SGA
LAW OFFICES

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News From Court Rooms

GUJARAT HC : Entire credit on input would be allowed if scrap is further used in manufacturing of finished product.

Gujarat VAT - Where assessee purchased castor oil seeds for manufacture of castor oil and after crushing same obtained castor oil as well as deoiled cake (waste) and it used deoiled cake in furnace as a fuel in manufacture of castor oil, action of Assessing Authority in disallowing input tax credit to the proportion of the deoiled cake (waste) was not proper. Revenue's appeal dismissed. *(Jayant Agro Organics Ltd. – August 11, 2015).*

JHARKHAND HIGH COURT: Assessee could be arrested for evasion of excise even on basis of prima facie quantification of duty.

Where prima facie quantification of duty shows alleged evasion of duty of Rs. 10 crores, offence is cognizable and non-bailable; therefore, arrests can be made by Intelligence Officers of department.

Department issued various summons to assessee and on assessee's non-appearance conducted search/seizure and found incriminating documents suggesting prima facie evasion of duty of Rs. 10 crore. Intelligence Officer of Department arrested assessee. Assessee argued that arrest can be made only after final quantification of duty and not on basis of prima facie quantification.

HELD: Prima facie assessment of duty showed that evasion was almost Rs. 10 crores, far exceeding monetary limit/ceiling of Rs. 1 crore. Hence, offence was prima facie cognizable and non-bailable and therefore, assessee's arrest was correct in law *(Hemant Goyal Vs. Union of India.)*

CESTAT, NEW DELHI : Service Tax: Demand of service tax on commission received by appellant is valid, even though it passes on the entire commission received to its employees, as passing on to the employees is an internal policy of the appellant that need not concern the tax authority. *(Joshi Auto Zone P Ltd. – October 30, 2015)*

BOMBAY HC: Inter-state transfer of goods deemed as sale as assessee failed to furnish Form 'F'. *(Johnson Matthey Chemicals India (P) Ltd. – February 16, 2016).*

MADRAS HIGH COURT: Assessee cannot be asked to reverse input tax credit due to non-payment of taxes by the selling dealer *(Sri Lakshmi Textiles Vs. the Commissioner of Commercial Taxes and Others)*

Facts: Sri Lakshmi Textiles("the Petitioner") is a partnership firm engaged in the business of inner garments and textiles registered under Tamil Nadu Value Added Tax Act, 2006 ("TN Vat Act"). The Petitioner was regularly filing the VAT return and paying the VAT liability after adjusting the corresponding input tax credit. For the Assessment Year 2013-2014, the Petitioner had reported total turnover and taxable turnover of Rs. 2,02,88,151/- and Rs. 15,98,693/- respectively in his return.

The Department alleged that because some of the selling dealer of the Petitioner had not paid the tax, the Petitioner is required to reverse the corresponding input tax credit and further sought to levy penalty under Section 27(3) of the TN VAT Act on the Petitioner.

Held: The Hon'ble High Court of Madras relied upon the decision in the case of Sri Vinayaga Agencies Vs. the Assistant Commissioner (Ct), Chennai and another [(2013) 60 VST 283 (Mad)] and held that when the fact of Petitioner paying the taxes to his supplier is not under dispute, the Petitioner cannot be compelled to reverse the input tax Credit due to non-payment of VAT liability by the selling dealer

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 1666 OF 2006

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UNION OF INDIA & ORS.
Vs
HAMDARD (WAQF) LABORATORIES

DEEPAK MISRA AND SHIVA KIRTI SINGH, JJ.

25th February, 2016

HF ▶ Assessee

Department is bound to pay statutory interest in case of delay in deciding the application for refund

INTEREST ON REFUND – DISPUTE WITH REGARD TO CLASSIFICATION OF GOODS – RECOVERY MADE DURING THE PENDENCY OF LITIGATION – MATTER FINALLY DECIDED BY SUPREME COURT IN FAVOUR OF ASSESSEE – APPLICATION FOR REFUND MADE – REFUND GRANTED AFTER ONE YEAR FROM THE DATE OF APPLICATION – INTEREST CLAIMED BY ASSESSEE – HIGH COURT ALLOWED THE WRIT PETITION – ON APPEAL BEFORE SUPREME COURT, HELD IT IS OBLIGATORY UPON THE REVENUE TO PAY THE INTEREST BEYOND THREE MONTHS FROM THE DATE OF APPLICATION – APPEAL DISMISSED.

The respondent, a manufacturer of various items including Rooh-Afza, had paid the duty classifying the item under sub-heading 2201.90 of the Schedule to the Central Excise Tariff Act, 1986. The Revenue did not accept the same on the ground that it was classifiable under sub-heading 2107.91 of the Tariff Act. Because of aforesaid dispute, recovery of differential duty was made and the respondent manufacturer started paying the duty as demanded by concerned authority. The matter was eventually reached up to Tribunal who dismissed the appeal of the assessee. The matter challenged before the Supreme Court where the contention of assessee was accepted and the appeal was allowed.

Consequently, the assessee applied for refund on 25.08.1999. In response, the Revenue vide letter dated 27.9.1999, asked the assessee to furnish the evidence regarding burden having not been passed on to the customer and also to submit the protest letter filed under Rule 233-B of Central Excise Rules in respect of the amount debited in PLA. The assessee made the necessary reply which was accepted and the application for refund was allowed and was paid on 15.11.2000.

Since no interest was paid to the assessee, a writ petition was filed before the High Court, who after taking into cognizance the time prescribed for disposal of application for refund under Section 11-BB opined that liability for payment of tax is statutory and it is the bounden duty of

the Department to pay interest from 26.11.1999 till 15.11.2000 at the rate specified under Section 11-BB of the Act.

The Revenue challenged the order of High Court before the Supreme Court.

Held:

An application is required to be made for refund of duty and interest under Section 11-B. In case the application is found deficient in any manner, then the Department can point out the said deficiency within 48 hours in view of the Circular dated 30.05.1995. In the present case, the assessee had made the necessary application under Section 11-B and since the same had not been processed within three months, the Department is bound to pay interest in terms of Section 11-BB at the specified rate. The matter in this regard stands settled by the judgment of Supreme Court in the case of Ranbaxy Laboratories Ltd. vs Union of India and others, 2011(10) SCC 292. The adjudicatory process, by no stretch of imagination, can be carried on beyond three months and in case there is any deficiency, the application for refund can be rejected but the entire matter is required to be concluded within three months. Beyond this, interest is payable. Revenue appeal is accordingly dismissed.

Case referred:

- *Hamdard (Wakf Laboratories vs. Collector of Central Excise, Meerut (1999) 6 SCC 617*
- *Ranbaxy Laboratories Limited vs. Union of India & Ors.* (2011) 10 SCC 292.

Present: For Appellant(s) Mr. Yashank P. Adhyaru, Sr. Advocate
Mr. Sanjai Kumar Pathak, Advocate
Mr. Ritesh Kumar, Advocate
Mr. B. Krishna Prasad, AOR.

For Respondent(s) Mr. S.B. Upadhyay, Sr. Advocate
Ms. Pawan Upadhyay, Advocate
Ms. Anisha Upadhyay, Advocate
Ms. Param Mishra, Advocate
Mr. Kaustuv P. Pathak, Advocate
Mr. Sarvjeet P. Singh, Advocate
Ms. Sharmila Upadhyay, AOR

Ms. Neeru Vaid, Advocate

******

DIPAK MISRA, J.

1. The respondent, M/s. Hamdard (Waqf) Laboratories, is engaged in the business of manufacture and sale of various items including Rooh Afza which is a sweetened non-alcoholic beverage, and the respondent treated it to have been classified under the sub-heading 2201.90 of the Schedule to the Central Excise Tariff Act, 1986 (for short, 'the Tariff Act'), but the Revenue did not accept the classification claimed by the assessee-respondent on the foundation that it was classifiable under the sub-heading 2107.91 of the Tariff Act.

2. Because of the cavil relating to classification, steps were taken for recovery of the differential duty and keeping in view the demands made, the respondent-manufacturer started paying the duty as demanded by the concerned authority. Be it stated, the initial adjudicator, that is, the Assistant Commissioner of Central Excise, did not accept the stand of the assessee. The said grievance compelled the respondent to prefer an appeal before the Commissioner (Appeals) who negatived the stand of the assessee. Being grieved the assessee preferred an appeal before the Central, Excise and Service Tax Appellate Tribunal (for short, 'the tribunal'), which, agreed with the view expressed by the fora below and consequently dismissed the appeal.

3. The decision rendered by the tribunal, was called in question by the assessee in Civil Appeal No. 7766 of 1995. The two-Judge Bench in ***Hamdard (Wakf Laboratories vs. Collector of Central Excise, Meerut (1999) 6 SCC 617*** adverted to the issue of classification pertaining to the product, namely, Sharbat Rooh Afza and posed the question whether the said "Sharbat" was within the tariff heading 2201.90 as contended by the assessee or under heading 2107.91 as the excise authorities would maintain and after adverting to various aspects, accepted the stand of the assessee that it is a non-alcoholic beverage and repelled the stand of the Revenue and resultantly allowed the appeal.

4. Be it mentioned here that this Court in its judgment dated 4th August, 1999 had stated that it falls within the term of heading 2201.90 and accordingly, set aside the order passed by the tribunal and further directed for consequential relief to follow. For the sake of completeness, paragraphs 7 and 8 of the said decision are extracted below:-

> *"7. The Tribunal would also appear to have concluded that the said sharbat was not a beverage but a preparation for the same. The fact that these tablespoonfuls of the said sharbat have to be added to a glass of water to make it drinkable does not, in our view, make the said sharbat not a beverage but a preparation for a beverage. Were that so, many beverages which are squash would not be beverages [See for example para 5 of this Court's judgment in the case of Parle Exports (P) Ltd. (Northern Industries vs. CCE (1988) 37 ELT 229 (Tribunal) and para 12 et seq. Of the Tribunal's judgment in the case of Northland Industries (From the judgment and order dated 4.5.1995 of the National Consumer Disputes Redressal Commission, New Delhi in F.A. No.65 of 1994]. It seems to us that the phrase "preparations for lemonades or other beverages" in clause (j) of Note 5 of Chapter 21 was intended to refer to the industrial concentrates from which aerated water and similar drinks are mass produced and not to preparations for domestic use like the said sharbat.*
>
> *8. It was necessary for the respondents to have shown, having regard to the terminology of Heading 21.07, that the said sharbat was "not elsewhere specified or included". That, in our view, was not done. In fact, as we see it, it falls within the terms of Heading 2202.90."*

At this juncture, it is necessary to state that initially when the judgment was pronounced on 04.08.1999, paragraph 8 mentioned "within the terms of heading 2201.90" and the same has been corrected by a corrigendum. We shall advert to the factum of rectification and its impact at a later stage.

5. After the judgment was pronounced, the respondent filed an application on 25th August, 1999 for grant of refund. The Revenue, in response, vide letter No.C.No.V(18) Ref/311/99/7041 dated 27.09.1999 communicated to the respondent-assessee as follows:-

> *"You are requested to furnish the evidences showing that the incidence of duty debited/deposited by you for Rs.3.74 crores has not been passed on to your customers.*
>
> *It has also been observed that you have not submitted copy of protest letter under Rules 233B of the C.E. Rules in respect of Rs.54,00,000/- debited by you in PLA vide entry No.956 dated 26.5.95.*
>
> *You are directed to submit the above documents within three days of receipt of this letter so that your claim may be processed."*

6. The said letter was replied to on 30.09.1999. The relevant part of the reply reads as follows:-

> *"The deposit of amount of Rs.3,20,00,000.00 was made directly in the Bank against TR 6 for which no credit was taken in the PLA and the balance amount of Rs.54,00,000.00 was debited from the PLA under protest in presence of Superintendent, Central Excise, Range-IV, Div. I Ghaziabad. In this way when the amount was not utilised by us in any way other than making deposits against the Adjudications Order of the Assistant Commissioner, then the question or scope of passing it on to the consumer does not arise. However, we certify that we had not passed on this amount of Rs.3,74,00,000.00 to our customers.*
>
> *In the debit entry No.956 dated 26.5.95 in the PLA after debiting the amount of Rs.54,00,000.00 against the Adjudication Order of Asstt. Commissioner it was clearly mentioned that the debit was made under Protest which was also witnessed/authentication by the Superintendent, Central Excise, Range -IV, Div.I, Ghaziabad at that time."*

7. After receipt of the said reply, the matter was taken up by the competent authority, that is, the Assistant Commissioner (Div. I), Ghaziabad. The said authority recorded the history of the litigation and order passed by this Court and opined as follows:-

> *"I have carefully examined the claim papers and submission made by the party in their reply and at the time of personal hearing. Regarding deposit of Rs.5,40,000.00 in PLA vide Entry No.956 dated 26.6.95 under protest, I observed that the contention of the party is tenable as the letter of protest dated 8.9.94 protest all payments made under protest on 8.9.94 and their view finds support in the case of CCE, Meerut vs. Citurgia Biochemical Ltd. 1998 (101) 568 (SC). Even otherwise, I find that the payment of Rs.54 lacs which was endorsed "under protest" had been verified and authenticated on the same date i.e. on 26.5.95 by the Range Superintendent and the same is sufficient compliance of Rule 2338.*
>
> *Regarding passing on the duty element to the Customers, I carefully examined the O-I-A 600-CE/MRT/94 dated 10.01.95 passed by the Commissioner (appeal), Ghaziabad, who had decided in the above O-I-A that the assessable value in relation to any excisable goods, does not include the amount of duty of excise, sales tax and other taxes, if any, payable on such goods. Therefore, in the case for cum duty price, the abatement of excise duty and other taxes is to be allowed for determining the assessable value of the goods for the purpose of levy of excise duty thereon and accordingly passed order that differential duty payable by the appellants should be recalculate by the Assistant Collector after allowing the abatement of excise duty and other admissible deduction, if any, from the wholesale price."*

Being of this view, the said authority allowed the application for refund.

8. Be it mentioned here that after the application for refund was filed and the Revenue was in correspondence with the assessee, it required the assessee to get a rectification order from this Court with regard to a typographical error pertaining to the classification. As stated earlier, in the original order of this Court, the classification was mentioned as 2201.90 which was corrected by a corrigendum making it "2202.90". Be that as it may, we clearly state that it has neither any bearing nor impact on the present lis.

9. Presently to the flash back. In pursuance of the order passed by the competent authority, an amount of Rs.3,74,00,000/- was refunded by cheque no.639266 dated 15.11.2000 payable at PNB Navyug Market, Ghaziabad. As no interest was paid by the appellant, the respondent filed a Civil Miscellaneous Writ Petition No. 249 of 2001 before the High Court of

Judicature at Allahabad. The Division Bench, considered the judgment rendered by this Court in Civil Appeal No.7766 of 1995, took note of the time prescribed for disposal of the application for refund, the language employed in Section 11-BB of the Central Excise Act, 1944 (for short, 'the Act') and further appreciating the conduct of the parties, opined that the liability for payment of interest is statutory and it is the bounden duty of the Assistant Commissioner to pay interest from 26th November, 1999 till 15th November, 2000 at the rate specified under Section 11-BB of the Act. The aforesaid conclusion impelled the Division Bench to allow the writ petition with costs which was assessed at Rs.10,000/-. The said order is the subject matter of appeal by special leave.

10. We have heard Mr. Yashank Adhyaru, learned senior counsel along with Mr. Sanjai Kumar Pathak, learned counsel for the appellants and Mr. S.B. Upadhyay, learned senior counsel and Ms. Sharmila Upadhyay, learned counsel for the respondent.

11. The facts which we have adumbrated herein-above are not in dispute. It is contended by Mr. Adhyaru, learned senior counsel appearing for the Revenue that Section 11-B which deals with grant of refund of duty has to be strictly construed and, if there is no compliance with the conditions enumerated therein, the application has to be rejected. Elucidating the said argument, learned senior counsel would submit that if there is a defective application or an application not meeting the requisite criteria stipulated under the statutory provision, it is to be held that there is no application in the eye of law and hence, the period has to commence from the date when the defects are rectified. In essence, the submission is that the prescription of three months in the said provision has to commence when the application is appositely rectified to bring it in order, and there has to be adjudication to arrive at the necessitous conclusions as enshrined in the said provision, otherwise, the persons who are not entitled to get refund would be in a position to avail the benefit of refund and the interest on technical score. To buttress the said submission, he has paid immense stress on the factual matrix. It is urged by him that there was no proper application and, in fact, when the defects were communicated, they were not appositely corrected and things only came to light at the time of adjudication and thereafter in quite promptitude, the amount was paid by way of a cheque and hence, the claim of interest is absolutely unjustified and resultantly, the grant of interest by the High Court is wholly unsustainable.

12. Mr. Upadhyay, learned senior counsel appearing for the respondent would contend that in the absence of a particular form in praesenti the application was in order from the inception and, in any case, the period commences from the date of submission of the application which is required to be filed within one year. It is put forth by him that the time runs from that day and it is open to the Revenue to ask the assessee to remove the defects and if the defects are not removed it can reject the application but it has to be done within the statutory period, but under no circumstances, there can be an assumed extension of time by the Revenue. To bolster the said submission, reliance has been placed on ***Ranbaxy Laboratories Limited vs. Union of India & Ors.*** (2011) 10 SCC 292.

13. To appreciate the controversy in proper perspective, it is seemly to refer to the provisions dealing with refund and interest. Section 11-B deals with claim for refund of duty and interest, if any, paid on such duty. The said provision reads as under :-

> ***"Section 11B. Claim for refund of duty and interest, if any, paid on such duty-***
>
> *(1) Any person claiming refund of any duty of excise and interest, if any, paid on such duty may make an application for refund of such duty and interest, if any, paid on such duty to the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise before the expiry of one year from the relevant date in such form and manner as may be prescribed and the application shall be accompanied by such documentary or other evidence*

(including the documents referred to in section 12A) as the applicant may furnish to establish that the amount of duty of excise and interest, if any, paid on such duty in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such duty and interest, if any, paid on such duty had not been passed on by him to any other person :

Provided that where an application for refund has been made before the commencement of the Central Excises and Customs Laws (Amendment) Act, 1991, such application shall be deemed to have been made under this sub-section as amended by the said Act and the same shall be dealt with in accordance with the provisions of sub-section (2) substituted by that Act :

Provided further that the limitation of one year shall not apply where any duty and interest, if any, paid on such duty has been paid under protest.

(2) If, on receipt of any such application, the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise is satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty paid by the applicant is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund:

Provided that the amount of duty of excise and interest, if any, paid on such duty as determined by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise]under the foregoing provisions of this sub-section shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

(a) rebate of duty of excise on excisable goods exported out of India or on excisable materials used in the manufacture of goods which are exported out of India;

(b) unspent advance deposits lying in balance in the applicant's account current maintained with the Commissioner of Central Excise;

(c) refund of credit of duty paid on excisable goods used as inputs in accordance with the rules made, or any notification issued, under this Act;

(d) the duty of excise and interest, if any, paid on such duty paid by the manufacturer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(e) the duty of excise and interest, if any, paid on such duty borne by the buyer, if he had not passed on the incidence of such duty and interest, if any, paid on such duty to any other person;

(f) the duty of excise and interest, if any, paid on such duty borne by any other such class of applicants as the Central Government may, by notification in the Official Gazette, specify :

Provided further that no notification under clause (f) of the first proviso shall be issued unless in the opinion of the Central Government the incidence of duty and

interest, if any, paid on such duty has not been passed on by the persons concerned to any other person.

(3) Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or any other law for the time being in force, no refund shall be made except as provided in sub-section (2).

[Emphasis added]

14. Section 11-BB deals with interest of delayed refunds. The said provision is extracted below:-

Section 11-BB. Interest on delayed refunds.--*If any duty ordered to be refunded under sub-section (2) of section 11B to any applicant is not refunded within three months from the date of receipt of application under sub-section (1) of that section, there shall be paid to that applicant interest at such rate, not below five per cent and not exceeding thirty per cent per annum as is for the time being fixed by the Central Government, by Notification in the Official Gazette, on such duty from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty:*

Provided that where any duty ordered to be refunded under sub-section (2) of section 11B in respect of an application under sub-section (1) of that section made before the date on which the Finance Bill, 1995 receives the assent of the President, is not refunded within three months from such date, there shall be paid to the applicant interest under this section from the date immediately after three months from such date, till the date of refund of such duty.

