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"The art of taxation consists in so plucking the goose as to obtain the largest possible amount of feathers with the smallest possible amount of hissing."

– Jean Baptiste Colbert

NOMINAL INDEX

OFFICE ORDER, PUBLIC NOTICE AND NOTIFICATION

PUNJAB

HARYANA

NEWS OF YOUR INTEREST

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News From Court Rooms

CALCUTTA HC : West Bengal VAT : Bitumen emulsion is more relatable to product bitumen and covered by Entry No. 14 of Part I of Schedule C of VAT Act. *(Indian Oil Corporation Ltd. – May 20, 2016).*

GUJARAT HC : Excise & Customs : Recovery by way of encashment of bank guarantee on High Court deciding in favour of revenue, amounts to 'payment of duty'. Hence, refund thereof on Supreme Court holding in favour of assessee would be subject to doctrine of unjust enrichment under Section 27 of the Customs Act, 1962. Assessee was granted liberty to furnish documents to show that there was no unjust enrichment to become eligible for refund. *(Ruchi Soya Industries Ltd. – April 28, 2016).*

DELHI HC : Central Excise : Mere mention of wrong notification number cannot lead to 'suppression' or 'misstatement' and when all other facts were within knowledge of department, extended period cannot be invoked. *(DCM Shriram Industries Ltd. – May 25, 2016)*

T & AP HC : AP VAT : Mere production of a tax invoice would not disable the assessing authority from enquiring whether the sale of goods referred to in the said tax invoice is genuine or not and whether the said tax invoice has been issued by a registered VAT dealer, before allowing ITC. On finding that the tax invoices were not genuine disallowance of ITC is valid. *(Sri Venkateswara Industries – Mar 15, 2016).*

MADRAS HC : Tamilnadu VAT : Notice was sent to the residential address of the Director as notice sent to registered place of business was returned undelivered since business was closed. Writ Petition questioning the validity of Assessment Order passed due to muted response to the notice dismissed as alternative appellate remedy was available. *(MCC Digital Innovations P Ltd. – June 7, 2016).*

GUJARAT HC: Sales Tax / VAT : Contract with ONGC for the commission of turnkey projects at Bombay High which is situated in exclusive economic zone of the coast of India is an export not liable to CST. Revenue's appeal dismissed. *(Larsen And Tourbo Ltd. - June 21, 2016)*

CESTAT, MUMBAI : Central Excise : Samples that are drawn and either : (a) subject to test within factory, or, (b) retained in factory for prescribed periods, are not 'removed' from factory and, therefore, they are not liable to excise duty at that stage. (*Central Cables Ltd. – October 6, 2015*)

MADRAS HC : TNVAT : Non-filing of return by the selling dealer do not make purchasing dealer ineligible to claim ITC. The liability had to be fastened on the selling dealer and not on the petitioner-dealer which had shown proof of payment of tax on purchases made. (*The Computer Consultants – June 2, 2016*).

PATNA HC dismisses tax payers' writ petitions. States that police has the power to entertain, institute and investigate FIR instituted against the assesssee for violation of section 56(4) of Bihar VAT Act read with Indian Penal Code (IPC); HC concludes that in absence of power of Officer-in-Charge of a Police Station having been vested with Bureau of Investigation ('BI') or designated officer under VAT Act, it is not open to the assessee to allege lack of jurisdiction in the police to investigate the offence; Upholds validity of registration of FIR for offences under IPC where there was an alleged infraction of provision of the VAT Act and observes that offences for which FIR is filed does not come under the vested powers of BI, relies on SC Judgment in case of Narayan K. Patodia; Rejects assessee's argument that based on the principles of generalia specialibus non-derogant" provisions of VAT Act (special act) will override CrPC (general act), HC refers to section 4 and section 5 of the CrPC and states that all offences, whether under IPC or under any other law, have to be investigated / inquired into / tried / otherwise dealt with according to the provisions of CrPC, unless there would be some enactment regulating the manner / place of investigating / inquiring into / trying / otherwise dealing with such offences; Observes that no procedure for investigation had been prescribed for offences under the VAT Act or IPC to oust the jurisdiction of the police to register and investigate the offence, distinguishes the cases of Hindustan Lever, Om Prakash Sah and Torque Pharmaceuticals relied on by the assesssee (*The Judgment was delivered by Mr. J. A. Shaikh and Smt. A. K. Jadhav. [TS-256-HC-2016(PAT)-VAT])*

CESTAT, NEW DELHI : Cenvat Credit : If service tax demand is upheld by Commissioner (Appeals), then, assessee's plea to permit Cenvat

credit raised for first time before Commissioner (Appeals) is to be allowed. Hence, credit was allowed subject to verification. (*Universal Cylinders Ltd. – May 23, 2016).*

RAJASTHAN HC: Central Excise : As per section 37C(1) of the Central Excise Act, 1944, adjudication order can be served through 'registered post with acknowledgement due'; hence, mere service through 'registered post' without 'acknowledgement due' is not a valid service. *(RP Casting P Ltd. – May 13, 2016).*

RAJASTHAN HC : Central Excise : Differential excise duty arising on differential price recovered by way of supplementary invoices, would attract interest under Section 11AA of the Central Excise Act, 1944. However, since matter in the case of Steel Authority of India Ltd. v. CCE [Civil Appeal No. 2150/2012, dated 7-12-2015] is pending before larger bench of Supreme Court, present judgment would be subject to outcome of said reference. *(Man Structurals (P.) Ltd. – May 18, 2016).*

CESTAT, MUMBAI: Service Tax : Since question of refund arises only after tax is collected without authority of law, hence, every refund (even on non-taxable service) is governed by section 11B of the Central Excise Act, 1944 and time-limit thereof. Limitation period to claim refund is also applicable when assessee has paid service tax mistakenly on non-taxable services. *(Benzy Tours & Travels (P.) Ltd. - March 11, 2016).*

SC : West Bengal VAT : Where assessee, a club, supplied food, drinks and refreshments to its permanent members and did not charge sales tax on payments made by them contending that there could be no 'sale' by it to its own permanent members. To decide whether 'doctrine of mutuality' would come into play, matter referred to larger Bench. (*Calcutta Club Ltd. – May 4, 2016.)*

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 4184 OF 2009

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STATE OF WEST BENGAL AND OTHERS
Vs
CALCUTTA CLUB LIMITED

DEEPAK MISRA AND SHIVA KIRTI SINGH, JJ.

4th May, 2016

HF ▶ None

Whether supply of Food and Drinks by Club to its members is liable to tax as sale or not needs to be considered by Larger Bench.

SALE—CLUB—ARTICLE 366 (29A)(e)-- ARTICLE 366 (29A)(f)—SUPPLY OF FOOD AND DRINKS BY AN INCORPORATED BODY TO ITS PERMANENT MEMBERS—WHETHER LIABLE TO TAX OR NOT—TRIBUNAL ACCEPTING THE APPEAL APPLYING THE DOCTRINE OF MUTUALITY—HIGH COURT AFFIRM THE ORDER OF TRIBUNAL—REVENUE CHALLENGE THE MATTER BEFORE SUPREME COURT—CONTENDED THAT CONCEPT OF MUTUALITY HAS LOST RELEVANCE AFTER THE AMENDMENT OF CONSTITUTION—DECISIONS RELIED UPON BY ASSESSEE DO NOT CONSIDER THIS ASPECT AND PROCEED ON THE BASIS THAT NO TAX IS PAYABLE IF THE FACT OF MUTUALITY EXISTS—LAW NEEDS TO BE LAID DOWN AUTHORITATIVELY AS TO WHETHER TAX WOULD BE PAYABLE EVEN IF THERE IS EXISTENCE OF MUTUALITY BETWEEN MEMBERS AND THE CLUB—MATTER REFERRED TO LARGER BENCH FOR REDETERMINATION OF THE MATTER - *ARTICLE 366 (29A)(e) AND ARTICLE 366 (29A)(f) OF CONSTITUTION OF INDIA, SECTION 2(30) OF WEST BENGAL SALES TAX ACT, 1994*

The respondent Assessee, an incorporated body is a club who while supplying Food and Drinks to his permanent members has not paid the tax on the ground that it is agent of permanent members and no consideration is passed for supplies of Food Drinks or Beverages and the amount paid by the members is only reimbursement and hence no sale has taken place. The demand was raised which was challenge before Tribunal The Tribunal accepted the contention of the Assessee holding that supply of Food Drinks and Refreshments by the Club to its permanent members cannot be treated as deemed sale within the meaning of Section2(30) of 1994 Act. The challenge by Revenue before the High Court also failed and accordingly the matter was taken to Supreme Court.

The Revenue contended that reasoning of Tribunal as well as High Court is faulty as they have erroneously appreciated the application of Clause 29A of Article 366 of Constitution of India. According to them the concept of mutuality and pronouncement made in that context have no applicability.

On the other hand the respondent/Assessee submitted that Constitution amendment does not envision sale by one to himself or for that matter by the agent to those who have engaged it as an agent. It was further submitted that aspect of mutuality still holds the field while placing reliance upon ***Fateh Maidan Club vs. Commercial Tax Officer, Hyderabad, (2008) 12 VST 598 (SC)*** *and* ***Cosmopolitan Club vs. State of Tamil Nadu & Ors., (2009) 19 VST 456 (SC)****.*

Supreme Court held:

In our considered opinion, the controversy that has arisen in this case has to be authoritatively decided by a larger bench in view of the law laid down in ***Cosmopolitan Club*** *(Supra) and* ***Fateh Maidan Club*** *(Supra). None of the Judgments really laid down that doctrine of mutuality would apply or not but proceed on the basis that in case there is a mutuality between the club and the member then tax is not to be charged. It is desirable that the position should be clear. For the aforesaid purpose the matter should be referred to a larger bench for determination of the following three questions:*

i. *Whether the doctrine of mutuality is still applicable to incorporated clubs or any club after the 46th amendment to Article 366 (29A) of the Constitution of India?*

ii. *Whether the judgment of this Court in* ***Young Men's Indian Association*** *(supra) still holds the field even after the 46th amendment of the Constitution of India; and whether the decisions in* ***Cosmopolitan Club*** *(supra) and* ***Fateh Maidan Club*** *(supra) which remitted the matter applying the doctrine of mutuality after the constitutional amendment can be treated to be stating the correct principle of law?*

iii. *Whether the 46th amendment to the Constitution, by deeming fiction provides that provision of food and beverages by the incorporated clubs to its permanent members constitute sale thereby holding the same to be liable to sales tax?*

The Papers be placed before the Hon'ble Chief Justice of India for constitution of appropriate Larger Bench.

Cases referred:

- *Hindustan Club Limited v. Additional Commissioner of Commercial Taxes and Others, (1995) 98 STC 347*
- *The Automobile Association of Eastern India v. State of West Bengal and Others (2002) 40 STA 154*
- *Bharat Sanchar Nigam Ltd. and another v. Union of India and others (2006) 3 SCC 1*
- *Fateh Maidan Club v. Commercial Tax Officer, Hyderabad (2008) 12 VST 598 (SC)*
- *Cosmopolitan Club v. State of Tamil Nadu & Others (2009) 19 VST 456 (SC)*
- *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1978) 4 SCC 36 : AIR 1978 SC 1591*
- *State of Punjab v. Associated Hotels of India Ltd., (1972) 1 SCC 472*
- *Joint Commercial Tax Officer v. Young Men's Indian Association (1970) 1 SCC 462*
- *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., AIR 1958 SC 560*
- *New India Sugar Mills Ltd. v. CST 1963 Supp (2) SCR 459: (1963) 14 STC 316*
- *Vishnu Agencies (P) Ltd. v. CTO (1978) 1 SCC 520*
- *K.L. Johar and Co. v. CTO AIR 1965 SC 1082*
- *A.V. Meiyappan v. CCT (1967) 20 STC 115 (Mad)*
- *CTO v. Young Men's Indian Assn. (Regd.)[14 (1970) 1 SCC 462]*
- *Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 2 SCR 603 SCR at p. 647*
- *Styles v. New York Life Insurance Company (1889) 2 TC 460, 471 (HL)*
- *IR v. Cornish Mutual Assurance Co. Ltd. [1926] 12 TC 841 [HL]*
- *CIT v. Royal Western India Turf Club Ltd. AIR 1954 SC 85*
- *CIT v. Bankipur Club Ltd., (1997) 5 SCC 394*
- *Chelmsford Club v. CIT (2000) 3 SCC 214*

- *CIT v. Kumbakonam Mutual Benefit Fund Ltd., 1964 SCR 204 : AIR 1965 SC 96*
- *Fletcher v. CIT (1971) 3 ALL ER 1185 : (1972) 2 WLR 14 (PC)*
- *Wilcock case Wilcock (Inspector of Taxes) v. Pinto & Co., 9 TC 111 : (1925) 1 KB 30*

Present: For Appellant(s): Mr. Kailash Vasdev, Sr. Advocate
Mr. Soumik Ghosal, Advocate
Mr. Gaurav Ghosh, Advocate
Mr. Umraon Singh Rawat, Advocate
Mr. Parijat Sinha, AOR
Mr. Somnath Banerjee, Advocate

For Respondent(s): Mr. Rana Mukherji, Sr. Advocate
Mr. Arijit Prasad, Advocate
Ms. Sonia Dube, Advocate
Mr. Shatadru Chakraborty, Advocate
Ms. Kanchan Yadav, Advocate
for M/s. Victor Moses & Associates

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DIPAK MISRA, J.

1.The present appeal, by special leave, is directed against the judgment and order passed by the Division Bench of the High Court of Calcutta in W.P.T.T. No.652 of 2006, wherein it has affirmed the view expressed by the West Bengal Taxation Tribunal (for short, 'the tribunal') and disposed of the appeal preferred by the respondent along with other connected appeals holding, inter alia, that the assessee, the Calcutta Club Limited, was not liable for payment of sales tax under the West Bengal Sales Tax Act, 1994 (for brevity, 'the Act').

2. The facts that are necessary to be stated are that the Assistant Commissioner of Commercial Taxes issued a notice to the respondent-Club assessee apprising it that it had failed to make payment of sales tax on sale of food and drinks to the permanent members during the quarter ending 30.6.2002. After the receipt of the notice, the respondent- Club submitted a representation and the assessing authority required the respondent-Club to appear before it on 18.10.2002. The notice and the communication sent for personal hearing was assailed by the respondent before the tribunal praying for a declaration that it is not a dealer within the meaning of the Act as there is no sale of any goods in the form of food, refreshments, drinks, etc. by the Club to its permanent members and hence, it is not liable to pay sales tax under the Act. A prayer was also made before the tribunal for nullifying the action of the revenue threatening to levy tax on the supply of food to the permanent members.

3. It was contended before the tribunal that there could be no sale by the respondent-Club to its own permanent members, for doctrine of mutuality would come into play. To elaborate, the respondent-Club treated itself as the agent of the permanent members in entirety and advanced the stand that no consideration passed for supplies of food, drinks or beverages, etc. and there was only reimbursement of the amount by the members and therefore, no sales tax could be levied.

4. The tribunal referred to Article 366(29A) of the Constitution of India, Section 2(30) of the Act, its earlier decision in ***Hindustan Club Limited v. Additional Commissioner of Commercial Taxes and Others***, (1995) 98 STC 347 distinguished the authority rendered in ***The Automobile Association of Eastern India v. State of West Bengal and Others (2002) 40 STA 154*** and, eventually, opined as follows:-

> *"Considering the relevant fact presented before us and the different judgments of the Supreme Court and the High Court we find that supplies of food, drinks and refreshments by the petitioner clubs to their permanent members cannot be treated as 'deemed sales' within the meaning of section 2(30) of the 1994 Act. We find that the payments made by the permanent members are not considerations and in the case of Members' Clubs the suppliers and the recipients (Permanent Members) are the same persons and there is no exchange of consideration."*

Being of this view, the tribunal accepted the contention of the respondent- Club and opined that it is not exigible to tax under the Act.

5. Being dissatisfied with the aforesaid order passed by the tribunal, the revenue preferred a writ petition and the High Court opined that the decision rendered in ***Automobile Association of Eastern India*** (supra), was not a precedent and came to hold that reading of the Constitutional amendment, as well as the provisions of the definition under the Act, it was clear that supply of food, drinks and beverages had to be made upon payment of consideration, either in cash or otherwise, to make the same exigible to tax but in the case at hand, the drinks and beverages were purchased from the market by the club as agent of the members. The High Court further ruled that the members collectively was the real life and the club was a superstructure only and, therefore, mere fact of presentation of bills and non-payment thereof consequently, striking off membership of the club, did not bring the club within the net of sales tax. The High Court further opined that in the obtaining factual matrix the element of mutuality was not obliterated. The expression of the aforesaid view persuaded the High Court to lend concurrence to the opinion projected by the tribunal.

6. We have heard Mr. Kailash Vasdev, learned senior counsel along with Mr. Soumik Ghosal, learned counsel for the appellants and Mr. Rana Mukherjee, learned senior counsel along with Mr. Arijit Prasad, learned counsel for the respondent.

7. It is submitted Mr. Vasdev, learned senior counsel that the reasoning of the tribunal as well as the High Court is faulty as there has been erroneous appreciation and application of clause (29A) of Article 366 of the Constitution of India. It is urged by him that after the constitutional amendment, the concept of mutuality and the pronouncements made in that context have no applicability. He has commended us to the decision in ***Bharat Sanchar Nigam Ltd. and another v. Union of India and others (2006) 3 SCC 1***.

