SGA
LAW OFFICES

**Issue 11**
**1st June 2017**

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

— Franklin D. Roosevelt

# NOMINAL INDEX



# NEWS OF YOUR INTEREST




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# News From Court Rooms

**BOMBAY HC :** Maharashtra VAT : The appellants have given buses on hire to Pune Municipal Transport (PMT). The hired buses will be operated as stage carriages within the operational area of the PMT. The appellant contended that the transaction in question is being taxed as taxable service under the category of "Rent-a-Cab Service" as defined in The Finance Act, 1994 and the appellants are paying service tax on hire of buses. Held that the transaction is liable for payment of VAT as it involves transfer of right to use of goods and confirmed the demand as deemed sale. (***Waltor Buthello and Harrold Buthello – February 7, 2017)***.

CESTAT, CHANDIGARH : Central Excise : Whether cenvat credit can be denied to the appellant on the ground that the invoices issued by the dealer to the appellant were not pre-authenticated? Held : Pre authentication of invoices is a procedural issue and cenvat credit cannot be denied on the basis of such lapse, thus, cenvat credit cannot be denied to appellant (***Swaraj Foundry Division - February 8, 2017***).

**KERALA HC :** Kerala VAT : Where assessee purchased cement from local supplier and subsequently supplier allowed discount to assessee by way of credit notes and AA levied tax on said discount and assessee objected levy of tax on discount. Held, discount would not form part of taxable turnover specially when discount suffered tax in hands of supplier. Amendment to fifth proviso to section 11(3) only clarified fact that amount covered under credit notes issued by supplier that did not affect input tax credit already availed shall not be reckoned for purpose of assessment.(***Vettathil Agencies – February 7, 2017***).

**CESTAT, NEW DELHI :** CENVAT Credit : Mere fact that the appellant has been promoting and marketing foreign universities within India and then getting prospective students enrolled for various courses in those universities does not mean that services to foreign universities were consumed within India. Refund of CENVAT credit allowed. (***Study Overseas Global P Ltd. – March 12, 2017***)

**GUJARAT HC :** Gujarat VAT : Registration certificate of the dealer was cancelled both under the VAT Act as well as CST Act solely on the ground that the dealer has not filed returns for three consecutive periods. Subsequently, the dealer has paid the tax along with interest and penalty and filed returns. Since nothing adverse to the dealer was found except non-filing of the returns RC is restored. Revenue's appeal dismissed. (***Shri Shyam Industries – May 3, 2017***).

**BOMBAY HC :** Service Tax: Levy of service tax on coaching center registered as a trust from retrospective effect isn't unconstitutional. Explanation added to definition of term 'taxable service' set out in section 65(105)(zzc) by Finance Act, 2010, with retrospective effect from 1-7-2003, is neither unconstitutional nor ultra vires article 14 of Constitution.

**T & AP HC :** Telangana VAT : Where AA has intercepted goods of assessee and threatened to detain same on the ground that they were not accompanied by advance way bills. Thereupon assessee paid tax on value of goods and thereafter AA has issued a notice for imposition of penalty at rate of 100 per cent, AA was to be directed to take a lenient view while imposing penalty. (***Aditya Rice Industries – March 23, 2017***)

**MADRAS HC :** CENVAT credit : Assessee, an exporter of output services, claimed refund of unutilized CENVAT credit of service tax paid on input services. The claim was rejected by the Department on the ground that additional building taken on lease was not registered with the concerned Authority. Held that, the rejection of claim on the ground that additional building taken on lease by assessee was not registered is not valid. Revenue's appeal dismissed. (***CESTAT – April 10, 2017***).

**MADRAS HC :** Tamilnadu VAT : Interstate stock transfer can't be deemed as local sale just because assessee fails to obtain transit pass by mistake.

Where assessee managed to prove that sale of goods did not take place within State of Tamil Nadu on basis of various documents such as stock transfer memo, e-sugam etc, mere fact that it failed to obtain transit pass inadvertently, would not attract provisions of section 70(1)(c). (***Trans ACNR Solutions P Ltd. – April 6, 2017***).

**CESTAT, HYDERABAD:** Service Tax : Mere non-payment of ST and mere non-filing of returns does not attract penal provisions of Section 78 as it contains the words fraud, wilful mis-statement and suppression of facts. When ST is not paid due to financial hardships, Section 80, the then existing provision, can be invoked to give the benefit of waiving penalty. (***Vision Labs Institute – February 9, 2017***).

**CESTAT, BANGALORE :** Central Excise : Assessee is engaged in manufacture of extruder machines and accessories. They imported two extruder machines China and availed CENVAT credit of duty paid on these machines. It is alleged that said imported machines were not used "in or in relation to manufacture" as stipulated in Rule 2(a) of CCR 2004, same cannot be termed as 'capital goods' for manufacture in factory. Held: Definition of "capital goods" what emanates is that such goods are to be used in factory of manufacturer of final products and nowhere it is stipulated that said goods are to be used

"in or in relation to the manufacture of final products". The lower authority is reading a non-existent condition into definition of capital goods which is impermissible. ***(Steer Engineering P Ltd. – November 11, 2016)***.

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# SUBJECT INDEX

**Issue 11**
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# SUPREME COURT OF INDIA

**CIVIL APPEAL NOS. 997-998 OF 2004**

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**STATE OF U.P. & ORS.**
**Vs**
**INDIAN OIL CORPORATION LTD.**

**A.K. SIKRI AND ASHOK BHUSHAN, JJ.**

23rd March, 2017

**HF ▶ None**

*Entry Tax matters are disposed of with liberty to file fresh writ petitions before respective High Courts by taking all the pleas regarding Acts being unconstitutional.*

**ENTRY TAX – CONSTITUTIONAL VALIDITY – NINE JUDGES CONSTITUTION BENCH ANSWERING THE REFERENCE – MATTER SENT BACK TO REGULAR BENCHES FOR DECISION ON MERITS IN VIEW OF LAW LAID DOWN BY CONSTITUTION BENCH– MATTERS TRAVELLED UP TO SUPREME COURT FROM HIGH COURT JUDGMENTS DEALING WITH MATTERS ON THE BASIS OF COMPENSATORY TAX THEORY – COMPENSATORY TAX THEORY DISCARDED BY CONSTITUTION BENCH – OTHER GROUNDS TO BE ADJUDICATED UPON AFRESH BY THE HIGH COURTS AS THERE IS NO FACTUAL FOUNDATION FOR THE SAME IN THE PLEADINGS – APPELLANTS GRANTED LIBERTY TO FILE FRESH WRIT PETITIONS BY TAKING ALL THE PLEAS AS PER LAW LAID DOWN BY NINE JUDGES BENCH – WRIT PETITIONS TO BE FILED BY 7TH OF JULY 2017 BEFORE RESPECTIVE HIGH COURTS – MATTERS DISPOSED OF –** *ARTICLE 301, 302, 303, 304(a) & 304(b) OF CONSTITUTION OF INDIA*

*Entry Tax Acts of various States were challenged before respective High Courts and after decision by those High Courts, SLPs were filed before Supreme Court of India. All the matters were referred to Nine Judges Bench for adjudication regarding infringement of Article 301 while imposing Entry Tax under Entry 52 of List-II of Seventh Schedule. The Nine Judges Bench answered the reference upholding the levy of Entry Tax under Entry 52 without being infringed by Article 301 of Constitution of India. Matters referred back to regular Benches for decision afresh in view of law laid down by Constitution Bench. The Division Bench Noticed that matters cannot be adjudicated on the basis of law laid down by Nine Judges Bench on other issues as High Courts had primarily proceeded on the basis of Compensatory Tax theory laid down in the case of Automobile Rajasthan Transport case which has now been discarded, having no juridical basis. It would be in the fitness of things that appellants are allowed to file fresh writ petitions before respective High Courts challenging the validity of respective Entry Tax Acts by incorporating challenge on the various grounds which are now available after the judgment of Constitution Bench. The fresh writ petitions to be filed by 7th July 2017. Interim*

*protection granted during pendency of mattes before Supreme Court also extended till 7th July 2017. Matters accordingly disposed of.*

***Cases referred:***

- *Automobile Transport (Rajasthan) Ltd. Etc. v. State of Rajasthan and Ors. [1963 (1) SCR 491]*
- *Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors. [2016 (11) SCALE 1]*
- *Jindal Stainless Ltd.(2) and Anr. v. State of Haryana and Ors. [2006 (7) SCC 241]*
- *Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors. [2016 (11) SCALE 1]*

***Editorial Note:***

The date for filing of fresh writ petition was extended by Hon'ble Supreme Court vide order dated 29.05.2017 which is reproduced at the end of judgment.

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**ORDER**

**1.** With the consent of counsel for the parties, all the matters of the State of Uttar Pradesh and Haryana on the issue arising in the instant matters are taken on record and shall be governed by this order.

**2.** Having regard to the fact that the correctness of the ratio of the judgment of the Seven Judges' Bench of this Court in ***'Automobile Transport (Rajasthan) Ltd. Etc. v. State of Rajasthan and Ors.' [1963 (1) SCR 491]*** and the theory of compensatory tax was questioned, the matter was referred to Nine Judges' Bench. The Nine Judges' Bench of this Court heard the matters and answered the reference in those cases, leading case being ***'Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors.' [2016 (11) SCALE 1]***. The Court, by majority, answered the reference in the following terms:

> *"1. Taxes simpliciter are not within the contemplation of Part XIII of the Constitution of India. The word 'Free' used in Article 301 does not mean "free from taxation".*
>
> *2. Only such taxes as are discriminatory in nature are prohibited by Article 304(a). It follows that levy of a non-discriminatory tax would not constitute an infraction of Article 301.*
>
> *3. Clauses (a) and (b) of Article 304 have to be read disjunctively.*
>
> *4. A levy that violates 304(a) cannot be saved even if the procedure under Article 304(b) or the proviso there under is satisfied.*
>
> *5. The compensatory tax theory evolved in Automobile Transport case and subsequently modified in Jindal's case has no juristic basis and is therefore rejected.*
>
> *6. Decisions of this Court in Atiabari, Automobile Transport and Jindal cases (supra) and all other judgments that follow these pronouncements are to be extent of such reliance over ruled.*
>
> *7. A tax on entry of goods into a local area for use, sale or consumption therein is permissible although similar goods are not produced within the taxing state.*
>
> *8. Article 304(a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). The*

*question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.*

9. *States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular benches hearing the matters.*

10. *The questions whether the entire State can be notified as a local area and whether entry tax can be levied on goods entering the landmass of India from another country are left open to the determined in appropriate proceedings."*

**3.** It may be recapitulated at this stage that insofar as the instant appeals are concerned, which were also part of the aforesaid reference, the levy of entry tax was challenged by the assessees by filing writ petitions in the High Courts primarily on the ground that the levy was not in the nature of compensatory tax. The aforesaid challenge was because of the law laid down in Automobile Transport case (supra) which held the field at that time.

**4.** Similar challenges were made by the assessees in other States challenging various provisions of the similar enactments made by the said States. Some of the High Courts upheld the legislation holding the tax to be compensatory tax whereas some other High Courts found the legislation not to be compensatory in nature and, thus, struck down the provisions thereof. Some High Courts had taken support of certain other reasons also in striking down these legislations. The assessees as well as the States had filed special leave petitions against those judgments. Those cases were heard and decided by the Constitution Bench of this Court in ***Jindal Stainless Ltd.(2) and Anr. v. State of Haryana and Ors.' [2006 (7) SCC 241].***

**5.** Jindal Strips Ltd. is an industry manufacturing products within the State of Haryana. The raw-material is purchased from outside the State. The finished products are sent to other States on consignment basis or stock transfer basis. No sales tax is paid on the input of the raw material. Similarly, no sales tax is paid on the export of finished products.

**6.** The impugned Act came into force w.e.f. 5th May, 2000, to provide for levy and collection of tax on the entry of goods into the local areas of the State for consumption or use therein. The Act is enacted to provide for levy and collection of tax on the entry into a local area of the State, of a motor vehicle for use or sale, and of other goods for use or consumption therein. The Act seeks to impose entry tax on all goods brought into a "local area". The entire State is divided into local areas. The Act covers not only vehicles bringing goods into the State but also vehicles carrying goods from one local area to another. However, those who pay sales tax to the State are exempt from payment of entry tax. Ultimately, the entry tax only falls on concerns, like Jindal Strips, which, by virtue of the provisions of the Central Sales Tax Act, 1956, pay sales tax on purchase of raw-material and sale of finished goods to other States and do not pay sales tax to the State of Haryana. This is the context in which the challenge to the Act under Article 301 has been made. At this stage, we may point out that prior to September 30, 2003, Section 22 stated that the tax collected under the Act shall be distributed by the State Government amongst the local bodies to be utilized for the development of local areas. However, on 30th September, 2003, Section 22 was amended clarifying that the tax levied and collected shall be utilized for facilitating free flow of trade and commerce.

**REASONS FOR THE REFERRAL ORDER:**

**7.** In Atiabari Tea Co. Ltd. etc. v. State of Assam & Ors., it was held that taxing laws are not excluded from the operation of Article 301, which means that tax laws can and do

amount to restrictions on the freedoms guaranteed to trade under Part-XIII of the Constitution. However, the prohibition of restrictions on free trade is not an absolute one. Statutes restrictive of trade can avoid invalidation if they comply with Article 304(a) or (b).

**8.** In ***Automobile Transport (Rajasthan) Ltd.*** (Supra), it was held that only such taxes that directly and immediately restrict trade would fall within the purview of Article 301 and that any restriction in the form of taxes imposed on the carriage of goods or their movement by the State Legislature can only be done after satisfying the requirements of Article 304(b). The statute which was challenged in ***Atiabari Tea Co.*** (supra) was the Assam Taxation (On Goods Carried By Roads And Inland Waterways) Act, 1954. It was held that the Act had put a direct restriction on the freedom of trade and since the State Legislature had not complied with the provisions of Article 304(b), the Act was declared void.

**9.** It is in the aforesaid background, reference was made to Nine Judges' Bench, as indicated at the outset of this order.

**10.** We may also mention at this stage that when the matters were argued before the Nine Judges' Bench, certain other aspects were also argued. Primarily, three kinds of issues were taken by the assessees which are to the following effect:

(1) Whether the entire State can be treated as 'local area' for the purposes of entry tax?

(2) Whether entry tax can be levied on the goods which are directly imported from other countries and brought in a particular State?

(3) In some statutes enacted by certain States, there was a provision for giving adjustment of other taxes like VAT, incentives etc. paid by the indigenous manufacturers and it was contended by the assessees that whether the benefits given to certain categories of manufacturers would amount to discrimination under Section 304.

**11.** The Nine Judges' Bench while answering the reference deemed it appropriate to leave these questions to be agitated before the regular Bench. That is how these matters are posted before this Bench and it is agreed that the aforesaid issues are the main issues to be decided.

**12.** During the hearing of arguments, counsel for both sides submitted that since the main challenge in the writ petitions, which were filed by the writ petitioners before the High Court, was predicated on the law laid down by the Constitution Bench in ***'Atiabari Tea Co. Ltd.*** (supra), the High Court essentially confined its discussion only on "compensatory tax theory", as propounded in the aforesaid judgment so the High Courts looked at the issue by only keeping in mind the principle propounded in the aforesaid judgment and decided as to whether the tax imposed by a particular statute is compensatory in nature or not. Thus, when other issues are to be dealt with, as indicated above, we find that in many cases there is no adequate factual foundation and there is no discussion in the impugned judgments as well. It is also agreed by counsel for both the sides that in the absence thereof, it may not be possible for this Court to decide these issues.

**13.** According to us, in the aforesaid scenario, appropriate course of action would be to permit the appellants to file fresh petitions by May 31, 2017, raising the aforesaid issues with necessary factual background or any other constitutional/statutory issue which arises for consideration.

**14.** All these appeals/writ petition are, accordingly, disposed of with the aforesaid liberty granted to the appellants. The interim orders which were passed by this Court and which are continued in these appeals shall continue till May 31, 2017. It will be open to the

appellants to seek interim orders. We make it clear that the High Courts shall deal with the interim prayers of stay on their own merits without being influenced by the fact that the stay order was passed in these cases or has been extended by this Court as aforesaid. The High Courts, at that time, shall also consider the import and effect of the reference answered by the Nine Judges' Bench.

**15.** There are many applicants who have filed applications for intervention in some of the petitions, those applications for intervention are dismissed giving them liberty to file substantive writ petitions in the High Courts on the same lines as given to others.

**16.** Some of the intervenors who had filed writ petitions in the High Courts but the High Court did not entertain those petitions directing them to intervene in these matters.

**17.** They are also given liberty.

**T.P.(C) No. 307 of 2017**
**T.P.(C) No. 291 of 2017**

The transfer petitions stand dismissed. The High Court may proceed with the matter in accordance with law and in the light of the judgment passed in ***'Jindal Stainless Ltd. and Anr. v. State of Haryana and Ors.' [2016 (11) SCALE 1]***.

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**CIVIL APPEAL NOS. 997-998 OF 2004**
**(ALL OTHER CONNECTED CASES)**

**STATE OF U.P. & ORS.**
**Vs**
**INDIAN OIL CORPORATION LTD.**

**A.K. SIKRI AND ASHOK BHUSHAN, JJ.**

29th May, 2017

ORDER

In orders dated 21st, 22nd, 23rd and 29th March, 2017, while disposing of the instant matters, we had permitted the appellants to file fresh petition before the respective High Courts by May 31, 2017, which time-line we extend up to July 07, 2017.

