



**Issue 11**  
**1 June 2016**

*“The hardest thing to understand in the world is Income tax”*

—Albert Einstein

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## **News From Court Rooms**

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**KARNATAKA HC:** CENVAT credit on input services would be available for claiming refund by exporter of services, even if out-put services are non-taxable. Revenue's appeal dismissed. (*MModal Global Services Pvt. Ltd.* - April 7, 2016).

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**KARNATAKA HC:** Karnataka VAT : If the credit or adjustment is to be given to the amount of tax already paid there is no reason why the credit of input tax should not be adjusted against the tax liability and thereafter to arrive at the additional tax liability while filing revised return

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**KARNATAKA HC:** Karnataka VAT : Where assessee purchased iron and steel from a registered dealer 'H' and claimed input tax credit in respect of same, disallowance of input tax credit on grounds that (i) no books of account and tax invoices were produced before Assessing Authority, and (ii) 'H' was involved in bill trading and was absconding, disallowance of input tax credit was justified. (*Nav Bharat Steel* – April 27, 2016).

**SC :** Service Tax : When summons are issued to petitioner to appear 'in person', petitioner cannot make appearance through lawyer; hence, petitioner's attempt in avoiding personal presence was penalized with costs of Rs. 1,00,000. (*Sudhir Kumar Tripathi* – May 2, 2016).

**ALLAHABAD HC :** VAT: Imposition of VAT on the dyes, chemicals etc., used in the dyeing/colouring and printing of cloth for various traders treating them to be deemed sales is not valid when the transaction does not satisfy the definition of sale, the question of subjecting it to tax under Vat Act does not arise. (*Chandok Textiles Enterprises P Ltd.* – May 18, 2016).



**Issue 10**  
**16 May 2016**

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Issue 11  
1 June 2016

## SUPREME COURT OF INDIA

CIVIL APPEAL NO. 5021-5022 OF 2016

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STATE OF PUNJAB & ANR  
Vs  
BHARAT PETROLEUM CORPORATION LTD.

A.K. SIKRI AND R.K. AGRAWAL, JJ.

11<sup>th</sup> May, 2016

### HF ► Revenue

*As assessment order passed within the limitation period as per amended Act is valid if the amendment Act is retrospective.*

**ASSESSMENT – LIMITATION – PERIOD OF LIMITATION EXPIRED – RETROSPECTIVE AMENDMENT MADE – PERIOD EXTENDED FROM THREE YEARS TO FIVE YEARS – ASSESSMENT MADE IS WITHIN THE AMENDED PERIOD OF LIMITATION – ORDER OF ASSESSMENT UPHOLD – JUDGMENT OF HIGH COURT REVERSED – ONLY SALES TAX TO BE PAID – NO PENALTY OR INTEREST PAYABLE AS RETROSPECTIVE AMENDMENT HAS BEEN MADE – APPEAL ALLOWED – SECTION 11(3) AND 11-CC OF PUNJAB GENERAL SALES TAX ACT, 1948**

### Facts

*For the assessment year 2001-02 returns were filed. The assessment ought to have been framed within a period of three years i.e. by 30<sup>th</sup> April, 2005. The assessment was not made by then. Subsequently, an amendment was made in the Act whereby S. 11-CC was added with retrospective effect from July 19<sup>th</sup>, 2000 and deemed to be in force upto September, 2002. As per this amendment, the period of limitation got extended from three to five years. The assessment was framed thereby levying tax, interest and penalty. An appeal was filed before High court against the assessment order on the ground that the assessment was time barred whereby it was held that the assessment was within the limitation period. Aggrieved by the order, an appeal is filed before Supreme Court by revenue.*

### Held:

*The assessment made is saved by way of amendment which has a retrospective effect. Thus, the assessee shall pay only the principal amount of Sales Tax and no interest or penalty shall be paid. The appeals are allowed. The order of High court is set aside.*

**Present:** For Petitioner(s): Mr. Nikhil Nyar, AAG.  
Mr. Kuldip Singh, Advocate  
Mr. Jagjit Singh Chhabra, Advocate  
For Respondent(s): Mr. A. Subba Rao, Advocate

Mr. Annam D. N. Rao, Advocate

Mr. A. Venkatesh, Advocate

Ms. Ankita Chadha, Advocate

Mr. Sudipto Sivcar, Advocate

Mr. Rahul Mishra, Advocate

Mr. Abhishek Anand, Advocate

Mr. Aditya Bhattachary, Advocate

Mr. M. P. Devanath, Advocate

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## **ORDER**

1. Leave granted.

2. In all these appeals, the question of law that needs to be determined is identical and, therefore, they are taken up for hearing together. However, for the sake of convenience, we will refer to the facts from Civil Appeals arising out of SLP(C) Nos.27807-27808/2010.

3. These appeals pertain to the Assessment Year 2001-2002 for the assessment of sales tax under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as 'the Act'). The respondent/ assessee had filed quarterly returns, which are required under the law, in respect of the aforesaid assessment in terms of Section 11(3) of the Act. Time-limit for completing the assessment provided therein is three years from the end of the year. Accordingly, the last date for assessment in respect of Assessment Year 2001-02 would be 30th April, 2005. Assessment was, however, not made by the said date. On the other hand, under Section 11(1) of the Act, which empowers the Commissioner to extend the period of three years for passing the order of assessment for such further period as he may deem fit, the necessary consequence of this provision would be that after 30th April, 2005 the assessment would become time barred. However, the said Act was amended by the State Legislature vide Punjab General Sales Tax (Amendment and Validation) Act, 2005 whereby Section 11-CC was added after Section 11-C, which is to the following effect:

*"11-CC. Assessments of tax and validation of certain assessments.*

*(1) Notwithstanding anything contained in this Act, the assessing authority, shall pass an order of assessment in respect of the dealers of or the financial years 2000-2001 and 2001-2002 within a period of five years from the last date, prescribed for furnishing the last return in respect of these years:*

*Provided that no order shall be made under this section against any dealer without giving him an opportunity of being heard."*

4. This amendment Act further provided that this amendment shall come into force w.e.f 19th July, 2000 and be deemed to have remained in force as such up to the 11th day of September, 2002. Thus, this amendment was retrospective in nature and covered the period in question i.e. Assessment Year 2001-02. As per the aforesaid amendment, the period of limitation got extended from three years to five years. In the instant case, assessment order was made on 10.07.2006 which was within the limitation as was provided by amended Section 11-CC.

5. In view of the aforesaid statutory provision, the judgment of the High Court holding that the assessment was validly made within the period of limitation is clearly unsustainable. The appeals are, accordingly, allowed.

**6.** We, however, make it clear that since the assessment is saved by the subsequent amendment and that too by making it retrospective, the assessee shall pay only principal amount of sales tax and no interest or penalty shall be paid.

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**PUNJAB & HARYANA HIGH COURT**

STA No. 5 OF 2016

**PREMIER MOTOR GARAGE**

Vs

**COMMISSIONER, CENTRAL EXCISE COMMISSIONERATE, CHANDIGARH & ANR.****AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.**1<sup>st</sup> April, 2016**HF ► Revenue**

*Delay cannot be condoned as it was due to lack of effort on part of appellant to keep a record of proceedings.*

**APPEAL – CONDONATION OF DELAY – MISTAKE OF COUNSEL – APPEAL ALLOWED BY TRIBUNAL IN FAVOUR OF REVENUE IN FEBRUARY 2013 – MIS -INFORMATION REGARDING DISMISSAL OF APPEAL AGAINST REVENUE GIVEN BY APPELLANT’S COUNSEL – SUBSEQUENTLY, ENQUIRY RECEIVED FROM DEPARTMENT IN 2016 IF FURTHER APPEAL FILED BY APPELLANT AGAINST THE ORDER OF TRIBUNAL THEREBY SETTING APPELLANT IN ACTION TO FILE AN APPEAL AGAINST THE ORDER – DELAY OF 638 DAYS APPLIED FOR CONDONATION PLEADING MISTAKE OF COUNSEL – HELD: EXPLANATION TENDERED BY APPELLANT NOT FOUND PLAUSIBLE – NO AFFIDAVIT PRODUCED IN THIS REGARD – EVEN IN YEAR 2015 NO EFFORT ON PART OF APPELLANT TO PROCURE THE CERTIFIED COPY OF ORDER SHOWN – STORY PUT FORTH IS TO CAMOUFLAGE THE DELAY- DELAY NOT CONDONED – APPEAL DISMISSED BEING TIME BARRED – APPEAL DISMISSED – S .5 OF LIMITATION ACT**

**Facts**

*A demand of service tax alongwith interest was confirmed by the department against the appellant. The commissioner partly allowed the appeal whose order was set aside by Tribunal while deciding the case exparte. The order was passed on 6.12.2013. An appeal against the order has been filed after a delay of 638 days alongwith an application for condonation of delay. The explanation tendered is that delay was on account of mis-information on part of appellant’s counsel. It was informed by his counsel in year 2015 that the Tribunal had dismissed the appeal against the revenue. Subsequently, it received a call from the department in 2016 enquiring if the appellant had filed any appeal against the order of Tribunal. After knowing about dismissal of appeal, it had to procure the copy of certified order from Tribunal on 14.3.2016 after which the appeal has been filed thereby causing delay.*

**Held:**

*The explanation is not plausible. After knowing in 2015 about appeal being dismissed, it never bothered to obtain a copy of order. No affidavit of the counsel has been produced. A litigant would always like to complete his record by obtaining a certified copy of the order which has not been done here. The explanation given is to camouflage the inordinate delay. Thus,*

*condonation of delay is not made out as there is no sufficient cause. The appeal is dismissed as barred by time.*

**Cases referred:**

- *Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459*
- *R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892*

**Present:** Mr. Sanyan Malhotra, Advocate for the appellant

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**AJAY KUMAR MITTAL, J.**

1. This appeal has been filed by the assessee under Section 35G of the Central Excise Act, 1994 (in short “the Act”) read with Section 83 of the Finance Act, 1994, against the order dated 6.12.2013 (Annexure A-4) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as “the Tribunal”), claiming the following substantial questions of law:-

- Whether a litigant can be made to suffer dire consequences on account of mistake of counsel?
- Whether a litigant can be condemned unheard due to fault on part of its counsel?
- Whether the issue/matter deserves to be heard and decided on merits?
- Whether substantial justice can be denied on mere technicalities?

2. The facts necessary for adjudication of the present appeal as narrated therein may be noticed. The appellant was the authorized dealer of the car manufacturer company-M/s Hindustan Motors Ltd. and purchased motor cars from the manufacturer on principal to principal basis and sold the same to respective buyers. It provided services, namely, “Authorized Service Station” and “Business Auxiliary Service” and discharged service tax liabilities from time to time. A show cause notice dated 4.10.2006 (Annexure A-1) was issued to the appellant demanding service tax to the tune of Rs. 15,29,240/- (Rs. 4,08,297/- + Rs. 4,26,409/- + Rs. 6,86,972/- + Rs. 7562/-) inclusive of education cess along with interest and penalty. The appellant filed reply dated 28.11.2006 to the said show cause notice. The adjudicating authority vide order dated 19.2.2007 (Annexure A-2) confirmed the demand of service tax amounting to Rs. 14,07,448/- along with interest under Section 75 of the Act. The adjudicating authority directed that the amount of service tax and interest already deposited by the noticee be appropriated against the total demand and interest due thereon. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals) who vide order dated 4.4.2008 (Annexure A-3) partly allowed the appeal and quashed the service tax demand of Rs. 11,13,381/- (Rs. 6,86,972/- + Rs. 4,26,409/-). Against the order, Annexure A-3, respondent No.1 filed an appeal bearing STA No. 426 of 2008 before the Tribunal. The Tribunal vide order dated 6.12.2013 (Annexure A-4) allowed the appeal *exparte* and set aside the order, Annexure A-3, passed by the Commissioner (Appeals) and restored the order of the adjudicating authority. On receiving information from the department, the appellant contacted its earlier counsel and enquired about the status of the appeal whereby the appellant came to know that the appeal had been allowed vide order dated 6.12.2013. The appellant asked the counsel to hand over the documents. On his failure to do so, the appellant moved an application dated 14.3.2016 (Annexure A-5) before the Tribunal for the certified copy of the order dated 6.12.2013. Accordingly, the appellant filed the present appeal. Since the appeal was barred by time, an application bearing CM No. 6800-CII of 2016 has been filed for condonation of 638 days' delay in filing the instant appeal.