Explanation.- *Where any order of refund is made by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or any court against an order of the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise, under sub-section (2) of section 11B, the order passed by the Commissioner (Appeals), Appellate Tribunal, National Tax Tribunal or, as the case may be, by the court shall be deemed to be an order passed under the said sub-section (2) for the purposes of this section."*

15. Sub-section (2) of Section 11-B stipulates filing of an application by the assessee before the competent authority. It also postulates that the said authority is required to be satisfied that the whole or any part of the duty of excise and interest, if any, paid on such duty is refundable. The application, as submitted by Mr. Adhyaru, has to be an application in law. Section 11-BB which deals with interest on delayed refund clearly and categorically predicates that if any duty ordered to be refunded under sub-section (2) of Section 11-B is not refunded within three months from the date of receipt of the application under Section (1) of Section 11-B, there shall be paid to the applicant interest at the notified rate from the date immediately after the expiry of three months from the date of receipt of such application till the date of refund of such duty. The significant words are "expiry of three months from the date of receipt of such application". In the instant case, the application was filed on 25 th August, 1999. The said application, needless to emphasise, was preferred under sub-section (2) of Section 11-B. We have been apprised of the circular dated 30th May, 1995. It deals with interest of delayed refund under Section 11-BB. Paragraph 2 of the said circular being relevant is reproduced below:-

"2. Keeping the above in view, the following instructions are being issued regarding refunds claimed under section 11 BB of CE & SA, 1944:-

(a) Refund application must invariably be filed in the office of the Assistant Collector and not with the Range Superintendent.

(b) Immediately on receipt of an application, the same must be scrutinized by an officer, not below the rank of an Inspector for its completeness.

(c) Preliminary scrutiny should be carried out with regard to completeness of the information in the proforma already prescribed, verification of supporting documents to substantiate the refund claims and to evidence payment of duty.

(d) An acknowledgment should be issued immediately after the above mentioned verification which will be an evidence of the receipt of refund application in terms of Section 11-BB. The period of 3 months in terms of Section 11-BB shall be counted from the date following the date of receipt of refund application up to the date of dispatch of cheque for refund.

(e) The Collector should direct the Divisional Assistant Collector to designate an officer by name who will carry out the initial verification and issue the acknowledgment thereof.

(f) Such acknowledgment must be issued within 48 hours of the receipt of the refund application, excluding holidays.

(g) Where the refund application is found to be incomplete a letter shall be issued stating the deficiencies therein the additional information/document required within 48 hours of the receipt. In such cases the letter shall be issued only with the approval of a Superintendent and the period of 3 months, for purpose of Section 11-BB shall count from the date of receipt of all the requisite information or documents.

(h) The Collector may use a cyclostyled Performa for the purpose of intimating the deficiencies or for acknowledgment of the receipt of the refund application.

(i) Check-lists of various documents which should be filed with the refund claims of different types are annexed herewith to be used as guidelines. However, the list may not be treated as exhaustive and any other documents, if required, may be included therein and called from the assessee."

16. Mr. Upadhyay, learned senior counsel has rested his stand on paragraph (g) which provides that where the refund application, is found to be incomplete, a letter shall be issued stating the deficiencies therein within 48 hours. The said circular is issued by the Government of India, Ministry of Finance (Department of Revenue), New Delhi it is binding on the Revenue but the Revenue had not pointed out any deficiency in the application within 48 hours. On the contrary, it had issued a letter on 27th September, 1999. We have already reproduced the said communication. On a studied scrutiny of the said letter, it is quite vivid that the two aspects were mentioned by the Revenue. They relate to the arena whether the assessee has passed on the duty to others; and whether the amount that was deposited was done under protest. The assessee was granted three days time and within a span of three days, i.e., 30 th September,

1999, the same was complied with by stating that the duty had not been passed on by the assessee to any consumer and the amount was deposited under protest. With the said communication, the proceedings commenced so that the competent authority could be satisfied as provided under sub-section (2) of Section 11-B. During that process, a communication was made on 1st December, 1999 to get the order passed by this Court rectified as there was a mistake with regard to the classification. We have already stated that the rectification in the order has no bearing on the determination of interest. No special emphasis can be laid on the said aspect. As is evident, after production of documents, ledgers and other documents, the adjudicating authority passed an order dated 16.11.2000 granting refund.

17. The seminal issue is be whether there has been delay in grant of refund and consequently, whether the respondent-assessee is entitled to interest. Keeping in view the enumerated facts, the submissions canvassed and the provisions referred to, it is necessary to appreciate the principle stated in ***Ranbaxy Laboratories Limited*** (supra). In the said case, the question arose whether the liability of the Revenue to pay interest under Section 11-BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund or on the expiry of the said period from the date on which the order of refund is made. The two-Judge Bench after analyzing the provision has held as follows:-

> *"12. It is manifest from the afore-extracted provisions that Section 11BB of the Act comes into play only after an order for refund has been made under Section 11B of the Act. Section 11BB of the Act lays down that in case any duty paid is found refundable and if the duty is not refunded within a period of three months from the date of receipt of the application to be submitted under sub-section (1) of Section 11B of the Act, then the applicant shall be paid interest at such rate, as may be fixed by the Central Government, on expiry of a period of three months from the date of receipt of the application. The Explanation appearing below Proviso to Section 11BB introduces a deeming fiction that where the order for refund of duty is not made by the Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise but by an Appellate Authority or the Court, then for the purpose of this Section the order made by such higher Appellate Authority or by the Court shall be deemed to be an order made under sub-section (2) of Section 11B of the Act. It is clear that the Explanation has nothing to do with the postponement of the date from which interest becomes payable under Section 11BB of the Act.*
>
> *13. Manifestly, interest under Section 11BB of the Act becomes payable, if on an expiry of a period of three months from the date of receipt of the application for refund, the amount claimed is still not refunded. Thus, the only interpretation of Section 11BB that can be arrived at is that interest under the said Section becomes payable on the expiry of a period of three months from the date of receipt of the application under Sub-section (1) of Section 11B of the Act and that the said Explanation does not have any bearing or connection with the date from which interest under Section 11BB of the Act becomes payable.*
>
> *[Emphasis supplied]*

18. While dealing with the said facet, the Court also referred to circular dated 01.10.2002 issued by the Central Board of Excise and Customs, New Delhi whereby a direction was issued to fix responsibility for not disposing of the refund/rebate claims within three months from the date of receipt of the application. Appreciating the import of the said circular, the Court opined as follows:-

> *"12. Thus, ever since Section 11BB was inserted in the Act with effect from 26 th May 1995, the department has maintained a consistent stand about its*

> *interpretation. Explaining the intent, import and the manner in which it is to be implemented, the Circulars clearly state that the relevant date in this regard is the expiry of three months from the date of receipt of the application under Section 11B(1) of the Act."*

The ultimate conclusion was recorded thus:-

> *"19. In view of the above analysis, our answer to the question formulated in para (1) supra is that the liability of the revenue to pay interest under Section 11BB of the Act commences from the date of expiry of three months from the date of receipt of application for refund under Section 11B(1) of the Act and not on the expiry of the said period from the date on which order of refund is made."*

19. We will be failing in our duty if we do not refer to the larger Bench decision rendered in ***Mafatlal Industries Ltd. & Ors. vs. Union of India & Ors.*** (1997) 5 SCC 536 which has been emphatically relied upon by Mr. Adhyaru, learned senior counsel for the Revenue. He has drawn our attention to paragraphs 83 and 91. Relying on the said paragraphs, it is contended by Mr. Adhyaru that the onus is on the assessee to satisfy the competent authority that he has not passed on the burden of duty to others, for the claim of refund is founded on the said bedrock. The Bench dealing with this facet has expressed thus:-

> *"... Where the petitioner-plaintiff alleges and establishes that he has not passed on the burden of the duty to others, his claim for refund may not be reused. In other words, if he is not able to allege and establish that he has not passed on the burden to others, his claim for refund will be rejected whether such a claim is made in a suit or a writ petition. It is a case of balancing public interest vis-a-vis private interest. Where the petitioner-plaintiff has not himself suffered any loss or prejudice (having passed on the burden of the duty to others), there is no justice or equity in refunding the tax (collected) without the authority of law) to him merely because he paid it to the State. It would be a windfall to him. As against it, by refusing refund, the monies would continue to be with the State and available for public purposes. The money really belongs to a third party - neither to the petitioner/plaintiff nor to the State - and to such third party it must go. But where it cannot be so done, it is better that it is retained by the State. By any standard of reasonableness, it is better that it is retained by the State. By any standard of reasonableness, it is difficult to prefer the petitioner-plaintiff over the State.''*

20. In paragraph 91, this court was dealing with the constitutional validity of Section 11-B. It was contended that there is no reason why the person who becomes entitled to refund of duty, as a result of appeal or courts order, should also be made to apply and satisfy all the requirements of sub-sections (1) and (2) of Section 11-B, when he is entitled to such refund as a matter of right. The said contention was not accepted by the Court and while not accepting the larger Bench stated that:-

> *"... Such a holding would run against the very grain of the entire philosophy underlying the 1991 Amendment. The idea underlying the said provisions is that no refund shall be ordered unless the claimant establishes that he has not passed on the burden to others. Sub-section (3) of the amended Section 11-B is emphatic. It leaves no room for making any exception in the case of refund claims arising as a result of the decision in appeal/reference/writ petition. There is no reason why an exception should be made in favour of such claims which would nullify the provision to a substantial degree. So far as "lack of incentive" argument is concerned, it has no doubt given us a pause; it is certainly a*

substantial plea, but there are adequate answers to it. Firstly, the rule means that only the person who has actually suffered loss or prejudice would fight the levy and apply for refund in case of success. Secondly, in a competitive market economy, as the one we have embarked upon since 1991-92, the manufacturer's self interest lies in producing more and selling it at competitive prices — the urge to grow. A favourable decision does not merely mean refund; it has a beneficial effect for the subsequent period as well. It is incorrect to suggest that the disputes regarding classification, valuation and claims for exemptions are fought only for refund; it is for more substantial reasons, though the prospect of refund is certainly an added attraction. It may, therefore, be not entirely right to say that the prospect of not getting the refund would dissuade the manufacturers from agitating the questions of exigibility, classification, approval of price lists or the benefit of exemption notifications. The disincentive, if any, would not be significant. In this context, it would be relevant to point out that the position was no different under Rule 11, or for that matter Section 11-B, prior to its amendment in 1991. Subrules (3) and (4) of Rule 11 (as it obtained between 6-8-1977 and 17-11-1980) read together indicate that even a claim for refund arising as a result of an appellate or other order of a superior court/authority was within the purview of the said rule though treated differently. The same position continued under Section 11-B, prior to its amendment in 1991. Sub-sections (3) and (4) of this section are in the same terms as sub-rules (3) and (4) of Rule 11; if anything, sub-section (5) was more specific and emphatic. It made the provisions of Section 11-B exhaustive on the question of refund and excluded the jurisdiction of the civil court in respect of all refund claims. Subrule (3) of Rule 11 or sub-section (3) of Section 11-B (prior to 1991) did not say that refund claims arising out of or as a result of the orders of a superior authority or court are outside the purview of Rule 11/Section 11-B. They only dispensed with the requirement of an application by the person concerned which consequentially meant non application of the rule of limitation; otherwise, in all other respects, even such refund claims had to be dealt with under Rule 11/Section 11-B alone. That is the plain meaning of sub-rule (3) of Rule 11 and subsections (3) and (4) of Section 11-B (prior to 1991 Amendment). There is no departure from that position under the amended Section 11-B. All claims for refund, arising in whatever situations (except where the provision under which the duty is levied is declared as unconstitutional), has necessarily to be filed, considered and disposed of only under and in accordance with the relevant provisions relating to refund, as they obtained from time to time. We see no unreasonableness in saying so."

21. As far the said principles are concerned, they are binding on us. But the facts in the case at hand are quite different. It is not a case where the assessee is claiming automatic refund. It is a case that pertains to grant of interest where the refund has been granted. The grievance pertains to delineation by the competent authority in a procrastinated manner. In our considered opinion, the principle laid down in Ranbaxy Laboratories Limited (supra) would apply on all fours to the case at hand. It is obligatory on the part of the Revenue to intimate the assessee to remove the deficiencies in the application within two days and, in any event, if there are still deficiencies, it can proceed with adjudication and reject the application for refund. The adjudicatory process by no stretch of imagination can be carried on beyond three months. It is required to be concluded within three months. The decision in Ranbaxy Laboratories Limited (supra) commends us and we respectfully concur with the same.

22. Tested on the aforesaid premises, we do not perceive any infirmity in the order passed by the High Court and, accordingly, the appeal, being sans substratum, stands dismissed. There shall be no order as to costs.

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 10554 OF 2010

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ELECTRO OPTICS (P) LTD.
Vs
STATE OF TAMIL NADU

SHIVA KIRTI SINGH AND R. BANUMATHI, JJ.

26th February, 2016

HF ▶ Partly Revenue and partly asssessee

Electronic survey machines fall under Entry 14 of Part F of schedule I and are liable to be taxed @16% but penalty is not imposable being bonafide dispute.

ENTRIES IN SCHEDULE – ELECTRONIC GOODS – SURVEY MACHINE – TAX ON SALE OF 'ELECTRONIC SURVEY MACHINE' PAID @3% CONTENDING IT TO FALL UNDER ENTRY 50 OF PART B OF SCHEDULE I – DEMAND RAISED AND PENALTY IMPOSED ALLEGING THAT THE SAID GOODS FALL UNDER ENTRY 14 OF PART F OF SCHEDULE I –DISMISSAL OF APPEALS BY LOWER AUTHORITIES AND HIGH COURT HOLDING THAT ENTRY 50 INCLUDES THOSE ELECTRONIC INSTRUMENTS WHICH ARE NOT SPECIFIED ANYWHERE ELSE – APPEAL BEFORE SUPREME COURT – PART B TO INCLUDE ONLY LEFT OVER ELECTRONIC ITEMS WHICH ARE NOT SPECIFIED ANYWHERE ELSE – ALSO, ENTRY 14 CONSPICUOUSLY MISSES EXCLUSION OF ELECTRONIC VARIETY OF MACHINES AND APPARATUS UNLIKE ITS PRECEDING ENTRIES – ENTRY 14 INTENDS TO INCLUDE ALL VARIETY OF MACHINES , MANUAL OR ELECTRONIC – SAID GOODS TO FALL UNDER ENTRY 14 OF PART F OF SCHEDULE I LIABLE TO BE TAXED @16% -APPEAL DISMISSED- *ENTRY 14 OF PART F OF SCHEDULE I OF TAMIL NADU GENERAL SALES TAX ACT, 1959; ENTRY 50 OF PART B OF SCHEDULE I OF TAMIL NADU GENERAL SALES TAX ACT, 1959*

PENALTY – INCORRECT RETURNS – GOODS WRONGLY CLASSIFIED UNDER ENTRY 50 OF PART B OF SCHEDULE I THEREBY LEADING TO PAYMENT OF TAX AT A MUCH LOWER RATE – DEMAND RAISED AND PENALTY LEVIED FOR FILING WRONG RETURNS CONTENDING GOODS LIABLE TO BE TAXED @16% - PENALTY AMOUNT PARTLY PAID BY APPELLANT -APPEAL BEFORE SUPREME COURT – EXTENSIVE AMENDMENT OF SCHEDULE HAVING TAKEN PLACE PRIOR TO ASSESSMENT YEARS IN QUESTION TAKEN INTO ACCOUNT – ELECTRONIC GOODS SHIFTED UNDER A DIFFERENT CATEGORY CONSEQUENTLY – BONAFIDE BELIEF OF APPELLANT REGARDING CORRECTNESS OF RETURNS FILED BY HIM – RETURNS CONCLUDED TO BE WRONG ONLY AFTER OUTCOME OF LEGAL DISPUTE - PENALTY SET ASIDE IN INTEREST OF JUSTICE – AMOUNT ALREADY PAID TO BE RETAINED BY RESPONDENT AS COSTS OF PROTRACTED LITIGATION – APPEAL ACCEPTED TO THE EXTENT OF SETTING ASIDE BALANCE PENALTY AMOUNT – *S. 12 OF TAMIL NADU GENERAL SALES TAX ACT, 1959*

Facts

The appellant is engaged in sale of electronic goods (survey instruments) imported from other countries. A demand was raised alongwith penalty for the years 1993-94 and 1994-95 as tax @3% was paid by appellant contending it to fall under entry 50 Part B of schedule I. However, the department had contended that the said item fell under Entry 14 part F of Schedule I thereby requiring payment of tax @16%. The appeals were dismissed by authorities below and High court holding that Entry 50 covers electronic instruments other than those specified elsewhere in the schedule and since the said goods were covered under generic term 'survey instruments' in Part F of Entry 14, they will be excluded from Entry 50 of Part B. An appeal is thus filed before Supreme Court.

Held:

1) *Part B of Schedule covers various kinds of goods like agricultural products, vegetable oils, kerosene, aluminium domestic utensils, raw wool etc. all chargeable @ 3%. Entry 50 of Part B is meant to accommodate only such left over electronic system, Apparatus etc which are not specified elsewhere and are therefore chargeable @ 3%. If it is specified elsewhere, they cannot be included under Entry 50.*

2) *Moreover, in the preceding four entries to entry 14, there is specific exclusion of electronic variety of machines. On the other hand, in entry 14 such exclusion of electronic variety of any type of machine such as survey machine is conspicuously missing which shows that it is intended to include machines of all varities , be they manual or electronic. Therefore, electronic survey instruments are included in entry 14 in Part F of Schedule.*

Regarding imposition of penalty, it is submitted that as all earlier schedules were rewritten with amendment in year 1993 and most electronic goods were brought under Part B, a misunderstanding arose as to whether the goods in question would be covered by Entry 50 of Part B or not. Considering this, it is found that the return submitted was on account of bonafide belief of correctness of appellant's stand regarding lower rate of tax. After outcome of legal dispute only the authorities can hold that the returns were in correct. Therefore, it is not proper and just to hold appellant guilty of submitting wrong return so as to attract penalty. The balance amount of penalty is set aside. The amount already paid shall be retained by respondents as cost of protracted litigation. Appeals to challenge assessment orders are dismissed. Appeal relating to penalty is allowed to the extent that balance amount shall not be released.

Case distinguished:

- *BPL Ltd. v. State of Andhra Pradesh reported in (2001) 2 SCC 139*

Cases referred:

- *Hindustan Steel Ltd. v. State of Orissa, (1969) 2 SCC 627*
- *Commissioner of Sales Tax, Uttar Pradesh v. Sanjiv Fabrics, (2010) 9 SCC 630*

Present: For Appellant(s) Mr. Subrat Birla, Advocate
Mr. S.C. Birla, AOR

For Respondent(s) Mr. B. Balaji, Advocate
Mr. Muthuval Pakani, Advocate

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SHIVA KIRTI SINGH, J.

1. Common judgment and order of the High Court of Judicature at Madras dated 29.09.2009 in Tax Case Nos.1834 of 2006, 2307 of 2008 and Writ Petition No.18770 of 2000 is

under challenge in these appeals. The High Court has rejected the case of the appellant assessee in respect of Assessment Years 1993-94 and 1994-95 and as a consequence also rejected the challenge to the penalty and thereby upheld order of Sales Tax Appellate Tribunal which arose out of orders under Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as 'the Act') passed by the original authority as well as appellate authority, all against the appellant.

2. For both the assessment years the dispute is confined to an issue of law relating to classification of the goods sold by the appellant. According to the appellant it is engaged in the sale of electronic goods (survey instruments) imported from other countries and such goods should rightfully fall within Entry 50, Part B of Schedule I of the Act attracting rate of 3%. On the other hand the authorities have taken the stand that survey instruments, whether electronic or otherwise, are covered by Entry 14, Part F of Schedule I, chargeable @ 16%. Since appellant's claim was not accepted by the Commercial Tax Officer who assessed the appellant at 16% leading to demand of tax as well as penalty, the appellant preferred appeal before the Appellate Commissioner. On being unsuccessful, the appellant preferred further appeal before the Tribunal and then the matter reached the High Court leading to the impugned order under appeal. The two relevant entries, i.e., Entry 50 of Part B and Entry 14 of Part F of Schedule I are as follows:

"Part B

Sl. No.	Description of Goods	Point of levy	Rate of tax
50	Electronic systems, instruments, apparatus, appliances and other electronic goods (other than those specified elsewhere in the Schedule) but including electronic cash registering, indexing, card punching, franking, addressing machines, and computers of analog and digital varieties, one record units, word processor and other electronic goods and parts and accessories of all such goods	At the point of first sale in the State	3%

Part F

Sl. No.	Description of Goods	Point of levy	Rate of tax
14	Binoculars, monoculars, opera glasses, other optical telescope, astronomical instruments, microscopes, binocular microscopes, magnifying glasses, diffraction apparatus and mountings therefor including theodolite, survey instruments and optical lenses parts and accessories thereof	At the point of first sale in the State	16%

3. There is no difficulty in accepting the consistent finding of the authorities based upon appellant's own declaration in respect of goods which were imported and declared before the customs authorities as survey instruments, that the goods are covered by the generic expression 'survey instruments'. The main controversy is whether on account of being electronic survey instruments the goods would be out of Entry 14 so as to fall under Entry 50. The High Court

and all the authorities have taken a consistent view that Entry 50 itself clarifies that it covers all electronic instruments, apparatus, other than those specified elsewhere in the Schedule and since the goods in question are specified under the generic term 'survey instruments' in Part F Entry 14, they will stand excluded from Entry 50 of Part B.