Likewise, the interim orders which were passed by this Court and which are continued in these appeals shall continue till July 07, 2017

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# PUNJAB & HARYANA HIGH COURT

**VATAP NO. 28 OF 2016**

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**TAYAL SONS LIMITED**
**Vs**
**STATE OF PUNJAB AND ANOTHER**

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

30th May, 2017

**HF ▶ Remand**

*Appellate Authority is justified in remanding the case back for fresh decision where there are disputed facts regarding transaction being subsequent sale falling under Section 3(b) and Section 6(2) of Central Sales Tax Act, 1956.*

**PENALTY – ATTEMPT TO EVADE TAX – APPEAL – REMAND ORDER - SUBSEQUENT SALE UNDER SECTION 3(b) READ WITH SECTION 6(2) OF CST ACT 1956 – GOODS INTERCEPTED ON THE SUSPICION OF SECOND TRANSACTION BEING NOT COVERED UNDER SECTION 6(2) OF CENTRAL SALES TAX ACT 1956 – PENALTY IMPOSED – ON APPEAL, FIRST APPELLATE AUTHORITY REMANDED THE CASE BACK – ON APPEAL TRIBUNAL DISMISSED THE APPEAL UPHOLDING THE IMPOSITION OF PENALTY – ON APPEAL BEFORE HIGH COURT, ORDER OF REMAND BY 1ST APPELLATE AUTHORITY JUSTIFIED – FINDING OF FACT NEED TO BE DECIDED ON THE BASIS OF EVIDENCE LED BY BOTH THE PARTIES – ASSESSING AUTHORITY TO DECIDE THE MATTER AFRESH WITHOUT BEING INFLUENCED BY OBSERVATIONS OF TRIBUNAL – APPEAL DISMISSED. -** *SECTION 51 OF PUNJAB VAT ACT 2005, SECTIONS 3(b) AND 6(2) OF CENTRAL SALES TAX ACT, 1956*

*M/s Nav Durga Industries, Sangria (Rajasthan) sold 90 bales of cotton to the appellant dealer who is located in Ahmedabad (Gujarat). The Appellant in turn, sold the consignment to a dealer in Punjab on E-1 form basis under Section 3(b) read with Section 6(2) of Central Sales Tax Act, 1956. The consignment of goods started from Sangria (Rajasthan) to Machhiwara (Punjab). The vehicle was intercepted on the ground that transaction in question is not genuine E-1 sales. Consequently, a penalty under Section 51 of Punjab VAT Act was imposed.*

*On appeal, the first appellate authority remanded the matter back to the AETC. This order was challenged by the appellant before the Tribunal stating that first appellate authority ought to have decided the matter himself. The Tribunal, however, dismissed the appeal upholding the levy of penalty. On appeal before the High Court,*

***Held:***
*The question is whether in the present case there are no undisputed facts and the facts clearly establish that the sales fall within the ambit of Section 6(2) of the Act. In our view, the order of remand was not only justified but in fact protects the appellant's rights. The appellant would be entitled to establish its case in remand by leading further evidence if required. Even though*

*the question regarding first sale being an inter-state sale cannot be disputed but the question as to whether second sale between appellant and the Punjab dealer was a sale referred to in section 6(2) or not, needs to be decided on the basis of facts. The order of remand would enable both the parties to adduce evidence in support of their rival contentions in this regard. There is nothing to indicate that subsequent sale i.e. the sale by the appellant to Punjab dealer was during movement of goods and the onus in this regard is on the appellant to establish that second transaction between itself and Punjab dealer was entered during the movement of goods from Rajasthan to Punjab. Since the Tribunal has dismissed the appeal, the order of remand passed by first appellate authority would stand and the Assessing Authority shall pass the order on remand without being influenced by observations of the Tribunal. Appeal is accordingly disposed of.*

**Present:** Mr. Sudhir Mittal, Advocate for the appellants.
Ms. Sudeepti Sharma, Deputy Advocate General, Punjab for the respondents.

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**S.J. VAZIFDAR. CHIEF JUSTICE**

**1.** This is an appeal under Section 68(1) of the Punjab Value Added Tax Act, 2005 against the order of the Value Added Tax Tribunal, Punjab (hereinafter referred to as 'the Tribunal') dated 29.02.2016, dismissing the appellants' appeal against the order of the Deputy Excise and Taxation Commissioner (DETC) remanding the appeal against the order passed by the Assistant Excise and Taxation Commissioner, Mobile Wing (AETC) imposing a penalty of Rs.4,94,800/- under Section 51(7)(b) of Punjab Value Added Tax Act, 2005.

**2.** According to the appellant, the following substantial questions of law arise in this appeal:-

(a) *Whether in the facts and circumstances of this case the sale was exempted under section 6(2) of the Central Sales Tax Act, 1956 being an inter state sales under Section 3(b) of the said act?*

(b) *Whether in the facts and circumstances of this case the Tribunal was justified in holding that there was an attempt to evade tax?*

(c) *Whether in the course of proceedings under Section 51 (7) of the Punjab Value Added Tax Act, 2005 the nature of the transaction can be called into question?*

**3.** As a result of the Tribunal having dismissed the appellants' appeal against the order of the Deputy Excise and Taxation Commissioner, the order of remand directed by the Deputy Excise and Taxation Commissioner stands. As a result the question of law that arises is whether the Tribunal rightly upheld the order of the Deputy Excise and Taxation Commissioner remanding the matter to the Assistant Excise and Taxation Commissioner i.e. the Adjudicating Authority. The appeal is admitted on this question of law. The determination of this question will, however, require our having to consider the provisions of the Central Sales Tax Act.

**4.** The appellants' case is as follows:

*M/s Nav Durga Industries sold 90 bales of cotton to the appellants on the terms and conditions contained in an invoice dated 05.12.2013. The invoice mentioned the particulars of the consignment including the price and the appellants' TIN number. A goods receipt (GR) was issued by the Punjab Goods Transport Company also dated 05.12.2013 in which M/s Nav Durga Industries*

*and the appellants were described as the consignor and consignee, respectively. The GR notes and the consignment were to be transported from Sangaria in Rajasthan to Machhiwara in Punjab. The appellants are located in Ahmedabad, Gujarat. The appellants, in turn, sold the consignment to M/s S.T. Cottex Exports Pvt. Ltd. on the terms and conditions contained in an invoice also dated 05.12.2013. The invoice states that the sale was an "E-l sale against 'C' Form".*

**5.** The consignment left Sangaria in Rajasthan for Machhiwara in Punjab. On 06.12.2013, the vehicle loaded with the consignment was checked by the Excise and Taxation Officer, Mobile Wing, Fazilka (Punjab). The driver presented the said invoices, the GR and a weight note issued by M/s Nav Durga Industries. The detaining officer was of the view that this was not a genuine E-l sale and forwarded the case to the AETC, who issued a notice to the appellants, who according to him are the owners of the goods. The AETC noticed that the appellants had affixed the mark 'ST' on the consignment. The Department contends that this was a reference to M/s S.T. Cottex Exports Pvt. Ltd. It was also noticed that the goods were not accompanied by the Vat 49 Form as required by the Government of Rajasthan. The AETC observed that the order was predetermined and, therefore, the transaction could not be considered to be as an E-l sale. He held that the transaction was deliberately shown to be an E-l sale. According to him, the same was by the appellants to M/s S.T. Cottex Exports Pvt. Ltd.

**6.** The first appellate authority remanded the matter. The appellants challenged that order before the Tribunal contending that the first appellate authority ought to have decided the matter himself. Mr. Sudhir Mittal contended on behalf of the appellants that M/s Nav Durga Industries, first sold the goods to the appellants and the appellants thereafter sold then to M/s S.T. Cottex Exports Pvt. Ltd. It was contended before the Tribunal as well as before us that the transaction between the appellants and M/s S.T. Cottex Exports Pvt. Ltd. was a second sale, which fell within the ambit of Section 6(2) of the Central Sales Tax Act and is, therefore, exempted from tax under the CST Act. We, however, cannot accept his submission that the case is clearly established on undisputed facts and that, therefore, the first Appellate Authority and the Tribunal ought to have decided the matter themselves without remanding the matter to the Assistant Excise and Taxation Commissioner.

**7.** Sections 3 and 6(2) of the Central Sales Tax Act, 1956 read as under:-

***3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce***

*A Sale or purchase of goods shall be deemed to take place in the course of inter-state trade of commerce if the sale or purchase-*

*(a) occasions the movement of goods from one State to another or*

*(b) is effected by a transfer of documents of title to the goods during their movement from one State to another.*

***Explanation 1:** Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.*

***Explanation 2:** Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.*

***"6. Liability to tax on inter-State sales.***

***(1)*** ***xxx xxx xxx xxx xxx xxx xxx xxx xxx***

*(2) Notwithstanding anything contained in sub-section (1) or sub-section (1-A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act: Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—*

*(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and*

*(b) if the subsequent sale is made to a registered dealer, a declaration referred to in sub-section (4) of section 8:*

*Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if—*

*(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent, or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any other name); and*

*(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this sub-section.* "

**8.** The question is whether in the present case, there are no disputed facts and that the facts clearly establish that the sales fall within the ambit of Section 6(2) of the Act. In our view, the order of remand was not only justified but infact protects the appellants' rights. The appellants' rights are protected, for on remand it would be entitled to establish its case including, if necessary by leading further evidence.

**9.** We will presume in favour of the appellants that there were two sales, one between M/s Nav Durga Industries and the appellants and the other between the appellants and M/s S.T. Cottex Exports Pvt. Ltd. Mr. Mittal contended that the sale by the appellant to M/s S.T. Cottex Exports Pvt. Ltd. falls within the ambit of Section 6(2) of the Act.

Section 6(2) contemplates two sales. The first is referred to in the words *"where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another". The*

*second sale contemplated in Section 6(2) is referred to in the words "any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer".*

Section 6(2) would operate only where the first and the second sales conform to the requirements stipulated therein.

**10.** The first sale must be a sale in the course of inter-state trade or commerce which has occasioned the movement of such goods or has been effected by a transfer of documents of title to such goods during their movement from one State to another. The sale may fall in either of these categories. Mr. Mittal contends that the first sale is the one between M/s Nav Durga Industries and the appellant. This sale was not effected by a transfer of documents of title to the goods. As noted earlier an invoice was issued by M/s Nav Durga Industries to the appellant which by itself does not indicate an inter-state sale. The mere mention of the appellant i.e. the purchaser in that sale as belonging to Ahmedabad does not establish an inter-state sale. However, the invoice must be read with the lorry receipt ( for short 'LR'). The LR refers to the lorry/truck number, the date of the transaction and indicates that the goods were to be transported from Rajasthan to Punjab. The sale, therefore, was in the course of inter-state trade or commerce.

It is important to note that M/s Nav Durga Industries, Rajasthan is named as the consigner and the appellant is named as a consignee. Thus the sale between M/s Nav Durga Industries and the appellant occasioned the movement of goods from one State to another. That the sale occasioned the movement of such goods from one State to another i.e. from Rajasthan to Punjab is evidenced by the invoice read with the LR. Without the sale of the goods by M/s Nav Durga Industries to the appellant, there would have been no question of transporting, moving the goods from one State to another, namely, from Rajasthan to Punjab. Thus the sale between M/s Nav Durga Industries and the appellant is a sale of goods in the course of inter-state trade or commerce which occasioned the movement of goods from one State to another, namely, Rajasthan to Punjab.

**11.** The next question is whether the subsequent sale, namely, the sale between the appellant and M/s S.T.Cottex Exports Pvt. Ltd. conforms to the type of second sale referred to in Section 6(2). The sale is evidenced by the invoice also dated 05.12.2013 issued by the appellant to M/s S.T.Cottex Exports Pvt. Ltd. and the endorsement on the reverse of the LR by the appellant "Please Delivery To This Goods M/s S.T.Cottex Exports Pvt. Ltd. rllc-IRAQ-Machhiwara (LDH) TIN No.03921002721". The subsequent sale referred to in section 6(2) must be a sale during the movement of the goods effected by the transfer of documents of title to such goods to a registered dealer. In other words the subsequent sale must be during such movement i.e. movement caused by the first sale and must be effected by the transfer of documents of title to such goods to a registered dealer. It is not sufficient if the subsequent sale is effected by transfer of documents of title to such goods. It is also necessary that this second sale must be subsequent to the first sale and the subsequent sale must be during the movement of the goods under the first sale.

**12.** Two questions of fact arise in respect of the sale between the appellant and M/s S.T.Cottex Exports Pvt. Ltd. Firstly was it a subsequent sale, to wit, was it a sale entered into after the first sale referred to in section 6(2). There is nothing on record that expressly indicates whether or not it was. Both the invoices are of the same date i.e. 05.12.2013. Absent any evidence to the contrary, it would be reasonable to presume that the second sale i.e. the sale between the appellant and M/s S.T.Cottex Exports Pvt. Ltd. was subsequent to the sale between the appellant and M/s Nav Durga Industries for in the normal course, the appellant could not have sold the goods to M/s S.T.Cottex Exports Pvt. Ltd. if it did not have or was not entitled to the same itself unless of course it was a forward certificate. The respondents,

however, have contended that this was really a direct sale by M/s Nav Durga Industries to M/s S.T.Cottex Exports Pvt. Ltd. or by the appellant arranging both the sales simultaneously. That, however, would be a disputed question of fact in respect whereof the evidence is insufficient. The order of remand would enable both the parties to adduce evidence in support of their rival contentions.

**13.** The matter, however, does not end here. In addition to the sale between the appellant and M/s S.T.Cottex Exports Pvt. Ltd. being subsequent to the sale between the appellant and M/s Nav Durga Industries, the sale by the appellant to M/s S.T.Cottex Exports Pvt. Ltd. must have been during such movement i.e. movement of the goods from one State to another i.e. from Rajasthan to Punjab. Even assuming that this was a sale by transfer of documents of title to the goods by virtue of the endorsement on the reverse of the LR, it would be a disputed question of fact as to whether the sale between the appellant and M/s S.T.Cottex Exports Pvt. Ltd. was during the movement of the goods. Explanation (i) to Section 3 provides that where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purpose of clause (b), be deemed to commence at the time of such delivery. The bales were marked with the letters 'ST' which indicates the possibility of the goods having been sold by the appellant to M/s S.T.Cottex Exports Pvt. Ltd. before their movement i.e. before they were delivered to the carrier i.e. the lorry. If the transaction was prior to the movement of the goods, the subsequent sale would not fall within the ambit of Section 6(2) of the Act.

**14.** There is nothing to indicate that the subsequent sale i.e. the sale by the appellants to M/s S.T. Cottex Exports Pvt. Ltd. was during such movement i.e. the movement on account of the first side. The record does not indicate that the sale by the appellants to M/s S.T. Cottex Exports Pvt. Ltd. was during such movement of the goods. Both the invoices are dated 05.12.2013. The onus was on the appellants to establish that the second transaction i.e. transaction between itself and M/s S.T. Cottex Exports Pvt. Ltd. was entered into during the movement of the goods from Rajasthan to Punjab.

The evidence, in fact, indicates that the sale by the appellants to M/s S.T. Cottex Exports Pvt. Ltd., even assuming it to be the second sale, was prior to the movement of the goods effected by the first side. As mentioned earlier, the cotton bales had on them the mark 'ST'. The name of the purchaser of the goods from the appellants is M/s S.T. Cottex Exports Pvt. Ltd. On the record as it stands, there is no other explanation for the letters 'ST' used on the bales. The presumption, therefore, that the word's indication of M/s S.T. Cottex Exports Pvt. Ltd. was reasonable and justified. Upon remand, the appellants would have the opportunity of explaining the use of the letters 'ST' as well.

**15.** Mr. Mittal next submitted that, in any event, the State of Punjab would not be entitled to collect the Central Sales Tax. In this regard, he relied upon Section 9(1) of the Act. The respondents, however, have not sought to collect the Central Sales Tax. They have imposed a penalty under Section 51(7)(b) of the Punjab Vat Act. Section 51 insofar as it is relevant, reads as under

> ***"SECTION 51. ESTABLISHMENT OF INFORMATION COLLECTION CENTRES OR CHECK POSTS AND INSPECTION OF GOODS IN TRANSIT:***
>
> *(7) xxx xxxx xxxx xxx xxxx xxxx xxx xxxx xxxx*
>
> *(b) The designated officer shall, before conducting the enquiry, serve a notice on the consignor or consignee of the goods detained under clause (a) of sub-section (6), and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been an attempt to avoid or evade the*

> *tax due or likely to be due under this Act, he shall, by order, impose on the consignor or consignee of the goods, a penalty, which shall be equal to thirty percent of the value of the goods. In case he finds otherwise, he shall order release of the goods and the vehicle, if not already released, after recording reasons in writing and shall decide the matter finally within a period of fourteen days from the commencement of the enquiry proceedings."*

**16.** It is true that no tax is payable in respect of these transactions under the Punjab Vat Act. However, the mis-declaration in respect of the consignment would invite the penalty under Section 51(7)(b) nevertheless. Section 51(7)(b) would come into operation, if it is found that there has been an attempt to avoid or evade the tax due "or likely to be due under this Act". It is not necessary, therefore, that the tax must be due under the PVAT Act for the purpose of Section 51(7)(b). It is sufficient, if there is an attempt to avoid or evade the tax likely to be due under this Act. It is reasonable to presume that M/s S.T. Cottex Exports Pvt. Ltd. on a further sale would collect the tax payable under the Central Sales Tax while further selling the goods or factor the same into its sale price. If tax under the CST Act is not paid, the value of the goods would be less. If tax under the CST Act is paid, the value would be higher resulting in enhancement of liability to pay the tax under the Punjab VAT Act in respect of the sales by the purchaser in Punjab. The section is preventive.

**17.** It was also necessary to remand the matter even to avoid the liability under section 51(7)(b) of the Punjab Value Added Tax Act, 2005 on the ground that in any event there was no intention to avoid or evade the tax.

Upon remand the appellant would also be entitled to contend in the alternative that even assuming that the sale does not fall within the ambit of Section 6(2), it is not liable to penalty under section 51(7)(b) of the Punjab VAT Act as it did not attempt to avoid or evade the tax due or likely to be due under the Act. We refrain from expressing any opinion as to whether the mens rea is required for the purpose of section 57(1 )(b) of the Act. That issue would be decided upon remand and any challenge to the order passed upon remand.

**18.** The Tribunal dismissed the appeal. As a result thereof the order of remand passed by the First Appellate Authority stands. In these circumstances, the Assessing Authority shall pass the order on remand without being influenced by the observations of the Tribunal.