3. We have heard learned counsel for the appellant.

4 The primary question that arises for consideration in the appeal is whether there was sufficient cause for condonation of delay in filing the appeal.

5. Examining the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963 (in short, the “1963 Act”) it may be observed that the Supreme Court in ***Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another*, (2010) 5 SCC 459** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

*“14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.*

*15. The expression “sufficient cause” employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil.”*

6. It was further noticed by the Apex Court in ***R.B. Ramlingam v. R.B. Bhavaneshwari* 2009(1) RCR (Civil) 892** as under:-

*“It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of “sufficient cause” is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of “sufficient cause” delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such.”*

It was also recorded that:-

*“For the aforesaid reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition....”*

7. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5

of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression “sufficient cause” occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

8. The Apex Court in *Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam's cases (supra)* noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

9. Adverting to the factual matrix in this case, we do not find any merit in the application for condonation of delay. The question regarding whether there is sufficient cause or not depends upon each case and primarily is a question of fact to be considered taking into totality of events which had taken place in a particular case. According to the learned counsel for the appellant, the appellant engaged a counsel, namely, Shri Joy Kumar before the Tribunal to defend the appeal filed by the department. However, the said counsel did not put in appearance before the Tribunal on 6.12.2013 and the appeal was allowed exparte. In the year 2015, the appellant contacted its counsel to know the status of the appeal filed by the department wherein it was informed that the said appeal had been dismissed by the Tribunal. Thereafter, the appellant in February, 2016 received a call from the department enquiring if any appeal had been filed by the appellant against the order, Annexure A-4. On receiving such information, the appellant inquired about the status of the appeal from its earlier counsel wherein he came to know that the appeal stood allowed on 6.12.2013. Thereafter, the appellant asked its earlier counsel to handover the case file and certified copy of the order which were not supplied. Accordingly, the appellant applied for the certified copy of the order dated 6.12.2013 from the Tribunal on 14.3.2016. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing the appeal before this Court. Learned counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the appellant.

10. In the present case after appreciating the plea of the appellant, the explanation furnished by it cannot be held to be plausible. It cannot be said that there was sufficient cause for condonation of delay. The Tribunal had decided the appeal on 6.12.2013. However, the appeal before this Court was required to be filed on or before 5.3.2014, i.e. within the stipulated period of limitation of three months. But the appellant filed the appeal before this Court on 28.3.2016, after a long and inordinate delay of 638 days. According to the version of the appellant, it was informed by the counsel that the appeal of the revenue was dismissed in 2015 but still the appellant never bothered to obtain certified copy of the order. Nothing had been produced to substantiate the said plea either in the form of an affidavit of the counsel or by producing other material on record. Further, this version does not appear to be natural and cannot be said to be reasonable and logical as a litigant would always like to keep his record complete in case the lis had been decided either in his favour or against him by obtaining certified copy of the order and other relevant papers from its counsel which had not been done here. The story put forth by the appellant is a camouflage to cover the inordinate and

unexplained delay in filing the present appeal. Since no sufficient cause has been shown in the present case, no ground for condonation of delay is made out.

**11.** In view of the above, there is no merit in the application for condonation of delay and the same is hereby dismissed. Consequently, the appeal is also dismissed as barred by time.

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**PUNJAB & HARYANA HIGH COURT**

VATAP NO. 56 OF 2016

**BHAWANI INDUSTRIES (P) LTD.**

Vs

**STATE OF PUNJAB****AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.**4<sup>th</sup> May, 2016**HF ► Assessee**

*Sickness and consequent death of counsel leading to delay in filing of appeal is a sufficient cause for condoning the delay.*

**APPEAL – CONDONATION OF DELAY – SICKNESS OF COUNSEL – ORDER IMPOSING PENALTY RECEIVED – COPY OF ORDER HANDED OVER TO COUNSEL FOR FILING OF APPEAL WITHIN A PERIOD OF ONE MONTH FROM DATE OF RECEIPT OF ORDER– COUNSEL ALREADY UNDER MEDICAL TREATMENT – LIVER TRANSPLANT AND CONSEQUENT DEATH – SUBSEQUENTLY, PAPERS TAKEN FROM COUNSEL’S OFFICE AFTER TWO MONTHS OF DEATH -APPEAL FILED AFTER A DELAY OF 120 DAYS – DISMISSAL OF - APPEAL BEFORE HIGH COURT – EXPLANATION REGARDING ILLNESS AND DEATH OF COUNSEL SEEMS PLAUSIBLE – DELAY CONDONED – MATTER REMITTED TO DETC TO ADJUDICATE ON MERITS AFTER HEARING THE PARTIES – S. 5 OF LIMITATION ACT, 1963, SECTION 64 OF PVAT ACT, 2005**

**Facts**

*The assessing authority had imposed penalty u/s 51 of the Act vide order dated 31/1/2-13, the copy of which was received after four months on 14/5/2013. The copy was handed over the appellant’s counsel thereafter who was undergoing treatment. The counsel fell ill and had a liver transplant which kept him in hospital from 23/5/2013 to 7/8/2013 subsequently causing his death on the latter date. The appellant then collected his file from his office and filed appeal before DETC on 17/10/2013. The appeal was dismissed due to delay of 120 days in filing of it. On dismissal of appeal by Tribunal, an appeal is filed before High court explaining the cause of delay.*

**Held:**

*The explanation tendered by the appellant regarding illness of counsel is plausible one and shows sufficient cause of delay. Delay is condoned and the matter is remitted to DETC to adjudicate the appeal on merits after hearing the parties.*

**Cases referred:**

- *Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459*
- *R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892*

**Present:** Mr. Rishab Singla, Advocate for the appellant.

Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

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**AJAY KUMAR MITTAL, J.**

1. This appeal has been filed by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short “the Act”) against the order dated 14.8.2015 (Annexure A-7) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (hereinafter referred to as “the Tribunal”) in Appeal No. 190 of 2014, claiming the following substantial question of law:-

1. *Whether on the facts and in the circumstance of the case the Ld. Tribunal was justified in not condoning the delay wherein there exists a sufficient cause for the same?*

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant is engaged in the business of Iron and Steel goods at Mandi Gobindgarh having TIN No. 03221136481. It had placed an order for import of heavy melting scrap from United States of America. The said goods entered India through Gateway Rail Freight India Limited in sealed containers. Each container was transported through a separate truck and the entry tax was paid. The consignment of the imported goods was detained by the Excise and Taxation Officer (Mobile Wing), Ludhiana near Khanna under Section 51(6)(b) of the Act. The assessing authority vide order dated 31.1.2013 (Annexure A-1) under Section 51(7)(c) of the Act imposed penalty of Rs. 6,39,436/-. The copy of the said order was received by the appellant on 14.5.2013 after a passage of more than four months. Thereafter, it handed over the papers to Shri Subhash Chander Satija, Advocate. However, due to liver ailment, the said counsel fell seriously ill and despite treatment from various doctors, he could not recover. He was referred to MIOT Hospital, Chennai for liver transplant where he remained admitted from 23.5.2013 to 7.8.2013 and ultimately died on 7.8.2013 as per death certificate dated 11.12.2014 (Annexure A-2). Due to this unfortunate incident, the appellant collected the file from the office of Shri Subhash Chander Satija, Advocate and thereafter filed the appeal on 17.10.2013 (Annexure A-3) before the Deputy Excise and Taxation Commissioner (Appeals) [DETC(A)]j, Ludhiana. Since the appeal was barred by time of 120 days, an application, Annexure A-4, was filed for condonation of the delay in filing the appeal. The DETC(A) vide order dated 10.3.2014 (Annexure A-5) dismissed the appeal being time barred. Feeling aggrieved, the appellant filed an appeal on 13.5.2014 (Annexure A-6) before the Tribunal. The Tribunal vide order dated 14.8.2015 (Annexure A-7) dismissed the appeal. Hence, the present appeal.

3. We have heard learned counsel for the parties.

4. The primary question that arises for consideration in this appeal is whether the delay of 120 days in filing the appeal before the DETC(A) was liable to be condoned in the facts and circumstances of the present case.

5. Examining the legal position relating to condonation of delay under Section 5 of the Limitation Act, 1963 (in short, the “1963 Act”) it may be observed that the Hon'ble Supreme Court in ***Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459*** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under:-

*“14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy*

*can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.*

*15. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector (L.A.) v. Katiji N. Balakrishnan v. M. Krishnamurthy and Vedabai v. Shantaram Baburao Patil."*

**6.** It was further noticed by the Hon'ble Apex Court in **R.B. Ramlingam v. R.B. Bhavaneshwari 2009(1) RCR (Civil) 892** as under:-

*"....It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such."*

It was also recorded that:-

*"For the aforestated reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition...."*

**7.** From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the court belatedly shows sufficient cause for not availing the remedy within the prescribed period. The meaning to be assigned to the expression "sufficient cause" occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

**8.** The Hon'ble Apex Court in **Oriental Aroma Chemical Industries Ltd. and R.B. Ramlingam's cases (supra)** noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved therein. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of

acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

**9.** The question regarding whether there is sufficient cause or not, depends upon each case and is to be decided taking totality of events which had taken place in a particular case. Learned counsel for the appellant submitted that the order dated 31.1.2013 passed by the Assistant Excise and Taxation Commissioner (Mobile Wing) was received by the appellant on 14.5.2013 and the appeal was to be filed on or before 14.6.2013. The appellant after receiving the order handed over the complete file to Shri Subhash Chander Satija, Advocate, who at that time was undergoing the treatment of liver transplant at Chennai. He remained admitted there from 23.5.2013 to 7.8.2013 and ultimately died on 7.8.2013. The appellant collected the papers from the office of the said counsel after two months from his death and filed the appeal against the order, Annexure A-1, on 17.10.2013. The appeal was filed late by 120 days. In such circumstances, delay in filing the appeal before the DETC(C) was unintentional and due to the circumstances beyond the control of the appellant.

**10.** The explanation furnished by the appellant appears to be plausible and, therefore, leads to the conclusion that there was sufficient cause for delay in filing the appeal. Once that was so, the delay in filing the appeal before the DETC(A) deserves to be condoned and appeal heard on merits by the DETC(A).

**11.** In view of the above, it is held that the DETC(A) had erred in refusing to condone the delay in filing the appeal. The substantial question of law is answered accordingly. As a sequel, the appeal is allowed and the orders dated 10.3.2014 (Annexure A-5) passed by the DETC(A) and dated 14.8.2015 (Annexure A-7) passed by the Tribunal are set aside. The matter is remitted to the DETC(A) to adjudicate the appeal on merits after hearing learned counsel for the parties in accordance with law.