8. Mr. Mukherjee, learned senior counsel for the respondent, in his turn, would contend that the view expressed by the High Court is absolutely flawless and irreproachable inasmuch as the constitutional amendment does not envision sale by one to himself or for that matter by the agent to those who have engaged it as an agent. It is further argued that the aspect of mutuality still holds the field. For the aforesaid purpose, inspiration has been drawn from the authorities in ***Fateh Maidan Club v. Commercial Tax Officer, Hyderabad (2008) 12 VST 598 (SC)*** and ***Cosmopolitan Club v. State of Tamil Nadu & Others (2009) 19 VST 456 (SC)***. Learned counsel has further submitted that the concept of deemed sale is not attracted to the present nature of transaction and supply.

9. At the very outset, we may mention certain undisputed facts. It is beyond cavil that the respondent is an incorporated entity under the Companies Act, 1956. The respondent-assessee charges and pays sales tax when it sells products to the non-members or guests who accompany the permanent members. But when the invoices are raised in respect of supply made in favour of the permanent members, no sales tax is collected.

10. Section 2(30) of the Act defines 'sale' as follows:-

"(30) "sale" means any transfer of property in goods for cash, deferred payment or other valuable consideration, and includes-

(a) any transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) any delivery of goods on hire-purchase or any system of payment by instalments;

(c) any transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(d) any supply, by way of, or as part of, any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink(whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

(e) any supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration, and such transfer, delivery, or supply of any goods shall be deemed to be a sale of those goods by the person or unincorporated association or body of persons making the transfer, delivery, or supply and a purchase of those goods by the person to whom such transfer, delivery, or supply is made, but does not include a mortgage, hypothecation, charge or pledge.

Explanation: A sale shall be deemed to take place in West Bengal if the goods are within West Bengal –

(a) In the case of specific or ascertained goods, at the time of the contract of sale is made; and

(b) In the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller, whether the assent of the buyer to such appropriation is prior or subsequent to the appropriation:

PROVIDED that where there is a single contract of sale in respect of goods situated in West Bengal as well as in places outside West Bengal, provisions of this Explanation shall apply as if there were a separate contract of sale in respect of the goods situated in West Bengal;."

11. The said provision has been introduced after incorporation of clause (29A) to Article 366 of the Constitution vide 46th amendment, 1982, which reads as follows:- "(29A) "tax on the sale or purchase of goods" includes –

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;

(d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;"

12. It is submitted by Mr. Vasdev that statutory provision is in accord with the Constitution of India. Learned senior counsel would submit that clause (29A)(f) clearly lays a postulate that when there is a supply by way of or as a part of supply of food or any other article for human consumption or any drink whether or not intoxicating for supply or service, for cash or deferred payment or valuable consideration would amount to deemed sale. According to Mr. Vasdev, the earlier decisions which related to the concept of mutuality have lost their force.

13. In this context, he has referred to the decision in ***Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi***, (1978) 4 SCC 36 : AIR 1978 SC 1591 the three-Judge Bench was dealing with the issue whether in the case of non-residents the service of meals by the appellant in the restaurant constitutes a sale of foodstuffs. Answering the said issue, the Court held:-

"It has already been noticed that in regard to hotels this Court has in State of Punjab v. Associated Hotels of India Ltd., (1972) 1 SCC 472 adopted the concept of the English law that there is no sale when food and drink are supplied to guests residing in the hotel. The Court pointed out that the supply of meals was essentially in the nature of a service provided to them and could not be identified as a transaction of sale. The Court declined to accept the proposition that the Revenue was entitled to split up the transaction into two parts, one of service and the other of sale of foodstuffs. If that be true in respect of hotels, a similar approach seems to be called for on principle in the case of restaurants. No reason has been shown to us for preferring any other. The classical legal view being that a number of services are concomitantly provided by way of hospitality, the supply of meals must be regarded as ministering to a bodily want or to the satisfaction of a human need".

14. Earlier the Constitution Bench decision in ***Joint Commercial Tax Officer v. Young Men's Indian Association (1970) 1 SCC 462*** dealing with the liability of a club to pay sales tax when there is supply of refreshment to its members, had Court concluded thus:-

> *"The essential question, in the present case, is whether the supply of the various preparations by each club to its members involved a transaction of sale within the meaning of the Sale of Goods Act, 1930. The State Legislature being competent to legislate only under Entry 54, List II, of the Seventh Schedule to the Constitution the expression "sale of goods" bears the same meaning which it has in the aforesaid Act. Thus in spite of the definition contained in Section 2(n) read with Explanation I of the Act if there is no transfer of property from one to another there is no sale which would be exigible to tax. If the club even though a distinct legal entity is only acting as an agent for its members in matter of supply of various preparations to them no sale would be involved as the element of transfer would be completely absent. This position has been rightly accepted even in the previous decision of this Court".*

15. In ***Fateh Maidan Club*** (supra), the Court was considering the defensibility of the judgment and order of a Division Bench of the High Court of Andhra Pradesh whereby it has held that the assessee club was liable to pay sales tax under the Andhra Pradesh General Sales Tax Act, 1957 on the supplies of food and drink to their members. It was contended before the Court that when the club supplies food or drink to its members, there is no sale because a members' club only acts as the agent of the members. The Court placed heavy reliance on ***Young Men's Indian Association*** (supra) and remanded the matters stating that:-

> *"In some of the present matters the appellants filed writ petitions against notices seeking to assess them to sales tax on the supply of food and beverages to their members. There was, therefore, no determination by the fact-finding authorities of the relationship between the appellants and their members in the matter of supply by the former to the latter of food and drink and such like; that is to say, was the club acting as the agent of the members or did the property in the food and drink pass from the club to the members? In the other matters the High Court was approached after orders of assessment had been made and appeals filed but there was no inquiry into the said relationship. We think it appropriate, therefore, that the matters should go back to the assessing authorities who will determine, on facts in regard to each appellant. What was the said relationship and, with that finding in mind, decide, whether or not the appellants are liable to sales tax in this behalf under the provisions of the Andhra Pradesh General Sales Tax Act, 1957."*

16. In the case of ***Cosmopolitan Club*** (supra), the controversy related to liability of the club to pay sales tax under the Tamil Nadu General Sales Tax Act, 1959 for supply of food and drinks to its members. Relying on the earlier judgment, the Court remanded the matter by holding that:-

> *"…. it may be further stated that the said show cause notice was challenged in 1993 by the Club by filing a Writ Petition in the High Court which came to be later transferred to the Tribunal. The Tribunal dismissed the matter on merits. That decision of the Tribunal has been confirmed by the impugned judgment. Suffice it to state that in this case there was no determination by the fact finding authorities regarding the relationship between the Club and its members in the matter of supply of food and drinks; that is to say, was the Club acting as an*

> *agent of the members or did the property in food and drinks pass from the Club to the members?*
>
> *At this stage it may be mentioned that after the judgment of the High Court dismissing the Writ Petition, the Assessment Order was passed against which the Club has preferred an appeal before the First Appellate Authority which has also dismissed this appeal and as of today the matter, being T.A.No. 17 of 2000, is pending before the Tribunal.*
>
> *In the circumstances, we think it appropriate that the matter should go back to the Tribunal, who will decide, on facts, as to the exact relationship between the parties in the matter of supply by the Club of food and drinks to its members. In other words, the principle of mutuality and agency among other circumstances shall be gone into by the Tribunal before which the said appeal is pending."*

17. The aforesaid decisions, thus, refer to principle of mutuality and agency. Submission of the learned counsel for the appellant is that after the amendment the said principles cannot be made applicable. For the aforesaid purpose, he has commended us to the pronouncement in ***Bharat Sanchar Nigam Ltd.*** (supra). Learned senior counsel has drawn our attention to the views expressed by Lakshmanan, J., which is to the following effect:-

> *"104. Parliament had to intervene as the power to levy tax on goods involved in works contract should appropriately be vested in the State Legislatures as was pointed out in State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., AIR 1958 SC 560., the passages quoted hereinabove. There were five transactions in which, following the principles laid down in Gannon Dunkerley & Co. relating to works contract, this Court ruled that those transactions are not exigible to sales tax under various State enactments. Parliament, therefore, in exercise of its constituent power, by the Forty-sixth Amendment, introduced Article 366(29-A). The Statement of Objects and Reasons has fully set out the circumstances under which the Forty-sixth Amendment was necessitated.*
>
> *105. The amendment introduced fiction by which six instances of transactions were treated as deemed sale of goods and that the said definition as to deemed sales will have to be read in every provision of the Constitution wherever the phrase "tax on sale or purchase of goods" occurs. This definition changed the law declared in the ruling in Gannon Dunkerley & Co. only with regard to those transactions of deemed sales. In other respects, law declared by this Court is not neutralised. Each one of the sub-clauses of Article 366(29-A) introduced by the Forty-sixth Amendment was a result of ruling of this Court which was sought to be neutralised or modified. Sub-clause (a) is the outcome of New India Sugar Mills Ltd. v. CST 1963 Supp (2) SCR 459: (1963) 14 STC 316 and Vishnu Agencies (P) Ltd. v. CTO (1978) 1 SCC 520. Sub-clause (b) is the result of Gannon Dunkerley & Co. Sub-clause (c) is the result of K.L. Johar and Co. v. CTO AIR 1965 SC 1082. Sub-clause (d) is consequent to A.V. Meiyappan v. CCT (1967) 20 STC 115 (Mad). Sub-clause (e) is the result of CTO v. Young Men's Indian Assn. (Regd.)[14 (1970) 1 SCC 462]. Sub-clause (f) is the result of Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi (supra) and State of Punjab v. Associated Hotels of India Ltd. (supra)."*

18. In addition to the aforesaid paragraphs, learned senior counsel appearing for the appellant has also heavily relied on paragraphs 106 and 107 of the said judgment. They read as follows:-

> *"106. In the background of the above, the history prevailing at the time of the Forty-sixth Amendment and pre-enacting history as seen in the Statement of Objects and Reasons, Article 366(29-A) has to be interpreted. Each fiction by which those six transactions which are not otherwise sales are deemed to be sales independently operates only in that sub-clause.*
>
> *107. While the true scope of the amendment may be appreciated by overall reading of the entirety of Article 366(29-A), deemed sale under each particular sub-clause has to be determined only within the parameters of the provisions in that sub-clause. One sub-clause cannot be projected into another sub-clause and fiction upon fiction is not permissible. As to the interpretation of fiction, particularly in the sales tax legislation, the principle has been authoritatively laid down in Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 2 SCR 603 SCR at p. 647:*
>
> *"The operative provisions of the several parts of Article 286, namely, clause (1)(a), clause (1)(b), clause (2) and clause (3) are manifestly intended to deal with different topics and, therefore, one cannot be projected or read into another." (S.R. Das, Actg. C.J.)"*

19. Before we proceed further, it is necessary to appreciate the doctrine of mutuality in proper perspective. The said doctrine or the general law relating to mutual concern is predicated on the principle enunciated in ***Styles v. New York Life Insurance Company (1889) 2 TC 460, 471 (HL)*** by Lord Watson in the following words:-

> *"When a number of individuals agree to contribute funds for a common purpose, such as the payment of annuities or of capital sums, to some or all of them, on the occurrence of events certain or uncertain, and stipulate that their contributions, so far as not required for that purpose, shall be repaid to them, I cannot conceive why they should be regarded as traders, or why contributions returned to them should be regarded as profits."*

20. This doctrine was subsequently explained in ***IR v. Cornish Mutual Assurance Co. Ltd. [1926] 12 TC 841 [HL]*** and it has been laid down that the mutual concern should be held to be carrying on business or trade with its members, albeit the surplus arising from such trade is not taxable as income or profit. However, the principle is not free from diversity or contra opinion which can relate to issues like complete identity between the contributors and participators or whether such doctrine would equally apply to incorporate company which is a juristic entity, and if so, under what circumstances. The principle of mutuality was examined by this Court in ***CIT v. Royal Western India Turf Club Ltd. AIR 1954 SC 85*** and then in ***CIT v. Bankipur Club Ltd., (1997) 5 SCC 394*** followed by ***Chelmsford Club v. CIT (2000) 3 SCC 214***. In ***Bankipur Club Ltd.*** (supra), it has been observed as under:-

> *"... The gist of the various English decisions has been succinctly summarised in the textbooks which we have adverted to hereinabove (Halsbury's Laws of England, Simon's Taxes, Wheatcroft etc.). Particular stress was laid on the decisions of the Supreme Court in CIT v. Royal Western India Turf Club Ltd. (supra), CIT v. Kumbakonam Mutual Benefit Fund Ltd., 1964 SCR 204 : AIR 1965 SC 96 Fletcher v. CIT (1971) 3 ALL ER 1185 : (1972) 2 WLR 14 (PC). We do not think it necessary to deal at length with the above decisions except to state the principle discernible from them. We understand these decisions to lay down the broad proposition — that, if the object of the assessee company claiming to be a "mutual concern" or "club", is to carry on a particular*

> *business and money is realised both from the members and from non-members, for the same consideration by giving the same or similar facilities to all alike in respect of the one and the same business carried on by it, the dealings as a whole disclose the same profit-earning motive and are alike tainted with commerciality. In other words, the activity carried on by the assessee in such cases, claiming to be a "mutual concern" or "members' club" is a trade or an adventure in the nature of trade and the transactions entered into with the members or non-members alike is a trade/business/transaction and the resultant surplus is certainly profit — income liable to tax. We should also state, that "at what point, does the relationship of mutuality end and that of trading begin" is a difficult and vexed question. A host of factors may have to be considered to arrive at a conclusion. "Whether or not the persons dealing with each other, is a 'mutual club' or carrying on a trading activity or an adventure in the nature of trade", is largely a question of fact. (Wilcock case Wilcock (Inspector of Taxes) v. Pinto & Co., 9 TC 111 : (1925) 1 KB 30, CA Tax Cases at p. 132; KB at pp. 44 and 45)."*

21. Earlier in ***Kumbakonam Mutual Benefit Fund Ltd*** (supra) the Court had held that where an association or a company trades with its members only and the surplus out of the common fund is distributable among the members, there is no mutuality and the surplus is assessable to tax as profit, for there is no complete identity between the contributors and the participators. The reason being that the members, who have not contributed to surplus as customers, are nevertheless entitled to participate and receive a part of the surplus. However, where the surplus is distributed among the customers as such, there would be complete identity between the contributors and the participators, for only customers would be entitled to participate in the surplus.

22. In the light of the aforesaid position and the law of mutual concerns, we have to ascertain the impact and the effect of sub-clause (e) to clause (29A) to Article 366 of the Constitution of India, as enacted vide 46th amendment in 1982 and applicable and applied to Sales or VAT Tax. The said clause refers to tax on supply of goods by an unincorporated association or body of persons. The question would be whether the expression 'body of persons' would include any incorporated company, society, association, etc. The second issue is what would be included and can be classified as transactions relating to supply of goods by an unincorporated association or body of persons to its members by way of cash, deferred payment or valuable consideration. Such transactions are treated and regarded as sales. The decisions of the Court in ***Fateh Maidan Club*** (supra) and ***Cosmopolitan Club*** (supra) in that context have drawn a distinction when a club acts as an agent of its members and when the property in the goods is sold, i.e., the property in food and drinks is passed to the members. The said distinction, it is apparent to us, has been accepted by the two Benches. However, the decisions do not elucidate and clearly expound, when the club is stated and could be held as acting as an agent of the members and, therefore, would not be construed as a party which had sold the goods. The agency precept necessarily and possibly refers to a third party from whom the goods, i.e., the food and drinks had been sourced and provided to by the club acting as an agent of the members, to the said members. These are significant and relevant facets which must be elucidated and clarified so that there is no ambiguity in appreciating and understanding the aforesaid concepts "acting as an agent of the members" or when property is transferred in the goods sold to the members.

23. At this stage, we would appropriately like to refer to some of the arguments raised, to understand the scope and width of the controversy. Learned senior counsel for the State has submitted that the revenue has treated it as a sale under Section 30 and clause (29A) (e) and (f)

to Article 366 of the Constitution. Mr. Rana, learned senior counsel appearing for the respondent-assessee would submit that once a club is incorporated, it beyond the State to impose tax or its provision. He would submit that clause (29A)(f) would not apply and in any case when the Club is acting as an agent for its members in supply of various preparation, there cannot be any demand of any sales tax as the concept of mutuality is still alive after the amendment to the Constitution. Mr. Vasdev has taken us through the objects and reasons to the 46th amendment and stressed how various decisions of this Court were referred to in the objects and reasons to remove the base of certain judgments. Paragraph 8 of the objects and reasons which has been emphatically placed reliance upon is extracted below:-

> *"Besides the above mentioned matters, a new problem has arisen as a result of the decision of the Supreme Court in Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi (supra). States have been proceeding on the basis that the Associates Hotels of India case was applicable only to supply of food or drink by a hotelier to a person lodged in the hotel and that tax was leviable on the sale of foodstuffs by a restaurant. But, overruling the decision of the Delhi High Court, the Supreme Court has held in the above case that service of meals whether in a hotel or restaurant does not constitute a sale of food for the purpose of levy of sales tax but must be regarded as the rendering of a service in the satisfaction of a human need or ministering to the bodily want of human beings. It would not make any difference whether the visitor to the restaurant is charged for the meal as a whole or according to each dish separately".*

24. Learned senior counsel for the State would contend that the objects and reasons throw immense light how clause (29A) was added and what it intends to cover. It is argued by him that the club has an independent entity and it supplies food and beverages to the permanent members and invoices are raised. Money goes to the club and, therefore, there is supply or service for value. Mr. Mukherjee would submit that the controversy is covered by the decisions in ***Young Men's Indian Association*** (supra) and the concept of mutuality applies, because neither clause (e) or (f) to clause (29A) of Article 366 of the Constitution has removed the concept of mutuality or agency. It is urged by him that the club merely acts as an agent for supply of goods and agent does not sell the goods to the principal. It only acts as a conduit to pass on the goods and the money whether it is in cash deferred payment or by way of security.