**19.** The question of law is answered in favour of the respondent. The appeal is accordingly disposed of.

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# PUNJAB & HARYANA HIGH COURT

**VATAP NO(S). 41, 43, 64 & 65 OF 2016**

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**THE MORINDA CO-OPERATIVE SUGAR MILL LTD.**
**Vs**
**STATE OF PUNJAB AND OTHERS**

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

15th May, 2017

**HF ▶ Revenue**

*Assessee is liable to pay interest and penalty from the due date of payment on the dismissal of writ petition wherein interim protection was given in the meanwhile*

**INTEREST - PENALTY – NON PAYMENT OF TAX - DUE DATE – PURCHASE TAX – ASSESSEE CHALLENGING VALIDITY OF CHARGING SECTION RELATING TO IMPOSITION OF PURCHASE TAX ON SUGARCANE – HIGH COURT ADMITTING THE PETITION AND STAYING THE RECOVERY BY COERCIVE STEPS IN THE MEANWHILE – WRIT PETITION FINALLY DISMISSED – SLP ALSO DISMISSED – ASSESSING AUTHORITY CONSEQUENTLY LEVIED TAX AND IMPOSED INTEREST AND PENALTY – BOTH THE APPEALS AGAINST SAID ORDER DISMISSED – ON APPEAL BEFORE HIGH COURT – DUE DATE OF PAYMENT IS THE DATE ON WHICH RETURN IS TO BE FILED AND NOT THE DATE OF ASSESSMENT – INTEREST RELATES TO THE LIABILITY DUE ON THE DATE OF FILING OF RETURN AND NOT ON COMPLETION OF ASSESSMENT PROCEEDINGS – AFTER VACATION OF INTERIM ORDER, LIABILITY RELATES BACK TO THE ACTUAL DATE WHEN IT WAS DUE – INTEREST AND PENALTY PAYABLE FROM THE DATE OF FILING OF RETURN – APPEALS DISMISSED. -** *SECTIONS 32(1), 53 AND 60 OF PUNJAB VAT ACT, 2003*

*Assessee-appellant is a cooperative sugar mill who had challenged the validity of Section 19 of Punjab VAT Act insofar as it sought to levy VAT on taxable turnover of purchase of sugar specified in Schedule-H at the applicable rates. The writ petition filed by assessee before High Court was admitted and the respondents were directed not to take any coercive steps for recovery of the tax demanded. Later on the writ petition was dismissed and the levy of tax on sugarcane was upheld. The SLP filed by assessee before Supreme Court against the said judgment was also dismissed.*

*Assessment proceedings for the year 2009-10 were accordingly completed on 4.11.2013. The appeals filed against said orders were also dismissed by appellate authority and Tribunal. In the appeal filed before the High Court, the question regarding interest levied under Section 32(1) and penalty imposed under Sections 53 and 60 were under challenge. The High Court Held:*

*The assessee was required to make a self-assessment of tax and file the Return within the prescribed time. As per Section 26(3), every person is bound to pay the full amount of tax due from him as per provisions of the Act. Accordingly, it follows that the due date for payment is*

*not the date of final assessment but the date stipulated in Rule 36, i.e. the date on which Return is required to be filed alongwith tax due from the assessee as per provisions of the Act. Thus, liability for payment of interest under Section 32(1) is from the date due for payment and not from the date of final assessment. The Contention that tax is payable only upon the conclusion of assessment proceedings is, therefore, not well founded. A view to the contrary would enable any assessee to file the Return of negligible amount and pay the amount actually due from him only after the assessment proceedings are completed and in the meantime enjoy the value of the difference without payment of any interest thereon. This cannot be the intention of Legislature.*

*The contention that assessee was not required to pay interest or penalty up to the date of dismissal of writ petition as there was challenge to the constitutional validity of Section 19, there was an interim order dated 31.01.2006, is also not well founded. A view to this effect would enable any assessee to avoid payment by simple expedient of challenging the constitutional validity of a charging section. Interlocutory orders are only meant to protect the interest of an assessee by suspending the Department's right to recover the same temporarily. Interim orders do not create any right contrary to or derogation of statutory or for that matter any liabilities. They do not determine the rights of parties. The moment an injunction is vacated the liability relates back to the date on which it was incurred, i.e. the date on which the tax was due with all consequential benefits to the Revenue thereafter.*

*In the facts of present case, there is no reason to absolve the appellant of any liability under Section 32(1), 53 and 60. The question of law is, therefore, answered in favour of Revenue and against the assessee. Appeals are dismissed.*

**Present:** Mr. M.R. Sharma, Advocate, for the appellant.
Mr. Sukhdip Singh Brar, Additional Advocate General, Punjab.

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**S.J. VAZIFDAR, C.J. (ORAL)**

**1.** These appeals are against the order of the Value Added Tax Tribunal, Punjab dismissing the appeals filed by the appellant against the order of the Deputy Excise and Taxation Commissioner which confirmed the order passed by the Excise and Taxation Officer-cum-Designated Officer raising an additional demand for tax, interest and penalty under the provisions of the Punjab Value Added Tax Act, 2005 (the Act).

The above appeals, namely VATAP-41-2016, VATAP-43-2016, VATAP-64-2016 and VATAP-65-2016 pertain to the assessment years 2009-2010, 2006-2007, 2008-2009 & 2010-2011 respectively.

**2.** It is agreed that the appeals raise a common question of law and may be disposed of by a common order and judgement. For convenience, we will refer to the facts from VATAP-41-2016.

**3.** According to the appellant, several questions of law arise in this appeal. However, by an order dated 21.09.2016, another Division Bench of this Court issued notice of motion only on question (v) which reads as under:-

> *"(v) Whether in the facts and in the circumstances of the case the VAT Tribunal Punjab Chandigarh has grossly erred in upholding the order of the Excise & Taxation Officer-cum-Notified Authority as upheld by the Deputy Excise & Taxation Commissioner (Appeals) Patiala imposing penalty under Section 53, under Section 60 and levying interest under Section 32(1) of the Punjab VAT Act?"*

The order dated 21.09.2016 reads: "Notice of motion for 19.01.2017 only on question No. (v) relating to levy of penalty under Section 53 of the Act". Question (v), however, is not limited to penalty. It also refers to interest. We have, therefore, decided question (v) in so far as it relates to interest as well.

**4.** The Act came into force with effect from 01.04.2005. The appellant claims to have commenced purchasing sugarcane only in November, 2005. According to the appellant, therefore, its liability under the Act commenced only in January, 2006. It is not necessary for us to consider this issue as the order issuing notice of motion dated 21.09.2016 limits the scope of this appeal to interest and penalty. In other words, the liability itself must be taken to have attained finality.

**5.** The appellant filed CWP-20355-2005 to challenge the constitutional validity of Section 19 of the Act which levied VAT on the taxable turnover of purchase of goods specified in Schedule-H at the rates applicable to goods as per the Schedule. Schedule-H admittedly includes sugarcane. The petitioner sought a writ of certiorari declaring Section 19 and item 4 of the Schedule 'H' of the Act as unconstitutional and not applicable in respect of sugarcane. The petitioner contended that the purchase tax was not assessable under the Act. On 31.01.2006, a Division Bench of this Court admitted the writ petition and passed the following order:-

> *"Admitted. In view of the fact that a huge amount of sales tax is involved in this petition, we direct that this matter be set down for final hearing before a learned Single Judge on 15.02.2006 (Wednesday) high-up in the list.*
>
> *We also direct that till then the respondents shall not resort to coercive steps for the recovery of the tax demanded."*

Suffice it to note at this stage that on the basis of this order it was contended that the petitioner is not liable to pay interest under Section 32(1) and penalties under Sections 53 and 60 of the Act.

**6.** By an order and judgement dated 20.01.2010, the writ petition was dismissed. It is important to note the following observations of the Division Bench of this Court:-

> *"The first question which would arise for determination is whether 3-Judge Bench judgement of the Hon'ble Supreme Court rendered in the case of Jagatjit Sugar Mills (supra) is binding on the parties. In the aforesaid case the question of law was posed in para 4 of the judgement and in namely whether the sugar mill was liable to pay purchase tax on the sugarcane purchased by it from the growers of the sugarcane. In a categorical answer to the aforesaid question it has been held that Section 4 (1) of the PGST Act, 1948 contemplates levy of purchase tax on all sales and purchases. Once the aforesaid judgement in the categorical terms lays down that purchase tax is leviable under Section 4(1) then it is well nigh impossible for us to say that such a tax cannot be levied on the ground that PGST Act, 1948 is a statute of general character which deals with sale or purchase tax in respect of all goods whereas the 1953 Act is a special Act which deals with all aspects including levy of purchase tax on sugar cane. The petitioner has convassed for the contrary view on the basis of the judgement rendered by 2 Judge Bench of the Hon'ble Supreme Court in the case of Govind Sugar Mills (supra). The aforesaid judgement has been rendered by interpreting Bihar Finance Act, 1981 and Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 by holding that both the Acts would operate in the same field. The underlying principle followed by the Hon'ble Supreme Court is that the Sugarcane Act being a special Act pertaining to all aspects of control of the sugarcane as well as levy of purchase tax has to be preferred over the*

*Finance Act which empower the State to levy all commercial taxes generally whereas the sugarcane Act empowered the levy of purchase tax only on sugarcane. Such a course would not be available to us as the specific Act which is applicable to the petitioner namely PGST Act 1948 has been interpreted by a 3 Judge Bench in the case of Jagatjit Sugar Mills case (supra). Furthermore we would prefer the interpretation adopted by the Hon'ble Supreme Court for PGST Act, 1948 which is in question before us. The judgement of Govind Sugar Mills' case (supra) has emerged out of different statute. It is needless to emphasise that the judgement by the Hon'ble Supreme Court is a law declared in respect of the field occupied by it which is binding on all Courts within the territory of India including the High Courts. In that regard reliance may be placed on the observations made by a Constitution Bench of the Hon'ble Supreme Court in the case of Behram Khurshid Pesikack v. State of Bombay AIR 1955 SC 123. Even otherwise the decision of 3 Judge Bench in J agatjit S ugar Mills case (supra) has to be followed because that decision is by a larger Bench than the one deciding the Govind Sugar Mills's case (supra). The 3 Judge Bench judgement decision is also under the PGST Act 1948 which is applicable to the petitioner. Therefore, in our view there is no possibility whatsoever to reopen the question by opining that the provisions of Section 4(1) of the PGST Act,1948 would not apply and those of 1953 Act alone would apply.*

*On the basis of the aforesaid premise, the writ petitions are liable to be dismissed. On account of the binding precedent available in the form of judgement of Jagatjit Sugar Mills' case (supra) we are not dealing with any of the contentions raised by the petitioners which could have been otherwise examined in the light of the observations made in Govind Sugar Mill's case (supra)."* *(emphasis supplied)*

**7.** The appellant's Petition for Special Leave to Appeal to the Supreme Court against the above judgement was dismissed on 29.08.2013. It is important to note a few aspects in respect of this order. The order disposed of a large number of petitions including the one filed by the appellant. A reading of the order as a whole, however, makes it clear that the Supreme Court dealt with Special Leave to Appeal (Civil) No. 10324/2010 which was filed by another party, namely, M/s A.B. Sugars Limited to which the appellant before us was not a party. The order reads as under:-

*"Upon hearing counsel the Court made the following*

*O R D E R*

*S.L.P.(C) Nos. 10324 of 2010*

*The petitioner herein is a sugar mill which calls in question the correctness or otherwise of the common order passed by the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 17878 of 2008, dated 20.01.2010, whereby the High Court has dismissed all the writ petitions praying, inter alia, for quashing of notification issued by the Government of State of Punjab imposing tax at the rate of 50 paisa for 100 kgs on purchase of sugar cane by or on behalf of the sugar cane mills, dated 27.05.1998 and for issuance of declaration to the effect that no purchase tax on the purchase of sugarcane be levied and collected from them under the provisions of the Punjab General Sales Tax Act, 1948 (for short, 'the Act').*

*Insofar as this special leave petition is concerned, in our considered view, it may not be necessary for us to delve into the correctness or otherwise of the*

*impugned judgment and order passed by the Writ Court. We say so for the reason that the petitioner having filed the Writ Petition before the Writ Court had only questioned the assessment order passed by the Assessing Authority, Hoshiarpur, Punjab under the provisions of the Act, dated 28.04.2008 and not impugned the relevant provisions of the Act.*

*The petitioner now seeks to assail the provisions of the Act while impugning the common judgment and order of the Writ Court.*

*In our considered opinion, since the petitioner had called in question only the assessment order passed by the Assessing Authority, in light of there being an efficacious alternative remedy available to the petitioner under the Act, the Writ Court ought to have relegated the petitioner to first exhaust the alternative remedy available to them under the provisions of the Act instead of adjudicating the case on its merits.*

*In aid to our aforesaid conclusion, we rely upon the decision of this Court in Titaghur Paper Mills Co. Ltd. & Anr. vs. State of Orissa & Ors., (1982) 2 SCC 433 wherein this Court after detailed analysis of the statutory provisions of various fiscal enactments had come to the conclusion that if an alternative, effective and efficacious remedy available under the relevant statute, the assessee should exhaust the said remedies before invoking the writ jurisdiction of the Writ Court. This Court has clarified that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*

*In view of the above, without going into the merits or demerits of the petitioner's case we dispose of this special leave petition with liberty to the petitioner, if it so desires, to question the correctness or otherwise of the assessment order passed by the Assessing Authority, dated 28.04.2008 by filing an appropriate appeal before the Appellate Authority under the provisions of the Act within thirty days' time from today. If such an appeal is filed within the time granted by this Court, the Appellate Authority shall consider the same only on merits without any reference to the period of limitation.*

*However, it is clarified that the Appellate Authority shall not be influenced by the observations made by the High Court while disposing of the writ petition.*

*All contentions of the parties are left open.*

*Ordered accordingly.*

*SLP(C) No. 10337, 10619 of 2010*

*These special leave petitions are disposed of in terms of the order passed in Special Leave Petition (Civil) No. 10324 of 2010.*

*Rest of the matters Dismissed."* *(emphasis supplied)*

It is apparent that the appellant did not challenge the order of this Court in so far as it dealt with the constitutional validity of Section 19 of the Act. The importance of this is that the appellant before us accepted the judgement of this Court at least on the issue of the constitutional validity of the Act.

**8.** The assessment proceedings were completed on 04.11.2013. An assessment order in respect of the assessment year 2009-2010 was passed on 04.11.2013. It is this assessment order that was challenged before the Deputy Excise & Taxation Commissioner (Appeals), Patiala Division, Patiala and thereafter before the Tribunal. As we mentioned earlier, the liability to

pay tax under the Act is not in question. Only the imposition of interest under Section 32(1) and penalty under Sections 53 and 60 is in question before us.

**9.** Mr. M.L. Sharma, the learned counsel appearing on behalf of the appellant, contended that in the facts and circumstances of the case, the respondents were not entitled to levy either interest or penalty. He firstly contended that the liability for interest or penalty could arise only after the assessment order dated 04.11.2013. He then contended that in any event from 01.04.2005 to 20.01.2010, no penalty or interest could be charged as till 20.01.2010 the interim order dated 30.01.2006 was in operation. 20.01.2010 as we noted was the date on which the writ petition challenging the constitutional validity of Section 19 was dismissed.

**10.** Sections 1, 2, (v), (y), (z), (zn), 26, 32(1), 53 and 60 of the Punjab Value Added Tax Act, 2005 in so far as they are relevant read as under:-

> *"S. – 1. Short title and commencement.*
>
> *(1) This Act may be called the Punjab Value Added Tax Act, 2005.*
>
> *(2) It shall come into force from the 1st day of April, 2005.*
>
> *S.- 2. Definitions.*
>
> *In this Act, unless the context otherwise requires, -*
>
> *(v) "prescribed" means prescribed by rules made under this Act.*
>
> *(y) "quarter" means a period consisting of three months, commencing from the first day of April, July, October, and January of a calendar year.*
>
> *(z) "registered person" means a person, who is registered for the purpose of paying turnover tax under this Act.*
>
> *(zn) "taxable person" means a person, who is registered for the purpose of paying value added tax under this Act.*
>
> *S.- 26. Returns.*
>
> *(1) Every taxable person shall make self assessment of tax and shall file return for a period, within such time and in such form as may be prescribed.*
>
> *(2) Every registered person shall make self assessment of tax and shall file return for a period, within such time and in such form as may be prescribed.*
>
> *(3) Every person shall, in such manner, as may be prescribed, pay into a Government Treasury or any bank authorized to transact Government business or at the District Excise and Taxation Office, the full amount of tax due from him as per provisions of this Act and shall furnish along with the returns, receipt from such Treasury or Bank or District Excise and Taxation Office, as the case may be, showing the payment of such amount:*
>
> *Provided that no payment of such amount shall be accepted at the District Excise and Taxation Office, except through a bank draft or crossed cheque drawn on a local Scheduled Bank in favour of the designated officer.*
>
> *(4) If any person referred to in sub-sections (1) and (2), discovers any bonafide error or omission in any return furnished by him, he may rectify such error or omission in the return, due to be filed immediately following the detection of such error or omission. If such rectification results in a higher amount of tax to be due than the original return, it shall be accompanied by a receipt for payment of the additional amount of tax, payable along-with the interest at the rate specified under this Act for the period of delay, in the manner prescribed in sub-*

*section (3). No such rectification shall, however, be allowed after the end of the financial year immediately following the year to which the rectification relates or issue of a notice for audit or assessment whichever, is earlier. Where such rectification results in excess amount of tax having been paid than due, such excess tax shall be refundable on application as per provisions of this Act and the rules framed thereunder. No adjustment shall, however, be allowed for such excess payment.*

*(5) In addition to any return under sub-sections (1) and (2), the Commissioner or the designated officer may, require a taxable person or a registered person to furnish such further information along-with the returns or at any other time, as may be deemed necessary.*

*(6) Notwithstanding anything contained in this section, the Commissioner or the designated officer, as the case may be, may by notice, direct a person other than a taxable person or a registered person, to file returns at such intervals and in such form and containing such information, as may be required.*

*(7) Every taxable person or registered person, as the case may be, shall file an annual statement in such form and in such manner, as may be prescribed.*

*(8) A taxable person or a registered person, whose registration is cancelled under section 24, shall file such final return, as may be prescribed, within thirty days from the date of cancellation by the Commissioner or the designated officer, as the case may be.*

*S.- 32. Interest for non-payment or delayed payment of tax.*

*(1) If any person fails to pay the amount of tax due from him as per provisions of this Act, he shall, in addition to the amount of tax, be liable to pay simple interest on the amount of tax due from him at the rate of half per cent per month from the due date for payment till the date, he actually pays the amount of tax.*

*S.- 53. Penalty for failure to pay tax when due.*

*If a person registered under this Act, fails to pay the amount of tax in accordance with the provisions of this Act, he shall be liable to pay, in addition to the tax and the interest payable by him, a penalty, at the rate of two per cent per month on the tax, so due and payable from the date, it had become due to the date of its payment, or to the date of the order of the assessment, whichever is earlier. The amount of penalty payable under this section, shall be calculated by considering a part of the month as one month.*

*S.- 60. Penalty in cases not covered elsewhere.*

*(1) Whosoever contravenes or fails to comply with, any of the provisions of this Act or the Rules made thereunder or any order or direction made or given thereunder, shall, if no other penalty is provided under this Act for such contravention or failure, be liable to pay penalty, not exceeding rupees ten thousand, subject to a minimum of rupees one thousand.*

*(2) Where such contravention or failure continues thereafter, the person shall be liable to pay a further penalty of rupees one hundred per day from the due date specified for payment of penalty under subsection (1).”*

*(emphasis supplied)*

**11.** The question whether an assessee is liable to pay interest under Section 32(1) requires the determination of the meaning of the words "due date for payment" therein for the liability commences "from the due date for payment".