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**PUNJAB & HARYANA HIGH COURT**

VATAP NO. 1 OF 2016

**A.B. SUGARS LTD.**

Vs

**STATE OF PUNJAB AND ANOTHER****A.K. MITTAL AND RAJ RAHUL GARG, JJ.**11<sup>th</sup> April, 2016**HF ► Revenue**

*Purchase tax on sugarcane is payable even if tax is being paid under the Punjab (Sugarcane Regulation of Purchase and Supply) Act, 1953*

**PURCHASE TAX – SUGARCANE – PURCHASE OF SUGARCANE BY SUGAR MILL – TAX ALSO BEING PAID UNDER THE PUNJAB (SUGARCANE REGULATION OF PURCHASE AND SUPPLY) ACT, 1953 – CONTENTION THAT SPECIAL ACT WOULD PREVAIL UPON GENERAL ACT – HENCE NO PURCHASE TAX LEVIABLE ON SUGARCANE – MATTER STANDS COVERED BY SUPREME COURT JUDGMENT IN THE CASE OF JAGATJIT SUGAR MILLS UNDER THE PUNJAB GENERAL SALES TAX ACT 1948 – NO BENEFIT CAN BE DERIVED FROM JUDGMENT OF GOBIND SUGAR MILLS UNDER BIHAR ENACTMENT – PURCHASE TAX HELD TO BE PAYABLE. SECTION 4 OF PUNJAB GENERAL SALES TAX ACT, 1948**

*The appellant, a sugar mill, made purchases of sugarcane for the year 2001-02 and did not pay the purchase tax on the purchase of sugarcane on the ground that it is already paying the tax under the Special enactment namely Punjab (Sugarcane Regulation of Purchase and Supply) Act, 1953. Reliance was placed upon a judgment of Supreme Court in the case of Gobind Sugar Mills vs State of Bihar and others, (1999)115 STC 358 (SC). Rejecting the contention, it was held that matter with regard to purchase tax on sugarcane has been already decided against the assessee in the case of Jagatjit Sugar Mill vs State of Punjab and another, 1995(1) SCC 67. Accordingly, following the decision of Punjab and Haryana High Court in the case of appellant itself for a different year, the appeal was dismissed holding that the purchase tax on sugarcane is payable.*

**Cases referred:**

- *Gobind Sugar Mills Ltd. v. State of Bihar and others (1999) 115 STC 358 (SC)*
- *Jagjit Sugar Mills Co. Ltd. v. State of Punjab and another 1995(1) SCC 67*
- *AB Sugars Ltd. v. State of Punjab and another VATAP No. 176 of 2013*

**Present:** Mr. Sandeep Goyal, Advocate for the appellant.

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**AJAY KUMAR MITTAL. J.**

1. This order shall dispose of two appeals bearing VATAP Nos. 1 and 8 of 2016 as according to the learned counsel for the appellant, the issue involved therein is identical. For brevity, the facts are being extracted from VATAP No. 1 of 2016.

2. VATAP No. 1 of 2016 has been filed by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short “the Act”) against the order dated 21.9.2015 (Annexure A-4) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (hereinafter referred to as “the Tribunal”) in Appeal No. 183 of 2014, for the assessment year 2001-02, claiming the following substantial questions of law:-

- (i) *Whether the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 is a special Act, whereby tax has been levied on the purchase of sugarcane and therefore no tax under the provisions of the Punjab General Sales Tax Act, 1948 can be levied as the 1948 Act is a general Act and will give way to the 1953 Act?*
- (ii) *Whether the purchase of sugarcane is liable to be taxed under the provisions of the Punjab General Sales Tax Act, 1948 when the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1963 is in force which is a special Act?*

3. A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The appellant is running a sugar mill and is engaged in the manufacturing of sugar, baggage and molasses. It filed its return for the assessment year 2001-02 and did not pay tax on the purchase of sugarcane in view of judgment of the Supreme Court in the case of ***M/s Gobind Sugar Mills Ltd. v. State of Bihar and others (1999) 115 STC 358 (SC)***. Accordingly, a notice was issued to the appellant. The Assessing Authority framed the assessment vide order dated 30.3.2005 (Annexure A-1) by creating a demand of Rs. 23,51,557/- for non-payment of purchase tax on sugarcane. The assessee challenged the order, Annexure A-1, by filing CWP No. 8526 of 2005 which was tagged with other similar writ petitions. This Court vide order dated 20.1.2010 dismissed all the writ petitions following the judgment of the Apex Court in ***Jagjit Sugar Mills Co. Ltd. v. State of Punjab and another 1995(1) SCC 67***. Against the order dated 20.1.2010, the appellant filed SLP(C) No. 10619 of 2010 before the Supreme Court who vide order dated 29.8.2013 disposed of the appeal with liberty to the appellant to question the correctness or otherwise of the assessment order dated 28.4.2008 passed by the Assessing Authority by filing an appeal before the appellate authority. In pursuance thereto, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals) [DETC(A)]. The DETC(A) vide order dated 27.11.2013 (Annexure A-2) upheld the assessment order, Annexure A-1, and dismissed the appeal. Feeling aggrieved by the order, Annexure A-2, the appellant filed an appeal on 25.4.2015 (Annexure A-3) before the Tribunal. The Tribunal vide order dated 21.9.2015 (Annexure A-4) dismissed the appeal. Hence, the present appeals.

4. We have heard learned counsel for the appellant.

5. It is not disputed by the learned counsel for the appellant that the issue involved in these appeals stands concluded against the appellant by this Court in ***VATAP No. 176 of 2013 (M/s AB Sugars Ltd. v. State of Punjab and another) decided on 15.7.2015***, wherein it was held as under:-

*“10. We, therefore, cannot take a view different from the one taken by the Supreme Court in M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab (supra) on the ground that the Supreme Court did not consider the provisions of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. Nor we are entitled to ignore this judgment on the basis of the judgment of the Supreme Court in*

*Gobind Sugar Mills Ltd. v. State of Bihar (supra)* as in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab (supra)* the Supreme Court considered the very provisions that fall for our consideration. In *Gobind Sugar Mills Ltd. v. State of Bihar (supra)* different enactments fell for the consideration of the Supreme Court.

11. This is not even a case where the enactments considered in *Gobind Sugar Mills Ltd. v. State of Bihar (supra)* were identical to the Punjab General Sales Tax Act and the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 or that there were no difference between the two enactments. Section 49(8) of the Sugarcane Act which fell for consideration in *Gobind Sugar Mills Ltd. v. State of Bihar (supra)* expressly provides that a part of the amount of purchase tax collected under subsection (3) is to be utilized for the purpose of the Board and the Council as grant but did not indicate that the entirety of this collection was solely earmarked for the purpose of expenditure of the Board or the Council. Such a provision is absent in the enactments before us. Infact, the statement of object and reasons of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 expressly state as under:-

“Statement of Objects and Reasons- “With the promulgation of the Industries (Development and Regulation) Act, 1951, with effect from the 8th May, 1952, this regulation of sugarcane industry has become exclusively a Central subject. The State Government are now only concerned with the supply of sugarcane to sugar factories: moreover in view of lean financial position of the State, the State Government are not in a position to provide adequate funds for extensive Cane Development work in the areas supplying cane to sugar factories with the result that the factories are not getting cane of good quality. The Bill is being introduced in order to provide for a rational distribution of sugarcane to factories for its development on organized scientific lines making adequate funds available after imposing a tax on sugarcane purchases by factories, to protect the interests of cane growers and of the Industry and to put the new Act permanently on the Statute Books” (vide Punjab Government Gazette Extraordinary, dated the 9th October, 1953, p. 1630).”

12. Faced with this, Mr. Goel submitted that in any event in view of Article 266 of the Constitution of India the amounts collected under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 would be transferred to the consolidated fund of India and the enactments thereafter cannot direct the manner in which the same is to be utilized. He further submitted that once the amounts are credited to the consolidated fund of India, the Act cannot say how it is to be utilized. Only the legislature can do so.

Even assuming this to be so we do not see how it can make a difference. The legislature has imposed the tax. The amounts collected may well be available to the legislature to be spent for the purposes mentioned therein and in the statement of objects and reasons. These are aspects which can be gone into only by the Supreme Court and not by this Court for accepting these submissions would in effect result in this Court holding that the judgment of the Supreme Court in *Jagatjit Sugar Mill's case (supra)* is not good law.

13. Considering the view taken by us on Mr. Goyal's submission, it is not necessary to consider Mr. Jain's further submission that the appellant has infact

*challenged the validity of the Punjab General Sales Tax Act, 1948 and that such a challenge could not have been taken before the authorities.*

*14. In the circumstances, the questions of law, are answered against the appellant. The appeal is accordingly dismissed.”*

**6.** In view of the above, the present appeals are dismissed in terms of the order dated 15.7.2015 passed in VATAP No. 176 of 2013.\_\_\_\_\_

**PUNJAB & HARYANA HIGH COURT**

COCP NO. 1707 OF 2015

**MANTAR SINGH**

Vs

**D. P. REDDY AND OTHERS****RAJESH BINDAL**12<sup>th</sup> May, 2016**HF ► Revenue**

*No contempt is made out for non-refund of tax to the contractors who have sought refund on declaration of section 10C as ultravires without filing Returns.*

**CONTEMPT OF COURT - TAX DEDUCTION AT SOURCE – PROVISIONS OF SECTION 10C OF PGST ACT 1948 DECLARED ULTRAVIRES - TAX OF PETITIONER DEDUCTED AT SOURCE – PETITIONER NOT PARTY BEFORE HIGH COURT IN EARLIER PROCEEDINGS – NO RETURNS FILED AND NO CREDIT OF TAX HAS BEEN GRANTED – TAXABILITY OF TRANSACTION NOT IN DISPUTE – NO CASE MADE OUT FOR INTERFERENCE IN CONTEMPT PETITIONS – RESPONDENTS HELD NOT GUILTY OF COMMITTING CONTEMPT OF COURT – SECTION 10-C OF PGST ACT, 1948**

*Petitioner had filed the contempt petitions on the ground that refund is not being paid which had been deducted under section 10C of PGST Act 1948 and has been declared ultravires subsequently. No direction has been given by the Court in the case of petitioner. Petitioners have not filed the Returns and the credit of tax so deposited has not been granted. The taxability of transaction is not in dispute. Held no case is made out for interference in the contempt petition for holding the respondents guilty of committing contempt of court.*

**Case referred:**

- *M/s Cobra Instalaciones Y Services v. State of Punjab and others*

**Present:** Mr. Ashish Gupta and Mr. Puneet Kansal, Advocates for the petitioner(s).  
Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.

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**RAJESH BINDAL J.**

1. This order will dispose of a bunch of petitions bearing COCP Nos. 1707, 1986 to 2000, 2289 to 2298, 2696, 2725 to 2727, 3313 to 3321 of 2015; 79 to 81 and 96 to 103 of 2016, as common questions of law and facts are involved.

2. The petitioners herein were not party to the writ petition in which the order was passed declaring the provisions of Section 10-C of the Punjab General Sales Tax Act, 1948 (for short, 'the Act') as ultra vires and for refunding the amount of tax deducted. The judgment of the learned Single Judge was upheld in appeal in LPA No. 740 of 2009—*M/s Cobra*

*Instalaciones Y Services v. State of Punjab and others*, decided on 26.8.2009, wherein the Division Bench of this court directed for grant of interest.

3. The petitioners herein are contractees. The tax has been deducted. Refund thereof has been sought. Firstly, there is no direction as such in the case of any of the petitioners before this court. Further Section 10-C of the Act provided for provisional payment of tax in the kind of advance tax. The tax so deposited was adjustable in the actual tax liability determined. It is not the case of the petitioners that they had filed their returns and the credit of the tax so deposited for the period from 2000-01 to 2004-05 had not been granted. The taxability of the transaction as such is not in dispute.

4. Considering the aforesaid factual matrix, in my opinion, no case is made out for interference in the present contempt petitions for holding the respondents guilty of committing contempt of this court.

