SGA
LAW OFFICES

Issue 17
1st September 2016

"Make sure you pay your taxes; otherwise you can get in a lot of trouble."

– Richard M. Nixon

NOMINAL INDEX

NOTIFICATION, PUBLIC NOTICE AND OFFICE ORDER

NEWS OF YOUR INTEREST

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News From Court Rooms

BOMBAY HIGH COURT - We are also aware that certain amount of latitude in cases where Government is a litigant, is not impermissible, as the State represents collective cause of the community and what ultimately suffers is public interest, necessitating adoption of pragmatic approach to do substantive justice. However, in case of gross delay and inaction, it becomes difficult to put a State on high pedestal, so as to be immune to the consequences of the inaction. No separate standards to determine the cause laid by the State vis-a-vis private litigant could be laid to prove sufficient cause."

As a matter of fact, the Government, being the largest litigant, has to be a model and ideal litigant. The sheer and gross negligence on the part of the Government in preferring such Appeals cannot be condoned in this manner, as a routine or as a right of the Government, and that too to unearth the cause which is already set at rest."

Dismissing the petitions observing that if they are allowed, it will set a bad precedent and may encourage the Revenue in the 'dilly dallying tactic', the court observed: "a delay can hardly be explained by attributing the same merely to the functioning of the Government and internal correspondence." (***The Addl. Comm. of Sales Tax vs. Phonographic Performance Ltd. - VAT SA NO. 119 / 2013 dt. 19.07.2016)***

CESTAT, NEW DELHI : Service Tax : When service tax was paid directly by the provider of GTA services even though it was the liability of the recipient under reverse charge, refund of service tax paid by the service provider is allowed. ***(Kumar Infrastructure Development P. Ltd. – June 27, 2016)***.

MADRAS HC : TN VAT : Assessment adopting uniform percentage of invisible loss during manufacturing for restricting ITC is not valid. Revenue directed to redo the assessment in accordance with law. ***(Sri Gayathri Enterprises – August 8, 2016).***

CESTAT, NEW DELHI : CENVAT Credit : When the ER-1 returns containing the details of credit were filed regularly extended period later even in case it was found that certain credits are not eligible to the assessee. ***(Nalwa Steel and Power Ltd. – June 30, 2016)***.

GUJARAT HC : Gujarat VAT : A public charitable trust running and maintaining a public hospital is not a dealer as it is not engaged in business activity within the meaning of Exception (iii) to section 2(10) of the Act. ***(Bhailal Amin General Hospital – August 1, 2016)***.

RAJASTHAN HC : Cenvat credit : The credit taken on the basis of the bill of entry endorsed by the Head Office of the Assessee was valid document under Rule 3 and Rule 9 of the Cenvat Credit Rules, 2004 and credit cannot be faulted. Revenue's appeal dismissed. ***(BSNL – February 4, 2016)***.

MADRAS HC: TN Sales Tax: Estimating the suppression of sales turnover on the basis of one day sales by the AO is not justified. Revenue's appeal dismissed***. (Saravana Stores – July 12, 2016)***

T & AP HC: VAT: Where assessee, a registered dealer, was carrying on business in purchase and sale of used/second hand vehicles in State of Telangana, in order to avail notional input tax credit, assessee was required to produce documentary evidence before Assessing Authority to show (i) price actually paid by it on purchase of vehicles, and (ii) said vehicles had suffered VAT at time of their initial registration under Motor Vehicles Act within State of Telangana. ***(Prathul Automobiles P Ltd. – July 19, 2016)***.

BOMBAY HC : Maharashtra VAT : The agreement between Subway and its franchisees is not a sale but is in fact a bare permission to use. It is therefore subject only to service tax not sales tax. ***(Subway Systems India P Ltd. – August 11, 2016)***.

CESTAT, NEW DELHI : Central Excise : In the absence of any allegation of price at which the samples were being sold by the assessee to the distributor the value of said samples has to be sale price of the goods for the purpose of valuation of physician samples. The fact that distributor further distributed the sample free of cost is irreverent to determine the value of physician samples. ***(Gracure Pharmaceuticals Ltd. – June 10, 2016)***.

CESTAT, BANGALORE: Cenvat Credit : It is neither possible nor practical for any service recipient to verify the fact of payment of service tax by the service provider. Remedy of the Revenue lies at the hands of the service provider and not at the hands of the service recipient. ***(Federal Mogul TPR India Ltd. – August 18, 2016).***

GUJARAT HC : Service Tax : Mere payment of VAT does not mean that service tax, if otherwise payable, cannot be recovered on lease charges. Hence, even if VAT is already paid, service tax demand cannot be said to be without jurisdiction so

as to be set aside in writ jurisdiction. Issues were left open for the petitioner to pursue statutory remedy. ***(Quippo Energy Ltd. – July 13, 2016)***.

CESTAT, NEW DELHI : Central Excise : For Invokation of extended period of limitation alleging willful misstatement/ suppression of facts, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso. ***(Maral Overseas Ltd. – August 9, 2016)***.

P & H HC : Service Tax : On the contract for construction of BPL houses as awarded by the Haryana Housing Board to the petitioners no service tax is leviable w.e.f. 1.7.2012. The Board is not entitled to pass on the burden of service tax payable on its part upon the contractors, if at all service tax is leviable under RCM***. (Bhart Bhushan Gupta – August 11, 2016)***.

MADRAS HC : CENVAT Credit : Term 'inputs' is wide enough to cover all goods used in or in relation to manufacture of final product, whether directly or indirectly or whether contained in final products or not. Hence, welding electrodes used for repair and maintenance of machineries, in relation to manufacture of sugar, is eligible for credit. ***(National Co-op Sugar Mills Ltd. – July 15, 2016)***.

DELHI HC : Delhi VAT : Where assessee in returns filed claimed for refunds due to it and Assessing Authority did not process and issue refunds to assessee within time set out under section 38, Assessing Authority was to be directed to issue to assessee amount of refund claimed with interest. ***(Prime Papers & Packers – July 28, 2016)***.

CESTAT, MUMBAI : Service Tax : Demand of Service Tax in respect of the same transaction on the ground that the deposit of Service Tax was under a different category other than the service provided cannot be held to be justifiable. ***(Idea Cellular Ltd. – July 20, 2016)***.

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SUPREME COURT OF INDIA

CIVIL APPEAL NOS. 8070-8073 OF 2016

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JAYAM & CO.
Vs
ASSISTANT COMMISSIONER & ANR..

A.K. SIKRI AND R.F. NARIMAN, JJ.

5th August, 2016

HF ▶ Assessee / Revenue

ITC accrued to a dealer cannot be taken away by way of retrospective amendment.

INPUT TAX CREDIT – RETROSPECTIVE AMENDMENT – NOTIFICATION – SECTION 19 INTRODUCED IN AUGUST 2010 WITH RETROSPECTIVE EFFECT FROM JANUARY 2007 - NEW PROVISION INTRODUCED REVERSING ITC OVER AND ABOVE OUTPUT TAX WHEN GOODS ARE SOLD BY DEALERS AT LESSER PRICE THAN PURCHASE PRICE PAID – CHALLENGE TO RETROSPECTIVE EFFECT OF THE SAID NOTIFICATION – HELD: NEW PROVISION BEING ABSOLUTELY NEW IN TERMS OF MANNER OF CALCULATION OF ITC DETRIMENTAL TO DEALERS- VESTED RIGHTS ALREADY ACCRUED TO DEALERS IN TERMS OF SALES AND PURCHASES MADE IN BETWEEN 2007 AND 2010 - SAID NOTIFICATION STRUCK DOWN TO THE EXTENT OF RETROSPECTIVITY – APPEAL PARTIALLY ALLOWED – *S. 19(20) OF TAMIL NADU VAT ACT, 2006*

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RESPECT OF THOSE GOODS THERE BEING A DIFFERENCE IN PURCHASE PRICE AND SALE PRICE- APPEAL FILED CONTENDING SUCH SECTION NOT APPLICABLE AS NET PRICE OUGHT TO BE TAKEN IN TO ACCOUNT AND NOT THE TAX INVOICE PRICE – HELD: IN VIEW OF S 19(10), TAX INVOICE IS IMPERATIVE FOR CLAIMING ITC EVIDENCING AMOUNT OF INPUT TAX – ITC IS NOT A RIGHT BUT A CONCESSION GRANTED BY VIRTUE OF S . 19 – TAX INVOICE TO BE PRODUCED UNDER ALL CIRCUMSTANCES FOR CLAIMING ITC – THEREFORE, PLEA REGARDING NOT CONSIDERING TAX INVOICE CANNOT BE ACCEPTED – APPEAL DISMISSED - *S. 19(20) R/W S. 19(10) OF TAMIL NADU VAT ACT, 2006*

Facts

Subsection (20) of Section 19 had been introduced on August 2010 with retrospective effect from Jan 2007.The retrospectivity of Section 19(20) is challenged here. The section provides that if a registered dealer sells goods at a lesser price than the purchase price paid by him, the amount of ITC over and above the output tax shall be reversed on those goods.

The appellant is a dealer purchasing appliances from local registered dealers on payment of VAT as per VAT Invoice issued by vendors. Subsequently, these are sold to consumers by dealers under VAT invoice charging VAT on their selling price. On such resale, the dealer is entitled to avail ITC i.e. the amount of VAT which he had paid to the vendor on purchase of those appliances.

In this case, after issuing of original tax invoice and availing ITC, the vendor gave discount to the dealer and issued purchase credit note. The dealer took into account the discounted price it paid to the vendor to arrive at net cost and adding VAT which was limited to vendor by the dealer and sold the goods to the consumers at a lower price. The vires were challenged before the High Court raising following pleas:

1) *The appellant contended that the said section could not be applied to this case as instead of tax invoice price, the net purchase price after discount should have been considered.*
2) *The retrospective effect given to the amendment from January 2007 while it came into force on August 2010 takes away the vested right accruing to the dealer.*

High Court rejected the Challenge. On appeal before Supreme Court.

