clearly on production of the goods but the measure of tax is dependent on either actual production of goods or on some other basis. The incidence of tax is, therefore, on the production of goods. It cannot be said that collection of tax based on the annual furnace capacity is not relatable to the production of goods and does not carry the purpose of the Act. In holding whether a relevant rule to be ultra vires it becomes necessary to take into consideration the purpose of the enactment as a whole, starting from the preamble to the last provision thereto. If the entire enactment is read as a whole indicates the purpose and that purpose is carried out by the rules, the same cannot be stated to be ultra vires of the provisions of the enactment. Therefore, it is made clear that* ***the manufacturers, if they have availed of the procedure under Rule 96ZO(3) at their option, cannot claim the benefit of determination of production capacity under Section 3A(4) of the Act which is specifically excluded."***

Two things are required to be noticed from the above. This Court made references to Rule 96ZP in the earlier paragraphs of the judgment but when it came to the conclusion, it only dealt with Rule 96ZO(3) but not Rule 96ZP(3). Secondly, Section 3A(4) of THE ACT does not deal with the determination of the production capacity of the factory. It only deals with the right of the assessee to establish that notwithstanding the determination of the ACP, the **actual production** achieved is less than the ACP determined. The Court concluded "that if the entire enactment is read as a whole indicates the purpose and that purpose is carried out by the Rules, the same cannot be stated to be *ultra vires* of the provisions of the enactment."

52. With respect, we are of the opinion that such a statement of law has no basis either in precedent or on any settled principles of interpretation of statutes. On the other hand, it is in conflict with a long settled line of authorities that subordinate legislation which is in conflict with the parent enactment is unsustainable[16].

53. The decision in ***Supreme Steels*** was rendered by a Bench of three learned Judges. The vires of Rule 96ZO was directly in issue in ***Supreme Steels***[17]. This Court in ***Venus Castings*** noted[18] that "in these proceedings the validity of the provisions of the Rules is not in challenge but only their interpretation and application have to be examined". However, the learned Judges in ***Supreme Steels*** opined that the controversy was finally settled by the judgment of this Court in ***Venus Castings***.

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[16] Hukam Chand Etc. v. Union of India & Others, AIR 1972 SC 2427 : (1972) 2 SCC 601,

Para 8 …….The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same. The initial difference between subordinate legislation and the statute laws lies in the fact that a subordinate law making body is bound by the terms of its delegated or derived authority and that court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all the conditions precedent to the validity of the rules have been fulfilled (see Craies on Statute Law, p. 297, Sixth Edition).

Also See: Godde Venkateswara Rao v. Government of Andhra Pradesh & Others, AIR 1966 SC 828, para 10

[17] Vires of Rule 96ZO of the Central Excise Rules has also been challenged on the ground that it is inconsistent with the provisions of the Act. - Para 1

[18] In para 7

54. Apart from the various problems noticed by us in the abovementioned two judgments, there are marked differences in the language employed under Rule 96ZP(3) and the scheme appears to be different from the one adopted under the scheme of Rule 96ZO(3).

55. Rule 96ZO deals with levy, assessment and collection of excise duty on the manufacture of non-alloy steel ingots and billets. Duty on such goods is payable at the rate of Rs.750/- per metric tonne. Sub-rule (3) prescribes levy and collection of a lump sum of Rs.5 lakhs per month in cases of those manufacturers who have a total furnace capacity of three metric tonnes installed in their factories. However, such a scheme is available at the option of the assessee. In other words, a manufacturer has a choice to make a lump sum payment of Rs.5 lakhs, irrespective of his **actual production** for that month, in two instalments instead of paying the duty at the rate of Rs.750/- per metric tonne of the actual production of the manufacturer. Whether the capacity of three metric tonnes in the said sub-rule is the capacity of the factory per day or per month or per annum is not very clear from the language of the Rule. The expression does not appear to be defined under the Rules.

56. Coming to Rule 96ZP(3), it also provides an option to the assessee falling under the Rule to pay the duty at the concessional rate of Rs.300 per metric tonne contrary to the liability of the assessees who do not opt to avail the procedure under sub-rule (3) to pay Rs.400 per metric tonne. But both the classes of assessees are required to pay the total duty calculated on the ACP of the factory. While those who choose to pay the lower rate of tax under sub-rule (3) pay the tax every month and those who do not opt to avail the scheme under sub-rule (3) are required to pay tax long after duty actually falls due as indicated under sub-rule (1) and (2).

57. The only similarity between Rules 96ZO(3) and 96ZP(3) is that both the Rules seek to eliminate the benefit of the procedure under Section 3A(4) of THE ACT in cases of those assessees who choose to opt for levy and collection of excise duty in accordance with the sub-rules (3) which are exceptions to the general Rules of levy and collection of duties provided under Rules 96ZO and 96ZP.

58. Therefore, we find it difficult to accept the submission of the respondent that the issue is covered by the judgments of this Court in ***Venus Castings*** and ***Supreme Steels***. In our opinion, for the reasons mentioned above, these two judgments require a further examination. Apart from that, these judgments did not deal with *vires* of Rule 96ZP(3). However, in view of the fact that ***Supreme Steels*** is a decision rendered by a Bench of three learned Judges, we deem it appropriate that the question of law be settled by a Bench of an appropriate strength. We, therefore, direct the Registry to place the matter before Hon'ble the Chief Justice of India for further orders.

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SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

Go to Index Page

CWP NO. 18336 OF 2016

GOODYEAR INDIA LTD.
Vs
STATE OF HARYANA AND OTHERS

CHIEF JUSTICE S.J. VAZIFDAR AND ANUPINDER SINGH GREWAL, J.

20th March, 2017

HF ▶ Assessee

The department is directed to decide the amount of interest payable to the petitioners and pay the same on specified dates.

INTEREST – DIRECTION TO DEPARTMENT – INTEREST CLAIMED BY PETITIONER AMOUNTING TO RS 75 LACS ON ACCOUNT OF DELAYED PAYMENT OF REFUND FOR THE ASSESSMENT YEARS IN QUESTION – DEPARTMENT CONTENDS THE AMOUNT PAYABLE TO BE MUCH LOWER AMOUNT – WRIT FILED – DEPARTMENT IS DIRECTED TO DECIDE THE AMOUNT PAYABLE AND PAY THE SAME BY THE DATES SPECIFIED IN THE ORDER – ALSO, THE BASIS OF CALCULATION OF INTEREST IS TO BE COMMUNICATED TO THE DEPARTMENT – WRIT DISPOSED OF – *SECTION 43 OF HGST ACT, 1973*

Facts

The petitioners have demanded interest for the assessment years 1973-74 to 1977-78 and 1980-81 under the HGST Act. It is contended that the interest amounts to over Rs 70 lacs. However, the department concluded it to be Rs 29,39,238/- which is payable on account of delayed payment of refund. The decision of finance department is awaited.

Held:

The respondents are directed to take the decision regarding amount of interest 5/4/2017 and pay it by 17/4/2017. The respondents are also directed to communicate the basis on which the amount is computed. If higher interest is payable as per the petitioners they would be at liberty to file petition.

Present: Mr. Rajiv Agnihotri, Advocate for the petitioner.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

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S.J. VAZIFDAR, C.J.

1. The petitioners have demanded interest pursuant to several proceedings between the parties. The matter pertains to the assessment years 1973-1974 to 1977-1978 and 1980-1981 under the Haryana General Sales Tax Act, 1973. The petitioners contend that as per the various orders of the authorities under the Act, they are entitled to interest of an aggregate amount of over Rs.70 lacs. The respondents, however, had after filing of this petition come to the conclusion that amount of Rs. 29,39,238/- is payable on account of interest on delayed payment of refund to the petitioners. We are informed that the decision of the Finance Department is yet to be obtained before taking decision in this regard.

2. In the circumstances, the petition is disposed of by the following order :-

(i) The respondents shall latest by 05.04.2017 take a final decision regarding the amount of interest, which according to them is payable to the petitioners and pay over the same to the petitioners latest by 17.04.2017.

(ii) The respondents shall communicate to the petitioners in writing the basis on which they have computed the amount. The order shall, inter alia, deal with the contentions raised in this petition.

(iii) The petitioners shall be entitled to receive and appropriate the amounts determined as aforesaid but entirely without prejudice to their rights and contentions. If according to the petitioners a higher amount is payable, the petitioners shall be at liberty to file a petition including on the same grounds taken in this writ petition. The amount received by the petitioners shall be adjusted by them on account with the clarification that no further interest shall accrue on such amount from the date of its receipt thereof.

The petition is, accordingly, disposed of.

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SGA
LAW OFFICES

PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 274 OF 2015

R.D. ENTERPRISES
Vs
STATE OF PUNJAB

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

6th March, 2017

HF ▶ Revenue

Penalty for taking escape route and non reporting goods at ICC is upheld on account of admission by owner and facts of the case.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – ESCAPE ROUTE - GOODS VEHICLE INTERCEPTED – INVOICE AND GR PRODUCED - ADMISSION REGARDING ESCAPE ROUTE MADE BY OWNER AND DRIVER – PENALTY IMPOSED U/S 51 OF PVAT ACT – APPEAL BEFORE TRIBUNAL – ROUTE TAKEN BY DEALER FACTUALLY FOUND TO BE AN ESCAPE ROUTE – ADMISSION BY OWNER EVEN AFTER 10 DAYS OF DETENTION COULD NOT HAVE BEEN MADE UNDER PRESSURE – S 51(7) IS APPLICABLE AS MANDATORY PROVISION OF REPORTING AT ICC U/S 51(2) NOT COMPLIED WITH – CONTENTION THAT C FORM WOULD BE GIVEN TO SELLING DEALER OF HARYANA EVENTUALLY LEADING TO ACCOUNTING OF TRANSACTION IN BOOKS IS IRRELEVANT – PENALTY UPHELD AND APPEAL IS DISMISSED – *S. 51(7) OF PVAT ACT, 2005*

Facts

The goods were intercepted by the mobile wing officer when goods were being loaded by the owner/consignee. The driver and the owner admitted that they had adopted the escape route and entered the state from Haryana without declaring at ICC. Invoice and VAT D-3 were produced. After ten days of detention, he admitted in writing that he had deliberately adopted escape route. Penalty u/s 51 was imposed. An appeal is thus filed before Tribunal contending that provisions of S.51 are not applicable and that since VAT D 3 was issued and the selling dealer would necessarily be given C form, consequently, the transaction would not remain out of books. Also, that the dealer did not make any statement but had signed blank papers which might have been misused.

Held:

Factually, the appellant had adopted the escape route rather than the one which ought to have been adopted in the ordinary course. Also, admission regarding escape route had been made. Even after 10 days the same statement was made by the owner which could not have been made under any pressure. Had there been no intention to evade tax, escape route would not have been adopted.

The goods vehicle has to be reported at ICC in view of S. 51(2) by the person incharge of goods and goods vehicle which was not done.

Issuance of VAT D 3 has nothing to do with provisions of PVAT Act and goods had to be reported at nearest ICC .Since mandatory provisions have not been complied with, S. 51(7) is applicable.

The contention that since C forms would have been given to the selling dealer eventually leading to accounting in books is meritless as no one knows what the parties were speculating.

The appeal is dismissed.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith
Mr. Rohit Gupta, Advocate Counsel for the appellant.
Mr. B.S. Chahal, Deputy Advocate General for the State.

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

1. The Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala (herein referred as the Designated Officer), vide his order dated 27.8.2012, imposed a penalty to the tune of Rs.1,38,516/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005. The appeal filed against the said order was dismissed by the First Appellate Authority on 27.2.2015.

2. On 17.8.2012 at 12.30 AM, the driver Sh. Ravinder Kumar accompanied by the owner/consign.ee of the goods Sh. Ashwani Kumar while loading the electrical goods in vehicle No. PB-05R-6391 when checked by the Excise and Taxation Officer, Mobile Wing, Patiala at escape route i.e. Jamitgarh-Sarala-Ghanour, the driver disclosed that he had adopted escape route at the instance of his owner Sh. Ashwani Kumar, Proprietor of M/s R.D. Enterprises, Ferozepur. When Sh. Ashwani Kumar was confronted with the transaction, then he also admitted that he had adopted the escape route and entered into the State of Punjab from Haryana side without declaring the goods at any ICC in the State of Punjab. However, he produced the following documents:-

1. Invoice No. 3699 dated 16.8.2012 issued by M/s Lakshmi Traders, G.T. Road, Karnal in favour of M/s R.D. Enterprises, Ferozepur City for Rs. 2,77,032/-.
2. Form VAT D3 (valid for use during 2011-12 Challan Outward No.C-1518927 issued by M/s Lakshmi Traders, G.T. Road Karnal in favour of M/s R.D. Enterprises, Ferozepur City.

3. On examination of the documents and in view of the confessional statement made by the driver Sh. Ravinder Kumar as well as Sh. Ashwani Kumar, Partner of the consignee firm/The Detaining Officer detained the goods and forwarded the case to the Designated Officer who also issued notice U/s 51 (6) (b) of the Punjab Value Added Tax Act for 27.8.2012. On the said date, the appellant was directed to produce the said books of account and any other documents/evidence in support of the transaction. On the said date Sh. Ashwani Kumar appeared and was confronted with the genuineness of the transaction to which he failed to make any explanation, he also could not produce any regular books of account or other relevant documents. He had nothing to say as to why he had not declared the goods at the nearest ICC, while entering into the State of Punjab. However, he admitted in writing that he was entering into the State of Punjab and did not declare the transaction at any ICC and he had deliberately adopting escape route. Eventually, the Designated Officer vide his order dated 27.8.2012 imposed penalty to the tune of Rs.1,38,516/- U/s 51 (7) (c) of the Punjab Value Added Tax Act against the appellant. The appellant also failed to convince the Appellate Authority in the appeal filed by him.