5. Accordingly, all the petitions are dismissed.

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**PUNJAB VAT TRIBUNAL****APPEAL NO. 259 OF 2015**[Go to Index Page](#)**YOGINDRA WORSTED LTD.****Vs****STATE OF PUNJAB****JUSTICE A.N. JINDAL, (RETD.)****CHAIRMAN**26<sup>th</sup> April, 2016**HF ► Revenue**

*No input tax credit allowed on diesel used for captive consumption for manufacturing of tax free goods.*

**INPUT TAX CREDIT – DIESEL – PURCHASE FOR CAPTIVE CONSUMPTION – ENTRY TAX PAID ON IMPORT OF GOODS - CLAIM OF ITC ON DIESEL PURCHASED DISALLOWED – APPEAL FILED BEFORE TRIBUNAL CONTENDING THE CLAIM OUGHT TO BE ALLOWED IN VIEW OF PROVISIONS OF VAT ACT - HELD: S. 6(7) IS CHARGING SECTION BUT IS DEPENDENT ON NOTIFICATION ISSUED BY STATE GOVERNMENT WHICH WAS NEVER ISSUED BY THE STATE FOR YEAR 2010-11 – S. 13 DOES NOT PERMIT CLAIM OF ITC ON MANUFACTURING OF GOODS WHICH ARE TAX FREE IN THE STATE – THUS, CLAIM RIGHTLY DISALLOWED – APPEAL DISMISSED – S. 6, S. 13 OF PVAT ACT, 2005**

**Facts**

*The claim for ITC on account of purchase of diesel used for captive consumption was disallowed for the year 2010-11. On dismissal of appeal, an appeal is filed before Tribunal contending that the claim should be allowed in view of S. 6(7) and S. 6(8) of PVAT Act, provisions of Punjab Tax on Entry of Goods Into Local Areas Act, 2000 and also u/s 13 -A of PVAT Act.*

**Held:**

*The applicability of S.6(7) was subject to a notification to be issued by the state government which was not issued by the government for the year in question. Therefore, appellant is not entitled to ITC under this section. Also, tax collected as advance tax cannot be refunded or adjusted u/s 13 of PVAT Act.*

*The appellant has been using diesel for manufacturing of goods which are not taxable in the State of Punjab. Thus, the appellant is not be entitled to ITC if he uses diesel in generation, distribution and transmission of electric energy for captive consumption in light of S.13 of the Act. The appeal is dismissed.*

**Present:** Mr. Jaswinder Singh, 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. This appeal has arisen out of the order dated 31.3.2015 passed by the First Appellate Authority, Ludhiana Division, Ludhiana dismissing the appeal against the order 8.12.2014 passed by the Assessing Authority-cum- Designated Officer Ludhiana-II creating additional demand to the tune of Rs. 19,01,156/- under the Punjab VAT Act, 2005. On account of the rejection of ITC on purchase of diesel, and also creating additional demand to the tune of Rs.22,068/- on account of furnishing less "C" Forms against the interstate sale. The case relates to the assessment year 2010-11.

2. The appellant is a registered person and is engaged in the business of manufacturing synthetic yarn. The appellant had filed its quarterly returns and annual statement (VAT 20) for the year 2010-11 on time and had claimed ITC over the diesel. The appellant had paid VAT amounting to Rs.4,71,769/- on the purchase of diesel used for generation of electric power for captive consumption. The Designated Officer dis-allowed the claim of ITC on diesel which was used for generation of electric power for captive consumption. The First Appellate Authority had also dismissed the appeal.

3. The counsel for the appellant while assailing order passed by the First Appellate Authority, in this second appeal has submitted that the appellant wants adjustment of the tax which he had deposited at the time of bringing diesel in the State of Punjab against his final tax liability. The Designated Officer had wrongly disallowed the ITC on the purchase of diesel and illegally imposed the penalty and interest. He further urged that the Designated Officer illegally disallowed/reversed the entry tax on purchase of transformers and also reversed the UC on purchase of capital goods. Whereas, the appellant is entitled to claim the ITC against entry tax on all these items and he has further urged that interest has also been levied illegally on rejection of ITC on purchase of diesel. Consequently, he has prayed for acceptance of the appeal.

4. Arguments heard. Record perused.

5. Though at the initial stage the appellant had raised the following issues while assailing the orders passed by the First Appellate Authority:-

- Allowing of ITC of Rs.4,71,769/- paid on purchase of diesel.
- Allowing of entry tax of Rs.2,45,767/- paid on purchase of transformers from outside the State of Punjab.
- Allowing of ITC of Rs.4,29,442/- paid on electrical parts which form part of machinery.
- Deletion of penalty charged U/s 53 of the Punjab VAT Act, 2005 amounting to Rs.5,66,373/- on reversal of entry tax on diesel.
- Deletion of penalty levied under Section 60 of the Punjab VAT Act, 2005 amounting to Rs. 10,000/-.

6. However, while raising the arguments, the appellant has only stressed about the claim of the ITC over the diesel as well as the issue regarding penalty and interest. The counsel has urged that in view of the provisions of Section 6 (7) & (8) of the VAT Act, the provisions of entry of the goods into Local Area Act, 2000 and also U/s 13 -A of the Punjab VAT Act, the appellant is entitled to the ITC over the diesel. Having pondered over the contentions it would be necessary to reproduce section 6 (7) of the VAT Act:-

**Clause - 7 of Section 6** is being reproduced for your kind perusal:-

- (a) *Notwithstanding anything contained in Sub-Section (1) to Sub-Section (6), the State Government shall charge the tax in advance on the import of goods to be notified in such manner as may be prescribed, and at such rates as may be notified.*
- (b) *But not exceeding the rates applicable on such goods under this Act.*  
*PROVIDED THAT such goods are meant for sale or use in manufacturing or processing of any goods for sale.*  
*PROVIDED FURTHER THAT such tax collected in advance shall be accounted towards final liability of the taxable person at the end of each tax paid.*

**Section 6(8)** of the Punjab VAT Act specifically states that the tax collected under the Punjab tax on entry of goods into the Local Area Act, 2000 (Punjab Act No. 9 of 2000), shall be deemed to have been collected under the provisions of clause (7) of Section 6.

7. Sub-Section (6) is the charging Section and deals with the liability to pay tax under the Act. Sub-Section (7) of the Section 6 provides for the charging of the advance tax on import of specified goods as noticed from time to time. Liability to pay tax is not dependent on issue of RC. As per the Section, its applicability was subjected to a notification to be issued by the State Government. No such notification was issued for applicability if the provisions to the assessment year 2010-11. Therefore, the appellant was not entitled to the ITC on diesel in the light of this Section. Even otherwise the tax was deposited as advance tax therefore, the tax so collected can't be refunded or adjusted against the TTC except in cases which fall within provisions of Section 13 or 13-A of the Punjab VAT Act. Section 13 read with Rules 18 to 26 describe the conditions for admissibility of the ITC which are reproduced as under:-

- (a) ITC is admissible to a taxable person only for purchases made within the State of Punjab.
- (b) ITC is available only when goods are sold within the State or In, the course of interstate trade or commerce or in the course of export or are used in the manufacturing, processing or packing of taxable goods for sale within the State or in the course of interstate trade or commerce or in the course of export.
- (c) ITC is available only on original VAT invoice issued by a taxable person and to be claimed during the period such invoice is received. In no case the amount of ITC on any purchase of goods shall exceed the amount of tax, in respect of same goods or goods used in manufacture of same goods, actually paid, if any. In case the original VAT invoice is lost or mutilated, the input credit tax will be available only after the Designated Officer has determined the credit.
- (d) ITC is available on capital goods if the capital goods are used for manufacturing or processing of taxable goods for sale.
- (e) ITC available on goods sent for job work for further processing, if received back within ninety days.
- (f) In respect of purchases tax paid U/s 19, full ITC is allowed when the goods are for sale or for use in manufacture for sale within Punjab or in the course of export. When the goods are for interstate sale, ITC on the schedule "H" goods and the product manufactured there from, is

available only to the extent of CST chargeable under the Central Sales Tax Act.

- (g) Partial ITC will be available when the goods purchased are used for some purposes other than taxable sales; or for job work; or some specific petroleum products.
- (h) No ITC will be available when the goods fall under the "negative list" or do not meet conditions laid down by Rule 21.
- (i) No ITC will be available to a person registered under lump sum tax payment option. Also, no ITC will be available to taxable persons in respect of goods purchased by them from a "lump sum person".
- (j) ITC is admissible for zero rated sales, export and SEZ.
- (k) ITC is not admissible to subsequent person for goods covered under "Single Stage Taxation" unless they are covered by packing norms and paying tax as per schedule "E".
- (l) ITC is restricted to an extent when goods purchased by a taxable person from an industrial unit availing tax incentives under Industrial Policy-2013, are further sold as interstate sales.

**8.** The appellant is admittedly not engaged in the business of sale and purchase of diesel. He has been using it for manufacturing of the goods which are not taxable in the State of Punjab. The appellant is not entitled to the ITC if he uses the diesel in generation, distribution and transmission of electric energy for captive consumption in the light of sub-Section 5 (b) (i) and sub-Section (4) of the Section 13 of the Act.

**9.** As such claim of the appellant appears to have been right / ignored by the authorities below.

**10.** Resultantly, finding no merit in the appeal, the same is thereby-/ dismissed.

**11.** Pronounced in the open court.

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**PUNJAB VAT TRIBUNAL****APPEAL NO. 97, 98 OF 2005-06****EMM KAY INDUSTRIES LTD.****Vs****STATE OF PUNJAB****JUSTICE A.N. JINDAL, (RETD.)  
CHAIRMAN**11<sup>th</sup> February, 2016**HF ► Revenue**

*Assessment framed within a period of three years is held to be within the limitation period in view of amendment under Punjab General Sales Tax Act.*

**LIMITATION – ASSESSMENT – ASSESSMENT YEAR 1998-99 – FRAMING OF ASSESSMENT ON 30.4.2002 – APPEAL FILED CONTENDING ASSESSMENT TO BE TIME BARRED – ASSESSMENT SO FRAMED BEING FRAMED WITHIN A PERIOD OF THREE YEARS FROM DATE OF FILING OF RETURNS HELD TO BE WITHIN THE LIMITATION PERIOD IN VIEW OF AMENDMENT UNDER PGST ACT – APPEAL DISMISSED – SECTION 11(3) OF PUNJAB GENERAL SALES TAX ACT, 1948.**

**Facts**

*In this case an appeal had been filed before first appellate authority on the grounds of limitation contending that the assessment was time barred. The said appeal was dismissed. An appeal is thus filed before Tribunal on the same ground.*

**Held:**

*The assessment for the years 1998-99 was framed on 30.4.2002. As per the amendment made in Punjab General Sales Tax Act, 3 years period was prescribed for framing the assessment which comes to an end on 30.4.2002. Thus, the assessment so made cannot be said to be beyond the period of limitation. The appeals are dismissed.*

**Present:** Mr. G.R. Sethi, Advocate Counsel for the appellant.  
Mr. Manjit Singh Naryal, Addl. Advocate General for the State.

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

**1.** This order of mine shall dispose off two connected appeals No.97 and 98 of 2005-06 filed against the order dated 10.3.2005 passed by the First Appellate Authority, Jaladhar Division, Jalandhar dismissing the appeal against the order dated 30.4.2002 (reducing the exemption and holding that nothing was due against the appellant in appeal No. 97 of 2005-06 for the assessment year 1998-99 and holding nothing against the appellant in appeal No.98 of 2005-06 for the assessment year 1998-99. Since both the appeals involve the common question of law, therefore, these are decided together.

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

**Appeal No. 97 of 2005-06**

3. In brief, the facts are that the Assessing Authority while scrutinizing assessment for the year 1998-99, assessed the interstate sale @ 4% and reduced exemption by Rs.80,273.78/-. According to the appellant the rate of the CST was 1%, as per notification S0.16/C.A./74/56/S.8/Amd/88, dated 25.2.1988. The appellant filed the appeal against the said order which was dismissed by the First Appellate Authority on 10.3.2005. Still aggrieved the appellant has filed this appeal before the Tribunal.

**Appeal No.98 of 2005-06**

4. The company had made interstate sale amounting to Rs.20,06,832/- in the year 1998-99. The Assessing Authority assessed the interstate sales @ 4% and reduced the exemption. The said order was challenged by filing an appeal before the First Appellate Authority whereupon the former dismissed the appeal.