4. We have heard learned counsel appearing for the parties at length. In order to persuade us to take a different view than that of the High Court and the Authorities, learned counsel for the appellant reiterated the submissions advanced before the High Court and further highlighted some entries in Part - B of Schedule I such as Entries 38 to 42 and pointed out that these entries, all providing for rate of tax at 3% use the word "electronic" in all the entries before various machines such as duplicating machines, teleprinters, typewriters, tabulating/calculating machines and clocks/time pieces. The submission is that after enumerating such electronic machines in the various entries noted above, the policy was to charge same 3% rate of tax for all residuary electronic system, apparatus and other electronic goods and if any other meaning is given by placing reliance upon words used in Entry 50, especially those in parenthesis - "other than those specified elsewhere in the Schedule" then there would be no rationale for using the word "electronic" to qualify duplicating machines, teleprinters etc. covered by Entries 38 to 42. The submission lacks merits. Part-B of the Schedule covers various kinds of goods such as agricultural products, vegetable oils, kerosene, aluminium domestic utensils, raw wool, hosiery goods, gold and silver articles, cycles, tractors, different electronic items, television sets, gramophones, all chargeable at the rate of 3%. In this background, Entry 50 of Part-B is meant to accommodate only such left over electronic system, apparatus etc. which are not specified elsewhere in the Schedule and are therefore chargeable at the rate of 3%. Clearly, if specified elsewhere and chargeable at a different rate, they cannot be included under Entry 50. This conclusion is further strengthened by a look at some of the entries in Part-F, just preceding Entry 14. Entries 10, 11, 12 and 13 cover goods chargeable at the rate of 16%, such as typewriters, teleprinters, tabulating, calculating machines and duplicating machines etc. In all these four entries there is a specific exclusion of electronic variety of these machines. On the other hand in relevant Entry no. 14 such exclusion of electronic variety of any of the machines and apparatus such as survey instruments is conspicuously missing. Clearly the intended effect is deliberate so as to include binoculars, monoculars, survey instruments etc. of all varieties, be they manual or electronic. Had the intention been different, in Entry 14 also exclusion of 'electronic' survey instruments could have been inserted and specified as in Entry Nos. 10 to 13 in respect of other different machines or instruments. Hence, the conclusion is obvious that even electronic survey instruments are covered by Entry No. 14 in Part-F of the First Schedule of the Act.

5. Learned Counsel for the appellant has placed reliance upon judgment in the case of ***M/s BPL Ltd. v. State of Andhra Pradesh*** reported in (2001) 2 SCC 139. This judgment has been elaborately discussed by the High Court and held to be not applicable to the facts of this case. We have also considered the facts and law involved in the said judgment and we agree with the conclusion of the High Court. In that case the dispute under the Andhra Pradesh General Sales Tax Act, 1957 was on the interpretation of definition of the term "Electronic Goods". On the basis of the definition it was held that the goods "automatic washing machine" was covered by the term electronic goods and not under the other item i.e, Entry 38 (IV) which related to electrical items including electrical washing machine. The wordings and expressions used and interpreted in that case were entirely different and are of no help to the appellant in the present case.

6. As a result, the Civil Appeals arising out of Tax Case Nos. 1834 of 2006 and 2307 of 2008 must fail. However, the Appeal arising out from Writ Petition containing challenge to imposition of penalty deserves further consideration in the light of submissions to the effect that appellant has been in same business since 1985 and no controversy or dispute of this nature

ever arose except for the two assessment years under consideration. It has been pointed out that all earlier Schedules were re-written on account of extensive amendments in the year 1993 and since most of the electronic items were brought under Part-B, a genuine controversy or misunderstanding arose as to whether the goods in question would be covered by Entry No. 50 of Part B or not. Genuinely believing that it is so covered, the appellant contested the matter and in the process suffered penalty for both the assessment years in total amounting to Rs. 15.48 lakhs approximately. Out of this, appellant claims to have paid approximately Rs. 3.74 lakhs but still about Rs. 11.73 lakhs remain as balance payable towards penalty. It was pointed out that considering the merit of appellant's case this Court has stayed realization of penalty. Hence, it has been submitted that in the interest of justice the balance penalty be set aside on account of bona fide belief on the part of the appellant that it was liable to pay only at the rate of 3% and therefore there was absolute lack of any mens rea in not paying in time the tax assessed by the authorities. It was also pointed out that against the total tax demand of Rs. 16.39 lakhs approximately the appellant has by now paid about Rs. 16.18 lakhs.

7. Learned counsel for the appellant has supported the submissions against imposition of penalty by placing reliance upon the following judgments:-

(1) ***M/s Hindustan Steel Ltd. v. State of Orissa,*** (1969) 2 SCC 627

(2) ***Commissioner of Sales Tax, Uttar Pradesh v. Sanjiv Fabrics***, (2010) 9 SCC 630

In **M/s Hindustan Steel Ltd.** in paragraph 8 it was held that although the Statute permitted imposition of penalty but still the authority concerned had the judicial discretion to consider whether penalty should be imposed for failure to perform a statutory obligation. In such a situation the discretion has to be exercised judicially after consideration of all the relevant circumstances. Even if minimum penalty is prescribed, the authority may be justified in refusing to impose any penalty in some peculiar situations, such as, where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the Statute. In **Sanjiv Fabrics** it was reiterated that there is a rebuttable presumption that mens rea is essential ingredient in every offence. For examining whether mens rea is essential for an offence created under a tax Statute, three factors require particular attention, (i) the object and scheme of the Statute; (ii) the language of the section; and (iii) the nature of penalty. Since the relevant expression for constituting the offence in that case was - "falsely represents", the Court held that the offence attracting penalty would be established only where it is proved that the dealer has acted deliberately in defiance of law and is guilty of contumacious or dishonest conduct.

8. In the present case penalty is imposable by the assessing authority under Section 12 of the Act, both, for failure to submit return or for submission of incorrect or incomplete return. Appellant, in the eyes of the Authorities has submitted incorrect return leading to imposition of penalty in accordance with relevant clauses of Section 12. Considering that the situation of dispute arose on account of amendments in the Schedule in 1993 and was confined only to immediate two assessment years and also considering that the appellant had a good arguable case even in this Court which had stayed the penalty orders, we find that the return submitted by the appellant was on account of bona fide belief in correctness of appellant's stand that the goods in question were chargeable only at the rate of 3%. In our considered view, in the facts of the case it would not be proper to hold that the appellant had submitted a return which was incorrect to its knowledge or belief. Only after the outcome of the legal dispute by virtue of this judgment, the authorities can be justified in holding henceforth that the return was incorrect. In such a situation it would not be just and proper exercise of discretion to hold the appellant guilty of submitting incorrect return so as to attract penalty for the same. Hence, in the peculiar facts of the case and in the interest of justice, we set aside the balance dues of penalty.

However, the penalty already paid by the appellant shall not be refunded and the same may be retained by the respondent authorities by way of cost of this protracted litigation.

9. In the result, the Civil Appeal Nos. 10554 and 10562 of 2010 containing challenge to assessments orders are dismissed. The remaining appeal Civil Appeal No. 10563 of 2010 relating to penalty is allowed to the extent that balance amount of penalty shall not be realised from the appellant. There shall be no order as to further costs

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PUNJAB & HARYANA HIGH COURT

VATAP 134 OF 2012

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BALAJI TRADING COMPANY
Vs
STATE OF HARYANA AND ANOTHER

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

27th January, 2016

HF ▶ Appellant- Dealer

Mere statement of driver is not sufficient to conclude attempt to evade tax when other material on record is produced to prove genuineness of transaction.

PENALTY – CHECK POST/ROAD SIDE CHECKING- ATTEMPT TO EVADE TAX – GOODS WERE LOADED IN VEHICLE FOR TRANSIT – VEHICLE CHECKED BY OFFICER WHILE WAITING ON ROADSIDE FOR DOCUMENTS - STATEMENT OF DRIVER RECORDED – PENALTY IMPOSED – DISMISSAL OF APPEAL BY TRIBUNAL ON THE GROUND THAT STATEMENT OF DRIVER WAS SUFFICIENT TO PROVE ATTEMPT TO EVADE TAX – APPEAL BEFORE HIGH COURT – GOODS PURCHASED FROM GOVERNMENT ORGANIZATION AND PAYMENT MADE THROUGH BANK DRAFTS – ENTIRE MATERIAL ON RECORD NOT TAKEN INTO ACCOUNT BY TRIBUNAL – MERE STATEMENT OF DRIVER NOT ENOUGH TO CONCLUDE ATTEMPT TO EVADE TAX – MATTER REMITTED TO TRIBUNAL FOR FRESH DECISION AFTER HEARING APPELLANT – *S. 31(8) OF HVAT ACT, 2003*

Facts

The appellant is engaged in sale and purchase of foodgrains. It had purchased 340 bags of foodgrains from NAFED for which payment was made through bank drafts. All goods were loaded in vehicle. When the vehicle was waiting on roadside for carrying the goods, the same were checked and detained. Penalty was imposed on the statement of driver. The documents accompanying the goods were submitted i.e. invoice, GR, ST 38 and way bill. First appeal was dismissed. On appeal before Tribunal, the appellant produced the ledger account. However, the Tribunal also upheld the order of penalty holding that statement of driver was sufficient to prove attempt to evade tax. Hence, an appeal is filed before the High court.

Held:

The Tribunal has adjudicated primarily observing that no evidence was produced by the appellant to controvert the orders of the AETO and JETC. Also, there was nothing on record to show that the driver was forced to make a particular statement.

The appellant has relied on the invoice and challan outward to show that the transaction was with the government organization. The Tribunal ought to have examined the entire material on record rather than merely relying on the statement of driver. Thus, appeals are allowed and matter is remanded to Tribunal to pass fresh orders.

Case referred:

- *Krish Pack Industries V state of Punjab(2006) 28 PHT 27 (P&H)*

Present: Mr. Sandeep Goyal, Advocate for the appellant.
Ms. Mamta Singla Tawar, DAG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing VATAP Nos. 134 and 148 of 2012 as it was not disputed by learned counsel for the parties that the issues involved therein are identical. For brevity, the facts are being taken from VATAP No. 134 of 2012.

2. VATAP No. 134 of 2012 has been filed by the assessee under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the order dated 11.4.2012 (Annexure A-11) passed by the Haryana Tax Tribunal, Haryana Punjab (hereinafter referred to as "the Tribunal"). The appeal was admitted by this Court vide order dated 28.1.2014 for determination of the following substantial questions of law:-

1. *Whether the goods in question purchased from NAFED, a Govt. of India undertaking would have remained unaccounted and there could have been an attempt to evade the tax on the part of the appellant where the payments are made in advance through bank channels?*
2. *Whether on the facts and circumstances of the case, the ld. Tribunal was justified in upholding the order of Ld. AETO on the basis on the statement of driver in the light of judgment of Krish Pack 28 PHT 27 of this Court?*
3. *Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in holding that the documents produced by the appellant were manipulated even though no enquiry had been conducted by AETO about the genuineness of the documents as held by the Tribunal?*

3. VATAP No. 148 of 2012 has been admitted for determination of questions No.1 to 3 as reproduced above and also for questions No.4 and 5 which are as under:-

1. *Whether on the facts and circumstances of the case, the finding recorded by the Ld. Tribunal are perverse in as much as the same are contrary to the facts of the case?*
2. *Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in upholding the penalty levied under Section 37(6) of the HGST Act even though the transaction in question would be an interstate sale as recorded by the AETO for which the provisions of CST Act have not been invoked?*

4. The appellant-dealer is engaged in the business of sale and purchase of foodgrains on intra-state as well as inter-state basis. It regularly makes purchases of mustard seed from National Agricultural Co-operative Marketing Federation of India Ltd. (NAFED), a Government of India Undertaking. All the payments made to NAFED and received from the customers were through banking channels. The appellant made purchase of consignment of goods containing 340 bags from NAFED vide Delivery Order No. 1061 for which the payment was made in advance through bank drafts. The delivery was made by NAFED under gatepass dated 28.1.2003 (Annexure A-1). After the goods were being loaded in vehicle No. HR-47A-1477, the same were weighed from the nearby Dharamkanta vide weighment slip dated

5.2.2004 (Annexure A-2). Since the goods were sold on interstate basis to Calcutta buyers, the appellant was required to issue an invoice and Form ST-38 which could have been issued after the receipt of invoice from the NAFED. The NAFED had issued the invoices at 8.20 PM on 28.1.2003 (Annexure A-3). When the said vehicle was waiting on the roadside for the documents required for carrying the goods, the same were checked and detained by the Assistant Excise and Taxation Officer (AETO). Accordingly, a show cause notice dated 28.1.2003 (Annexure A-4) was issued to the appellant. In response thereto, the appellant made written submissions dated 27.2.2003 (Annexure A-5). The AETO vide order dated 14.3.2003 (Annexure A-6) imposed a penalty of Rs. 1,25,000/- holding that there was an attempt to evade tax by relying on the statement of the driver. The appellant submitted the documents (Annexure P-7 Colly) accompanying the goods, i.e. invoice, GR, ST 38 and way bill. Against the order, Annexure A-6, the appellant filed an appeal before the Joint Excise and Taxation Commissioner (Appeals) [JETC(A)] who vide order dated 25.11.2003 (Annexure A-8) upheld the order of the AETO and dismissed the appeal. Being dissatisfied, the appellant filed an appeal along with stay application (Annexure P-9 Colly) before the Tribunal. The appellant also produced the ledger account (Annexure A-10) before the Tribunal. However, the Tribunal vide order dated 11.4.2012 (Annexure A-11) dismissed the appeal holding that the statement of the driver was sufficient to prove that there was an attempt to evade tax. Hence, the present appeals.

5. Learned counsel for the appellant submitted that the Tribunal had upheld the orders of AETO and JETC(A) primarily on the ground that the statement of the driver which was recorded by the authorities at the time of checking of goods pointed that an attempt to evade tax was there. Relying upon the judgment of this Court in **Krish Pack Industries v. State of Punjab (2006) 28 PHT 27 (P&H)**, the action of the authorities imposing the penalty only on the basis of the statement of the driver was assailed. It was urged by the learned counsel for the appellant-dealer that the transaction had taken place with the NAFED which is a Government organization and reference was made to Annexure A-3 appended with the appeal to show the bonafide of the transaction.

6. On the other hand, learned State counsel supported the orders passed by the authorities below and prayed for dismissal of the appeals.

7. The Tribunal had adjudicated primarily by observing that no evidence was produced by the appellant to controvert the orders of the AETO and JETC(A). Further, the Tribunal noticed that there was nothing on record to show that the driver was forced to make a particular statement which cannot be brushed aside and disbelieved. It was recorded from these facts and circumstances that there was an attempt to evade the tax on the part of the appellant.

8. The appellant relies upon Annexure A-3, i.e., the invoice and challan outward to substantiate that the transaction with the Government organization NAFED was bonafide and genuine. The Tribunal has not looked into the entire documents to record a finding that any attempt of evasion was made or that the documents were not genuine and had merely gone by the alleged admission of the driver. In our opinion, the order of the Tribunal cannot be sustained as the Tribunal was required to examine the entire material on record before concluding whether there was any attempt to evade tax on the part of the dealer.

9. In view of the above, the appeals are allowed and the impugned orders passed by the Tribunal are set aside. The matter is remanded back to the Tribunal with a direction to pass a fresh and speaking order in accordance with law after affording an opportunity of hearing to the appellant.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 1 OF 2015

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SINGLA BUILDERS PROMOTERS LTD
Vs
STATE OF PUNJAB

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

21st January, 2016

HF ▶ Appellant

Appellate authority has the power to waive off the condition of predeposit for entertaining the appeal in appropriate cases.

PREDEPOSIT – WAIVER OF - APPELLATE AUTHORITY- POWER TO WAIVE OFF – DEMAND RAISED – APPEAL FILED BEFORE FIRST APPELLATE AUTHORITY ALONGWITH PRAYER FOR WAIVER OF PREDEPOSIT – DISMISSAL OF – DISMISSAL OF APPEAL BY TRIBUNAL – APPEAL FILED BEFORE HIGH COURT – HELD : RELYING ON A RECENT JUDGMENT PASSED BY THE SAME HIGH COURT IMPUGNED ORDERS ARE SET ASIDE – MATTER TO BE DECIDED BY DETC CONSIDERING THE JUDGMENT SO PASSED WHEREBY IT IS HELD THAT APPELLATE AUTHORITY HAS POWER TO WAIVE OF CONDITION OF PREDEPOSIT UNDER GIVEN CIRCUMSTANCES AS PROVISION OF 62(5) IS DIRECTORY IN NATURE- APPEAL DISPOSED OF – *S. 62(5) OF PVAT ACT*

Facts

A demand was raised for the assessment year 2009-10. An appeal was filed before the DETC alongwith an application for admission without predeposit of 25% of additional demand which was dismissed for want of predeposit. An appeal was filed before Tribunal praying for grant of stay which was also dismissed. Hence an appeal is filed before the High court.

Held:

In view of Punjab State Power Corporation Ltd. V/s State of Punjab and others whereby it has been held that the appellate authority is empowered to partially or completely waive the condition of predeposit in the given circumstances, the orders passed by the lower authorities are set aside. Thus, the DETC would decide the application for waiver of predeposit in terms of judgment passed in the case of Punjab State Power Corporation Ltd.

Case applied:

- *Punjab State Power Corporation Ltd V/s State of Punjab and others (CWP No. 26920 of 2013))*

Present: Mr. Sandeep Goyal, Advocate for the appellant-assessee.
Ms. Radhika Suri, Addl. A.G. Punjab with
Mr. D.S. Mann, AAG, Punjab.

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AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the appellant-assessee under section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") against the order dated 18.11.2014, Annexure A.14 passed by the Value Added Tax Tribunal, Punjab, (in short, "the Tribunal") in Appeal No.78 of 2014 for the assessment year 2009-10, claiming following substantial questions of law:-

> *"a) Whether under the facts and circumstances of the case, the condition of pre-deposit under section 62(5) of the PVAT is unreasonable, arbitrary, discriminatory and ultra vires Articles 14 and 19(1)(g) of the Constitution of India?*
>
> *b) Whether on the true and correct interpretation of Section 68 (PVAT) read with Section 100 of CPC, the High Court can exercise the jurisdiction for waiving the condition of pre-deposit under section 62(5) of the PVAT?"*

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant- company is engaged in the business of developing the land purchased from various authorities and individuals. It is constructing residential apartments and commercial buildings with the purpose of selling them for consideration to interested persons and continue to be the owner of the said property till the execution of registered sale deed as per the terms of the agreement to sell. For the assessment year 2010-11, assessment order under section 29(2) of the PVAT Act was passed on 24.1.2014 raising demand of Rs.80,67,170/- after allowing the benefit of input tax credit and tax paid. A penalty under Section 56 of the PVAT Act of Rs.1,61,34,339/- was levied alongwith interest under section 32 (3) of the PVAT Act for Rs.56,87,354/-. The said order was challenged before the Deputy Excise and Taxation Commissioner (Appeals) [DETC(A)] by the assessee in appeal. For the assessment year 2012¬-13, the provisional assessment under section 30 of the PVAT Act was passed on 28.5.2013, Annexure A.1 which was challenged before the DETC(A). Vide order dated 1.7.2013, Annexure A.2, the DETC(A) dismissed the appeal on the ground of non-fulfillment of the provisions of Section 62(5) of the PVAT Act i.e. pre-deposit of 25% of the additional demand before institution of the appeal. The assessee filed appeal before the Tribunal. Vide order dated 8.8.2013, Annexure A.3, the Tribunal dismissed the appeal with the direction to deposit 25% of additional tax demand. The appellant challenged the said order before this court through CWP No.22437 of 2013 wherein notice of motion alongwith notice regarding stay was issued. In the meantime, the respondent passed another assessment order dated 23.10.2013, Annexure A.5 creating additional demand of Rs.2,04,85,306/- which was challenged in appeal before DETC(A) alongwith application for admission of appeal without pre-deposit of 25% of additional demand. The DETC(A) dismissed the appeal vide order dated 8.1.2014, Annexure A.8. On 24.1.2014, assessment order for the assessment year 2010-11 was made creating demand of Rs. 2,98,88,864/- comprising of Rs.80,67,170/- as tax, Rs.1,61,34,339/- as penalty and Rs.56,87,354/- as interest. According to the appellant on 31.1.2014, the Apex Court in ***Dishnet Wireless Limited vs. The Commercial Tax Officer and another***, WP(C) No.1055 of 2013 granted stay of operation and implementation of sub section (5) of Section 62 of the PVAT Act. Vide order dated 7.2.2014, Annexure A.11 in CWP No.2343 of 2014 filed by the appellant, stay and interim order was granted in the same terms as per the order of the Apex Court. On 17.2.2014, the order dated 8.1.2014, Annexure A.12, passed by the DETC(A) was challenged in appeal by the appellant alongwith prayer for grant of stay before the Tribunal. Vide order dated 18.11.2014, Annexure A.14, the Tribunal dismissed the appeal. Hence the instant appeal by the appellant-assessee.