4. Hence this second appeal.

5. I have heard the rival contentions and having gone through the record of the case. The counsel for the appellant has submitted that he had purchased the goods from Karnal dealer. The goods being in small quantity were loaded by him in his car. The Karnal dealer also issued VAT D3 as prescribed by Haryana Government. The transaction could not remain out of books of account because karnal dealer will insist "C" Form from the appellant. If, "C" Form issued the tax payable by him would be 2% and if "C" Form is not issued then it shall be liable to pay full tax @ 12%, therefore, the appellant was bound to deliver "C" Form. In that case, the transaction could not remain out of books of account qua the appellant also. The appellant is a works contractor, he was allotted work by northern railway. These goods were to be incorporated in the said works contract. Since the total price of the contract and its receipt are always taken into consideration by. the Assessing Authority at the time of assessment and 6% of the total sales are deducted at source which is considered as payment on any evasion of tax, therefore, provisions of Section 51 (7) (c) are not applicable at all. It was further contended that Sh. Ashwani Kumar did not make any statement regarding adoption of an escape route, however, he has signed blank papers, which might have been misused. The appellant also did not cross any ICC which may have fallen in his way while entering into the State of Punjab. Eventually, he had prayed for acceptance of the appeal.

6. To the contrary, the State Counsel has submitted that the formalities as provided U/s 51 of the VAT Act, 2005 relating to the evasion of tax are not Sheer formalities. The violation of such mandatory provisions must attract the penalty as envisaged under the Act, if the transactions are conducted while parting with the mandatory provisions of law, the statue itself would be rendered as waste paper, therefore it would be in the interest of business people to conform to the mandatory provisions of law. The issuance of Exim form by the State of Haryana from where the goods were purchased would not exonerate the appellant from complying of the provisions of Punjab Act while entering into the State of Punjab.

7. Having heard the rival contentions and having gone through the record of the case, admittedly, as per the statement of the driver, the appellant had purchased the goods against an invoice dated 16.8.2012 In the ordinary course, the appellant was to adopt karnal Ambala route in order to reach Ferozepur. However, he adopted the escape route i.e. Damitgarh-Sarala-Ghanaur and was apprehended at Sarala. The appellant had not disputed that he was apprehended at Sarala. Actually, the proper route to reach Ferozepur from karnal was to adopt the GT Road from Karnal upto Ludhiana. Then he was to go to Ferozepur through Moga. The Patiala was not to fall in the way. Not only Ravinder Kumar in his statement dated 17.8.2012 admits adopting of the escape route, but Sh. Ashwani Kumar in' his statement dated 27.8.2012 i.e. 10 days after the goods were intercepted also admitted that he had adopted the escape route and he also did not stop his car at any ICC to generate the information regarding transaction in question. A finger could be raised over the statement of Ravinder Singh that it may be result of coercion but the statement of Sh. Ashwani Kumar made after 10 days of the goods were intercepted, can't be said to be result of any pressure. As such no iota of doubt remains in my mind to hold that the appellant had adopted the escape route with intention to evade the tax. Had the appellant no intention to evade the tax, then he would not have adopted the escape route in this dread of night.

8. Now coming to the other issue with regard to the non generating of the information at the nearest ICC while entering into the State of Punjab, there is a specific provision U/s 51 of the Act that the carrier of the goods had to generate the information at the nearest ICC while entering into the State of Punjab. This Section 51 (2) would have to be complied with in letter and spirit by the person incharge of the goods and the goods vehicle while entering into the limits of the State of Punjab and he had to stop at the nearest check post or the Information Collection Centre in order to generate the information The issuance of the Exim form (Form D3) by the State of Haryana had nothing to do with the provisions of the Punjab VAT Act of 2005, which provides that when the appellant enters into the State of Punjab, he has to generate the information regarding the interstate transaction at the nearest ICC. The goods could only be part of the record of Punjab State if information regarding the same is generated at the ICC of Punjab. These mandatory provisions have not been complied with by the appellant in letter and spirit. The violation of such provisions would certainly attract the penalty. Similar view was taken in case of M/s Mohan Fibre Production Ltd., Derabassi Vs State of Punjab and others VATP-3/2007 (P&H) decided on March 9, 2010 and M/s REI Agro Limited, Amritsar Vs State of Punjab VATP-3/2010 decided on 9.3.2010.

9. I also do not find any merit in the contentions raised by the Counsel for the appellant that since the appellant had to supply the 'C' Form to the Karnal dealer, therefore, he could not keep the goods out of the account books, is without any merit as no body knows as to what the parties were speculating and how they managed for keeping the goods out of the account books, but the Tribunal in the given circumstances of the case has to observe that there was apparent violation of the mandatory provisions of law which would certainly attract the penalty. Having perused the orders passed by the authorities below, the same appear to be well reasoned and well founded and do not call for any interference at my end.

10. Resultantly, this appeal being devoid of any merit is dismissed.

11. Pronounced in the open court.

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SGA
LAW OFFICES

PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 340 OF 2015

SIBIA RICE MILLS
Vs
STATE OF PUNJAB

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

16th March, 2017

HF ▶ Revenue

Input tax credit disallowed on account of bogus purchases and documents pointing toward collusion with the selling firm.

INPUT TAX CREDIT – BOGUS PURCHASES – ITC DISALLOWED ON GROUND SO PURCHASES MADE FROM FIRM WHOSE RC STOOD CANCELLED – MATTER REMITTED BY TRIBUNAL TO INVESTIGATE IF GOODS ACTUALLY MOVED FROM SELLER TO BUYER CONSIDERING MOVEMENT OF VEHICLES WITH CONCERNED NUMBERS – VEHICLES FOUND NON-EXISTENT THEREBY RAISING OF DEMAND BY AETC – APPEAL BEFORE TRIBUNAL- DOCUMENTS FOUND INGENUINE AS GR AND VAT INVOICE FOUND IN SAME WRITING – ABSENCE OF ALLEGED TRANSPORT COMPANIES – KK FORMS PRODUCED TO PROVE TRANSACTION FOUND INCORRECT – SELLING DEALER NEVER APPEARED DESPITE BEST EFFORTS OF DEPARTMENT AS SUMMONS COULD NOT BE SERVED DUE TO NON EXISTENCE OF FIRM – NO KANDA PARCHI TO PROVE PURCHASES PRODUCED – ALL FACTS INDICATING CONNIVANCE AND COLLUSION WITH THE SELLING FIRM – APPEAL DISMISSED – *SECTION 13 OF PVAT ACT, 2005*

Facts

ITC was disallowed on account of bogus purchases made by the appellant from firm A whose registration certificate was cancelled. An appeal was thus filed before Tribunal whereby the Tribunal had remitted the matter for fresh assessment after verifying if goods had really moved from the seller to buyer. The AETC created an additional demand after due verification holding that the alleged numbers of the vehicles were actually non- registered. The KK forms were held to be fake. The selling dealer never appeared as summons could not be served as the firm was non -existent. No kanda parchi was submitted to prove purchases. Thus, second appeal is filed before Tribunal.

Held:

A perusal of documents shows that the appellant has manipulated the documents. The GR and VAT invoice appear to be the same as per writing appearing on them. The DTO has observed that there has been no movement of goods and the other vehicles shown are not goods vehicles thereby proving that there was no movement of goods. No effort is made by appellant to prove *existence of vehicles. The transport companies allegedly used do not exist. No weighment slip is produced. The KK forms produced are found to be fake.*

Thus, there appears to be connivance of the appellant along with the selling dealer fully knowing that its RC was going to be cancelled. Thus, no ITC could be claimed on bogus purchases.

Non appearance of selling dealer despite best efforts made by the department is taken in to account indicating collusion of the two parties.

The appeal is dismissed.

Present: Mr. K. L. Goyal, Sr. Advocate alongwith
Rohit Gupta, Advocate counsel for the appellant.
Mr. B.S. Chahal, Dy. Advocate General for the State.

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

1. Assailed. In this appeal is the order dated 15.5.2015 passed by the First Appellate Authority, Patiala Division, Patiala, dismissing the appeal of the appellant against the order dated 25.9.2013 passed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, Sangrur creating additional demand to the tune of Rs.2,50,700/- under the Punjab Value Added Tax Act, 2005.

2. The assessment for the year 2010-11 relating to the appellant was originally framed by the Excise and Taxation Inspector-cum-Designated Officer on 19.9.2012. The Designated Officer while framing the said assessment disallowed the ITC amounting to Rs. 69,350/- regarding the purchases made by the appellant from M/s Radha Food Industries Chhajli Sunam amounting to Rs. 17,33,740/-. On the ground that the registration certificate of the selling dealer was cancelled on 14.9.2011, the appellant, in collusion with the selling dealer, got issued the bogus invoices in order to claim the bogus ITC. The transactions were fake in as much as the movement of goods could not be proved. The appeal filed by the appellant against the said order was dismissed. However, the Tribunal, vide order dated 17.5.2013 accepted the appeal of the appellant and remitted the case back to the the Assistant Excise and Taxation Commissioner-cum-Designated Officer, Sangrur to frame fresh assessment in accordance with law after verifying whether or not the trucks of which the numbers have been mentioned In the invoices are existent/non existent/ or the goods have actually been moved from M/s Radha Food Industries Chhajli Sunam to the premises of the appellant assessee. The relevant extract of the order is reproduced as under:-

> *"In view of the above discussion, the orders passed by both the authorities below are set-aside and this matter is sent to the AETC, Sangrur to frame fresh assessment in accordance with law after verifying "whether or not the trucks, of which the numbers have been mentioned in the invoices are existent/non-existent and/ or the goods have actually been moved from M/s Radha Food Industries, Chhajli, to the appellant-assessee?" The request, if any, made by the appellant-assessee for cross-examination of the seller, shall be considered in the light of the earlier decisions of this Tribunal, being relied upon by the appellant-assessee. The matter shall be disposed off within three months from the date of receipt of the certified copy of this order. Accordingly, this appeal is disposed off.*
>
> *Pronounced in the open court,*
>
> *Chandigarh, dated the* *Sd/-*

17th May, 2013 *(Justice Harbans Lal)*
Chairman, VAT Tribunal, Punjab"

3. Pursuant to this order, the Assistant Excise and Taxation Commissioner conducted the investigation and on the basis of the report made by the DTO of Sangrur, he observed as under:-

> *"The report of DTO office has made it evident that the vehicles shown in the transactions are not goods vehicles hence actual movement of goods did not take place. Since the above claimed goods vehicles indeed do not exist, therefore, these transactions are mere paper transactions and are made to create ingenuine/bogus ITC. This exercise has been completed with the connivance of both seller and purchaser. In view of the above factual position, the entire ITC claimed on the basis of bogus/ paper transactions is rejected.*
>
> *In view of the above authoritative report, facts & circumstances of the case and as no business activity has taken place, the claim of ITC on entire **"in question"** purchases is found to be bogus and hence is rejected."*

4. Consequently, the Assistant Excise and Taxation Commissioner vide order dated 25.9.2013 created additional demand to the tune of Rs.2,50,700/- against the appellant. The appeal filed by the appellant against the aforesaid order was dismissed by the First Appellate Authority on 15.5.2015 the relevant part of the order reads as under:-

> *"I have perused the record of the case. As directed in the remand order, the DO has tried to verify the status of vehicles allegedly involved in transaction of concerned goods through the office of DTO Sangrur As per report of the DTO, verification of only one vehicle was possible which was not found to be registered meaning thereby that fake RC number was mentioned. Further, the appellant had produced 'KK Forms' allegedly issued by Market Committee Dhuri, showing payment of Rural Development fund and Market Fees by the seller on his purchases of concerned goods. These forms were produced by the appellant as a proof for genuineness of his purchases from the seller. But as per verification report of Market Committee, Dhuri, these forms were never issued by it and actually all these forms were bogus certificate. All these facts show that claims of the appellant were not genuine and question of movement of goods from the premises of seller/dealer to the premises of purchasing dealer does not arise. Hence, documents i.e. GRs and Invoices showing transportation of goods through so called vehicles are also bogus, as even report from the DTO, Sangrur office never stated that status of other vehicles was genuine. Further, record shows..that summons were Issued for cross verification to the seller firm i.e. M/s Radha Food Industries, Chajjli, Sunam for appearance on 19.8.2013, but the summons could not be served due to non-existence of the firm. Summons were also served through substituted service I.e. registered post, but could not be served due to the non-existence of the firm. The firm even did not submit any Kanda Parchi/weighment slip against these purchases. All these facts prove that the appellant has claimed ingenuine ITC as no actual purchases/sales have taken place."*

5. Hence this second appeal.

6. In order to assail the findings returned by the authorities below, the Counsel for the appellant has contended that the appellant is a registered dealer so as M/s Radha Food Industries, Chajjli, who was a selling dealer. The case relates to the assessment year 2010-11, the appellant paid the tax to the said selling dealer, therefore, In the light of the judgment delivered by the Hon'ble Punjab and Haryana High Court in case of M/s Gheru Lal Balchand Vs. State of Haryana, the tax was to be recovered from the selling dealer. It was also argued that Hon'ble Tribunal, while remanding the case to the Assessing Officer, had noticed that both. the firms are assessed in one District and therefore, the assessment should be framed by the Assistant Excise and Taxation Commissioner. The Assistant Excise and Taxation Commissioner was obliged to take notice of the findings made by the Tribunal and should have assessed the present appellant as well as the selling dealer simultaneously. The appellant had made a request for cross examination of the selling dealer but the latter failed to appear before the Assistant Excise and Taxation Commissioner as he had closed the business. It was also contended that the report of the DTO is not valid and it was only for few vehicles, therefore such report could not be placed reliance. The Counsel has also disputed imposition of penalty and interest while arguing that since the selling dealer had deposited K.K.Forms in respect of the sales, therefore, the sales should not have been doubted.