Held:

1) *Subsection 10 of Section 19 categorically stipulates that the dealer cannot claim ITC unless the dealer receives an original tax invoice duly signed, filled by a registered dealer from when goods are purchased. Thus, it show that tax invoice is imperative for claiming ITC evidencing the amount of Input tax. This provision makes original tax invoice relevant for purpose of claiming tax. Therefore, the dealers cannot argue that the price indicated in tax invoice should not be taken into consideration but the net purchase price after discount is to be the basis. In view of Specific Statutory Scheme, general principles laid down in the Sale of Goods Act does not apply. When concession is given by statute or notification etc. the conditions thereof are to be strictly complied with. Thus it is not the right of the dealers to get benefit of ITC but a concession by virtue of S. 19.*
2) *Agreeing with the judgment passed by the High court with regard to constitutional validity of the said subsection, it is held by the court that since concession is given by statute, the legislature has power to make the provision stating the form and manner in which such concession is to be allowed. Claim of ITC is given to dealers by virtue of section 19 and is not an inherent or vested right. The main purpose of inserting*

subsection 20 was to protect the revenue against clandestine transactions leading to evasion of tax.

3) *The provision for calculating ITC in such like cases where the goods are sold at a lower price is a new provision. The manner of calculation was entirely different earlier. This is clearly a provision made for the first time to the detriment of the dealers. Such a provision, therefore, cannot be retrospective when vested rights had accrued in favour of dealers in respect of purchases and sales made between January 2007 to August 2010. The vires are upheld but the amendment is struck down to the extent whereby this is given retrospective effect from January 2007.*

The appeals are partially allowed.

Cases referred:

- *R.C. Tobacco Pvt. Ltd. V. Union of India (2005) 7 SCC 725*
- *Tata Motors Ltd. v. State of Maharashtra and others (2004) 5 SCC 783*
- *Commissioner of Income Tax (Central) - I, New Delhi v. Vatika Township Private Limited (2015) 1 SCC 1*

Present: ***For Petitioner(s):***

Senior Advocates: Mr. S.K. Bagaria and Mr. V. Giri

Other Advocates: Mr. E.R. Kumar, Mr. Sameer Paukh, Mr. K.Ajit Singh, Mr. Abhishek Vinod Deshmukh, Mr. Aditya Sharma, Mr. Aakansha Nehra, Mr. Akash Jindal, Mr. Chatanya Safaya, Ms. Shelly Bhasin, Ms. Vasudha Gupta, Ms. L. Kamath, Mr. Mahesh Agarwal, Ms. Sadapurna Mukherjee, Mr. E. C. Agrawala, Mr. F.R. Kumr, Mr. Abhishek Vinod Deshmukh, Mr. Aditya Sharma, Mr. Aakansha Nehra, Mr. Akash Jindal, M/s. Parekh & Co., Mr. K. V. Vijayakumar, Mr. Jayanth Moth Raj, Ms. Malavika J., Mr. Sureshan P., Ms. Hemalatha, Mr. P.R. Kovilan, Mrs. Geetha Kovilan, Mr. Sanand Ramakrishnan, Mr. S. Nandakumar, Mr. Parivesh Singh, Mr. P. Srinivasan, Mr. Prateek Gupta, Mr. Ranjeet Singh, Mr. Naresh Kumar, Mr. K. K. Mani, Ms. T. Archana, Mr. Gautam Narayan, Mr. R.A. Iyer, Mr. Shatrajit Banerji, Mr. Shatrajit Banerji, Mr. Nikhil Swami, Ms. Divya Swami, Mrs. Prabha Swami, Mr. Anil Kaushik, Mr. Anand Padmanabhan, Ms. Amritha Sarajoo, Mr. Shashi Bhushan Kumar

For Respondent(s):

Senior Advocates: Mr. Subramonium Prasad and Mr. Ram Subramanian

Other Advocates: Mr. B. Balaji, Mr. Utkarsh Srivastava, Mr. Arvind Athithan, Mr. Muthuver Palani

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A.K. SIKRI, J.

Leave granted.

2. We have heard the matter in detail finally at this stage on all issues that are raised. We are of the opinion that special leave petitions need to be granted only on the issue as to whether sub-section (20) of Section 19 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'VAT Act') could be given retrospective effect.

3. All these appeals arise out of common judgment dated July 17, 2013 rendered in batch of writ petitions. In the writ petitions filed by the appellants (hereinafter referred to as 'dealers'), vires of newly inserted sub-section (20) of Section 19 of the VAT Act, vide amendment brought by Amendment Act 22 of 2013 were challenged. This provision though

came into force on August 19, 2010, by the aforesaid Amendment Act, was given retrospective effect from January 01, 2007 by Tamil Nadu Value Added Tax (Special Provision) Act, 2010 (hereinafter referred to as 'Act, 2010'). The retrospectivity of the provision was also questioned by the dealers. The dealers had argued that this provision is confiscatory in nature as well as unreasonable and arbitrary and is, therefore, violative of Article 14 and 19(1)(g) of the Constitution and repugnant to the general scheme of the charging provisions of Section 3(2) and 3(3) of the VAT Act. On both the counts, the dealers' challenge has been repelled by the High Court vide impugned judgment July 17, 2013.

4. We have heard learned counsel for the parties at length. Before us, Mr. Bagaria, learned senior counsel appearing for the dealers in some of these appeals had also argued that even if the aforesaid provision was valid, it was not properly interpreted by the High Court. We have considered this additional submission as well. We may record, at the outset, that insofar as this submission based on interpretation of this provision as well as challenge laid to the constitutional validity of the said provision are concerned, we do not find any merit therein and are of the opinion that the High Court by a well-reasoned and detailed judgment rightly rejected these contentions. It is because of this reason that leave in the special leave petitions is granted only to limited extent as indicated in the beginning of this order. However, before coming to the issue of retrospectivity, we would delve into these two aspects briefly as that discussion would be required in order to understand the question of retrospectivity.

5. The appellants are 'dealers' and registered as such under the provisions of VAT Act. For example, the appellant in Civil Appeal No. 24023-26 of 2013 deals in electronic home appliances. It purchases appliances from local registered dealers on payment of VAT under the VAT invoice issued by the vendors. Thereafter, the appellant re-sells to consumers under VAT invoice charging appropriate VAT on their selling price. It had purchased LCD Televisions from M/s. LG Electronics Private Limited for re-sale. The vendors, i.e., M/s. LG Electronics had charged VAT on the selling price, as per the VAT invoice issued by M/s. LG Electronics to the dealers. Based on the price shown in the invoice, VAT was paid. Under the scheme of VAT Act, as would be seen hereinafter, on re-sale when the VAT is paid by the dealer, the dealer is entitled to avail Input Tax Credit (for short, 'ITC'), i.e., he is entitled to get the credit of the VAT which was paid by the dealer to M/s. LG Electronics on purchase of these T.V. sets from the said vendors.

6. It so happened that after the original tax invoice and availing ITC, the vendor had given discount and purchase credit note was issued for a lesser price. The dealer took into account the price it paid to M/s. LG Electronics after adjusting the discount that was subsequently given to the dealer to arrive at net cost and adding VAT which was limited to the vendors by the dealer, the goods were re-sold at a lesser price. This is illustrated before us in the following manner:

PURCHASE DETAILS

S.No	Description	Price (Rs.)	Vat (10% Rs.)
1	As per Tax Invoice of the Seller	100	10
2.	Less: Discount actually allowed by seller under its applicable incentive/discount scheme by issuing credit note.	10	
	Net purchase price after discount	90	

SALE DETAILS

S.No	Description	Amount (Rs.)

1.	Sale Price	95
2.	VAT actually on the sale price @10%	9.50

7. From the aforesaid, it is clear that the dealer had paid to the vendor VAT of Rs. 10/-. However, at the time of re-sale VAT actually allowed was Rs. 9.50. That is the effect of sub-section (20) of Section 19, which reads as under:

> *"S. 19(20) Notwithstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed."*

8. First submission of the dealer was that the price could not have been taken as per the tax invoice but net price at which it was ultimately purchased after discount should have been taken. In the given illustration, it was Rs. 90/-. On this basis, argument raised on interpretation was that since the goods were purchased at Rs. 90/- and sold at Rs. 95/-, sub-section (20) of Section 19 had no application at all. Detail submissions were made with reference to the provisions of Sale of Goods Act to buttress the submission that net purchase price would be the "price" of goods. However, according to the Revenue, purchase price had to be taken as Rs. 100/-, as mentioned in the original tax invoice, without deducting the discount of Rs. 10/- allowed by the issuing of credit note. On this basis, the Revenue took the decision that since the goods were purchased at Rs. 100/- but sold at Rs. 95/- (Section 19(20) became applicable). The High Court has accepted the contention of the Revenue. As mentioned above, detailed reasons in this behalf are given. Suffice it to state that as per the scheme of the VAT Act itself, it is the price as per the tax invoice which has to be taken into consideration. In view of this Specific Statutory Scheme, general principles laid down in the Sale of Goods Act would not be applicable.

9. We may mention that Section 19 deals with ITC and this Section is to be understood keeping in view the entire scheme of the VAT Act. VAT Act, obviously, deals with payment of value added tax on the goods sold by the dealers. It is not necessary to go into definitions of various expressions like 'business', 'dealer', 'goods', 'sale', 'turnover' etc. Since we are concerned with grant of ITC, we would reproduce the definitions of those expressions which are relevant for this purpose. These are:

> *"S. 2(24) "input tax" means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods including capital goods in the course of his business.*
>
> *S. 2(36) "tax invoice" means an invoice issued by a registered dealer who sells taxable goods to another registered dealer in the State showing the tax charged separately and containing such details as may be prescribed.*
>
> *S. 2(41) "turnover" means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (33), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea and rubber (natural rubber latex and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, unsufructuary mortgage, tenant or otherwise, shall be excluded from his turnover.*

Explanation I: "Agricultural or horticultural produce" shall not include such produce as has been subjected to any physical, chemical or other process for being made fit for consumption, save mere cleaning, grading, sorting or dying;

Explanation II: Subject to such conditions and restrictions, if any, as may be prescribed in this behalf—

(i) the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time or, or before the delivery thereof;

(ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover;

Explanation III: Any amount, realised by a dealer by way of sale of his business as a whole, shall not be included in the turnover;

Explanation IV: Any amount, charged by a dealer by way of tax separately without including the same in the price of the goods sold, shall not be included in the turnover"

10. After giving the definitions of various terms under Section 2, Sections 3 to 12 deal with levy of taxes on various kinds of transactions. For example, Section 3 deals with levy of taxes on sale of goods; Section 4 talks about levy of taxes on transfer of right to make use of any goods for any purpose and Section 5 prescribes the levy of tax on transfer of goods involved in works contract. From Section 13 onward, some concessions/ deductions are allowed. Section 13 deals with deduction of tax at source in works contract. Section 14 is about the reversal of tax credit. Likewise, Section 15 deals with those sales which are exempted from tax. In this scheme of deductions and concessions comes Section 19 which allows grant of ITC. Pertinently, however, scrutiny of this provision reveals that ITC is not allowed on all kinds of transactions. On certain types of sales, no ITC is admissible at all. Nature of those sales where ITC is inadmissible is stipulated in sub-sections (5) to (9) of Section 19. For understanding this pertinent aspect of the scheme, at this juncture, we reproduce Section 19 in its entirety as under:

"Input tax credit

(1) There shall be input tax credit of the amount of tax paid or payable under this Act, by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule:
PROVIDED that the registered dealer, who claims input tax credit, shall establish that the tax due on such purchases has been paid by him in the manner prescribed.