5. The sole point being argued before the First Appellate Authority as well as the Tribunal is that the assessments are time barred. The First dismissed the appeal with the following observations:-

*"I have gone through the arguments, written submission of the appellant and the departmental representative and also perused the file and legal position enunciated by the Counsel and the departmental representative and find that the arguments advanced by the departmental representative carry weight. The departmental representative was able to distinguish his case from the case decided by the Sales Tax Tribunal in Revision No. 36 to 38 of 1999-2000 and 39 to 41 of 1999-2000. Based on facts and law contained in the statute book, I find that the appellant who is availing concessions under Punjab General Sales Tax (D & E) Rules, 1991 can't avail concessions contained in notification dated 25.2.1988, therefore, the assessee is to collect and deposit tax @ 1% and the balance 30% which is worked out by deducting 1% from 4% ( against "C" form) otherwise leviable, the concession is worked out whereas under the Punjab General Sales Tax (D & E) Rules 1991, the assessee is not to collect any tax but notional tax liability @ normally leviable/ chargeable is to be worked out to know the quantum of exemption availed. The two notifications are therefore, poles apart and should not be confused. It is further noticed that the case of M/s P.G. Sports is covered under Industrial Policy, 1987 which stands distinguished as above. Regarding the fact that case is covered by any limitation, the Rule 9(3) under the Punjab General Sales Tax (D&E) Rules, 1991 makes it very clear that assessment will be framed as per provisions of the Act. The Rules, as a matter of law, cannot override provisions of the Act and are Subservient to the Act. The wording of Section 11(3) of the Punjab General Sales Tax Act further makes it clear that assessment can be framed at any time after the submission of arguments/documents by the assessee but as per the decision of the Hon'ble Punjab and Haryana High Court reported above, the limitation if any, is applicable to the assessment year 1997-98 and not to the period prior to this year which is covered by the decision of Punjab High Court in Rattan Di Hatti vs. ETO Ludhiana reported at page 626 Vol. 64-1964 of the Punjab Law Reporters. A number of decisions cited by the departmental representative support the case. The Sales Tax Tribunal is a last fact finding body. The case decided by the Sales Tax Tribunal referred to by the Counsel for the appellant is in persona and not in rem. The leviability of rate of tax at general rate under the Punjab General Sales Tax Act, 1948 and @ 4% against*

*"C" Form under the Central Sales Tax Act, 1956 is sustained and assessments framed are within limitation period provided under the Act. The appeals are therefore dismissed. The copy of the order be placed on each file."*

**6.** Arguments heard. Record perused.

**7.** It is not in dispute that the appeals relate to the assessment years 1998-99 for which the assessment was to be finally filed upto 30.4.1999. As per amendment made in the Punjab General Sales Tax Act, 3 years period was prescribed for framing an assessment from the date, the last return is filed for the assessment year which comes to 30.4.2002, therefore, the assessment for the year 1998-99 could be framed upto 30.4.2002, as such, the assessment so framed on 30.4.2002 can't be said to be beyond the period of the limitation. No other issue has been raised by the Counsel for the appellant to assail the assessment order passed by the First Appellate Authority.

**8.** Resultantly, finding no merit in the appeals, the same are dismissed. Copy of the order be placed in each file.

**9.** Pronounced in the open court.

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## PUNJAB VAT TRIBUNAL

REVISION NO. 5 OF 2013

[Go to Index Page](#)

**DHRUV CHEMICALS & PHARMACEUTICALS**

Vs

**STATE OF PUNJAB**

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

**CHAIRMAN**

17<sup>th</sup> May, 2016

**HF ► Assessee**

*Notional Input Tax Credit is to be calculated on the price charged by selling exempted dealer and not by deducting Notional Input Tax Credit from that.*

**INPUT TAX CREDIT - NOTIONAL INPUT TAX CREDIT – PURCHASES MADE FROM EXEMPTED UNIT – GOODS SOLD AT A PRICE LESSER THAN PURCHASE PRICE – PROFIT EARNED BY USING THE NOTIONAL INPUT TAX CREDIT – REVISIONAL AUTHORITY REVISED THE ORDER HOLDING THAT NOTIONAL INPUT TAX CREDIT TO BE CLAIMED AFTER DEDUCTING THE NOTIONAL INPUT TAX CREDIT FROM THE TOTAL PURCHASES VALUE – REVISION FILED BEFORE TRIBUNAL – CIRCULAR ISSUED BY ETC HOLDING THAT NOTIONAL INPUT TAX CREDIT AVAILABLE ON THE AMOUNT OF SALE PRICE OF THE SELLING PERSON – NO OTHER METHOD OF CALCULATION OF TAX LIABILITY UNDER VAT ACT – REVISIONAL AUTHORITY DIRECTED TO CALCULATE THE INPUT TAX CREDIT IN THE LIGHT OF CLARIFICATION GIVEN BY ETC – REVISION PETITION ACCEPTED – MATTER REMANDED – SECTION 13 OF PVAT ACT, 2005**

*Petitioner had made purchases from an exempted unit and claimed Notional Input Tax Credit at the applicable rate on the purchase price of such goods. Assessment was framed accepting the Returns. Revisional Authority took up the matter in suo motu revision holding that assessee could not have taken the benefit of Notional Input Tax Credit on the full value and the Notional Input Tax Credit has to be reduced from the purchase price before calculating the entitlement of Notional Input Tax Credit. On revision before the Tribunal, it is held that ETC in the case of Saurav Chemicals has already held that Notional Input Tax Credit is to be calculated on the selling price of exempted dealer and not on any other price as there is no other method of calculation of tax liability under the Punjab VAT Act. The Tribunal remitted the matter back to Revisional Authority to calculate the Input Tax Credit in the light of order passed by ETC. Revisional Authority is also directed to examine the issue with regard to penalty and interest in view of the judgments of High Court. Revisional Petition is accepted and matter is remitted back.*

**Present:** Mr. K.L. Goyal, Sr. Advocate alongwith  
Mr. Navdeep Monga, Advocate Counsel for the appellant.  
Mr. N.K. Verma, Sr. Dy. Advocate General for the State.

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

1. This appeal has arisen out of the order dated 23.4.20013 passed by the Assessing Authority/Designated Officer creating additional demand to the tune of Rs. 11,61,516/- while framing the assessment for the year 2008-09.

2. The factual background of the case is that Excise and Taxation Officer-cum-Designated Officer framed the original assessment in the case vide order dated 20.9.2011 whereby, he created additional demand to the tune of Rs.5000/-. However, the Revisional Authority, when came to know about the illegality and impropriety in the order, it initiated revisional proceedings suo- moto; issued notice U/s 65 of the Punjab Value Added Tax Act for 10.9.2012.

3. In response to the notice, the petitioner appeared before the Revisional Authority. When confronted with the impropriety and illegality in the order passed by the Designated Officer that gross purchase of the firm was amounting to Rs.42,43,71,400/- and gross sales were amounting to Rs.41,59,14,451/- and closing stock as on 31.3.2009 was nil; the firm had given trade discount to the tune of Rs.1,30,30,191/- and trade discount received by the firm was Rs. 1,08,64,911/- which again widens the gap of sale value and the purchase value and that aforesaid circumstances revealed that sale value was lesser than the purchase value despite the fact that the firm had made gross profit to the tune of Rs.61,36,714/- as shown in the trading account no plausible reply was given, however, after few adjournments, the respondent disclosed to the Revisional Authority that the firm had made all purchases from an exempted unit i.e. M/s PACL Naya Nangal and from the said purchases, he had earned incentives/commissions amounting to Rs.46,37,725/- for achieving targets and meeting norms which has been reflected in the trading account. It was also disclosed that the appellant had received the notional input tax credit amounting to Rs.1,21,21,219/- which was shown in the trading account and he had deducted the same from the purchases made by the firm. In this manner, the appellant had got gross profit of Rs.61,36,714/-.

4. After providing proper opportunity of being heard to the appellant and after perusal of the record of the case, the Revisional Authority observed that the petitioner had sold the goods at the lesser value as compared with the purchase value and the appellant had also deducted the notional ITC from the purchases made by him. Consequently, the appellant earned profit. The Assessing Authority further urged that the appellant should have claimed the notional input tax credit on the value of the purchases from exempted unit after deducting the notional ITC amounting to Rs.1,21,21,219/-.

5. Consequently, the Revisional Authority vide order dated 23.4.2013 framed reassessment while holding the tax liability of the petitioner to the tune of Rs.4,84,849/- and after adding the penalty U/s 53 and 60 of the Act and interest U/s 32 (1) of the Act, created additional demand to the tune of Rs.11,61,516/-.

6. Aggrieved by the said order, the petitioner is in revision.

7. The prime question involved in the case is as to what is the method for calculating notional ITC?" The department had come out with the circulars wherein the method for calculating the notional ITC has been described. The said circulars are based on purchase value of the goods in the hands of the purchasing units. Then notional ITC in case of purchase from an exempted unit is to be calculated by the subsequent person on the amount on which the selling person has calculated its VAT liability (notional liability in case of exempted unit). There is no other method of calculation of tax liability under the Punjab VAT Act. Similar issue was raised before the Excise and Taxation Commissioner in case of M/s Saurav

Chemicals, Naya Nangal U/s 85 of the a Punjab VAT Act, the Hon'ble Commissioner then observed as under:-

*"Output tax" in relation to a taxable person means the tax charged or chargeable or payable in respect of sale and/or purchase of goods, as the case may be, under this Act.*

*"Input tax" in relation to a taxable person means Value Added Tax (Vat), paid or payable under this Act by a person on the purchase of taxable goods for resale or for use by him in the manufacture or processing or packing of taxable goods in the State.*

*"Input tax credit" means credit of input tax (in short referred to as ITC) available to a taxable person under this Act.*

*The basic scheme of the PVAT Act is that whatever tax has been paid by the selling person on the sale of goods in relation to a taxable transaction, shall be allowed to be deducted from the output tax liability of the purchasing person. It is obvious that the 'output tax' charged by the selling person in each case would be the 'input tax' in the hands of the purchasing person. The purchasing person can not be allowed to claim credit for the amount of tax which has not been charged/deposited by the selling person. Similarly, conditions relating to exemption from payment of tax, as per the notification dated 6.4.2005, provide that a taxable person purchasing goods from an exempted unit, shall to entitled to the notional input tax credit on the basis of the invoice issued by the a exempted unit.*

*In view of the above discussion the ITC (Notional UC in case of purchase from an exempted unit) is to be calculated by the subsequent person on the amount on which the selling person has calculated its VAT liability (notional liability in case of exempted unit).*

*There is no other method of calculation of tax liability under the PVAT Act."*

**8.** Thus while examining the facts and circumstances of case this Tribunal is of the opinion that the Revisional Authority will calculate the input tax credit in the light of the order passed by the Excise and Taxation Commissioner, Punjab in the case of M/s Saurav Chemicals, Naya Nangal.

**9.** Since the petitioner has seriously agitated the issue regarding penalty and interest while stating that the Revisional Authority could only examine the illegality or propriety of the order and could not impose penalty and interest while framing the assessment. The arguments have merit as such the Revision Authority would examine the case regarding its authority to impose penalty and interest in the light of the judgment delivered in case of State of Haryana Vs Dasaunda Singh Waryam Singh (1996) 103 STC 128 (Punjab) as well as M/s Chaudhary Tractor Company Vs State of Haryana (2007) 10 VST 253 (P & H) and pass the order afresh accordingly and if the Revisional Authority points that the business to impose penalty and interest was that of Assessing Authority then it will pass the appropriate orders according to law.

**10.** Resultantly, this revision petition is accepted, impugned order is set-aside and the case is remitted back to the Revisional Authority to decide the same afresh in the terms of aforesaid observations made in the order.