3. We have heard learned counsel for the parties.

4. It is not disputed by the learned counsel for the parties that the issue involved in this appeal stands decided by this Court in CWP No.26920 of 2013 (Punjab State Power Corporation Limited vs. The State of Punjab and Others) vide order dated 23.12.2015, wherein after considering the relevant statutory provisions and the case law on the point, following conclusions were drawn:-

> *"33. It is, thus, concluded that even when no express power has been conferred on the first appellate authority to pass an order of interim injunction/protection, in our opinion, by necessary implication and intendment in view of various pronouncements and legal proposition expounded above and in the interest of justice, it would essentially be held that the power to grant interim injunction/protection is embedded in Section 62(5) of the PVAT Act. Instead of rushing to the High Court under Article 226 of the Constitution of India, the grievance can be remedied at the stage of first appellate authority. As a sequel, it would follow that the provisions of Section 62(5) of the PVAT Act are directory in nature meaning thereby that the first appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts and circumstances. It is not to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. Only when a strong prima facie case is made out will the first appellate authority consider whether to grant interim protection/injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the first appellate authority is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of the appeal before it. Therefore, the power to grant interim protection/injunction by the first appellate authority in appropriate cases in case of undue hardship is legal and valid. As a result, question (c) posed is answered accordingly.*
>
> *34. In some of the petitions, the petitioners had filed an appeal without filing an application for interim injunction/protection which are still pending whereas in other petitions, the first appellate authority had dismissed the appeal for want of pre-deposit and further appeal has also been dismissed by the Tribunal on the same ground without touching the merits of the controversy. Where the appeals are pending without an application for interim injunction/protection before the first appellate authority, the petitioner may file an application for interim injunction/protection before the appeals are taken up for hearing by first appellate authority and in case such an application is filed, the same shall be decided by the said authority keeping in view all the legal principles enunciated hereinbefore. The other cases where the first appellate authority had dismissed the appeal for want of pre-deposit without touching merits of the controversy or further appeal has been dismissed by the Tribunal, the said orders are set aside and the matter is remitted to the first appellate authority where the petitioners may file an application for interim injunction/protection before the appeals are taken up for hearing by the first appellate authority who shall adjudicate the application for grant of interim injunction/protection to the petitioner in the light of the observations made above. All the cases stand disposed of in the above terms."*

5. In view of the above, the orders dated 8.1.2014 and 18.11.2014 and 18.11.2014, Annexures A.8 and Annexure A.14 passed by the DETC(A) and the Tribunal respectively are set aside. The first appellate court i.e. DETC(A) shall decide the application dated 27.11.2013,

Annexure A.6 filed by the appellant-assessee under section 62(5) of the PVAT Act for waiver of deposit of 25% of amount in accordance with law in terms of the judgment dated 23.12.2015 in Punjab State Power Corporation Limited's case (supra).

6. The appeal stands disposed of.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 2925 OF 2016

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S.M. CONSTRUCTIONS
Vs
STATE OF PUNJAB

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

15th February, 2016

HF ▶ Directions issued

Department is directed to take decision on the representation made by the assessee for issuance of Certificate of No Deduction of tax at source on the representation made by it.

TAX DEDUCTION AT SOURCE – APPLICATION FOR ISSUING CERTIFICATE FOR NO DEDUCTION OF TAX AT SOURCE BY THE CONTRACTEE – NO ACTION TAKEN BY THE DEPARTMENT – WRIT FILED – DIRECTION GIVEN FOR DECISION OF REPRESENTATION AFTER GRANTING OPPORTUNITY WITHIN ONE MONTH – WRIT PETITION DISPOSED OF – *S. 27 OF PVAT ACT, 2005*

The petitioner has approached the High Court for seeking mandamus to direct the Department to issue Certificate of No Deduction and for restraining from initiating any action on various clients of the petitioner for not effecting TDS in view of judgment of Punjab and Haryana High Court. Further, mandamus has been sought to direct the respondents to refund the excess TDS.

The petitioner has already moved a representation dated 18.1.2016 but no action has been taken thereon. Accordingly, a direction is issued to Respondent No. 3 to take a decision on the representation within a period of one month after affording an opportunity of hearing to the petitioner.

Case referred:

- *Larsen and Toubro Limited v. State of Haryana and others CWP No. 14797 of 2010*

Present: Mr. Aman Bansal, Advocate for the petitioner.

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AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to issue the certificate of no deduction and for restraining from initiating any action on various clients of the petitioner for not effecting TDS in view of the judgment dated 26.10.2010 (Annexure P-2) passed by this Court. Further, a writ of mandamus has been sought directing the respondents to refund the excess TDS.

2. The petitioner is engaged in construction business and undertakes execution of works, contracts for different persons including Public Sector Undertaking, State and Central Government Departments. One letter of intent dated 2.12.2015 (Annexure P-1) has been issued in the name of the petitioner by Adani Logistic Limited, Gurgaon for the civil works for Multi Model Logistic Park at Killaraipur, Ludhiana. The petitioner is duly registered with the respondent-department under the Value Added Tax Act, 2005 (in short "the Act") having Registration No. 03812113480. This Court in **CWP No. 14797 of 2010 (Larsen and Toubro Limited v. State of Haryana and others)** decided on 26.10.2010 (Annexure P-2) wherein validity of statutory provisions of sales tax law in Punjab and Haryana for deduction of tax at source out of payment made to contractors for execution of works contracts involving transfer of property in goods at specified rate was challenged, had held Section 27 of the Act and Section 24 of the Haryana Value Added Tax Act, 2003 as ultra vires as it did not provide any mechanism for the exclusion of labour component or interstate sales or sales outside the State or sales in the course of imports from the value of works contract while deduction of tax, but instead of striking down the provisions, this Court had decided on the proposal of the petitioners that the said Sections would be applicable only to the taxable turnover, i.e. after deducting service component and turnover relating to sales outside State in the course of inter-state sales or in the course of import. The had filed its returns on time as is discernible from the refund vouchers (Annexure P-3). The petitioner requested the concerned officers for issuance of certificate of no deduction to contractee, but to no effect. Thereafter, the petitioner sent a representation dated 18.1.2016 (Annexure P-4) to respondent No.3, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has moved a representation dated 18.1.2016 (Annexure P-4) to respondent No.3, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.3 to take a decision on the representation dated 18.1.2016 (Annexure P-4), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 2184 OF 2015

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AMBUJA CEMENTS LTD.
Vs
STATE OF PUNJAB

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

21st January, 2016

HF ▶ Appellant

Tribunal has discretion to waive the deposit of 25% under Section 65(3) in the Revision filed before it.

REVISION – ASSESSMENT FOR THE YEAR 2006-07 FRAMED – CASE TAKEN UP FOR REVISION AND ADDITIONAL DEMAND RAISED – REVISION FILED BEFORE THE TRIBUNAL – VIRES OF SECTION 65(3) CHALLENGED BEFORE THE HIGH COURT REQUIRING PRE-DEPOSIT OF 25% OF TAX, INTEREST AND PENALTY AS A CONDITION PRECEDENT FOR HEARING OF REVISION – MATTER ALREADY CONSIDERED IN THE CASE OF PSPCL VS STATE OF PUNJAB – ACCORDINGLY SECTION 65(3) OF PUNJAB VAT ACT IS HELD TO BE INTRA-VIRES – TRIBUNAL DIRECTED TO DECIDE THE MATTER IN ACCORDANCE WITH LAW IN TERMS OF JUDGMENT IN PSPCL CASE - PETITION DISPOSED OF – *S. 65(3) OF PUNJAB VAT ACT, 2005*

The Assessment of the petitioner for the year 2006-07 was framed by the Assessing Authority – The matter was taken up for revision by the revisional authority in exercise of its powers under Section 65. The said proceedings resulted into raising of additional demand of Rs. 5,13,09,680/-. A revision is filed before the Tribunal against the revisional order u/s 65. A prayer is also made for waiver of pre-deposit which is mandated under Section 65(3) of Punjab VAT Act.

The matter has already been considered in the case of PSPCL vs State of Punjab (CWP No. 26920 of 2013) dated 23.12.2015. The provisions of Section 62(5) have been held to be intra-vires but it has been held that the appellate authority has the discretion of waiving the requirement of pre-deposit in deserving cases. On the similar analogy, provisions of Section 65(3) of Punjab VAT Act are held to be intra-vires, However, the Tribunal shall decide the matter in accordance with law in terms of judgment in the case of PSPCL (supra.)

Present: Mr. Sandeep Goyal, Advocate for the petitioner-assessee.

Ms.Radhika Suri, Addl.A.G.Punjab with Mr. D.S.Mann, AAG, Punjab.

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AJAY KUMAR MITTAL, J.

1. Prayer in this petition is for declaring the provisions of Section 65(3) of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") to be ultra vires the Constitution of India being violative of Article 14 as it provides mandatory deposit of 25% tax, interest and penalty as a condition precedent for hearing of revision without giving any discretion to the revisional authority to waive such deposit. Further prayer has been made for quashing the demand notice dated 2.2.2015, Annexure P.10 directing the petitioner to deposit an amount of Rs. 5,13,09,680/-.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a company duly registered under the provisions of the Companies Act, 1956. It had established two cement grinding units in the State of Punjab at Ropar and Bathinda in the years 1994 and 2001 respectively. The petitioner had also expanded its manufacturing facilities at the Ropar unit in the year 2004. Assessment for the year 2006-07 was carried out on the basis of returns filed by it showing a total turnover of Rs. 964,36,04,370/-. The tax payable under the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act") amounting to Rs. 94,51,58,556/- and Rs. 8,08,58,339/- under the Central Sales Tax Act, 1956 (in short, "the CST Act") was exempt from payment of tax in view of the provisions of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 which was deducted out of the eligible amount available to the petitioner. In addition, an amount of Rs. 10,26,19,108/- was also deducted on account of tax calculated on stock transfers and deducted from exemption limit which was otherwise not deductible. The order dated 20.11.2009, Annexure P.1 was passed by the assessing authority under Section 29 of the PVAT Act. Subsequent thereto, the period of limitation for framing of assessment had expired on 20.11.2010 in terms of section 29(4) of the PVAT Act and the period for retention of account books and other documents for the year in question had also expired on 31.3.2013 in terms of Section 44 of the PVAT Act according to which the assessee was to maintain the account books only for the period of six years from the end of the financial year. On the expiry of the said period, the petitioner was of the belief that the entire proceedings had become final and no further action would be required in respect of assessment year 2006-07. On 7.10.2014, the petitioner received a notice whereby respondent No.2 initiated revisional proceedings under Section 65 of the PVAT Act read with Section 9(2) of the CST Act for the assessment year in question observing that there was huge difference of sale price per bag of cement for inter state sale and value of per bag of cement for stock transfer and therefore the case was taken up for revision under section 65 of the PVAT Act. The petitioner filed written statement on 10.11.2014 inter alia pleading that initiation of proceedings itself was bad as the same was barred by limitation. On 14.11.2014, the petitioner received another notice. The petitioner was asked to show cause as to why penalty and interest be not imposed. The petitioner filed reply dated 18.11.2014 and the same day the order was reserved. On 21.11.2014, the petitioner filed Civil Writ Petition No.23873 of 2014 to challenge the revisional proceedings. Vide order dated 21.11.2014, Annexure P.2 this Court declined to interfere at that stage but granted liberty to raise all the pleas in appropriate proceedings in case any adverse order was passed. On 30.12.2014, the petitioner was served with order dated 19.11.2014, Annexure P.3 revising the order passed by the Assessing authority raising huge demand on the enhanced value of stock transfer. Aggrieved by the order, the petitioner filed CWP No.1002 of 2015 which was disposed of by this Court vide order dated 21.1.2015, Annexure P.4 relegating the petitioner to the remedy of revision before the Tribunal. The petitioner thereafter filed revision petition before the Tribunal alongwith application for entertainment of revision petition under section 65(3) of the PVAT Act and stay of recovery. For the assessment year 2007-08, the petitioner had deposited an amount of Rs. 64,50,000/- and for the year 2010-11, it had deposited a sum of Rs. 4,95,81,836/-. In total, it had deposited a sum of Rs. 5,60,31,836/-. Vide order dated

17.7.2014, Annexure P.7, the DETC(Appeals) set aside all those orders and the matters were remitted back to the assessing authority. The petitioner approached the Tribunal against the order dated 19.11.2014, Annexure P.3. The petitioner also prayed that the aforesaid amount being refundable in view of the order dated 17.7.2014, Annexure P.7, it may be considered towards deposit of 25% of the additional demand raised by the revisional authority. It was also prayed that in terms of Rule 74 of the Punjab VAT Rules, 2005 (in short, "the PVAT Rules") recovery of balance amount may be stayed as the petitioner had complied with the condition of pre-deposit of 25%. On 21.1.2015, the Excise and Taxation Officer issued notice proposing to impose penalty and interest. The petitioner submitted reply dated 2.2.2015, Annexure P.9 stating that its revision before the Tribunal was pending. When the executive of the petitioner had attended the proceedings on 6.2.2015, he was again issued a demand notice dated 2.2.2015, Annexure P. 10 directing the petitioner to deposit an amount of Rs. 5,13,09,680/-. Hence the instant writ petition to challenge the vires of section 65(3) of the PVAT Act.

3. We have heard learned counsel for the parties.

4. Section 65(3) of the PVAT Act which is pari materia with Section 62(5) of the PVAT Act reads thus:-

> ***"Revision***
>
> *65. (1) xxxxxxx*
>
> *(2) xxxxxxxxxx*
>
> *(3) No application for revision under sub-section (2), shall be entertained unless such application is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of tax, penalty and interest, if any."*

5. It is not disputed by the learned counsel for the parties that the issue involved in this appeal stands decided by this Court ***in CWP No.26920 of 2013 (Punjab State Power Corporation Limited vs. The State of Punjab and Others)*** vide order dated 23.12.2015, wherein after considering the relevant statutory provisions and the case law on the point interpreting Section 62(5) of the PVAT which is pari material with Section 65(3) of PVAT Act, following conclusions were drawn:-

> *"33. It is, thus, concluded that even when no express power has been conferred on the first appellate authority to pass an order of interim injunction/protection, in our opinion, by necessary implication and intendment in view of various pronouncements and legal proposition expounded above and in the interest of justice, it would essentially be held that the power to grant interim injunction/protection is embedded in Section 62(5) of the PVAT Act. Instead of rushing to the High Court under Article 226 of the Constitution of India, the grievance can be remedied at the stage of first appellate authority. As a sequel, it would follow that the provisions of Section 62(5) of the PVAT Act are directory in nature meaning thereby that the first appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts and circumstances. It is not to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. Only when a strong prima facie case is made out will the first appellate authority consider whether to grant interim protection/injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the first appellate authority is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the*

hearing of the appeal before it. Therefore, the power to grant interim protection/injunction by the first appellate authority in appropriate cases in case of undue hardship is legal and valid. As a result, question (c) posed is answered accordingly.

34. In some of the petitions, the petitioners had filed an appeal without filing an application for interim injunction/protection which are still pending whereas in other petitions, the first appellate authority had dismissed the appeal for want of pre-deposit and further appeal has also been dismissed by the Tribunal on the same ground without touching the merits of the controversy. Where the appeals are pending without an application for interim injunction/protection before the first appellate authority, the petitioner may file an application for interim injunction/protection before the appeals are taken up for hearing by first appellate authority and in case such an application is filed, the same shall be decided by the said authority keeping in view all the legal principles enunciated hereinbefore. The other cases where the first appellate authority had dismissed the appeal for want of pre-deposit without touching merits of the controversy or further appeal has been dismissed by the Tribunal, the said orders are set aside and the matter is remitted to the first appellate authority where the petitioners may file an application for interim injunction/protection before the appeals are taken up for hearing by the first appellate authority who shall adjudicate the application for grant of interim injunction/protection to the petitioner in the light of the observations made above. All the cases stand disposed of in the above terms."

6. In view of the above, the provisions of Section 65(3) of PVAT Act are held to be intra vires, however, the Tribunal shall decide the matter in accordance with law in terms of the judgment in Punjab Power Corporation Limited's case (supra). The writ petition stands disposed of accordingly.

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PUNJAB VAT TRIBUNAL

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MISC. (REF.) NO. 46 OF 1996-97

BHAGAT INDUSTRIAL CORPORATION
Vs
STATE OF PUNJAB

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

HF ▶ Revenue

Old glass bottles fit for reuse are not to be excluded from 'glassware' under Schedule 'A' as there is no difference between old and new ones for purpose of taxation.

REFERENCE – ENTRIES IN SCHEDULE – GLASSWARE - OLD / USED GLASS BOTTLES – TAX @8% DEMANDED ON ACCOUNT OF GLASS BOTTLES USED BY DISTILLERY ALONGWITH SALE OF LIQUOR – APPEAL FILED CONTENDING OLD GLASS BOTTLES NOT TO FALL WITHIN ENTRY 23 OF SCHEDULE A UNDER 'GLASSWARE' – GENERAL RATE OF TAX PAYABLE – APPEAL DISMISSED BY AUTHORITIES – REFERENCE FILED BEFORE TRIBUNAL – GLASSWARE TO INCLUDE OLD AND USED GLASS BOTTLES – NOTHING IN THE ACT TO SHOW SEGREGATION OF OLD BOTTLES FROM NEW ONES FOR PURPOSE OF TAXATION – ASSESSMENT FOR SUBSEQUENT ASSESSMENT YEARS ACCEPTED BY APPELLANT – THUS APPELLANT STOPPED FROM RAISING THIS PLEA AT THIS STAGE – INTENTION OF LEGISLATURE NOWHERE REFLECTS EXCLUDING GLASS BOTTLES FROM 'GLASSWARE' – REFERENCE NOT MAINTAINABLE- *S.22 OF PGST, 1948 SCHEDULE 'A' ENTRY 23 OF PGST ACT, 1948*

Facts

A demand was raised for the assessment year on account of tax to be paid @ 8%, instead of general rate of tax, on old glass bottles used by distillery owner for using the same as glassware for packing liquor to be sold alongwith liquor.

First appeal was dismissed holding that the said entry fell under Schedule 'A' of PGST Act and only 'bangles' were excluded from the said entry from glassware. On appeal before Tribunal the same was dismissed. A reference was thus filed before Tribunal contending that the bottles in question were empty and old used bottles which could not be categorized under item 23 of schedule A.

Held:

The Act does not differentiate between old and new glassware. There is nothing to show that old glass bottles fit for use will be taxed differently. It is not scrap or broken bottles unfit for use. Therefore, taxability with regard to the old bottles cannot be segregated from the taxability over the new bottles purchased by the appellant for packing liquor for sale.

The appellant has only challenged assessment for the years 1979-80 and 1988-89 on the ground of taxability. The assessments for the years subsequent to these have been accepted by the appellant. So, the appellant is stopped from making reference at this stage.

The legislature has not created different item in the schedule for glass bottles. No such intention can be inferred which suggests glassware other than glass bottles.

Thus, it is not a fit case to frame a question of law arising out of order passed by Tribunal for referring the same to Hon'ble High court for decision.

Case distinguished:

- *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. K. Ummul Kulsu reported in 92 STC, 450*
- *State of Tamil Nadu v. P. Singaraveloo in [1996] 100 STC 540 (Mad.).*

Case referred:

- *Shantilal Kali Dass v. state of Orissa(1974) 42 STC 9*

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

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

1. This order of mine shall dispose off two reference applications No 2 & 3 of 2015 filed by the petitioners for making reference to the Hon'ble High Court to decide the following questions:-

1. Whether under the facts and circumstances of the case, the word "glassware" covered empty glass bottles, which are used by the distiller?
2. Whether the empty glass bottles purchased from kabbarias liable to be taxed at the general rate or at the higher rate as prescribed under Schedule 'A' of the Punjab General Sales Tax Act?

2. The facts in the background of the case are that the petitioner filed the annual statement for the financial year 1979-80 which was ultimately decided on 12.6.1987. The Assessing Authority while raising the demand qua other aspects also imposed tax upon the old glass bottles and other items U/s 4 (B) of the Act @ 8%. It may be mentioned that the bottles were being purchased by dealer (distillery owner) for the using the same as glassware for packing the liquor to be sold alongwith liquor.