(2) Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of—

(i) re-sale by him within the State; or

(ii) use as input in manufacturing or processing of goods in the State; or

(iii) use as containers, labels and other materials for packing of goods in the State; or

(iv) use as capital goods in the manufacture of taxable goods;

(v) sale in the course of inter-State Tax Act, 1956 (Central Act 74 of 1956);

(vi) agency transactions by the principal within the State in the manner as may be prescribed.

3(a) Every registered dealer, in respect of purchases of capital goods, for use in the manufacture of taxable goods, shall be allowed input tax credit in the manner prescribed.

(b) Deduction of such input tax credit shall be allowed only after the commencement of commercial production and over a period of three years in the manner as may be prescribed. After the expiry of three years, the unavailed input tax credit shall lapse to Government.

(c) Input tax credit shall be allowed for the tax paid under section 12 of the Act, subject to clauses (a) and (b) of this sub-section.

(4) Input tax credit shall be allowed on tax paid or payable in the State on the purchase of goods, in excess of three percent of tax relating to such purchases subject to such conditions as may be prescribed,—

(i) for transfer to a place outside the State otherwise than by way of sale; or

(ii) for use in manufacture of other goods and transfer to a place outside the State, otherwise than by way of sale:

PROVIDED that if a dealer has already availed input tax credit there shall be reversal of credit against such transfer.

(5) (a) No input tax credit shall be allowed in respect of sale of goods exempted under section 15

(b) No input tax credit shall be allowed on tax paid or payable in other States or Union Territories on goods brought into this State from outside the State.

(c) No input tax credit shall be allowed on the purchase of goods sold as such or used in the manufacture of other goods and sold in the course of inter-State trade or commerce falling under sub-section (2) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

(6) No input tax credit shall be allowed on purchase of capital goods, which are used exclusively in the manufacture of goods exempted under section 15.

Provided that on the purchase of capital goods which are used in the manufacture of exempted goods and taxable goods, in put tax credit shall be allowed to the extent of its usage in the manufacture of taxable goods in the manner prescribed.

(7) No registered dealer shall be entitled to input tax credit in respect of—

(a) goods purchased and accounted for in business but utilised for the purpose of providing facility to the proprietor or partner or director including employees and in any residential accommodation; or

(b) purchase of all automobiles including commercial vehicles, two wheelers and three wheelers and spare parts for repair and maintenance thereof, unless the registered dealer is in the business of dealing in such automobiles or spare parts; or

(c) purchase of air-conditioning units unless the registered dealer is in the business of dealing in such units.

(8) No input tax credit shall be allowed to any registered dealer in respect of any goods purchased by him for sale but given away by him by way of free sample or gift or goods consumed for personal use.

(9) No input tax credit shall be available to a registered dealer for tax paid or payable at the time of purchase of goods, if such—

(i) goods are not sold because of any theft, loss or destruction, for any reason, including natural calamity. If a dealer has already availed input tax credit against purchase of such goods, there shall be reversal of tax credit; or

(ii) inputs destroyed in fire accident or lost while in storage even before use in the manufacture of final products; or

(iii) inputs damaged in transit or destroyed at some intermediary stage of manufacture.

(10) (a) The registered dealer shall not claim input tax credit until the dealer receives an original tax invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax.

(b) If the original tax invoice is lost, input tax credit shall be allowed only on the basis of duplicate or carbon copy of such tax invoice obtained from the selling dealer subject to such conditions as may be prescribed.

(11) In case any registered dealer fails to claim input tax credit in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchase, whichever is later.

(12) Where a dealer has availed credit on inputs and when the finished goods become exempt, credit availed on inputs used therein, shall be reversed.

(13) Where a registered dealer without entering into a transaction of sale, issues an invoice, bill or cash memorandum to another registered dealer, with the intention to defraud the Government revenue, the assessing authority shall, after making such enquiry as it thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer who has claimed input tax credit based on such invoice, bill or cash memorandum from such date.

(14) Where the business of a registered dealer is transferred on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the business to a joint venture with the specific provision for transfer of liabilities of such business, then, the registered dealer shall be entitled to transfer the input tax credit lying unutilized in his accounts to such sold, merged, amalgamated, leased or transferred concern. The transfer of input tax credit shall be allowed only if the stock of inputs, as such, or in process, or the capital goods is also transferred to the new ownership on which credit has been availed of are duly accounted for, subject to the satisfaction of the assessing authority.

(15) Where a registered dealer has purchased any taxable goods from another dealer and has availed input tax credit in respect of the said goods and if the registration certificate of the selling dealer is cancelled by the appropriate registering authority, such registered dealer, who has availed by way of input

tax credit, shall pay the amount availed on the date from which the order of cancellation of the registration certificate takes effect. Such dealer shall be liable to pay, in addition to the amount due, interest at the rate of two per cent, per month, on the amount of tax so payable, for the period commencing from the date of claim of input tax credit by the dealer to the date of its payment.

(16) The input tax credit availed by any registered dealer shall be only provisional and the assessing authority is empowered to revoke the same if it appears to the assessing authority to be incorrect, incomplete or otherwise not in order.

(17) lf the input tax credit determined by the assessing authority for a year exceeds tax liability for that year, the excess may be adjusted against any outstanding tax due from the dealer.

(18) The excess input tax credit, if any, after adjustment under sub-section (17), shall be carried forward to the next year or refunded, in the manner, as may be prescribed.

(19) Where any registered dealer has availed input tax credit and has goods remaining unsold at the time of stoppage or closure of business, the amount of tax availed shall be reversed on the date of stoppage or closure of such business and recovered.

(20) Not withstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed. ”

11. From sub-section (10) onwards, provisions are made to follow the procedure and fulfill the requisite conditions for availing ITC. For the purposes of this particular issue, sub-section (10) is the material provision. This provision, which is couched in negative terms, categorically stipulates that such ITC would be admissible to the registered dealer and he would not be entitled to claim this credit 'until the dealer receives an original tax invoice duly filled, signed and issued by a registered dealer from where the goods are purchased .....' Further, such original tax invoice should evidence the amount of input tax. So much so, even if the original tax invoice is lost, the obligation cast on the registered dealer is to obtain duplicate or carbon copy of such tax invoice from the selling dealer and only then input tax is allowed.

From the aforesaid scheme of Section 19 following significant aspects emerge:-

(a) *ITC is a form of concession provided by the Legislature. It is not admissible to all kinds of sales and certain specified sales are specifically excluded.*
(b) *Concession of ITC is available on certain conditions mentioned in this Section.*
(c) *One of the most important condition is that in order to enable the dealer to claim ITC it has to produce original tax invoice, completed in all respect, evidencing the amount of input tax.*

12. It is a trite law that whenever concession is given by statute or notification etc. the conditions thereof are to be strictly complied with in order to avail such concession. Thus, it is not the right of the 'dealers' to get the benefit of ITC but its a concession granted by virtue of Section 19. As a fortiorari, conditions specified in Section 10 must be fulfilled. In that hue, we find that Section 10 makes original tax invoice relevant for the purpose of claiming tax. Therefore, under the scheme of the VAT Act, it is not permissible for the dealers to argue that

the price as indicated in the tax invoice should not have been taken into consideration but the net purchase price after discount is to be the basis. If we were dealing with any other aspect do hors the issue of ITC as per the Section 19 of the VAT Act, possibly the arguments of Mr. Bagaria would have assumed some relevance. But, keeping in view the scope of the issue, such a plea is not admissible having regard to the plain language of sections of the VAT Act, read along with other provisions of the said Act as referred to above.

13. For the same reasons given above, challenge to constitutional validity of sub-section (20) of Section 19 of VAT Act has to fail. When a concession is given by a statute, the Legislature has power to make the provision stating the form and manner in which such concession is to be allowed. Sub-section (20) seeks to achieve that. There was no right, inherent or otherwise, vested with dealers to claim the benefit of ITC but for Section 19 of the VAT Act. That apart, we find that there were valid and cogent reasons for inserting Section 19(20). Main purport was to protect the Revenue against clandestine transactions resulting in evasion of tax. High Court has discussed this aspect in detail and our task would be accomplished in reproducing those paras as we are concurring with the discussion:

> *"64. Let us now point out the background/reasons for inserting Section 19(20) by Amendment Act 22 of 2010, by referring to the Chart, the sample instance is detailed in the Chart in paragraph (34). Let us recapitulate the entries in the Chart. Based on the sale price, i.e., Rs. 36,780/- in the tax invoice, an amount of Input Tax Credit, i.e., Input Tax Credit of Rs.4m 597.50 was available to the petitioner when he re-sells goods. Based on the Credit Note, the same goods are re-sold within the State at a lesser price than what was purchased, i.e., Rs. 33,777.78 (taking into account discount price, there is a profit margin for the dealer) and thereby the output tax payable to the Government is reduced, leaving excess Input Tax Credit at the hands of the dealer. The said excess credit in the hands of the dealer might be adjusted to their other liabilities or might claim refund of the said excess Input Tax Credit. Taking excess Input Tax Credit and later in the guise of credit note giving discount and reducing the price of the goods which reduces the Output tax payable to the Government dwindles State revenue.*
>
> *65. Learned Advocate General contended that seller and buyer coalition is issuing purchase invoice at an escalated price thereby taking benefit of excess Input Tax Credit and later in the guise of credit notes giving discount, reduced the price of the same goods and thereby reducing the output tax payable to the Government creates a dent of the State revenue. Learned Advocate General further submitted that excess Input Tax Credit available in the hands of the dealer is being adjusted to their other liabilities and the dealer might also make a claim of refund of Input Tax Credit as per Section 19(18) of the Act which were ultimately resulted in creating dent on the State revenue.*
>
> *66. To contend as to how the so called discount and reduction of sale price caused revenue loss to the Government, the learned Advocate General has drawn our attention to the illustration stated in paragraph (6) of the counter which reads as under: -*

Purchase price of 10 Washing Machines	*Rs.1,00,000/-*
Tax paid on purchase at 12.5% (ITC allowed)	*Rs.12,500/-*
Sale price after discount *Tax payable on sales at 12.55* *Excess ITC available*	*Rs.75,000/-* *Rs,9,375/-* *Rs. 3,125/-*

(Difference between ITC and Output Tax)	*Rs.12,500-Rs.9,375*
Excess ITC Adjusted	*Rs.3,125/-"*

67. As rightly contended by the learned Advocate General, the "Input Tax Credit" adjusted in the above illustration comes to Rs. 3,125/- in a single transaction and that it would run to several lakhs and crores for a year for a single dealer. The excess Input Tax Credit earned by the petitioners is being adjusted against the outstanding tax due or carried forward to next year or refunded. If this trend is allowed to continue, the concept of VAT that meant for payment of tax on every value addition gets defeated.