25. Mr. Vasdev has submitted that whether mutuality exists or not is a question of fact, for the contention of the State is assuming the mutuality clause applies then also the respondent assessee is liable to pay tax , for its supply or sale to a member by the club which is a dealer. In ***Bharat Sanchar Nigam Ltd.*** (supra), the Court has opined that by virtue of the constitutional amendment, the Parliament has neutralised the rulings of this Court. In ***Fateh Maidan Club*** (supra), the three-Judge Bench remanded the matter as there was no determination by the fact-finding authorities as regards the relationship between the club and its members in the matter of supply by the former to the latter of food and drinks and such like. The Court has also observed the relationship would govern the fate of imposition of sales tax. In ***Cosmopolitan Club*** (supra), the Court has remarked that there was no determination that the club was acting as an agent of the members or for that matter its property in food and drink has passed from the club to the members. The matter was remanded to the tribunal to decide on facts as regards the relationship between the parties in the matter of supply of food and drinks to its members. The Court clarified whether the principle of mutuality amongst other circumstances has to be gone into. Thus, in a way, the principle of mutuality has been regarded as the base of imposition or non-imposition of sales tax. It is also noticeable that the Court has not addressed the issue whether the facet of mutuality survives after the amendment to the Constitution. There is observation in the case of ***Bharat Sanchar Nigam Ltd.*** (supra) that the judgment of this Court

has been neutralised. Clause (29A)(f), as Mr. Vasdev would submit has to be understood independently and not in conjunction with Clause 29A(e). It is put forth by him that the litmus test has to be that the transaction has to be determined only within the parameters of provisions in that sub-clause. Learned senior counsel would submit that clause (29A)(e) relates to a different field altogether and clause (29A)(f) has a different field wherein it operates. In any case, according to him, the club does not act as an agent. An attempt has been made to draw a distinction between doctrine of mutuality and principle of agency and also between "unincorporated association" or "body of persons".

26. It is appropriate to state here what has transpired in the course of hearing. Learned senior counsel for both sides, at one point of time, had submitted that this Court following the decision in ***Cosmopolitan Club*** (supra) and ***Fateh Maidan Club*** (supra) can remand the matter. In the said cases, the Court had observed that the authorities below had not recorded any finding with regard to exact relationship or the mutuality facet. The argument before us is that even if the principle of mutuality or agency is in existence or established, still it would be a sale on the basis of clause (29A)(e) or (29A)(f). Thus, the initial suggestion by the learned senior counsel for the parties was not pursued and we are disposed to think, rightly.

27. In our considered opinion, the controversy that has arisen in this case has to be authoritatively decided by a larger Bench in view of the law laid down in ***Cosmopolitan Club*** (supra) and ***Fateh Maidan Club*** (supra). We are disposed to think so as none of the judgments really lay down that doctrine of mutuality would apply or not but proceed on the said principle relying on the earlier judgments. It is desirable that the position should be clear. For the aforesaid purpose, the matter should be referred to a larger Bench and for the said purpose, we frame following three questions.

i. *Whether the doctrine of mutuality is still applicable to incorporated clubs or any club after the 46th amendment to Article 366 (29A) of the Constitution of India?*

ii. *Whether the judgment of this Court in **Young Men's Indian Association** (supra) still holds the field even after the 46th amendment of the Constitution of India; and whether the decisions in **Cosmopolitan Club** (supra) and **Fateh Maidan Club** (supra) which remitted the matter applying the doctrine of mutuality after the constitutional amendment can be treated to be stating the correct principle of law?*

iii. *Whether the 46th amendment to the Constitution, by deeming fiction provides that provision of food and beverages by the incorporated clubs to its permanent members constitute sale thereby holding the same to be liable to sales tax?*

28. Let the papers be placed before the Hon'ble Chief Justice of India for constitution of appropriate larger Bench.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 11243 OF 2016

JANDIAL IMPEX PVT. LTD.
Vs
STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

31st May, 2016

HF ▶ Assessee

The Revenue is directed to take a decision on the refund application of the Assessee by passing a speaking order.

REFUND—APPLICATION FOR PROVISIONAL REFUND MADE—INDEMNITY BOND ALSO FURNISHED—NO ACTION TAKEN ON THE APPLICATION—REMINDER ALSO SENT BUT NO RESPONSE RECEIVED—WRIT PETITION FILED PRAYING FOR GRANT OF REFUND—COMPETENT AUTHORITY DIRECTED TO TAKE A DECISION ON THE APPLICATION FOR REFUND MADE BY DEALER WITHIN TWO MONTHS FROM THE DATE OF RECEIPT OF CERTIFIED COPY OF THE ORDER - *SECTION 39 OF PVAT ACT 2005*

The petitioner engaged in the business of building material, electrical goods and hardware at Amritsar filed its returns showing an excess ITC of Rs.11,57,575/-. It applied for provisional refund alongwith indemnity bond in Form VAT 59 to the tune of Rs.8,68,180/-. The application was duly received but no action was taken on the same. The reminder sent also did not yield any response. A writ petition was filed for seeking refund. High Court directed the competent authority to take appropriate decision by passing a speaking order and after affording an opportunity to the Assessee within a period of two months from the date of receipt of certified copy of the order.

Present: Dr. Naveen Rattan, Advocate for the petitioner.

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AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing respondent No.2 to allow the provisional refund of Rs. 8,68,180/- as per application dated 22.3.2016 (Annexure P-4).

2. The petitioner is engaged in the business of building material, electrical goods and hardware at Amritsar and is a registered dealer under the Punjab Value Added Tax Act, 2005 (in short "the Act") vide registration certificate dated 2.7.2015 (Annexure P-1). The petitioner is filing its returns regularly and had filed its quarterly return in Form VAT-15 for the period 1.10.2015 to 31.12.2015 (3rd quarter) on 28.01.2016 on (Annexure P-2) after making full

payment of tax due and excess Input Tax Credit (ITC) of Rs. 11,57,575/- was generated. The petitioner applied for provisional refund in indemnity bond in Form VAT- 59 on 21.3.2016 (Annexure P-3) and also moved an application dated 22.3.2016 (Annexure P-4) to respondent No.3 for refund of Rs. 8,68,180/-. The department issued a computer generated acknowledgment slip dated 18.5.2016 (Annexure P-5) regarding receipt of refund application dated 22.3.2016. However, no action was taken on the refund application, Annexure P-4. Thereafter, the petitioner sent a reminder dated 23.5.2016 (Annexure P-6), but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has moved an application dated 22.3.2016 (Annexure P-4) to respondent No.3, but no action has so far been taken thereon.

3. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 or the concerned authority to take a decision on the application dated 22.3.2016 (Annexure P-4), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two months from the date of receipt of certified copy of the order.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 10302 OF 2016

OASIS TECHNOCONS LIMITED
Vs
STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

23rd May, 2016

HF ▶ Assessee

The Revenue is directed to take a decision on the refund application of the Assessee by passing a speaking order.

REFUND—APPLICATION FOR REFUND MADE—NO ACTION TAKEN ON THE APPLICATION—LEGAL NOTICE SENT BUT NO RESPONSE RECEIVED—WRIT PETITION FILED PRAYING FOR GRANT OF REFUND—COMPETENT AUTHORITY DIRECTED TO TAKE A DECISION ON THE APPLICATION FOR REFUND MADE BY DEALER WITHIN TWO MONTHS FROM THE DATE OF RECEIPT OF CERTIFIED COPY OF THE ORDER—IN CASE REFUND IS FOUND ADMISSIBLE THEN THE SAME TO BE PAID WITHIN NEXT ONE MONTH - *SECTION 39 OF PVAT ACT, 2005*

The petitioner is a Government contractor. It filed its return for the Year 2014-15 claiming refund of Rs.1,85,33,010/- on account of excess deduction of TDS. The Assessee also served a legal notice upon the department but no action had been taken thereon. A writ petition was filed for seeking refund. High Court directed the competent authority to take appropriate decision by passing a speaking order and after affording an opportunity to the Assessee within a period of two months from the date of receipt of certified copy of the order. If the Assessee is found entitled for refund then the same is to be released within next one month.

Present: Mr. R.K. Girdhar, Advocate for the petitioner.

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AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to refund the amount of excess Input Tax Credit (ITC) to the petitioner along with interest as claimed vide Form VAT-20 dated 7.11.2015 (Annexure P-1).

2. The petitioner is A-Class Government Contractor and is a registered dealer under the Punjab Value Added Tax Act, 2005 (in short "the Act") having TIN No. 03672032756. The petitioner has filed all its statutory quarterly returns and also the annual returns under the Act. During the year 2014-15, the output tax liability of the petitioner was Rs. 2,67,72,643/- and the department deducted VAT tax amounting to Rs.4,53,05,653/- resulting into excess tax of

Rs.1,85,33,010/- paid by the petitioner. Therefore, the petitioner was entitled for refund of excess ITC amounting to Rs.1,85,33,010/-. Accordingly, the petitioner submitted Form VAT-20 for the year 2014-15 on 17.11.2015 (Annexure P-1) claiming excess ITC of Rs.1,85,33,010/-, but to no effect. Thereafter, the petitioner served a legal notice dated 1.5.2016 (Annexure P-2) upon the respondents for refund of excess ITC along with interest, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent a legal notice dated 1.5.2016 (Annexure P-2) to the respondents, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.5 to take a decision on the legal notice dated 1.5.2016 (Annexure P-2), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two months from the date of receipt of certified copy of the order. It is further directed that in case any amount is found payable to the petitioner, the same be released to it within next one month, in accordance with law.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 13786 OF 2011

WOOLTEX, PANIPAT
Vs
STATE OF HARYANA & OTHERS

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

16th May, 2016

HF ▶ Assessee

The Assessee is allowed to produced Tax invoices and certificates at appellate stage also.

TAX INVOICE—DECLARATIONS/CERTIFICATES—NON PRODUCTION DURING ASSESSMENT—DOCUMENTS CAN BE SUBMITTED EVEN AT THE APPELLATE STAGE—ASSESSEE ALLOWED TO PRODUCE THE TAX INVOICES AND CERTIFICATES BEFORE THE ASSESSING AUTHORITY—ASSESSING AUTHORITY TO DECIDE THE CLAIM AFRESH IN ACCORDANCE WITH LAW.

Assessment of the Dealer was framed for the Year 2006-07. The claim for Input Tax Credit was disallowed for want of submission of Declarations in Form-C-4 and statutory documents. The appeal filed against the order was also dismissed on account of negligence in not producing Form C-4. The order of Tribunal is based on the Judgment of M/s Vijay Cottex Ltd Panipat. The said order was challenged before the High Court and was disposed of in CWP No.13789 of 2011 allowing the Assessee to produce the necessary declaration Forms and directing the Assessment Authority to redetermine the tax liability on the basis of said forms. Following the said case, the present case is also disposed off in the same terms allowing the Assessee to produce the Forms before the Assessing Authority.

Cases referred:

- *M/s Vijay Cottex Ltd,, Panipat vs. State of Haryana CWP 13789 of 2011*
- *M/s Jai Hanuman Stone Crushing Mills, Bhiwani vs. The State of Haryana and others CWP 15553 of 2011*

Present: Mr. Avneesh Jhingan, Advocate for the petitioner.
Ms. Mamta Singla Talwar, DAG, Haryana.

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AJAY KUMAR MITTAL, J.

1. The petitioner is a partnership firm manufacturing yams and fabrics and is registered under the Haryana Value Added Tax Act, 2003 as also under the Central Sales Tax Act, 1956.

2. For the assessment year 2006-07, the petitioner filed all the returns and also deposited the tax due and claimed input tax credit on its purchases. However, in final assessment, the assessing authority disallowed the input tax credit for want of submission of

declaration Form C-4 and statutory documents. Against assessment order dated 08.03.2010 (Annexure P-1), an appeal carried to the Joint Excise & Taxation Commissioner (Appeals), Rohtak was dismissed on 06.10.2010. The Tribunal while partially allowing the appeal rejected the claim of the petitioner on account of input tax credit relying upon its decision in the case ***M/s Vijay Cottex Ltd., Panipat vs. State of Haryana*** (STA No. 597 of 2010-11) which was decided on 04.07.2011

3. The order of the Tribunal declining to grant benefit of input tax credit for want of Form C-4 and documents while partially allowing the appeal, has been challenged in this writ petition.

4. Learned counsel for the petitioner submitted that the decision of the Tribunal in ***M/s Vijay Cottex Ltd, Panipat*** (supra) was assailed in this Court in CWP No. 13789 of 2011 wherein while disposing of the writ petition on 19.12.2013, the assessing officer was directed to redetermine the tax liability by taking into consideration Form C-4 which the assessee was granted opportunity to produce before him. Further reliance was placed upon the judgment passed by this Court in CWP No. 15553 of 2011 titled as ***M/s Jai Hanuman Stone Crushing Mills, Bhiwani vs. The State of Haryana and others*** decided on 19.12.2013.

5. On the other hand, learned State counsel submitted that the petitioner was negligent in not producing Form C-4 and in such a situation, the opportunity should not be granted to produce the same.

6. After hearing learned counsel for the parties, we find that the Tribunal had decided the issue primarily replying upon its own order passed in ***M/s Vijay Cottex Ltd,, Panipat*** (supra) for declining the claim of input tax credit for non production of tax invoices and certificates in Form C-4 before the assessing authority. The case of ***M/s Vijay Cottex Ltd,, Panipat*** (supra) was disposed of by permitting the assessee to produce Form VAT C-4 before the assessing authority who was directed to decide the same afresh in accordance with law.

7. Accordingly, this writ petition is disposed of in the same terms as in CWP No. 13789 of 2011 decided on 19.12.2013.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 284 OF 2015

SHRI AMBICA ALLOYS
Vs
STATE OF PUNJAB

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

29th February, 2016

HF ▶ Revenue

Penalty for attempt to evade tax is upheld when the e-TRIP was found to be not matching with the goods.

PENALTY—ATTEMPT TO EVADE TAX—IRON AND STEEL GOODS LOADED FROM PREMISES OF CONSIGNOR ON 9.12.2013 AT 12.11 P.M.—E-TRIP FOR THE TRANSACTION ALSO ISSUED—AS PER E-TRIP GOODS WERE TO BE DELIVERED BY 6.11 P.M. ON THE SAME DAY—VEHICLE INTERCEPTED ON 10.12.2013 WELL BEYOND THE PERIOD OF 6 HOURS PRESCRIBED UNDER LAW—EXPLANATION OF THE ASSESSEE THAT GOODS WERE TAKEN FOR REWEIGHMENT NOT ACCEPTABLE AS NO EXTENSION OF E-TRIP SOUGHT FROM THE DEPARTMENT—EXPLANATION APPEARS TO BE AFTERTHOUGHT—PENALTY RIGHTLY LEVIED - *SECTION 51 OF PVAT ACT 2005*

Appellant had purchased certain goods from M/s Regal Alloys Pvt. Ltd Mandi Gobindgarh. The e-TRIP accompanying the goods and issued by the consignor for vehicle No. PB 23K 7813 indicated the time of 12.11 p.m. for dispatch of goods. As per this e-TRIP goods were to be delivered by 6.11 p.m. on the same day i.e. 9.12.2013. However the vehicle was intercepted on 10.12.2013 well beyond the period of 6 hours. Assessee explained the delay by stating that the goods were taken for reweighment as the consignee of the goods had not accepted the weight. The weightment slip issued by the weighbridge relates to some other consignment and cannot be connected with the present transaction as there is difference in number of truck and quantity of goods. The explanation appears to be afterthought. Moreover if there was change in circumstances then appellant ought to inform the department and get the e-TRIP extended or reissued again. Goods being carried by appellant on 10.12.2013 were not covered by genuine documents and hence the impugned order do not suffer from any error and appeal is dismissed.

Present: Mr. B.L. Bassi, 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. Assailed in this appeal is the order dated 11.12.2014 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala (Herein referred as the First Appellate Authority) dismissing the appeal against the order dated 23.12.2013 passed by the Assistant Excise and Taxation Commissioner, Mohali imposing a penalty of Rs.1,80,500/- upon the appellant.

2. On 10.12.2013, when the Excise and Taxation Officer, Mobile Wing, Punjab was present at R.G. Mill Road, Mandi Gobindgarh, he intercepted a truck bearing No. PB-23K-7813 carrying steel ingots. The driver was coming from Village Kumbh, Amloh Road, Mandi Gobindgarh to R.G. Mill Road, Mandi Gobindgarh. On demand, the driver produced the following documents:-

1. *Invoice No.440, dated 9.12.2013 time 12.10 p.m.*
2. *E-trip Form No. ICC001S136950061 dated 9.12.2013 time 12.11 p.m.*

3. On verification, it was observed that the goods were not covered by genuine documents as the truck through which the driver was taking the goods, accompanied by e-trip too did not tally with the vehicle in question Consequently, he imposed a penalty to the tune of Rs. 1,80,500/- on 23.12.2013. The appeal filed by the appellant against the said order was dismissed by the First Appellate Authority, hence this second appeal.