3. Feeling aggrieved, the appellant filed the appeal before the Deputy Excise and taxation Commissioner, Jalandhar Division, Jalandhar who after giving full hearing to the parties dismissed the appeal while observing that the empty glass bottles are being treated as "glassware" and is covered by entry No. 23 of Schedule 'A' appended to the Punjab General Sales tax Act and as such are taxable @8% and not at the General rate of Tax. The Deputy Excise and taxation Commissioner, Jalandhar Division, Jalandhar observed as under:-

> *" I have heard both the sides and seen the record of the case. I have given a careful thought to the arguments submitted by counsel for the appellant that the tax on the empty bottles should be levied at general rate instead of 8% as bottles are not covered under the items of "glassware" is not correct. I fully agree with the counsel for the State that empty glass bottles are covered by item " glassware" of Schedule "A" and as such were taxable at 8% instead of 6% i.e. general rate. The citation given by the counsel for the appellant is not applicable in the present case because it pertains to an entirely different*

enactment and different circumstances. The expression " glassware" in item 23 of Schedule of the Punjab Act has a wider meaning to include all glass containers and articles made of glass excluding bangles. The item 23 appended to Schedule "A" of the Punjab General Sales Tax Act is as under:-

> *"Glassware excluding bangles made of glass, glazed waste and chinaware including crockery."*

4. It is further evident from item 23 that from the items, "glassware" only bangles made of "glass" have been excluded. The decision of the Hon'ble Orissa High Court in the case of M/s Shanti Lal Kali Dass Vs. State of Orissa cited as (1974) 42-STC-page 9 is a direct Authority on this issue. The entry 111 of Kerala Sales Tax Act and a entry 23 of the Punjab General Sales Tax Act are quite contrary and different as differentiated by the Ld. Counsel for the State. The appellant does not fetch any support from this decision of Kerala High Court. The terms 'glassware' is to be interpreted in view of the intent of the legislature involved. The citation given by the counsel for the State is fully applicable to the present case. In view of the facts and discussion of the matter, I hold that the empty glass bottles fall in the expression 'glassware' and come in the ambit of 5 the entry 23 of Schedule 'A' appended to the Punjab General Sales Tax Act and as such taxable @ 8% and not at the general rate of the tax."

5. Still aggrieved, the appellant preferred the second appeal, whereupon Tribunal also affirmed the view taken by the First Appellate Authority and dismissed the appeal on 10.12.1996. The only issue raised before the Tribunal was "whether 'glassware' fell within the category No/23 Schedule 'A' of the Punjab General Sales Tax Act?" This issue was answered by the Tribunal against the petitioner.

6. Still dis-satisfied the appellant filed an application U/s 22 (1) of the Punjab General Sales Tax Act for referring the aforesaid question to the Hon'ble High Court for decision. The petitioner in his reference application has taken the following grounds:-

1. *The petitioner being a distiller was in business of resale of country liquor for the purpose of company had purchased empty glass bottles and other various commodities for manufacturing of country liquor and Indian made foreign spirit. He has been purchasing the bottles for sale of liquor.*
2. *There is no specific category regarding taxability of empty glass bottles and the view taken by the Tribunal that glass bottles fall under item No.23 Schedule 'A' Punjab General Sales Tax Act, 1948, therefore, liable to be taxed @ of 8% instead of general rate @ 6% is not correct and is without considering that the empty bottles fall in the category of the general clause.*

7. It has been urged by the appellant that the word 'glassware' has not been interpreted, defined or classified under the Punjab General Sales Tax Act anywhere. The applicant has been purchasing the empty glass bottles for packing the liquor for sale. The petitioner also purchases such bottles from the rag dealers and after cleaning and sterilizing the same he uses them for packing liquor. The word "glassware" does not cover the glass bottles so as to take into item No.23 of Schedule 'A' of the Punjab General Sales Tax Act.

8. The notification No.S.O.26/P.A.46/48/S.5/Amd./96 was issued by the Government of Punjab Department of Excise and Taxation on 5.11.1996 for excluding empty glass bottles from glassware's w.e.f. 1.7.1993, therefore after 1.7.1993 the glass bottles were specifically excluded from item No.23 of Schedule 'A' of the Punjab General Sales Tax Act.

9. Arguments heard. Record perused.

10. The act does not differentiate between the old and the new glass ware. The appellant does not term it as scrap and unusable as such there is nothing on the record to hold that the old glass bottles, fit for use; will be taxed differently then the new at a different rate, therefore, the second question regarding the taxability of the old bottles has not been pressed before me by the counsel for the appellant. In any case, item No. 23 Schedule 'A' does not exclude the old bottles as purchased from any source and used after cleanliness for packing the liquor. Every bottle, old or new has to be cleaned and sterilized before it is used. It is not a case of scrap or broken bottles unfit for use. Therefore also, the taxability with regard to the old bottles cannot be segregated from the taxability over the new bottles purchased by the appellant for packing the liquor for sale.

11. It would also be pertinent to mention here that the Punjab General Sales Tax Act was enforced since the year 1948 with certain amendments from time to time and remained in operation till 31.3.2005 when the Punjab VAT Act came into force. Except the two assessments for the years 1979-80 and 1988-89, no other assessment was challenged by the appellant on the ground of taxability of the glass bottles under item No. 23 Schedule 'A' of the Punjab General Sales Tax Act. Therefore, the petitioner is now estopped to apply for making reference even where the assessment made after the year 1988-89 were accepted by the appellant. The making of reference at this stage would amount to reopening of the earlier assessments, where he did not dispute about the taxability of the glass bottles under item No.23 of Schedule 'A' of the Punjab General Sales Tax Act.

12. Now coming to the word "glassware" simplicitor as per the Encyclopedia, Wikipedia, the word "glassware" means objects, especially containers, made of glass as also called glasswork as well as Articles made of glass. The word "glass bottles" has not been given different meaning and shown as made of different material. Admittedly, the containers to contain liquor are either made of glass, plastic or other material. This was the only reason that the legislature intended to make entry of word "glassware" at item No. 23 of Schedule 'A' appended to Punjab General Sales Tax Act, 1948. The legislature never created different item in the schedule for glass bottles. As such, it had no such intention which could be inferred from the word "glassware" to mean the glassware other than glass bottles. The assessees had been depositing the tax at the scheduled rate since coming into the force of the Act till 1996 when the Notification dated 5.11.1996 was issued while excluding empty glass bottles from glassware. This Notification by itself meant that glassware earlier included glass bottles. But on the request, representation or protest made by the distillers, empty glass bottles were excluded from the word "glassware" as mentioned in the item No.23 of Schedule 'A'. This notification by itself is the answer to the question raised by the appellant that the "glassware" covers the glass bottles.

13. The argument that "the issue with regard to the non covering of the glass bottles in 'glass ware' was decided in favour of the appellant by some Hon'ble High Courts" has been discussed and answered by the First Appellate Authority as well as the Tribunal. The arguments were not accepted. Having gone through these judgments 92 STC 450 and 100 STC 540, the same are not applicable to the facts of the present case. These interpret the provisions as prevailing in different states. Thus without raising any doubt, it has to be held that the word glassware as shown in the Schedule 'A' of the Punjab General Sales Tax Act covered glass bottles at the relevant time.

14. Since, the applicant had raised that very question before me, which has been raised before the authorities below as well as before the Tribunal, therefore, the said question cannot be said to have arisen out of the order passed by the Tribunal. Section 22 (1) of the Act, in this regard, is reproduced as under:-

1. *Within 60 days from passing of an order U/s 20 & 21 by Tribunal affecting any liability of any dealer to pay tax under this Act, Such dealer or the commissioner may, by the application in writing accompanied by a fee of Rs. 100/-. In case the application is made by a dealer required. The Tribunal to refer the High Court <u>any question of law arising out of such order</u>.*

15. From bare reading of Section 22 (1) of the Act, it transpires that the Tribunal was obliged to make reference to those questions of law which arise out of such order as has been passed by it. The question as to whether the glass bottles fall within the category of item No.23 of Schedule 'A' of the Punjab General Sales Tax Act, 1948, in the given circumstances of the case when answered by the authorities and remained intact upto the level of the Tribunal cannot be said to be question of law arising out of such order. It is only a question of fact which could be easily sorted out after going through bare provisions of the Act. However, if the appellant was still aggrieved, could prefer an appeal before the Hon'ble High Court. Had it been the intention of the legislature to provide a remedy of reference to be made by Tribunal, then this power could be exercised before the appeal is decided. It would look absurd if the same question which is concurrently decided by three authorities, could still be forwarded by the Tribunal to the Hon'ble High Court Of course, the applicant could apply for referring that question of law for decision which arises out of the order. This type of application is another way to prolong the recovery of tax and also the remedy of appeal with an intention to evade tax. The Counsel for the petitioners has referred me to the two judgments STI (1996) Punjab and Haryana High Court page 28 M/s Anil Rubber Mills, Faridabad Vs. the State of Haryana, Department of Excise and Taxation, Haryana and (1996) 219 ITR 400 in order to press the issue regarding the maintainability of the reference application. I have gone through such judgments but the same are not applicable to the facts of the present case.

16. Consequently, I am of considered opinion that it is not a fit case to frame a question of law arising out of the order passed by the Tribunal for referring the same to the Hon'ble High Court for decision.

17. Resultantly, I find no merit in this applications, therefore, the same are dismissed. Copy of the order be placed in each file.

18. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO(s) 255, 391, 522 OF 2013

DABUR INDIA LTD.
Vs
STATE OF PUNJAB

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

25th January, 2016

HF ▶ Revenue

Glucon D sold in market in small packets as energy drink is not considered an 'industrial input' to attract lower rate of tax.

ENTRIES IN SCHEDULE - GLUCON D - INDUSTRIAL INPUT – GLUCON D MANUFACTURED UNDER APPELLANT'S OWN BRAND FOR SALE AS ENERGY DRINK / FOOD SUPPLEMENT AT CST DEPOTS -LOWER RATE OF TAX PAID CONTENDING IT TO BE AN INDUSTRIAL INPUT FALLING UNDER SCHEDULE B ENTRY 218- ASSESSMENT DONE – CHALLENGE AGAINST THE LOWER RATE OF TAX PAID BY APPELLANT IN VIEW OF IT HAVING UNDERGONE MECHANICAL PROCESSES AND BEING SOLD IN SMALL PACKETS TO CONSUMERS FOR CONSUMPTION – PLEA RAISED SEEKING PERMISSION TO PRODUCE C FORMS AND F FORMS -APPEALS DISMISSED – APPEAL BEFORE TRIBUNAL – HELD: GLUCON D IS SOLD TO REACH CONSUMERS AND NOT AS AN INDUSTRIAL INPUT AS PER FACTS AND CIRCUMSTANCES OF THE CASE – CLASSIFYING IT UNDER SCHEDULE B WOULD MEAN GOING AGAINST FUNDAMENTALS OF THE POLICY BEHIND FRAMING THE SCHEDULE- C FORMS AND F FORMS PERMITTED TO BE PRODUCED BEFORE AUTHORITIES – APPEAL DISMISSED ON MERITS- *ITEM 58 OF ENTRY 218 OF SCHEDULE B OF PVAT ACT, 2005*

Facts

In this case the question that came up for consideration was whether the product Glucose D In powdered form packed in small packings could be treated as an 'Industrial input' under schedule B or it is an unclassified item attracting VAT 13% when sold under by appellant to wholesalers and retailers under its own brand.

The appellant has been manufacturing the product and paying tax @4% on sales made to CSD depots. On assessment, the rate of tax was challenged on the said commodity as it was contended to be sold after treating, refining, reconditioning and mixing with some other items through a mechanical process thereby making it fit for consumers for instant use.

The appellant submitted before authorities that it would produce C and F forms regarding its sales made to CSD depots. However, the appeal was dismissed by first appellate authority holding that the said commodity was not an industrial input. The certificates were not produced for claiming concessional rate of tax. An appeal is thus filed before Tribunal.

Held:

The Tribunal has held that the said commodity is sold as an energy drink in the market and not as an industrial input so as to attract the lower rate of tax. In facts and circumstances of the case, the appellant manufactures it under its own brand to reach consumers as medicines or food supplement and is sold in small packets at chemist shop. It is difficult to put in the bracket of industrial input particularly where it goes through a mechanical process. To classify under schedule B under Entry 218, it would be against the fundamentals of the policy behind framing the schedule. Also, the appellant prepares it after purchasing the Glucose-D from traders, therefore, while considering the case from that angle also this item cannot attract entry 58 of Schedule B of the Act.

The appellant is permitted to produce C forms and F forms for the assessment year 2008-09 and 2009-10 for consideration by authorities.

The appeal is dismissed with a view that the said commodity does not fall under Entry No. 218 of Item 58 of Schedule B of the PVAT Act.

Cases referred:

- *Indian Aluminum Cables Ltd, Vs. Union of India reported in 21 ELT 3*
- *State of Punjab Vs. Fedral Gogul Goetze (I) Ltd, reported in 43 VST 100.*
- *Goyal Motor Parts Vs State of Punjab reported in 38 VST 159 (P&H)*
- *CCE Vs. Carrier Aircon Ltd. reported in 199 ELT 577*
- *Reckitt & Colman of India Ltd. Vs, Asstt Collr. Of C. Ex., Hyderabad, reported in 72 ELT 263 (AP) and 76 ELT A55 (SC)*

Present: Mr. K.L.Goyal, Sr Advocate alongwith Mr. Navdeep Monga, Advocate counsel for the appellant.

Mr. Manjit Singh Naryal, Addl. Advocate General for the State.

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

1. This judgment of mine shall dispose off three connected appeals No,255 & 391 of 2013 and 522 of 2014. The Appeal No.255 of 2015 relates to the assessment year 2008-09, 391 of 2013 relates to the assessment year 2009-10 and 522 of 2014 relates to the assessment year 2011-12, since all these appeals involve the common question of law, therefore these are decided together.

2.The sole issue raised in all the three appeals is "whether the Glucose- D in powder form packed in different small packings of 100 gms, 200 gms, 500 gms and 1kg sold in whole sale and retail, in the brand name of "Dabur" and not as an "Industrial Input" could be treated as an Industrial Input falling in entry No,218 of Item No. 58 under Schedule-B of the Punjab Value Added Tax Act, 2005 or whether it is an unclassified item attracting VAT @ 13%?"

3. The facts in the back ground of the case are as under:-

> *"The appellant is engaged in the manufacturing and marketing of diversified ayurvedic products and proprieties i.e, honey, hair oil, cosmetics and Glucose-D etc under the Brand name of "Dabur" and trades the aforesaid items throughout the country including the State of Punjab on whole sale as well as retail basis. The appellant is supplying its products to CSD depots all over the country on the concessional rate of tax as prescribed under Entry 10Q-A of Schedule-B of Punjab VAT Act, for which the dealer is required to furnish certificate duly signed and stamped by the officer authorized to make purchases certifying that the goods are meant for sale to serving military personnel and Ex-serviceman directly or through unit run canteens.*

4. While Filing the annual statement for the year 2008-09, the appellant paid the tax @ 4% considering the Glucon-D to be an 'Industrial Input' and after claiming the concessional rate of tax on the sales made to the CSD depots as per provisions of Punjab VAT Act, 2005. The respondents being dis-satisfied with the assessment, issued notice to the appellants on 9.3.2011 challenging the rate of tax charged by the appellants on the Giucose-D particularly when it was sold after treating, refining, reconditioning and mixing with some other items through a mechanical process to make it energetic while claiming that such items when sold in small packets could not be treated as an item falling under Item No,58 Sub-Entry 218 of Schedule-B.

5. When the appellant appeared before the Designated Officer on 15.11.2012, he submitted four "C" and "F" forms regarding sales made to the CSD Canteens and also sought more time to produce the other forms, Accordingly, the case was adjourned to '19.11.2012. On that day, the appellant submitted that the item Glucose-D" being "Industrial Input" is fully covered vide Entry No.58 Sub Entry-218 of the list of Industrial Inputs and packing material! which reads as "Maize Starch, Glucose-D. Maize gluten, maize germ and oil."

6. The appellant also challenged The . clarifications made by the Excise and Taxation Commissioner, Punjab dated 13,11.2009 stating that the Said clarification differentiated rate of tax on the basis of product dwelling usabilities, one being used as Industrial Input and the other for direct consumption by consumer as energy drink or medicine. The clarifications have been decided against the appellant on the basis of pack sizes. The appellant also relied upon the VAT FAQs/Circular/Clarifications wherein at Q.46, wherein, it has been clarified that items which are mentioned at Entry 46 (now Entry 58) of the Punjab Value Added tax Bill 2005, are the Industrial Input and packing material and as such the same would be taxable at the rate of 4% irrespective of the use either as industrial input or while trading.

7. After hearing the arguments, the Id. Assistant Excise and Taxation Commissioner decided the question against the appellant, vide order dated 19.11.2012, while holding that item Glucose-D sold by the appellant is not covered by the Entry 218, Item No.58 of schedule-B for the following reasons-

(i) the said product is available in packings of different weight like 100 gms, 200 gms, 500 gms and 1kg for sale to the consumers for consumption.

(ii) These items are available in ail the retail chemist shops and in general Stores.

(iii) The item Glucose-D is not sold in bulk as an Industrial Input or raw material to produce another product by the appellant, but it is sold as final product after treating and reconditioning and is sold to the customers who can use instantly, directly or by mixing it in water and these goods are nowhere used as a raw material.

8. The appeal against the order dated 19.11.2012 passed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, S.A.S,Nagar, Mohali was dismissed by the Deputy Excise and Taxation Commissioner (herein referred as the First Appellate Authority) dated 15.3,2013. The Appellate Authority observed as under

(i) The Glucon-D sold in small packs blended with many flavours and mixed with many items manufactured through a mechanical process does not tall within the definition of 'Industrial Input.'

(ii) The appellant company itself purchases the Glucon-D from the other companies for manufacturing variety of items for trading.

(iii) Regarding sales to the CSD Stores, the concessional rate is leviable subject to production of required certificate. This certificate is prescribed only to keep the cheques and measures of such sales and to avoid their mis-utilization.

(iv) Since the dealer had failed to furnish the said forms to claim concessional rate, cannot be allowed to claim the deduction of tax.

(v) The Designated Officer had rightly levied higher rate of tax on the said sales. The higher rate of tax while treating Glucose-D as an unclassified item was correct for the reasons recorded in the order, Hence this second appeal.

9. The Counsel for the appellant, in order to assail the findings returned by both the authorities, urged that the clarifications given U/s 85 of the Act by the Excise and Taxation Commissioner, Punjab are based upon product dwelling, usabilities one being used as Industrial Input and the other for direct consumption. It is immaterial to measure the nature of goods on the basis of end use. Once the goods are listed in a particular entry and legislature, in its wisdom, has included the item in the list even of multiple use, it would-be treated as covered by specific entry provided therefore, In this regard, he has placed reliance on the judgments ***M/s Indian Aluminum Cables Ltd, Vs. Union of India reported in 21 ELT 3***, ***State of Punjab Vs. Fedral Gogul Goetze (I) Ltd, reported in 43 VST 100***. It was further argued that in case of ***Goyal Motor Parts Vs State of Punjab reported in 38 VST 159 (P&H)***, it was observed that when there is a specific entry in the list, its end use is immaterial to decide the controversy. He also referred to the judgment delivered in the case of ***CCE Vs. Carrier Aircon Ltd. reported in 199 ELT 577, M/s Reckitt & Colman of India Ltd. Vs, Asstt Collr. Of C. Ex., Hyderabad, reported in 72 ELT 263 (AP) and 76 ELT A55 (SC)***, in order to buttress his arguments. Thus, he has pressed for determining the Glucose-D as an item falling at Item No. 218, Entry No, 58 of Schedule-B taxable at the rate of 4%.

10. To the contrary, the State Counsel has submitted that all certificates relating to the sale of Glucose-D at the CSD stores could not be produced for a period of three years pending assessment proceedings despite the fact that the Assessing Authority had given various opportunities to produce such certificates. Thus, the claim of the appellant on that account has rightly been disallowed. These certificates were also not produced before the Appellate Authority. The Designated Officer had relied upon clarifications given by the Excise and Taxation Commissioner, Punjab in case of Balaji Chemicals, Sekha Road, Barnala. The said clarification made U/s 85 of the Punjab Value Added Tax Act, 2005 has been challenged in appeal but the same was dismissed as such it has attained finality. While refuting the judgments as relied upon by the counsel for the appellant, he has argued that the judgments are on their own facts and are not applicable to the facts of the present case. The judgment passed by the Hon'ble Allahabad High Court in the case of Commissioner of Sales Tax V/s M.G. and Company, Delhi is on the basis of the entries as contained in the Sales Tax Act of that State which is not in question in the present case, None of the judgments relates to the issue of Industrial Input.

11. Arguments heard. Record perused.

12. Vide order dated 20.7.2015 this Tribunal had directed the appellants to place on record the properties of Glucose-D, the products manufactured by the appellant, method of formation of the product, packing of the items, number of verities manufactured by the appellant for sale as Glucon-D alongwith their labels.

13. In response to the order dated 20.7.2015, the appellant vide his letter dated 18th Sept, 2015 placed the following clarifications by way of reply to the query:-

> *From the above report it transpires that "Dextrose functions as a good oral dehydrating agent and once enriched with Vitamin D and Calcium it provides*

easy assimilation and replenishment of essential nutrients in the body. It's a ready source of energy to fight tiredness and refresh the consumer instantly.