68. In order to protect the revenue and with a view to curb the clandestine transactions resulting in evasion of tax, in respect of second and subsequent sales, Section 19(20) was introduced, where any dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of "Input Tax Credit" over and above the output tax of those goods, shall be reversed.

69. Constitutional Validity of fiscal legislation:- When there is a challenge to the constitutional validity of the provisions of a Statute, Court exercising power of judicial review must be conscious of the limitation of judicial review must be conscious of the limitation of judicial intervention, particularly, in matters relating to the legitimacy of the economic or fiscal legislation. While enacting fiscal legislation, the Legislature is entitled to a great deal of latitude. The Court would interfere only where a clear infraction of a constitutional provision is established. The burden is on the person, who attacks the constitutional validity of a statute, to establish clear transgression of constitutional principle. Observing that the law relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc., in R.K. Garg vs. Union of India [(1981) 4 SCC 675, this Court held as under:

xxx xxx xxx xxx xxx"

14. With this, let us advert to the issue on retrospectivity. No doubt, when it comes to fiscal legislation, the Legislature has power to make the provision retrospectively. In ***R.C. Tobacco Pvt. Ltd. V. Union of India (2005) 7 SCC 725***, this Court stated broad legal principles while testing a retrospective statute, in the following manner:

"(i) A law cannot be held to be unreasonable merely because it operates retrospectively;

(ii) The unreasonability must lie in some other additional factors;

(iii) The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be unreasonable as to violate constitutional norms;

(iv) Where taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of tax or that is confiscatory, Courts will be justified in striking down the impugned statute as unconstitutional;

(v) The other factors being period of retrospectivity and degree of unforseen or unforseeable financial burden imposed for the past period;

(vi) Length of time is not by itself decisive to affect retrospectively."

15. At the same time, this Court has also held that retrospective legislation would be admissible in cases of validation laws, i.e., where the laws as initially passed was held to be inoperative by the court and when there is a new provision inserted, it should normally be prospective. We may refer to the judgment of this Court in ***Tata Motors Ltd. v. State of Maharashtra and others (2004) 5 SCC 783***. In that case, the appellant -assessee company, manufactured motor vehicle chassis and spare parts. It procured steel in primary form covered by Entry 6 of Schedule B to the Bombay Sales Tax Act, 1959 for use in the manufacturing process which resulted also in iron and steel crap which was covered by the said entry. Therefore, in Assessment Year 1982-83, the appellant therein claimed set-off of a certain amount in terms of Rule 41 -E for the quantum of iron and steel purchased which was converted into iron and steel scrap. The claim was allowed. Subsequently, Maharashtra Act 9 of 1989 was enacted and by Sections 26 and 27, the benefit of Rule 41-E was denied altogether for the period 1-7-1981 to 31-3-1988 where the manufactured goods falling under Schedule B were in the nature of waste goods/scrap goods/by-products. The validity of such retrospective amendment to Rule 41-E was unsuccessfully challenged before the High Court. The High Court took the view that the impugned amendment of Rule 41-E was clarificatory to remove the doubts in interpretation. However, by the Bombay Sales Tax (Amendment) Rules, 1992 Rule 41-E was amended. That amendment removed the exclusionary clause of goods manufactured out of waste or scrap goods or products and restored the position as it stood prior to 1981. The appellant's appeal and another connected appeal were heard simultaneously.

The appellant - assessee contended that retrospective operation of a provision depriving the assessee of the vested statutory right and covering a long period (eight years in that case) imposed a prima facie unreasonable restriction and was, therefore, unconstitutional. More so, when the original provision was subsequently reintroduced deleting the amendments and there was no material to justify the special treatment given for the said eight years. The respondent State could not meet the said contention. The assessee company further contended that since the CST Act had not been extended to Dadra and Nagar Haveli, where the assessee's branch office was located, the requirement under Rule 41-D for registration of the assessee under the CST Act in that place was impossible of performance and should, therefore, be ignored.

16. Though the latter contention was rejected, the first contention noted above, touching upon the retrospectivity of the amendment, was accepted and while allowing the appeal the matter was dealt with in the following manner:

> *"15. It is no doubt true that the legislature has the powers to make laws retrospectively including tax laws. Levies can be imposed or withdrawn but if a particular levy is sought to be imposed only for a particular period and not prior or subsequently it is open to debate whether the statute passes the test of reasonableness at all. In the present case, the High Court sustained the enactment by adverting to Rai Ramkrishna case when the benefit of the rule had been withdrawn for a specific period. The learned counsel for the State contended that the amendments had been made to overcome certain defects arising on account of the decision of the Tribunal in regard to the modalities of working out the relief. But, the impugned amendment brought about by Section 26 is not for that purpose. Assuming that it was the legislative policy not to grant set-off in respect of waste or scrap material generated, it becomes difficult to appreciate the stand of the State in the light of the fact that the original rule continued to be in operation (with certain modifications) subsequent to 1-4-1988. The reason for withdrawal of the benefit retrospectively for a limited period is not forthcoming. It is no doubt true that the State has enormous powers in the matter of legislation and in enacting fiscal laws. Great leverage is allowed in the matter of taxation laws because several*

fiscal adjustments have to be made by the Government depending upon the needs of the Revenue and the economic circumstances prevailing in the State. Even so an action taken by the State cannot be so irrational and so arbitrary so as to introduce one set of rules for one period and another set of rules for another period by amending the laws in such a manner as to withdraw the benefit that had been given earlier resulting in higher burdens so far as the assessee is concerned, without any reason. Retrospective withdrawal of the benefit of set-off only for a particular period should be justified on some tangible and rational ground, when challenged on the ground of unconstitutionality. Unfortunately, the State could not succeed in doing so. The view of the High Court that the impugned amendment of Rule 41-E was of clarificatory nature to remove the doubts in interpretation cannot be upheld. In fact, the High Court did not elaborate as to how the impugned legislation is merely clarificatory. In that view of the matter, although we recognise the fact that the State has enormous powers in the matter of legislation, both prospectively and retrospectively, and can evolve its own policy, we do not think that in the present cases any material has been placed before the Court as to why the amendments were confined only to a period of eight years and not either before or subsequently and, therefore, we are of the view that the impugned provision, namely, Section 26 deserves to be quashed by striking down the words "not being waste goods or scrap goods or by-products" occurring in the said Section 26 of Maharashtra Act 9 of 1989 and the authorities concerned shall rework assessments as if that law had not been passed and give appropriate benefits according to law to the parties concerned."

17. The entire gamut of retrospective operation of fiscal statues was revisited by this Court in a Constitution Bench judgment in ***Commissioner of Income Tax (Central) - I, New Delhi v. Vatika Township Private Limited (2015) 1 SCC 1*** in the following manner:

"33. A Constitution Bench of this Court in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas [AIR 1968 SC 1336 : (1968) 3 SCR 623], while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows: (AIR p. 1339, para 8)

"8. ... The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from Section 115 of the Code of Civil Procedure, and the legislature has by the amending Act not attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act."

34. It would also be pertinent to mention that assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. (See CED v. M.A. Merchant [1989 Supp (1) SCC 499 : 1989 SCC (Tax) 404].)

35. We would also like to reproduce hereunder the following observations made by this Court in Govind Das v. ITO [(1976) 1 SCC 906 : 1976 SCC (Tax) 133] , while holding Section 171(6) of the Income Tax Act to be prospective and

inapplicable for any assessment year prior to 1-4-1962, the date on which the Income Tax Act came into force: (SCC p. 914, para 11)

"11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that

'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.'" (emphasis supplied)

18. When we keep in mind the aforesaid parameters laid down by this Court in testing validity of retrospective operation of fiscal laws, we find that the amendment in-question fails to meet these tests. The High Court has primarily gone by the fact that there was no unforseen or unforeseeable financial burden imposed for the past period. That is not correct. Moreover, as can be seen, sub-section (20) of Section 19 is altogether new provision introduced for determining the input tax in specified situation, i.e., where goods are sold at a lesser price than the purchase price of goods. The manner of calculation of the ITC was entirely different before this amendment. In the example, which has been given by us in the earlier part of the judgment, 'dealer' was entitled to ITC of Rs. 10/- on re-sale, which was paid by the dealer as VAT while purchasing the goods from the vendors. However, in view of Section 19(20) inserted by way of amendment, he would now be entitled to ITC of Rs. 9.50. This is clearly a provision which is made for the first time to the detriment of the dealers. Such a provision, therefore, cannot have retrospective effect, more so, when vested right had accrued in favour of these dealers in respect of purchases and sales made between January 01, 2007 to August 19, 2010. Thus, while upholding the vires of sub-section (20) of Section 19, we set aside and strike down Amendment Act 22 of 2010 whereby this amendment was given retrospective effect from January 01, 2007.

19. Appeals are partially allowed to the aforesaid extent. No orders as to costs.

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 6016 OF 2016

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COMMERCIAL TAXES OFFICER
Vs
AGRAWAL PLYWOOD

A.K. SIKRI AND N.V. RAMANA, JJ.