4. The appellant in order to assail the impugned orders has urged that the consignee of' the goods had doubted the weight of the goods, therefore, he had directed the truck driver to reload the goods for re- weighment. The goods were detained when the same were under the process of re-weighment. This fact was also brought to the knowledge of the Detaining Officer as well as he had given a written explanation to him. The weighment slips taken in to possession by the department are related to the goods and the appellant is also unable to understand as to how Shri Rupinder Singh, driver made the statement admitting the case. At that time, Shri Pawan Kumar Jain one of the partners could not explain those documents which do not pertain to the firm. He has further urged that since it has come to the notice of the appellant firm that Shri Rupinder Singh, driver was not trustworthy person, therefore, the appellant had doubted his conduct. The appellant asked for getting the goods weighed at the weighment Bridge to which he was hesitating, however, he ultimately agreed for reweighment in the presence of the partner of the appellant firm. The penalty order has been passed in hit haste and in a biased manner. Eventually, he prayed for acceptance of the appeal.

5. Arguments heard. Record perused.

6. The goods i.e. steel ingot goods were loaded from Shri Ambica Alloys, Village Kumbh, Amloh Road, Mandi Gobindgarh for delivery to M/s Regal Alloys Private Limited, Mandi Gobindgarh. The e-trip accompanying the goods as issued by the department indicates that the goods were loaded in vehicle of M/s Regal Alloys Pvt. Ltd to the consignee firm Shree Ambika Alloys, Mandi Gobindgarh. The trip further reveals that the goods were to be delivered within 100 Km till 6.11p.m. on the same day i.e. 9.12.2013. Thus, the goods covered by the invoice and the e-trip VAT 12-A were to be delivered by 6.12 P.M. Here, it may be mentioned that the e-trip which has been produced is not connected with the goods. According to the e-trip the goods were loaded from Regal Alloys for delivery to Ambica Alloys but the case of the appellant is otherwise. In any case, if it is assumed that there is clerical mistake even then as per the said invoice goods were not delivered within six hours as mentioned in the invoice and if there were any adverse circumstances or change of circumstances then the appellant was obliged to inform the Tax Department and get the time extended but that was not done. As such after the expiry of the time as mentioned in the e-trip the said document could not be used to cover another goods which were carried away on 10.12.2013. Ultimately, the

goods were detained on 10.12.2013, when the same were in the process of weighment at Adarsh Computer Kanda, G. T. Road Sarhind side, Mandi Gobindgarh. The weighment slip issued by the weighbridge operator on 10.12.2013 can't be connected with the invoice as well as the GR produced by the driver at that time. The weighment slip indicates that the truck carrying the goods was bearing No. PB-23K-7815 whereas the goods sold as per invoice purchased by Shree Ambica Alloys were loaded in the truck No. PB-23K-7813. As per invoice, the goods were 16.030 M.T. in quantity but as per the kanda slip dated 10.12.2013 the weight of the goods is shown as 16.105 M.T. Thus, it is difficult to say that the goods which were detained in a different truck were the same as covered by invoice No. 440, dated 9.12.2013.

6. In any case, since the goods covered by the invoice No.440 were unloaded and the e-trip regarding the said goods expired and the goods sought to be connected with invoice No. 440 were to be reloaded on 10.12.2013. Then it was the duty of the appellant to inform the department and get necessary e-trip issued again for weighment and redelivery to the said firm (appellant). The appellant has failed to produce any such documents showing that the appellant informed about the circumstances on 9.12.2013, however, he wants to place reliance on a letter dated 20.12.2013 which being an afterthought cannot be given any weight.

7. As an up-shot of the aforesaid discussions, the Tribunal is of the opinion that the goods carried by the appellant firm on 10.12.2013 were not covered by the genuine documents.

8. Having perused the impugned orders, the same appear to be well founded and well reasoned and do not call for any interference at my end.

9. Resultantly, finding no merit in the appeal, the same is hereby dismissed.

10. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 142 OF 2015

GOPAL SWEETS PVT. LTD.
Vs
STATE OF PUNJAB

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

29th February, 2016

HF ▶ Assessee

Input Tax Credit is not to be allowed proportionately where the Assessee is maintaining complete accounts to distinguish the source of purchases and utilization thereof.

INPUT TAX CREDIT—RAW MATERIAL PURCHASED FROM STATE OF PUNJAB AS WELL AS FROM OUTSIDE THE STATE—GOODS USED IN MANUFACTURING OF TAXABLE GOODS, TAX FREE GOODS AND ALSO SENT ON BRANCH TRANSFER—INPUT TAX CREDIT CLAIM ALLOWED PROPORTIONATELY APPLYING RULE 24—ASSESSEE CLAIMED THAT IT IS MAINTAINING PROPER RECORDS SHOWING SOURCE OF PURCHASE AND UTILIZATION THEREOF—RULE 23 COULD HAVE BEEN APPLIED—ON APPEAL TRIBUNAL ASKED FOR REMAND REPORT—DEPARTMENT ACCEPTING THE MAINTENANCE OF COMPLETE RECORDS AS REQUIRED—CASE REMANDED BACK FOR FRESH ASSESSMENT - *SECTION 13 OF PVAT ACT 2005, RULE 23 AND 24 OF PVAT RULES, 2005.*

The Assessee is a manufacturer and seller of Halwai goods, Sweets meats, namkins and re-sale of Ice-cream and confectionary items etc. It is purchasing the raw material from within the State as well as from outside the State. The goods are used in the manufacturing of taxable goods and tax free goods. The manufacturer goods and the traded goods are sold locally or are sent on stock transfer to other branches in other States. Assessment was framed applying Rule 24 of PVAT Rules allowing proportionate ITC. The Assessee filed appeal claiming that it is maintaining proper records showing the source of purchase and utilization thereof. Accordingly the ITC should have been allowed as per Rule 23 and not proportionately. The Tribunal asked for remand report from the department who accepted the fact of maintenance of complete record for identification of goods. The remand record was accordingly accepted by the Court as well as both the parties and matter is remitted back for fresh adjudication.

Present: Mr. R.K. Malhotra, Advocate Counsel for the appellant.
Mr. Amit Chaudhary, Addl. Advocate General for the State.

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

1. This second appeal is directed against the order dated 8.9.2014 passed by the First Appellate Authority, Patiala Division, Patiala dismissing the appeal against the order dated 28.6.2012 passed by the Excise and Taxation officer-cum-Designated Officer, Patiala framing additional demand to the tune of Rs 6,84,602/-.

2. The facts in brief are that the appellant firm M/s Gopal Sweets Pvt. Ltd., Fountain Chowk, Patiala bearing TIN No.03921067905 is engaged in the business of manufacturing and sale of halwai goods, sweet-meats, namkins, resale of ice-cream, confectionery, soft-drinks, dry-fruit and runs restaurants and has its branches in the cities of the State of Punjab, Union Territory of Chandigarh and the State of Haryana. The appellants after preparation of sweetmeats, dry fruits as well as the raw material, sends the same to the branch offices loaded in the aforesaid areas by way of branch transfer.

3. The case relates to the assessment year for 2007-08 for which the appellant filed the annual return on time. However, the Tax and Taxation Officer-cum Designated Officer, Patiala initiated proceedings U/s 29 (2) of the Act. On close scrutiny of the annual statement and the documents, the Designated Officer while framing the assessment reduced the input tax credit as claimed by the appellant, by applying Rule 24 of the Punjab Value Added Tax Rules 2005, in relation to the raw material purchased from the taxable persons within the State of Punjab and used in the production of tax free halwai goods/sweetmeats as also transfer of stocks to the branches outside the State of Punjab. The claim had been made by the appellant as per provisions of Rule 23 of the Rules as the sources of purchase and utilization thereof were identifiable, but the Designated Officer vide order dated 28.6.2012, while disapproving the contentions raised by the appellant, applied Rule 24 of the Rules and created additional demand to the tune of Rs.6,84,602/- consequently tax demand notice was issued on 20.8.2012.

4. Feeling aggrieved, the appellant preferred the appeal which was dismissed by the First Appellate Authority on 8.9.2014, hence this second appeal.

5. While assailing the orders passed by the authorities below, the counsel for the appellant has raised the following issues:-

(i) The Appellate Authority had not properly applied the rule while framing the assessment.

(ii) Since the sources of purchase and utilization of the goods used in preparation of the sweetmeats as well as the raw materials so supplied were identifiable, therefore, Rule 24 was not the appropriate rule for determining the amount of the Input Tax Credit. As such reversal of the Input Tax credit was not correct and actually Rule 23 was applicable in the present case because sources of raw material as transferred to the branches and used in the production of tax free sweetmeats was identifiable

(iii) The counsel has also challenged the imposition of penalty as well as the interest on demand so created against him.

(iv) The counsel has also urged that the appellant is in possession of all the records i.e. books of account maintained by him in the normal course and he has neither concealed any information nor has furnished wrong information in the returns/ annual statement furnished by him, therefore, the input tax credit could well be assessed from the account books so prepared by him and as per the account books there was no ground to reject the ITC.

6. During the course of arguments when the State counsel was confronted with the application of the Rule 24 to the facts of the present case, he has submitted that actually at the time of assessment, no proper documents have been submitted, therefore, Rule 24 was applied in the case for want of evidence.

7. Faced with the situation, counsel for the appellant was agreeable to produce the account books as well as submit the chart showing item wise sources of purchases and utilization for verification by the Designated Officer. Accordingly, the appellant was directed to appear before the Designated Officer and produce all the documents before him and the Designated Officer was to submit his report after examination of documents.

8. Pursuant to the order dated 11.9.2015, the appellant produced all the documents before the Designated Officer, who after verifying all the documents submitted the following report:-

> *As per directions of your goodself, the Counsel of the firm M/s Gopal Sweets, Patiala TIN No. 03921067905 appeared on 23rd of Sep 2017 for the case pertaining to the year 2007-08. The dealer is engaged in the business of production and sale of halwai goods, sweet-meats, namkins, resale of ice-cream, confectionery, soft-drinks, dry-fruits and runs restaurants also. The taxable person has its branches in other cities of the State of Punjab and in U.T. of Chandigarh and the State of Haryana. The finished items like sweet-meats and halwai-goods and items, as they are, transferred to these branches. The Ld. Counsel has submitted the copy of stock register and a chart showing item wise Source of Purchase & Utilization. On verification of the documents submitted, it has been observed that the assessee has been regularly maintaining commodity-wise purchase details and a stock register identifying the source of purchase of such commodity i.e. whether it is a local purchase or purchase made out of the State of Punjab and further utilization thereof towards manufacture of "Tax Free" or "Taxable Goods". The stock register also identifies the utilization of items for making branch transfer of the goods as such. As per the impugned order due to non-submission of any such documents during assessment proceedings the Assessment Officer applied Rule 24 of the Punjab Value Added Tax Act, 2005 and calculated the tax accordingly. Since the assessee has now submitted the ledger and stock register of items from which the source of the item can be ascertained whether the input tax credit was available on the purchase of such items or not and further if it was sold as it is, transferred out, issued for manufacturing of either taxable or tax free goods. The item wise source of purchase & utilization chart also reflected the reversal amount on account of stock transfer and tax free sales on the basis of the utilization of such items which were done by the dealer himself in the returns. So, from the perusal of the documents submitted it is concluded that the reversal of Input Tax Credit may be allowed as per Rule 23 Value Added Tax Rules 2005 since the commodity wise account of purchased and its use in production or transfer or sale is maintained by the taxable person which is the prerequisite of the respective rule.*
>
> *Sd/-*
> *Excise and Taxation Officer, Ward-2*
> *Patiala.*

9. The report has been accepted by the counsel for the appellant and the State has also raised no objection to it. Both the parties have no objection, if the assessment is framed afresh

in the terms of the report dated 21.1.2016 passed by the Excise and Taxation Officer, Ward-2, Patiala.

10. Resultantly, this appeal is accepted, impugned orders are set- aside and the Excise and Taxation Officer-cum-Designated Officer, Patiala is directed to frame the assessment afresh in the terms of the report dated passed by the Excise and Taxation Officer, Ward-2, Patiala

11. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 478 OF 2014

INDIAN YARN LTD.
Vs
STATE OF PUNJAB

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

29th February, 2016

HF ▶ Revenue

No input tax credit is available for the Entry Tax paid on purchase of Diesel used in the generation of power and DG sets and Spare Parts having not been used directly in manufacturing of goods for sale.

INPUT TAX CREDIT—ENTRY TAX—INTER-STATE PURCHASE OF DIESEL—TAX PAID UNDER ENTRY TAX ACT—ITC CLAIMED IN THE RETURNS—DENIED ON THE BASIS OF SEC.13A AND SEC.13(5)(b) –ASSESSEE CLAIM THAT ITC IS ADMISSIBLE IN VIEW OF SEC.3(6) OF ENTRY TAX ACT—HELD, ITC ON DIESEL IS ADMISSIBLE ONLY TO A PERSON ENGAGED IN THE BUSINESS OF SELLING OF DIESEL—ASSESSEE BEING A MANUFACTURE OF SYNTHETIC YARN NOT ENTITLED FOR ITC – *SECTION 13(5) AND 13A OF PVAT ACT, 2005; SECTION 3(6) OF PUNJAB TAX ON ENTRY OF GOODS INTO LOCAL AREA ACT, 2000*

INPUT TAX CREDIT—DG SETS AND SPARE PARTS—GOODS DO NOT FALL WITHIN THE CATEGORY OF CAPITAL GOODS WHICH ARE DIRECTLY USED IN THE MANUFACTURING PROCESSING AND PACKING OF GOOD FOR SALE BUT USED AS AN OUTSIDE SOURCE TO SUPPLY ELECTRICITY IN ORDER TO RUN THE MACHINERY—INPUT TAX CREDIT IS NOT ADMISSIBLE U/S 13(1) – *SECTION 13(1) OF PVAT ACT 2005*

PENALTY—WRONG CLAIM OF ITC—ASSESSEE CLAIMING ITC OF ENTRY TAX PAID ON DIESEL AND ITC ON ACCOUNT OF PURCHASE OF DG SETS AND SPARE PARTS—ASSESSEE CLAIMS IT TO BE A MATTER OF INTERPRETATION AND RAISED PLEA OF BONA FIDE—CHAIN OF AUTHORITIES AVAILABLE INTERPRETING SEC. 13(4) AND SEC.13(5) HOLDING THAT NO ITC IS ADMISSIBLE ON DIESEL—NO PLAUSIBLE EXPLANATION GIVEN WHEN SHOW CAUSE NOTICE ISSUED TO THE DEALER—A CASE OF FILING INCORRECT RETURN AND RAISING FALSE CLAIM—ORDER OF PENALTY AND INTEREST UPHELD AGAINST DEALER – *SECTION 53 OF PVAT ACT, 2005*

Facts

The Assessee dealer had filed its returns and claimed Input Tax Credit on account of Entry Tax paid while making Inter State purchase of Diesel and Lubricants. Similarly the ITC was also claimed for the purchases of DG sets and its Spare Parts and Electricals items. The Assessing Authority framed the Assessment holding that no ITC is available for these claims as Sec.13A r/w Sec.13(5)(b) does not allow ITC for Diesel unless it is purchased by a person dealing in

such product. Similarly ITC on DG sets and Spare parts was also disallowed on the ground that these have not been used directly in the manufacturing of goods for sale and are only standby arrangement for generation of electricity if needed. The claim of ITC regarding Entry Tax paid on Lubricants was also denied. Penalty U/s 53 an interest U/s 32 was also imposed. On appeal before 1st Appellate Authority partial relief was granted and the demand was reduced. On Second Appeal before Tribunal.

Held:

Even though the Assessee has made a claim for ITC on the basis of Sec.3(6) of Entry Tax Act, 2000 but in view of Sec. 13A of PVAT Act which is subject to other provisions of Act , the ITC would not be admissible on Diesel to a person who is not a dealer of such goods. Further the Input Tax Credit on DG sets and Spare Parts would also not be available since it is only used as an outside source to supply electricity in order to run the machinery and not directly used in the manufacturing, processing or packing of goods. In so far as imposition of penalty is concerned the same is also leviable in the present case as there are number of authorities holding that ITC is not available on Diesel unless a person is engaged in the sale purchase of such commodities. The contention of raising bonafide plea is thus not admissible. Appeal dismissed.

Cases referred:

- *Uniflex Cables Ltd. Vs Commissioner Central Excise (2011) 40 PHT 28 (SC)*
- *Ashoka Industries Vs State of Haryana and others (2010) 37 PHT 519 (P& H)*
- *Karan Raghav Exports P. Ltd. Vs CIT (2012) 349 ITR 112 (Delhi)*
- *Caplin Point Laboratories Ltd. 2007 (293) ITR 524 (Mad).*

Relied upon:

- *Commissioner of Income Tax vs. Reliance Petro Products (P) Ltd. (2010) 322 ITR 158*

Present: Mr. Jasvinder Singh, Advocate Counsel for the appellant.
Mr. Amit Chaudhary, Addl. 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 29.8.2014 passed by the First Appellate Authority, Patiala Division, Patiala dismissing the appeal against the order dated 23.1.2014 passed by the Excise and Taxation Officer- cum-Designated Officer, Mohali creating an additional demand to the tune of Rs.66,53,033/- U/s 53 and 32 of the Punjab Value Added Tax Act, 2005, while framing the assessment for the year 2010-11.

2. The appellant is a taxable person engaged in the business of trading of synthetic yarn. The appellant filed the annual statement in form VAT- 20 on time. However, on scrutiny of the annual statement, the Designated Officer observed as under:-

(1) The taxable person had shown interstate sales and zero rated sales (direct and indirect export) for which he claimed deductions without submitting the prescribed declaration forms as per the conditions laid down under the CST Act, 1956.

(2) He has claimed ITC against the entry tax paid, without- submitting the entry tax receipts.

(3) He has claimed deduction against sales returns without producing the evidence.

(4) He has claimed ITC against local purchases.

(5) He has shown gross sales worth Rs. 110.88 crores in the annual statement against the sales of Rs. 119.34 crores as shown in the balance sheet.