7. To the contrary, the State Counsel has urged that the process for cancellation of the registration certificate relating to M/s Radha Food Industries, Chajjli is pending decision and the same was in the notice of the appellants, therefore, the appellant with the connivance of M/s Radha Food Industries exploited the situation and got issued the invoices of the huge value of Rs. 17,33,740/- within two days i.e. 28.12.2010 and 29.12.2010. The VAT invoices, the GRs and the gate passes produced on the record reveal their date as 28.12.2010 and 29.12.2010 and they appear to have been prepared at one time. The selling dealers did not deposit the tax. The appellants got manipulated such documents without physical movement of goods and showed the bogus purchases with the intention to earn the ITC for which he was actually not entitled, therefore, the demand created by the department was justified.

8. Arguments heard. Record perused.

9. As regards, the VAT invoices, GRs and Gate passes as issued by M/s Radha Food Industries and the transporters respectively speak for themselves that these are the false documents as manipulated by the appellant in connivance with the selling dealers. If a close look is given to these documents, then necessary conclusion could easily be drawn that these documents were prepared in one and the same handwriting by introducing two dates i.e. 28.12.2010 and 29.12.2010. The author of the VAT invoices is the same who had issued the GRs. Though, it has been projected that the GRs were issued by Krishna Transport Company Chhajli and Jai S.S.Trallor operators Union, Sunam. Vet the forms of GR books of two transporters i.e. Jai S.S.Traiior Operators, Sunam as well as Krishna Transport Company are in no way dissimilar which proves the collusion, connivance and forgery and are not sufficient to establish about the actual sale transaction between the purchasing dealer and selling dealer.

10. As regards, the movement of goods worth Rs. 17,33,740/- from the premises of M/s Radha Food Industries, Chajjli, Sunam to the premises of the appellant. The DTO, Sangrur vide letter No. 2488 dated 18.9.2013 observed that the following vehicle were not found registered in his office:-

S.No.	Vehicle NO.	Type shown in transaction	Type of vehicle as per report	Value of goods	Date of transaction
1.	PB28F8234	Truck	Not Registered	191838/-	29.12.2010

11. The DTO further reported that the other vehicles shown in the transaction are not the goods vehicles hence the actual movement did not take Place.

12. On the aforesaid basis, the Assessing Authority was justified in holding that since the goods vehicles as claimed by the appellant to have been used in carrying the goods did not exist, therefore, the appellant appears to have indulged into forging documents with the connivance of M/s Radha Food Industries Chhajli with a motive to create ingenuine/bogus ITC. The appellant did not make any effort to confront the DTO office with the report and also could not lead any such rebuttal evidence in order to prove the existence of the vehicles involved in the transactions. The onus to prove the genuineness of the transactions was upon the appellant but they have failed to shift the onus. On the verification of the transport companies it was revealed that no such companies exist in the area to carry out the business of transport.

13. The appellant also failed to bring on record any weighment slips qua the purchases. The appellant has tried to take support of 'KK' Forms In order to prove the genuineness of the transactions. 'KK' form Is a declaration issued by the seller to the purchaser as a proof of the payment of RDF and market fee paid by the seller on self purchases and is issued under Rule 29 of the Punjab Agricultural Produce Market (General) Rules, 1962 which is reproduced as under:-

> *"29. Levy and collection of fees on the sale and purchase of agricultural produce:-*
>
> *1 (1) Under section 23 a committee shall levy*
>
> *(i) fees on the agricultural produce bought or sold by licensee; and*
> *(ii) ____________________*
>
> *2 [provided that no fee shall be levied on the agricultural produce bought or sold in respect of which such fee has already been paid in the same or any other notified market area within the State.* ***The licensee dealer who claims exemption from payment of fee shall make declaration and given certification to that effect in Form 'KK' within a period of thirty days of the transaction of agricultural produce in question to the Committee from where the exemption is claimed];***
>
> *The certificate in Form 'KK' shall be prepared In quadruplicate from the book-let, duly attested and issued by the Secretary of the concerned committee or its authorized officer, against the payment, fixed by the committee. It shall be the duty of the dealer, claiming exemption from the payment of fee to send the original copy of form 'KK' to the committee within whose market area the agricultural produce is brought. The second copy shall be sent to the office of the committee within whose market area such agricultural-produce is bought and the third copy shall be retained by the dealer, who purchased the agricultural produce and the fourth copy shall be retained by the dealer who sold the agricultural produce and. the same shall be kept as a part of their accounts, maintained In respect of payment of the fee. The certificate referred to above 'KK' form was submitted by the firm as a proof in support of its claim of genuine purchases made from M/s Radha Food Industries, Chhajli, Sunam wherein it has been stated that RDF & Market Fee are duly paid on these purchases. This certificate is duly stamped & signed by the officials of market committee. The said K.K. Form was subjected to the verification. On verification, the Secretary Market Committee, Sunam vide his report dated 18.9.2013 has verified that the details mentioned in the form are incorrect as per record therefore, it is established that claim of the dealer regarding sale and purchases and subsequently depositing market fee and RDF is bogus and fictitious. Since, the documents i.e. GR's and invoices showing transportation of goods through so called vehicles are also bogus, therefore, the question of movement of goods does not arise.*

Net conclusion which can be arrived is that the appellant firm Indulged in nefarious activities and .got manipulated the documents from the selling, dealer knowing fully well that his registration certificate was going to be cancelled. The judgment passed in case of M/s Gheru Lal Balchand Vs. State of Punjab is not applicable to the facts of the present case, rather It is observed that on the basis of such sales, which are result of collusion, connivance and fraud, no ITC could be claimed.

ITC can be allowed against the bonafide transactions, the onus to prove of which lies on the taxable person as per section 13(14) & 13 (15) of PVAT Act 2005 which are reproduced as under:-

14) If upon audit or cross verification or otherwise, it is found that a taxable person has made a false input tax credit claim, the Commissioner or the Designated Officer, as the case may be, shall order for recover/ of whole or any part of such input tax credit, as the case may be, without prejudice to any action or penalty provided for in this Act.

15) <u>The onus to prove that the VAT invoice on the basis of which, input tax credit is claimed, is bonafide and is issued by a taxable person, shall lie on the claimant."</u>

14. The firm has claimed ITC of Rs.69350/- on purchases of Rs.1733740/- made from M/s Radha Food Industries, Chhajli, Sunam, as such the onus to prove that the sale and purchase transactions made by the appellant were genuine was upon the appellant but he has failed to shift the onus. Thus, it would be concluded that the ITC claimed on account of purchases made from M/s Radha Food Industries is proved to be bogus, hence TTC is rejected.

<u>Penalty under Section 56 of PVAT Act, 2005:-</u>

15. Since the Hon'ble Tribunal remanded the case only for verification and to find out as to whether the goods had been actually moved or not and also find out if the vehicles as mentioned by the appellant were used for transporting the goods, the detailed verifications/enquiries were conducted from the office of DTO Sangrur, and regarding the validity of "KK" forms, from the secretary, Market Committee, Dhuri, from where it was revealed that the vehicles as mentioned are not goods vehicles and actual movement of goods have never taken place. The "KK" forms also contain in correct particulars and are invalid, consequently the claim of ITC was found to be bogus, therefore, the appellant is liable for penal action u/s 56 of Pb. VAT Act 1956.

16. As regards, the argument with regard to providing opportunity to the appellant for cross examination the representative of M/s Radha Food Industries, it may be observed that since selling dealer/ Purchasing dealer were hand in glove with each other therefore the selling dealer did not appear before the Assessing Authority despite the best efforts made by the department. Had the appellant been true to his version then he would have called the representative of M/s Radha Food Industries to prove the genuineness of the transactions. As regards, the disposal of the case relating to Industries alongwith the appellant, no such direction was issue to do so. Even otherwise, since the firm was closed and the partners of the firm were not available, therefore, it being a time consuming process, the Assessing Authority was not supposed to weight and delay the decision of this case. As such, the non decision of the case relating to M/s Radha Food Industries by the Assessing Authority at the same time hardly effects the decision of the present case.

17. No other argument has been advanced.

18. Resultantly, this appeal being devoid of any merit is dismissed.

19. Pronounced in the open court.

HARYANA TAX TRIBUNAL

Go to Index Page

STA NO. 08 OF 2014-15

JAGDAMBA TIMBERS PVT. LTD.
Vs
STATE OF HARYANA

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

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

10th March, 2017

HF ▶ Revenue

Appeal cannot be re argued on merits in the garb of Review.

REVIEW – MAINTAINABILITY OF – REVIEW APPLICATION FILED CONTENDING THAT SOME GROUNDS HAD ESCAPED ATTENTION OF TRIBUNAL – CONTENTION RAISED THAT TRIBUNAL ERRED IN HOLDING IT AS AN INTERSTATE SALE AND DID NOT CONSIDER THAT TAKING OF DIFFERENT ROUTE/ LONGER ROUTE COULD NOT BE A GROUND OF IMPOSITION OF PENALTY – HELD: BOTH CONTENTIONS ARE UNTENABLE AND DO NOT PERMIT REVIEW- APPLICATION IS MERITLESS – APPLICATION DISMISSED – *SECTION 36 OF HVAT ACT, 2003*

Facts

A review application is filed by the appellant contending that some of the grounds of appeal have escaped attention of Tribunal and that the order suffers from mistake apparent on record. The contention mentioned in appeal that taking of longer route is held to be a ground of evasion of tax is pleaded to have escaped discussion. Also, that finding of interstate sale is erroneous as VAT D-3 outward is mentioned by tribunal though VAT D-3 inward was accompanying the goods.

Held:

Both the contentions are untenable and are not permissible for review. No ground of review is found. Thus, review application is misconceived and is meritless.

Present: Sh. A.K. Sachdeva, Advocate and Ms Ayushi Sachdeva, Advocate
Counsel for the review-applicant.

Sh. S.K. Saini, JD(L) for the State-respondent.

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

1. This review application has been filed by assessee-appellant M/s Jagdamba Timbers Pvt. Ltd., Imambar Sadar Bazar, Karnal for review of order dated 30-1-2014 of this Tribunal whereby appeal STA No. 120 of 2013-14 filed by the assessee was dismissed.

2. The assessee had filed second appeal in the matter of imposition of penalty under Section 31(8) of the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act).

3. We have heard counsel for the review applicant and State Representative and perused the case file.

4. The only ground pleaded for review in the review application is that some of the grounds set up in the grounds of appeal, which were vital in nature, have escaped attention of the Tribunal resulting in miscarriage of justice, besides pleading general ground of review that the order suffers from a mistake apparent on record. However, neither the grounds of appeal allegedly omitted and not dealt with in the impugned order of the Tribunal have been specified in the review application nor alleged mistake apparent on record has been mentioned in the application.

5. During the course of hearing, counsel for the review- applicant referred to ground No 3 in the grounds of appeal at page No. 6 of the appeal to contend that the said ground has not been discussed in the impugned order. The contention is untenable because diversion of the vehicle to a different and longer route has been held to be a ground for holding that there was intention to evade the tax. The documents accompanying -the goods might be genuine, but the same did not tally with the route on which the goods were being carried. Counsel for the review-applicant also contended that the Tribunal has referred to VAT- D-3(outward) form also although VAT-D-3 (inward) form was accompanying the goods and thus finding of interstate sale is erroneous. The contention regarding VAT-D-3(outward) form is untenable because the Tribunal has observed that on the basis of inward form, the goods should have been brought in Haryana and fresh documents including outward form should have been issued.

6. In addition to the aforesaid, counsel for the review-applicant was arguing the case as if he was arguing the appeal itself. That is not permissible in the review jurisdiction.

7. We find no ground for review of impugned order of the Tribunal within the limited scope of review jurisdiction. The review application is completely misconceived and meritless and is accordingly dismissed.

SGA
LAW OFFICES

HARYANA TAX TRIBUNAL

Go to Index Page

STA NO. 397 OF 2015-16

MAA BHAGWATI RICE MILLS
Vs
STATE OF HARYANA

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

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

15th March, 2017

HF ▶ Assessee

No Interest is to be levied on excess amount refunded to assessee when excess carry forward amount is already available to it for adjustment of demand raised.

INTEREST – REVISION – PERIOD FOR LEVY OF INTEREST – REVISION OF ASSESSMENT ORDER-DEMAND RAISED ON ACCOUNT OF REFUND GRANTED AT EXCESS RATE OF 5% INSTEAD OF 4% - INTEREST LEVIED FROM DATE OF ASSESSMENT ORDER INSTEAD OF DATE OF PASSING OF REVISIONAL ORDER – APPEAL FILED CHALLENGING LEVY OF INTEREST – HELD: EXCESS AMOUNT CARRY FORWARD COULD HAVE BEEN ADJUSTED TOWARDS DEMAND CREATED BY REVISIONAL AUTHORITY- INTEREST COULD NOT HAVE BEEN LEVIED AS EVEN AFTER ADJUSTMENT, EXCESS CARRY FORWARD WAS LEFT – ALSO, INTEREST IS LEVIABLE FROM DATE OF ORDER OF REVISIONAL AUTHORITY AND NOT FROM AN EARLIER DATE IN CASE DEMAND IS FIRST CREATED BY REVISIONAL AUTHORITY- APPEAL PARTLY ALLOWED SETTING ASIDE LEVY OF INTEREST – *SECTION 32 OF PVAT ACT, 2005*

The Revisional Authority found that the Assessing Authority had wrongly allowed ITC @5% instead of 4%. An additional demand was thus created along with levy of interest on the amount that had been refunded to assessee for the period from August 2013 (date of order of assessing authority) till October 2015 (date of impugned order of Revisional Authority). Aggrieved by the order an appeal is filed before Tribunal contending that there was excess ITC carry forward and the difference could have been adjusted from that excess amount.