**11.** Pronounced in the open court.

**PUNJAB VAT TRIBUNAL****APPEAL NO. 494 OF 2015**[Go to Index Page](#)**DASMESH ENTERPRISES****Vs****STATE OF PUNJAB****JUSTICE A.N. JINDAL, (RETD.)  
CHAIRMAN**12<sup>th</sup> May, 2016**HF ► Assessee**

*Imposition of penalty on the ground of undervaluation is not justified merely on the basis of admission of Drive.*

**PENALTY – ATTEMPT TO EVADE THE TAX – EMPTY OLD JUTE BAGS BEING IMPORTED FROM NEW DELHI TO JALALABAD – GOODS REPORTED AT ICC – DETENTION MADE ON THE GROUND OF UNDER-VALUATION – ON APPEAL BEFORE TRIBUNAL – ORDER IS EX-PARTE AS NO NOTICE SERVED UPON OWNER OF FIRM – NO EVIDENCE COLLECTED BY DEPARTMENT FOR VALUATION OF GOODS – NO EVIDENCE COLLECTED BY DEPARTMENT FOR VALUATION OF GOODS – ADMISSION OF DRIVER REGARDING PRICE NOT ADMISSIBLE AS HE DOES NOT KNOW ABOUT THE ACTUAL PRICE OF GOODS – PROVISIONS OF SECTION 46A NOT INVOKED BEFORE DETERMINING THE VALUATION OF GOODS – CASE REMITTED BACK TO ASSESSING AUTHORITY FOR FRESH DECISION – SECTION 46-A, 51 OF PVAT ACT, 2005**

**Facts**

*Appellant in the present case had imported empty old jute bags and reported the goods at ICC Killianwali. Goods were detained on suspicion and under-valuation of goods. Driver of the vehicle admitted that goods are under-valued and accordingly penalty is imposed. On appeal before the Tribunal.*

**Held:**

*Manjit Singh is driver of vehicle who could not have given any statement regarding actual price of goods. Admission made by him does not carry any value. No notice served upon the firm. Report made by M/s Sumit Trading Company which has been relied upon by the Department is not even part of the order passed by Designated Officer. No proper opportunity given for proving the price of goods as well as the intention to evade tax. Provisions of Section 46A have also not been pressed into operation for determining the valuation of goods. Matter needs re-examination and accordingly remitted back for decision afresh.*

**Present:** Mr. K.L. Goyal, Sr. Advocate alongwith  
Mr. Navdeep Monga, Advocate Counsel for the appellant.  
Mr. N.K. Verma, Sr. Dy. Advocate General for the State.

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

1. On 22.8.2014, the Empty Old Jute Bags were transported in. vehicle N0.RJ-19IG-2982 from New Delhi and were to be delivered at Jalalabad (W) when the driver reached the ICC Killianwali, he reported the goods and produced the following documents:-

- (1) Form VAT-XXXVI (No.ICC 14ST010478517) dated 22.8.2014.
- (2) Invoice No.262, dated 21.8.2014 issued by M/s Hari Om Traders, New Delhi in favour of M/s Dasmesh Enterprises, Jalalabad (W) for Rs. 1,83,600/-.
- (3) GR No.512, dated 21.8.2014 of Maa Ambey Freight Carriers, Delhi.

2. On scrutiny of the documents, the Detaining Officer observed that the goods were more in quantity than those mentioned in the invoice and the transaction required to be verified, as such, he detained the goods for verification. On 26.5.2014, he forwarded the case to the Designated Officer. On 27.8.2014, on receipt of the file, the Designated Officer issued the notice to the owner of the goods for 12.9.2014. On 12.9.2014 none appeared, therefore that notice was issued on 13.9.2014 for 22.9.2014, in response to which none appeared. Therefore, the Designated Officer, vide his order dated 22.9.2014, observed that the value of the goods was Rs.20/- per bag and not Rs.09/- as mentioned in the invoice therefore, the goods were under valued as the market price of the bag was Rs.20/- per bag. He further observed that Manjit Singh admitted before him about under valuation and did not produce any evidence about price of the goods. Consequently, he imposed penalty to the tune of Rs.78,100/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

3. The appeal filed by the appellant was dismissed on 11.9.2015.

4. Arguments heard. Record perused.

5. The order at the face of it, appears to be exparte. Though the detaining officer had recorded the name of Manjit Singh in the order as owner of the goods but it is factually wrong as Manjit Singh is the driver of the appellant firm who was not served. The Detaining Officer even did not record the statement of Manjit Singh. There is nothing on the record to show the presence of Manjit Singh and regarding recording of his statement on 27.8.2014 or thereafter. Since the notice was issued by the Designated Officer to the owner of the goods on 27.8.2014 therefore, had there been any admission made by the appellant or Manjit Singh before him about the value of the goods, then the Designated Officer must have recorded the statement of any of them on 27.8.2014 or thereafter. The documents further reveal that Manjit Singh is neither the proprietor nor the partner of the firm but he is only the driver of the vehicle, therefore, he was not supposed to know about the actual price of the goods.

6. It may further be noticed that the state has relied upon a report made by the proprietor M/s Sumit Trading Company made on 26.8.2014 whereby the proprietor of the said firm had reported that the price of the goods was Rs. 20 per bag. It is not clear on the record as to before whom this report was produced and the said report was not mentioned in the order passed by the Designated Officer. In these circumstances, this Tribunal is of the definite opinion that the appellant was not provided any proper opportunity to lead evidence for proving the price of the goods as well as to prove that there was no intention to evade tax. The authorities below have not given specific findings regarding the price of goods except to hold that Manjit Singh had admitted that the goods were under valued. Admission made by Manjit

Singh can't be believed as he being the driver was not supposed to know the price of old bardana carried by him in the vehicle and his statement was also not recorded.

**7.** The counsel for the appellant has also raised the question that the designated officer did not apply the provisions of Section 46-A of the Punjab Value Added Tax Act before determining the valuation of the goods.

**8.** In these circumstances, the orders passed by the authorities below need a relook and it is a fit case for remitting the same back to the designated officer.

**9.** Resultantly, I accept the appeal, set-aside the impugned order and remit the same back to the Designated Officer to decide it afresh in the light of the observations made by me above.

**10.** Pronounced in the open court.

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**PUNJAB VAT TRIBUNAL**

APPEAL NO. 77 OF 2012

[Go to Index Page](#)**B.K.STEELS**

Vs

**STATE OF PUNJAB****JUSTICE A.N. JINDAL, (RETD.)  
CHAIRMAN**

21st April, 2016

**HF ► Assessee**

*Penalty under Section 51 is not sustainable where the goods have been sold after import from outside the State after duly reporting at ICC in the same truck to another dealer of Punjab*

**PENALTY – ATTEMPT TO EVADE TAX – GOODS IMPORTED FROM OUTSIDE THE STATE – REPORTED AT ICC - SUBSEQUENTLY SOLD TO ANOTHER DEALER IN THE SAME TRUCK – DETENTION MADE ON THE GROUND THAT GOODS STARTED FROM OUTSIDE THE STATE BUT THE ACCOMPANYING DOCUMENTS SHOW THE TRANSACTION AS INTRA-STATE SALE – DRIVER IN POSSESSION OF GR AND INVOICE SHOWING THE REPORT OF GOODS AT ICC – FURTHER BILL ISSUED FOR SALE TO ANOTHER DEALER AT ZIRAKPUR – NO QUESTION OF KEEPING THE GOODS OUT OF ACCOUNT BOOKS – GOODS SOLD AFTER ADDING 4% VAT AS REQUIRED – GOODS ACCOMPANIED BY PROPER AND GENUINE DOCUMENTS – NO ATTEMPT TO EVADE TAX – APPEAL ACCEPTED – PENALTY DELETED – SECTION 51 OF PVAT ACT, 2005**

*Appellant being consignment agent of M/s Rathu Industries Limited, Gaziabad, brought certain goods (iron and steel) for sale in Punjab. The goods are duly reported at ICC Rajpura. Goods further sold by appellant to another dealer of Punjab after charging tax and issuing fresh invoice and GR. Goods are detained on the suspicion that the goods were originally shown as stock transfer but the same were actually inter-state sale and the documents accompanying the goods were ingenuine and improper. On appeal before the Tribunal, Held:*

*Since the goods were generated at ICC, there was no question of keeping the goods out of account books. Consignment was sold after adding 4% VAT as chargeable and a fresh GR was issued from Rajpura to Zirakpur. Unloading of goods was not carried out to save loading charges, which cannot be termed as malafide and causing any loss to the State Revenue. The goods were accompanied by proper and genuine documents and there was no intention to evade the payment of tax. Appeal is accepted and penalty deleted.*

**Present:** Mr. K.L.Goyal, Advocate alongwith  
Mr. 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. This appeal has arisen out of the order dated 22.5.2009 passed by the First Appellate Authority, Patiala Division, Patiala, dismissing the appeal of the appellant against the order dated 29.4.2008 passed by the Assistant Excise and Taxation Commissioner, Patiala Division, Patiala imposing a penalty to the tune of Rs.1,51,687/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005 against the appellant.

2. The appellant is a registered dealer under the Punjab Value Added Tax Act, 2005 with the head office at Abohar and branches at Rajpura and Killianwali. The firm has been filing the regular returns. He is acting as a consignment agent of M/s Rathi Industries Limited, Chhapraulla (U.P.), Gaziabad. He brings the goods from M/s Rathi Industries Limited for sale in Punjab and thereafter, he delivers the goods to the buyers inside the State of Punjab against the invoices. All the transactions relating to receiving of the goods are reported at the ICC and are entered in the book of accounts maintained by the appellant firm regularly. Earlier, the appellant was registered under the Punjab General Sales Tax Act, 1948, now under the Punjab VAT Act. The appellant obtains the orders for supply of iron goods from the dealers in Punjab and then after bringing the consignment from M/s Rathi Industries Limited, he issues his own bills duly VAT paid and thereafter without unloading the said goods from the truck, delivers the goods at the place of the buyer thereupon, he saves the loading and freight expenses. The transactions are duly accorded in the book of accounts.

3. On 4.3.2006, the driver while loading the M.S.Bars from Village Chhapraulla in vehicle No.HR-37A-6007, when reached the ICC, Rajpura, he generated the goods at the ICC. However, when he reached on G.T.Road, Rajpura then he was apprehended by the Excise and Taxation Officer, Rajpura, when confronted, the appellant produced the following documents:-

1. Bill No.932 dated 4.3.2006 for M.S. Bars valued at Rs.5,05,626/- alongwith challan No. 932 of the same date issued by M/s B.K. Steels (Branch Office) G.T.Road, Village Madanpur, Rajpura, VAT No.036010961114 in favour of M/s Yamuna Iron and Building Material Store, Zirakpur, Kalka High Way, Baltana, VIN-033610-76749;
2. G.R.No.1308 dated 4.3.2006 of M/s Shaksham Road Carrier, Rajpura, showing freight charges of Rs. 11,220/-.
3. State Rahdari Pass No. 100659

4. While suspecting that the goods were not covered by the genuine and proper documents, he detained the goods and issued notice.

5. On enquiry, the Assistant Excise and Taxation Commissioner, Patiala observed that the goods originally were shown as stock transfer in challan No.05405 DATED 3.3.2006 issued by M/s Rathi Industries Ltd, Chhapraulla (UP) in favour of M/s B.K. Steels, but the same were actually Inter State Sales and documents accompanying the goods were ingenuine and improper. Consequently, the Assistant Excise and Taxation Commissioner, Patiala, vide order dated 6.3.2006, imposed penalty to the tune of Rs.1,51,687/- U/s 51 (7) (b) of the Act against the appellant.

6. Aggrieved against the order dated 6.3.2006, the appellant filed the appeal whereupon, the First Appellate Authority, Patiala Division, Patiala vide his order dated 15.5.2006 remitted the case back to the Excise and Taxation Officer for passing a speaking order.

7. After remand, the Assistant Excise and Taxation Commissioner, Patiala vide his order dated 29.4.2008 again imposed a penalty to the tune of Rs. 1,51,687/- against the appellant.

8. Aggrieved against the said order, the appellant filed the appeal before the First Appellate Authority, Patiala Division, Patiala who vide his order dated 22.5.2009 dismissed the appeal.

9. Still aggrieved, the appellant filed the appeal before the Tribunal alongwith an application for condonation of delay of 907 days in filing the appeal, whereupon, the Tribunal vide his order dated 29.4.2013 dismissed the application for condonation of delay, consequently, the appeal on the ground of limitation.

10. Still dis-satisfied, the appellant preferred the appeal against the said order before the Hon'ble Punjab and Haryana High Court, whereupon, the High Court vide order dated 10.8.2015, accepted the appeal; condoned the delay in filing the appeal and remitted the case back to the Tribunal to decide the same on merits in accordance with law. With this factual back ground, now this appeal has come up for arguments before me.