(6) There was a difference in the interstate purchase and interstate sale.

(7) Excess ITC was claimed.

3. On examination of the purchase invoice, entry tax payment receipts and other documents produced, the following facts emerged:-

(a) The taxable person had made interstate purchase of diesel and lubricants against which entry tax was paid and the taxable, person had availed ITC against the same, which is not admissible as per the conditions laid down U/s 13 (5) (b) and 13 (4) of the Act of 2005 respectively.

(b) The taxable person had claimed ITC against some purchases like DG set spare parts, electrical items which was not admissible as per the conditions laid down under section 13 (1) of the Act.

(c) In the explanation submitted for the difference in the gross sales, the taxable person had claimed deduction against DEPB sale which lacked any plausible explanation and evidence.

4. When confronted with the aforesaid facts and after examination of the documents, the Designated Officer refused to allow the ITC against the entry tax paid as per section 13-A of the Punjab Value Added Tax Act, 2005. He also observed that the appellant is entitled to ITC on such purchases against which entry tax has been duly paid but disallowed the ITC on the diesel in view of the Section 13 (4) and 13 (5) (b) of the Punjab Value Added Tax Act. It was also observed, while discussing points 2 for DG set and spare parts, the D.G. Set and spare parts do not fall within the category of capital goods which are directly used in manufacturing, processing and packing of the goods for sale but the DG set is used as an outside source to supply electricity in order to run the machinery, if required and are not directly put to use for manufacturing, processing, packing of the taxable goods. Consequently, the Designated Officer vide order dated 23.1.2014 assessed the tax to the tune of Rs. 32,45,382/- and imposed penalty to the tune of Rs,27,26,121/- U/s 53 of the Act. Thus, while adding interest U/s 32 of the Act to the tune of Rs. 6,81,530/-created additional demand of Rs.66,53,033/- against the appellant.

5. Feeling aggrieved, the appellant preferred the appeal whereupon, the First Appellate Authority vide order dated 29.8.2014, partly accepted the appeal to the extent that the Designated Officer had wrongly reversed the ITC of Rs.49,803/- on lubricants U/s 13 (4) of the Act ibid. Whereas, the appellant had voluntarily reversed the ITC of Rs.40,595/- on this account. As such only amount of Rs.9,208/- was required to be reversed U/s 13 (4) of the Act. Consequently, the Appellate Authority reduced the demand to the tune of Rs. 64,80,560/- after deducting an amount of Rs. 1,72,473/-.

6. Still aggrieved, the appellant has preferred this second appeal. The counsel for the appellant while assailing the orders passed by the authorities below has raised three issues:-

Firstly, he has submitted that the appellant had paid entry tax of Rs.30,93,420/- on the purchase of diesel from outside the State of Punjab under the Punjab tax on entry of goods into Local Area Act, 2000 (Punjab Act No.9 of 2000), for which the appellant was entitled to claim the ITC under the Punjab Vat Act, 2005. He has argued that Section 13 (A) of the PVAT Act, 2005 has provided only for the adjustment of entry tax and this Section is to be read with sub-clause (6) of Section 3 of the Punjab Tax on entry of the goods into Local Areas Act, 2000 which specifically states that "where an importer paid the tax under

this act and becomes liable to pay tax under the Punjab Value Added Tax Act, 2005 or the Central Sales Tax Act, 1956 also by virtue of consumption, use or sale of such goods. His liability to tax under the aforesaid Acts shall be reduced to the extent of tax paid under this Act. He has taken me through Section 2 (0) and (p) relating to input tax credit and also Section 84 of the Punjab Value Added Tax Act, which provides that no tax is chargeable under the Act on sale/purchase of goods to/from outside the State of Punjab. He has 'also taken me through the reply filed by the department in the Punjab and Haryana High Court in the petitions where the levy of entry tax has been challenged by some petitioners. However, he has admitted that the said submission has not so far been accepted and the writ petitions are still pending before the Hon'ble High Court. Thus, he has urged that the claim regarding claiming of the ITC on diesel has been wrongly denied, while giving challenge to the imposition of penalty, the appellant has submitted that since the provisions regarding ITC on diesel needed interpretation and the return was filed in good faith, therefore, no penalty could be imposed. In order to buttress his contention, he has placed reliance on the following judgments:-

In order to buttress the arguments, he has placed reliance on the judgments:-

> ***Uniflex Cables Ltd. Vs Commissioner Central Excise (2011) 40 PHT 28 (SC)*** *where in it was held that where matter is of interpretational nature-Penalty not leviabl*
>
> ***Ashoka Industries Vs State of Haryana and others (2010) 37 PHT 519 (P& H)*** *where in it was held that if an assessee acting on a bonafide belief based on doubtful position of law, levy of penalty was not called for.*
>
> ***M/s Karan Raghav Exports P. Ltd. Vs CIT (2012) 349 ITR 112 (Delhi) Caplin Point Laboratories Ltd. 2007 (293) ITR 524 (Mad).***
>
> *Reliance is also placed on the decision of Hon'ble Supreme Court, of India COMMISSIONER OF INCOME TAX vs. RELIANCE PETRO PRODUCTS (P) LTD. (2010) 322 ITR 158*
>
> *Penalty under s. 271 (1) (c)- Concealment -Disallowance of claim for deduction-In order to attract the provisions of s. 271 (1) (c), there has to be concealment of income or furnishing of inaccurate particulars of his income by the assessee-In the instant case, assessee claimed deduction of interest on loans taken by it for purchase of shares-AO disallowed such interest-Admittedly, no information given in the return was found to be incorrect or inaccurate-Hence, the assessee cannot be held guilty of furnishing inaccurate particulars-Making an incorrect claim in law cannot tantamount to furnishing of inaccurate particulars-Merely because the assessee claimed deduction which has not been accepted by the Revenue, penalty under s. 271 (1) (c) is not attracted if the contention of the Revenue is accepted, the assessee would be liable for penalty under s. 271 (1) (c) in every case where the claim made by the assessee is not accepted by the AO for any reason-That is clearly not the intendment of the legislature.*

7. Having heard the arrival contention and having gone through the record of the case, it transpires that the main issue raised by the counsel for the appellant is that he was entitled to ITC against the importing of the diesel.

8. Much stress has been made over Section 13 -A of the Punjab VAT Act, 2005 which is reproduced as under:-

> *"Subject to the provisions of this Act, a taxable person shall be entitled to input tax credit in respect of the tax, paid by him under the Punjab Tax on Entry of goods into local areas ACT, 2000, if such goods are for sale in the state or in the course of interstate trade or commerce or in the "course of export or for use 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."*

9. Section 13-A opens with an exception that this Section would be subject to the other provisions of the Act. Other provisions of the Act relate to Input tax credit are Section 13 (4) and 13 (5) (b) of the Act. The said Section are reproduced as under:-

> *Section 13(4):- "Input tax credit on furnace oil, transformer oil, mineral turpentine oil, water methanol mixture, naphtha and lubricants, shall be allowed only to the extent by which the amount of tax paid in the state exceeds four percent."*
>
> *Section 13 (5) (b):- " A taxable person shall not qualify for input tax credit in respect of tax paid on purchase of petrol, diesel, aviation turbine fuel, liquefied petroleum gas and condensed natural gas, unless the taxable person is in the business of selling such products."*

10. On combined reading of Section 13-A, 13 (4) and 13 (5) (b) of the Act, it would not be difficult to conclude that the ITC shall be allowed only if the taxable person is in the business of selling of the diesel. Admittedly, in this case, the appellant is engaged in the business of synthetic yarn and diesel so imported has been used for generation of power for kept a consumption U/s 13(5) (b) of the Act, no ITC is available on petrol or diesel to the dealer who is not engaged in the business of such trade.

11. I finds support to my this, view from the judgment delivered in case Malwa Cotton Spinning Mills Ltd. Vs. State of Punjab (2010) 15 STM 405 (P & H), therefore, the ITC claimed against the purchase of diesel has rightly been declined.

12. As regards the claim of ITC on D.G. Set and its parts, it would be suffice to say that D.G. Set and spare parts do not fall in the category of such goods as are used in manufacturing, processing or packing of goods for sale but D.G. Set is used as on outside source to supply electricity in order to run the machinery therefore the ITC on these items also can't be allowed.

13. Now coming to the issue of penalty, the appellant has stated that he had raised the bonafide claim of ITC of penalty and interest and the provisions required interpretation, therefore, no penalty could be imposed; Having pondered over the contention, I do not find myself in agreement to the same. There is a chain of authorities which interprets Section 13(4) & (5) of the. Act and hold specifically that no ITC is allowable on the diesel to a person who is not engaged in the sale purchase of such commodity. The taxable person, was issued a show cause notice U/s 53, 56 and 32 of the Punjab Value Added Tax Act, 2005. Despite providing an opportunity to produce evidence, the appellant failed to give a plausible explanation as to why claim the ITC on the diesel used for captive consumption could be allowed. Therefore, the inference would drawn that the appellant filed incorrect return while raising a false claim,

therefore, I do not find any ground to accept the contention of the appellant and uphold the order of penalty and interest passed against him.

14. I have gone through the judgments as referred to by the appellant, but the same are not applicable to the facts of the present case.

15. No other arguments have been advanced.

16. Resultantly, finding no merit in the appeal, the same is hereby dismissed.

17. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 26 OF 2015

TAYAL SONS LTD.
Vs
STATE OF PUNJAB

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

29th February, 2016

HF ▶ Revenue

Penalty U/s 51 of PVAT Act is upheld where it has been found that the dealer has shown an inter-state sale as sale against Form E-1.

PENALTY—ATTEMPT TO EVADE TAX—GOODS IMPORTED INTO STATE OF PUNJAB—SHOWN AS E-1 SALES FROM A GUJARAT DEALER AFTER PURCHASING FROM RAJASTHAN DEALER—APPEARS TO BE A CASE OF PREDETERMINED SALE—DOCUMENTS GENERATED AT THE PREMISES OF RAJASTHAN DEALER PROVING THAT DELIVERY HAS BEEN TAKEN BY GUJARAT DEALER IN RAJASTHAN —NON-CHARGING OF TAX LEADS TO REDUCTION IN COST OF PUNJAB DEALER—IMPACTS SALE PRICE OF PUNJAB DEALER LEADING TO EVASION OF TAX—ON FACTS THE PENALTY UPHELD HOLDING THAT TRANSACTION WAS AN INTER-STATE SALE BUT CAMOUFLAGED AS E-1 SALE – APPEAL DISMISSED – *SECTION 51 OF PVAT ACT, 2005*

Facts:

Vehicle carrying cotton bales was intercepted and on demand the driver produced bill issued by appellant (Gujarat Dealer) to Punjab Dealer in addition another bill is produced showing sale by Rajasthan Dealer to appellant (Gujarat Dealer). The vehicle was detained on the suspicion that it was a direct inter-state sale and on E-1 sale. Had it been shown as inter-state sale the dealer of Punjab would have paid 2% CST to Gujarat Dealer which would have increased the purchase price of Punjab Dealer and ultimately leading to increase sale price resulting into higher tax to the State. It was found that goods were having Marka "ST" showing that goods were destined to be taken to Punjab Dealer. Moreover it was not possible to take the goods from Rajasthan to Gujarat first meaning thereby that goods have been delivered to appellant dealer at Rajasthan itself. Moreover the documents seem to have been generated in Rajasthan itself. The penalty was imposed which was challenged in appeals.

Held:

It was a clear cut inter-state sale by appellant to Punjab Dealer U/s 3(a) of CST Act 1956. To give it a colour of E-1 sale the GR was endorsed at Sangria (Rajasthan) before despatch of goods. All this was done to reduce the purchase cost of Punjab Dealer which resulted into the documents covering the goods being non proper and genuine. In this way the tax due to the State has been avoided/evaded. The fact that original invoice of Gujarat Dealer was accompanying the goods shows that the delivery of goods was taken in Rajasthan and

thereafter the goods were despatch to Punjab. Accordingly the appeal being devoid of any merits is dismissed."

Present: Mr. Avneesh Jhingan, Advocate Counsel for the appellant.
Mr. Sukhdip Sinh Brar, Addl. Advocate General for the State.

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

1. This appeal is directed against the order dated 9.9.2014 passed by the Deputy Excise and Taxation Commissioner (A), Ferozepur Division, Bathinda (herein referred as the First Appellate Authority) remanding the appeal against the order dated 20.1.2014 passed by the Assistant Excise and Taxation Commissioner Mobile Wing Fazilka imposing a penalty of Rs.4,94,800/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

2. Brief facts of the case are that during the course of checking on 6.12.2013, vehicle No. RJ-13G-7271 loaded with cotton bales was checked by the Excise and Taxation Officer, Mobile Wing, Fazlika. On demand the driver of the vehicle presented the following documents:-

(1) VAT-XXXVI No. 05234ST130081665 showing M/s Tayal Sons Ltd., Ahmedabad as consignor and M/s S.T. Cottex Exports Pvt. Ltd., Village Machhiwara (District Ludhiana) as consignee.

(2) VAT Invoice No. 432, dated 5.12.2013 (Carbon copy) issued by M/s Nav Durga Industries Sangria VRN:08713509040 to M/s Tayal Sons Ltd. Ahmedabad Tin No. 024073801076 for Rs.16,39,557/- another VAT Invoice No. 937 dated 5.12.2013 issued by M/s Tayal Sons Ltd. Ahmedabad to M/s ST Cottex Exports Pvt. Ltd., Machhiwara (Ludhiana) Tin No. 03921002721 for Rs. 16,49,493/-.

(3) A weight note for 90 bales issued by M/s Nav Durga Industries, Sanghria dated 5.12.2013.

(4) A GR No.2550, dated 5.12.2013 issued by M/s Punjab Goods Tpt. Company Hanumangarh, Junction (Rajasthan) from Sanghria to Machhiwara.

3. On scrutiny of the documents, the Detaining Officer was of the view that E-I sale shown by the Ahmedabad dealer in favour of Punjab dealer was not genuine and forwarded the case to the Assistant Excise and Taxation Commissioner, Mobile Wing, Fazlika who issued notice to the owner of the goods in response to which the appellant firm appeared. When confronted with the facts, it was traced that the appellant had shown it as an E-I sale by marking press marka, 'ST', purportedly for "M/s ST Cottex Pvt. Ltd.", Village Machhiwara, District Ludhiana i.e. ultimate consignee. It was also observed that goods were not accompanied by VAT- 49 as required by Rajasthan Govt., Department of Commercial Taxation. He observed that the order was pre set and was thus predetermined, therefore, the E-I sale was a bogus one. The relevant observations made by the Designated Officer, vide order dated 20.1.2014, are reproduced as under:-

"The press marka and date of pressing i.e. 5.12.2013 take into concluding that it is an interstate sale and not an E-I sale. Had it been shown an interstate sale, the dealer of Punjab would have to pay 2% CST to M/s Tayal Sons Ltd. Ahmedabad which would have increased the purchase price for the Punjab dealer and hence taken a toll on the margins of M/s ST Cottex Export Pvt. Ltd., Village Machhiwara. The transaction has knowingly been shown as such and a

camouflaged one in as much as the press marka i.e. ST was there on the cotton bales. It means that the order was preset and it was a predetermined sale and hence the E-I sale is invalidated. Thus, the Ahmedabad Firm i.e. M/s Tayal Sons Ltd. Ahmedabad acted and worked as commission agent of Punjab firm i.e. M/s ST Cottex Exports Pvt. Ltd., Village Machhiwara. Non submission of information Vat-49 prescribed by the Govt. of Rajasthan further establishes that M/s Nav Durga Industries, Sangaria is a passive firm and is just a tool in the hands of M/s ST Cottex Exports Pvt. Ltd., Village Machhiwara to simply hoodwink the department and to evade the payment of tax.

The appeal against the order dated 20.1.2014 was filed and the Ld. First Appellate Authority vide his order dated 9.9.2014 remanded back the matter to the Assistant Excise and Taxation Commissioner, Mobile Wing, Fazlika, hence second appeal.

The counsel for the appellant has urged that the Id. First Appellate Authority was wrong to remand the case instead of deciding himself. He pleaded that M/s Tayal Sons Ltd. Ahmedabad had purchased the cotton bales from M/s Nav Durga Industries, Sangaria vide Bill No.432 dated 5.12.2013 and subsequently these bales were sold to M/s ST Cottex Exports Pvt. Ltd. Machhiwara against bill No.937, dated 5.12.2013. The appellant endorsed GR No. 2550 in favour of M/s ST Cottex Exports Pvt. Ltd. Machhiwara. Thus the transaction in question is exempt from tax U/s 6 (2) of the Central Sales Tax Act, 1956. The sale is covered by E-I sale as well as "C" Form. The consignee has made advance payment to the consignor firm through bank. The goods have been voluntarily generated at the ICC. The penalty has been imposed simply on the basis of presumption, which is not correct.

Arguments heard. Record perused.

4. The counsel for the appellant has urged that it was E-I sale and not interstate sale so as to attract the payment of tax under the Central Sales Tax Act.