Held:

Even after the amount was refunded to assessee as per assessment order of Assessing Authority, assessee was left with huge amount as Excess Carry Forward. The amount of difference in rate of ITC as found by Revisional Authority could have been adjusted easily out of the Excess Carry Forward amount. Even after adjustment there would have been a huge amount left as Excess Carry Forward thereby negating requirement of levy of interest on additional demand so created as additional demand could be adjusted out of Excess Carry Forward.

Also, as per judgments passed by High court of Punjab and Haryana, if additional demand is created for first time by Revisional Authority, then interest there on shall be leviable from date of order of Revisional Authority and not from an earlier date. Thus, demand of interest from date of its impugned order is unsustainable.

The appeal is allowed partly to the extent of setting aside demand of interest.

Present: Mr. Avneesh Jhingan, Advocate Counsel for the Appellant.
Sh. N.K. Gupta, J.D.(L) Counsel for the State.

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

1. This appeal has been filed by assessee M/s Maa Bhagwati Rice Mills, Kaithal to impugn order dated 16-10-2015 of Revisional Authority, Kaithal. The Revisional Authority has found that the Assessing Authority vide order dated 19-08-2013 wrongly allowed Input Tax Credit (ITC) at the rate of 5 % instead of the correct rate of 4 %. Consequently, the Revisional Authority created additional demand of Rs. 78,762/- due to difference of 1% in the rate of ITC. Besides it, the Revisional Authority has also levied interest of Rs. 39,381/- for the period from August, 2013 (dated of order of Assessing Authority) till October, 2015 (dated of impugned order of Revisional Authority).

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

3. Counsel for the appellant did not challenge the impugned order regarding demand of Rs. 78, 762/- on account of difference of 1% in the rate of ITC. However, counsel for the appellant challenged the demand of interest amount of Rs.39,381/- contending that there was excess carry forwarded (ECF) of Rs. 15,76,934/- as per assessment order and, therefore, the difference amount of Rs.78,762/- could be adjusted out of the said ECF amount.

4. State Representative contended that besides aforesaid ECF amount, the Assessing Authority also allowed refund of Rs.781296/- and demand of Rs.78,762/- created by Revisional Authority due to differences in rate of ITC pertains to the said refund amount which already stands refunded to the assessee and, therefore, interest has been rightly levied by the Revisional Authority.

5. We have carefully considered the matter. We find force in the contention of counsel for the appellant. Even after amount Rs.781296/- was refunded to the assessee as per assessment order of the Assessing Authority, the assessee was still left with huge amount of Rs. 15,76,934/- as ECF. Small amount of Rs.78,762/- on account of difference in the rate of ITC as found by the Revisional Authority could be easily adjusted out of the aforesaid ECF amount. Even after said adjustment, the assessee would still have been left with huge ECF amount of Rs.14,98,172/-. Consequently, if the assessee was still left with ECF amount, interest could not be levied on the additional demand created by the Revisional Authority because the amount of additional demand could be adjusted out of ECF amount.

6. The matter may also be examined from another angle. It has been well settled by the this Tribunal as well as by Hon'ble High Court of Punjab and Haryana that if additional demand is created for the first time by Revisional Authority, then interest thereon shall be leviable from the date of order of the Revisional Authority and not from an earlier date. Consequently interest amount levied by the Revisional Authority upto date of its impugned order is completely unsustainable.

6. Contention on behalf of the State that refund amount would have been lesser if ITC had been allowed at correct rate by the Assessing Authority and, therefore, interest is leviable on the amount wrongly refunded as found in the impugned order, can not be accepted for the two reasons mentioned hereinbefore.

7. Resultantly, this appeal is allowed partly. Impugned order dated 16-10-2015 of the Revisional Authority is set aside partly to the extent of levying interest of Rs.39,381 /-.

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SGA LAW OFFICES

HARYANA TAX TRIBUNAL

Go to Index Page

STA NO. 73 TO 78 OF 2015-16

RMI METALS PVT. LTD.
Vs
STATE OF HARYANA

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

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

13th February, 2017

HF ▶ Assessee

Wrong method of calculation adopted by Revisional authority in respect of tax deferment/ concession scheme is set aside.

TAX DEFERMENT – CALCULATION METHOD - BENEFIT OF TAX DEFERMENT/ CONCESSION SCHEME AVAILED – DEDUCTION OF 50% OF TOTAL TAX ALLOWED BY ASSESSING AUTHORITY FOLLOWED BY ALLOWING REBATE UNDER HGST ACT AS PER THE SCHEME – REVISIONAL AUTHORITY FOLLOWING A DIFFERENT METHOD ALLOWED NO DEDUCTION UNDER HGST ACT BUT ALLOWED DEDUCTION UNDER CST ACT AFTER ADJUSTING EXCESS TAX PAID UNDER HGST ACT THEREBY CREATING ADDITIONAL DEMAND – APPEAL FILED CHALLENGING THE METHOD OF CALCULATION OF REVISIONAL AUTHORITY – HELD: METHOD FOLLOWED BY ASSESSING AUTHORITY IS RIGHT IN VIEW OF RULE 28C (5)(a) OF RULES WHILE REVISIONAL AUTHORITY IS WRONG – ENTIRE TAX AMOUNT BEFORE ADJUSTING REBATE HAS TO BE TAKEN INTO ACCOUNT AND TAX PAYABLE INCLUDING TAX COMPONENT TO BE CONVERTED INTO SUBSIDY IS TO BE CONSIDERED FOR PURPOSE OF CALCULATION OF BENEFITS – APPEAL ACCEPTED – *RULE 28C(5)(a) OF HGST RULES, 1975*

Facts

The assessee was availing benefit of tax deferment/concession scheme under Rule 28C of HGST Act according to which half the tax would be paid by assessee and balance half was to be retained as capital of subsidy from the state.

The Assessing Authority allowed deduction of 50% of tax liability and then allowed rebate under HGST Act. The Revisional authority allowed no deduction of 50% under scheme under HGST Act but allowed deduction of 50% under CST Act after adjusting excess tax paid under HGST Act and thus created additional demand under CST Act. It is against the order of Revisional authority that appeal is filed contending that the method of calculation followed is wrong.

Held:

Perusal of Rule 28 C (5)(a) of the Rules shows that method of calculation of concession adopted by assessing authority was correct and one followed by revisional authority is wrong.

The said concession has to be allowed on gross tax payable under both Acts i.e. HGST Act and CST Act. Explanation I below Rule 28C(5)(a) of Rules states that for the purpose of calculation of benefits availed of , tax payable including the component of tax to be converted into subsidy shall be taken into account. Thus the entire tax amount before adjusting rebate has to be taken into account for calculation of the benefit under the scheme.

Thus, appeal is accepted.

Present: Mr. Sandeep Goyal, Advocate counsel for the appellant.
Sh. Dinesh Bajaj, District Attorney 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 Nos. 73 to78 of 2015-16 filed by the same assessee M/s RMI Metals Pvt. Ltd. (now RMI Enterprises Pvt. Ltd.), Village Liwaspur Distt. Sonepat for assessment year 2000-01, 2001-02 and 2002-03. For each assessment year, there are two appeals - one under the Haryana General Sales Tax Act, 1973 (in short, the HGST Act)/the Haryana Value Added Tax Act, 2003 (In short, the HVA T Act) and the other under the Central Sales Tax Act, 1956 (in short, the CST Act). The appeals have been preferred against three orders dated 12-03-2007 passed separately for the three assessment years by Revisional Authority, Sonepat.

2. The assessee-appellant was availing benefit of Tax Deferment/Consession Scheme (in short, the Scheme) under rule 28C of the Haryana General Sales Tax Rules, 1975 (in short, the Rules) framed under the HGST Act. According to the Scheme, half of the tax amount was to be paid by the assessee and the balance half was to be retained by the assessee as capital subsidy from the State. The dispute relates to the method of calculation of concession and tax liability under the Scheme. The Assessing Authority allowed deduction of 50% of the tax out of total tax liability and then allowed rebate under the HGST Act (now called input tax credit i.e. ITC under the HVAT Act). The Revisional Authority, however, allowed no deduction under the Scheme out of tax under the HGST Act and allowed deduction of 50% under the Scheme under the CST Act after adjusting the excess tax paid under the HGST Act and thus created additional demand under the CST Act.

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

4. Counsel for the appellant contended that the Assessing Authority adopted correct method of calculation of concession under the Scheme and found excess tax paid by the assessee which, however, is not refundable under the Scheme. It was contended that the Revisional Authority adopted wrong and erroneous method of calculation of concession under the Scheme which is completely contrary to the Scheme. In this regard, reference was made to rule 28C (5)(a) of the Rules read with Illustration thereunder. It was contended with reference to order of Revisional Authority for assessment year 2002-03 as instance that no deduction of 50% of tax liability to be granted under the Scheme has been granted by the Revisional Authority under the HGST Act at all and the said deduction under the CST Act has been allowed after-adjusting the excess tax amount paid under the HGST Act although the said deduction should have been allowed on the total tax liability under both the Acts before adjusting rebate/ITC claim/excess tax paid, is evident from bare reading of rule 28C (5)(a) of the Rules read with Illustration thereunder. Reference was also made to judgment dated 25.07.2014 of Hon'ble Punjab and Haryana High Court in VAT AP No. 48 of 2012 M/s Sonex Auto Industries P. Limited, Bahadurgarh V/s State of Haryana and others wherein 50% concession under the Scheme was held to be allowed before excluding ITC amount under the HVAT Act.

5. On the other hand, District Attorney for the state defended the impugned orders of the Revisional Authority. Reference was also made to Explanation I below rule 28 C (5)(a) of the Rules as mentioned in the impugned orders.

6. We have carefully considered the matter. Before proceeding further, it would be appropriate to extract relevant part of rule 28C (5)(a) of the Rules alongwith Explanation I and Illustration below it, as under:-

> *"(5)(a) Subject to other provisions of this rule, an eligible industrial unit (except a prestigious unit) holding a valid entitlement certificate shall be entitled to the concession of deferment of payment of sales tax including central sales tax and conversion of the same to capital subsidy, computed on the sale of goods (including bye-products and waste) manufactured by the unit or arising from the process of manufacturer and declared in the sales tax returns filed by the unit, without taking into account the rebate admissible under section 15-A or the rules framed under the Act, at the scale, subject to the time limit and the extent related to the fixed capital Investment (FCI) as tabulated below-*
>
> ....
>
> ....
>
> *and the unit shall be required to pay only the balance of tax after deducting the rebate and the capital subsidy plus any purchase tax payable at its hands but no refunds of any amount of tax paid shall accrue to the unit by operation of these provisions.*
> *Explanation I. - For the purpose of calculation of benefits availed of under the rule, tax payable including the component of tax to be converted into subsidy shall be taken into account."*
>
> *"Illustration - Owner of a unit purchased goods worth Rs. 1000 locally from Haryana and used them in manufacture of goods which he sold for Rs. 2500. He paid Rs. 20 as tax at the time of purchase of goods which were taxable at the first stage and Rs. 30 became payable by him on other goods taxable at the last stage. The tax payable on sale of manufactured goods is Rs. 120.*
>
> *The scale of concession admissible to him is 50%. He is entitled to defer the payment of Rs. 60 (50% of Rs.120) and retain the same as capital subsidy from the State. He is required to pay Rs.30 as purchase tax (same as in a normal case) and Rs. 10 as sale tax (Total sale tax: Rs.120 minus capital subsidy: Rs, 60 minus rebate admissible Rs. 50) in the Government treasury."*

7. A bare perusal of the aforesaid provision leaves no room for doubt that method of calculation adopted by the Assessing Authority was correct and method of calculation adopted by the Revisional Authority in the impugned orders is patently perverse, wrong, erroneous and contrary to the aforesaid provisions of the Scheme. According to plain and categorical language of the aforesaid provisions, the concession for the deferment of the tax has to be allowed without taking into account the rebate admissible under section 15A of the HGST Act (now ITC under Section 8 of the HVAT Act). The said concession has to be allowed on gross tax payable under the both the Acts i.e. the HGST Act and the CST Act. However, the Revisional

Authority in the impugned orders has not allowed the concession of 50% in the tax amount under the HGST Act at all and has allowed the said concession under the CST Act after adjusting the excess amount under the HGST Act and not on the total tax amount under the CST Act. Thus method of calculation applied by the Revisional Authority in the aforesaid manner in the impugned orders is completely illegal and unsustainable being contrary to the express provisions of the Rules quoted above. Illustration below rule 28 C (5)(a) of the Rules further makes the position very clear. The said Illustration fully supports the contention of counsel for the appellant. Explanation I below rule 28C (5)(a) relied on by the State also helps the assessee. It categorically states that for the purpose of calculation of benefits availed of under the rule, tax payable including the component of tax to be converted into subsidy shall be taken into account. Thus the entire tax amount before adjusting any rebate or excess amount has to be taken into account for calculation of the benefit under the rule/Scheme.

8. For the reasons aforesaid, we find that impugned orders of the Revisional Authority are completely illegal and unsustainable and are, therefore, set-aside. All the six appeals stand allowed accordingly.