**12.** Mr. Sharma's contention that the due date is the date on which the assessment order is passed is not well founded. The appellant is both a taxable person and a registered person under the Act. Thus, under sub-sections (1) and (2) of Section 26, it was required to make a self-assessment of the tax and to file the return within the time prescribed. Under Section 26(3), every person is bound to pay the full amount of tax due from him as per the provisions of the Act. The word "prescribed" is defined in Section 2 (v) to mean prescribed by the Rules made under the Act. The Punjab Value Added Tax Rules, 2005 came into force with effect from 01.04.2005. Rule 36, inter alia, prescribes the time for payment. Rule 36 in so far as it is relevant reads as under:-

> *R.- 36. Returns.—*
>
> *(1) Every taxable person shall file quarterly self-assessed return in Form VAT-15 within a period of thirty days from the date of expiry of each quarter along with the proof of the payment made into the appropriate Government Treasury and the Tax Deductions at Source (hereinafter referred to as the TDS ) certificates, if any:*
>
> *Provided that where a person opts to make the payment of tax through crossed cheque or bank draft, he shall enclose the crossed cheque or the bank draft, as the case may be, along with the return, which shall be filed within a period of twenty days from the date of the expiry of the quarter:*
>
> *Provided further that a person, whose annual gross turnover exceeds rupees one crore in the previous year, shall determine his tax liability for every month and shall pay tax by the 20th day of the month, if paid through the crossed cheque or draft and by the 30th day of the month, if paid through the treasury receipt and shall submit the same to the designated officer, along with the information in Form VAT-16; and payment for the last month of each quarter shall be made on the 20th or the 30th day of the close of quarter, as the case may be, along with the quarterly return. The return in Form VAT-15, shall be accompanied by photocopies of the treasury receipt evidencing the payment of tax for the previous two months also.*
>
> *Provided further that a person making sales in the course of inter-State trade or export out of India may, by making an application to the designated officer, opt to file selfassessed return on monthly basis in Form VAT-15 within a period of twenty days, if payment of tax is made by a crossed cheque or draft and within a period of thirty days, if payment is made through a treasury receipt:*
>
> *Provided further that a person exclusively conducting business of 'Kacha Arhtia' engaged in the purchase and supply of agricultural produce purely on commission basis shall not be required to file quarterly selfassessed return in Form VAT-15.*
>
> *(2) Every registered person, shall file quarterly self-assessed return in Form VAT-17 within a period of thirty days from the date of expiry of each quarter along with the proof of payment made into the appropriate Government Treasury and the TDS certificates, if any:*

*Provided that a person, who opts to make payment of tax through the crossed cheque or bank draft, he shall enclose the crossed cheque or the bank draft, as the case may be, along with the return, which shall be filed within a period of twenty days from the date of the expiry of the quarter."*

**13.** The appellant is a registered person and is also a taxable person under the Act. Thus, under Rule 36, the appellant was bound to file the quarterly self-assessed return in Form VAT-15 alongwith the payment of tax in the manner and within the period stipulated therein. The date of filing the return and for making payment varies depending on various factors. For instance, the date for filing self-assessed returns by a taxable person is different if the sales are in the course of inter-state trade or export. The date for payment of tax varies depending upon the mode of payment viz. through crossed cheque or bank draft or otherwise. It also varies depending upon the nature of the transaction viz. if the sales are in the course of inter-state trade or export out of India. Lastly, the date of payment also depends upon the turnover. In other words, within the period stipulated from the date of expiry of each quarter, every taxable person such as the appellant is bound not merely to file the quarterly selfassessed return in Form VAT-15, but also the proof of payment or to make the payment. Thus, payment of the tax due is also to be made within the period stipulated in Rule 36 from the date of expiry of each quarter. "Quarter" is defined in Section 2 (y).

**14.** It follows, therefore, that the due date for payment is not the date of the final assessment, but the date stipulated in Rule 36. Under Section 26(3), every person is bound to pay the full amount of tax due from him as per the provisions of the Act. Thus, liability for payment of interest under Section 32(1) is from the due date for payment. The due date for payment would be the date on which payment is liable to be made under Rule 36.

**15.** This is also clear from sub-rule (4) of Section 26 which entitles a person to rectify an error in any return furnished by him. If such rectification results in a higher amount of tax to be due than as per the original return, it shall be accompanied by a receipt for the payment of the additional amount of tax "payable alongwith the interest at the rate specified under the Act for the period of the delay" in the manner prescribed by sub-section (3). Thus, interest is payable even when a quarterly return is filed for an amount less than what is actually due and the same is rectified. The payment of the additional amount is also not postponed to the completion of the assessment.

**16.** The contention that the tax is payable only upon the conclusion of the assessment proceedings is, therefore, not well founded.

**17.** This brings us to Mr. Sharma's contention that the only amount that is liable to be paid alongwith the return is the amount stipulated by the assessee in a return irrespective of whether that amount is ultimately found to be correct or not. This submission is not well founded either.

**18.** Section 26(3) requires every person to pay "the full amount of tax due from him as per the provisions of the Act" and not the amount which according to the assessee is payable. The words "full amount of tax due from him as per provisions of this Act" refer to the amount actually payable under the Act and not the amount which according to the assessee is payable.

**19.** A view to the contrary would enable any assessee to file a return of a negligible amount and pay the amount actually due from him only after the assessment proceedings are completed and in the meantime enjoy the value of the difference without payment of any interest thereon. This could never have been and is not the intention of the Legislature. There is nothing that even remotely suggests that it is.

**20.** Mr. Sharma also contended that in view of the challenge to the constitutional validity of Section 19 and in view of the interim order dated 31.01.2006, the appellant ought

not to be made liable to pay interest or penalty at least upto the date of the dismissal of the writ petition.

**21.** A view to this effect would enable any assessee to avoid payment by the simple expedient of challenging the constitutional validity of a charging section. Interlocutory orders are only meant to protect the interest of an assessee by suspending the Department's right to recover the same temporarily. Interim orders do not create any right contrary to or in derogation of statutory or for that matter any liabilities. They do not determine the rights of parties. An injunction at the highest only suspends temporarily the liability for payment of tax. It does not by any stretch of imagination declare that the assessee was not liable to pay tax at all during the period of the subsistence of the injunction. The liability is at the highest only postponed from the date of the injunction to the date of the vacation thereof. When the injunction is vacated, the liability relates back to the date on which it was incurred i.e. the date on which the tax was due with all consequential benefits to the revenue thereafter.

**22.** In the facts of the present case, we see no reason to absolve the appellant of the liability under Sections 32(1), 53 and 60. We quoted the relevant part of the judgement of the Division Bench of this Court which dismissed CWP-20355-2005. The Division Bench noted that it was impossible to accept the petitioner's contention in view of the three Judge Bench judgement of the Supreme Court. Further, as we noted earlier, before the Supreme Court, the challenge to this aspect of the judgement was not even pressed by the appellant before us.

**23.** The judgement of the Supreme Court in J.K. Synthetics Limited Vs Commercial Taxes Officer, (1994) 4 SCC 276 relied upon by Mr. Sharma does not support the appellant's case. In that case, Section 11-B of the Rajasthan Sales Tax Act, 1954 fell for consideration which reads as under:-

> *"11 -B. Interest on failure to pay tax, fee or penalty.-*
>
> *(a) If the amount of any tax payable under sub-sections (2) and (2-A) of Section 7 is not paid within the period allowed, or*
>
> *(b) If the amount specified in any notice of demand, whether for tax, fee, or penalty, is not paid within the period specified in such notice, or in the absence of such specification, within 30 days from the date of service of such notice, the dealer shall be liable to pay simple interest on such amount at one per cent per month from the day commencing after the end of the said period for a period of three months and at one and a half per cent per month thereafter during the time he continues to make default in the payments."*
>
> *(The two provisos are not material for our purpose.)"*

The note at the end is a part of the judgement of the Supreme Court.

**24.** As Mr. Sharma also rightly admitted Section 11-B of the Rajasthan Act is similar to Section 32(4) and not to Section 32(1) of the Act with which we are concerned. It is not possible to incorporate the provisions of sub-section (4) of Section 32 into sub-section (1) of Section 32. Sub-section (4) in fact is a separate and independent liability in addition to the liability under subsection (1). It in fact supports the case of the Revenue. It imposes a liability in addition to the amount of tax or penalty that an assessee is otherwise liable to pay in the event of the tax or penalty not being paid by the assessee within the period specified in the notice of demand or if no period is specified within thirty days from the service of such notice. The judgement, therefore, does not support the appellant's case.

**25.** In VATAP-64-2016, Mr. Sharma contended that the earlier Division Bench by the order dated 21.09.2016 issuing notice of motion wrongly decided question (iv). The remedy in that event is either to have the order reviewed or to challenge the same.

**26.** The question of law is, therefore, answered in favour of the Revenue and against the assessee. The appeals are dismissed.

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# PUNJAB VAT TRIBUNAL

**APPEAL NO. 552 OF 2013**

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**R.K. MACHINE TOOLS LTD.**
**Vs**
**STATE OF PUNJAB**

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

24th April, 2017

**HF ▶ Revenue/Assessee**

*Track/links, Bomb Bodies, Mine Bodies and Mortar (semi-finished) are not declared goods and are unspecified goods, but Sprocket Wheels are Declared Goods.*

**ENTRIES IN SCHEDULE – CLASSIFICATION OF GOODS – DECLARED GOODS – TRACK/LINK, BOMB BODIES, MINE BODIES, MORTAR (SEMI-FINISHED) – TAX LEVIED AT HIGHER RATE CONSIDERING THE ITEMS TO BE UNSPECIFIED – DEALER CLAIMING THE GOODS TO BE DECLARED GOODS – PERUSAL OF ENTRY 14 OF CST ACT 1956 SHOWS IT IS NOT COVERED BY ANY OF SUCH ITEM – GOODS NOT DECLARED GOODS UNDER SECTION 14 OF CENTRAL SALES TAX ACT 1956 – UNSPECIFIED ITEMS – TAX LEVIABLE UNDER RESIDUAL ENTRY. -** *SECTION 14 OF CENTRAL SALES TAX ACT, 1956 AND SCHEDULE 'F' OF PUNJAB VAT ACT.*

**ENTRIES IN SCHEDULE – CLASSIFICATION OF GOODS – DECLARED GOODS – SPROCKET WHEELS – CLASSIFIABLE UNDER SECTION 14(iv)(xiv) OF CENTRAL SALES TAX ACT, 1956 – TAXABLE AS DECLARED GOODS AT LOWER RATE – LEVY OF TAX ON SPROCKET WHEELS REDUCED – ORDER TO THIS EXTENT SET ASIDE. -** *SECTION 14 OF CENTRAL SALES TAX ACT, 1956.*

*Assessment of the dealer for 2007-08 was framed under the Central Sales Tax Act, 1956. The dealer had sold Track Links, Bomb Bodies, Mine Bodies, Sprocket Wheels and Mortar (semi finished) against Form-C. However, it could not procure C-Forms and therefore Assessing Authority levied the tax on such goods considering them as unspecified items and not covered under the category of Declared Goods under Section 14 of the Central Sales Tax Act, 1956. On appeal before Tribunal,*

***Held:***

*On a perusal of Section 14 of Central Sales Tax Act, 1956, Track Links, Bomb Bodies, Mine Bodies, and Mortar (semi finished) items do not find mention anywhere in the List of Declared Goods. Accordingly, these are liable to be taxed as unspecified items at highest rate. However, Sprocket Wheels would be considered as Declared Goods and hence liable to tax at the lower rate. The appeal dismissed except with modification regarding tax on Sprocket Wheels.*

**Present:** Mr. K.L. Goyal, Sr. Advocate counsel for the appellant.
Mr. N.K. Verma, Sr. Deputy Advocate General for the State.

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

**1.** The Excise and Taxation Officer-cum-Designated officer, Ludhiana-III while framing assessment for the year 2007-08 created demand to the tune of Rs. 2,61,74,240/- under the Central Sales Tax Act, 1956.

**2.** Feeling aggrieved, the appellant filed the appeal before the First Appellate Authority, but the same was dismissed for non compliance of Section 62 (5) of the Punjab Value Added Tax Act, 2005, thereafter, the appellant fled the appeal before the Hon'ble VAT Tribunal, Punjab who remitted the case back to the Appellate Authority with direction to entertain the appeal without depositing any amount in view of the judgment of Hon'ble Punjab and Haryana High Court passed in the case of M/s Ahluwalia Contracts (P) Ltd.

**3.** Consequently, the First Appellate Authority entertained the appeal in compliance with the order dated 13.2011 passed by Tribunal and after hearing the arguments of both the parties, dismissed the appeal while holding that the goods sold by the appellant do not fall within any of the clauses of Section 14 of the Act indicating the "declared goods" and as such the same were taxable @12.5%.

**4.** Brief facts of the case are that the appellant filed the return for the assessment year 2007-08 which was taken up for scrutiny and notice U/s 29 (2) of the Act of 2005 was issued on the grounds that the appellant had shown interstate sale of Rs.39,22 crores of goods namely "Track Link", "Bomb Bodies", Sprocket wheels, Mine bodies, Morter (Semi Finished) which are unspecified items and are not Covered under any of the schedules as appended to the Punjab Value Added Tax Act, 2005 or the Central Sales Tax Act, 1956 except under Schedule "F", of the Punjab Value Added Tax Act, 2005 and the same were taxable @ 12.5% whereas the appellant had paid tax @ 3% on the sale of aforesaid goods worth Rs.33.22 crores, but, he was to pay tax @12,5% under the Central Sales Tax Act, 1956. He did not submit any statutory forms in support of the concessional rate of tax claimed by him. The appellant also did not pay the Punjab Value Added Tax @ 12.5% but paid only 4% VAT on the sale of car parts. The Designated Officer after examining the entire case as well as the arguments advanced by the counsel for the appellant, created demand to the tune of Rs.2,61,74,240/- with the following observations:-

1. As per form VAT-18 appended with the returns, the dealer has manufactured & sold the items "Track Links", "Bomb Bodies", Sprocket wheels, Mine bodies and Morter (Semi Finished) which are unspecified items & not covered under any of schedules appended to the Act except under Schedule “F” of PVAT Act taxable @ 12.5 but he has paid CST @ 3% that too without “C” Forms. The taxable person has no where mentioned or indicated in Sale Invoices or in Returns that items sold are "Forgings or Rough Forgings.

2. As per VAT Returns filed by the taxable person in VAT-15 for the Quarter Ending 31,3.2008, he himself has charged tax @ 12.5% on the Inter-state Sale of items i.e. track links, Bomb Bodies from the firm M/s G.M. Heavy Vehicles Factory which clearly speaks that these items are taxable @ 12.5% but during the Quarter Ending 30.6.2007, 30.9.2007 & 31.12.2007, the taxable person has charged tax @ 3% i.e. concessional rate against statutory declarations on the sale of commodities from the same firm.

3. The taxable person making sales in the course of Inter-state trade has charged tax @ 3% as general rate of tax supported by statutory declaration as already

discussed above. Had the dealer charged tax @ 2% on the sales it could be construed that the items sold in the course of Inter-state trade are declared goods as the items specified U/s 14 of CST Act by statutory declaration. This contention of the taxable person taken in the reply is not accepted.

**5.** Feeling aggrieved, the appellant filed the appeal before the First Appellate Authority which was dismissed on 29.7.2013.

**6.** Still aggrieved, the appellant has come up before this Tribunal by way of second appeal.

**7.** While assailing the findings returned by the First Appellate Authority, the counsel for the appellant has contended that the orders passed by, the authorities below san reasoning. All the grounds as setup by the appellant were not dealt with by the authorities, but they simply proceeded on the basis of payment of tax @12.5% by the appellant for the last quarter which is not correct. If the appellant has paid any excess tax in the last quarter then he was entitled to refund of the same.

**8.** It was next contended that track links supplied to the ministry of defence are nothing, but a steel item made through standard casting process. It is poured into the dyes and then casting are taken out which are supplied to the defence authorities. This process was explained to the Excise and Taxation Officer as well as to the appellate Authority, but it was not noticed by them. This item is further dispatched to the heavy vehicle factory and the said factory carries some more processes over it to make chain of track link for its further fitment to the tanks. The items supplied by the appellant is nothing but purely a steel castings covered by section 14 (iv) (viii) of the Central Sales Tax Act and the tax leviable on such goods was 4% during the relevant years, Similarly, the items "Body for 120mm. Shell, 81mm. Shell" as sold by the appellant are nothing but the steel forgings and these steel forging bodies are supplied to the Ordnance Factories for further processing. These items are used after converting the same into explosives and supplied to the army authorities. These items also fall under Section 14 (iv)(xiv) and Rule 20 (iii)(viii) of the CST Act, 1956 .

**9.** It is also contended that the appellant had also supplied 'sprocket wheels' which are also covered under declared goods as they fall u/s 14 (iv) (xiv) being steel wheels, The Ld. Assessing Authority has levied tax @ 12.5% instead of 4% which was leviable in this case. It has been further argued that actually rate of CST at that time was 2% but the appellant paid 3%, therefore, the amount paid in excess was liable to be refunded to the appellant, Since he was not supplied "C" forms by the Ministry of Defence, therefore the appellant was not in a position to get concessional rate of tax, therefore, he can't be compelled for his compulsions.

**10.** It has been also contended that insofar as the payment of 12.5% tax on these goods in the last quarter is concerned, the same has been paid even though it was not charged from its customers. The said tax has been paid under pressure of the then AETC Ludhiana who was annoyed with the company despite the fact that the appellant was not liable to pay tax under the law. Since it had huge amount of Input Tax Credit available to him against which the liability to pay the tax was liable to be set off, therefore, no penalty could be imposed upon him. However, despite that the appellant had paid tax of more than rupees one crores but this fact has been completely ignored. It is worth mentioning here that the appellant had never charged tax @ 12.5% as alleged by the department in its orders including the Appellate Authority. In fact, the retention of tax at higher rate than prescribed, being without authority of law, is illegal and the appellant should be allowed to adjust the same while calculating the final amount of tax in this regard.

**11.** Consequently, the appellant has urged that he is not liable to pay the full Central Sales Tax @ 12.5% and only 2% CST could be charged on the goods as the same were declared goods.

**12.** To the contrary, Mr. B.S. Chahal, Counsel for the State has submitted that the appellant though did not deposit full tax for the three quarters for the year 2007-08 yet he, while accepting the rate of tax, deposited tax @ 12.5% which shows that the appellant had accepted the rate of tax and he was in the knowledge of the fact that the goods being unclassified are taxable @ 12.5%. It has also been contended that the appellant has been supplying the goods by paying tax @ 3% on MC" Forms but since he stopped to pay the "C" Forms, therefore, he was liable to pay full tax, thereafter, as such, the department was certainly right in charging full rate of tax.

**13.** Having heard the rival contentions and having gone through the record of the case, the main plank of argument raised by the counsel for the appellant is that since the goods were declared goods falling within the preview of Section 14 of the Central Sales Tax Act, 1956 therefore, he was not liable to pay full rate of tax. In this regard, he has placed reliance on Section 14 (iv) (viii) and (xiv) of the Central Sales Tax Act, 1956 which reads as under:-

*Section 14 (iv) Steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted in coil form as well as straight lengths);*

*(viii) discs, rings, forgings and steel castings.*

*(xiv) Wheels, tyres, axels and wheels sets.*

**14.** While going to the depth of the Section 14 (iv) (viii) and (xiv) of the Act only discs, rings, forging and steel castings, and as per Section. 14 (xiv) of the Act wheels, tyres, axels and wheels sets are declared goods. Admittedly, the appellant has not been dealing with the aforesaid items. It has been admitted by .the appellant in his grounds of appeal that he has been selling the following items:-

1. Track Links Castings
2. Bomb Shells.
3. Proof Machined Body.
4. Container Assembly, Mine Body & Spool Assembly.
5. Sprocket Wheel.
6. Casting for Auto Parts.
7. Casting for Boiler Parts.
8. Miscellaneous other Castings.

**15.** The appellant has also not shown as to which specific Items were sold and for how much amount to the ministry of defence. It is also not disputed that the purchaser is also a taxable person. The goods supplied appear to be finished goods and not purely castings. It also can't be said that the casting sold by the appellant were only steel castings. Bomb Shells, Proof Machined Bodies, Container Assembly, Mine Bodies and Spool Assembly were nowhere disclosed steel castings before the authorities below and as such do not fall within the aforesaid provisions of the Act.