5. To the contrary, the State Counsel has urged that it was an interstate sale attracting the payment of tax by Tayal Sons Ltd. under the CST Act. He submitted that no doubt a dealer is fully entitled to do lawful tax planning in order to reduce his tax liability, but evasion of tax in the garb of planning is not permitted. That is but had happened in the instant case. It is a case where the Ahmedabad dealer purchased the Cotton Bales in question from M/s Nav Durga Industries, Sangaria and took delivery of goods and then sold the same to M/s S.T. Cottex Exports Pvt. Ltd., the Punjab dealer. This facts finds support from the following:-

i. *The specific Press Marka "ST" was got pressed on the cotton on 05.12.2013 at Sangaria and in this way the Gujrat dealer appropriated the goods to the Punjab dealer.*

ii. *Keeping in view the distance between Ahmedabad and Sangaria, original bill No.937 dated 5.12.2013 could not accompany the goods in question. The presence of original bill goes to show that Appellant was present at Sangaria alongwith Bill Book. He took delivery of goods and issued the VAT Invoice No. 937 on 5.12.2013 and handed over the goods to the transporter for onward dispatch to Machhiwara. Accordingly, the GR was Sangaria to Machhiwara. Thus it was a direct interstate sale between Gujrat dealer & Punjab dealer and CST was required to be charged. The CST would have enhanced the purchase value of Punjab dealer of the goods in question and which in turn increased the sale*

value of the cotton or product manufactured there from with the result, the Punjab State would have got higher tax. To reduce the cost price of the goods in question by avoiding CST, the Ahmedabad dealer gave it a colour of E-l sales by endorsing the GR.

iii. *The appellant did not lead any evidence to prove the genuineness of alleged endorsement on the GR. Number. Evidence was produced in order to show the place of endorsement. To the contrary, a close look at the GR would show that it was endorsed at Sanghria by the person who issued the bill. Thus, the GR was endorsed before dispatch of goods.*

iv. *VAT 36 disclosed Gujrat dealer as consignor and Punjab dealer as consignee.*

v. *Perusal of invoice shows that vide invoice No.937 dated 29.11.2013 M/s Tayal Sons Ltd., Ahmedabad sold goods in question of M/s S.T. Cottex Export Pvt. Ltd., Machhiwara with the support delivery from Sanghria to Machhiwara.*

vi. *The absence of statutory from for Exporting goods out of Gujrat is not explained by the appellant.*

vii. *The appellant not only deprived the State of Punjab of due tax by reducing the purchase cost of Punjab dealer but also deprived the State of Gujrat of CST due to it.*

viii. *The other invoices produced by the appellant also depicts that the Appellant is operating in the area around Sanghria, Rawatsar, Hanumangarh etc. and making sales to Punjab, but obtained the registration in Gujrat. Ali this seems to have been done to give the interstate sales U/s 3- (a) of CST Act 1956 a colour of exempted sales U/s 6 (2) of the Central Sales Tax Act.*

ix. *The invoice issued by the appellant is hand filled printed invoice, which proves presence of appellant at the station of purchase. Moreover, the invoice does not disclose any branches of the appellant in Rajasthan.*

6. The State Counsel thus further submitted that in view of the above explained position, it is established that appellant came to Sanghria purchased the goods and took delivery of the same and appropriated the goods to Punjab dealer by getting the same press marked and dispatched the same to Machhiwara. Thus it was a clear-cut interstate sale by appellant to Punjab dealer U/s 3 (a) of the CST Act 1956. To give it a colour of exempted E-l sales, the GR was endorsed at Sanghria, before dispatch of goods. All this was done to reduce the purchase cost of Punjab dealer, with the result the document's covering the goods did not reflect true picture, so the same were not proper & genuine. In this way the tax due to the State was avoided/ evaded. The instant case is covered by the case of Mool Chand Chunni Vs. Manmohan Singh & others reported at 40 STC 238 (Full Bench). He further urged that the orders passed by the First Appellate Authority remanding the case back to the penalizing officer be set-aside and the order dated 20.1.2014 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing Fazilka be confirmed.

7. The whole case has been considered and the impugned orders of both the authorities have also been perused. The payment of CST @ 2% on the part of M/s S.T. Cottex Exports. Pvt. Ltd. and in turn the sale price would have enhanced tax liability. In view of the long distance between Ahmedabad and Machhiwara, the original invoice of Gujrat dealer could not accompany the goods on 5.12.2013. But the fact is otherwise. Appellant appears to be in

Sanghria and took delivery of goods, earmarked the same for Punjab dealer by getting the same press marked, issued the invoice and dispatched the same to Machhiwara. It was a direct interstate sale, but was camouflaged as exempted sales U/s 6 (2) of CST Act, 1956 to reduce the purchase cost of Punjab dealer. It is normally seen that the business entrepreneurs play multiple tactics with an intention to evade tax, apply such devices from the very beginning while preparing the papers so that there may remain no doubt about the goods and the same may pass safely without any objection by the tax authorities. Similar observations were made in the case of Mool Chand Chunni Lal Vs. Manmohan Singh and others reported at 40 STC 238 (full Bench) (P&H) where the Full Bench made the following observations in this regard:-

> *"A scheme or device to evade the tax may start operating long before the actual liability to pay the tax arises. As soon as the scheme or device is set in motion there is an attempt to evade the tax due under the Act and it will not be necessary to wait till the liability arises. If an attempt to evade tax is discovered earlier, the liability to be subjected to penalty is straightaway attracted."*

8. In view of the above, the appeal being devoid of any merit is dismissed.

9. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 89 OF 2015

DHAN KARTAR STEEL CORPORATION
Vs
STATE OF PUNJAB

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

19th February, 2016

HF ▶ Assessee

Non declaration of goods at ICC cannot lead to evasion of tax if the Assessee had already disclosed the transaction to the department at the time of Intra State purchase by way of e-TRIP.

PENALTY—ATTEMPT TO EVADE TAX—APPELLANT PURCHASED IRON AND STEEL GOODS FROM MANDI GOBINDGARH DEALER AFTER PAYING TAX-- E-TRIP ALSO GENERATED FOR THE SAID TRANSACTION AND TRANSACTION STOOD DECLARED TO THE DEPARTMENT—SAME GOODS SOLD TO A DEALER IN DADARA AND NAGAR HAVELI—THE DRIVER OF VEHICLE OMITTED TO REPORT GOODS AT ICC RAJPURA—GOODS INTERCEPTED NEAR BORDER OF RAJASTHAN—NO EVASION OF TAX POSSIBLE AS GOODS PURCHASED AFTER PAYMENT OF TAX IN THE STATE AND CST CHARGED FROM CONSIGNEE DEALER ON INTER-STATE TRANSACTION—NO BENEFIT ACCRUING TO THE DEALER FOR NOT ACCOUNTING IN THE BOOKS—ATTEMPT TO EVADE TAX IS NOT POSSIBLE—PENALTY DELETED—APPEAL ACCEPTED – *SECTION 51 OF PVAT ACT, 2005*

Facts:

The appellant who is a dealer in Iron and steel goods purchased certain goods from another dealer namely M/s SA Tubes and Spirits Pvt. Ltd. Mandi Gobindgarh after paying the taxes. e-TRIP is also generated disclosing the transaction to the department. Thereafter goods are further sold to Krishna Trading Co. situated in UT of Dadra and Nagar Haveli. Transaction not reported at any ICC and consequently intercepted at the border of Punjab and Rajasthan. Penalty was imposed on the ground of non-declaration of goods at ICC after recording the statement of the driver that it was done under directions of owner/appellant. On appeal before the Tribunal held:

Held:

The appellant when purchased goods from Punjab Dealer had paid all taxes including Punjab VAT. The e-TRIP for the transaction was also generated disclosing the transaction to the department. Later on the said goods were sold to other registered dealer i.e. Krishna Trading Co. Naroli situated in UT of Dadra and Nagar Haveli after charging CST @2%. Appellant cannot be said to be benefited for not accounting for the goods in his account books as he was to receive the ITC for the remaining amount after deducting CST charge on the transaction.

The transaction cannot be kept out of account books. Non-reporting of the goods at ICC may be on account of fault on the part of driver but no intention to evade the tax is proved. Resultantly the appeal is accepted and the impugned order is set aside.

Present: Mr. Avneesh Jhingan, Advocate Counsel for the appellant.
Mr. Sukhdip Singh Brar, Addl. Advocate General for the State.

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

1.The appellant firm M/s Dhan Kartar Steel Corporation, Motia Khan, Mandi Gobindgarh was imposed penalty U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005 for not generating the transaction relating to E.R.W Pipes at the ICC of Punjab State when the goods were taken away from Mandi Gobindgarh to Naroli (Daman). The appeal filed by the appellant against the order was dismissed on 12.11.2013. The appellant had purchased E.R.W. Pipes from M/s SA Tube and Spirits (P) Ltd. on 13.10.2012 for Rs. 9,54,103/- including B.E.D. @ 12%, E.Cess @ 2%, H.Cess @ 1%, Vat/Cst 4.50 %, Surch @ 10% then he sold the same to Krishna Trading Company , Plot No.77, Bala No.6, Village Naroli Daman for Rs.8,93,275/- including CST @ 2% on 19.10.2012. When the driver by loading the aforesaid E.R.W. Pipes in vehicle No. PB-13Y-9701 reached near Khanna Petrol Pump on Rajastan boarder, the Excise and Taxation Commissioner, Mobile Wing Bathinda checked the vehicle on demand, the driver produced the following documents:-

(1) Invoice No.64, dated 18.10.2012 of M/s Dhan Kartar Steel Corporation, Mandi Gobindgarh in favour of M/s Krishana Trading Co. Plot No.77, Gala No.6, Village Naroli (D and NH) for Rs.8,93,275/-.

(2) GR No.3200, dated 18.10.2012 of M/s Uppal Road Carrier, G.T. Road, Mandi Gobindgarh.

2. Since the appellant had not reported at the ICC Rajpura, therefore, a suspicion arose to the Excise and Taxation Officer, Mobile Wing Bathinda, therefore, he detained the goods for verification.

3. When confronted, the driver failed to produce VAT XXXV/XXXVI as required U/s 51 of the Punjab Value Added Tax Act. The driver disclosed that he had not generated the goods at Rajpura as per direction's issued to him by the owner/appellant. When confronted with the facts of the case, the appellant failed to make any explanation regarding non generation of the goods at the ICC Rajpura. Consequently, the case was forwarded to the Designated Officer who after close scrutiny of the case imposed a penalty of Rs.5,35,000/- against the appellant. The appeal filed by him was dismissed on 12.11.2013.

4. The appellant, in order to stress the view point for approving innocence of the appellant, urged that there was no deliberate disregard of the obligation U/s 51 (2) read with Section 51 (6) (b) of the Punjab VAT Act, 2005; the transaction was between respondent and bonafide taxable registered dealer(appellant) holding Tin No.03861147575 and there is no impropriety or in genuineness in the covering documents. The appellant had purchased the goods vide invoice, dated 13.12.2012 from SA Tube and Stripes (P) Ltd. Mandi Gobindgarh. After making payment of all the taxes and there after sold the same to Krishna Trading Company Ltd. Naroli Daman bearing Tin No.26001001465 after charging CST @ 2% on 18.10.2012 he has proved the GR covering the goods which were being taken away from Mandi Gobindgarh to Naroli and also the e-trip showing the purchase the said goods from SA Tube and Stripes (P) Ltd. Mandi Gobindgarh in favour of the appellant dated 13.10.2012. He has further urged that the said e-trip is a proof of generation of goods and information by the

appellant to the department, therefore, the question of keeping these goods away from the account books with intention to evade tax does not arise.

5. To the contrary the state counsel has urged that since the requirement of law regarding generation of the information at the ICC by way of VAT XXXVI with regard to taking of the goods out of the State of Punjab has not been fulfilled, therefore, the appellant was certainly bound to pay the penalty for violation of 51 (1) (6) (b) and U/s 51 (7) (c) of the Act.

6. Having given by thoughtful consideration to the aforesaid contentions raised by the parties, it transpires that the appellant had no intention to evade the tax because Firstly, the appellant, when purchased the goods from the Punjab dealer, had paid all taxes including Punjab VAT on 13.10.2012. In this regard, he has placed on record the invoice of M/s SA Tube and Stripes (P) Ltd. Mandi Gobindgarh which shows that the appellant purchased these goods on 13.10.2012 while discharging all taxes and he had also generated VAT XXXIV-D i.e. interstate slip with regard to the removal of the goods from premises of SA Tube and Stripes (P) Ltd. Mandi Gobindgarh on the same date through vehicle No. PB-23K-4143.

7. Secondly, the appellant being registered dealer, had sold E.R.W. Pipes to the other registered dealer i.e. Krishna Trading Company Naroli after charging the CST @ 2%. The appellant cannot be said to be benefited for not accounting for the goods in his account books as he was to receive the ITC for / the remaining amount after deducting the amount of CST charged by him. It may further be observed that when he had already generated the goods with the Excise Department at the time of intrastate sale, the same cannot be kept out of the account books and he was bound to account for the same. All this goes to show that non reporting of the goods at the ICC Rajpura may be on account of the fault on the part of the driver. But intention to evade the tax is not proved.

8. Having perused the impugned orders passed by the authorities below, the same appear to have been passed by over looking the actual fact situation of the case, therefore, the same are liable to be set-aside.

9. Resultantly, I accept the appeal, set-aside the impugned orders and quash the order-of-penalty-passed against the appellant.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 373 OF 2015

AVDESH TRACKS (P) LTD.
Vs
STATE OF PUNJAB

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

19th February, 2016

HF ▶ Revenue

Attempt to evade tax is proved where the documents being carried with the goods cannot be connected to the transaction.

PENALTY—ATTEMPT TO EVADE TAX—GOODS REPORTED AT ICC ON 5.11.2014—INVOICE DATED 25.9.2014 AND GR DATED 4.11.2014 PRODUCED—ON SUSPICION BECAUSE OF DIFFERENT DATES THE GOODS WERE DETAINED—APPELLANT APPEARS AND REQUESTED THE DESIGNATED OFFICER TO DECIDE THE CASE THEN AND THERE ON THE FIRST DATE OF HEARING—PENALTY IMPOSED HOLDING THE DOCUMENTS TO BE IN GENUINE—ON APPEAL ASSESSEE SUBMITTED THAT GOODS WERE INITIALLY TAKEN TO JOB WORKER WHO SUPPLIED THE SAID GOODS ON 4.11.2014—THE FURNISHING OF INVOICE FROM THE JOB WORKER DATED 4.11.2014 ON A LATER STAGE IS OF NO SIGNIFICANCE—NO DOCUMENT PRODUCED BEFORE THE DETAINING OFFICER TO PROVE THE GENUINENESS—PENALTY UPHELD – *SECTION 51 OF PVAT ACT, 2005*

The appellant purchased certain goods from M/s Insaaf Foundary and Agro Industries Mandi Gobindgarh through invoice dated 25.9.2014 for Rs.4,24,521/-. The goods were allegedly handed over to M/s Onkar Agro and Engineering Works Mandi Gobindgarh for job work. The goods were being carried after job work on 4.11.2014 and driver of the vehicle produced bill issued by M/s Insaaf Foundary and Agro Industries and GR dated 4.11.2014. The difference in date lead to detention of goods. Notice was issued to the Assessee for 12.11.2014. However he appeared on 5.11.2014 and requested the Designated Officer to decide his case then and there as he regretted his inability to appear on the adjourned date. The Designated Officer rejected the contention of Assessee that goods were initially taken for job work. Further the Assessee had failed to generate the e.TRIP required for the transaction. Penalty U/s 51(7)(b) was imposed. On appeal the Assessee contended that no e-TRIP was required for the item in question and therefore penalty imposed is unsustainable. The Tribunal held:

The penalty was not imposed only on the ground of non-generation of e-TRIP but also on the ground that driver had failed to produced true document for the transaction in question. Even though a notice was issued to the owner but he refused to produce any document and requested for decision of the case on that very day i.e. 5.11.2014. The invoice of job worker being now produced is of no consequence as it does not have material particulars to connect with the GR

produced at the time of detention. No work order has been placed on record and there is no note on the invoice issued by job worker that goods were being sent back after job work. There is no evidence to prove that goods loaded in the vehicle and being transported on 4.11.2014 are covered by genuine documents. The bill now being produced is only an after thought as it has not been produced before the Detaining officer or the Designated Officer or the 1st Appellate Authority. Finally no merits in the appeal. The appeal was dismissed.

Present: Mr. J.P. Dhiman, 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 23.6.2015 passed by the First Appellate Authority, Patiala Division, Patiala dismissing the appeal of the appellant against the order dated 5.11.2014 passed by the Designated Officer ICC Banur imposing a penalty to the tune of Rs. 1,27,356/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

2. On 5.11.2014 at 10.30 A.M., when the driver alongwith truck No. PB-02-AL-9875 loaded with Cl casting arrived at the ICC Banur, he was apprehended by the detaining officer. When the driver was asked to produce the proof in support of the transaction, he produced the following documents:-

(1) *Invoice No. 55, dated 25.9.2014 for Rs.4,24,521/-issued by M/s Insaf Foundary & Agro Industries, GT Road Mandi Gobindgarh in favour of M/s Avdesh Tracks (P) Ltd. Village Jawaharpur Derabassi, District S.A.S. Nagar Mohali.*

(2) *GR No.4536, dated 4.11.2014 of Uppal Road Carrier from Mandi Gobindgarh to Derabassi.*

3. While doubting documents, the Detaining Officer detained the goods; recorded statement of the driver and issued notice to the owner of the goods. Thereafter, he forwarded the case to the Designated officer who also issued notice U/s 51 (7) (b) of the Act for 12.11.2014 directing the owner to explain as to why penalty be not imposed for transporting the goods without proper and genuine documents and without reporting the goods at the ICC.