11. The Counsel for the appellant has urged that the goods actually had been loaded from Gaziabad (UP) by the driver in charge of the vehicle for the branch office of the appellant at Rajpura. The driver was in possession of the GR as well as invoice in this regard which he had presented while reporting about the goods at ICC Shamboo (import), Rajpura. The counsel has urged that the goods were being brought by the appellant from Chhaproulla to Rajpura. As he was a trader of the goods, therefore, he sold the goods vide bill No.05405 dated 3.3.2006 to M/s Yamuna yarn and building store Zirakpur for a price of Rs.4,86,179/- over which he had also charged VAT @ 4% (total Rs. 5,05,626/-) consequently, the goods were to be delivered at Zirakpur. Since the goods were duly generated at the ICC and no further tax of Punjab was involved, therefore, the authorities below fell in error in imposing the penalty upon the appellant.

12. To the contrary, the state counsel has urged that the appellant has concealed the true facts. The consignment was projected as stock transfer for Rajpura but it was taken to a different place then the place for which it was tipped, therefore, the penalty was imposed. It was further contended that the appellant had purchased the goods on payment of CST @ 2% against, "F" Form and after the goods entered into the state of Punjab, he sold the same against a valid invoice while charging the tax under the VAT invoice from M/s Yamuna yarn and building store Zirakpur, but since the appellant concealed all these facts and did not disclose about the subsequent sale before the authorities, therefore the penalty was rightly imposed against him.

13. After hearing both the parties and perusal of the records, it transpires that the goods were loaded in the truck bearing No. HR-37A-6007 which was intercepted by the Excise and Taxation Officer, Rajpura. The goods were duly accompanied by the invoices issued by M/s Rathi Industries Ltd. Chhapraulla (UP) in Gaziabad. The invoice was duly generated at the ICC, the goods were purchased against Form "F" on payment Central Sales Tax @ 2%. Due Excise duty was already paid on M.S. Bars. It is also in evidence that the goods were covered by bill No. 05405, dated 3.3.2006 and were further sold by the appellant against valid invoice No.932 dated 4.3.2006 to M/s Yamuna Yarn and Building Store Zirakpur after charging the VAT @ 4% from the buyers. The appellant had issued VAT bill in favour of the purchaser and had shown the said bill to the Detaining Officer. The bill book has been regularly maintained and tallied with the returns filed. The appellant has failed to show as to under what circumstances the appellant had any intention to evade the tax. The Assistant Excise and Taxation Commissioner has misstated the facts and has tried to sit over the department's order of registration. Wherein, branch Officer at Madanpur (Rajpura) has been shown by the

appellant and has been accepted. Since the goods were generated at the ICC, then there was no question to keep the goods out of the account books. The state counsel has failed to convince this court as to how the appellant had any intention to evade the tax. The appellant had produced the account books which clearly reveal about the sale of the goods to buyers. The consignment was sold after adding 4% VAT as chargeable, consequently a GR was issued by the Shaksham Road Carrier for transporting the goods upto Baltana. This act was done by the appellant in order to save the loading as well as carriage expenses "can't be termed as malafide in order to cause any loss to the State Revenue. The documents further reveal that the transaction in question cannot be termed as neither branch transfer nor interstate sale.

**14.** As an up shot of the aforesaid discussions, the Tribunal reaches the conclusion that the goods were accompanied by the proper and genuine documents and there was no intention on the part of the appellant to evade the tax, consequently, the order passed by the authorities below are liable to be set-aside.

**15.** Resultantly, finding merit in the appeal, the same is accepted, the impugned order is set-aside and the penalty imposed upon the appellant is quashed.

**16.** Pronounced in the open court.

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## NOTIFICATION (Punjab)

### NOTIFICATION REGARDING APPOINTMENT OF OFFICERS UNDER PUNJAB RIGHT TO SERVICE ACT, 2011

[EXTRACT FROM THE PUNJAB GOV. GAZ. (EXTRA, DATED THE 15<sup>TH</sup> JANUARY, 2016)]

GOVERNMENT OF PUNJAB  
DEPARTMENT OF GOVERNANCE REFORMS  
(GOVERNANCE REFORMS-2 BRANCH)

### NOTIFICATION

**The 15th January, 2016**

**No. 5/27/2014-2GR-2(PF)/668041/1.-** In partial modification of the notification issued *vide* no. NO.5/27/2014-2GR2/425953/1, dated 02.03.2015, the Governor of Punjab is pleased to modify stipulated time limited, designated officers, first appellate authorities and second appellate authorities for the purpose of section 3 of the Punjab Right to Service Act, 2011 in respect of services as mentioned against each as under:

Sr. No.	Department Organization	Name of the Service	Given time limit (Working days)	Designated Officer	First Appellate Authority	Second Appellate Authority
188d	Town & Country Planning	Sanction of building plans above 10000	60 days	Chief Town Planner	Director Town and Country Planning Punjab	Principal Secretary, Housing & Urban Dev. Department
189d	Town & Country Planning	Issue of Completion / Partial Completion certificate above 10000 square meters	30 days	Chief Town Planner	Director Town and Country Planning Punjab	Principal Secretary, Housing & Urban Dev. Department
207	Excise and Taxation	Grant of Registration Certificate	30 days	ETO-cum-Designated Officer	Deputy Excise & Taxation Commissioner of Division concerned	Additional Excise & Taxation Commissioner (VAT), Punjab
208	Excise and Taxation	Amendment in Registration Certificate	30 days	ETO-cum-Designated Officer	Deputy Excise & Taxation Commissioner of Division concerned	Additional Excise & Taxation Commissioner (VAT), Punjab

209	Excise and Taxation	Issue of Duplicate Registration Certificate	30 days	ETO-cum-Designated Officer	Deputy Excise & Taxation Commissioner of Division concerned	Additional Excise & Taxation Commissioner (VAT), Punjab
210	Excise and Taxation	Cancellation of Registration Certificate	30 days	ETO-cum-Designated Officer	Deputy Excise & Taxation Commissioner of Division concerned	Additional Excise & Taxation Commissioner (VAT), Punjab
211	Excise and Taxation	Permission for Business by a casual dealer	5 days	ETO-cum-Designated Officer	Deputy Excise & Taxation Commissioner of Division concerned	Additional Excise & Taxation Commissioner (VAT), Punjab
212	Excise and Taxation	Request for extension of period of casual business	2 days	ETO-cum-Designated Officer	Deputy Excise & Taxation Commissioner of Division concerned	Additional Excise & Taxation Commissioner (VAT), Punjab
213	Excise and Taxation	Allotment of Tax Deduction Number in case of Works Contract	30 days	ETO-cum-Designated Officer	Deputy Excise & Taxation Commissioner of Division concerned	Additional Excise & Taxation Commissioner (VAT), Punjab
214	Excise and Taxation	Supply of Assessment Orders/Penalty Orders/Refund Orders	15 days	ETO-cum-Designated Officer / Asstt. Excise & Taxation Commissioner as the case may be	Deputy Excise & Taxation Commissioner of Division concerned	Additional Excise & Taxation Commissioner (VAT), Punjab
215	Excise and Taxation	Obtaining additional certified copy of order	30 days	ETO-cum-Designated Officer	Deputy Excise & Taxation Commissioner of Division concerned	Additional Excise & Taxation Commissioner (VAT), Punjab
216	Excise and Taxation	Obtaining copy of statement recorded in any enquiry held under PVAT Rules	30 days	ETO-cum-Designated Officer	Deputy Excise & Taxation Commissioner of Division concerned	Additional Excise & Taxation Commissioner (VAT), Punjab
217	Excise and Taxation	Issuance of Advance Tax Exemption	60 days	DETC of the Division concerned or Officer authorized by Excise and Taxation Commissioner, Punjab	Additional Excise & Taxation Commissioner (VAT), Punjab	Excise & Taxation Commissioner, Punjab

218	Excise and Taxation	Renewal of Advance Tax Exemption Certificate	30 days	DETC of the Division concerned or Officer authorized by Excise and Taxation	Additional Excise & Taxation Commissioner (VAT), Punjab	Excise & Taxation Commissioner, Punjab
219	Excise and Taxation	Registration under Luxury Tax	30 days	ETO (Excise)	Deputy Excise & Taxation Commissioner of Division concerned	Additional Excise & Taxation Commissioner (VAT), Punjab
220	Excise and Taxation	Hard Bar License	60 days	Deputy Excise & Taxation Commissioner of the concerned Division-cum-Collector Excise	Joint Excise & Taxation Commissioner (X), Punjab	Add. Excise & Taxation Commissioner (X), Punjab
221	Excise and Taxation	Beer Bar License	60 days	Deputy Excise & Taxation Commissioner of the concerned Division-cum-Collector Excise	Joint Excise & Taxation Commissioner (Excise), Punjab	Additional Excise & Taxation Commissioner (Excise), Punjab
222	Excise and Taxation	Drought Bear Bar License	60 days	Deputy Excise & Taxation Commissioner of the concerned Division-cum-Collector Excise	Joint Excise & Taxation Commissioner (Excise), Punjab	Additional Excise & Taxation Commissioner (VAT), Punjab
223	Excise and Taxation	Annual License to Marriage Palaces	30 days	Deputy Excise & Taxation Commissioner of the concerned Division –cum-Collector Excise	Joint Excise & Taxation Commissioner (Excise), Punjab	Additional Excise & Taxation Commissioner (VAT), Punjab
224	Excise and Taxation	Bar License to Clubs	60 days	Deputy Excise & Taxation Commissioner of the concerned Division – cum-Collector Excise	Joint Excise & Taxation Commissioner (Excise), Punjab	Additional Excise & Taxation Commissioner (Excise), Punjab
225	Excise and Taxation	Permission to serve liquor in a marriage or banquet hall to a	2 days	Excise & Taxation Officer (Excise) of concerned	Joint Excise & Taxation Commissioner (Excise), Punjab	Deputy Excise & Taxation Commissioner

		function holder		district		
226	Excise and Taxation	Permit for industrial Alcohol to Chemical industries etc.	60 days	Deputy Excise & Taxation Commissioner	Joint Excise & Taxation Commissioner (Excise), Punjab	Additional Excise & Taxation Commissioner (Excise), Punjab
227	Labour	Registration under the Contract Labour (Regulation & Abolition) Act, 1970 after receipt of duly completed application along with prescribed fee.	30 days	Additional Labour Commissioner / Deputy Labour Commissioner/ Assistant Labour Commissioner/ Labour-cum-conciliation Officer	Labour Commissioner	Principal Secretary Labour
228	Labour	Licence under the Contract Labour (Regulation & Abolition) Act, 1970 after receipt of duly completed application alongwith prescribed fee.	30 days	Additional Labour Commissioner / Deputy Labour Commissioner/ Assistant Labour Commissioner/ Labour-cum-conciliation Officer	Labour Commissioner	Principal Secretary Labour
229	Labour	Renewal of License under the Contract Labour (Regulation & Abolition) Act, 1970 after receipt of duly completed application along with prescribed fee.	30 days	Additional Labour Commissioner / Deputy Labour Commissioner/ Assistant Labour Commissioner/ Labour-cum-conciliation Officer	Labour Commissioner	Principal Secretary Labour
230	Labour	Registration under Punjab Shops and Commercial Establishments Act, 1958	30 days	Labour Inspector	Deputy Labour	Additional Labour Commissioner
231	Labour	Registration under Trade Unions Act after receipt of duly completed application with documents alongwith prescribed fee	90 days	Labour Commissioner	Special Secretary Labour	Principal Secretary Labour



## NEWS OF YOUR INTEREST

### LOGISTICS COMPANIES RALLY ON GST PASSAGE HOPES

MUMBAI: Logistics companies have rallied in a weak market late last week as the BJP's win in Assam and gains in vote share in other states have bolstered hopes of the passage of the much-awaited Goods and Services Tax bill in the monsoon session of Parliament.

In the last two sessions of the market, shares of Patel Integrated Logistics BSE -4.92 % and Allcargo Logistics BSE -1.76 % gained around 8% each. Gati gained the most, rising nearly 11%. Snowman Logistics and VRL Logistics gained 1.4% and 2.1% respectively. However, the low delivery volumes, in the range of 16% to 47%, indicate the speculative nature of the upswing in these stocks.