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SGA
LAW OFFICES

CLARIFICATION (HARYANA)

Go to Index Page

ORDER OF CLARIFICATIONA MADE BY SHRI SANJEEV KAUSHAL,
ADDL. CHIEF SECRETARY TO GOVERMENT,
HARYANA, EXCISE & TAXATION DEPARTMENT
UNDER SECTION 56(3) OF THE
HARYANA VALUE ADDED TAX ACT, 2003

QUERIST: JASCH PLASTICS

21st March, 2017

Non woven fabrics are not textiles and do not fall under Entry 51 of schedule B of the HVAT Act.

ENTRIES IN SCHEDULE – NON-WOVEN FABRIC - CLARIFICATION – NON WOVEN FABRIC- CLARIFICATION SOUGHT REGARDING RATE OF TAX – NON WOVEN FABRIC IS NOT TEXTILE AS IT DOES NOT INVOLVE WEAVING PROCESS – THUS, IT IS NOT CLASSIFIABLE UNDER ENTRY 51 OF SCHEDULE B OF THE ACT – IT IS NOT EXEMPTED AND IS LIABLE TO BE TAXED @12.5% - *ENTRY 51, 52 OF SCHEDULE B HVAT ACT, 2003.*

Facts
The applicant is a manufacturer of Non Woven Fabric. It claims that non woven fabric is a variety of textile and tax free under Entry 51 of schedule B.

Held:
When yarn of any quality is woven into fabric, what comes into being is a textile. The method of weaving adopted may be the warp and weft pattern which involves interlacing. Non woven fabric is made by spunbound technology which involves neither any yarn nor process of weaving. Therefore, the non woven fabric cannot be termed as a textile and consequently did not fall under Entry 51. Thus, they are not exempted from VAT. The product Non Woven Fabric do not fall in list of Goods of Special Importance mentioned in S.14 of CST Act. The product is not covered by any entry of any Schedule appended to the Act and is an unclassified item liable to be taxed @ 12.5% plus surcharge.

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ORDER

1. M/s Jasch Plastics, India Ltd., Kundli, Sonepat, having TIN No.06183002006 has sought clarification under section 56(3) of the Haryana Value Added Tax Act, 2003 on the following question:-

> **“Whether, the non woven fabric is tax free under entry 51 of Schedule B of Haryana Value Added Tax Act?”.**

2. As per statement containing the applicant's interpretation of laws and facts, the applicant is a manufacturer of non woven fabric. The applicant states that non woven fabrics are tax free as per order of assessing authority, Bhiwani but another view may be expressed by assessing authority, Sonepat, therefore, a clarification is sought to know the correct liability of tax. Non woven fabric also known as 'technical textile' is used in manufacturing of air-filters for automobiles, surgical disposal caps, masks, vacuum cleaner bags, carry bags, for inner lining of suits, padding of shoulders etc. The applicant claims that 'non woven fabric' is a variety of textile and tax free under entry 51 of Schedule B. The applicant has relied upon the judgement of Supreme Court passed in the case of M/s Porritts and Spencer (Asia) Ltd. Vs. State of Haryana (1978 42-STC-433). The applicant has also relied upon the judgement of Supreme Court in the case of Delhi Cloth and General Mills Company Limited Vs. State of Rajasthan (1980) 46- STC-256 (SC), wherein the Court held that "fabric covers all textiles no matter how constructed".

3. The matter has been examined. The applicant has claimed that the product, "non woven fabric" is covered by entry 51 of Schedule B and, therefore, is exempted from levy of VAT. For ready reference, entry 51 is reproduced as under:-

> *"All varieties of cotton, woollen or silken textiles including rayon, artificial silk or nylon but not including such carpets, druggets, woollen durrees, cotton floor durrees, rugs and all varieties of dryer felts on which additional Excise Duty in lieu of sales tax is not levied. "*

Perusal of the above entry reveals that only 'textiles' fall within the purview of this entry. The word 'textile' is derived from Latin word 'texere' which means 'to weave'. When yarn, whether cotton, woollen, silken, rayon, nylon or of any other description is woven into fabric, what comes into being is a 'textile'. The method of weaving adopted may be the warp and woof pattern which involves interlacing a set of longer threads (called the warp) with a set of crossing threads (called the weft). This is done on a frame or machine known as a loom. With the advent of science and technology there may be various processes or techniques of weaving. Whatever be the mode of weaving employed, woven fabric would be 'textiles'.

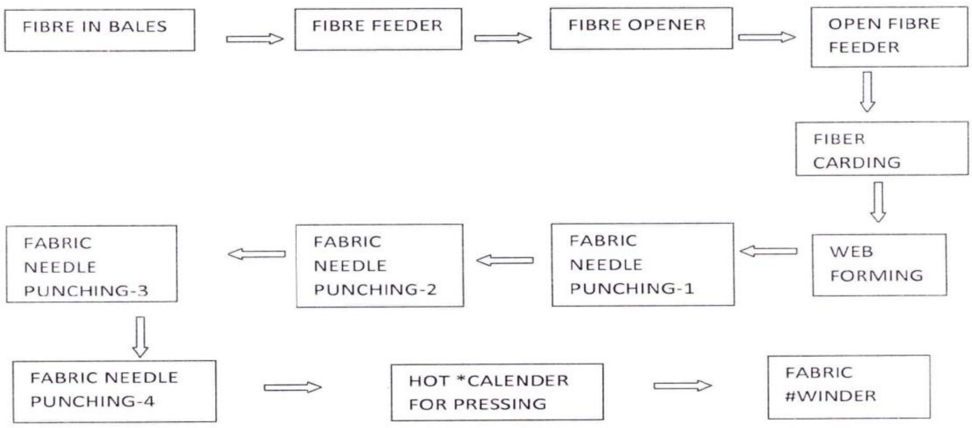
Fabric, on the other hand, is manufactured through weaving, knitting, spreading, crocheting, or bonding. Thus, 'fabric' is a wider term which includes woven fabrics (textiles) and also includes non woven fabrics, but the term 'textile' is restrictive which includes woven fabrics only.

4. As per Wikipedia,

> *"Nonwoven fabric is a fabric-like material made from long fibres, bonded together by chemical, mechanical, heat or solvent treatment. The term is used in the textile manufacturing industry to denote fabrics, such as felt, which are neither woven nor knitted. Some nonwoven materials lack sufficient strength unless densified or reinforced by a backing. In recent years, nonwovens have become an alternative to polyurethane foam"*

Non woven fabric is manufactured from Polypropylene Granules by adopting 'Spunbond technology'. In this technique PP Granules are fed to the Hopper and at a certain temperature they are pressed through the extruder and melted. The molten polymer is filtered and passed through spinning unit and directly converted to numerous filaments called Polypropylene filaments. The filaments are laid in the form of continuous web on a conveyor belt. Under controlled pressure, thermal bonding of filaments eventually results into formation of non woven fabric.

The flow chart for manufacturing of non woven fabric as obtained from the applicant is as under:-



The above flow chart reveals that neither yarn is used as raw material nor process of weaving is undertaken for manufacturing of non woven fabric.

5. The Supreme Court in the case of M/s Porritts and Spencer (Asia) Ltd., on which the applicant has relied, had the occasion to discuss the term 'textiles'. The Court observed

> *"The word 'textiles' is derived from the Latin 'texere' which means 'to weave' and it means any woven fabric. When yam, whether cotton, silk, woollen, rayon, nylon or of any other description as made out of any other material is woven into a fabric, what comes into being is a 'textile' and it is known as such. It may be cotton textile, silk textile, woollen textile, rayon textile, nylon textile or any other hind of textile. The method of weaving adopted may be the warp and woof pattern as is generally the case in most of the textiles, or it may be any other process or technique. There is such phenomenal advance in science and technology, so wondrous i.e. the variety of fabrics manufactured from materials hitherto unknown or un-thought of and so many are the new techniques invented for making fabric out of yarn that it would be most unwise to confine the weaving process to the warp and woof pattern. Whatever be the mode of weaving employed, woven fabric would be 'textiles'. What is necessary is no more than weaving of yarn and weaving would mean binding or putting together by some process so as to form a fabric. "*

The issue before the Court was whether 'dryer felts' fall within the category of "all varieties of cotton, woollen or silken textiles". The Court *held that dryer felts are, therefore, clearly woven fabrics and must be held to fall within the ordinary meaning of the word 'textiles'. We do not think that the word, 'textiles' has any narrower meaning in common parlance other than the ordinary meaning given in a dictionary, namely, a woven fabric."*

The judgment in the case of Delhi Cloth and General Mills Ltd. vs. State of Rajasthan and others relied upon by the applicant is distinguishable. The Supreme Court, in that case interpreted that the term 'rayon fabrics' falling in item 18 of the Schedule to the Rajasthan Sales Tax Act, 1954, also included 'rayon tyre cord fabric' manufactured by the petitioner. Entry 51 of Schedule B appended to the HVAT Act uses the term 'textile'.

6. In view of this interpretation of the term 'textile', the non woven fabric cannot be treated as 'textile'. Entry 51 of Schedule B which exempts "All varieties of cotton, woollen or silken textiles including rayon, artificial silk or nylon" is restricted to textiles only. Therefore, non woven fabrics do not come within the ambit of entry 51 and are not exempted from levy of VAT. The product non woven fabric do not fall in the list of Goods of Special Importance mentioned in Section 14 of the CST Act, 1956. The product is also not covered by any entry of any Schedule appended to the Act, therefore, is an unclassified item liable to tax @12.5% plus 5% surcharge.

7. The matter is clarified accordingly.

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SGA
LAW OFFICES

CLARIFICATION (HARYANA)

Go to Index Page

ORDER OF CLARIFICATIONA MADE BY SHRI SANJEEV KAUSHAL,
ADDL. CHIEF SECRETARY TO GOVERMENT,
HARYANA, EXCISE & TAXATION DEPARTMENT
UNDER SECTION 56(3) OF THE
HARYANA VALUE ADDED TAX ACT, 2003

QUERIST: HEMLA EMBROIDERY MILLS PVT. LTD.

20th March, 2017

HF ▶ Revenue

Embroided cloth does not fall in the category of exempted goods but is taxable as declared goods

ENTRIES IN SCHEDULE – EMBROIDED CLOTH – ENTRY 51, 52 OF SCHEDULE B OF HVAT ACT 2003 – WHETHER TAX-FREE – ITEMS COVERED BY ENTRY 52 ARE EXEMPT FROM PAYMENT OF TAX SUBJECT TO LEVY OF ADDITIONAL EXCISE DUTY IN LIEU OF SALES TAX – NO ADDITIONAL EXCISE DUTY IN LIEU OF SALES TAX PAYABLE W.E.F. 8.4.2011 – GOODS COVERED UNDER 52 BECOME TAXABLE W.E.F. 8.4.2011 – ITEM HELD TAXABLE – *ENTRY 51, 52 OF SCHEDULE-B OF HVAT ACT, 2003*

ENTRIES IN SCHEDULE– EMBROIDED CLOTH – DECLARED GOODS – RATE OF TAX – COTTON FABRIC, MANMADE FABRIC AND WOVEN FABRICS OF WOOL – EMBROIDERY IN PIECE, IN STRIPS OR IN MOTIFS – BASE FABRICS OF WOOL, COTTON AND MANMADE FABRIC COVERED BY ENTRY 58.05 OF CENTRAL EXCISE TARIFF ACT – TAXABLE AS DECLARED GOODS –

ENTRIES IN SCHEDULE – EMBROIDERY ON SILK FABRIC - EMBROIDERY ON BASE FABRIC OF SILK COVERED UNDER ENTRY 58.05.11 OF CENTRAL EXCISE TARIFF ACT, NOT COVERED UNDER SECTION 14 OF CENTRAL SALES TAX ACT 1956 – DOES NOT FALL UNDER CATEGORY OF DECLARED GOODS – UNCLASSIFIED ITEMS – TAXABLE UNDER RESIDUAL ENTRY.

CLASSIFICATION – TEXTILE ON WHICH KNITTING WORK HAS BEEN DONE – NOT COVERED BY DECLARED GOODS UNDER SECTION 14 OF CST ACT – NOT COVERED UNDER ANY OF THE SCHEDULES OF HVAT ACT 2003 – LIABLE TO TAX @ 12.5%.

CLASSIFICATION OF GOODS – EMBROIDERY – ENTRY 30 OF SCHEDULE-C OF HVAT ACT – ONLY ARTICLES OF EMBROIDERY MENTIONED IN THE ENTRY ARE COVERED – EMBROIDERY IS NOT COVERED INDEPENDENTLY – TEXTILE ON WHICH WORK OF EMBROIDERY IS DONE NOT COVERED INDEPENDENTLY – TEXTILE ON WHICH WORK OF EMBROIDERY HAS BEEN DONE DOES NOT COME WITHIN THE AMBIT OF ENTRY 30 OF SCHEDULE-C – QUESTION REPLIED ACCORDINGLY.