**16.** The number/weightwise commodity and the price thereof are also not mentioned in the statement of accounts, However, sprocket Wheels could only be termed as wheels and could be covered by Section 14 (iv) (xiv) of the Central Sales Tax Act, 1956 as such the same could be subject of concessional rate of tax. The sale of this commodity has been shown by the appellant to the tune of Rs.25,26,572/- and the tax to be paid by the appellant was Rs. 1,30,859/- which could be deducted from the demand.

**17.** No other argument has been raised by the counsel for the appellant.

**18.** In the wake of the aforesaid discussion, this appeal is dismissed with the modification that the appellant will be liable to pay the additional demand raised against him. However a sum of Rs. 1,30,859/- claimed as tax on account of sale of Sprocket Wheel will be deducted from the tax liability. The penalty and interest would also be proportionately reduced accordingly.

**19.** The penalty and interest would also be proportionately reduced accordingly.

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# PUNJAB VAT TRIBUNAL

**APPEAL NO. 34 OF 2016**

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**ALLENGERS GLOBAL HEALTHCARE PVT. LTD.**
**Vs**
**STATE OF PUNJAB**

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

2nd May, 2017

**HF ▶ Revenue**

*Penalty upheld for showing lesser quantity in documents than actually transported.*

**PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – EXCESS GOODS FOUND ON PHYSICAL VERIFICATION – INVOICE SHOWED 30 PIECES INSTEAD OF 55 – GOODS DETAINED – INVOICE FOR 25 REMAINDER PRODUCED MUCH LATER – PENALTY IMPOSED – APPEAL FILED – HELD – INFORMATION AT ICC GIVEN REGARDING 30 PIECES – INVOICE PRODUCED AFTER A LONG GAP AND THAT TOO SIGNED BY DIFFERENT PERSON RAISED SUSPICION – ATTEMPT TO EVADE TAX BEGAN MUCH EARLIER – PENALTY UPHELD – PENALTY ON TRANSPORTER SET ASIDE ON GROUNDS OF FURNISHING OF INFORMATION REGARDING CONSIGNOR AND CONSIGNEE – APPEAL DISMISSED WITH MODIFICATION OF THE AMOUNT –** *SECTION 51 OF PVAT ACT, 2005.*

***Facts***

*The truck loaded with 55 monitors reached ICC and the driver produced the documents. Though the documents reflected lesser quantity (30 pieces), on physical verification it was found that they were 55 in number. Goods were detained. Much later after detention, invoice for 25 pieces was produced. Penalty was imposed for producing suspicious invoice. On appeal to Tribunal:-*

***Held:***

*The GR produced showed 55 pieces while VAT invoice showed 30 pieces. Information furnished at Himachal ICC was for only 30 pieces and also at Zirakhpur ICC only 30 pieces were informed. The intention to conceal 25 pieces was right from the beginning. The VAT invoice produced much later for excess goods is also manipulated as it does not bear signatures of the same person (consignors). Thus, it proves that it was issued only after detention. Intention to evade tax is apparent.Since the transporter had disclosed information about consignor and consignee, no offence under S. 51(12) is made out.*

**Present:** Sh. Rishab Singla, Advocate counsel for the appellant.
Mr. B.S. Chahal, Dy. Advocate General for the State.

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

**1.** The Excise and Taxation Officer-cum-Officer lncharge, Information Collection Centre, Zirakpur, District Mohali, vide his order dated 15.7.2013 imposed a penalty to the tune of Rs. 10,12,726/- U/s 51 (7) (c) read with Section 51 (12) of the Punjab Value Added Tax Act, 2005 against the appellant.

**2.** The circumstances leading to the detention of the goods are that on 10.7.2013, the driver while carrying 55 Multipara Monitors in vehicle bearing No. HP-15B-0361 reached ICC, Zirakpur, produced the following documents in support of the transaction:-

1. Invoice No. GBSAL-00156 dated 9.7.2013 issued by M/s Allengers Global Healthcare Pvt. Ltd. Ind. Area, Baddi, Distt. Solan (HP) in favour of M/s Allengers Medical systems Ltd. Bhankarpur-Mubarikpur Road, Derabassi for a sum of Rs. 18,90,000/-.
2. Form VAT-XXVI-A dated 9.7.2013 of Excise & Taxation Department, Himachal Pradesh showing the transactions relating to 30 items.
3. GR No. 16653 dated 9.7.2013 of Doon Tempo Operator union Baddi.
4. Form VAT XXXVI No. 0261594 of ICC Zirakpur showing transactions relating to 30 items.

**3.** The invoice No. GBSAL-00156 related only 30 pieces of Multipara Monitors. The same quantity in the form VAT-XXVI-A dated 9.7.2013 was issued by the Excise and Taxation Department, Himachal Pradesh.

**4.** On physical verification of the goods from the truck, the same were found to be 55 pieces. The appellant failed to produce the invoice relating to remaining 25 pieces. The valuation of 25 pieces of Multipara Monitors was calculated on the basis of VAT invoice No. 00156 and it came to be Rs. 15,75,000/-. The said goods were not accompanied by any VAT invoice. The Detaining Officer issued notice for 12.7.2013. In response to which Sh. Desh Raj an employee of the appellant appeared before the Detaining Officer and produced bill No. 157 of 9.7.2013 at 3.00PM on 10.7.2013 whereas the goods were detained at 9.30AM on that day. Therefore, while observing that the invoice relating to 25 goods was suspicious, he forwarded the case to the Designated Officer who also issued notice for 12.7.2013. However, Sh. Sandeep Dogra appeared and got released the goods.

**5.** Again on 15.7.2013 Sh. Sandeep Dogra appeared on behalf of the appellant but failed to explain about the genuineness of the transaction relating to 25 pieces of Multipara Monitors. After thorough examination of the case, the Designated Officer vide order dated 15.7.2013 imposed penalty to the tune of Rs. 10,12,726/- against the appellant U/s 51 (7) (c) read with 51 (12) of the Punjab Value Added Tax Act, 2005 against the appellant. The appeal filed by the appellant was also dismissed on 14.8.2015.

**6.** Hence this second appeal.

**7.** The counsel for the appellant has contended that though VAT invoice relating to 25 Multipara Monitors could not be produced at the relevant time due to the mistake of the driver as he missed to carry the same after collecting. It from the appellant's office at Ind. Area, Baddi. District Solan, yet the GR No. 16653 dated 9.7.2013 proves that there were two consignments, i.e, one for thirty pieces and the other for twenty five pieces. However GR was issued for 55 pieces. That apart, the driver had voluntarily reported the goods at the ICC, therefore, there was no intention on the part of the driver to evade the tax. No physical verification as alleged, was

made since the sales were made against form "C", therefore, there was no question of evasion of tax. Since the name of the owner was known to the transporter and he disclosed the same and the information regarding consignor or the consignee was not concealed, therefore, the case U/s 51 (12) of the Punjab Value Added Tax Act is not made out. He has further contended that there were regular transactions between the appellant (consignor) and the consignee which were being accounted for in the books of account by both the appellant and the consignee, the payments were being made through banking channels in advance. When once the payments were made through the banking channel, then no question of keeping the goods out of the account books arises. After the goods were detained, the appellant produced all the account books and the entire record to prove the genuineness of the transaction. Eventually, he has prayed for acceptance of the appeal.

**8.** To the contrary, Sh. B.S. Chahal, Counsel for the State has contended that neither the documents nor the record believes this fact that there were 55 pieces Multipara Monitors in the truck, but it is established on the record that the appellant did not produce any proper and genuine documents regarding the transaction of 25 Multipara Monitors. The bill No.00157 relating to 25 pieces Multipara Monitors is manipulated document as the same was not issued at one and the same time as it Is not signed by the same person, had it been issued at one and the same time the person signing invoice No.l56would have signed invoice No. 157 also, therefore, the invoice No. 157 being a manipulated document, no reliance can be placed over this invoice relating to 25 Multipara Monitors.

**9.** Arguments heard. Record perused.

**10.** There is no denying a fact that there were 55 Multipara Monitors in the truck. The GR so produced also indicates that there were 55 Multipara Monitors in the truck. It is also a fact that the appellant produced VAT invoice for only 30 Multipara Monitors when the goods were apprehended and the goods did not coordinate to the GR and VAT invoice No.00156 dated 9.7.2013 which related to only 30 boxes (Monitors). The intention to evade the tax on the part of the appellant could be gathered from very beginning. While preparing VAT-XXVI-A of the Excise and Taxation Officer, Himachal Pradesh, the appellant furnished the information to the Excise and Taxation Department, Himachal Pradesh that there were only 30 Monitors. Not only this, the appellant while reaching the ICC, Zirakpur, also informed that there were only 30 Multipara Monitors in the truck and he concealed the information regarding 25 Multipara Monitors, The information generated on Form VAT-XXXVI also relates to 30 Multipara Monitors. The sale invoice regarding extra goods produced much after retention of goods is not a genuine document and appears to have been manipulated in order to plughole the retention. The VA"I invoice No, 156 and 157' were not prepared at one and the same time because both the invoices bear the signatures of different persons (consignors). Similarly, though the goods were apprehended at 9.00 AM on 10.7.2013, yet the VAT invoice No.00157 allegedly the dated 9.7.2013 was produced 3.00PM on 10.7.2013. Thus, inference would be drawn that this invoice was issued after the excess goods were detained. Had the appellant been in possession of the invoice No.00157 relating to 25 Multipara Monitors at that time, then he would have generated the same in VAT-XXVI-A prepared by the Excise and Taxation Officer, Himachal Pradesh. Thus, guilty intention to evade the tax on the part of the appellant is apparent.

**11.** Now coming to the penalty U/s 51 (12) of the Art since the transporter had disclosed the information regarding the consignor and the consignee of the goods, therefore, no offence 51 (12) is made out.

**12.** Now coming to the penalty U/s 51 (7) (c) of the Act, the said provision provides for the penalty equal to 50% value of the goods involved. In the present case, the value of the goods involved were of the value of Rs. 15,75,000/-, therefore, the Designated Officer appears to have not properly calculated and imposed penalty and the penalty to the tune of Rs.

10,12,726/- appears to be on higher side as according to Section 51 (7) (c) of the Act, a penalty to the tune of Rs. 7,87,500/- should have been imposed U/s 51 (7) (c) of the Act against the appellant.

**13.** Resultantly, this appeal is dismissed with the modification that the appellant shall pay the penalty to the tune of Rs.7,87,500/- U/s 51 (7) (c) of the Act instead of Rs.10,l2,726/-. However, no penalty can be imposed U/s 51 (12) of the Act of 2005.

**14.** Pronounced in the open court.

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# PUNJAB VAT TRIBUNAL

**APPEAL NO. 53 OF 2016**

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**GAGANDEEP STEEL INDUSTRIES**
**Vs**
**STATE OF PUNJAB**

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

25th April, 2017

**HF ▶ Revenue**

*E -Trip has to be issued for transporting Heavy Metal Scrap (HMS) carp as these are specified goods covered under Rule 64-A.*

**PENALTY – CHECK POST – ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – HEAVY METAL SCRAP - GOODS IN TRANSIT INTERCEPTED – GOODS FOUND TO BE DIFFERENT THAN MENTIONED INVOICE – NO E- TRIP GENERATED – PENALTY IMPOSED – APPEAL FILED – HELD: GOODS IN TRANSIT WERE RAILWAY SCRAP ALLEGEDLY WHICH TURNED OUT TO BE HEAVY METAL SCRAP AS PER REPORT PREPARED – REPORT NOT REBUTTED – THEREFORE, e–TRIP OUGHT TO BE GENERATED FOR GOODS MENTIONED AS SPECIFIED GOODS UNDER RULE 64-A IN PVAT RULES – APPEAL DISMISSED –** *SECTION 51 OF PVAT ACT, 2005*

***Facts***

*A vehicle was intercepted which was loaded with scrap. Documents were produced. On examination it transpired that there was a variation in items purchased as per invoice issued by seller and further sold by the dealer. Purchase invoice showed that railway scarp was purchased whereas invoice in question issued by the appellant to other dealer disclosed sale of scrap. Goods were detained. Penalty was imposed u/s 51 as no e-TRIP was produced. An appeal is filed before tribunal contending that no e-TRIP is required for railway scrap.*

***Held:***

*The contents in the truck were 'Heavy Metal Scrap' as per the report. Rule 64-A imposes an obligation upon a dealer indulging into sale of Heavy Metal Scrap to issue e-TRIP. Though invoice issued by railways termed the goods as railway scrap but physically they were found to be Heavy Metal Scrap. Therefore, penalty u/s 51 is upheld and appeal is dismissed.*

**Present:** Sh. K.L. Goyal, Sr. Advocate alongwith Sh. Rohit Gupta, 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 28.12.2015 passed by the Deputy Excise and Taxation Commissioner(A), Jalandhar Division, Jalandhar remitting the case back to the Assistant Excise and Taxation Commissioner, Fatehgarh Sahib with a direction to make a proper enquiry after considering all the issues raised by him and then decide the case by giving reasonable opportunity of hearing to the appellant. The appellant was also given liberty to raise any other point before the Designated Officer.

**2.** In short, the facts are that on 21.4.2014 at 3.00 PM, Smt. Hardeep Sandhu, Excise and Taxation Officer intercepted a vehicle bearing No. PB-23C-9545 loaded with scrap. When she confronted the driver with the, genuineness of the transaction, he produced the following documents:-

1. Invoice No.26, dated 21.4.2014 issued by M/s Gagandeep Steel Industries, Mandi Gobindgarh in favour of M/s Mathli Steels, Village Kumbra, near Truck Stand, Mandi Gobindgarh.
2. Purchase Invoice No. 56 dated 18.4.2014 of M/s Swami Steels, Yamuna Nagar, GR dated 18.4.2014.
3. Declaration in Form VAT-XXXVI.

**4.** The Excise and Taxation Officer also recorded the statement of the driver. On examination of the record, it transpired that there was a variation of the items purchased as per invoice issued by M/s Swami Steels and further sold by the dealer.

**5.** As per purchase invoice, the appellant had shown the purchase of "Railway Scrap" whereas invoice in question issued by the appellant to the other dealer disclosed the sale of scrap. This variation raised the suspicion in the mind of the checking officer which led to the detention of the goods and issuance of the notice U/s 51 (6) (a) of the Punjab Value Added Tax Act to the owner of the goods.

**6.** In response to the said notice, Sh. Gagandeep Jand proprietor of the said firm appeared on 21.4.2014 instead of 22.4.2014 and submitted the written submissions stating that no attempt to evade the tax has been made as the goods had been purchased in auction from the Northern Railways by the seller. The railways has also termed those goods as scrap. When confronted with non furnishing of e-trip as provided under Rule 64-A of the Rules, he failed to say anything. However, he reiterated that the goods retained were railway scrap and there was no attempt to evade the tax. The Assistant Excise and Taxation Commissioner after hearing both the parties imposed penalty to the tune of Rs.3,13,200/- against the appellant U/s 51 (7) (b) of the Act.

**7.** Aggrieved by this order dated 24.4.2014, the appellant filed the appeal, whereupon the Appellate Authority acceded to the request of the appellant and remitted the case back to the Appellate Authority for providing reasonable opportunity to raise his contentions and the Designated Officer was directed to hear the appeal and consider all the issues raised.

**8.** Being dis-satisfied with the remand order, since the appellant wanted his appeal to be decided on merits instead of remitting the case, therefore, he has preferred this appeal.

**9.** Having considered the rival contentions, and having gone through the record of the case, this Tribunal observed that It is a admitted fact that the appellant is a registered person. The goods loaded in the vehicle No. PB-23C- 9545 were railway scrap i.e. the scrap made by cutting Heavy Railway Lines. The goods were purchased from Northern Railways by M/s Swami Steel Jagadhari (consignor). The appellant purchased the railway scrap from M/s Swami Steels on 21.4.2014 and the goods were on their way to Mandi Gobindgarh through truck

bearing No. PB-23C-9545 when the same were detained solely on the ground that since on physical verification, the goods were found to be heavy melting scrap (railway) but no e-trip was generated by the appellant. The driver Kirpa Nand Yadav made a statement admitting that the goods were Heavy Melting Steel and he also admitted that there was no e- trip with him. It is admitted in the reply filed by the appellant that no e-trip was furnished as Rule 64-A was not applicable to the iron/railway scrap. Since, there was a doubt regarding the items loaded in the truck, therefore, physical verification was made on 24.4.2014 and found that the contents loaded in the truck were cutting of railway lines and these fall in the definition of Heavy Melting Scrap. Even in technical sense, scrap of the thickness of more than 3/4 inch comes within the definition of Heavy Melting Scrap. This report has not been rebutted in any manner. The photograph has also proved that the scrap were cutting of railway lines.

**10.** Rule 64-A of the Punjab Value Added Tax Rules imposes an obligation upon a dealer indulging into sale of Heavy Melting Scrap to issue e- trip. Rule 64A in this regard reads as under:-

RULE 64-A. PROCEEDURE FOR FURNISHING INFROMATION INRESPECT OF INTRASTATE TRADE OR COMMERCE OF GOODS THROUGH VIRTUAL INFORMATION COLLECTION CENTRE

(1) The owner or person incharge of the specified goods, before putting the same into transit any intrastate destination, for trade or commerce by any mode of transition, shall submit information in Form VAT-12-A, through Virtual Information Collection Center on the official website of the department i.e. www.pextax.com; or any other website as may be specified by the commissioner.

(2) Such owner or person incharge, after tendering of the aforesaid information through electronic mode, shall generate electronic receipt bearing unique number allotted to such person, as a proof for submission of the said information. The aforesaid receipt shall be a necessary document alongwith the goods receipt, trip sheet, log book, bill, cash memo, sale invoice, vehicle's record in which such goods are being transported or delivery challan etc. as the- case may be, as a proof for such transaction.

**11.** The Rule refers to furnishing of the e-trip in case of specified goods. The specified goods were defined vide order dated 17.7.2013 as cotton, sarson plywood, iron and steel excluding scrap. According to this order the iron and steel excluding scrap of the value less than 50,000 was specified goods and not beyond that. In any case this class of goods were modified vide notification dated 17.9.2013 by way a clarification which reads as under:-

*"In continuation of my orders dated 17 July 2013 under Rule 2 (hh) for the purposes of Rule 64-A of PVAT Rules 2005 read with section 3-A of the PVAT Act, 2005 I hereby clarify that "Goods and material obtained from cutting of old and used ships & boats and heavy melting scrap" is covered under the entry Iron and Steel in the orders ibid.*

*2. It is also clarified that no other goods except those specified in the my orders dated 17.7.2013 are covered under rule 64-A of PVAT Rules, 2005 popularly known as e-trip.*

*3. It is further clarified that no other goods except those specified in my orders dated 17.7.2013 are covered under Rule 64-B of PVAT Rules, 2005 popularly known as e-ICC.*

*Dated—13.9.2013*

*(Anurag Verma), IAS*
*Excise and Taxation Commissioner, Punjab*

**12.** From the bare reading of this clarification, it is very much apparent that the heavy melting scrap is covered under entry "Iron and Steel" therefore, e-trip for the sale high melting scarp was mandatory. It has also been admitted by Sh. Gagandeep land that the goods loaded in the truck were heavy melting scrap and he had purchased the same from Jagadhari for selling the same to different firms by charging different rates of tax.