5th August, 2016

HF ▶ Revenue

Penalty imposed on the consignee for incomplete forms is upheld in view of judgment of Guljag Industries.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT – DOCUMENTS PRODUCED BY DRIVER – ST 18-A FORM FOUND INCOMPLETE ON CONSIGNOR'S SIDE– PENALTY IMPOSED – APPEAL FILED BY CONSIGNEE- APPELLANT ALLOWED BY LOWER AUTHORITIES AND HIGH COURT HOLDING CONSIGNEE NOT ACCOUNTABLE FOR LAPSE ON PART OF CONSIGNOR - APPEAL BY REVENUE BEFORE SUPREME COURT – HELD: PENALTY TO BE UPHELD IN VIEW OF AN EARLIER JUDGMENT PASSED BY THIS COURT – APPEAL ALLOWED – *S. 78(2) OF RAJASTHAN SALES TAX ACT, 1994*

Facts

The appellant – department conducted inspection of the vehicle carrying goods whereby it was observed that the driver produced incomplete ST 18-A Form. Concluding it to be violation of Section 78(2) of the Rajasthan Sales Tax Act, 1994 r/w Rule 53, a penalty was imposed. The respondent- dealer filed an appeal which was allowed holding that the incomplete from was sent by the seller for which the respondent could not be made accountable. The order was further upheld by the Board. The high court dismissed the revision petition of the appellant-department holding that the respondent could not be penalized for lapse on part of the seller. Hence, an appeal is filed before Supreme Court.

Held:

The issue is covered by the judgment of the Supreme court in ***Guljag Industries V Commercial Taxes Officer [2007] (7) SCC 269*** *in favour of revenue. The appeal is allowed and order passed by High court is set aside.*

Cases referred:

- *M/s. Guljag Industries v. Commercial Taxes Officer' [2007 (7) SCC 269]*

Present: For Petitioner(s): Dr. Manish Singhvi, Advocate
Mr. Prasentjit Pritam, Advocate
Mr. Irshad Ahmad, Advocate

For Respondent(s): None

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ORDER

1. None has put in appearance on behalf of the respondent.

2. Leave granted.

3. The appellant conducted the inspection of a vehicle at a check post and it was discovered that the said vehicle was transporting plywood from Delhi to Bikaner. It was observed that the driver produced incomplete ST-18A Form on the seller / consignor's side. Therefore, the goods were seized and a notice was sent to the respondent. The appellant found that there is a violation of Section 78(2) of the Rajasthan Sales Tax Act, 1994 (hereinafter referred to as 'Act') read with Rule 53 of the Rajasthan Sales Tax Rules and therefore, imposed a penalty of Rs.25,865/- under the Act.

4. Aggrieved by the above order, the respondent filed appeal before the appellate authority and the appellate authority allowed the appeal and held that the seller/trader had sent the blank form for which the respondent cannot be made accountable and the appellant failed to prove that the respondent had the intention to evade the tax, hence, the penalty was wrongly imposed.

5. Aggrieved by the above order, the appellant filed appeal before the Rajasthan Tax Board. The Board upheld the order of the appellate authority and held that the respondent had completed all the formalities at his end and fill the columns in the form but the consignor did not complete the form at his part. This apart, documents like bills, vouchers and authorization letter, etc., were available with the driver at the time of checking. Hence, the penalty was wrongly imposed.

6. Aggrieved by the above order, the appellant filed revision petition before the High Court.

7. Vide the impugned order, the High Court dismissed the revision petition of the appellant and upheld the findings of the lower authorities and held that there was no malafide intention of the respondent for evading tax or defraud the Revenue and the respondent cannot be penalised for the lapse on the part of the seller.

8. Challenging the aforesaid order, the present appeal is preferred.

9. We find that the issue involved is no more *res integra* and is covered in favour of the Revenue by the judgment of this Court in '***M/s. Guljag Industries* v. *Commercial Taxes Officer' [2007 (7) SCC 269].*** This appeal is, accordingly, allowed and the order of the High Court is set aside.

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SUPREME COURT OF INDIA

CIVIL APPEAL NOS. 3161-3162 OF 2008

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ITC LIMITED
Vs
STATE OF U.P. & ORS.

A.K. SIKRI AND R.F. NARIMAN, JJ.

22nd July, 2016

HF ▶ Assessee - dealer

Exemption from purchase tax on wheat is admissible even if goods are supplied to a job worker for conversion into wheat flour.

PURCHASE TAX - WHEAT - EXEMPTION - NOTIFICATION - WHEAT PURCHASED BY APPELLANT FROM FARMERS FOR SUBSEQUENT COVERSION INTO ATTA BY RECOGNIZED ROLLER FLOUR MILLS ON JOB WORK - EXEMPTION FROM PAYMENT OF PURCHASE TAX CLAIMED IN TERMS OF S. 4B OF THE ACT R/W NOTIFICATION DATED 29/8/03 – CLAIM DENIED AND HIGH COURT HELD THAT BENEFIT NOT AVAILABLE IN CASE OF 'SUPPLY' OF WHEAT – WORDS 'OR SUPPLIED' ARE REDUNDANT AND ARE MECHANICALLY BORROWED FROM THE RELEVANT SECTION UNDER WHICH THE NOTIFICATION IS ISSUED - APPEAL BEFORE SUPREME COURT – HELD: WORDS USED IN THE NOTIFICATION OUGHT TO BE SAME AS GIVEN IN THE SAID SECTION UNDER WHICH NOTIFICATION IS ISSUED - S.4B (1) (a-1) ITSELF PROVIDES FOR SPECIAL RELIEF FOR NOT ONLY GOODS SOLD BUT ALSO ON GOODS SUPPLIED BY A DEALER- EXCLUDING THE GOODS SUPPLIED BY A DEALER WOULD BE DOING VIOLENCE TO THE PROVISIONS OF SECTION 4B(1)(a-1) – SAID NOTIFICATION ISSUED HAS TO BE READ AS IT IS AND EXAMINED – CONDITIONS MENTIONED FOR CLAIMING EXEMPTION STAND FULFILLED BY THE APPELLANT – APPEAL ALLOWED - *S.4B (1) (a-1) OF UTTAR PRADESH TRADE TAX ACT, 1948*

Facts

The appellant is the first purchaser of wheat from farmers in state of U.P. It supplies the same to the Roller flour mills within the state for conversion of same to Atta and Maida and takes it back for onward sale. It had been claiming exemption for payment of purchase tax on wheat In terms of S.4B(1) (a-1) of the Act r/w Notification dated 29/8/2003 which provide exemption (special relief) in respect of those goods that are 'sold or supplied' by the first purchaser of the goods to Roller flour mills which should be holding a valid recognition certificate.

The DETC denied the claim of the petitioner on the basis that the exemption was not available in case of supply of wheat by appellant to the roller flour mills. The High court upheld the orders holding that though the notification uses words 'sold or supplied'; the words 'or supplied' are redundant because they are mechanically borrowed from the wording of Section 4B(1)(a-1) of the Act. Thus, the claim of the petitioner was denied once again. An appeal is filed before Supreme Court.

Held:

The High court has ignored that the said notification was issued in exercise of powers conferred u/s 4B(1)(a-1) of the Act and it is but natural to prescribe the same language and the conditions which are mentioned there in that section. Section 4B (1)(a-1) itself provides for special relief for not only goods sold but also on goods supplied by a dealer. Excluding the goods supplied by a dealer would be doing violence to the provisions of Section 4B(1)(a-1).The notification issued should have been read as it is and examined whether the appellant fulfilled the condition as given in it. The appellant here has satisfied all the conditions mentioned in the said notification.

The benefit is extended to a dealer in the said section and for availing it, it is not necessary that he has to be a manufacturer.

The appeal is allowed along with consequential relief as the appellant is entitled to the benefit of Section 4B (1)(1-a) as well as notification dated 29/8/03.

Present: For Appellant(s): Mr. Arvind P. Datar, Sr. Advocate
Mr. Ajay Aggarwal, Advocate
Ms. Mallika Joshi, Advocate
Ms. Ruchika, Advocate
Mr. Rajan Narain, Advocate

For Respondent(s): Mr. Ravi Prakash Mehrotra, Advocate
Mr. Vibhu Tiwari, Advocate
Mr. Abhinav K. Malik, Advocate
Mr. Vinay Garg, Advocate

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ORDER

1. These appeals are preferred by the appellant/assessee questioning the validity and/or propriety of the judgment dated 16.01.2007 passed by the High Court of Judicature at Allahabad whereby the writ petitions preferred by the appellant have been dismissed. The said writ petitions were filed by the appellant challenging the order dated 17.11.2006 passed by the Deputy Commissioner, Trade Tax, Saharanpur under Rule 41(6) of the U.P. Trade Tax Rules by which purchase tax at the prescribed rate of 4% amounting to Rs.2,33,00,663/- had been imposed upon the appellant along with interest @ 14% on the admitted purchase of wheat.

2. To state at the outset, the appellant herein wanted to avail the benefit of exemption Notification dated 29.08.2003 issued under Section 4B(1)(a-1) of the Uttar Pradesh Trade Tax Act, 1948 (hereinafter referred to as 'the Act') which plea of the appellant was rejected by the Deputy Commissioner, Trade Tax and the High Court has, as mentioned above, upheld the order of the Deputy Commissioner, Trade Tax while dismissing the writ petitions filed by the appellant. Few relevant facts which need to be noticed to decide the controversy are as follows:

> *The appellant herein is the first purchaser of wheat from the farmers in the State of U.P. It supplies the wheat so purchased to certain Roller Flour Mills in the State of U.P. for conversion of the same to Atta and Maida. The period with which we are concerned is April,2006 and May, 2006 during which the appellant had purchased wheat from those farmers and supplied the same for conversion into flour by grinding process to three flour mills. After conversion of wheat into flour it was taken back by the appellant from those flour mills for onward sale. It was the case of the appellant that it had been claiming exemption since 2004 for payment of purchase tax in respect of wheat in terms*

of Section 4B(1) (a-1) of the Act read with Notification dated 29.08.2003, both of which provide for such exemption in respect of goods that are "sold or supplied" by the first purchaser of the goods to such Roller Flour Mills. However, vide order dated 23.11.2006 passed by the Deputy Commissioner, this exemption was denied on the basis that the same was not available in case of supply of the wheat by the appellant to the Roller Flour Mills. Two show cause notices were issued by the Deputy Commissioner, Trade Tax and after considering reply thereupon and hearing the appellant, the demand of the show cause notices was confirmed. The orders passed by the Deputy Commissioner were challenged by filing two writ petitions which had been dismissed by the High Court by the impugned order.