Since it is in powder form the product gets caked and becomes hard, In this situation, it is difficult to keep it for some time as it may get contaminated. Hence, the company has to use anticaking agents like phosphates etc as anticaking agents. These anticaking agents always help in preventing the caking and also keeping the product stable in market place. So 100% Glucon-D alone is technically impossible to manufacture maintain and sell in the market,

The report also clarifies the following things:-

(i) The appellants are manufacturers and the traders of product Glucose-D sold with the brand name "Glucose-D". Properties of Glucon-D, which originally are Dextrose Monohydrate involving Formula C6H12G6, FI20. It is a white crystalline powder, odourless and sweet to taste.

(ii) The Vitamin-C & D, the citric acid, calcium and phosphate are not the properties of Glucon-D but are added in the glucose to increase nutrition value of product and to manufacture the new product for sale in the brand name of the company.

(iii) Some other additives are added to make the product stable during shelf life. 100% Glucose, without any additive, cannot be stable in market conditions.

(iv) The report further reveals that in order to cater to consumption needs of the consumers; the appellant is selling manufactured Glucose in various pack sizes to meet individual needs.

(v) The Glucose-D is allowed to pass through a mechanical process in order to make it salable in the market. After making many additions, adding preservatives and using anti caking agents like phosphates, it comes out to be a new product.

(vi) The company also adds many vitamins and flavors to make it a food supplement/energy drink or a medicine.

14. It is not sold in bulk as an Industrial Input but thrown In the market as energy food/medicine for the use of the customers directly in small pack sizes by the company in its own brand. The appellant has not stated in its report dated 18th September, 2015 that they are not trading the Glucose-D or are selling as an Industrial Input to be used for manufacturing other products. Rather, it has been mentioned that it is sold in their brand name "Dabur" to its customers. It is also not mentioned in the report that the appellant company understands treats, considers or sells it to be an Industrial Input. Rather it appears that the Glucon-D is used as one of the constituents in preparation of an item of energy/food supplement to be sold in the market in small pack sizes.

15. It may further be observed that the question with regard to taxability over liquid Glucose, solid Glucose and Glucon-D was raised before the Excise and Taxation Commissioner, Punjab U/s 85 of the Act in case of Daulat Ram Chaman Lal, H.Q. Sadar Bazar, Barnala whereupon, Sh. A.Venu Prasad, IAS, Excise and Taxation Commissioner vide order dated 13.11.2009, after considering Excise Tariff No. 1702, observed as under :-

The Departmental representative pointed out that the solid glucose/glucose powder is consumed as such and is not used in the manufacturing of confectionary goods, for example Glucon-C and Glucose-D powder are used as such, Had this glucose been covered under the Excise Tariff No, 1702.00 then the entry should have been glucose only, The solid glucose/glucose powder was

intentionally left out as the same is not an industrial input, Therefore, the solid glucose/glucose powder is taxable @ 12,5% being an unclassified item."

16. Sh. A. Venu Prasad, Excise and Taxation Commissioner, Punjab also took the similar view vide his order dated 8-2.2008 in case of Balaji Chemicals, Sekha Road, Barnala, He again, vide his order dated 18.10.2010, clarified that this rate of 4% is applicable only when it is sold as an Industrial Input and in bulk form. In all other cases, where it is sold as final product for direct consumption in small packings, the rate of tax will be 12.5% and surcharge as applicable. As regards, the arguments pertaining to question No, 46 of the FAQs/Circulars/Clarifications, it is observed that this is a question, the answer to which was given by an officer of the Department, its foundation can't be traced from any notification or circular so as to make it effective. It is also not based on any instructions or rules over which the department may reply- This is a question of interpretation to made by the authorities or the courts so as to find out the exact meaning of the "Industrial Input" or the rate of tax when the goods are used as Industrial Input or when these are put to use after conditioning, treating, tempering or manufacturing other items by mixing the additives, preservatives and vitamins.

17. The appellant, though has named its item as Glucon-D/Gfucose-D with an intention to get this item covered by entry No. 218, Item No.58 of Scheduled in order to pay the lesser tax, yet the following items, as is apparent from the wrappers taken up from the internet, are sold in different flavours in the market:

1. Glucose-D No. 1
2. Glucose-D Special Orange
3. Glucose-D (No. 1) Ready to serve instant energy
4. Glucose-D Special Nimbupani

Glucose-D (No. 1) besides containing other properties, which is sold in the market, also contains

calcium - 120mg

Vitamin C - 55mg

Vitamin D - 1000 LU.

Di Calcium Phosphate 0.2g

Energy Value - 372kca

18. Besides the aforesaid items, internet shows that the appellant is manufacturing Glucon-D Original, Glucon-D Tangy Orange flavour, Glucon-D Nimbu Pani flavour and Glucon-D Aam Panna Flavour.

19. All these things go to show that the appellant is projecting the sale of Glucon-D only with intention to evade the tax.

20. As regards the classification of Glucon-D, the appellant has referred me to the judgments delivered in cases of ***Commissioner of Central Excise, Delhi Vs Carrier Aircon 2006 (199) Ltd. E.LT, 577 (S.C.), Indian Aluminium Cables Ltd Vs. Union of India 1985 (21) E.L.T. 3 (S,C,) page/284, Dunlop India Ltd, & Madras Rubber Factory Ltd. Vs. Union of India and Others 1983 (13) E.L.T, 1566 (S.C) page/241, M/s Indian Aluminum Cables Ltd. Vs. Union of India reported in 21 ELT 3, State of Punjab Vs. Fedral Gogul Goetze (I) Ltd. reported in 43 VST 100*** and ***Goyal Motor Parts Vs State of Punjab reported in 38 VST 159 (P&H)***.

21. Having gone through the aforesaid judgments, the same are on their own facts and are not relevant to the facts of the present case. On critical analysis of the aforesaid judgments and the law of land, it may be observed that in order to determine elements which contribute to classify an item, the end use of the product by itself may not be material but number of factors have to be taken into consideration for this purpose viz. fiscal entry and basic character; function and use of the goods, how the people in trade and commerce conversant with the subject, generally treat and understand them in the usual course; the intention of the dealer who sold the goods and the knowledge with regard to the manner In which the goods would be put to sale. While putting the facts situation of the present case, on the aforesaid parameters, it comes out that the Glucose-D is not sold in bulk as an industrial input for manufacturing of an item. In cases where it is to the knowledge of the seller that the item is sold as an industrial input, it may attract the entry No, 218 item 58 of Schedule-B attracting lesser rate of tax. But in the facts and circumstances of the present case, when the appellant manufactures the item in such a manner so as to reach the consumers as a medicine or energy drink or a food supplement and sold in small packets then it would be very difficult to place the said product in the category of Industrial Input, particularly when the said energy drink is prepared through a mechanical process with the help of Glucom-D and vitamins, calcium, phosphate and other items and flavours, In such circumstances, claim to be classified as item No,58 Entry No. 218 of Schedule-B) would be against the very fundamentals of the policy behind framing the schedule.

22. It is also a matter of common knowledge and experience that the people/consumers of the country behave, understand treat and purchase such brand of "Dabur" as an energy drink or beneficial at the time of disease and not as an Industrial Input for manufacturing other items, and the product as manufactured by the appellant is sold by the chemists whereas, industrial glucose is sold by traders who deal in chemicals and industrial inputs, The appellant prepares these items after purchasing the glucon-D from traders, therefore, while considering the case from that angle also, this item cannot attract entry 58 of Scheduled of the Act. As regards the 'C and 'F' Forms for the assessment year 2008-09 and 2009-10. The appellant has sought to produce those forms for taking into consideration at the appellate stage for seeking benefit on concessional supplies. In this regard, I am of the opinion that the 'C' and 'F' Forms which could not be produced earlier and as such were not taken into consideration at the appropriate stage, the appellant has the genuine reasons for not producing the same earlier could be produced at a later stage. Since such forms being issued by the department could not manipulated lateron, therefore, it would be expedient in the interest of justice to grant such permission.

23. I find support to my this view from the judgment delivered in case of Deepak Radios Pvt. Ltd. Vs. Union Territory of Chandigarh and Another (2009) 23VST 42 (P&H) wherein it was observed as under:-

> *"Held, that there is no principle of law discernible from Section 51 (1A) of the Punjab General Sales Tax Act, 1948 or rule 29 (xi) of the Punjab General Sales tax Rules, 1948 confining production of Declaration in form ST-XXII-A by the dealer only before the Assessing Authority and that no such documents can be produced before the appellate authorities. Such documents could be produced at any stage in the assessment proceedings. They could be produced before the Assessing Authority, Commissioner, Tribunal or even the High Court. It is the production of the documents, which is mandatory, but not the stage at which such documents are produced. However, the dealer has to furnish sufficient cause for late production of the beneficial documents. The case of the appellant right from the day of filing the returns for the last quarter of 2001-02, had consistently been that no tax was imposable upon it as it had sold goods on*

which tax had been paid at the point of first sale, Therefore, all the orders including the assessment orders were liable to be set-aside,"

24. As such, it would be appropriate if the Assessing Authority reconsiders the case of the appellant qua 'C and 'F' Forms for the assessment year 2008-09, 2009-10 if the same are produced before it. No 'C and 'F' Forms have been produced for the assessment year 2010-11.

25. Resultantly, these appeals are dismissed with the aforesaid observations that the items as produced by the appellants are not covered by Entry No. 218 Item 58 of Schedule-B of the Punjab Value Added Tax Act and would attract unclassified items, however, as regards 'C & 'F Forms, the appellant may produce the said forms whereupon the appellate authority would proceed in accordance with law. Copy of the order be placed in each file.

26. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 389 OF 2013

KRBL LTD.
Vs
STATE OF PUNJAB

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

25th January, 2016

HF ▶ Appellant assessee

The only requirement for claiming exemption from payment of purchase tax on paddy purchased in the course of export out of India is to have sufficient export orders on the date of purchase and actual export in the same year is not required.

PURCHASE TAX- PADDY – EXPORT – PENULTIMATE SALE/PURCHASE PADDY PROCURED AGAINST EXISTING EXPORT ORDERS – ASSESSING AUTHORITY ALLOWED THE CLAIM – IN REASSESSMENT PROCEEDINGS, DEPARTMENT CLAIMED EXPORT SHOULD BE MADE IN THE SAME YEAR – NO SUCH PROVISION UNDER THE LAW – ONLY REQUIREMENT IS OF SUFFICIENT EXPORT ORDERS IN HAND AT THE TIME OF PURCHASE – RE-ASSESSMENT PROCEEDINGS FOR LEVY OF PURCHASE TAX ARE INVALID – APPEAL ACCEPTED – *SECTIONS 19, 84 OF PUNJAB VAT ACT, 2005, ARTICLE 286 OF THE CONSTITUTION OF INDIA, SECTIONS 5(3) AND 15(CA) OF CST ACT 1956.*

RE-ASSESSMENT – JURISDICTION – ESCAPED TURNOVER – AUDIT OBJECTION – PURCHASE TAX – PADDY PURCHASED AGAINST SUFFICIENT EXPORT ORDERS – ASSESSMENT FRAMED ACCEPTING THE CLAIM – AUDIT OBJECTION RAISED – RE-ASSESSMENT PROCEEDINGS INITIATED UNDER SECTION 29(7) – CONDITIONS CONTAINED IN SECTION 29(7) NOT FULFILLED – NEITHER A CASE OF ESCAPED TURNOVER – NOR A CASE OF ANY WILFUL NEGLECT, MISREPRESENTATION OR FRAUD – NO JURISDICTION WITH THE ASSESSING AUTHORITY TO FRAME THE RE-ASSESSMENT – ORDER WITHOUT JURISDICTION – SET ASIDE – *S. 29(7) OF PVAT ACT, 2005*

PURCHASE TAX – PADDY – VALUATION – PADDY PURCHASED – RICE AND OTHER BY-PRODUCTS PROCURED – BY-PRODUCTS SOLD LOCALLY OR USED IN CAPTIVE CONSUMPTION – RESULTANT RICE SENT ON STOCK TRANSFER – PURCHASE TAX PAID ON 70% VALUE EQUAL YIELD OF RICE OUT OF PADDY – HELD, TAX PAID BY ASSESSEE IS CORRECT AS TAX ON OTHER ITEMS ALREADY STANDS PAID – *S. 19 OF PVAT ACT, 2005*

Appellant is an exporter of rice for which he purchases paddy from Punjab and other States for export purposes. It also receives paddy/rice from other branch offices for job work and sends its own rice for sorting, grinding, grading and packing to its Head Office at Delhi. In Assessment order for the year 2009-10, the assessing authority had recorded a finding that

appellant had sufficient purchase orders for export and therefore paddy purchased against such export purchase orders is exempted being in the course of export under Section 5(3) of the CST Act, 1956.

On an audit objection, the assessing authority sought permission from Excise and Taxation Commissioner, Punjab for amending assessment order Section 29(7) on the ground that appellant has made excessive purchase of paddy for export purposes with reference to the actual consumption which appeared to be deliberate in order to avoid payment of purchase tax on excessive purchases made every year and the appellant had deposited short payment of purchase tax. On reply, the appellant raised the question of jurisdiction regarding applicability of Section 29(7) as well as on merits. The assessing authority, however, rejected each and every argument of the assessee and raised the additional demand on the purchase of paddy on the ground that it had not been exported.

Having failed in first appeal, second appeal was filed before the Tribunal.

Held:

The case does not fall under Section 29(7) as none of the conditions mentioned in the said sub-section are fulfilled. Each and every issue had been already considered and adjudicated by the Assessing Authority, the order cannot be considered as to have been passed where any turnover has escaped assesmmsent. Moreover, the assessing authority in reassessment proceedings has not alleged any wilful neglect or fraud or misrepresentation of the facts and the earlier order had also been passed on the basis of same set of facts and on the basis of account books and relevant documents. Accordingly, the impugned order is without jurisdiction and the same needs to be set aside.

On merits, the appellant had purchased the paddy during the year in question for the purpose of fulfilment of export orders which were already in its hands on the date of purchase. Such purchases are exempt from payment of tax under Article 286 of the Constitution of India read with Section 5(3) and Section 15(ca) of CST Act. The similar provisions have been incorporated under Section 84 of the Punjab VAT Act also and no tax is payable on such goods. Insofar as plea of Department that rice has not been exported in the same year is concerned, the same does not find any mention in the statute book and there is no provision or clause in the exemption rules, the policy and the certificate issued to the company which may qualify the deduction of export based upon such contingency. The only requirement of law for seeking exemption is possession of export orders against which the paddy is purchased and then actual export is made out of India. The appellant has duly explained the export of rice during the year and in the subsequent year for justifying its claim from payment of tax on the paddy procured during the year in question. Even otherwise, the assessee would be entitled for refund of tax paid during the year in question if the rice is ultimately exported in the subsequent years. This would render the entire proceedings revenue neutral and therefore there is no justification to have any reassessment proceedings on such basis.

Insofar as issue with regard to valuation of paddy for the purpose of payment of tax on the paddy which has been stock transferred is concerned, the tax has been paid on the proportionate value of paddy out of which certain by-products have been procured and either sold locally or have been used in the captive consumption on which necessary tax has been paid in accordance with law. In this manner, the rice which has been stock transferred is only 70% of the paddy procured for this purpose and by applying said formula the average price of Rs. 1956.10/- would come to Rs. 1409/- per quintal on which purchase tax has been paid by the assessee. Moreover, if the assessee would have paid the tax on the entire value, then it would have been entitled for adjustment of said tax as Input Tax Credit, which would have resulted into the same tax payment to the Department. The orders passed by authorities, therefore, deserve to be set aside.

Cases referred:

- *Tata Iron and Steel Company Vs State of Punjab (2007) 30 PHT 211.*
- *Bal Chand Pardeep Kumar Vs State of Punjab and other (2009) 25 VST 420*
- *Haryana cooperative Sugar Mills Ltd. Rohtak State of Haryana (1996) 8 PHT144 (P&H)*

Present: Mr. Sandeep Goyal, Advocate alongwith Mr. Rohit Gupta, Advocate
Counsel for the appellant.
Mrs. Sudeepti Sharma, Dy. Advocate General for the State.

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

1. This appeal is directed against the order dated S.6.2013 passed by the First Appellate Authority, Patiala Division, Patiala, dismissing the appeal of the appellant against the order dated 9.4.2013 passed by the Assistant Excise and Taxation Commissioner, Sangrur, creating additional demand to the tune of Rs. 13,88,29,925/- under the Punjab Value Added Tax Act.

2. The appellant firm M/s KRBL Ltd., Village Bhasaur, Dhuri is a part of KRBL Ltd, New Delhi. He is a major exporter of rice out of India. The appellant is a taxable person and has been purchasing paddy from Punjab and from other states for export purposes and also receives paddy/rice from other branch offices for job work and also send his own rice for sorting, grinding, grading and packing to his head office at Delhi. The Assistant Excise and Taxation Commissioner in his order dated 22.3.2012 recorded that the appellant had sufficient purchase orders for export and paddy has been purchased against those purchase orders and rice was exported against which he had claimed exemption which is in order and under the law. The Assistant Excise and Taxation Commissioner vide his order dated 22.3.2012 further observed that the appellant transferred the goods worth Rs, 15,42,57,070/-to his other branches/head office situated out of State of Punjab for job work i.e. segregating packing and other work and after doing the job work returned the goods worth Rs. 14,69,86,195/-. He further observed that the goods worth Rs.69,56,11,897/- were received from other branches and after doing job work, the same were returned. The appellant while filing VAT-20 also exposed about the consumption of husk for captive generation of power. Ultimately, a demand of Rs.4,40,625/- was created which has been deposited by the appellant. It is an exempted unit for export of rice out of India.

3. However, on raising of the audit objection, after seeking permission from the Excise and Taxation Commissioner, Punjab, the notice under Section 29 (7) of the Punjab Value Added Tax Act, 2005 was given to the appellant on 26.12.2012 on the following grounds:-

(1) The appellant had made excessive purchases of paddy for export purposes with reference to the actual consumption which appeared to be deliberate in order to avoid payment of purchase tax on the excessive purchases made every year and the appellant had deposited short payment of purchase tax.

(2) The appellant had paid the less purchase tax while showing the less purchase rate of the paddy consumed for producing rice and transferring it to other branches outside the state in order to avoid the payment of tax actually due.

(3) The appellant had purchased paddy amounting to Rs. 19,11,46,653/- for intra/inter state purposes and paid purchase tax thereon @ 4% i.e. 76,45,866/- and he had claimed ITC equivalent to the purchase tax. Whereas, as per section 19 (5) of the act ibid, 1TC on goods liable to tax U/s 19 (1) and products manufactured there from when sold in the

course of interstate trade or commerce shall be available only to the extent CST chargeable under the CST Act, 1956.

(4) The appellant has shown the yield of rice from the paddy at a lesser percentage then as prescribed by the government resulting in to loss of revenue.

4. The reply to the notice was given, whereupon the Assistant Excise and Taxation Commissioner, Sangrur passed a detailed order dated 9.4.2013, whereby he created additional demand on account of tax, penalty and interest to the tune of Rs. 13,88,29,925/- U/s Punjab Value Added Tax Act whereas no liability was created under the CST and Punjab Infrastructure (Development and Registration) Act 2002.

5. It is further noticed that the appellant is an exempted unit for purchase tax under Punjab VAT Act as well as under Punjab Infrastructure (Development and Registration) Act 2002 for exporting Basmati rice out of India. The appellant has been in litigation since the year 2004-05 when the unit was installed at Village Bhasaur, Dhuri, District Sangrur. Earlier, the assessments for the years 2004-05, 2005-06 and 2006-07 were challenged and the matter reached upto the Deputy Excise and Taxation Commissioner who had remitted the case back to the Assessing Authority with a direction for reconsideration and framing fresh assessment, therefore the fresh assessment was framed on 8.5.2009, which was challenged before the Deputy Excise and Taxation Commissioner. Then again, the case was remitted back to the assessing authority, but the appellant filed the appeal before this Tribunal. The Tribunal then vide order dated 2.10.2010 had observed as under

> *"From the perusal of all the statements, it is sufficiently dear that paddy purchased in Punjab and sent to Kandia Port for export out of India, stands substantially proved and is allowed in toto".*

6. However, the case was remitted to the Designated Officer on certain other issues.

7. Initially, the department was of the view that the rice shelters were required to deposit purchase tax first on the purchase of paddy and the parties could claim refund in case the goods are exported out of the country. In this connection, a public notice had been issued for various years whereby the rice exporters were asked to deposit the purchase tax U/s 19 and claim the refund of the said amount after the goods are exported. Aforesaid notice was challenged by the appellant before the Hon'ble Punjab and Haryana High Court in Civil Writ Petition No. 19366 of 2010 reported in 39 PHT page/56. The Hon'ble High Court, while accepting the contention of the appellant, held that "the public notice is bad in the eyes of taw in so far as it obliges the rice exporter to pay the tax as the said transaction would be exempted from payment of tax in view of Article 286 of the Constitution of India." The Hon'ble High Court was of the view that the said transaction being not taxable in the first place, the question of paying tax and asking of the refund lateron, is totally unacceptable. The relevant part of the observations is reproduced as under:-

> *"Ld. counsel for the petitioner submits that omnibus notice to recover tax, even where the State Legislature has no legislative competence, cannot be justified merely on the ground that the provision for refund was available. Reliance has been placed on judgments of the Hon'ble Supreme Court in Bhawani Cotton Mills v. State of Punjab AIR 1967 SC 1616, SAIL v. State of Orissa (2008) 118 5TC 297, State of Haryana v. Nipha Exports Pvt. Ltd. (2007) 7 VST 466 and judgments of this Court in Nipha Exports Pvt. Ltd. v. State of Haryana (1998) 108 STC 337 and Sagar Cotton Co. v. State of Haryana VSTI 2010 B-746.*

8. Learned counsel for the State is unable to distinguish the applicability of judgments relied upon thus it cannot be held that irrespective of legislative competence of the Legislature,

tax could be recovered leaving the remedy of refund being sought. Tax can be levied only by an authority of law and the State Legislature can recover tax only if it is within its legislative competence. In case tax is evaded in any manner, the authorities can act according to the statutory provisions dealing with evasion of tax."