**13.** All the aforesaid facts and circumstances, invite me to draw only one conclusion that though as per invoice issued by the railways the goods were shown as railway scrap but on physical variation, the same were found to be high melting scrap of more than the value of 50,000, therefore these were the specified goods covered by Rule 64-A, order dated 17.7.2013 and further clarified on 17.9.2013, therefore furnishing of e-trip was mandatory under Rule ' 64-A of the Punjab Value Added Tax Rules which the appellant failed to furnish, therefore, the penalty U/s 51 (7)(b) of the Act was, obviously, to be attracted.

**14.** Having gone through the order passed by the Designated Office the same appears to be well founded, and, I do not find any reason to interfere with the same.

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

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

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# PUNJAB VAT TRIBUNAL

**APPEAL NO. 362 OF 2015**

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**PARAS STEELS**
**Vs**
**STATE OF PUNJAB**

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

25th April, 2017

**HF ▶ Revenue**

*Penalty upheld on account of statement of driver and passer regarding crossing border without reporting at ICC.*

**PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – INGENUINE INVOICE – GOODS LOADED IN TWO VEHICLES IN TRANSIT APPREHENDED – DOCUMENTS PRODUCED – TWO INVOICE BEARING NO 25 AND 26 APPEARED SUSPICIOUS – INVOICE NO. 26 ISSUED ON A PREVIOUS DAY TO ISSUING OF INVOICE 25 INVITING ADVERSE INFERENCE - ABSENCE OF VAT FORMS – ADMISSION BY DRIVER REGARDING INVOICE TO BE REPLACED AFTER CROSSING BORDER – STATEMENT OF PASSER ACCOMPANYING GOODS REFLECTS INTENTION TO GET GOODS CLEARED AT THE BORDER – ABSENCE OF PURCHASE BILLS – ATTEMPT TO EVADE TAX INDICATED – PENALTY UPHELD – APPEAL DISMISSED –** *SECTION 51 OF PVAT ACT, 2005*

***Facts***

*The vehicles carrying iron goods and ERW pipes were apprehended while on way to UP and Maharashtra. The invoices (25 and 26)with small numbers were doubted and also driver could not produce VAT forms. Penalty was imposed on account of failure to produce documents.*

***Held:***

*It has been admitted that the driver and the passer accompanying were to cross the border without reporting at ICC and that the invoice was to be replaced after crossing the border.*

*The invoice No. 26 was issued on a previous day to the invoice No.25 which invites adverse inference.*

*It has been admitted that the goods were purchased without purchase bills which proves that no VAT has been paid on the goods. No coercion can be inferred on the person making these statements.*

*Therefore, statement made by the passer and driver are taken into account alongwith the fact that no purchase record, Form VAT 12 or VAT 36 were on record. Thus, the appeal is dismissed.*

**Present:** Sh. K.L. Goyal, Sr. Advocate alongwith Sh. Rohit Gupta, 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.** The Assistant Excise and Taxation Commissioner, Mobile Wing, Chandigarh (herein referred as the Designated Officer) vide his order dated 21.2.2011 imposed penalty to the tune of Rs.3,85,659/-U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005 against the appellant. The appeal filed by him also failed.

**2.** Brief facts leading to the detention of the appellant's trucks are that on 10.2.2011, the drivers while loading ERW Pipes in Vehicle bearing No. HR-58- 9777 and angles (iron goods) in the other vehicle bearing No. PB-10CT-8725, were on their way to Sahibabad (UP) and Maharashtra respectively, were apprehended by the Detaining Officer at Sirhind. When they were confronted with the genuineness of the transactions, they produced the following documents;-

1. Bill No. 25 dated 10.2.2011 issued by M/s Paras Steels, Jassran Road, Mandi Gobindgarh in favour of M/s Indian Steel Tubes, Sahibabad (Uttar Pradesh) for Rs,5,76,290/- (including CST) and Bills No. 26 dated 9.2.2011 issued by M/s Paras Steels, Jassran Road, Mandi Gobindgarh in favour of M/s Shri Mamjunath Traders, Nagpur (Maharashtra),for Rs.7,34,951/- (including CST).
2. GR No. 3062 dated 10.2.2011 issued for vehicle No. HR-58-9777 and GR No. 3063 dated 9.2.2011 Issued for vehicle No. PB-10CT-8725 by M/s Uppal Road Carrier, G.T.Road, Mandi Gobindgarh-147301.

**3.** On examination of the invoices and the GRs as referred to above, the Detaining Officer doubted the genuineness of the transaction as both the invoices were bearing number 25 & 26 only even when the financial year 2010-11 was about to end, therefore he believed that since when the firm had turnover of crores of rupees, therefore the invoices should not have born such small numbers at the end of the year, Consequently, the goods were detained for verification and production of the account books. The driver also could not produce the U.P. VAT form as well as the Maharashtra Form, as the goods were on their way to U.P. and Maharashtra respectively.

**4.** Pursuant to the detention of the goods, the Detaining Officer issued notice to the owner for 11.2.2011, on which date Mr. Kamaldeep Thapar appeared before the Detaining Officer, but failed to produce the account books including bill book, purchase bills, covering the goods. Since the drivers had stated that they had loaded the goods from M/s Jassran Pipes Mandi Gobindgarh and another rolling mill situated at G.T. Road, Sirhind side, but they were not in possession of the invoices allegedly issued by them. Therefore, verification regarding the purchase of goods from the aforesaid two firms had become more essential. The goods were also not accompanying Form VAT-12.

**5.** Having reasons to believe that the case was of tax evasion , the Detaining Officer forwarded the case to the Designated Officer, who also issued notice U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005. In response to which Sh. Kamaldeep Thapar, Manager of the appellant firm appeared, but he was still unable to produce the purchase bills, account books including bills, cash books and bank account statement in connection with the transaction. Therefore, the Designated Officer, vide his order dated 21.2.2011, imposed penalty to the tune of Rs.3,85,659/- U/s 51 (7)(b) of the Punjab Value Added Tax Act, 2005. The appeal filed by the appellant was also dismissed.

**6.** The counsel for the appellant, in order to assail the findings returned by the authorities below, has urged that the necessary documents in support of the transactions have not been produced. The sale has been made by the appellant to the purchasers on `C' Forms and charged tax @2%; the goods were accompanying the invoice as well as the G.Rs for their place of destination, therefore, no attempt to evade tax is made out. He has further argued that the goods were detained only on the ground that the appellant had failed to produce the purchase bills and the drivers also failed to deliver the phone numbers of the purchasers to whom the goods were to be delivered, no penalty could be imposed on these grounds as such, the orders regarding imposition of the penalty cannot be sustained.

**7.** To the contrary, the State Counsel has submitted that, there is a serious manipulation and forgery in the record, the invoices so issued were to be replaced after they cross the, border of Punjab as admitted by the drivers. The drivers had no material with them 'to show as to where the goods were to be delivered, therefore, the appeal is liable to be dismissed.

**8.** Having heard the rival contentions and having gone through the record of the case. It has been admitted by the driver Muhammod Sadiq and person companying (known as passer) had disclosed that the goods were loaded on 10.2.2011 in Vehicle No. PB-10CT-8725 and his duty was to cross it the border without reporting the goods at the ICC, when the Excise and Taxation Officer, Mobile Wing, Chandigarh apprehended, he was not in possession of any purchase bill regarding the goods.

**9.** Similarly, Sh. Muhammod Sadiq, the driver of the said vehicle, bearing No, PB-10CT-8725 also stated that he had loaded the goods from a factory stituated on G.T. Road, Sirhind side, but he was not delivered any purchase bills. The passer who was accompanying him, was to go with him upto Pehewa from where he was to replace the VAT invoice No. 26 and G.R.No.3063.

**10.** On 12.2.2011, Mr. Kamaldeep Thapar appeared before the Designated Officer and disclosed that the ERW Pipes were loaded in truck No. HR- 58-9777 from the premises of M/s Jassran Pipes Gum Ki Nagri, Mandi Gobindgarh and the angle was loaded from a factory situated at G.T. Road, Sirhind side, Mandi Gobindgarh. But he was unable to produce any bill book, account book or other documents in support of the transaction.

**11.** On examination of the aforesaid record, the invoices as well as the G.R. accompanying the goods, it transpires that the goods were not accompanying the proper and genuine documents. The invoice No. 26 and G.R.3063 pertaining to "angle" was issued on 9.2.2011 whereas the invoice No. 25 from the similar invoice book pertaining to ERW Pipes and G.R. bearing No.3062 were issued on 10.2.2011 which could not be possible and invites adverse inference against the appellant that the appellants had not prepared the genuine record relating to the transactions, Mr. Kamaldeep Thapar has admitted that the goods were purchased from M/s Jassran Pipes, Guru Ki Nagri, Mandi Gobindgarh and angle from another factory, therefore in the ordinary course, the invoices issued by the sellers should have been with the purchasers. Sh. Kamaldeep Thapar has admitted that he had purchased these goods without purchase bills, which also goes against the appellant and establishes that the appellant did not pay any VAT on the purchase of these items, The statement of Kamaldeep Thapar recorded on 12th Feb, 2011 i.e. after two days of the detention of the goods cannot be said to be result of undue pressure influence. The Designated Officer, in his order dated 12.2.2011, has also made mention of the aforesaid admissions made by Kamaldeep Thapar in his statement.

**12.** It may further be reiterated that the goods sought to be sent through trucks were without genuine documents, obviously for the reason, the owner of the goods might have entered into contract with Shri Happy Datta (a passer) for clearance of these goods from the border of the State of Punjab. Mr. Amit Mehta an employee of Sh. Happy Datta Is a passer and he was deputed for getting the goods cleared from the Punjab Border. It is normal practice in

Mandi Gobindgarh to employ such persons for getting the goods cleared at the borders on payment of certain amount. The Counsel for the appellant has taken me through two bills issued by M/s Sooraj Ispat Udyog in connection with sale of angle dated 10.2.2011 and VAT Invoice No. 21 issued by M/s Kelley Steel Rolling Mills dated 10.2.2011 regarding sale of ERW Pipes to the appellant. In this connection, it may be observed that these invoices appear to have been procured later on, Had these been existing at that time, then there was no difficulty to produce the same before the Designated Officer, but the same were not produced. Even otherwise according to the VAT Invoice No. 26 the angle was purchased on 9.2.2011, whereas, according to VAT Invoice No. 188 dated 10.2.2011, these goods were sold by M/s Sooraj Ispat Udyog to the appellant on 10.2.2011. Even otherwise, the invoices issued by the appellant in favour of his purchasers had not been prepared in accordance with the Rule 55 of the Punjab Value Added Tax Act as applicable in the State of Punjab. Rule 55 (4) reads as under:-

*Rule 55(4)* *A retail invoice for interstate sale and exports out of the country shall carry the following details in addition to the details mentioned in sub-rule (3), namely:-*

*(a)* *the name, address and registration number of the purchaser;*

*(b)* *the rate and amount of tax charged in respect of taxable goods;*

*(c)* *serial number of Form VAT-36; and*

*(d)* *mode of transportation and details thereof.*

**13.** In this case, no name of the purchaser (the seller of the appellant) fits registration number, Forms VAT-12 or VAT-36 which ever may be applicable were not recorded. No purchase record was shown by the drivers to the Designated Officer. No doubt, the Counsel for the appellant has produced some record including account books maintained by him, but the same could be manipulated after two trucks loaded were apprehended by the Taxation Authorities without genuine documents. The intention of the appellant to evade the tax appears to be well founded as is reflected from the statement of Sh. Amit Mehta who disclosed that he was deputed by Sh. Happy Datta, a passer to get the goods cleared at the border and the driver Muhammod Sadiq has not felt shy of speaking the truth that the invoice No. 25 & 26 were to be replaced after they cross the Punjab border.

**14.** Having gone through the orders passed by the authorities below, the same appear to be well founded and well reasoned and do not call for any interference at my end.

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

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

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# HARYANA TAX TRIBUNAL

**STA NO. 990 OF 2014-15**

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**STALWART ALLOYS INDIA PVT. LTD.**
**Vs**
**STATE OF HARYANA**

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

**SACHIN JAIN, MEMBER**

12th May, 2017

**HF ▶ Assessee**

*Input Tax Credit claim cannot be disallowed on the ground of ingenuine purchases made by seller of goods to the assessee*

**INPUT TAX CREDIT – PURCHASES MADE BY ASSESSEE DEALER 'A' FROM ANOTHER REGISTERED DEALER 'B' – TAX NOT PAID BY DEALER 'C' ON SALES MADE TO DEALER 'B'. NO PRIVITY OF CONTRACT BETWEEN DEALER 'A' AND DEALER 'C' – ITC CLAIM CAN BE DISALLOWED ONLY IF DEALER 'B' IS UNREGISTERED OR BOGUS DEALER – NO SUCH FINDING IN THE REVISIONAL ORDER – ITC CLAIM OF THE ASSESSEE APPELLANT COULD NOT BE DISALLOWED – ORDER COMPLETELY PERVERSE AND UNSUSTAINABLE – ORDER OF REMAND PASSED BY REVISIONAL AUTHORITY TO DISALLOW CLAIM OF ASSESSEE AND ALSO TO PASS WELL-SPEAKING ORDER ON EACH AND EVERY POINT IS BEYOND COMPREHENSION – ASSESSING AUTHORITY NOT IN A POSITION TO ALLOW THE ITC CLAIM OF ASSESSEE EVEN IF CONTENTION ACCEPTED – ORDER PERVERSE AND ABSURD – APPEAL ALLOWED – ORDER SET ASIDE.-** *SECTION 8 OF HARYANA VAT ACT 2003 AND RULE 20 OF HARYANA VAT RULES, 2003.*

*Appellant-Assessee 'A' purchased certain goods from M/s Kiran Industrial Corporation, Panipat 'B'. The said dealer 'B' made purchases from 5 firms 'C'. Assessment order of the assessee was revised by Revisional Authority on the ground that Registration Certificate of one of the said 5 dealers 'C' had been cancelled long back and sales by remaining four dealers to 'B' were not verified. Revisional Authority in suo motu proceedings remanded the case back directing Assessing Authority to disallow the ITC of the assessee-appellant by passing a well-speaking order discussing each and every point. On appeal before Tribunal, Held:*

*Impugned Revisional order is completely perverse and absurd. ITC claim of the assessee-appellant could be disallowed only if selling dealer 'B' had been unregistered or bogus trader. This is not even the case of State nor there is any such finding in the impugned Revisional Order. In fact, there is no mention of dealer B in the impugned Revisional order except mentioning that sales made by 2 of the 5 dealers 'C' to the Panipat Dealer 'B' could not verified. It remains undisputed that appellant assessee had not made any purchases from the aforesaid 5 dealers which are mentioned inthe impugned Revisional Order. Consequently, ITC claim of the assessee-appellant could not be disallowed or reversed. Moreover in the re-*

*assessment proceedings of dealer B sales made by him to appellant Dealer A have been assessed and in view thereof, the ITC claim of the assessee-appellant could not be reversed and disallowed.*

*Impugned Revisional order is perverse and absurd for another reason also. The Revisional authority had directed the Assessing Authority to disallow ITC claim of Assessee-appellant and also to pass well-speaking order discussing each and every point. It is beyond comprehension as to what would happen to the aforesaid direction if the Assessing Authority while discussing each and every point comes to a different conclusion, i.e. ITC claim of the assessee-appellant should be allowed.*

*For the reasons aforesaid, the appeal is allowed and impugned order of Revisional Authority is set aside alongwith consequential direction given to the Assessing Authority by him.*

**Present:** Sh. Sandeep Goyal, Advocate Counsel for the appellant.
Sh. S.K. Saini, J.D.(L) for the State.

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

**1.** This is appeal by assessee M/s Stalwart Alloys India Pvt. Ltd., Shahabad (earlier known as Stalwart Industries) challenging order dated 30-9-2014 passed by Revisional Authority, Ambala.

**2.** Assessee-appellant purchased goods from M/s Kiran Industrial Corporation, Panipat (KIC). Kiran Industrial Corporation had made purchases from five firms mentioned in the revisional order. The Revisional Authority has held that registration certificate of one of the said five dealers had been cancelled long back and sales by remaining four dealers to KIC were not verified. On this basis, the Revisional Authority directed the Assessing Authority to disallow the Input tax credit (ITC) of the assessee-appellant by passing a well speaking order discussing each and every point.

**3.** We have heard counsel for the appellant and State Representative and perused the case file.

**4.** Counsel for the appellant contended that sales made by KIC to the assessee-appellant have not been doubted by the Revisional Authority and, therefore, ITC claim of the assessee-appellant qua the said sales could not be disallowed or reversed even if the sales made the five dealers in question to KIC were not genuine or if tax was not paid for the same.

**5.** It was also submitted that vide order dated 27-08-2015 in Re-assessment proceedings of appellant's selling dealer KIC, sales - made in favour of assessee-appellant have been assessed and ITC claim of KIC has been disallowed qua purchases made from the five dealers in question.

**6.** State Representative relying on decision of Hon'ble High Court of Punjab and Haryana in Amit Papers Vs State of Punjab (2015) 52 PHT 558 (P&H) contended that ITC qua purchases from fictitious and bogus dealers cannot be allowed.

**7.** We have carefully considered the matter. We find that impugned revisional order is completely perverse and absurd. ITC claim of the assessee-appellant could be disallowed only if its selling dealer KIC, Panipat had been unregistered or bogus trader. However, it is not even the case of the State nor there is any such finding in the impugned revisional order. Infact there is no mention of the appellant's selling dealer KIC, Panipat in the impugned revisional order at all except mentioning that sales made by two of the five dealers in question to KIC, Panipat could not be verified. It is undisputed that the assessee-appellant made no purchases from the

five dealers in question mentioned in the impugned revisional order. Consequently ITC claim of the assessee-appellant could not be disallowed or reversed. The impugned revisional order is thus completely perverse and unsustainable.

**8.** In addition to the aforesaid, in reassessment of KIC, Panipat, sales made by KIC to the assessee-appellant have been assessed vide order dated 27.08.2015. In view thereof also, ITC claim of the assessee-appellant could not be reversed and disallowed. Judgment in the, case of M/s Amit Papers (supra) has no applicability to the facts of the present case because the assessee-appellant has not made any purchases from the five bogus traders in question. On the other hand, the assessee-appellant made purchases from KIC, Panipat which is a genuine dealer and sales made by KIC in favour of the assessee-appellant have also been reflected in the returns of KIC and have even been assessed. So the question of disallowing or reversing ITC claim of the assessee appellant does not arise.

**9.** The Impugned revisions order is perverse and absurd for another reason also. By the said order, the Revisions! Authority directed the Assessing Authority to disallow ITC claim of the assessee-appellant and also to pass well speaking order discussing each and every point. It is beyond comprehension as to what would happen to the aforesaid direction if the Assessing Authority while discussing each and every point comes to a different conclusion i.e. that the ITC claim of the assessee- appellant should be allowed.

**10.** For the reasons aforesaid, we allow this appeal and set aside the impugned order dated 30-09-2014 of the Revisional Authority alongwith consequential direction given to the Assessing Authority.