3. Before adverting to the manner in which the High Court has decided the matter, we would like to reproduce the relevant provisions of the Act as well as exemption Notification dated 29.08.2003.

4. Section 3D of the Act, which is a charging section, prescribes the levy of trade tax on purchaser or sale of certain goods. These goods, admittedly, include wheat. Notwithstanding this provision contained in Section 3D of the Act, Section 4B(1)(a-1)contains a special provision providing special relief to such assessees. The heading of the section is "special relief to certain manufacturers". Since the appellant is claiming the benefit of the special relief that is provided under the aforesaid provision, we would like to reproduce sub-Section(1)of Section 4B in its entirety:

"Sub-Section(l): Notwithstanding anything contained in Sections 3,3-A,3-AAAA and 3-D –

(a) Where any goods liable to tax under sub-section(1) of section 3-D are purchased by a dealer who is liable to tax on the turnover of first purchases under that sub-section, or where any goods are purchased by any dealer in circumstances in which such a dealer is liable to trade tax on purchase of such goods under section 3-AAAA and the dealer holds a recognition certificate issued under sub-section(2) in respect thereof, he shall be liable in respect of those goods to tax at such concessional rate, or be wholly or partly exempt from tax, whether unconditionally or subject to the conditions and restrictions specified in that behalf, as may be notified in the Gazette by the State Government in that behalf:

(a-1)Where any declared goods liable to tax under sub-section (1) of section 3-D are sold or supplied by a dealer, who is the first purchaser thereof, to another dealer, holding a valid recognition certificate under sub-section (2) in respect thereof, the State Government may, subject to such conditions and restrictions as may be specified by a notification in that behalf, grant the same relief as mentioned in clause (a) to such first purchaser;"

5. It is a common case of the parties that the provisions of Section 4B(1)(a-1) are attracted in the present case, benefit whereof has been sought by the appellant. It mentions - where any declared goods liable to tax under sub-section (1) of Section 3-D are "sold or supplied" by a dealer, who is the first purchaser thereof, to another dealer and the said dealer holds a valid recognition certificate under sub-section(2) thereof, the State Government may, by a notification, grant the same relief as mentioned in clause(a) to such first purchaser. The conditions that are required to be satisfied for claiming the benefit under these provisions are: (1) the declared goods should otherwise be liable to tax under Section 3D(1) of the Act; (2) such declared goods are sold or supplied by a dealer; (3) such dealer who sells or supplies the goods should be the first purchaser thereof and (4) the supply or sale has to be made to another

dealer and another dealer to whom the supply is made should be holding a valid recognition certificate under sub-Section(2) in respect thereof.

6. This was followed by a Notification dated 29.08.2003 issued by the State Government stipulating that no tax would be payable by a registered dealer who is the first purchaser of wheat within the State when such wheat is "sold or supplied" by such first purchaser to a Roller Flour Mill and Atta Chakki Plant holding a valid recognition certificate under sub-Section (2) of Section 4B(1)(a-1) of the Act and such manufactured goods shall be notified goods for the purposes of the said section. It is clear from the above that this Notification which was issued in exercise of powers conferred under Section 4B(1)(a-1) prescribed that no tax shall be payable by the said registered dealer who is the first purchaser and the conditions which are mentioned therein are the same which are provided under Section 4B(1)(a-1), as noticed above. Of course, this Notification mentions certain conditions and restrictions as well which are as follows:

> *"1. The wheat is purchased from the first purchaser by a Roller Flour Mill and Atta Chakki Plant situated within the State of Uttar Pradesh;*
>
> *2. The Roller Flour Mill and Atta Chakki Plant has been granted benefit of composition of tax liability under Section 7D during the relevant period;*
>
> *3. The first purchaser of wheat within the State furnishes a declaration in Form 3B as provided under the Act, obtained from the purchasing Roller Flour Mill and Atta Chakki Plant alongwith following endorsement on the back from such Roller Flour Mill and Atta Chakki Plant."*

7. It is not in dispute that the appellant herein had supplied the goods to three flour mills which are other dealers. It is also not in dispute that the appellant/assessee is the first purchaser of the wheat which was supplied to the said three dealers. Two dealers were having valid recognition certificate issued to them under sub-Section(2) and there was some dispute as far as third dealer is concerned. In appeal, the said third dealer also succeeded, as a result of which, it was also issued a valid recognition certificate. Thus, this condition also stood satisfied.

8. Notwithstanding the same, the High Court has dismissed the writ petitions on the spacious ground that the Notification dated 29.08.2003 though uses the expression "sold or supplied", the words "or supplied" are redundant because they are mechanically borrowed from the wording of Section 4B(1)(a-1) of the Act. We fail to understand the aforesaid reason given by the High Court in arriving at the conclusion that the words "or supplied" should not have been in the first part of the Notification. The High Court ignored the fact that this Notification was, in fact, issued by the State Government in exercise of powers conferred under Section 4B(1)(a-1) of the Act and it was but natural to prescribe the same language and the conditions which are mentioned therein and there was nothing to feel surprised as to why the aforesaid expression was mechanically borrowed from the wording of Section 4B(1) (a-1) of the Act. It is stated at the cost of repetition that Section 4B(1)(a-1) of the Act, which is a statutory provision, itself provides for special relief not only in the case where the goods are sold but also supplied by a dealer. Excluding the goods which are supplied by a dealer, in fact, would be doing violence to the provisions of Section 4B(1)(a-1) of the Act. The Notification dated 29.08.2003 was, thus, rightly issued by the State Government giving the benefit to those goods which are supplied as well. It was not proper on the part of the High Court to tinker with the language of the Notification and exclude the benefit which is given to the dealer who supplies the goods to another dealer and confined the same only to the sale of goods. We may also note that the High Court presumed that if the words "or supplied" are not removed there would be a danger of misuse of the Notification. While making these observations, the High Court has given a hypothetical illustration by stating that in order to avail the benefit of the Notification

and evade payment of purchase tax, a particular supplier may set up a middle man or an agent who will be the first purchaser and who will claim exemption under the said Notification and will supply wheat to flour mill beyond its assessed grinding capacity and the excess quantity of wheat which the flour mill will receive is only by way of supply and not by way of purchase. As mentioned above, this is not only a hypothetical situation, but even the illustration as given is not a correct illustration. If a dealer sets up any middle man or an agent who purchases the goods, then such middle man or agent becomes the first purchaser and in that event he would not be in a position to get the benefit of the special relief provided under Section 4B of the Act. Therefore, we are of the opinion that the Notification dated 29.08.2003 should have been read as it is and on that basis the High Court was supposed to examine as to whether the appellant satisfied the conditions of Section 4B of the Act read with the aforesaid Notification dated 29.08.2003 or not. As mentioned above, the appellant satisfies all the conditions.

9. At this stage, we would like to deal with the arguments which were advanced before us by the learned counsel for the State Government. In the first instance, it was submitted that Section 3D of the Act, which is a charging section, should be read along with Section 4B of the Act and it is Section 3D which governs Section 4B of the Act. This argument is totally misconceived and needs to be out-rightly rejected inasmuch as Section 4B of the Act, which starts with a non-obstante clause, clearly mentions that special relief which is provided under Section 4B would be available notwithstanding anything contained in certain provisions therein and Section 3D is specifically included. It would mean that the provisions of Section 3D have no relevance at all while considering whether a particular assessee is entitled to special relief under Section 4B of the Act or not. It was next contended that Section 4B of the Act gives the benefit only to "certain manufacturers" as is clear from the marginal note of the said section. We are afraid, even this argument is without any substance. No doubt, marginal note states that the special relief is to "certain manufacturers". However, in the body of the section and particularly, sub-section(l), manufacturer is not mentioned at all and as can be noticed from our discussion above, the benefit is extended to the dealer who is the first purchaser of the goods and sells or supplies the same to another dealer who holds a valid recognition certificate under sub-Section(2) of Section 4B of the Act. Thus, benefit is extended to a dealer and for availing this benefit it is not necessary that he has to be a manufacturer. This would answer the third argument of the learned counsel for the respondent/State which was predicated on the conditions and restrictions that are specified in the Notification dated 29.08.2003. It was sought to be argued that there are three conditions and restrictions (already re-produced above) and insofar as the appellant is concerned, it did not fulfill condition nos. 1 and 3. Once we hold that the benefit is available to the dealer who sells or supplies the goods, the conditions and restrictions are to be read in that context. From the reading of the three conditions, it becomes clear that condition nos. 1 and 3 are relatable to that dealer who sells the goods and condition no. 2 refers to the dealer who supplies the goods to another dealer. Obviously, a dealer who is a supplier of goods to another dealer would not be concerned with condition nos. 1 and 3. Insofar as condition no. 2 is concerned, it was not disputed that the appellant satisfied this condition. Thus, we read these conditions and restrictions to mean that insofar as that dealer who supplies the goods is concerned, he is to satisfy condition no. 2 and the seller has to satisfy all three conditions. Thus, a dealer who is a supplier would not be concerned with condition nos. 1 and 3.

10. In view of the above, we are of the opinion that the appellant was entitled to the benefit of Section 4B(1)(a-1) as well as Notification dated 29.08.2003. The judgment of the High Court as well as order dated 17.11.2006 passed by the Deputy Commissioner, Trade Tax are set aside and the appeals are allowed with consequential relief.

11. No costs.

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SGA
LAW OFFICES

SUPREME COURT OF INDIA

CIVIL APPEAL NO. 1314 OF 2008

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EXECUTIVE ENGINEER
Vs
COMMISSIONER OF TRADE TAX

A.K. SIKRI AND N.V. RAMANA, JJ.

15th July, 2016

HF ▶ Revenue

For availing the special rate of tax, conditions of form furnished by the purchaser are to be strictly complied with.

CONCESSIONAL RATE OF TAX – FORMS – GOODS PURCHASED ON SPECIAL RATE OF TAX – CONDITIONS REQUIRE USE OF GOODS BY PURCHASER – GOODS TRANSFERRED TO THIRD PARTIES BY THE ASSOCIATES OF APPELLANT – VIOLATION OF CONDITIONS – DUTY OF ASSESSEE TO ENSURE THAT NO VIOLATION IS COMMITTED BY THE ASSOCIATES – CONDITIONS TO BE COMPLIED WITH STRICTLY – APPEAL DISMISSED. *SECTION 3G OF UP TRADE TAX ACT, 1948.*

Facts

In this case, the appellant has produced Form III-D for availing concessional rate u/s 3-G which prescribes special rate of tax on certain sales. The cement purchased ought to be utilized by the appellant for its own purpose and not transferred to third parties to avail concession. The assessing authority, however, directed the appellant to pay normal rate of tax contending that it had transferred cement to third parties through its associates.