4. In response to the notice, the appellant appeared on 5.11.2014 and requested the Designated Officer to decide his case there and then as he regretted his inability to attend the proceedings on. the adjourned date. The Designated Officer, while accepting his request set to decide the case. When confronted with the discrepancies, the appellant submitted that after purchasing the goods from M/s Insaf Foundary & Agro Industries, on 25.9.2014, he had forwarded the said goods, on the same day to M/s Onkar Agro and Engineering works, Mandi Gobindgarh for doing job work. After doing the job work, M/s Onkar Agro and Engineering works, Mandi Gobindgarh sent the goods to the appellant on 4.11.2014 vide GR No. 4536. The appellant further failed to explain as to why the driver did not generate the e-trip, he also did not produce the other documents for verification in order to prove the genuineness of the transaction. The Designated Officer, while observing that | though the goods were meant for trade yet the same were not accompanied by the proper and genuine documents and the appellant also did not generate the e-trip imposed penalty to the extent of 30% of the value of the goods U/s 51 (7) (b) of the Act. The appeal filed by the appellant was dismissed on 23.6.2015, hence this second appeal.

5. The counsel for the appellant has vehemently contended that as public notice dated 1.8.2013 issued by competent authority indicates that "Forging and Casting" were not included

in the item "Iron and Steel" specified under Rule 64-A and 64-B of the Rules which relate to e-trip/e-ICC. He further argued that the goods were covered by genuine documents and thus challenged the penalty imposed upon him.

6. To the contrary the counsel for the respondent has submitted that non furnishing the e-trip was one ground but the other ground to impose the penalty was that the goods were not covered by proper and genuine documents. The transaction took place on 25.9.2014 whereas the goods were transported on 4.11.2014. Since the appellant has failed to connect the goods so transported with the goods sent for job work, therefore the penalty was rightly imposed.

7. Arguments heard. Record perused.

8. The counsel for the appellant has contended that the notice dated 5.11.2014 issued to the appellant was containing only one allegation that no e- trip was generated, therefore, in the light of the instructions issued by the Excise and Taxation Commissioner that no e-trip was required in the case of "Forging and Casting" goods, the penalty imposed by the Designated Officer was illegal. In this regard, it may be observed that on perusal of the notice dated 5.11.2014 which was received by Satnam Singh, Driver reveals that non furnishing of the e-trip was one ground but the Designated Officer had also required the appellant to produce the true documents for examination in order to establish the genuineness of the transaction, therefore, the appellant was directed to produce the evidence relating to the genuineness of the transaction. Similar notice was issued again to the owner in order to produce the documents but it was on request of the owner that he did not want to produce any documents and his case be decided on that very day (5.11.2014), case was decided on 5.11.2014 itself. Both the authorities have recorded the categorical findings that the goods were not accompanied by proper and genuine documents.

9. The specific case of the appellant is that he purchased the goods vide bill no.55 dated 25.9.2014 and had directed the driver to deliver the goods to Onkar Agro and Engineering Works for job work and after the job work those goods were transported by M/s Onkar Agro and Engineering Works, Mandi Gobindgarh to the appellant on 4.11.2014. In this situation, the appellant was obliged to produce the delivery challan pertaining to the delivery of the goods after job work and was also required to prove by making endorsement or otherwise that he was transporting the same goods as were received by him under invoice No.55, dated 25.9.2014 but this much evidence was not produced by him. The two documents i.e. invoice No.55, dated 25.9.2014 and GR No.4536, dated 4.11.2014 are not sufficient proof of genuineness of the transaction. It may be noticed that the invoice No.55 refers/to the quantity of the goods as 8.755 MT of CI Casting Rails whereas the G.R. relates to 7865 Kg of C.I. Casting rails. The G.R. does not bear the invoice number which had enabled me to relate the goods which were being transported. The value of the goods as shown in Invoice No.55 is Rs, 4,24,521/- where as the value shown in the G.R. is Rs.3,000/-. Thus, the said G.R. is not connected with the Invoice No.55 in any manner.

10. The counsel for the appellant has placed much reliance on the VAT invoice No. 13 issued by M/s Onkar Agro and Engineering Works, Mandi Gobindgarh in favour of M/s Avdesh Tracks (P) Ltd. on 4.11.2014 for Rs.30,000/-but this invoice also cannot be connected with the goods in question. This invoice does not bear the net weight of the goods for which this invoice was issued. It does not disclose as to when the goods were received. No work order has been placed on record in order to indicate that M/s Onkar Agro and Engineering Works was deputed by the appellant for doing the job work. In any case, had there been any note over the retail invoice issued by M/s Onkar Agro and Engineering Works that the goods relating to the invoice No.55, dated 25.9.2014 were being sent back, it would have been sufficient compliance of the formality on the basis of which Hon'ble Tribunal could record the finding in favour of the appellant that the goods relating to invoice No. 55, dated 24.9.014 were returned

after job work. As a matter of fact there is no evidence on the record to prove that the goods loaded in the truck No.PB-02AL-9875 and transported on 4.11.2014 were not covered by genuine VAT documents.

11. The invoice No.13 was not produced on 4.11.2014 before the Detaining Officer or before the Designated Officer or the First Appellate Authority, therefore, the said document appears to be an after thought.

12. Having gone through the impugned orders, the same appear to be well founded and well reasoned and do not call for any interference at my end.

13. Resultantly, finding no merit in the appeal, the same is dismissed.

14. Pronounced in the open court.

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PUBLIC NOTICE (Punjab)

PUBLIC NOTICE REGARDING REPLACEMENT OF ENTRY TAX WITH ADVANCE TAX FOR TAXABLE PERSONS

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION

To Whomsoever it May Concern

17-June-2016

It is certified that Entry tax which was earlier applicable in the state of Punjab has been replaced by Advance Tax for Taxable persons w.e.f. from 04/10/2013 vide notification no. S.O.90/P.A.8/2005/S.6/2013.

Excise and Taxation Commissioner,

Govt. of Punjab

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PUBLIC NOTICE (Punjab)

PUBLIC NOTICE REGARDING NON LEVY OF PROFESSIONAL TAX

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION

To Whomsoever it May Concern

17-June-2016

It is certified that Professional Tax is not levied in the state of Punjab. All information/queries under this head may be treated as NIL.

Excise and Taxation Commissioner,

Govt. of Punjab

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PUBLIC NOTICE (Punjab)

PUBLIC NOTICE REGARDING DIVISION OF STATE INTO WARDS

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION

To Whomsoever it May Concern

17-June-2016

It is certified that for the better administration and effective implementation of the VAT and CST Acts, the state has been divided into 200 wards having territorial jurisdiction and a corresponding computerized system for allocation of cases based on ward is also in place.

Excise and Taxation Commissioner,

Govt. of Punjab

PUBLIC NOTICE (Punjab)

PUBLIC NOTICE REGARDING SINGLE ID FOR REGISTRATION FOR VAT, CST AND LUXURY TAX

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION

PUBLIC NOTICE

17-June-2016

Kind Attention: Dealer/Charted Accountants/Lawyers/Other Stakeholders

In pursuance of implementation of the recommendations of the Department of Industrial Policy and Promotion, Ministry of Commerce, Government of India, the department of Excise and Taxation shall issue a Single ID for registration for the VAT, CST and Luxury Tax. This id will also be issued as reference number for filing returns/making payments for Entertainment Tax.

The Department of Excise & Taxation hereby informs all the concerned that the facility for e-filing of returns and e-payment of taxes (monthly/quarterly/yearly) which was earlier available for VAT has now been extended to CST, Luxury Tax and Entertainment tax. Further, the e-payment facility has also been extended for the submission of registration fee for VAT, CST and Luxury Tax through the portal www.pextax.com.

Excise and Taxation Commissioner,

Govt. of Punjab.

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OFFICE ORDER (Punjab)

OFFICE ORDER REGARDING FURNISHING OF ACCOUNT DETAILS FOR REFUND

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION

ORDER

23-June-2016

Kind Attention: Dealer/Charted Accountants/Lawyers/Other Stakeholders

The Department created dedicated corpus exclusively for the clearance of refund w.e.f. 20-12-2013. It is reiterated that all refund applications be examined in depth expeditiously on merits and once approved refunds should be directly credited into the accounts of the dealers. For ease of doing business and effective and expeditious direct disbursal of refunds into the accounts of the dealers, the following details shall be taken along with the refund application:-

(a) Name of the bank
(b) Name of the branch with address
(c) IFSC code of the branch
(d) Name of Account holder
(e) Account Number

EXCISE AND TAXATION COMMISSIONER,

PUNJAB

No. 300-537-VATI Dated: 23-2016

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OFFICE ORDER (Punjab)

OFFICE ORDER REGARDING FURNISHING OF INSPECTION REPORT FOR REGISTRATION BY ETIs WITHIN 48 HOURS

OFFICE OF EXCISE AND TAXATION COMMISSIONER, PUNJAB, PATIALA

ORDER

23-June-2016

In exercise the powers conferred upon me under Rule 92(1) read with Section 3 of the Punjab Value Added Tax Act, 2005 as amended from time to time, I, Rajat Agarwal, IAS, Excise and Taxation Commissioner, Punjab, hereby, direct all the Excise and Taxation Inspectors to submit the inspection/visit report regarding the business premises of the dealer at the time of new registration to the concerned Excise and Taxation Officer Incharge within 48 hours/2 working days of the date of filling application for registration.

EXCISE AND TAXATION COMMISSIONER,

PUNJAB

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OFFICE ORDER (Punjab)

APPOINTMENT OF NODAL OFFICERS FOR ASSISTANCE IN E-FILING OF RETURNS

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION

ORDER

17-June-2016

In pursuance of implementation of the recommendations of the Department of Industrial Policy and Promotion, Ministry of Commerce, Government of India, the following officers are appointed as nodal officers for assisting dealers in e-filing of returns. Dealers can meet them during office hours to seek any assistance in e-filing /e-payment of returns and other services.

Sr.No.	District	Name of the Officer / Officials	Designation	Contact no.
1.	**Amritsar-1**	Sh. Lakhbir Singh	ETO	98783-27300
2.	**Amritsar-2**	Sh. Sandip Gupta	ETO	94172-78616
3.	**Tarn Tarn**	Sh. Manjeet Singh	ETO	98140-22632
4.	**Gurdaspur**	Sh. Kapil Jindal	ETO	93165-96000
5.	**Pathankot**	Smt. Jyotsana Singh	ETO	98766-26919
6.	**Jalandhar-1**	Sh. Kulbir Singh	ETO	84278-28900
7.	**Jalandhar-2**	Sh. Sunil Kumar	ETO	97804-28448
8.	**Hoshiarpur**	Sh. Amit Sareen	ETO	97798-18455
9.	**Kapurthala**	Smt. Sunita Chaudhary	ETO	98551-40185
10.	**Nawan Shehar (SBS Nagar)**	Sh. Khuswant Singh	ETO	78372-20100
11.	**Ludhiana-1**	Sh. Amarjeet Nanda	ETO	75892-81441
12.	**Ludhiana-2**	Sh. Aman Gupta	ETO	99888-02562
13.	**Ludhiana-3**	Sh. Sumit Thapar	ETO	96468-03893
14.	**Fatehgarh Sahib**	Sh. Sanjeev Madaan	ETO	95010-23656
15.	**Patiala**	Dr. Jyoti Walia	ETO	78371-45451
16.	**Sangrur**	Sh. Randhir Singh	ETO	98151-57741 98150-65614
17.	**Barnala**	Sh. Upkar Singh	ETO	99141-00034
18.	**Ropar**	Smt. Amritdeep Kaur	ETO	78372-00891

19.	**S.A.S. (Mohali)**	Dr. Ankita Kansal	ETO	96461-90059
20.	**Ferozepur**	Sh. Gurbakhash Singh	ETI	94633-49411
21.	**Fazilka**	Sh. RS Chouhan	ETO	94175-26002
22.	**Moga**	Sh. Jagtar Singh	ETO	80540-11331
23.	**Muktsar**	Sh. Rikhi Ram	ETO	81461-33633
24.	**Faridkot**	Sh. Inderjeet Singh Sandhu Sh. Satwant Singh Tiwana	ETO ETI	98556-22467 96465-00393
25.	**Bathinda**	Shri Kali Charan	ETO	97792-00754
26.	**Mansa**	Sh. Ram Singh	ETO	99153-25250

Excise and Taxation Commissioner,

Govt. of Punjab.

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OFFICE ORDER (Punjab)

INSPECTION PROCEDURE FOR GRANT OF REGISTRATION CERTIFICATE

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION

ORDER

17-June-2016

Subject: Inspection Procedure for grant of Registration Certificate

In pursuance of implementation of the recommendations of the Department of Industrial Policy and Promotion, Ministry of Commerce, Government of India, the following procedure is laid down for the Inspection of premises during the process of grant of RC.

1. The TI is required to inform the applicant prior to the visit via SMS and email.
2. If applicant is a female, then the inspection official should be accompanied by a female official of the department.
3. Before leaving the office for inspection of premises. TI should inform the ETO ward in-charge and also record he same in the movement register.
4. The inspection should be carried out in the day time.
5. TI will inform the dealer about the discrepancies / queries in the documents submitted by the applicant at the time of inspection, if it is not possible to do so beforehand. During the inspection, TI will give opportunity to applicant to furnish additional documents to answer any discrepancies / queries and accept all the documents given at the time of visit. If any discrepancy / query requires further proof, TI will give notice indicating date and time to the applicant to submit the same in the office.
6. At the time of inspection, the dealer has liberty to call his advocate for assistance.
7. After completing the inspection process, TI is required to record his findings in the system within 48 hours of inspection.

For strict compliance.

Dated: 17-June-2016

Excise and taxation Commissioner.

Govt. Punjab.

NOTIFICATION (Haryana)

SERVICE NOTIFIED UNDER HARYANA RIGHT TO SERVICE ACT, 2014 (THE HARYANA TAX ON LUXURIES ACT, 2007)

HARYANA GOVERNMENT
ADMINISTRATIVE REFORMS DEPARTMENT

NOTIFICATION

The 14th June, 2016

No. 7/31/2014-3AR.- In exercise of powers conferred by Sub-sections (1) and (2) of Section 3 of the Haryana Right to Service Act, 2014 (4 of 2014), the Governor of Haryana, on the recommendation of the Commission hereby makes the following amendment in the Haryana Government, Administrative Reforms Department, notification No. 7/31/2014-3AR, dated the 15th February, 2016, namely:-

Amendment

In the Haryana Government, Administrative Reforms Department, notification No. 7/31/2014-3AR, dated the 15th February, 2016, in the Schedule, against serial number. 46, under columns 2, 3, 4, 5, 6 and 7, the following entries shall be inserted, namely:-

	2	3	4	5	6	7
	"Excise and Taxation Department	Grant of registration certificate under the Haryana Tax on Luxuries Act, 2007 (23 of 2007)	15 days	Concerned Excise and Taxation Officer-cum-Assessing Authority	Deputy Excise and Taxation Commissioner of the concerned district	Joint Excise and Taxation Commissioner of the concerned range."

D.S. DHESI,

Chief Secretary to Government, Haryana

NOTIFICATION (Haryana)

SERVICE NOTIFIED UNDER HARYANA RIGHT TO SERVICE ACT, 2014 (THE PUNJAB ENTERTAINMENT DUTY ACT, 1955)

HARYANA GOVERNMENT
ADMINISTRATIVE REFORMS DEPARTMENT

NOTIFICATION

The 30th June, 2016

No. 7/31/2014-3AR.- In exercise of powers conferred by Sub-sections (1) and (2) of Section 3 of the Haryana Right to Service Act, 2014 (4 of 2014), the Governor of Haryana, on the recommendation of the Commission hereby makes the following amendment in the Haryana Government, Administrative Reforms Department, notification No. 7/31/2014-3AR, dated the 15th February, 2016, namely:-

Amendment

In the Haryana Government, Administrative Reforms Department, notification No. 7/31/2014-3AR, dated the 15th February, 2016, in the Schedule, against serial number. 47, under columns 2, 3, 4, 5, 6 and 7, the following entries shall be inserted, namely:-

	2	3	4	5	6	7
	"Excise and Taxation Department	Grant of registration /certificate/permission under the Punjab Entertainment Duty Act, 1955 (Act No. 16 of 1955) Punjab and Rules framed thereunder	15 days	Entertainment Tax Officer of concerned District	Deputy Excise and Taxation Commissioner of the concerned district	Joint Excise and Taxation Commissioner of the concerned range."

D.S. DHESI,

Chief Secretary to Government, Haryana

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LOOKS LIKE NEW GST BILL WILL BE MORE TAXING FOR TECH COS

IAMAI says a `forward looking' Bill that is supposed to modernise Indian governance fails to recognise the Internet and digital economy in India

NEW DELHI: The new Goods and Services Tax (GST) Bill, likely to be tabled in the coming monsoon session of Parliament, seems to have "pushed the internet economy under the bus", said industry body Internet and Mobile Association of India.

The new GST Bill is a missed opportunity to set up a futuristic regulatory regime with focus on the key sectors that are expected to drive growth in the country , IAMAI said on Monday . At the heart of the issue is that the Bill's extant Service Tax Profile recognises services like advertising and online information services, online information and database access, internet telecommunication services and telecommunication services as separate service categories.

This means that services provided by companies such as Airtel Vodafone, Google, Facebook, WhatsApp or a Flipkart are identified as the same in the Bill.

"The new GST Bill springs an unpleasant surprise: a `forward looking' Bill that is supposed to modernise Indian governance fails to recognise the Internet and digital economy in India. It is ironic that while on one hand the Government is promoting Digital India and Start-up India initiatives, the GST seeks to turn the clock back by decades," IAMAI said.

IAMAI counts companies such as Google, Twitter, LinkedIn and Microsoft as its members in India.

Under the new GST Bill, electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services have been clubbed under `telecommunication services'.