The assessee moved an application for seeking clarification on the following questions:

1. *That the embroidery being covered by the Excise Schedule entry 58.05 is still subject to levy of Additional Excise Duty under the Additional Excise Duty (Goods of Special Importance) Act, 1978 and accordingly is covered by entry 52 of schedule 'B' annexed to the HVAT Act and is tax-free?*
2. *That embroidery being covered by Excise Schedule Entry 58.05 is a 'Declared Goods' and liable to be taxed in that category?*
3. *That embroidery is also covered by Entry 30 of Schedule 'C' annexed to the HVAT Act, 2003 and hence taxable at the current rate of 5%?*

The applicant is engaged in the embroidery work in its unit at Faridabad and is also carrying out the work on job work basis on the fabric as per design supplied by owner of the fabric. It also does the work of embroidery on fabric/cloth purchased by it and such embroided cloth is sold as cloth or in strips or pieces. The matter is clarified as under:

1. *The contention of the applicant that embroided cloth is tax-exempted being covered by Entry 51 of Schedule-B is not correct. The product sold by applicant, i.e. textile on which work of embroidery has been done is covered by Entry 52 of Schedule-B. However, benefit of Entry 52 can be given only if additional Excise Duty in lieu of Sales Tax is being levied on them. Since the said additional Excise Duty is omitted w.e.f. 8.4.2011, the said goods have become taxable. Accordingly, it is clarified that all varieties of textile covered by Entry 52 of Schedule-B are taxable w.e.f. 8.4.2011.*
2. *Embroidery in the pieces in strips or in motifs on fabric of wool, cotton and base fabric made with filament yarn or fabrics of manmade staple fibres are covered under Entry 58.05 of Central Excise Tariff Act and hence covered under Section 14 of CST Act and thus taxable accordingly under HVAT Act 2003.*
3. *Embroidery on base fabric of silk covered by Entry 58.05.11 of Central Excise Tariff Act do not fall under Section 14 of Central Sales Tax Act and hence it is an unclassified item and taxable accordingly.*
4. *All varieties of textiles covered under Entry 51 of Schedule-B on which knitting work has been done would be liable to tax @ 12.5% as these are not covered by declared goods under Section 14 of CST Act 1956.*
5. *Embroidery in itself is not covered under Entry 30 of Schedule-C, as the said Entry only deals with the embroidery or zari articles but not the principal item independently. Since it is not covered under Entry 30 of Schedule-C, it is taxable accordingly.*

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ORDER

1. M/s Hemla Embroidery Mills Pvt. Ltd., Faridabad, having TIN No. 06491202534 has sought clarification under section 56(3) of the Haryana Value Added Tax Act, 2003 on the following questions:-

Q(l) That the embroidery being covered by the Excise Schedule entry 58.05 is still subject of levy of Additional Excise Duty under the Additional Excise Duty (Goods of Special Importance) Act, 1978 and accordingly is covered by entry 52 of schedule 'B' annexed to the HVAT Act and is tax free ?

Q(2) That embroidery being covered by Excise schedule entry 58.05 is a 'Declared Goods' and liable to be taxed in that category ?

Q(3) That embroidery is also covered by entry 30 of schedule 'C1 annexed to the HVAT Act, 2003 and hence taxable at the current rate of 5% ?

2. As per the statement of facts submitted by the applicant and also during the course of personal hearing, the applicant is engaged in embroidery work in its unit at Faridabad. The embroidery work is carried out on job work basis on the fabric as per design supplied by the owner of the fabric. The applicant also does the work of embroidery on fabrics/cloths purchased by it and such embroidered cloth is sold as a cloth or in strips or pieces. As far as, the embroidery work carried out for the customers as job work, the applicant finds no ambiguity with regard to tax involvement on the transfer of material i.e. yarn/thread involved in execution of job work. However, as per narration of the dealer, confusion persists regarding taxation of embroidered cloth sold by the applicant. As per statement of facts narrated in the application in Form M-4, the applicant claimed that embroidery being covered by the Excise Schedule entry 58.05 is still subject of levy of Additional Excise Duty under the Additional Excise Duty (Goods of Special Importance) Act, 1978 and accordingly is covered by entry 52 of Schedule B 1 and is tax free. Whereas, during the personal hearing in the case, the applicant conceded that all the items of fabric were omitted from the first Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and claimed that embroidered fabric or cloth falling under heading No. 58.05 of the Schedule to the Central Excise Tariff Act, 1985 is exempted from levy of VAT as all varieties of textiles have been placed in entry 51 of Schedule B. It was also contended that the entry No.19 of the First Schedule to the Central Excise Act, 1944 covered the "Cotton fabrics" and it was defined to mean ail varieties of fabrics manufactured either wholly or partly from cotton and includes dhoties, sarees, chadders, bed sheets, bed spreads, counter panes, table clothes, embroidery in the piece, in strips or in motifs and fabrics impregnated or coated with preparation of cellulose derivatives or of other artificial plastic materials but does not include any such fabric if it contains.......... The embroidery which was included in the category of Cotton fabrics by entry 19 of the First Schedule annexed to Central Excise Act 1944 was covered by Tariff entry No. 58.05 of Chapter 58 of the Tariff of 1985 Act and from 28.2.1986 was added in the First Schedule of the Additional Duties of Excise (Goods of Special Importance) Amendment Act, 1985 (7 of 1986) w.e.f. 28.2.1986. The applicant has relied on the judgment of the Hon'ble Punjab and Haryana High Court delivered on 07.09.2016 in the case of M/s Jasch Plastics India Ltd. vs. State of Haryana.

The applicant also submitted that the embroidered cloth covered by entry 58.05 is one of the items of goods of special importance commonly known as 'Declared Goods' under Section 14 of the CST Act and therefore, may be treated as 'Declared Goods'. The applicant has further contended that the embroidery goods are also covered under entry 30 of Schedule C appended to the HVAT Act and therefore, liable to tax at the lower rate and finally, it has been submitted that if the proposition of the applicant that the embroidered cloth is tax free being covered by entry 51 of Schedule B is not accepted then the maximum rate applicable to such products will not exceed the rate prescribed for "Declared Goods" in view of ceiling prescribed under Section 15 of the CST Act.

3. The contention of the applicant that embroidered cloth is tax exempted being covered by entry 51 of Schedule B is not correct. The product sold by the applicant i.e. the textile on which work of embroidery has been done is covered by entry 52 of Schedule B. Items mentioned in entry 52 are excluded from the ambit of entry 51. Entry 51 and 52 are reproduced for ready reference:-

Entry 51 *"All varieties of cotton, woollen or silken textiles including rayon, artificial silk or nylon but not including such carpets, druggets,* *woollen durrees, cotton floor durrees, rugs and all varieties of dryer felts on which additional Excise Duty in lieu of sales tax is not levied.*"

Entry 52 *"All varieties of textiles covered by item 51 on which knitting and embroidery work has been done provided additional Excise Duty in lieu of sales tax is levied on them."*

The items covered by entry 52 were exempted from tax subject to condition of levy of Additional Excise Duty in lieu of sales tax. The first Schedule to the Additional Duty of Excise (Goods of Special Importance, Act, 1957) was amended by the Finance Bill of 2011 vide which all the items of fabrics were omitted from the first Schedule. The Finance Bill 2011 (Bill No. 8-F of 2011) received assent of the President on 08.04.2011. After this amendment, the condition of levy of Additional Excise Duty in lieu of sales tax, subject to which the goods falling entry 52 of Schedule B were exempt from tax, is not fulfilled, therefore, all varieties of textiles covered by entry 51 on which knitting and embroidery work has been done became taxable w.e.f. **08-04-2011**.

Applicant's reliance on the judgment in the case of Feno Plast vs. State of Andhra Pradesh (1999) 114 STC 559 (SC) does not help the applicant as the said judgment is not applicable to this case. Under the Andhra Pradesh General Sales Tax, 1957, item 5 of 4th Schedule dealt with the 'cotton fabrics, manmade fabrics and woollen fabrics'. The explanation of the 4th Schedule provided that expressions in entries 5, 6 and 7 shall bear the meaning assigned to them in the Additional Duties of Excise (Goods of Special Importance), Act, 1957. Entry 51 and 52 are not subject to such interpretation. The judgment delivered in the case of M/s Jasch Plastics India Ltd. is also not applicable to the matter under examination. The Hon Tile High Court in that case interpreted entry 54 of Schedule B covering leather cloth and inferior or imitation leather cloth'.

In view of this, it is clarified that all varieties of textiles covered by entry 52 of Schedule B are taxable w.e.f. 08-04-2011.

4. The second question is whether the embroidery being covered by excise Schedule entry 58.05 is a 'Declared Goods' and liable to be tax in that category. The items covered by Section 14 of the CST Act are 'Goods of Special Importance' commonly known as 'Declared Goods'. Entry 58.05 of the Central Excise Tariff Act appear in Section 14 (iia), (vii) and (x) of the CST Act. The relevant portion of said provisions is reproduced as under:-

Section 14 (iia) - Cotton fabrics covered under heading Nos. 52.05, 52.06,52.07, 52.08, 52.09, 52.10, 52.11, 58.01, 58.03, 58.04, **58.05**. 58.06, 59.01, 59.03, 59.05, 59.06 and 60.01 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

Section 14 (vii) - Man-made fabrics covered under heading Nos. 54.08, 54.09, 54.10, 54.10, 54.11, 54.12, 55.07, 55.09, 55.10, 55.12, 55.12, 58.01, 58.02, 58.03, 58.04, **58.05**, 58.06, 59.01, 59.02, 59.03, 59.05, 59.06, and 60.01 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

Section 14 (x) - Woven fabrics of wool covered under headings Nos. 51.06, 51.07, 58.01, 58.02, 58.03 and **58.05** of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).

After passage of the Central Excise Duty Tariff Act, 1985 (Act 5 of 1986) the provisions of the CST Act 1956 were also amended. Sectionl4 (iia, vii and x) of the CST Act, 1956 was amended by the Finance Act, 1988 w.e.f. 13-05-1988. Thereafter, no change has been carried out in Section 14 (iia, vii and x) of the CST Act, 1956, though entry 58.05 appearing in Central Excise

Duty Tariff Act, 1985 has changed. Entry 58.05 as it existed on 13-05- 1988 is reproduced as under:-

Entry 58.05 as it existed on 13.5.1988

"Heading No.	Sub-Heading No.	Description of Goods.
58.05		Embroidery in the piece, in strips or in motifs- manufactured with the aid of vertical type automatic shuttle embroidery machines operated with power.
	58.05.11	Embroidery on base fabrics of silk, of Chapter-50
	58.05.12	Embroidery on base fabrics of wool, of Chapter-51
	58.05.13	Embroidery on base fabrics of cotton, of Chapter-52
	58.05.14	Embroidery on base fabrics of man-made filament yam of Chapter-54 or fabrics of man-made staple fibres of Chapter 55
	58.05.19	Other
	58.05.90	Other"

As provided in Section 14 (iia, vii and x), goods covered in entry 58.05 of the Scheduled to the Central Excise Tariff Act, 1985 (5 of 1986) are 'declared goods'. Embroidery in piece, in strips or in motifs manufactured with the aid of vertical type of automatic shuttle embroidery machines operated with power on base fabrics of wool (58.05.12), cotton (58.05.13) and base fabrics made with filament yarn or fabrics of man-made staple fibres (58.05.14) as covered by entry 58.05 of the Central Excise Duty Tariff Act, 1985 (Act 5 of 1986) only will fall in the list of goods of special importance (Declared Goods) mentioned in Section 14 (iia, vii and x) of the CST Act, 1956 and therefore, will be subject to tax accordingly.

However, embroidery on base fabric of silk covered by entry 58.05.11 does not come in the category of 'Declared Goods'. The said goods are not covered by any entry of the Schedules appended to the HVAT Act, 2003 and is therefore, an unclassified item. Question 2 is replied accordingly.

It is also clarified that all varieties of textiles covered by entry 51 of Scheduled B on which knitting work has been done will be liable to tax @12.5% being not covered by list of 'Goods of Special Importance' mentioned in Section 14 of the CST Act and not covered by any entry of the Schedules appended to the HVAT Act, 2003.

5. Question 3 whether embroidery is also covered by entry 30 of Schedule C appended to the HVAT Act, 2003 and hence taxable at current rate of 5% has been examined. For ready reference, the said entry is reproduced:-

> *"(30) Embroidery or zari articles, that is to say, imi, zari, kasab, saima, dabka, chumki, gota sitara, naqsi, kora, glass bead, badla."*

Entry 30 of Schedule C covers embroidery or zari articles. The word 'embroidery' has not been used independently. The word 'articles' is attached to 'embroidery' as well as 'zari'. So, 'embroidery' and 'zari' articles which are used for 'embroidery' or 'zari' work are covered by this entry. Textile on which work of embroidery has been done does not come within the ambit of entry 30 of Schedule C. Question 3 is replied accordingly.

6. The matter is clarified.

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NEWS OF YOUR INTEREST

Go to Index Page

GST COUNCIL LIKELY TO DISCUSS CESS ON LUXURY CARS, TOBACCO PRODUCTS THURSDAY

The cess on luxury cars and tobacco products is aimed a t creating a corpus for compensating states for any loss of revenue from GST implementation

New Delhi: The goods and service tax (GST) council is likely to endorse on Thursday supplementary legislations needed for implementation of the tax reform.

The GST council, headed by finance minister Arun Jaitley and comprising representatives of all states, may also take up capping the cess to be levied on demerit goods like luxury cars and tobacco products for creation of a corpus that will be used for compensating states for any loss of revenue from GST implementation in the first five years.

The panel, which had at its last meeting approved the final draft of central GST (C-GST) and integrated GST (I-GST) laws, will on Thursday take up for approval the state GST and union territory GST (UT-GST) laws, officials said.

Once approved, the supporting legislations together with a GST Compensation Law, will go to the Cabinet for a formal nod before they are presented in Parliament in the ongoing Budget session that ends on 12 April.

The government is hoping the C-GST, the I-GST, the UT-GST and the GST Compensation laws will be approved in the current session of Parliament and the S-GST by each of the state legislatures soon to help roll out the new indirect tax regime from 1 July.

ALSO READ: GST: Industry sees no relief on compliance

The council may also be given an update on technology preparedness and migration of assessees to the new regime. Migration of all the 85 lakh central and state taxpayers is planned to be completed by 31 March. So far, over 51 lakh have migrated to the new system.