It is submitted that the cement was given to contractor by another associate company i.e. a different division, therefore, it is not the appellant who violated the condition.

Since the appellant furnished III-D form and given cement in question to different divisions and those divisions in turn transferred the said cement to the contractors; it was the duty of appellant to ensure that the condition of availing the special rate of tax is not violated.

The appeal is dismissed.

Present: For Appellant(s): Mr. Manish Kumar, Advocate
Mr. Piyush Kaushik, Advocate
Mr. Rakesh K. Sharma, Advocate

For Respondent(s): Mr. Rahul Kaushik, Advocate
Ms. Bhuvneshwari Pathak, Advocate

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ORDER

1. The admitted facts are that the appellant herein furnished Form III-D which is the form prescribed under the U.P. Trade Tax Act, 1948,(hereinafter referred to as 'Act') for availing concessional rate under Section 3-G of the said Act which prescribes special rate of tax on certain sales. One of the conditions for availing such concessional rates was that the cement purchased shall be utilised by the appellant for its own purpose and shall not be transferred further to the third parties. Admittedly, this condition has been violated inasmuch as the appellant through its other associates had transferred the cement to contractors. Because of the aforesaid reason, show cause notice was issued under Section 3-G of the Act and the Assessing Authority ultimately passed orders directing the appellant to pay the normal rate of tax. As, on the aforesaid basis, it was held that the appellant was not entitled to the concessional rates as prescribed under Section 3-G of the Act, the aforesaid order of the Assessing Authority has been confirmed by the Commissioner and thereafter by the Tribunal and even the High Court vide the impugned judgment has approved the said order.

2. Learned counsel for the appellant submits that since the cement was given to the contractor by another associate company, i.e., a different division, therefore, it is not the appellant which had violated the said condition. This argument cannot be countenanced. It is an admitted fact that it is the appellant which had furnished Form III-D and it is the appellant which had given the cement in question to different divisions and those divisions, in turn, transferred the said cement to the contractors. Since Form III-D was furnished by the appellant, it was the duty of the appellant to ensure that the condition for availing the special rate of tax is not violated and is strictly complied with.

We, thus, do not find any merit in these appeals which are accordingly, dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 9083 OF 2014

VARDHMAN SPECIAL STEELS LTD.
Vs
STATE OF PUNJAB AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

10th August, 2016

HF ▶ Revenue

Once an order is passed on the representation and the same remained unchallenged then any subsequent orders on fresh representation have no value at all, as the earlier order becomes final between the parties.

EXEMPTED UNIT – APPEAL – QUASI JUDICIAL AUTHORITY - EXEMPTION RULES – UNIT SET UP IN 1993 –BENEFIT OF EXEMPTION COULD BE AVAILED ONLY AFTER EXEMPTION CERTIFICATE WAS ISSUED - EXEMPTION CERTIFICATE GRANTED IN YEAR 2000- BENEFIT ENJOYED FOR THE REMAINING PERIOD OF FEW MONTHS – REFUND OF TAX CLAIMED AFTER EXPIRY OF ELIGIBILITY CERTIFICATE IN 2002 – CLAIM DENIED BY COMMISSIONER – REPRESENTATIONS FILED SUBSEQUENTLY AFTER THREE YEARS RAISING A PLEA THAT PERIOD OF ENTITLEMENT FOR EXEMPTION SHOULD BE EXTENDED – ORDERS PASSED AGAINST THE PETITIONER – NO STATUTORY REMEDY AVAILED AGAINST THE ORDER OF COMMISSIONER – WRIT FILED BEFORE HIGH COURT IN THIS REGARD – HELD MATTER STOOD FINAL VIDE ORDER DATED 13/10/2003 AS NO STATUTORY REMEDY AVAILED AGAINST THE ORDER PASSED BY COMMISSIONER – PLEA REGARDING EXTENSION OF PERIOD OF EXEMPTION NEVER RAISED EARLIER WHEN CERTIFICATE WAS ISSUED – VALIDITY OF RULES NOT QUESTIONABLE NOW WHEN THE MATTER STOOD FINAL WAY BACK IN YEAR 2003 – WRIT DISMISSED – *PGST (D&E) RULES, 1991*

Facts

The petitioner is engaged in manufacturing of alloy steel. New rolling mill was set up. As notified, the petitioner was eligible to claim benefit form 28/9/1992. The unit came into production on 15/9/1993.The eligibility certificate was issued 6 and ½ years later on 3/3//2000. Exemption certificate was issued on 18/4/2000.Since the period of validity was only 15/9/1993 to 14/9/2000, the petitioner could claim exemption only for five months. The petitioner has claimed that the benefit of exemption to be granted should be calculated only after the eligibility certificate is granted and not from date of production thereby praying to read down Rule 3(2) of PGST Rules to this extent .

Held:

The petitioner had enjoyed the benefit of exemption after the certificate was granted. It had also made a prayer for refund of tax to the Commissioner vide letter dated 24/7/2002 which was rejected. The matter was impugned by filing a writ. The writ was allowed as the order passed

by Commissioner was not speaking. The refund was again denied. Subsequently, representations were filed raising plea of extension of period of exemption which were also rejected. As per Section 20, the order passed by the Commissioner is appealable but the petitioner did not avail the statutory remedy of appeal and thus the same had attained finality. After that the Managing Director made a request to the Chief Minister of Punjab for the same relief which was considered but rejected vide order dated 13/10/2003. The petitioner did not avail the statutory remedy even at that stage. On writ before High Court held:

1) *Thus, when statutory remedy was available, against the order passed by the Commissioner, subsequent representation made by petitioner, that too more than three years thereafter, raising any plea was not maintainable. The rights between parties stood settled on 13.10.2003. The question of entertaining representation does not arise when statutory remedies are available. The petitioner having failed to do so, cannot be permitted to reopen by filing a representation.*

2) *There is nothing on record to show that plea regarding period of entitlement of exemption was ever raised immediately after issuing of the certificate. Also, there is no provision in the Rules providing for extension of period of eligibility.*

3) *It is too late to consider the issue of validity of Rules with reference to period of entitlement of exemption from payment of tax once the issue had attained finality in year 2003.*

The present writ petition is dismissed.

Cases referred:

- *Vardhman Special Steels v. State of Punjab and others CWP No. 2952 of 2003*

Present: Mr. Sandeep Goyal, Advocate for the petitioner.
Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.

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RAJESH BINDAL, J.

1. The petitioner has filed the present petition challenging the order dated 31.10.2006 (Annexure P-21), passed by Financial Commissioner (Taxation); order dated 22.5.2008 (Annexure P-20), passed by Excise and Taxation Commissioner, Punjab and order dated 2.9.2013 (Annexure P-18), passed by Value Added Tax Tribunal, Punjab (for short, 'the Tribunal'). Vires of the note appended to Rule 4(1) of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (for short, 'the Rules') has also been challenged. Further prayer in the alternative is to read down the provisions of Rule 3(2) of the Rules to mean that the benefit of exemption/deferment for payment of tax shall be available from the date of issuance of exemption/entitlement certificate.

2. Learned counsel for the petitioner submitted that the petitioner is engaged in the manufacture of special and alloys steel for use in automobile and engineering industry. New rolling mill was set up by the petitioner. As per Punjab Package of Incentives, 1992, as notified on 28.9.1992, the petitioner was eligible to claim benefit of exemption from payment of sales tax for a period of 84 months, subject to a maximum of 150% of fixed capital investment. The unit came into production on 15.9.1993. The application was submitted for issuance of eligibility certificate and consequently the exemption certificate. The application remained pending and finally after a period of 6-1/2 years from the date of production that the eligibility certificate was issued on 3.3.2000. Thereafter, the exemption certificate was issued on 18.4.2000. The period of validity was from 15.9.1993 till 14.9.2000. Meaning thereby the period for which the petitioner could claim benefit of exemption was merely five months. As

per Rule 3(2) of the Rules, the benefit is admissible to an eligible industrial unit only after the eligibility certificate is issued in its favour. Rule 4 of the Rules provides the period for which the benefit is admissible to an eligible industrial unit. Different periods and the amount of benefit have been provided for the units located in different areas. In the case of the petitioner, the benefit is admissible for a period of 84 months. The note appended to Rule 4 postulates that benefit is admissible from the date of production. While referring to the aforesaid provisions, learned counsel for the petitioner submitted that there is apparent discrepancy in the aforesaid rule, as an industrial unit cannot be granted eligibility certificate on the date of production. The process is bound to take some time. Once the benefit is to be granted only after the issuance of eligibility certificate, the period for which the benefit is granted also should have been from that date and not from the date of production.

3. He further submitted that in case of M/s Godrej & Boyce Mfg. Co. Ltd., the period which was spent in issuing the eligibility certificate to the company, was extended so as to enable the company to avail of the admissible benefit. There is no specific reply to the contention raised by the petitioner in the writ petition regarding the case of ***M/s Godrej & Boyce Mfg. Co. Ltd.***, being similar to the petitioner. The petitioner cannot be discriminated.