"Clubbing all the sectors under telecommunication services reflects a poor understanding of technology , and a wilful renouncement of the existence of these sectors in India. This renouncement is compounded further in the section listing activities to be treated as `supply of service' and also the new `Place of Supply of Goods and or Services' section under the new Bill," said IAMAI. Recognising the category of services is key in terms of determining tax liabilities, regulatory compliance and so on. For example, online marketplaces could successfully contest claims of VAT payment by positing their services as digital platforms and not retailers.

"The transition to the new GST regime from the existing tax structure is going to be a major challenge for all sectors of the economy (and the regulators as well) and such discrepancies will only add to the woe of the internet sector," said IAMAI.

Courtesy: The Economic Times
28th June 2016

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LID OFF MAJOR TAX EVASION

Dept recovers Rs 1.25 cr from firm dealing in cold drinks

CHANDIGARH: The UT Excise and Taxation Deparment has detected a major tax evasion and has recovered an amount of Rs 1.25 crore from a firm dealing in cold drinks.

Sources said the firm had deposited the tax. This was the highest amount recovered by the department from a single firm in the recent past. Ajit Balaji Joshi, Excise and Taxation Commissioner, confirmed that the department had detected a major tax evasion. He said such drives would continue.

The sources said the tax evasion by the firm, Eleven Excellence, came to light when officers got suspicious while checking the records of the returns filed by the company.

Ravinder Kaushik, Assistant Excise and Taxation Commissioner, ordered a probe after it was found that the firm had made a number of tax-free entries in the records to evade tax.

The department also recovered over Rs 30 lakh from shopkeepers selling books and uniforms of private schools after they were found guilty of tax evasion recently.

The department also found that over 200 traders in Shastri Market, Sector 22, had not deposited tax and issued notices to them.

Courtesy: The Tribune
16th June, 2016

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MODEL GST DRAFT PUTS ONUS ON BUYER

MUMBAI: Shifting the onus on the buyer to check whether the seller has paid goods and service tax (GST) is being considered as one of the most onerous provisions in the draft Model GST Law. The draft also contains restrictions on items for which input tax credit can be availed. While the draft has been largely lauded, some additional difficulties could arise owing to provisions relating to 'time of supply' as GST is a destination-based tax. Tax experts and CFOs are busy preparing their representations and hope these glitches will be ironed out in the final Act.

The draft provides that a buyer shall not be entitled to claim an input tax credit (ITC) unless the tax charged in respect of such supply has been paid by the seller. In simple terms, ITC is the amount of tax paid by the buyer on purchases made by him for which the buyer is entitled to claim a credit against the sales subsequently carried out by him. "It will be impossible for a buyer to ascertain whether the payment has actually been made by the seller," says Bipin Sapra, indirect tax partner at EY (India).

The draft law prescribes for a GST compliance rating score, which would be given to all taxpayers (including sellers). The parameters of such rating are yet to be defined. The rating would be available in public domain, so to this extent a buyer could avoid dealing those having a poor rating. "However, the rating has little or no value, as it doesn't absolve the buyer from ascertaining that the payment has been made by the supplier," says Sunil Gabhawalla, a chartered accountant.

The business process committee, in its report issued last October, had envisaged a mechanism of blacklisting errant sellers. Those who had made purchases from such a blacklisted seller would have been able to avail ITC only after an improvement in the rating.

"Denial of ITC as regards a large number of goods that have been purchased, or services that have been procured comes as a surprise. It will dent the seamlessness that was proposed in the GST regime. For a corporate entity, notable among the goods and services that have been excluded for ITC purposes are goods or services made available to employees such as medical insurance, club membership, travel benefits such as leave travel concession, food and beverages," says Gabhawalla.

Various acts of omission, such as non-filing of GST returns for a consecutive period of six months, could result in cancellation of the GST registration. "The fallout of this provision is onerous, as a cancellation of registration under Central GST Act shall be deemed to be a cancellation of registration under State GST (GST is dual regime). Once registration is cancelled, input tax credit would be denied to the customers of such taxpayer," says Gabhawalla.

The liability to pay GST arises at the time of supply. Currently, excise duty is payable only when goods are removed, or VAT when goods are delivered. However, under the GST draft, the time of supply of goods is the earlier of a number of events. "Thus, under the GST regime, even the receipt of an advance against sale of goods would trigger a liability for payment of tax. What is worrying is the provision for deeming certain extraneous events like booking of goods by buyer or expiry of 6 months from the removal of goods as deemed taxable events," points out Gabhawalla.

"Similarly, the time of supply needs to be simplified and needs to be linked to clear recordable events like date of invoice or date of receipt of payment. It would be difficult for the service provider to ascertain the date on which the recipient will make an entry in its books," says Sapra.

Courtesy: The Times of India
18th June, 2016

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BUY ONE GET ONE FREE' DEALS TO SOON LOSE CHARM, GST MAY APPLY TO FREE ARTICLES

NEW DELHI: The popular 'buy one get one free' deals stand to lose some of their charm as the proposed goods and services tax (GST) may apply to free articles given away with those purchased.

As per Section 3 of the model GST law that the government has unveiled for stakeholder comments, supplies specified in Schedule I, made without a consideration, are also liable to GST.

This means that the buyer will have to pay GST on the article that comes free, said tax experts, confirming that the provision will impact the popular sales.

They called for clarity on the issue as the wider implication is that even free samples given by way of business promotion could attract GST.

“Any form of direct or indirect GST on free supplies could have a significant impact on the sales & marketing spend of companies, specifically those dealing in consumer products," said Pratik Jain, national indirect tax leader at PwC.

Prashant Raizada, partner - indirect tax at BDO India, said, "The model GST Law does not provide any specific guidance on taxability of free samples issued by an entity to a prospective customer."

The provision is in line with the prevailing excise duty treatment (excise applies on free supplies as well), but marks a significant deviation from value-added tax (VAT) principles, experts said.

"This emerges from the shifting of taxable event from manufacture/sale to supply," said YG Parande, senior adviser, indirect tax, at Deloitte Haskins & Sells LLP. The government is keen to implement this crucial reform in indirect taxes that would replace multiple state and central taxes with a single GST.

The model law has been endorsed by the empowered committee of state finance ministers.

Experts also pointed out that Entry 5 of Schedule I of the model law covers "supply of goods and/or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business". "On a perusal of the said clause, it seems that free samples may potentially attract levy of GST on the value thereof as determined in terms of the GST Valuation Rules," Raizada of BDO said.

The draft law proposes reversal of GST credit attributable to non-taxable or exempt supplies, but it does not say if free goods and supplies would be covered. "While the GST law clearly lays down that supplies for business promotion without a consideration would be a supply, yet

it fails to provide a clarity whether it would be treated as an exempt supply for reversal of credits," said Bipin Sapra, partner at EY.

Courtesy: The Economic Times
16th June, 2016

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GUJARAT COLLECTS OVER RS 2 CRORE IN A MONTH IN ENTRY TAX FROM E-TAILERS

GANDHINAGAR: From May, the state government has begun collecting entry tax on items bought online by consumers from Gujarat, and in a month, has been able to collect above Rs 2 crore by taxing e-tailers. State authorities are hopeful that the collection would increase manifold once the government sorts out the online sales and physical check-post tracking system.

The new levy was introduced in this year's state budget to provide a level playing field to local dealers and to tax e-commerce transactions. The state commercial tax department, however, could not start collecting the tax from April itself due to some technical glitches, said officers.

The entry tax on online purchases is calculated on the basis of difference in VAT rates between Gujarat and the state from where the item was sent. Though some e-tailers have challenged the move in high court, there has been no interim stay on the tax.

Sources said Amazon India is one of the major players currently complying with the tax, while many big e-tailers are taking a wait-and-watch approach, given the cases pending in the high court. The state commercial tax department, however, has asked all e-tailers to shell out entry tax.

P D Vaghela, commissioner, commercial tax department, said, "We have implemented the entry tax on online goods sold in Gujarat from the April 1. However, due to some software issues, we could not collect entry tax for the first few days. The collection was around Rs2 crore in May, but we hope it will increase considerably, as we have allowed companies to set their system."

"We have asked all the companies to pay advance tax as well as send their weekly sales details. We are cross checking them with the goods movement data at check posts for all online companies. We are charging only the difference between the taxes here and in other states. One or two companies have challenged it in the high court, but the court has not given any stay. So, all the companies have started paying entry tax," Vaghela added.

How the entry tax is calculated?

The new levy was introduced in this year's state budget to provide level playing field to local dealers and tax e-commerce transactions. The state has now worked out a formula and decided to charge difference in VAT rates between Gujarat and a state from where a particular product is supplied as entry tax.

"Maharashtra charges 5% VAT on mobile phones and Gujarat has 15% VAT, the difference works out to be 10%. If someone from Gujarat buys a mobile phone through an e-commerce website and it is sold by a dealer in Maharashtra, the e-tailer will have to pay differential 10% as entry tax. The VAT can then be charged from the consumer," explained a senior government official.

Courtesy: The Times of India
19th June, 2016

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MANUFACTURING STATES WILL BE NET GAINERS UNDER GST, SAYS JAITLEY

Will continue dialogue with Congress, others opposed to the goods and services tax'

NEW DELHI: Finance Minister Arun Jaitley feels that the fears of manufacturing States such as Tamil Nadu, Maharashtra and Karnataka regarding revenue implications for their exchequer as a fallout of the Goods & Services Tax (GST) are overstated.

"Manufacturing States, which believe that a destination tax will reduce their taxes, are also the ones that will gain the maximum out of service tax. So, when you net total it, I think the fear is a little overstated," Jaitley said.

Words of reassurance

In an interview with BusinessLine, he said: "Tamil Nadu has had a conventional position that as a manufacturing State, its interests should be protected. And we (the Central government) are committed to that. The very fact that for five years, we will underwrite all the losses is a protection. I think Tamil Nadu's interests will be substantially taken care of."

Jaitley's comments should reassure the Tamil Nadu government, which has expressed concern about the impact of the proposed GST on the fiscal autonomy of States. In fact, Tamil Nadu Chief Minister J Jayalalithaa, at a recent meeting with Prime Minister Narendra Modi, had said that GST would lead to a permanent revenue loss for "manufacturing and net exporting States like Tamil Nadu."

Numbers favour GST

Aware that the support of other parties in the Rajya Sabha — where the BJP lacks a majority — is crucial for the Constitution Amendment Bill on GST to sail through, Jaitley said: "I have no doubt that the numbers are on the side of GST."

As regards the main Opposition party, the Congress, he said, "The party needs to reconsider its position on some of its conditions. It was not its position when it introduced the Bill; these are just add-ons as a Parliamentary tactic."

"I will certainly try my best to mobilise (support). I am meeting leaders of various political parties. Even with the Congress, I will continue the dialogue. Either the Congress supports it or it allows a vote on it," he stated.

Even as Jaitley and his team are looking to win over those still opposed to GST, the latest statement of support from Kerala Finance Minister Thomas Isaac, at variance with the Left's stance, could come as a booster.

Meanwhile, a member of the Empowered Committee of State Finance Ministers said that at the most recent meeting, Tamil Nadu had not been as vehement in its opposition to GST as it had earlier been.

In a statement, Tamil Nadu Minister for Commercial Taxes KC Veeramani, who represented the State, did not oppose GST, but raised certain issues that were common to other States as well, the member said.

"Two key issues were raised by the States. The first was the wide variation in the revenue-neutral rates (the rate at which there will be no profit or loss to the State) proposed by the Chief Economic Advisor and the National Institute for Public Finance and Policy (NIPFP). The second pertained to the threshold limit for dual control or the business turnover at which GST will be levied by both the Centre and the State," the member said.

While the Chief Economic Advisor has suggested a revenue-neutral rate of 15-15.5 per cent, the NIPFP has proposed a rate of 27 per cent.

With the government keen to push GST in the upcoming session of Parliament expected in July, the Empowered Committee is likely to meet two-three times in quick succession. The CEA and the NIPFP are expected to make presentations to the panel.

Courtesy: Business Line
19th June, 2016

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TAX-AT-SOURCE CLAUSE WORRIES E-TAILERS

BENGALURU: The draft law on goods and service tax (GST) to bring e-commerce companies under its purview is giving e-tailers such as Flipkart and Amazon India the jitters.

A major pain point for the e-commerce companies, which follow a marketplace model, is a clause relating to tax collection at source. According to senior executives at e-commerce companies, this clause will hurt the sellers who operate on thin margins to offer products at lower rates. They will either have to pass the tax burden onto the consumer or take a cut in their earnings. Some companies, like Flipkart, are welcoming the introduction of GST as it will do away with various state taxes such as entry taxes imposed by UP and Karnataka.

A Flipkart representative said: "A specific proposal in the draft law relating to tax collection at source will be detrimental to lakhs of small and medium sellers who do business on e-commerce platforms. This clause, which is not applicable to offline sellers, will hurt the working capital requirement for these sellers as they work on small margins work on small margins to provide affordable rates to consumers." Amazon India declined to comment, while an email sent to Snapdeal did not elicit any response.
According to a senior lawyer advising a leading ecommerce company , book to provide affordable rates to consumers." Amazon India declined to comment, while an email sent to Snapdeal did not elicit any response.

According to a senior lawyer advising a leading ecommerce company , bookkeeping will become more difficult for these companies. "The fresh set of guidelines will make it more complex to deal with some aspects such as returned goods.The accounting processes will have to undergo a change to comply with the new rules," he said.

"The latest notification does not address how they will impose GST on peer-topeer platforms selling used goods such as Quikr and Olx. The initial reactions ve been worrying but hopefully the government will clear it all up," said Harish H V of Grant Thornton, an accounting firm.

Online payments and ecommerce platform Paytm's VP Sudhanshu Gupta told TOI that it is in talks with have been worrying but hopefully the government will clear it all up," said Harish H V of Grant Thornton, an accounting firm.

Online payments and ecommerce platform Paytm's VP Sudhanshu Gupta told TOI that it is in talks with sellers to come up with a plan to address the matter.

GST, considered a major tax reform, has been stuck in Parliament due to resistance from Congress. On Tuesday , finance minister Arun Jaitley met state finance ministers to arrive at a consensus on key issues regarding GST. The Narendra Modi government plans to introduce a Constitutional amendment bill to implement GST in the monsoon session of Parliament.

Courtesy: The Times of India

16th June, 2016

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VAT REGISTRATION MADE EASY

LUDHIANA: Punjab excise and taxation department, which has been under fire from businessmen over harassment by its officers, is all set to start a new chapter by making registration of VAT dealers easy and prompt.

This comes in the wake of the Union government's department of industrial policy and promotion (DIPP) urging state excise and taxation departments to change complex registration procedures to comply to ease of doing business.

Under the new process, the excise and taxation department inspector will have to intimate the applicant of his impending inspection visit on sms or e-mail. The inspector would have to complete inspection on the same day and inform the excise and taxation officer (ETO) concerned. He will have to make records, including details of his findings in the department within 48 hours of inspection.

Reacting to the change in procedure, Dinesh Kalra, president, Ludhiana Business Forum said, "This is a welcome step. It will bring about transparency in the registration process. It will also end harassment of applicants. Since applicants are mostly not informed when the officer visits their premises for inspection, their applications are rejected only on the basis of very small discrepancy in documents. I think the excise department should tweak its systems in similar ways for VAT returns and refunds as well."

Vivek Sharma, secretary, district taxation bar association (DTBA) said, "If the department follows the procedure strictly, it will be beneficial for prospective dealers, who will be able to get TIN numbers in the stipulated time period of one month. Moreover, new guidelines also ensure full accountability of department officers in case of any delay on the part of the department in registering applicants."

Sharma said unlike the old system, the new procedure has made it mandatory for the inspecting officer to inform the dealer about discrepancies in documents. This will give the applicant a chance to correct his documents.

Courtesy: The Times of India
23rd June, 2016

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HAVE SUPPORT TO PASS GST: GOVT

BJP numbers in RS up, Bill likely to figure in first week of monsoon session

NEW DELHI: The government today said it had "enough support" for the passage of the GST Bill in the monsoon session of Parliament that will commence from July 18 till August 12.

A Cabinet Committee on Parliamentary Affairs chaired by Home Minister Rajnath Singh today drew up the schedule for the session.

For the GST Bill, the government seems to bank on a decipherable change in the arithmetic of the Rajya Sabha, where the BJP-led NDA was at a disadvantage till the last session due to paucity of numbers, and political equations with regional parties. Sources said the Bill could figure in the Rajya Sabha agenda in the first week of the session.

Since it is a Constitutional Amendment Bill, the government would require the support of two-thirds of the House, present and voting. For example, if everyone is present on the given day in the 245-member House, the government would need the support of around 164 members to clear the Bill.

Apart from a rise in its strength in the House, BJP leaders believe that many regional parties have turned "favourable", breaking ranks with the Congress on the crucial economic reform measure. Though the exact position of key non-Congress opposition player — AIADMK chief J Jayalalithaa — is not too clear, sources say she and parties like CPM and CPI may "help" in its passage by pressing for minor amendments.

After the recent elections, the "definitely pro-GST side" (BJP-led NDA plus some independents and nominated members) total up to around 83-84 members. The figure includes independent member Subhash Chandra who recently won with the BJP support in Haryana.
There are around 76 members in the House belonging to parties such as Samajwadi Party, BJD, BSP, RJD, NCP, TRS, JD-U, DMK, INLD, JMM, JD-S, Kerala Congress, Trinamool Congress and YSR Congress who "may support the GST Bill", BJP leaders say. These two blocks, plus 22 members of AIADMK, CPM and CPI, total up to the number which the BJP requires to take on the 60-odd members of the Congress.

Parliamentary Affairs Minister M Venkaiah Naidu said: "We have a wider support and we have enough numbers for GST but we would like to have all parties on board because it will have an effect on states."

Courtesy: The Tribune
30th June, 2016