Officials said the council has already finalised a four- tier tax structure of 5, 12, 18 and 28%, but the model GST law has kept the peak rate at 40% (20% to be levied by the centre and an equal amount by states) to obviate the need for approaching Parliament for any change in rates in future.

On similar lines, the council is also likely to decide on a cap rate for cess to be levied at the peak rate of tax to create the compensation corpus. Officials said any law approved by Parliament cannot have open-ended tax rates and, therefore, a cap or peak rate will have to be mentioned.

For the levy of GST, the peak rate has been put at 40% and a similar cap will also have to be approved for the cess. While the C-GST will give powers to the centre to levy GST on goods and services after union levies like excise and service tax are subsumed, the I-GST is to be levied on inter-state supplies.

The S-GST, which will allow states to levy the tax after VAT and other state levies are subsumed in the GST, will have to be passed by each state Assembly. The UT-GST will also go to Parliament for approval.

Officials said the model GST law will have a clause to enable levy of up to 40% tax, but the effective tax rates will be kept at the previously approved levels. This will also help in a scenario where the cess on demerit goods being proposed to compensate states for loss of revenue from GST is to be merged with the tax rate itself.

Courtesy: LiveMint
15th March, 2017

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NEWS OF YOUR INTEREST

Go to Index Page

GST CLOSER TO REALITY AS COUNCIL CLEARS FINAL TWO BILLS

With all five draft laws now being given the green signal by the Council, they will next be sent to the Cabinet for approval and subsequently to Parliament, which is currently in session, for the final nod.

The Goods and Services Tax (GST) Council, headed by Finance Minister Arun Jaitley, on Thursday approved the remaining two crucial supplementary bills — State GST (SGST) and Union Territory GST (UTGST) - moving the proposed July 1 implementation of the country's biggest tax reform closer to reality.

"The Council has granted formal approval to all five legislations," said Finance Minister Arun Jaitley after the Council's 12th meeting on Monday.

Final drafts of the three other bills — Integrated GST (IGST), Central GST (CGST) and Compensation bill — had been cleared by the Council in its previous meetings.

With all five draft laws now being given the green signal by the Council, they will next be sent to the Cabinet for approval and subsequently to Parliament, which is currently in session, for the final nod.

Consent from both Lok Sabha and Rajya Sabha would conclude the legislative requirement for the rollout of the new indirect tax regime.

Once the laws are passed, Jaitley said, two important acts remain. The first pertains to formulation of rules - five of which have already been approved. He said the Council would get the final draft of the other four rules by next week and discuss them at the GST Council's next meeting on March 31.

Jaitley said that the next step after that would be the fitment of various commodities into tax slabs. "After that [fitment], we will be ready for GST implementation," said the Finance Minister.

The industry has been particularly looking as to how items would be categorised under various slabs as they need at least two-three months to prepare themselves to adjust to the shift in tax regime.

The Council has agreed on a four-slab structure — 5, 12, 18 and 28 percent — along with a cess on luxury and "sin" goods such as tobacco. Jaitley said on Thursday that the cess has been capped at 15 percent for the four to five commodities including luxury cars and aerated drinks that fall in this category.

Under the GST, the states and the Centre will collect identical rates of taxes on goods and services. For instance, if 18 percent is the GST rate on a product, both the states and the Centre will get 9 percent each called the CGST and SGST rates.

The Centre will also levy and collect the IGST on all inter-state supply of goods and services. The IGST mechanism has been designed to ensure seamless flow of input tax credit from one state to another.

Courtesy: Money Control
16th March, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

TRADE BODY HAILS GOODS AND SERVICE TAX COUNCIL DECISION ON SEZS

The Export Promotion Council for SEZ and EoUs has welcomed the GST Council's decision to treat supplies to special economic zones at par with exports.

The Export Promotion Council for SEZ and EoUs has welcomed the GST Council's decision to treat supplies to special economic zones at par with exports. Export Promotion Council for SEZ and EoUs (EPCES) said that earlier the supply of goods or services, to an SEZ developer and SEZ units were defined as 'zero rated supply' under IGST, and it mandated the developers and units receiving such supplies were required to take refund of the IGST. The taxes were required to be paid at first place and then take refund, it said in a statement.

Exports from SEZs and export oriented units (EOUs) sector contributed about 33 per cent in the country's total shipments.

Paying the duties first and then seek refund would lead to hardship to the SEZ sector as their huge amount of working capital would have been locked for some period, EPCES Chairman Rahul Gupta said.

With regard of taxation of SEZ under the GST regime, the official said it would be "zero rated at par with exports".

"Now we will have the same treatment for any supply made to SEZ as it is made in case of exports. So zero rating will be the same," the official added.

Earlier it was stated that the SEZ players will first have to pay the tax and then the SEZ unit will get refund.

"Now it has been agreed that in case of physical export or anybody supplying goods to SEZ the same methodology applies. They can do it either under bond and not pay tax or they can pay IGST and take refund," the official added.

Courtesy: Financial Express
17th March, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

CABINET MAY TOMORROW CONSIDER GST SUPPLEMENTARY LEGISLATIONS

NEW DELHI: The Cabinet may tomorrow take up for approval the supporting GST legislations, which will then be introduced in Parliament as the government sprints to meet the July 1 target date for rollout of the new indirect tax regime.

A set of four supporting legislations -- the Compensation Law, the Central-GST or C-GST, Integrated-GST or I-GST and Union Territory-GST or UT-GST -- are likely to together go to the Cabinet for approval.

Sources said the Cabinet meeting has been called for Monday morning and the agenda list may not be very long.

The GST Council, in its previous two meetings, had given approval to the four legislations as also the State-GST (S-GST) bill. While the S-GST has to be passed by each of the state legislative assemblies, the other four laws have to be approved by Parliament.

Once approved, levy of Goods and Services Tax (GST) will get legal backing.

The government is hoping the C-GST, I-GST, UT-GST and the GST Compensation laws will be approved in the current session of Parliament and the S-GST by each of the state legislatures soon to help roll out the new indirect tax regime from July 1.

While a composite GST will be levied on sale of goods or rendering of services after the new indirect tax regime is rolled out, the revenue would be split between Centre and states in almost equal proportion.

This because central taxes like excise and service tax and state levies like VAT will be subsumed in the GST.

While the C-GST will give powers to the Centre to levy GST on goods and services after Union levies like excise and service tax are subsumed, the I-GST is to be levied on inter-state supplies.

The S-GST will allow states to levy the tax after VAT and other state levies are subsumed in the GST. The UT-GST will also go to Parliament for approval.

Sources said the Council has already finalised a four-tier tax structure of 5, 12, 18 and 28 per cent, but the model GST law has kept the peak rate at 40 per cent (20 per cent to be levied by the Centre and an equal amount by states) to obviate the need for approaching Parliament for any change in rates in future.

Similarly, the cess to be levied on top of peak rate on selected demerit goods like luxury cars for creation of a corpus that will be used for compensating states for any loss of revenue from GST implementation in the first five years, has been capped at 15 per cent.

Sources said the government may attempt for all the four laws to be taken up for approval in Parliament together during the ongoing Budget session that ends on April 12.

Courtesy: The Economic Times
19th March, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

GST: CENTRALIZED ASSESSMENT FOR SERVICE-ORIENTED INDUSTRIES LIKELY

As per a proposal being discussed in GST council, a common pool of officers from the centre and states could carry out the assessment for certain service sectors

New Delhi: The goods and services tax (GST) council is considering setting up a centralized assessment interface for service-oriented industries such as banking, telecom, insurance and information technology, according to two officials familiar with the discussions in the GST council.

A common pool of officers drawn from the centre and the states could carry out the assessment for certain service sectors thereby ensuring a single interface for these sectors, according to the proposal being discussed in the council.

The move will potentially lessen the burden on taxpayers operating in these industries who are required to register in every state they operate.

ALSO READ | Cabinet may consider GST supplementary legislations on Monday

The current GST draft law has retained a provision that requires these service providers to register in every state they operate, despite opposition from industry which pointed out the sharp rise in compliance requirements for the services sector under GST as against the current existing regime. In the existing service tax regime, service providers need to register with the central indirect tax authorities.

Various service industries and government departments had made specific presentations to the council pushing for single registration.

However, the council did not accept the demand for single registration as states feared loss of revenues and excessive dependence on the centre for receiving taxes due to them. This means that companies operating in the services space pan India will need to obtain more than 30 separate registrations and file nearly 2,000 returns annually.

ALSO READ | E-commerce firms to pay up to 1% tax collected at source under GST

The common assessment proposal being discussed is aimed at making the compliance requirements of these businesses under the new indirect tax regime simpler. “There have been talks in the council if we could look at a common assessment for the services sector to ensure that one company does not have to deal with multiple tax authorities. However, no final mechanism has been worked out yet,” said one of the officials.

A single audit and assessment is helpful but does not take the sting out of the provision of needing to register in every state, said Rajan Mathews, director general of Cellular Operators Association of India. “A big problem for the telecom industry is that the licensed service area is spread across state lines. How do we settle the proceeds across state jurisdictions? There are also place of supply issues as a customer may buy a SIM card in one state but use it in another state," he said.

ALSO READ | GSTN preparing to handle 3 billion invoices a month: Prakash Kumar

A centralized audit and assessment interface being discussed by the GST council will provide some respite for the industry, said a member of the general insurance council, the representative body of general insurance companies.

"However, there are a number of issues that remain unresolved. For instance, what will be the representation of the producing and the consuming states in this body. Where will the audit happen—in states or in the place the head office is located? At the end of the day, the main concern for the industry is seamless availment of input tax credit," said the member, who did not want to be identified since the details are yet to be made public.

Courtesy: MintLive
19th March, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

GST RELIEF FOR EXPORTERS, SOME REFUNDS TO CONTINUE

NEW DELHI: Exporters will continue to get certain duty refunds as incentives after the Goods and Services Tax is implemented. The GST Council has framed the draft laws to ensure that the export sector doesn't suffer when the new regime is rolled out, likely from July 1.

The GST legislation approved by the cabinet and the GST Council has a provision enabling duty drawback in relation to goods manufactured in the country and exported. It's been defined as rebate of duty or tax chargeable on imported and domestic inputs or input services used in the manufacture of these goods.

This would be an optional window that would aid sectors such as handicrafts, where artisans are not registered with the tax department. It will especially help exporters who have paid tax on inputs to make products that have no tax against which these duties could have been adjusted. The drawbacks are offered as incentives to ensure Indian goods do not become uncompetitive in foreign markets.

Exporters had been worried about the transition to the GST regime, which allows minimal upfront exemptions. The commerce department had represented to the Council as well as the Union finance ministry that the benefits enjoyed by exporters should be continued.

"This is a very positive move and benefits all those that do not claim input tax credit," said Ajay Sahai, director general of the Federation of Indian Export Organisations in New Delhi.

Many exporters in the small and medium enterprise sector will benefit.

"Drawback is one of the most popular export incentive schemes wherein the exporters typically get a percentage of exports as refund from the government, without too much of paperwork," said Pratik Jain, indirect tax leader at PwC India.

"Under GST, drawback for basic customs duty was expected to continue in any case but now it seems that it might include GST as well. If it does, as an optional scheme of refund, industry will welcome it."

India's merchandise exports registered double-digit growth in February 2017 for the first time since the Narendra Modi government took office in May 2014. The surge was led by a 47% rise in engineering goods on the back of improved global demand.

Courtesy: The Economic Times
21st March, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

JAITLEY HOPES GST ROLL OUT FROM JULY 1 TO MAKE GOODS CHEAPER

NEW DELHI: A new nationwide goods and services tax (GST) will be rolled out from July 1 to create one of the world's biggest single markets, make commodities cheaper and make tax evasion difficult, Finance Minister Arun Jaitley said today.

Speaking at the 23rd Conference of the Commonwealth Auditor General, Jaitley said India has "hugely" a non-tax compliant society and the government banned higher denomination notes to curb the tendency of people to deal in cash that lead to tax evasion as well as terror financing.

He said the reform measures undertaken by the government will help India clock 7-8 per cent growth and retain the tag of fastest growing major economy in the world, but challenges remain in volatile global oil prices, reviving private sector investment and health of state-owned banks.

With regard to GST, he said the new indirect tax regime will ensure seamless transfer of goods and services and with stronger information technology backbone will make evasion difficult.

Despite being one political entity, India currently is not a single economic entity as there are multiple layers of taxation that make goods costlier. GST - first proposed in 2006 - will replace at last 17 state and central levies.

"The biggest taxation reform what we are trying to implement from July 1 is Goods and Services Tax ... It will increase the volume of taxation, there is no tax on tax and therefore makes goods, commodities and services little cheaper and far more convenient," Jaitley said.

Courtesy: The Economic Times
22nd March, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

FM ARUN JAITLEY UNDERLINES URGENCY TO PASS GST BILLS IN THIS PARLIAMENT SESSION

NEW DELHI: The government today emphasised the urgency to pass the GST laws during the current session of Parliament, saying the Centre and the states would otherwise lose their right to collect indirect taxes after September 15.

Finance Minister Arun Jaitley said in the Rajya Sabha that the government is keen to roll out the GST on July 1 and other aspects like bringing petroleum and land under its ambit will be considered after the first year of implementation of the new system of indirect tax collection.

Replying to a debate on the Bugdet which was approved by the House later, he said four bills supporting the Constitution amendment law on GST enacted last year will be introduced in the Lok Sabha shortly.

These have to be passed in this session to meet the September 15 deadline for switching over to the new indirect tax regime, Jaitley said. The ongoing Budget session ends on April 12.