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## MAHARASHTRA TO HOLD SPECIAL SESSION ON GST FROM 20-22 MAY

***The draft Maharashtra GST Bill, which was approved by the state cabinet last week, will be tabled during the special session***

Mumbai: The Maharashtra legislature will hold a special session from 20-22 May to discuss and ratify the Goods and Services Tax (GST) Bill, 2017, to pave the way for the national roll-out of GST on 1 July.

Last week, the state cabinet approved a draft Maharashtra GST Bill which will be tabled during the special sitting. The Maharashtra bill seeks to protect the financial powers and autonomy of local self-government bodies in the state.

Maharashtra had ratified the GST Constitutional Amendment Bill in August 2016. On 6 April, Parliament passed four GST bills which now have to be ratified by all states to enable the shift to GST on 1 July.

Earlier this month, Shiv Sena, Bharatiya Janata Party's (BJP) ally in state and at the Centre, raised objections to the GST, arguing that the introduction of a single tax across the country would nullify local taxes like octroi duty that the civic bodies collect. Shiv Sena pointed out that the Brihanmumbai Municipal Corporation (BMC), which it rules, may lose nearly Rs7,000 crore on account of octroi getting subsumed after the introduction of GST.

In order to accommodate Shiv Sena's demands, the draft GST Bill passed by the state cabinet has a provision to compensate the BMC and other local bodies for the loss of their sources of revenue. The bill was passed after Shiv Sena president Uddhav Thackeray told Maharashtra finance minister Sudhir Mungantiwar that the BMC should not be made to beg for compensation and that there should be a statutory provision to compensate the BMC.

In the 288-member Maharashtra assembly, Shiv Sena's support is essential for the BJP for passage of key bills. The BJP has 122 members and Shiv Sena 63.

The draft bill seeks to address some of the key concerns raised by the Shiv Sena. For instance, the BMC will be compensated each month for loss of octroi after the introduction of GST. The bill has a clause which says the amount of compensation will be credited to the BMC's bank account by the fifth day of each month. In order to get Sena on board before the special session, Mungantiwar met Thackeray at the latter's residence last week to convince him that the introduction of GST will not cripple the fiscal health and autonomy of BMC.

According to a Maharashtra finance department official, who did not wish to be named, the GST introduction would lead to abolition of several state taxes like sugar purchase tax, state's share in central sales tax, entry tax on vehicles and goods manufactured in other states, lottery tax, octroi and local body tax. "The local self-government bodies will take the biggest hit because they collect most of these charges or have a share in them. The bill passed by the

cabinet also has a provision by which the state government can assign some of its taxes to local bodies to compensate them," the official said.

***Courtesy: LiveMint***

***16th May, 2017***

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### GST EXEMPTION LIST LIKELY TO BE KEPT AROUND 100 ITEMS

**NEW DELHI:** The Centre and states are expected to keep the exemption list short — about 100 — under the proposed goods and services tax regime, even as the North Block is flooded with requests from industry associations to keep their products out of tax net or in the lowest slab.

The Centre currently exempts 299 items while states keep 99 out of the tax net. "Some items will remain exempted," said a top government official.

Goods of common use and consumed largely by the masses will be spared in the final list. Salt, primary produce, fruits and vegetables, flour, salt, milk, eggs, tea, coffee and prasad sold at temples could figure on the exemption list.

It's near finalisation, ultimately, it will be a political call," said a government official.

Services above certain threshold, exempted under differential taxation, may be brought into the tax net to broaden the base. For instance, budget hotels with tariff below Rs 1,000 do not face service tax while others do.

Similar differentiation exists in luxury tax as well. Essential services such as healthcare and education are expected to be kept out. The GST Council will take a final call on Thursday or Friday.

Finance minister Arun Jaitley has been in talks with his state counterparts for deciding on rates. The idea is to broaden the tax base and not burden the new tax with exemptions. Exemption also means that these items will not be eligible for input tax credit and thus may ultimately not benefit the target group.

"The decision to grant exemptions to certain sectors and below a threshold — especially in case of services — should be based on whether exemptions really benefit the target group, given that input GST would be a cost," said Bipin Sapra, partner, EY.

Exemptions in an ideal GST should be few and the sectors who deserve benefit should be zero rated, he added. India has adopted a four-tier tax structure of 5%, 12%, 18% and 28%. The rate applicable on most products will be 18%. The highest rate has been pegged in the GST law at 40%. The government proposes to roll out the new tax regime, which seeks to replace multiple state and central taxes with a single levy, on July 1.

The proposed GST Council meeting will also take up the final set of rules.

***Courtesy: The Economic Times***

***17th May, 2017***

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### GST RATE STRUCTURE: FOODGRAINS EXEMPT, CARS IN TOP 28% TAX BRACKET

The goods and services tax rate structure for all but six items were finalised at the first day of the 2-day meeting in Srinagar of the GST Council headed by Arun Jaitley

Srinagar: Foodgrains and common-use products like hair oil, soaps and toothpaste, and also electricity will cost less from 1 July when the goods and services tax (GST) is scheduled to be rolled out as the all-powerful GST Council on Thursday finalised tax rates for bulk of the items.

While the Council fitted all but six items in 5, 12, 18 or 28% tax brackets, cars will attract the top rate as also a cess in the range of 1 to 15% on top of it. Smalls cars will be charged 1% cess on top of 28% tax, mid-sized cars will attract 3% cess and luxury cars 15% cess on top of the peak rate.

Aerated drinks too have been put in the 28% bracket but the rates for bidis along with gold, footwear and branded items would be decided on Friday. The GST on coal has been brought down to 5% from the current tax incidence of 11.69%, thereby making electricity generation cheaper.

The GST rates for all but six items were finalised at the first day of the two-day meeting in Srinagar of the GST Council, headed by Union finance minister Arun Jaitley and comprising state representatives.

Common use products like hair oil, soaps and toothpaste will be charged with a single national sales tax or GST of 18% instead of present 22-24% tax incidence through a combination of central and state government levies.

ACs and refrigerators will fall in the 28% tax slab while life-saving drugs have been kept at 5% rate. All capital goods and all industrial intermediaries would attract 18% tax instead of 28%. Milk and curd will continue to be exempt from taxation when the GST replaced current indirect taxes.

‘Mithai’ or sweets will attract 5% levy. Daily-use items like sugar, tea, coffee (barring instant coffee) and edible oil will attract the lowest tax rate of 5%, almost the same as current incidence. Prices of foodgrains, especially wheat and rice, will come down as they will be exempt from the GST. Currently, some states levy value added tax (VAT) on them.

“We have finalised tax rates for a majority of items as well as the exempt list (at today’s meeting),” Jaitley told reporters in Srinagar. Out of the 1,211 items, the GST rate for all but six was decided on the first day, he said, adding the tax rate for items that would be decided tomorrow include gold, footwear, branded items and bidi. “Rates have been finalised for the rest,” he said.

Also, the GST for packaged food items is to be finalised. Fridays’s meeting will also decide on the rate of tax for services, the finance minister said. “(With) the standard rate items of 12.5%

and 15%, plus the cascading effect of local taxes, the tax rate was going up to 30-31%. These 30-31% taxes... have all been brought down to 28%. Of these, some are items to be used by common man soap, oil—that has been brought down to 18%. So there will be a substantial reduction as far as those items are concerned. We have kept one criteria in mind that the overall impact is not inflation, in fact it brings down the costs," Jaitley added.

Revenue secretary Hasmukh Adhia said 7% of the items fall under the exempt list while 14% have been put in the lowest tax bracket of 5%. Another 17% items are in 12% tax bracket, 43% in 18% tax slab and only 19% of goods fall in the top tax bracket of 28%. As many as 81% of the items will attract 18% or less GST.

On gold, states demanded a 4% tax even though the rate is not among the 5, 12, 18 and 28% approved bands. Jaitley said there will be no inflationary impact as most of the rates which are at 31% have been brought down to 28%. Coal will attract the GST of 5% as against the current tax incidence of 11.69%.

"Cereals will be in exempt list. But what is to be done with packaged and branded food that has to be separately decided. We are yet to make a decision on that," he said.

Jaitley said the key feature of today's rate decision has been that "tax rate under GST will not go up for any of the commodities. There is no increase. On many commodities, there is a reduction particularly because the cascading effect of tax is gone."

"Of several commodities, we have consciously brought down the tax. In the overall basket there would be a reduction, but we are banking on the hope that because of a more efficient system, evasion would be checked and tax buoyancy would go up. That despite reduction the revenue neutrality and tax buoyancy thereafter would be maintained," he added.

***Courtesy:LiveMint***

***18th May, 2017***

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### GST: MOST MOBILE PHONES TO GET COSTLIER UNLESS GOVT RESTORES LOCAL MANUFACTURING SOPS BY JULY 1

**NEW DELHI:** Most mobile phones may get costlier by 4-5 per cent with the government imposing a goods and services tax (GST) of 12 per cent, taking away the benefit under duty differential that was being offered to local manufacturers.

Experts said government will have to come up with incentives by July 1 to ensure that Make in India remains an attractive proposition for contract manufacturers like Foxconn.

"GST rates are very positive signal to the industry, and we will certainly be pursuing the basic customs duty case and we believe that these two together, will give an impetus to local electronics manufacturing," IT and telecom secretary Aruna Sundararajan told ET.

"Either the existing regime will continue or the new regime with GST plus basic customs duty will come in, so either ways the industry will not lose out. We're trying to push for 5 per cent GST but 12 per cent is also a positive decision," she said, allaying fears or concerns of the industry with regards to continuation of the present duty regime.

Under the government's Make in Indian push, around 80 per cent of 59 million phones sold in India in the January-March quarter were made locally, up from 65 per cent in 2016 when 265 million phones were phones, as per Counterpoint Research.

Some 40 odd phone manufacturing plants have come up since, including 15 component making units, including Flex, Wistron and Foxconn.

In order to keep a differential between locally made and imported, the government is considering imposing a basic customs duty on mobile phones, senior government officials have earlier told ET. A final call is yet to be taken on this, but the industry hopes for more clarity on the duty differentials before July 1, from when the GST is expected to be implemented.

When asked whether the solution to keep Make in India going will be executed before implementation of GST, Sundararajan said that the department will work with the finance ministry on the timing.

According to rates fixed by the GST Council on Thursday night, 'Telephones for cellular networks or for other wireless networks [8517] and parts for their manufacture' will attract a rate of 12 per cent.

So while imported phones will become cheaper, most of the locally manufactured phones will get costlier.

"29 out of 36 VAT jurisdictions in India (29 States and 7 Union Territories) have VAT rate on mobile phones of 5 per cent along with 1 per cent excise duty; thus, the total incidence is 6 per cent currently in most parts of the country," said Pankaj Mohindroo, president of Indian

Cellular Association that represents handset makers including Apple, Samsung and Micromax among other.

"GST at 12 per cent will cause 4-5 per cent increase in prices in most geographies, therefore 5 per cent GST rate recommended by the IT and electronics ministry is the most appropriate rate," he added.

Gujarat, Madhya Pradesh and Maharashtra, may not see price drops even though they have VAT rates between 12.5 per cent and 15 per cent, as they subsidize to avoid grey marketing, while prices may not rise in Punjab, Rajasthan and Chandigarh that have rates of 8 per cent-9 per cent.

For mobile phones imported and sold in India, duty was from 17 per cent going upto 27 per cent, which now comes down to 12 per cent, giving imports a leg up. And those made in lower VAT states would be priced higher to match up to 12 per cent GST.

"Prices of phones that are imported into India are likely to go down, while those made locally may go up in cases where they are being made from low VAT states like Karnataka," Bipin Sapra, partner looking at indirect taxes at EY told ET.

"The government will now have to find an incentive to keep Make in India attractive," Sapra added.

Prices of mobile phones at e-commerce players like Amazon, Flipkart, Snapdeal, Shopclues and others, where sellers of mobile phones have been supplying from low VAT states, primarily Karnataka, may now be higher than earlier, Sapra added.

***Courtesy: The Economic Times***

***19th May, 2017***

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### GST RATE FOR SERVICES: ARUN JAITLEY GIVES YOU ALL THE DETAILS

The Goods and Services Tax Council broadly agreed on 4 tax brackets for services (5%, 12%, 18% and 28%), though they are yet to decide on a tax bracket for gold.

Finance minister Arun Jaitley, at a presser in Srinagar, listed out the details, which were:

1) All services have been fitted into four different rates, which are 5%, 12%, the standard 18% and the luxury rate of 28%
2) Transport services (Railways, air transport) will be under the 5% category because their main input is petroleum, which is outside GST ambit.
3) Service tax on non-AC hotels will 12%, on AC hotels that serve liquor will be 18%. Higher tax rate for luxury hotels.
4) Hotels and lodges with tariff below Rs 1,000 will be exempt. Those with Rs 2,500-5,000 will be 18%. Luxury hotels will face tax of 28%.
5) 28% tax slab on 5-star hotels, race club betting, cinema.
6) 18% tax slab for telecom, financial services
7) E-commerce players to deduct 1% tax at source before paying suppliers. E-retailers such as Flipkart and Snapdeal to pay GST.
8) 5% tax to be levied on cab aggregators like Ola and Uber
9) Economy class air travel to attract 5% GST, business class 12%
10) Healthcare and education have been exempted from the service list

The council has deferred the decision on the tax rates for gold, and also on bidis and cigarettes, to its next meeting, which is scheduled for June 3.

There will be no new addition of services in the exempted list under GST. Services that were currently exempt would continue to be exempt under GST. Most of the service tax exemptions grandfathered and they will continue.

***Courtesy: The Economic Times***

***19th May, 2017***

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### GOVERNMENT WORKING FAST TO PREVENT ANTI-PROFITEERING BY COMPANIES AFTER GST ROLL OUT

**SRINAGAR:** The government proposes to expedite the creation of the anti-profiteering mechanism under the goods and services tax (GST) law and could examine companies seen to have raised prices beforehand to avoid passing on the advantage of lower tax incidence to consumers.

"We will try and operationalise the machinery soon," said revenue secretary Hasmukh Adhia.

"We will be calling companies in to question if they increased prices in months prior to GST rollout." He said the government is not keen on using the anti-profiteering provision against companies and would urge them to pass on any reduction to consumers. The government will keep a close watch on price spikes.

He said the GST Council has conducted a detailed examination of the existing tariff structure and worked out what it should be. Care has been taken to ensure that effective incidence of tax under GST remains lower than the total effective tax now.

"Let us be honest... I would request industry to pass on the tax benefit that they will get due to reduction in rate and input tax credit to consumers," Adhia said, adding that they should ensure prices do not pinch consumers after the rollout of GST.

Asked about rise in cost of telecom services with the introduction of GST, he said the sector would in fact face lower effective tax as it would get input tax credit for all the taxes paid on goods used and services consumed.

"All telcos should provide complete billing breakup to consumers," said Adhia, adding that total incidence should come down.

Adhia had said earlier that the anti-profiteering clause is a transitory provision and was meant to shield consumers from any sudden spike in prices after the launch of GST.

***Courtesy: The Economic Times***

***20th May, 2017***

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### EXPORTERS TO GET TAX REFUND UNDER GST WITHIN 7 DAYS: NIRMALA SITHARAMAN

**NEW DELHI:** Commerce Minister Nirmala Sitharaman today assured exporters that they would get their refund tax claims within seven days under the new goods and services tax (GST) regime.

She also said that the GST Council has been fairly seized of the tax refund issue under the new indirect tax regime, to be rolled out from July 1.

"On the refund, we are very very clear that 90 per cent of the advanced payed money (by exporters in the GST regime) will be refunded within 6 to 10 days, post which an interest of about 6 per cent will be given for any delay by the government to exporters," she told reporters here.

She said this while speaking about the initiatives and achievements of the ministry in the last three years.

However, Sitharaman added that the ministry has asked the GST Council to consider to formulate an alternative mechanism for small and medium exporters on the issue pf payment of taxes.

"Our request with the council was that for SMEs. If we can think of giving an alternate to them rather than asking them to pay first and then get refund. We are yet to hear from them (Council)," she said.

Exporters have been demanding ab-initio exemption from payment of taxes under the GST regime arguing that delay in refunds often takes months.

Further, she said GST will help in improving exports as inputs are going to cost lesser for manufacturing exporters, as it would result in improving the product competitiveness in the global markets.

When asked about exporters' concern on rupee fluctuations, she said traders are fairly seized of this as "it is not a sudden fluctuation. Currency fluctuation has become a new normal".

"But, if there are extreme fluctuations, it is for the RBI to look at intervening just that much, so that, any extreme fluctuations are taken care of," she added.

On job creation, the minister informed that any proposal which goes to the Union Cabinet, "its (proposal's) implication on jobs, is something which the Prime Minister is very keen and we all are providing expected impact on direct and indirect employment of every such proposals which goes to the Cabinet".

India's exports grew by about 5 per cent to $ 276 billion in 2016-17.

***Courtesy: The Economic Times***
***20th May, 2017***

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### GST COUNCIL'S NEXT STEP: ENSURING TAX BENEFITS ARE PASSED ON TO CONSUMERS

***GST Council is trying to ensure businesses pass on to consumers any tax benefit accruing from GST rates that were finalized during the Srinagar meeting***

NEW DELHI: After having fixed the rates of the goods and services tax (GST) on almost all commodities and services, the powerful federal tax body GST Council is trying to ensure that businesses pass on any tax reduction benefit to consumers when the new indirect tax regime comes into force on 1 July.

The most important issue related to the implementation of GST is whether the tax cuts will be passed on to consumers, Kerala finance minister Thomas Isaac said, adding that the council, which debated it prior to bringing in the anti-profiteering clause in GST law, will discuss this matter further.

"Union finance minister Arun Jaitley has assured that we may even have a special session (of the council) on this. It is noteworthy that no industry has come forward and said maximum retail prices will be reduced in line with tax reduction," Isaac said in an interview.

For the government, which insists that GST rates are not inflationary, it is essential for consumers to feel a cooling of prices to make the most radical tax reform since Independence politically acceptable.

The GST Council has to recommend to the government whether a separate authority is needed or the Competition Commission of India (CCI) could be authorized to ensure that the reduced tax incidence on commodities has resulted in corresponding price cuts.

Revenue secretary Hasmukh Adhia had told reporters after the two-day meeting of the council in Srinagar that even if the anti-profiteering mechanism is set up three months from now, it will have the power to question corporate behaviour since the finalization of GST rates.

Competition law experts doubted whether CCI would get into price regulation. They say the anti-profiteering clause in the Central GST Act is a "political message".

The GST rate on a large section of services will fall into the 18% slab, which is three percentage points more than what is levied now, but both Jaitley and Adhia clarified last week that the efficiency in GST that eliminates the cascading or tax-on-tax effect of the current system will reduce the effective incidence of tax on services to a level much lower than the "headline" rate of 18%. The government believes the same will apply to goods as well.

According to consulting firm EY, the proposed GST rates imply reduction in tax incidence on items like mobile phones, processed food, energy drinks, contact lenses and utensils, while there is an increase in the case of items such as watches, air conditioners, washing machines and perfumes.

CCI, like other antitrust regulators worldwide, mostly regulates corporate behaviour such as cartelization and abuse of dominance and leaves pricing to be determined by the market, intervening only if the market is distorted, explained Subodh Prasad Deo, a partner at law firm Saikrishna and Associates and a former additional director general at CCI.