The delivery volumes in these stocks were lower than the average delivery volumes of 21% to 53% during the last six months.

"These are just momentum trades. If investors go and buy logistics stocks solely based on this event they could lose money as well as hope of GST being passed has been there for many years," said Sadanand Shetty, senior fund manager, Taurus Mutual Fund. Market participants said the euphoria in these stocks could fizzle out soon as the BJP's performance in the assembly elections will not do much to aid the passage of the GST bill. In a note to clients, CLSA on Friday said the House math to enable the GST's passage is still tough as it remains hinged on the Congress party's approval.

### Looking Up

Company	Rise in last 2 sessions (%)	Delivery % Thursday	Delivery % Friday	6 month Avg Delivery (%)
Patel Int Logistics	8.06	25.06	23.30	25.15
Gati	10.99	16.19	17.84	20.78
Allcargo Logistics	8.30	28.5	32.73	40.42
VRL Logistics	2.07	17.18	20.12	34.55
Snowman Logistics	1.39	35.06	30.46	34.56

Compiled by: ETIG Database

"I don't expect a re-rating to happen in these stocks. The possibility of GST coming has led to some excitement and those who have missed the initial rally may jump to buy these stocks but eventually investors will scrutinise and profit booking will happen," said Phani Sekhar, fund manager-PMS, Karvy Stock Broking.

The GST bill, which has received the Lok Sabha's approval, is pending in the Rajya Sabha due to opposition by the Congress over some proposals.

*Courtesy: The Economic Times  
23<sup>rd</sup> May, 2016*



## NEWS OF YOUR INTEREST

### BACKLOG BURDEN: HC PLANS SPECIAL HEARINGS DURING SUMMER VACATION

**CHANDIGARH:** With mounting pendency and no indications of appointment of more judges anytime soon, the Punjab and Haryana high court has decided to hold special hearings during the summer vacation next month to clear the backlog.

The high court lawyers have been asked to submit particulars of old cases, which they wanted to have listed for hearing during the one-month period, especially the criminal cases wherein accused are in custody. The particulars are to be supplied by May 23.

“All such cases, provided the counsel for all parties give their consent, would be taken up by vacation benches/other judges, who may express willingness to hold court during the summer vacation,” reads a notice by registrar judicial of the high court. The cases would be taken up during the vacation period between June 4 to July 3 and dates for hearing would be notified in advance.

It is learnt acting chief justice SJ Vazifdar had discussed the matter with the judges soon after he attended a conference of chief ministers and high court chief justices in April in Delhi, wherein chief justice of India (CJI) TS Thakur had expressed his concern over the shortage of judges. The CJI had also met the high court chief justices separately in this regard, it is learnt.

“It’s a good move, but needs support from the Bar. A similar initiative was undertaken around five years ago as well, but it received poor response. Only 14 cases could be dealt with by special benches at that time,” said a top official of the high court.

The HC had a pendency of 2.97 lakh cases in 2014. The figures for 2015 are yet to be released. In the past one year, there has been no appointment of judges in the high court. Last appoint was of justice Ramendra Jain on April 20, 2015, when judges’ strength was 54. Since July 2014, the high court is also functioning without a regular chief justice and against the sanctioned strength of 85 judges, the current number is 46 only. During the summer vacation, a maximum of two division benches and four single-judge benches are constituted to deal with fresh petitions only. With this move, the number of benches would go up. But it is not clear as to all judges would cut down on their holidays or only a few would be assigned with these special hearings as well.

“The entire plan will crystallise by month-end only. How many benches are to be constituted, is to be decided only on the basis of request from the lawyers. What if 15 benches are constituted and there very few cases? The past experience has not been very optimistic,” the official added.

The Bar, on the other hand, has welcomed the idea. “It would go a long way in clearing the backlog. We would also urge lawyers to come forward in the times of crisis. There is a huge backlog. This is a good opportunity to help litigants. If court agrees, we are ready to provide panel from the Bar and lawyers who could assist court as amicus curiae,” said HS Brar, Punjab and Haryana high court Bar association president.

*Courtesy: The Hindustan Times*

*19<sup>th</sup> May, 2016*



## NEWS OF YOUR INTEREST

### GST IMPACT WILL BE FELT FROM THE NEXT DAY: GODREJ

**MUMBAI:** A good monsoon and the proposed passing of the GST bill will change the Indian business landscape dramatically, driving growth beyond double digits, taking the markets to an all-time high and bringing back industrialists to open up their purse strings for investment, Adi Godrej said.

The chairman of the \$4-billion Godrej group told TOI in an interview that while double-digit growth would become a reality after 2017-18, when GST is introduced, the response in the stock markets and the kick-starting of the investment cycle would be immediate. While the markets have already started to take note of the potential of a good monsoon and higher corporate earnings over the last few trading sessions, lack of demand, high debt and unused capacities have so far kept companies away from making any large investments.

He termed the potential adoption of GST, which seeks to bring in a national value-added tax structure in India, as the second biggest piece of reform after the liberalization of the Indian economy during 1991. "It will add 1.5 to 2% to the GDP and the economy will start picking up much earlier than the scheduled adoption date," he said, adding that companies would immediately go on their drawing boards to start investments as it will also fuel consumer demand.

"The benefit would be felt from the very next day. Prices will go down and, as a result, demand would go up, which will lift industrial production and tax collection for the government," he said stressing on the need for its quick adoption. The government has indicated that it would be in a position to pass the GST bill during the monsoon session of Parliament.

Enthused by the renewed prospects of GST adoption, Godrej is planning to add 8 to 10 new factories which could take investments of anywhere between Rs 10 crore and Rs 100 crore each. He plans to make fresh investments in setting up two new projects under the group FMCG company, Godrej Consumer Products (GCPL) and a couple of agri-product projects under Godrej Agrovet. Besides, he also plans to grow through acquisitions as has been the norm over the last few years.

Though sales have been pulled down by weak demand, particularly in rural areas because of two consecutive bad monsoons, he feels things would start improving by the second half of this year. While growth rate of its consumer-focused company GCPL was 15 to 25% in the last three to four years, it came down to 9% last year and even further to 7% in the last quarter.

"For the first time in a decade, the volume growth (at 12%) is higher than value growth (at 9%)," he said, stressing on the drag.

Despite a sluggish demand, Godrej, however, has tasted success in real estate sales. "It's been a record year for Godrej Properties and one reason could be the elimination of black money from the system," he said, indicating that the group keeps away from it. Godrej is happy with the reforms taken by the Modi government in the first two years of its tenure, but said it should improve its record on privatization and disinvestment, adding that it has no business to be in airlines and hotels.

*Courtesy: The Times of India  
30<sup>th</sup> May, 2016*



## NEWS OF YOUR INTEREST

### HARYANA VB SEALS RECORDS IN FIVE DISTRICTS

**CHANDIGARH:** Tightening the noose on dealers and officials involved in the Rs 10,618 crore VAT scam, the Haryana Vigilance Bureau (SVB) has sealed the records of Excise and Taxation Department offices in five districts on the directions of the Punjab and Haryana High Court.

On the job since yesterday, SVB teams have sealed hundreds of gunny bags full of papers belonging to the department offices in Sirsa, Hisar, Kaithal, Gurgaon and Faridabad. "Official records in 70 gunny bags have been sealed in Kaithal alone," said Ashok Kumar, SP, SVB, Ambala. The Vigilance team that visited the Sirsa office sealed the record of more than 1,000 firms, said sources.

"A DSP from SVB's Hisar office led teams to Hisar and Sirsa. Another team from the Gurgaon office has sealed records in Gurgaon and Fatehabad for the period 2005-2015," Ashok Kumar said. Meanwhile, in its reply filed before the High Court, the CBI has requested that in case it is asked to look into the VAT scam, the Haryana Government should be directed to provide logistic support and manpower.

Whistleblowers Raghubir Singh and Shiv Sawhney had approached the Punjab and Haryana High Court seeking a CBI inquiry into the scam.

They had said that the Lokayukta, Haryana, had registered a case on their complaint and assigned the inquiry to Kamla Chaudhary, then DETC, Hisar. But she failed to hold the probe and the Lokayukta constituted an SIT headed by IG Shrikant Jadhav, which unearthed the scam. The petitioners said the SIT had submitted its report in January 2015 recommending a CBI inquiry.

Meanwhile, the Confederation of All-India Traders has decided to discuss the 'continuing VAT evasions in Haryana' at its upcoming meeting of the governing body in the second week of June since.

"Haryana has become a soft state for VAT evasion. Traders of Delhi and the NCR open offices and godowns in Haryana, denying a level playing field to others by evading VAT in connivance with officials of the Excise and Taxation Department," alleged SP Singh, president of the All-India Tyre Manufacturers Association.

*Courtesy: The Tribune*

*30<sup>th</sup> May, 2016*



## NEWS OF YOUR INTEREST

### GOVT ALARMED AS REVENUE COLLECTION DIPS

**CHANDIGARH:** The state's revenue growth for April — the first month of the fiscal — is less than last year.

A little over four per cent growth (as against over five per cent growth in April, 2015) in the states' taxes is a cause of concern in the corridors of power. The shortfall is pronounced as the state has embarked on a "sop giving" spree ahead of the Assembly polls. April is a revenue grosser as taxes from the sale of foodgrains add to the state coffers.

In spite of an impressive growth in Value Added Tax during the first month, the overall revenue growth has been rather slow.

While growth in VAT collection is an impressive 9.6 per cent, the stamp duty collection and revenue from transport has dipped by almost eight per cent in April as compared to the corresponding period last year.

Even excise collection has been much less than expected. This is mainly because of slow allotment of liquor vends and poor off take of liquor by the newly included super wholesale licensees.

The only saving grace for the government seems to be the VAT collections. The Excise and Taxation Department had done an analysis of 20 sectors where the VAT collections had dipped from April 2015 to January 2016.

They found negative growth in seven sectors - sale of foodgrains, tobacco, hosiery items, molasses, electronics and mobile phones. Following a district survey of these sectors and plugging loopholes in VAT collections, especially in sectors where lump sum VAT is to be paid like brick kilns, the department managed to turn around the VAT collection.

From less than two per cent increase in VAT collection in April 2015 to January 2016, VAT collection between February to April this year have shown an increase of almost 10 per cent.

The issue of how to increase taxes in other departments was discussed during a meeting chaired by Finance Minister Parminder Singh Dhindsa on Thursday. While reviewing the state of finances and the tax collection, the additional outgo required during this year (Rs 1,400 crore arrears of dearness allowance and new DA to be paid to employees; the hike in social security pensions and power subsidy to agriculture sector because of new tubewell connections) was also discussed.

All these departments have now been asked to shore up their earnings so that they attain at least the targeted growth.

This year, the government hopes to collect Rs 253 crore from Punjab Roadways and Rs 2,700 crore from stamp duty and registration of property.

*Courtesy: The Tribune  
30<sup>th</sup> May, 2016*



## NEWS OF YOUR INTEREST

### FAKE BILLING VICTIM ASKED TO PAY RS. 5.9 CRORE VAT

LUDHIANA: Almost a month after a city based businessman complained about bogus billing worth Rs. 97.77 crore done by three persons known to him, both the police and the excise and taxation department have been unable to crack the case. The accused had misused particulars of the complaint's firm M/s RP Shivam.

Complainant Manoj Kumar said the excise and taxation department was pressuring him to pay up Rs. 5.90 crore VAT due on the sale entries of Rs 97.77 crore. Kumar said, "I have given the details of all the three accused to the department and the police alongwith their contact details. But instead of investigating and solving the case, the department is asking me to pay the VAT, which the culprits have fraudulently refunded from the department. When the department has all the details, why no question is being asked from them."

Officers of the department refused to speak on the pretext that the case was under investigation and maintained that the role of the owner of the firm was also under suspicion.

This is not the first time that a tax-payer has been scammed.

*Courtesy: The Times of India  
30<sup>th</sup> May, 2016*