9. While placing reliance on this proposition of law, the assessment for the year 2009-10 was framed on 22.3.2012, but the department stuck to the traditional view and proceeded to rectify the return vide order dated 9.4.2013 U/s 29 (7) of the Act for deposit of tax on the purchases made for the export of rice against the advance export orders.

10. Still aggrieved, the appellant filed the appeal before the Deputy Excise and Taxation Commissioner, Patiala Division, Patiala who dismissed the same on 5.6.2013. By way of this second appeal, the appellant in order to assail the findings of the authorities below pressed for the reversal of the orders before the Tribunal on the following grounds:-

1. The appellant had the export orders for exporting the rice to the tune of 1,69,588 in M.T. The list of export orders is attached as Annexture-B-1.
2. The impugned order passed U/s 29 (7) of the Act is totally without jurisdiction because the amendment of the assessment could be made U/s 29(7) only in case where the taxable person had committed fraud, willful neglect or made mis-representation of the facts or a part of turnover had escaped assessment. But in the present case, none of the situations have arisen, therefore, the order passed U/s 29(7) was liable to be set-aside on this legal ground.
3. The Audit Objection cannot be a ground for invoking jurisdiction U/s 29(7) of the Act, The proceedings in the present case have been initiated on the basis of the Audit Objection as such the proceedings initiated U/s 29(7) and the subsequent orders passed in such proceedings are liable to be quashed.
4. Once all the documents had been perused and considered while passing the detailed order of the assessment, the question of further rectification U/s 29(7) of the Act does not arise on the same set of facts without pointing out any such violation on the part of the appellant of the conditions as mentioned in Section 29 (7) of the Act.
5. The imposition of the purchase tax was not in coconance with the legislative competence of the authorities. The appellant is the known exporter of rice out of the country. He is not liable to pay the purchase tax in the terms of article 286 of the Constitution of India read with Section 84 of the Punjab Value Added Tax Act and no purchase tax was payable on the same U/a 19 of the Act of 2005. None of the provisions of the VAT Act place a condition on the appellant for exporting the manufactured rice out of paddy purchased for export in the same tax period. Even if it is accepted that the purchase tax was payable during the year in question, the same would become refundable as and when the goods were exported out of country. In such a situation, the entire situation being revenue neutral, therefore reassessment was not justified.

11. The Ld. assessing authority fell in the error by adopting the rate of paddy @ 1956.10 per Quintal whereas the appellant had paid tax @ 70% of such value. The reason for payment of purchase tax @70% of the value was on account of the fact that 30% of the by products were kinky, husk and rice bran on which tax has been paid by the appellant, therefore,

the purchase tax on such value of the goods purchased and also payment of tax on the husk and bran also amounts to double taxation.

12. The imposition of interest in the reassessment proceedings is not justified in any manner.

13. To the contrary, the state counsel has refuted all the arguments by raising the issues that appellant had purchased paddy weighing 919616 quintals for export purposes against export orders in hand. The company had an opening, stock of paddy weighing 859025 quintals. As such the company had total 1778641 quintals of paddy allegedly meant for export purposes on which no purchase tax has been paid. However, out of this 613575 quintals of paddy was milled. Rest of the 1165065 quintals of paddy i.e. the quantity of paddy more than that purchased during the year under question, was neither milled not sold but remained as such in the stock of the company as closing stock. The company has also opening stock of rice weighing 715267 quintals for export purposes and manufactured rice weighing 376121 quintals. Out of this quantity, the company had exported rice weighing 626526 quintals only. In this way the company had 473708 quintals of rice left with it as dosing stock. It is thus obvious that the company has been purchasing paddy for the name sake against export orders with a view to evade the payment of purchase tax. It is relevant to add here that as per books, company purchased 1393525 quintals of paddy worth Rs.272,58,81,910/- out of which 919616 quintals purchased for export purposes and 473909 quintals for domestic purposes. The average rate of paddy was Rs. 1956.10/- per quintal. Therefore, the price of dosing stock of paddy comes out equal to 11,65,065 x 1956.10 = 227,89,83,646/-on which purchase tax accrues equal to Rs. 9,11,59,346/- i.e. 2278983646 x 4%.

14. It was further argued that the company had purchased paddy weighing 473910 Qtls for domestic sale purpose. During proceeding year, it was noticed that the company had shelled 321902 Qtls paddy out of which 206018 Qtls of rice was extracted, which was sent for consignment sales. However, as the company itself knew that it was liable to pay purchase tax on this paddy, therefore, the company claimed to have purchased this paddy @1409/- per quintal as against the average purchase price of Rs. 1956.10. The company was directed to explain this difference in the purchase price of paddy but failed to explain anything. The company failed to produce any bill of purchase or any relevant document which could have proved the actual price of the paddy purchased for domestic purpose only. As the company failed to explain the difference in purchase price, therefore the entire amount of paddy has been calculated @ 1956.10 per Qtls. Which comes equal to Rs.62,92,72,502/- instead of worth Rs. 45,35,68,157/- as has been done by the company itself. To substantiate the enhancement of the rate of the paddy used for domestic purpose, it is pertinent to mention here that the average sale price of rice which been exported and consigned out side the state of Punjab, comes equal to Rs.5180 per Qtls. The facts discussed, as above, clearly reveal the modus operand! of the company of evading the payment of purchase tax.

15. Arguments heard. Record perused.

16. While giving deep thought to the arguments raised by both the parties, I find substance in the contentions raised by the counsel for the appellant.

17. The appellant in the present case is challenging the order dated 5.6.2013 passed by the DETC(Appeals) Patiala Division, Patiala upholding the order dated 9,4,2013 passed by the AETC, Sangrur U/s 29 (7) of the Punjab VAT Act, amending the earlier order dated 22.3.2012 passed by the AETC under Section 29(2) of the Act framing the regular assessment.

18. The impugned order passed by the AETC is under Section 29(7) for which certain conditions are required to be fulfilled. Section 29(7) of the Act is reproduced as under:-

"29(7) The Designated Officer may, with the prior permission of the Commissioner within a period of three years from the date of the assessment order, amend an assessment, made under sub-section (2), if he discovers under assessment of tax, payable by a person for the reason that;

(a) Such a person has committed fraud or willful neglect; or

(b) Such a person has misrepresented facts; or

(c) A part of the turnover has escaped assessment;

Provided that no order amending such assessment, shall be made without affording an opportunity of being heard to the affected person."

19. On critical analysis of the aforesaid provisions, it comes out that the aforesaid power can be exercised only in cases of fraud willful neglect, misrepresentation of the facts or where the part of the turnover has escaped assessment.

20. Nothing has been pointed out in the impugned order that the appellant played fraud or made any misrepresentation of facts.

21. The revisional authority has created demand on the same set of facts. A reading of the impugned order would not show that as to under which of the clause, the case of the appellant is covered for passing a revisional order. Therefore the order passed earlier to the revisional order could otherwise be challenged if it was collusive or result of fraud. I find support to my this view from the judgment viz ***Tata Iron and Steel Company Vs State of Punjab (2007) 30 PHT 211.***

22. The revisional authority has passed the order merely on audit objection. In this regard, the counsel has relied upon the judgment ***Bal Chand Pardeep Kumar Vs State of Punjab and other (2009) 25 VST 420*** wherein its was observed that the law does not permit the reassessment on the ground that an audit objection has been raised and as such an audit objection can't constitute definite information within the meaning of Section ll-A of the Act. Similar observations were made by Division Bench of Punjab and Haryana High Court in case of ***Haryana cooperative Sugar Mills Ltd. Rohtak State of Haryana (1996) 8 PHT144 (P&H)***. The Division Bench also observed that an audit objection can't constitute information on the basis of which assessing authority could reopen the assessment U/s 31 of Haryana General Sales Tax Act.

23. In the present case, the issue in dispute is with regard to levy of purchase tax on the paddy which has been purchased for the purpose of export which has been claimed to be exempted by the assessee on the basis of Article 286 of the Constitution of India read with Section 5(3) and Rule 15 (ca) of the CST Act, 1956 and also on the basis of Section 84 of the Punjab VAT Act which is a non obstante clause. The said claim of the assesses had been duly accepted by the Assessing Authority while passing its order dated 22.3.2012 wherein he returned a finding of fact that the assessee is in possession of sufficient export orders and therefore the purchase of paddy for this purpose is not liable to be taxed. As a matter of fact, the moment the paddy is purchased for use in manufacturing of rice which is to be exported out of India on the basis of prior orders in hand, the same would be treated as a purchase In the course of export and hence, exempt from payment of tax. This issue had been duly thrashed out by the Assessing Authority while passing the earlier order and it could not be alleged in any manner that the said turnover has escaped assessment because of which there had been sunder assessment. It is worth mentioning here that tine respondent AETC has not alleged any willful neglect or fraud or mis-representation of the facts and as such those things are totally out of question. The earlier assessment order as well as the impugned amended assessment order have

been passed, based on the same set of facts and on the basis of the account books and other relevant documents produced during the course of assessment, Therefore, the impugned order is without jurisdiction and the same needs to be set aside on this score alone.

24. Now coming to the merits of the case, the appellant had purchased the paddy during the year in question for the purpose of the fulfillment of export orders which were already in its hand on the date of purchase. In fact, the appellant always has more than sufficient orders as it is the largest exporter of rice of the country and as such the purchases made by it are exempted from payment of tax under Article 286 of the Constitution of India read with Section 5 (3) and section 15 (ca) of the CST Act Keeping in view the nature of business and uniformity to the union law with the State law, the Punjab VAT act 2005 has also introduced a similar provision under Section 84 whereby any transaction treated as purchased for export out of India is not to be included even in the turnover of the assessee. No tax is payable on such goods.

25. Article 286 of the constitution, Section 5 (3) of the Central Sales Tax Act and Section 84 of the Punjab Value Added Tax Act read as under:-

286. Restrictions as to imposition of tax on the safe or purchase of goods.

(1) No law of a State shall impose, or authorize the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place-

(a) out side the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may be law formulate principles for saie or purchase of goods take place in any of the ways (1).

(3) Any law of a State shall, in so far as it imposes, or authorizes the imposition of-

(a) A tax on the sale or purchase of goods declared by Parliament by law to be of special importance in interstate trade or commerce, or

(b) A tax on the sale or purchase of goods, being a tax of the nature referred to in Sub Clause (b); Sub-Clause (c) or Sub Clause (d) of clause (29-A) of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

SECTION-5 WHEN IS A SALE OR PURCHASE OF GOODS SAID TO TAKE PLACE IN THE COURSE OF IMPORT OR EXPORT

(3) Notwithstanding any thing contained in Sub Section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after making any agreement or order and was for the purposes of complying with, the agreement or order for or in relation to such export.

SECTION-84 PROVISIONS IN CASE OF INTERSATE TRADE

Notwithstanding any thing contained in this Act, a tax on the sate of purchase of goods shall not be imposed under this Act,-

(a) Where such sale or purchase takes place out side the State; or

(b) Where such sale or purchase takes place in the course of interstate trade or commerce; or

(c) Where such sale or purchase takes place in the course of import of the goods into or export of the goods out of the territory of India:

PROVIDED THAT the last sale or purchase of any goods proceeding the sale or purchase occasioning the export of such goods out of the territory of India, shall also be deemed to be in the course of such export, if such last sale or purchase takes place after making an agreement or order [for such export subject to be furnishing a declaration in form "H" as specified in the Central Sales Tax (Registration and Turnover) Rules, 1957, by the purchaser.]

26. It is not in dispute that the appellant is a largest exporter of Rice out of India. It is also not doubted that the appellant had sufficient export orders against which purchases were made. The respondents have not proved that the paddy so purchased against the purchase orders is misused or otherwise sold in side the State. The bare provisions of law as envisaged in the constitution or the Punjab VAT Act indicate that no purchase tax could be imposed when the goods are purchased for export out side the State. It also cannot be doubted that there is exemption of purchase tax on such purchases.

27. The solitary plea setup by the respondents is of negative nature in the manner that if the paddy is not shelled and the rice is not exported by the appellant in the same year, then the benefit of exemption would not be available and the appellant will have to pay the tax on the dosing stock of paddy lying with him. In nutshell, the State wants to compel the appellant to dispose off the entire stocks by export in the same year in which the same are purchased which is completely not feasible and is not in favour of the business and trade. Even otherwise, there is no provision or clause in the exemption rules, the policy and the certificate issued to the company, which may qualify the deduction of export based upon such a plea. It would be pertinent to mention here that the purchase of paddy in the course of export out of India is exempt and the company has to manage his business of export by the actual storage for aging of paddy for at least one year for the sake of the removal of moisture and other technical considerations and also for making the rice exportable. It is submitted that due to aging, the test, the length and aroma of the rice is enhanced significantly and the basmati which is exported out of the country has to be out of the aged paddy before it is exported. In fact, the yield of the cooked rice out of the aged paddy is much more than the fresh paddy and the exportable rice is always extracted out of the paddy which is kept for more than one year. Moreover, the paddy is always procured during the season of October-November, after which it will take some time for the appellant to shell it, and export the same out of the country. As already stated above, the purchase of such paddy is exempt from payment of purchase tax as no conditions have been attached that the rice has to be exported out of the country in the same year. The only requirement of law for seeking exemption is possession of export orders against which the paddy is purchased and then actual export is made out of India.

28. I agree with this contention raised by the counsel for the appellant that the appellant has been sending the rice for export in the subsequent years, which he had procured during the year in question and the said rice has been exported out of the country and was never traded for any other purpose. The appellant has been duly explaining such export by way of filing the yearly returns and claiming the benefit of export. The appellant is In possession of all the documents showing export of rice which, justifies its claim for exemption from payment of tax

on tine paddy procured during the year in question. The company has maintained full record of the details of export of rice which is reproduced as under:

YEAR WISE CHART OF EXPORT
EXPORT

Paddy	2009-10	2010-11	2011-12	2012-13	
Opening Stock	859025	1162988	1233749.42	1333707	
Purchase	919616	1301323	1810539	1161345	
Milling	613575	1230562	1710581	1730834	
Sales	2078				
Closing Stock	1162988	1233749.42	1333707.42	764218	
Rice					
Opening Stock		715267	441295	585833	790467
Purchase	10540	46683	20885	325174	
Rice produced (Net)		343708	566058	786867	796184
Export	628220	468203	791088	1302706	
Closing Stock	441295	585833	790467	609119	

29. Even if it is assumed for the sake of arguments, (without admitting) that the tax is payable in the year 2009-10 on the purchase of paddy the dealer would become entitled to have the refund of said amount once the rice shelled out of the same is exported out of the country as per the provisions of the Punjab VAT Act. There is absolutely no justification for the Department to have initiated these proceedings as it would be a revenue neutral position since the assessee would be entitled for the refund of tax if It is paid in the year 2009-10 as the rice has been exported out of the country in the subsequent year.

30. As a matter of fact, it is transpired from the record as well as the data as referred to above, the stock of paddy was reduced to insignificant value in July 2013 as the entire paddy had been used for the purpose of export for which the export orders were already in hand. It is brought to the notice of this Hon'ble court that the paddy procured during the last season was very low as there was low yield and the procurement prices were very high. This led to the use of existing paddy and all the exports have been made out of the same as the assessee remained committed to its export orders.

31. Now coming to the issue with regard to the valuation of paddy for the purposes of taxation on the paddy so purchased for stock transfer, the Assistant Excise and Taxation Commissioner has enhanced the value of the purchase tax for the paddy which has been used for shelling of rice which has been stock transferred. According to the Assessing Authority average purchase price of the paddy is Rsl956/- whereas the purchase tax has been paid at a value of 1409/- per quintal. He has ignored the fact that stock transfer was made only of extracted rice and not of paddy. It would be pertinent to say that he was not justified at all to

have levied the tax on this ground. It is noticed that the rice procured and sent to its branches on Alipore/Ghaziabad and the total yield was to the tune of 64%. The remaining yield was attributable to rice husk bran and husk etc. which were sold locally on which sales tax has been paid or used in the captive consumption for the generation of power. The rice which has been sent on stock transfer basis was about 70% of the paddy procured for this purpose and as such the purchase tax had been paid on 70% of the average price of Rs.,1956.10 which comes to Rs.1409/- per quintal. It also sounds to the judicial conscience that the standards for yield published by the State Government are qua the paddy of the qualities other than basmati and no standards for percentage of yield from Basmati paddy have been fixed. As such after deducting the payment of tax on rice bran and husk, the value of the rice on which tax has to been paid in case of branch transfer, it comes at the same rate at which tax has been paid on the goods which have been used in captive consumption for generation of power for which has already been used in production of Saila Rice which has been exported out of the country. As such the entire tax liability stands discharged. If the department wants to levy purchase tax on the total value of paddy procured, then the assesses is entitled to the equivalent ITC which would be either adjustable on the sales tax already paid or would be refundable in view of the export of rice made out of the consumption of such goods. All this goes to show that the department is claiming purchase tax in violation of the mandatory provisions of the constitution the Central Sales Tax Act and the Punjab Value Added Tax Act itself, therefore, the reassessment so made can't be allowed to stand which has been made even in violation of Section 29 (7) of the Act and just to exaggerate the figures. Consequently, the orders passed by the authorities deserve to be set-aside.

32. Resultantly, the appeal filed by the appellant is accepted and the orders of reassessment are set-aside.

33. Pronounced in the open Court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 155-156 & 157-158 OF 2014

KURALI LAXMI MILLING
Vs
STATE OF PUNJAB
&
AGGARWAL OVERSEAS
Vs
STATE OF PUNJAB

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

5th November, 2015

HF ▶ Revenue

Assessment framed within extended period of limitation as per Amendment is held to be within limitation

ASSESSMENT – LIMITATION – ASSESSMENT FOR THE YEAR 2007-08 FRAMED ON 30.03.2012 – PERIOD OF THREE YEARS PRESCRIBED IN SECTION 29(4) EXTENDED TO 6 YEARS VIDE AMENDMENT DATED 15.11.2013 – THE EXTENDED PERIOD OF LIMITATION WOULD BE APPLICABLE – ASSESSMENT HELD TO BE WITHIN LIMITATION – APPEAL DISMISSED – *S. 29(4) OF PVAT ACT, 2005*

Assessment of the dealer for the year 2007-08 was required to be framed within three years up to 20.11.2011. However, the same was framed on 30.3.2012. Later on, the period of limitation was extended to six years by amendment of Rs. 29(4) of Punjab VAT Act on 15.11.2013. Similar orders were passed under Punjab Infrastructure (Development and Regulation) Act 2002 also. The issue in hand already stands adjudicated by High Court in the case of Amrit Banaspati Company Ltd. vs State of Punjab and others, (2015) 52 PHT 46 (P&H), wherein challenge to the amendment was repelled and it had been held that assessment for the earlier years can also be framed within the extended period of limitation. Since the matter is covered by judgment of High Court, the assessments are held to be within limitation and appeals are dismissed.

Case applied:

- *Amrit Banaspati Company Ltd. vs State of Punjab and others, (2015) 52 PHT 46 (P&H)*

Present: Mr. K.L.Goyal, Sr. Advocate alongwith Mr. Navdeep Monga, Advocate counsel for the appellant.

Mr. S.S.Brar, Addl., Advocate General for the State.

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

1. This order of mine shall dispose off four connected appeals No. 155, 156, 157 and 158 of 2014 relating to the assessment year 2007-08 dismissing the appeals of the appellants against the orders passed by the Excise and Taxation Officer-cum-Designated officer, Mohali creating additional demand under the Punjab Value Added Tax Act, 2005 as well as Central Sales Tax Act, 1948. The appeal wise facts are given as under:-

Appeal No. 155 & 156 of 2014

2. The Excise and Taxation Officer-cum-Designated Officer, Mohali vide order dated 30.3.2012 scrutinized the return for the year 2007-08 and created additional demand as under:-

	Demand created
Under the Punjab VAT Act	Rs. 12,83,022.00
Under Punjab Infrastructure Development and Regulation Act, 2002	Rs. 7,41,333.00

3. Aggrieved by the order dated 30.3.2012 passed by the Assessing Authority. The appeals were filed but the same were dismissed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala on 3.2.2014. Still aggrieved, the appeals No. 155 of 2014 was filed under the Punjab Value Added Tax Act, 2005 and the appeal No. 156 of 2014 was filed under the Central Sales Tax Act, 1956, (whereas, the appeal No. 156 of 2014 should also have been under the Punjab Value Added Tax Act, 2005 as provided under Section 25(3) of the Punjab Infrastructure Development and Regulation Act, 2002).