Actual price regulation is limited to sectors such as power and pharmaceuticals. A part of the pharmaceutical industry is regulated under the Essential Commodities Act. CCI's mandate to look into unfair pricing is in the limited context of a dominant market player imposing unfair conditions on pricing.

"Prices are not regulated, least of all by competition authorities as it is generally determined by the market. Competition regulators are reluctant to get into the issue of unfair pricing as they do not have a yardstick to determine what a fair price would be," said Deo.

In the market economy, what is seen is that prices are determined by the top players, said Kerala finance minister Isaac.

"The state is reducing taxes on the condition that the benefit may be transferred to consumers. If businesses do not respond, the government has to intervene," he said.

Jammu and Kashmir finance minister Haseeb Drabu, who hosted the 14th meeting of the GST Council in Srinagar last week, also said that the most important GST implementation issue is making sure that the benefit of tax reduction reaches consumers.

***Courtesy: LiveMint***

***22nd May, 2017***

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### GST: FMCG FIRMS OFFERING HUGE DISCOUNTS, BUT CAUTIOUS RETAILERS REDUCING STOCKS

**BENGALURU | NEW DELHI | MUMBAI:** Fast-moving consumer goods (FMCG) companies such as Hindustan Unilever, Procter & Gamble and Colgate-PalmoliveBSE -0.26 % that had altered manufacturing and pricing strategies in anticipation of the goods and services tax are now reaching out to wholesalers and retailers and offering them product and cash discounts.

With GST set to be rolled out on July 1, companies want to make sure that any initial uncertainty over the levy doesn't mean shops temporarily halt stocking consumer wares as they get accustomed to the new regime.

These firms are also keen to dispose of as much inventory as possible in May and June so that they are not saddled with unsold inventory on July 1.

"We cannot manage and evaluate inventory across millions of outlets in the pre-GST and post-GST scenario. It will be too complex since rates are different across different products," DaburBSE -0.43 % chief executive Sunil Duggal said. Dabur makes Real juices and Vatika shampoo.

While Colgate is said to have promised to double margins to retailers and wholesalers for May and June, Santoor maker WiproBSE 0.52 % has promised its distributors compensation for excess stock and difference in tax, said people aware of the matter. India's biggest consumer goods company said clarifications are required to make for a glitch-free shift to the new regime.

"HULBSE -1.51 % is working closely with its extended ecosystem of vendors and customers to target a cutover by July 1," it said in an email. "However, for smooth and timely transition we require an early clarification on a few open items like formal communication on cutover dates, reimbursement of fiscal, operational items like GST return formats, etc." Convincing the trade could be difficult.

"Companies such as Colgate and P&G are luring us to buy more by giving 2-4 per cent margin incentive, but I don't want to carry a burden on my shoulders," said Vasudev Chutwani, owner of Rajasthan-based Shankar Shree Enterprises, who has reduced his stock by 20 per cent across products of companies such as Dabur, Marico and HUL, and is planning to further bring it down to half in June, especially after June 15. "Even small shopkeepers are reducing purchases by 25 per cent ."

For wholesaler JT Brothers, the story is the same. "Almost every company such as Dabur and HUL is giving 3-7 per cent additional schemes, but we are not interested," said owner Kapil Advani, who has reduced stock by 50 per cent and will cut it by 75 per cent in June. Also, business is down by 50 per cent, he added, attributing this to overall slowdown.

"We are considering stepping up retailer margins," said Dabur's Duggal.

**MINIMISING IMPACT**

Companies want to ensure the impact is minimised. "We are focusing on creating stock pressure for these two months (May and June) and have also increased our production by 10-15 per cent ," said Mayank Shah, marketing head at Parle Products. "We are talking to our distributors and helping them understand the advantage of keeping more stock now."

Colgate-Palmolive is offering bigger discounts than before, said people aware of the matter. Wipro is pushing detergent and soap brands through distributors with the offer to reimburse transition stock — in other words, the stock left unsold with the retailer before the GST rollout.

Colgate-Palmolive did not respond to ET's queries. "There are going to be multiple costs associated with old stocks, compliances and increased cash flow requirements," said Sunil Wadhwa, CEO of Groupe SEB, the maker of electrical products and small appliances. "We also have to see how excise exemptions work out."

Companies have started offering discounts or product offers to wholesalers and retailers to push products that are in lower tax brackets under GST compared with the existing tax rates, said experts. Products such as toothpaste, soap and hair oil that attract a tax of 22-23 per cent currently will be taxed 18 per cent under GST.

This means companies have to move all the stock they have before July 1 to avoid the same product having two maximum retail prices (MRPs) — a higher pre-GST rate and a lower post-GST one.

"There could also be retailer-level schemes that would be passed on to customers on products like toothpaste, hair oil and soap," said MS Mani, senior director, Deloitte Haskins & Sells.

"The legal metrology provisions do not permit alterations to the printed MRP, hence there is need to adhere to these provisions in addition to the packaged commodities rules."

ET was the first to report on April 10 that many FMCG companies were either changing production strategies or raising prices to reflect the new tax treatment for their products.

Net benefits under GST will be passed on to consumers, HUL said recently while announcing fourthquarter results. In the current quarter, the company is expecting an inventory pipeline correction of 100-250 basis points ahead of the rollout of GST. A basis point is 0.01percentage point.

"The benefit to be passed on may not necessarily be in terms of price. It could be in terms of additional grammage," said Ulhas Kamath, joint managing director of Jyothy Laboratories.

There could be a month or so of short-term disruption at the level of trade channels.

"P&G continues to look at GST as a positive reform as it will benefit Indian economy and industry in the long term," a spokesperson told ET. "It will drive supply chain efficiencies and bring in a level playing field for the FMCG sector. We are working to ensure that we continue to delight our consumers with superior products and value."

**SLASHING PRODUCTION**

Insiders said many companies are also looking to slash production by 25-30 per cent in cases where the products are now in a lower tax bracket. Experts point out that there is also a fear that reducing manufacturing and adopting down-stocking supply chain strategies may affect market share.

Stocks are also being reduced due to complications regarding the rise in some costs, said experts. Many retailers and wholesalers are also demanding that FMCG companies underwrite losses they may incur when the new tax regime takes effect.

"Excise duty is embedded in the MRP in the products manufactured before July 1, and if this product is sold after this date, there would be a duty cost and probably a loss for the seller," Uday Pimprikar, partner, tax and regulatory services, EY India.

"Someone will have to underwrite this cost for the retailer, and it could be the manufacturer in most cases. To avoid this, companies will inter alia seek to reduce transition stocks in the supply chain — this could be done by pushing sales of products manufactured till June 30 before GST comes in. Further supplies to the supply chain will also be required to be regulated."

The big FMCG companies had increased product prices in anticipation of GST. In the past three months, HUL removed discounted offers as high as 15 per cent from detergents, soaps and shampoos, while Godrej ConsumerBSE 1.50 % raised the prices of Godrej No. 1 and Cinthol soaps by 11-13 per cent year-on-year. Colgate, which usually raises prices by 5-7 per cent every year, increased them by 10-18 per cent over last year.

Brokerage houses have given a mixed response to the consumer goods sector, with most saying GST taxes are neutral to positive, adding that since many companies enjoy excise duty exemption, clarity is awaited on these in the excise-free zones under GST.

According to a report by JPMorgan, GST will have a positive impact on categories such as soap, toothpaste and hair oil, while paints, skin creams, shampoos and laundry will be negatively impacted because of a 28 per cent tax slab.

A research report by Motilal Oswal Financial Services said with the implementation of GST, many companies in the FMCG sector will likely gain as a result of the potential shift from the unorganised to the organised segment.

***Courtesy: The Economic Times***

***23rd May, 2017***

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### 18% TAX UNDER GST FOR SOLAR MODULES TO INCREASE PROJECT COSTS: REPORT

***New tax rates under GST would hit more than 10 gigawatt of ongoing utility scale solar power projects and pose a threat to their viability, Bridge to India report said***

**NEW DELHI:** The GST Council's decision to set 18% tax rate for solar modules as compared to a present effective rate of zero will increase overall project costs by about 12%, consulting firm Bridge to India said in a note on Monday.

Bridge to India also said that the new rates would hit more than 10 gigawatt of ongoing utility scale solar power projects and pose a threat to their viability.

The firm, however, clarified that they believe long-term prospects of the industry would not be impacted by GST move as an increase in tax rates will be quickly offset by falling costs.

"A commercially viable, non-subsidy dependent sector is naturally more sustainable in the long run. However, we do wonder why solar equipment is attracting higher taxes than coal or other power equipment," it remarked.

India has an ambitious solar power target of 100 GW by 2022. At present, India has 12.28 GW of grid connected solar power installed.

BTI highlighted that as per the final goods and services tax (GST) rates announced by the GST Council, there will be 18% tax rate for solar modules as compared to a present effective rate of zero.

"In contrast, GST rate for coal has been lowered to 5% as against current rate of 11.69% and most other renewable projects and equipment including wind mills, waste to energy plants, tidal energy plants and bio-gas plants and even solar power based devices or generating systems have been classified under the 5% rate bracket," BTI said.

"The new regime will result in an increase of 18% in module cost, about 12% in inverter cost and 3% in all service costs – increasing overall project cost by about 12%. New rates would hit more than 10 GW of ongoing utility scale projects and pose a threat to their viability," added the consulting firm.

The note also emphasized that the new rate structure will not give any advantage to domestic manufacturing as cost of import of raw material, including cells and wafers, will go up in the same proportion.

BTI said there was widespread expectation that solar modules would be classified under zero or 5% bracket to continue growth momentum in the sector but sharp reduction in equipment costs and solar tariffs seems to have convinced the government that the sector doesn't need any more financial incentives.

Explaining further, BTI said, at present most states levy a 5% value added tax (VAT) on solar modules but in practice the actual tax rate levied is zero because of waiver on import duty and VAT in many states.

It also said that the union ministry of new and renewable energy (MNRE) has been assuring the industry that it will be insulated from any GST impact by passing any burden through to the off takers.

“But we believe that this process will be complex and challenging,” BTI said, cautioning that it wouldn’t be surprising if some projects are altogether cancelled.

“It is critical for MNRE to step up and play a coordinating role with central and state regulators to ensure that the process of tariff adjustment is as smooth as possible,” it suggested.

***Courtesy: LiveMint***

***23rd May, 2017***

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### GST: WATCHING MOVIES, THEATRE, CABLE TV TO BE CHEAPER

GST on watching movies is fixed at 28%, which is lower than entertainment tax that is as high as 100% in some states.

Watching movies, theatre or cable TV is set to become cheaper under the Goods and Services Tax (GST) regime scheduled from July 2017.

The finance ministry on Tuesday said the taxes on entertainments and amusements that are as high as 100% have been merged under GST.

Panchayats and municipalities can still levy a tax on entertainment over and above the GST.

"The rate of GST approved by GST Council on services by way of admission to entertainment events or cinematography films in cinema theatres is 28%," the ministry said.

At present, the entertainment tax rates charged to movie-goers are as high as 100% in some of the States.

In case of cable TV and Direct-To-Home (DTH), the GST rate has been pegged at 18% as against the entertainment tax ranging between 10% and 30% levied by states plus the 15% service tax charged by the Centre.

The GST rate for circus, theatre, Indian classical dance including folk dance and drama is 18% on value or ad valorem.

The GST Council has approved an exemption upto a consideration for admission of Rs 250 per person. These services currently attract entertainment tax levied by the States.

"Thus, entertainment services shall suffer a lower tax incidence under GST," the ministry said.

In addition to the benefit of lower headline rates of GST, the service providers shall be eligible for full input tax credits (ITC) of GST paid in respect of inputs and input services.

***Courtesy: The Hindustan Times***

***23rd May, 2017***

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### TRADERS WANT GST ON GOLD TO BE BELOW 2%, MEET ON JUNE 3

**KOLKATA:** The next fortnight is crucial for the gold trade in the country as it will make a last ditch effort to keep GST (goods and services tax) on gold below 2 per cent. Trade bodies are trying to meet Union finance minister Arun Jaitley, all state finance ministers and other senior bureaucrats and secretaries before June 3 when they will reconvene to fix the rate on gold.

The GST Council, which had met last week in Srinagar, had fixed the rates for 1,211 items under four GST slabs — 5 per cent, 12 per cent, 18 per cent and 28 per cent. But it did not take a call on the rates of some items such as gold, and put it off to June 3.

"At present, gold attracts an excise duty of 1 per cent and a VAT of 1 per cent apart from a 10 per cent import duty. Kerala is asking for a 5 per cent GST as it is the only state in the country that has put a 5 per cent VAT on gold. But the trade wants 1.25 per cent GST on gold as a higher rate will hamper growth and will result in a drop in tax compliance by the gold trade," Nitin Khandelwal, chairman, All India Gem & Jewellery Trade Federation (GJF), told ET.

GV Sreedhar, past chairman, GJF, argued that if GST is kept low, then the government's tax earnings will increase. "We will ensure that the industry becomes tax-compliant," said Khandelwal. GJF will approach all state finance ministers with its proposal from Tuesday onwards.

***Courtesy: The Economic Times***

***23rd May, 2017***

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## REVENUE DEPARTMENT SETS UP TWITTER HANDLE TO ANSWER GST QUERIES

**NEW DELHI:** With just over a month left for GST implementation, the revenue department today started a new twitter handle to answer industry queries related to the new indirect tax regime.

Traders and industry can ask questions on the twitter handle '@askGST_GoI' and officials from Central Board of Excise and Customs (CBEC) will answer them.

"All taxpayers and other stakeholders are welcome to direct their queries related to GST on the said twitter handle for early resolution and clarification," a finance ministry statement said.

The GST Council, headed by Union Finance Minister and comprising state counterparts, had earlier this month decided on fitment of over 1,200 commodities and 500 services in various tax slabs.

They have been classified in four tier slab -- 5, 12, 18 and 28 per cent.

Ever since the fitment of goods and services, Revenue Secretary Hasmukh Adhia has been holding townhall meetings with traders and has been answering GST related queries raised on twitter.

Further, the council has approved a set of seven of Goods and Services Tax (GST) rules and few more would be cleared in the next meeting on June 3.

It will also take up the issue of fitment of six more goods, including gold and precious metals, textiles, bidis and branded commodities in the tax slabs in its next meeting.

The GST will unify 16 different levies and transform India to a single market for seamless movement of goods and services. Government plans to roll out GST from July 1.

***Courtesy: The Economic Times***

***28th May, 2017***

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## GST COUNCIL MAY CLARIFY ON TAX RATE FOR SOLAR MODULES AT 3 JUNE MEETING

GST Council, in its 3 June meeting, might reverse a decision to set an 18% GST rate on solar modules, company executives say

Mumbai: The goods and services tax (GST) Council is likely to clarify on the tax rate applicable to solar modules at its next meeting in early June, which might reverse a decision to set an 18% rate on the key component of solar energy infrastructure, company executives say.

Under the final GST rates, which takes effect on 1 July, solar modules have been classified under an 18% tax slab; the present effective tax rate on them is zero.

The ministry of new and renewable energy (MNRE) has informally communicated to the sector that this might be an anomaly and that a clarification is likely to be issued when the GST Council meets on 3 June, according to companies.

The clarification could likely set the tax rate on solar modules at 5%—similar to that on the wind sector. Solar modules make up for about 60% of a solar project's overall cost and eight out of 10 top module suppliers in the Indian market are from China. Prominent Indian module makers include Waaree Energies Ltd, Tata Power Solar Systems Pvt. Ltd and Vikram Solar Pvt. Ltd.

New tax rates would hit more than 10 gigawatt (GW) of ongoing utility scale projects and pose a threat to their viability, clean energy-focused consulting firm Bridge To India said in a 22 May report.

India has 12.28GW of grid-connected solar power installed and it is expected to be the third largest solar market in 2017 with total capacity touching 18GW. India has a target of setting up 100GW of solar capacity by 2022. Solar power tariffs have fallen by about 25% in the past three months, raising questions on the viability of the projects.

Vinay Rustagi, managing director at Bridge To India, said clarity on whether modules will be under the 5% or 18% tax slab could come when the GST Council meets.

"Assuming that does not happen, this will be a major problem for the ongoing projects because it will result in 10-12% impact on the capital cost, which will be very significant for all these companies. And they would definitely try to invoke the 'change of law' provision and pass on the additional tariff to the distribution companies," Rustagi said.

Most firms are under pressure to complete their ongoing projects before 1 July, according to Rahul Gupta, managing director, Rays Power Experts Pvt. Ltd, a solar parks developer. "Everybody would demand change of tariff under the 'change of law' provision in power purchase agreements (PPAs) if modules will be charged an 18% duty from being fully exempt till now," Gupta said.

Typically, PPAs provide for protection to developers of renewable energy projects against any change in law, and they are allowed to seek a tariff revision from the central or state regulator, which would then review requests on a case-by-case basis. But this process can be lengthy and difficult, according to Sanjeev Aggarwal, chief executive at rooftop solar firm Amplus Energy Solutions Pvt. Ltd.

"PPAs signed earlier may not allow for a change in tariff, but for future projects, the provision may be invoked," Aggarwal said.

Rustagi of Bridge To India said: "The problem is two-fold; the change of law provision is not crystal clear; in many cases it does not allow for a pass-through of any tax change to the distribution companies. Second, the process of determining what the additional hit to the companies is likely to be complex and time consuming."

***Courtesy: liveMint***

***29th May, 2017***

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### WEST BENGAL OPPOSED TO GST IN PRESENT FORM, SAYS AMIT MITRA

West Bengal today said that its assembly will not move the bills required to roll out the new indirect tax. GST is scheduled to be rolled out on July 1.

Heightening uncertainties about the Goods and Services Tax (GST), West Bengal today said that its assembly will not move the bills required to roll out the new indirect tax.

GST is scheduled to be rolled out on July 1. While the Parliament had passed all the four GST-related bills during the budget session, states will have to ratify the State-GST legislation to rollout the new tax. Twenty-two states have so far passed the SGST Bill, other states have time till the first week of June to ratify it.

The dissent was expressed by Amit Mitra, state finance minister at the state secretariat in Kolkata on Tuesday. He will raise the West Bengal's objections in the next GST council meeting on June 3, Mitra said.

Mitra also said that he will object to the Centre's proposal to levy GST on items such as shoes, wig, and vernacular cinema. "I shall also highlight that there are major objections from different sectors of the state to rolling out GST from July 1. The services sector is against it".

Rolling out GST as it stands today will be a double-burden on the states that are yet to recover from the shocks of demonetisation, said the Bengal finance minister, who was also the chairman of the empowered committee of state finance ministers.

This is not the first time that West Bengal has opposed GST. Along with Kerala, the state was foremost in its reservations against the new indirect tax.

The objective of GST of creating a unified market will fail if it is not adopted by all states. But indirect tax reforms in India have seen staunch opposition even in the past, case in point the adoption of VAT. Certain states such as Uttar Pradesh adopted VAT much later than the rest of India.

***Courtesy: The Hindustan Times***

***30th May, 2017***