He said the GST Constitutional Amendment Bill does not provide for extension of the deadline beyond September 15 this year for transition to GST regime.

If Goods and Services Tax (GST) is not implemented by September 15, the government's legal entitlement for collection of taxes will end.

The Cabinet on Monday cleared the four GST related bills to enable roll out of the Goods and Services Tax from July 1.

The four bills are: the Central Goods and Services Tax Bill 2017, the Integrated Goods and Services Tax Bill 2017, the Union Territory Goods and Services Tax Bill 2017 and the Goods and Services Tax (Compensation to the States) Bill 20

Jaitley said nine bye-laws have to be framed, of which four have been approved and hopefully the remaining five would be approved by March 31.

The Constitutional Amendment Bill for roll out of GST was notified on September 16, 2016 and it provides for one year to switch-over to the new indirect tax regime.

"So after september 15 this year, the legal entitlement for collection of taxes will end. So the alternative system has to come in place before September 15," Jaitley said.

On petroleum products and alcohol, the Finance Minister said these will come under GST once the states and the GST Council arrive at a consensus on the rates to be imposed.

He said these are a part of GST "but till all the states, the GST Council agree, we won't start imposing tax on these".

Till then, the states will continue to impose their own taxes.

On land aspect, Jaitley said the Chief Economic Advisor and the Delhi government have favoured its inclusion in the GST because there is "enormous use of black money in it".

This view, he said, has "logic" and therefore the GST Council decided that these aspects will be considered after one year of GST implementation.

With regard to the marine areas, he said there is a dispute over revenue jurisdiction between the Centre and the states. While the seas come under the purview of the central government, the revenues are collected by the states, Jaitley said, and questioned how logical it was.

The minister said in the all-powerful GST Council, all decisions were taken by consensus and there was no vioting. He also said the Central and State governmments did not take any stand on political lines but on federal lines and taxation lines.

"Not even a single issue was there (in GST Council) on which the Centre or States took a stand on political lines. Some BJP (ruled states') finance ministers were opposing my proposal and Congress finance ministers were supporting.

"Sometime two Congress finance ministers had different views. Nobody took political line. They walked on the federal line and taxation line and 5 laws (CGST, UTGST, SGST, IGST and Compensation Law) were unanimously approved," he said.

Jaitley also said that at some point there may be a need for "federal bureaucracy of taxation" under the GST.

He added that a ministerial group is looking into ways to remove bottlenecks on tolls which impede smooth flow of goods and services.

Courtesy: The Economic Times
23rd March, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

GST: MODI GOVT CAN'T LEVY TAXES IF PARLIAMENT DOESN'T PASS 4 BILLS TILL SEPT 15

If the GST fails to roll out by September 15, the government will not be able to levy indirect taxes. With GST Constitution Amendment Act, the old tax regimes will cease to be effective on September 16.

The new indirect tax regime - the Goods and Services Tax - is heading for another roadblock. The GST is likely to miss yet another deadline on July 1, when it is supposed to be implemented.

Rolling out the GST on July 1 requires Parliament to pass four Bills before the Budget session ends on April 12.

However, it seems that both Prime Minister Narendra Modi and Finance Minister Arun Jaitley are not very confident about getting all those enabling legislation passed on time despite having a brute majority in the Lok Sabha and the Bills being finance ones.

PM Modi recently told his party MPs to raise awareness among people about the GST while Finance Minister Jaitley yesterday made an impassioned plea in Parliament during his reply on the Budget to pass all the four Bills.

WHY THIS HURRY?

A constitutional amendment was done last year to pave way for GST, which will replace all other indirect taxes. A GST Council was set up by the amendment Act. The GST Council has prepared five Bills altogether.

Four Bills are to be passed by Parliament to roll out the GST. The Constitution Amendment Act makes it mandatory to roll out GST on or before September 15. It is not possible without having the legislation in place.

According to the Constitutional Amendment Act, the older taxes will cease to exist on September 15.

If Parliament does not pass the four GST Bills, and government fails to roll out goods and services tax by September 15, it would not be legally entitled to collect any indirect tax from September 16.

No government can afford to be in such a situation even for one day when it does not have the right to collect taxes.

OPTIONS BEFORE MODI-JAITLEY

There are two theoretical options before the Modi government if it fails to roll out GST before September 15.

The government may go to Parliament and seek its nod for the status quo ante â€“ permission to revert to pre-GST situation.

The second option before the government is to adopt the ordinance route or presidential extension. Theoretically speaking, the government is required to prove before both â€“ Parliament and President- that there was a valid and unavoidable reason for not rolling out the GST.

THE GST BILLS

The government is likely to introduce the GST Bills next week. The Bills are - the Central Goods and Services Tax Bill 2017 (C-GST), the Integrated Goods and Services Tax Bill 2017 (I-GST), the Union Territory Goods and Services Tax Bill 2017 (UT-GST) and the Goods and Services Tax (Compensation to the States) Bill 2017.

The Union Cabinet cleared all the four Bills earlier this week for tabling in Parliament.

The State Goods and Services Tax Bill 2017 needs to be separately passed by 29 Assemblies to have the new tax regime in the country.

Courtesy: India Today
24th March, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

GST DEBATE NOW CONTINUES ON CATEGORISATION OF PRODUCTS

MUMBAI: Is Parachute hair oil or edible oil? Is KitKat a chocolate or a biscuit? Is a Vicks tablet medicament or confectionery? For the taxpayer and the tax collector, this is much more than an exercise in semantics — hundreds of crores of rupees ride on the exact categorisation.

As the government moves closer to rolling out the goods and services tax (GST) on July 1, many such distinctions are being debated so that no ambiguity remains. Not just that, the government is revisiting old tax cases that were lost over product categorisation, according to people with knowledge of the matter, presumably with a view to making sure that revenue collections can be maximised.

"In the past, several tax officers had challenged some of the product categorisations, including those in the retail segment, but lost out in court or at appellate level," said one of the persons. "Now we have a chance to go ahead with specifying the products in a way based on the old cases so that similar situations don't arise."

It is understood that the product categorisation exercise, which was expected to have been completed last year, is taking much longer because of this process. The rates have already been decided — nil, 5 per cent, 12 per cent, 18 per cent and 28 per cent —but product categorisation is yet to be finalised.

"The GST rates for each and every item are not yet decided as the government is categorising products and what rates can be applied on each category of goods," said MS Mani, senior director, Deloitte Haskins &Sells. "There is a chance that some of the old issues raised by the tax department regarding category of certain goods may come back to haunt some companies or products as GST is a new law and can redefine rates and what goods would fall under its preview."

Some states have also raised issues on this front, Kerala being a case in point. During a recent closed-door meeting on product categorisation, finance minister TM Thomas Isaac brought up a point highly pertinent to people of that state.

Coconut oil shouldn't be categorised as hair oil but as edible oil, he is reported to have said. The reason? Edible oil and hair oil are taxed differently as the latter is not an essential commodity. But coconut oil is an essential ingredient of Kerala cuisine, making its categorisation a matter of keen public interest for the state's people.

Key past cases are being researched by the GST committee before it decides on the exact tax rates for each category, said the people cited above.

This could mean disputes that many companies thought had been resolved coming back to life.

Whether such moves will be challenged or not by the companies is yet to be seen. However, experts said this may be difficult since GST is a new tax regime altogether and old rulings may not have the force of precedent. Some of the old cases being examined involve Marico, P&G,

NestleBSE 1.14 %, Paras Pharmaceuticals and Dabur, according to the people with knowledge of the matter.

For the record: KitKat is a biscuit and Vicks a medicament. In the KitKat case -- Nestle (India) Ltd v/s Commissioner of Central Excise, Mumbai, 1999 -- it was ruled that the product was a biscuit and not a chocolate, which is taxed at a higher rate.

Meanwhile, companies are lobbying the government to categorise biscuits as essential products under GST, which would mean their being taxed at a lower 5 per cent.

Courtesy: The Economic Times
25th March, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

ARUN JAITLEY INTRODUCES CGST, GST COMPENSATION BILLS IN LOK SABHA

Also, amendments to the excise and Customs Act to abolish various cess as well as furnishing Bills for exports and imports under the new GST regime will be placed before the House.

The government lists GST Bills in today's agenda in the Lok Sabha. The FM Arun Jaitley introduces CGST & GST Compensation Bills in the lower house.

An earlier article, quoting sources, had said said C-GST, I-GST, UT-GST and the compensation law will be introduced in the Lok Sabha today and could be taken up for discussion as early as March 28.

Also, amendments to the excise and Customs Act to abolish various cess as well as furnishing Bills for exports and imports under the new GST regime will be placed before the House.

The Business Advisory Committee of the Lok Sabha is likely to meet tomorrow to decide on the duration of discussion on the Bills, the sources added. According to the sources, the government is looking at passage of the GST Bills in the Lower House by March 29 or latest by March 30.

Then, these will move to the Rajya Sabha and this gives the government enough time to bring back any amendment adopted by the Upper House to the Lok Sabha.

The amendments can either be rejected or incorporated by the Lok Sabha. The current session of Parliament ends on April 12. Although the legislations will be introduced as Money Bills, the government wants discussion in both the Houses, the sources said.

The government has set a target of July 1 for rollout of GST, which will subsume excise, service tax, VAT and and other local levies. Once these Bills are cleared by Parliament, the states will then take the state GST (S-GST) Bill to their respective assemblies.

S-GST has been prepared as a model of the central GST (C-GST), with each state incorporating state-specific exemptions. The integrated GST (I-GST) deals in taxation of inter-state movement of goods and services while the Union Territory GST (UT-GST) Bill covers taxation in UTs.

The compensation law has been prepared to give a legislative backing to the Centre's promise to compensate the states for 5 years for any revenue loss arising out of GST implementation.

Courtesy: Money Control
27th March, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

CENTRE TO GET GREATER CHUNK IN RESIDUAL GST COMPENSATION FUND

NEW DELHI: The Centre will have a greater share of the residual amount in the compensation fund at the end of the 5-year period as the GST Bill now provides for equal sharing of the amount as against the earlier formula which favoured states.

According to the Goods and Services Tax (Compensation to States) Bill, as introduced in the Lok Sabha today, states will receive provisional compensation bi-monthly from the Centre for loss of revenue from implementation of GST. The draft law had provided for payment of compensation every quarter.

Tweaking the provision of the draft, which was made public in November 2016, the GST Compensation Bill said that "any residual amount left in the Compensation Fund after five year compensation period shall be shared equally between the centre and the states".

Related: 10 groups set up under senior taxmen to examine GST issues and report by April 10

As per the earlier draft, any excess amount after the end of five year tenure in the 'GST Compensation Fund' were to be divided between Centre and states as per the specified formula under which 50 per cent of the excess amount was to be devolved between Centre and States as per statute.

The remaining 50 per cent would have to be given to the states in the ratio of their total revenues from SGST in the last year of the transition period.

The bill, as cleared by the GST Council, has simplified the structure for sharing of the residual amount in the Compensation Fund.

The GST Council, comprising Union Finance Minister and state representatives, had decided to set up a compensation fund by levying cess on demerit and luxury goods. The proceeds from the fund would be utilised to compensate the states for revenue loss in the initial five years of GST roll out, which is likely from July 1.

The bill also provides for audit of accounts relating to Compensation Fund by the Comptroller and Auditor General. Also the final adjustment of compensation to be paid to the states would be done after audit of accounts of the year by the CAG.

Also Read: GST debate now continues on categorisation of products

The Bill also stipulates that the base year for calculating the revenue of a state would be 2015-16 and a secular growth rate of 14 per cent would be used for calculating the revenue of each state in the first five years of implementation of GST.

The loss of revenue to a state will be the difference between the actual realisation to a state under Goods and Services Tax (GST) regime and the tax revenue it would have got under the old indirect tax regime after considering a 14 per cent increase over the base year of 2015-16.

It also provides that in case of the 11 special category states, the revenue foregone on account of exemption of taxes granted by states shall be counted towards the definition of revenue for the base year 2015-16.

The revenues of states that were not credited to the Consolidated Fund of the states but were directly devolved to "mandi" or "municipalities" would also be included in the definition of 'revenue subsumed', the Bill said.

Courtesy: The Economic Times
27th March, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

GST A STEP CLOSER TO REALITY, LOK SABHA PASSES FOUR SUPPLEMENTARY BILLS

NEW DELHI: The historic Goods and Services Tax (GST) regime on Wednesday came a step closer to meet its July 1 target of roll out, with the Lok Sabha+approving four supplementary legislations.

The Central GST Bill, 2017; The Integrated GST Bill, 2017; The GST (Compensation to States) Bill, 2017; and The Union Territory GST Bill, 2017 were passed after negation of a host of amendments moved by the opposition parties.

Replying to the seven-hour-long debate, Finance Minister Arun Jaitley said the GST, which will usher in a uniform indirect tax regime in the country, will make commodities "slightly cheaper".

He said the GST rates would depend upon whether the commodity is used by a rich person or a common man.

Jaitley said once the new regime is implemented, the harassment of businesses by different authorities will end and India will be one rate for one commodity throughout the country.

He said the GST Council, comprising Finance Ministers of Union and states, had agreed to take a decision on bringing real estate within the ambit of the new tax regime within a year of its rollout.

On the impact of GST on prices, Jaitley said: "Today you have tax on tax, you have cascading effect. When all of that is removed, goods will become slightly cheaper".

On why the Council has decided on multiple GST rates, Jaitley said one rate would be "highly regressive" as "hawai chappal and BMW cannot be taxed at the same rate".

He said currently food articles are not taxed and those will continue to be zero rated under the GST. All other commodities would be fitted into the nearest tax bracket.

Courtesy: The Times of India
29th March, 2017