Appeal No. 157 & 158 of 2014

4. The Excise and Taxation Commissioner-cum- Designated Officer, Mohali, while scrutinizing the return filed by the appellant under the Punjab Value Added Tax Act, 2005 and Punjab infrastructure Development Fee Act, 2002 vide order dated 30.3.2012 created additional demand as under:-

Under the Punjab VAT Act	Rs. 10,60,128.00
Under Punjab Infrastructure Development and Regulation Act, 2002	Rs. 7,41,333.00
Demand created to the tune of	

5. These two appeals were filed before the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala and both were dismissed on 3.2.2014 for the assessment year 2007-08.

6. The main contention raised by the counsel is that assessment in question for the year 2007-08 has not been framed within limitation. The period within which it was to be framed ends on 20.11.2011, whereas the notice U/s 29 (2) of the Act was issued to the appellants after the expiry the period of limitation i.e. on 27.2.2012 and the assessment was framed on 30.3.2012, as such the assessment framed after expiry of the period of limitation is bad in law The amendment relating to enhancement of the period of limitation in Section 29 (4) of the Punjab VAT Act was introduced on 15.11.2013 vide the period of limitation was extended to 6 years cannot be applied retrorespectiveiy. Consequently, he has prayed that the assessment for the year 2007-08 as framed on 30.3.2012, is liable to be quashed. The counsel for the appellant has though raised various other pleas in the grounds of appeal yet he has not pressed these pleas at this stage.

7. To the contrary, the State Counsel has contended that two appeals were filed under the Central Sales Tax Act whereas the same should have been filed under the Punjab Value Added Tax Act, 2005 because the order under the PIDRA Act could be challenged in appeal under the Punjab Value Added Tax Act as provided U/s 25(3) of the PIDRA Act. From the plain reading of Section 25 (3) of the Punjab infrastructure (D and R) Act 2002, the Assessing Authority was required to consider the assessment within the period of limitation as provided under Section 29 (4) of the Punjab VAT Act, 2005 as no limitation has been provided to make assessment under the Punjab infrastructure (D and R) Act 2002, therefore in that light, in view of the Punjab VAT (second amendment) Act 2013, dated 15.11.2013, the limitation period for framing assessment U/s 29 (4) of the Punjab VAT Act, 2005 was extended to 6 years and the said amendment is applicable retro-respectively, therefore, the assessment framed by the assessing authority is within limitation. The counsel has also referred me to the judgment delivered in case of Amrit Banaspati Company Ltd, Vs the State of Punjab and others (2015) 52 PHT 46 (P&H) wherein the Division Bench of our own High Court while dismissing the written petition to quash the amendment upheld the validity of the amendment and observed as under:-

"Rejecting the challenge the court held:

1) *The contention of the petitioners that the prospective is misconceived as the commencement of the Act is different from the operation of the Act. Even though in the present case the amendment is applicable from 15/11/2013 but the same is operational even for the periods prior thereto. A combined reading of the amendment shows alongwith the explanations that the legislature has made its intentions very clear when explanation-1 provides for the applicability of extended period even to those cases where the aforesaid period of six years has not expired. Moreover, for the year 2006-07 a special proviso has been added to allow the framing of the assessment upto 20/11/2014, The amendment, therefore, has the retrospective effect and all the contentions are examined in the light of this presumption.*

2) *There is no dispute to the proposition that the amendment of law to nullify a judgment is valid only if the basis of judgment itself is altered so fundamentally that in the altered circumstances the judgment could not have been delivered. There is no reason in principle that if an ineffective statute can be validated retrospectively why an invalid action taken under a valid statute cannot be validated by a retrospective legislation, provided, of course the amendment should be valid in all other respects. In the present case, the legislature has given its own meaning and interpretation of Section 29 prior to the amendment by way of Explanation 2 to Section 29 (4) and by Sec 29 (10-A). This has been done to neutralize the basis of the judgment in the case of A.B, Sugars Ltd. V/s State of Punjab 2010 (29) VST 538 (P& H), Explanation 2 is a clarificatory amendment to remove the basis on which the judgment was delivered. This does not mean that the judgment of this court has been reserved. In any case, even if the Explanation 2 and Sub Section (10-A) are held unconstitutional it would not make any difference since the opening part of Sec 29 (4) operates retrospectively.*

3) *The contention that Explanation-2 being contrary to rule of natural justice is constitutionally invalid will not make any difference as the opening part of Sec 29 (4) is retrospective and therefore, it would not make any difference to the right of department to complete the assessment within the time specified as per amended Section 29(4).*

4) *Explanation-2 has been introduced with a need to validate an Act or the acts performed thereunder. And, therefore, there is a need to have such provision under the law even if the amendment does not have a substantive provision for which Explanation has been provided. The present case is an unusual one where the substantive provision was removed by the amendment but an Explanation was necessary in respect of the original substantive provision,*

5) *The provisions of the Amendment Act are not unreasonable, excessive or harsh so as to be struck down as violative of Article 14 & 19 of the Constitution. Even though the period for maintenance of books might have expired for the years 2006-07 and 2007-08 and therefore, it may result in a difficulty for an assessee. It is, however, not an insuperable difficulty so as to render the enactment unconstitutional. It would however be open to the assessee to take this factor as a defence and a justification for not having preserved the books. In such a case, an adverse inference cannot be drawn against the assessee.*

6) *The proviso to the amended Section 29(4) is not contrary to the main section and is thus neither illegal nor void. The proviso does not take away any right given by these provisions as it merely grants for the time for making an assessment in respect of the year 2006-07. The proviso carves out an exception to the main provision itself and is, therefore, perfectly valid.*

7) *There is nothing wrong with the amendment in so far as it extends the period of limitation even where the original period for assessment has expired. The amendment clearly shows its intention of having retrospective operation which is neither prohibited nor unconstitutional.*

8. The aforesaid judgment has been passed after taking various judgments passed earlier into consideration and it holds the field till now. As such the question raised by the counsel for the appellant before me stands answered by this judgment titled as Amrit Banaspati Company Ltd. decided on 7 August, 2015 against him.

9. It is no denying a fact that the notices were issued to the appellant for framing the assessment year in question within 6 years from filing the annual statement, therefore, the assessment for the year 2007-08 framed on 30.3.2012 is certainly within limitation, as regards, the objection with regard to the filing the appeal under the Central Sales Tax Act. It may be observed that the assessment was framed under the Punjab Infrastructure (D and R), 2002 therefore, the appeal should have been filed U/s 25 (3) of the PIDRA Act: consequently, under the Punjab VAT Act. In any case, since appeal was filed within limitation, therefore, mentioning wrong provision and wrong act is merely an illegality and would not entail dismissal on that account alone.

10. Resultantly, all these four appeals being without any merit are dismissed.

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NOTIFICATION (Punjab)

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AMENDMENT REGARDING REFUND OF TAX IN RULE 52 OF PVAT RULES

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION

NOTIFICATION

The 10th February, 2016

No.G.S.R.12/P.A.8/2005/S.70/Amd.(57)/2016.- In exercise of the powers conferred by sub-section (1) of section 70 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following rules further to amend the Punjab Value Added Tax Rules, 2005, namely: -

RULES

1. (1) These rules may be called the Punjab Value Added Tax (First Amendment) Rules, 2016.

(2) They shall come into force on and with effect from the date of their publication in the Official Gazette.

2. In the Punjab Value Added Tax Rules, 2005 (hereinafter referred to as the said rules), in rule 52, in sub-rule (9), after clause (c), the following clause shall be inserted, namely: -

"(d) A Gau-shala listed in the Schedule 'G', shall be allowed to get refund of tax in the following manner, namely:-

(i) a Gau-shala, shall be allowed refund of tax up to rupees three lac every year on all purchases meant for such Gau-shala; and

(ii) a new Gau-shala, shall be allowed refund of tax up to rupees five lac on the purchases made for, construction material and other goods meant for such Gau-shala only for the first year:

Provided that after a period of one year such new Gau-shala, shall be treated as an old Gau-shala and it shall be given the same benefit as is permissible to a Gau-shala under sub-clause (i)."

3. In the said rules, in Form VAT 29-A, -

(i) for the figure, sign and words "1. Name of the Organization", the figure, sign and words "1. Name of the person or organization" shall be substituted; and

(ii) for the words "Certificate: Certified that the goods purchased under the above invoices are for use in the official function of the organization", the following shall be substituted, namely: -

"Certificate: -

1. Certified that the goods purchased under the above invoices are for use in the official function of the person or organization; or
2. Certified that the goods purchased under the above invoices are for use in the ---------- ---- Gau-shala; and
   (Pl. tick, whichever, is applicable.)"

D.P. REDDY,
Additional Chief Secretary to
Government of Punjab,
Department of Excise and Taxation.

NOTIFICATION (Punjab)

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AMENDMENT IN SCHEDULE 'G' REGARDING 'GAUSHALA'

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 10th February 2016

No**. S.O.7/P.A.8/2005/S.8/2016.**-Whereas the State Government, is satisfied that circumstances exist which render it necessary to take immediate action in public interest:

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 8 of the Punjab Value Added Tax Act, 2005 and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in Schedule 'G' appended to the said Act, with immediate effect, by dispensing with the condition of previous notice, namely:-

AMENDMENT

In the Schedule, after serial No. 2, the following shall be added, namely:-

"3. The Gaushala registered with the Punjab Gau-Sewa Commission."

D.P. REDDY,
Additional Chief Secretary to
Government of Punjab,
Department of Excise and Taxation.

NOTIFICATION (Punjab)

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NOTIFICATION REGARDING FORM 'F' DECLARATION

PART III
GOVERNMENT OF PUNJAB
OFFICE OF THE EXCISE AND TAXATION COMMISSIONER,
PUNJAB, PATIALA

NOTIFICATION

The 4th February, 2016

No. S.O.8/CST (P)R/57/R.7/2016.- In pursuance of the provisions of sub-rule (10) of rule 7 of the Central Sales Tax (Punjab) Rules, 1957, read with the Government of Punjab, Department of Excise and Taxation, Notification No.S.O.11/P.A.8/2005/S.3/2013 dated the 31st January, 2013, I, Rajat Aggarwal, I.A.S., Commissioner, Punjab, hereby declare that the declaration in Form 'F', No. 0340792 to 0340796 pertaining to Series PBA/F, as obsolete and invalid with immediate effect.

RAJAT AGGARWAL,
Commissioner, Punjab.

NOTIFICATION (Punjab)

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AMENDMENT IN NOTIFICATION NO. No. S.O.90/P.A.8/2005/S.6/2013 WITH RESPECT TO ENTRIES RELATED TO SOYA, SARSON AND BINOLA KHAL

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION

(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 2nd February, 2016

No. S.O.4/P.A.8/2005/S.6/2016.-Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest ;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 6 of the Punjab Value Added Tax Act, 2005, (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.90/P.A.8/2005/S.6/2013, dated the 4th October, 2013, namely:-

AMENDMENT

In the said Notification, in the Table,-

(i) in serial No. 2, in the existing entry given under Column 2, for the words and bracket "(except Soya)", the words "except Soya, Sarson and Binola Khal" shall be substituted; and

(ii) after serial No. 35 and entries relating thereto, the following Serial No. and entries relating thereto shall be added, namely:-

" 36. Sarson and Binola Khal 2 percent".

D.P. REDDY,
Financial Commissioner Taxation and
Secretary to Government of Punjab,
Department of Excise and Taxation.

NOTIFICATION (Punjab)

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AMENDMENT IN NOTIFICATION NO. S.O.59/P.A.8/2002/S.28/2015 DATED 15.12.2015

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF FINANCE

(FINANCE EXPENDITURE-IV BRANCH)

NOTIFICATION

The 2nd February, 2016

No. S.O. 5/P.A. 8/2002/S.28/2016.-In exercise of the powers conferred by sub-section (7) of section 28 of the Punjab Infrastructure (Development and Regulation) Act, 2002 (Punjab Act No. 8 of 2002) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in the Government of Punjab, Department of Finance, Notification No. S.O.59/P.A.8/2002/S.28/2015, dated the 15th December, 2015, namely:-

AMENDMENT

In the said notification, in the Table, -

(a) under the heading 'DISTRICT URBAN INFRASTRUCTURE COMMITTEE',-

(i) after serial No.1 and entries relating thereto, the following shall be inserted, namely:-

"1-A	Mayor of the Municipal Corporation concerned or President of the Municipal Council or Municipal Committee or Nagar Panchayat concerned, as the case may be.	Member"; and

(ii) serial No. 6 and entries relating thereto shall be omitted; and

(b) under the heading 'DISTRICT RURAL INFRASTRUCTURE COMMITTEE',-

(i) after serial No.1 and entries relating thereto, the following shall be inserted, namely:-

"1-A	Chairman, Zila Parishad concerned.	Member"; and

(ii) serial No. 7 and entries relating thereto shall be omitted.

D.P. REDDY,
Additional Chief Secretary to Government of Punjab,
Department of Finance.

NOTIFICATION (Punjab)

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AMENDMENT REGARDING EXEMPTION OF PURCHASE TAX ON SUGARCANE FOR THE YEAR 2015-16

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 11th February, 2016

No. S.O.9/P.A.8/2005/S.8/2016.-Whereas the State Government, is satisfied that circumstances exist which render it necessary to take immediately action in public interest.

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.2/P.A.8/2005/S.8/2015, dated the 16th January, 2015, namely.

AMENDMENT

In the said notification for the figures and sign "2014-15", the figures and sign "2015-16" shall be substituted.

D.P. REDDY,
Additional Chief Secretary to Government of Punjab,
Department of Excise and Taxation.

PUBLIC NOTICE (Haryana)

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PUBLIC NOTICE REGARDING EXTENSION OF TIME FOR FILING ONLINE QUARTERLY RETURNS

Consequent upon implementation of electronic governance under sub section (1) of section 54-A of the Haryana Value Added Tax Act, 2003 vide order dated 05.08.2015, I am satisfied that circumstances exist for extension of period prescribed for furnishing of online quarterly returns. Therefore, in exercise of powers conferred upon me under sub section (3) of section 54-A of the Haryana Value Added Tax Act, 2003 and in pursuance of approval of the Government conveyed vide No. 3293/ACS E&T dated 03.02.2016, I, Shyamal Misra, IAS, Excise 8s Taxation Commissioner, Haryana, do hereby extend the period for filing online quarterly returns for the quarter ending 31.12.2015, upto 15.02.2016.

Panchkula, dated
03.02.2016

(SHYAMAL MISRA)
Excise & Taxation Commissioner,
Haryana, Panchkula.

ARTICLE

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THE INDIRECT TAX DISPUTE RESOLUTION SCHEME, 2016

By: Amit Bajaj, Advocate

The Finance Bill, 2016 has proposed THE INDIRECT TAX DISPUTE RESOLUTION SCHEME, 2016 for indirect tax disputes. The scheme is new to the indirect tax laws and is proposed to aim at resolving the litigation pending under the said Acts in a peacefull manner. The scheme is optional and provides relief to those litigants who want to buy peace of mind. The scheme is analysed as follows:

Disputes covered by scheme: The scheme covers the disputes pending under Central Excise Act, 1944, Customs Act, 1962 and Chapter V of the Finance Act, 1994 (I.e. service tax) before the Commissioner (Appeals) as an appeal against the impugned order as on 1st day of March, 2016.

It is worth noting here that scheme takes within its purview only the appeals pending before Commissioner (Appeals) under the abovesaid Acts as on 1st day of March, 2016. That means it is not applicable to the appeals filed after 1st March, 2016 before Commissioner (Appeals). The scheme also does not cover the appeals pending before Tribunal or High Court or supreme Court.

Disputes not covered by the scheme: The scheme provides that it shall not be applicable in the following cases:

(a) the impugned order is in respect of search and seizure proceeding; or
(b) prosecution for any offence punishable under the Act has been instituted before the 1st day of June, 2016; or
(c) the impugned order is in respect of narcotic drugs or other prohibited goods; or
(d) impugned order is in respect of any offence punishable under the Indian Penal Code, the Narcotic Drugs and Psychotropic Substances Act, 1985 or the Prevention of Corruption Act, 1988; or
(e) any detention order has been passed under the Conservation of Foreign Exchange and Prevention of Smuggling Act, 1974.

Procedure for making declaration under the scheme: A person may make a declaration to the designated authority on or before the 31st day of December, 2016 in such form and manner as may be prescribed.

The designated authority shall acknowledge the declaration in such form and manner as may be prescribed.

The declarant shall pay tax due alongwith the interest thereon at the rate as provided in the Act and penalty equivalent to twenty-five per cent of the penalty imposed in the impugned order, within fifteen days of the receipt of acknowledgement under sub-section (*2*) and intimate the designated authority within seven days of making such payment giving the details of payment made along with the proof thereof.

On receipt of the proof of payment of tax, interest and penalty, the designated authority shall, within fifteen days of the receipt of such proof, pass an order of discharge of dues referred to in sub-section (*3*) in such form as may be prescribed.

It is worth mentioning here that the form for making abovesaid declaration would be notified later once the rules under the scheme are framed.It is also worth noting here that Designated authority is defined to be an officer not below the rank of Assistant Commissioner who is authorised to act as Assistant Commissioner by the Commissioner for the purposes of this Scheme.

Scheme provides immunity from other proceedings of the Acts: Clause 213 provides under a non-abstante clause that once an order is passed under the scheme as stated above by the Designated Authority then the appeal pending before the Commissioner (Appeals) shall stand disposed of and the declarant shall get immunity from all proceedings under the Act, in respect of the indirect tax dispute for which the declaration has been made under this Scheme.

Such declaration shall become conclusive upon the issuance of an order under sub-section (*4*) of section 211 and no matter relating to the impugned order shall be reopened thereafter in any proceedings under the Act before any authority or court.

Consequences of order passed in the scheme: The scheme clearly provides that any amount paid in pursuance of declaration shall not be refunded. It also provides that the order passed under scheme in pursuance of the declaration filed by a person shall not be deemed to be an order on merits and has no binding effect.

Which means that once a person opts under the scheme, the order passed thereof would not lead to any inference that the tax or penalty imposed under the impugned order is correct as per law or on merits. In other words the order passed under the scheme would not become a precedent for other cases.

Rationale behind the proposed scheme: The rationale behind the scheme as also stated in the beginning is resolving the litigation pending before the first appellate authorities under the Central Excise, customs and service tax in a peacefull manner. The scheme is optional and provides relief to those litigants who want to buy peace of mind.

The rationale behind the legislation of the scheme can be very well understood from the extracts of the speech of finance minister as follows:

> *"Litigation is a scourge for a tax friendly regime and creates an environment of distrust in addition to increasing the compliance cost of the tax payers and administrative cost for the Government. There are about 3 lakh tax cases pending with the 1st Appellate Authority with disputed amount being 5.5 lakh crores. In order to reduce this number, I propose a new Dispute Resolution Scheme (DRS)."*

Summury of the scheme: The scheme is a step towards resolving litigation still pending at the initial level before the first appellate authorities. The scheme however does not speak about monetary limits in appeals to which this scheme will apply. Person opting under the scheme will have to pay the tax along with interest and in case the matter in appeal is related to penalty imposed under the impugned order then 25% of such penal amount will have to be paid. The feature of the scheme is that opting under scheme and paying tax and penalty would not render the matter as being decided on merits and would not result in any binding precedent for other cases. The rules under the schemes are yet to be framed so one will have to wait untill the rules are framed under the scheme before a person opts for such dispute resolution scheme.

All in all the scheme is for resolving the litigation for those litigants who wants to buy peace of mind.

NEWS OF YOUR INTEREST

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P'KULA ETO AMONG TWO HELD ON BRIBE CHARGE

CHANDIGARH: UT Vigilance sleuths today arrested two persons, including an Excise and Taxation Officer (ETO) posted in Panchkula, for allegedly taking a bribe of Rs 30,000 for allowing trucks of a Chandigarh-based businessman to ply without any checks.

Sources said the middleman, Aman, was arrested while taking the bribe amount at the grain market in Sector 26.

The sleuths asked the middleman to hand over the graft money to the ETO, Hanish Gupta, who was arrested while taking the money from the middleman at the Mini-Secretariat, Sector 1, Panchkula.

Maneesh Chaudhary, SSP, Vigilance, said they had received a complaint from a local businessman, whose vehicles passed through Haryana. "The accused had demanded a gratification for going soft on vehicles owned by the businessman," the SSP said.

The sources said the Vigilance sleuths, after scrutinising the call details and call recordings, found substance in the complaint.

Courtesy by: The Tribune
24th February, 2016