4. Learned counsel for the State submitted that after the eligibility certificate was issued to the petitioner, it enjoyed the benefit. The eligibility certificate expired on 14.9.2000. Thereafter, it filed application seeking refund of the amount of tax deposited during the period the petitioner was entitled to exemption from payment of tax, vide letter dated 24.7.2002. The same was rejected by the competent authority vide memo dated 25.11.2002. The communication was challenged by the petitioner by filing ***CWP No. 2952 of 2003—Vardhman Special Steels v. State of Punjab and others***, seeking a direction to the respondents therein to refund the amount of tax deposited during the period of exemption and further that the order passed by the competent authority rejecting the contention of the petitioner was non-speaking. This court, vide judgment dated 15.7.2003, set aside the order dated 25.11.2002 and remitted the matter back to the Excise and Taxation Commissioner, Punjab to pass a fresh order on the application for refund/adjustment of the excess tax, if any, paid under the Punjab General Sales Tax Act, 1948 (for short, 'the Act'). It was on the premise that the order passed by the Excise and Taxation Commissioner was non-speaking. The matter was heard by the Excise and Taxation Commissioner, who vide order dated 13.10.2003, rejected the claim of the petitioner. It was for the first time that before the Excise and Taxation Commissioner, the petitioner raised the issue for extension of time for availing the benefit. The order attained finality as the petitioner did not avail of its appropriate remedy against that order at that stage. Thereafter, the petitioner addressed a letter to the then Chief Minister, Punjab. After considering the request made therein by the Financial Commissioner, Excise and Taxation, Punjab, decision was communicated to the Chairman of the petitioner vide letter dated 31.10.2006. Even at that stage, no remedy was availed of by the petitioner. He filed a fresh representation on 15.1.2007 now praying for extension of time for availing the exemption. The same was rejected by the Excise and Taxation Commissioner vide communication dated 16.8.2011. It was challenged by the petitioner before the Tribunal in statutory appeal. The Tribunal vide order dated 5.3.2012, while setting aside the order passed by the Excise and Taxation Commissioner, remitted the matter back for passing a speaking order. Thereafter, the Excise and Taxation Commissioner passed order on 8.8.2012 rejecting the plea raised by the petitioner. The order was upheld by the Tribunal in appeal filed by the petitioner, as the petitioner was not able to refer to any of the provisions of the Rules, under which the petitioner was entitled to extension of period for availing the benefit of exemption from payment of tax.

5. Learned counsel for the State further submitted that the present petition is highly belated as the claim of the petitioner was rejected by the Excise and Taxation Commissioner by passing order on 13.10.2003 after the matter was remitted back by this court to the Excise &

Taxation Commissioner for passing a speaking order. The petitioner kept quiet, though against the order passed by the Excise and Taxation Commissioner, statutory appeal was maintainable. It was further submitted that once the order passed by the Excise & Taxation Commissioner had attained finality, the petitioner having not challenged the same, any subsequent judgment will not give a cause of action to the petitioner to file a fresh representation by taking a different stand. Thereafter, even a request made by the Chairman of the petitioner-company to the then Chief Minister was considered and the rejection thereof was conveyed to him vide communication dated 31.10.2006. Even at that stage, the petitioner kept quiet. Fresh representation was filed only on 15.1.2007, which was not maintainable in the cases where there are statutory remedies available against the order passed by any authority under the Act.

6. He further submitted that it is too late now to challenge the vires and provisions of the Rules, once the petitioner did not feel aggrieved of the same at the time when the eligibility certificate was issued to it and it availed the benefit initially. It did not raise the issue regarding delay in issuance of eligibility certificate at the appropriate time in case there was any lapse on the part of the department in issuing the eligibility certificate. The petitioner should have availed of its appropriate remedy at that time. Initially, the prayer made about two years after the expiry of the eligibility period was only for refund of the tax deposited during the period of exemption. When the same was rejected, a new plea of extension of period of exemption was raised. By no stretch of imagination, the petitioner could claim the same. He further submitted that the facts in the case of ***M/s Godrej & Boyce Mfg. Co. Ltd.*** are different than the case in hand. It was a case of deferment of payment of tax. In that case, amendment was made in the Rules. Neither the vires of that Rule have been challenged nor ***M/s Godrej & Boyce Mfg. Co. Ltd.*** has been impleaded as respondent in the petition, hence, the petitioner cannot claim any relief on that basis.

7. After hearing learned counsel for the parties, we do not find any reason to interfere in the present petition. As is claimed by the petitioner, the unit set up by it for manufacture of special and alloys steels for use in automobile and engineering sectors came into production on 15.9.1993. It applied for issuance of eligibility certificate. The same was granted to the petitioner on 3.3.2000. Thereafter, the petitioner was granted exemption certificate on 18.4.2000. The validity thereof was from 15.9.1993 to 14.9.2000 as the entitlement of the petitioner was for a period of 7 years to the extent of 150% of the fixed capital investment. There is nothing on record as to what was the reason for delay in issuance of eligibility certificate, as the facts on record suggest that the petitioner availed of the benefit for the period it was entitled to, which expired on 14.9.2000. As is evident from the communication dated 25.11.2002, the petitioner made a representation dated 24.7.2002 for refund of the tax already paid for the period the unit of the petitioner was exempted from payment of tax in terms of the exemption certificate issued in its favour. For that period, as claimed by the petitioner, it had collected and paid the tax to the State. The request made by the petitioner was rejected by the Excise and Taxation Commissioner vide communication dated 25.11.2002 mentioning that the tax charged and paid by the unit cannot be refunded. The order was impugned by the petitioner by filing CWP No. 2952 of 2003 with the following prayer:

> *"a) xx xx xx*
>
> *b) Issue a writ in the nature of certiorari for quashing the impugned order dated 25.11.2002, annexure P-18 vide which the application of the petitioner for the grant of adjustment/refund of sales tax for the period 15.9.1993 to 18.4.2000 has been rejected by totally non-speaking order and without any application of mind and being also against the provisions of Rule 4A of the 1991 Rules and also against the incentive granted to the petitioner vide eligibility certificate, dated 3.3.2000 as*

well as being violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

c) Issue a writ in the nature of prohibition/mandamus directing the respondents to refund/adjust an amount of Rs. 225.98 lacs which has been paid as sales tax by the petitioner to the respondents w.e.f. 15.9.1993 to 18.4.2000 as the exemption certificate for exemption of sales tax was granted to the petitioner in accordance with the provisions of the 1991 Rules for a period w.e.f. 15.9.1993 to 14.9.2000 but however the petitioner was actually granted exemption of sales tax from the date of issuance of certificate of eligibility i.e. w.e.f. 18.4.2000 to 14.9.2000, despite the provisions of Rule 4A of the 1991 Rules.

xx xx xx"

8. The writ petition was allowed by this court on the ground that the order passed by the Excise & Taxation Commissioner was nonspeaking. The communication dated 25.11.2002 was set aside. The matter was remitted back to the Excise & Taxation Commissioner to hear and decide the same afresh by passing a speaking order. The writ petition was disposed of on 15.7.2003. Thereafter, the Excise & Taxation Commissioner heard the petitioner and rejected the prayer made by the petitioner for refund of the tax charged and deposited by it with the State on 13.10.2003. The claim made by the petitioner that in fact it had not charged the tax from the buyer and had paid the same from its own resources was also considered and rejected. It was at that stage that the petitioner also made a prayer to the Excise & Taxation Commissioner to extend the period of eligibility for the period the application remained pending with the authorities for grant of eligibility and exemption certificates. The same was also rejected vide letter dated 13.10.2003. As per the provisions of Section 20 of the Act, appeal from every original order passed under the Act or the Rules by the Excise & Taxation Commissioner or any officer exercising the powers of the Commissioner was maintainable before the Tribunal. The petitioner kept quiet and did not avail of its statutory remedy of appeal against the order passed by the Excise & Taxation Commissioner on 13.10.2003 as a result, the same attained finality.

9. Thereafter, as is evident from the material on record, the Managing Director of the petitioner-company made a request to the then Chief Minister of Punjab for the same relief, which was considered by the Department of Excise and Taxation and vide letter dated 31.10.2006, the Financial Commissioner, Excise & Taxation, Punjab, conveyed rejection thereof to the Managing Director of the petitioner-company. Though such a representation was not maintainable in the light of the fact that the petitioner had statutory remedy of appeal against the order passed by the Excise & Taxation Commissioner on 13.10.2003. The petitioner did not avail of any remedy even at that stage. The petitioner thought of filing fresh representation on 15.1.2007 referring to certain judgment and the case of M/s Godrej & Boyce Mfg. Co. Ltd. claiming parity. Such a representation was not maintainable once the petitioner had earlier failed to avail of its statutory remedy against the order passed by the Excise & Taxation Commissioner on 13.10.2003 in pursuance of the directions issued by this court. The representation of the petitioner dated 15.1.2007 was considered and rejected by the Excise & Taxation Commissioner vide communication dated 16.8.2011. The Tribunal, vide order dated 5.3.2012, remitted the matter back to the Excise & Taxation Commissioner opining the order impugned therein to be non-speaking. Thereafter, again the Excise & Taxation Commissioner rejected the representation vide order dated 8.8.2012. The same was upheld by the Tribunal in appeal on 2.9.2013.

10. In the light of the fact that there was statutory remedy available to the petitioner against the order passed by the Excise & Taxation Commissioner on 13.10.2003, any

subsequent representation made by the petitioner, that too more than three years thereafter raising any plea was not maintainable and as a consequence all subsequent orders passed thereon have no value at all. The rights between the parties stood settled on 13.10.2003. It is a case where the orders are passed under the Act and the Rules, which is a complete code in itself. There is no question of representation being entertained when the orders are being passed by quasijudicial authorities against which statutory remedies are available. The petitioner having failed to avail of the same at the appropriate time cannot be permitted to get the issue re-opened merely by filing a representation.

11. There is nothing on record to suggest that the petitioner ever raised any issue regarding the period of its entitlement of exemption from payment of tax immediately after the eligibility and exemption certificates were issued to it. The issue initially was also sought to be raised nearly two years after the expiry thereof. There is no provision in the Rules providing for extension of period of eligibility or changing the dates thereof.

12. It is too late to consider the prayer of the petitioner regarding validity of the provisions of the Rules with reference to the period of entitlement of exemption from payment of tax once the issue had attained finality way back in the year 2003. The plea of discrimination sought to be raised is also to be noticed and rejected for the reason that firstly ***M/s Godrej & Boyce Mfg. Co. Ltd.*** was granted deferment from payment of tax and not exemption and further there was an amendment made in the Rules to that effect. The vires of that Rule has not been challenged.

13. For the reasons mentioned above, we do not find any merit in the present petition. Accordingly, the same is dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 3847 OF 2014

PUNJAB ALKALIES & CHEMICALS LIMITED
Vs
GOVERNMENT OF PUNJAB AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

10th August, 2016

HF ▶ Revenue

Period for exemption cannot be extended in absence of any enabling provision for the same as Court cannot direct the framing of rules in exercise of its extra ordinary jurisdiction.

EXEMPTED UNIT—DELAY IN ISSUANCE OF ELIGIBILITY CERTIFICATE—UNIT STARTED AVAILING BENEFIT AFTER MORE THAN 2 YEARS FROM DATE OF ISSUANCE OF EXEMPTION CERTIFICATE—REPRESENTATION MADE FOR EXTENSION OF ELIGIBILITY PERIOD WHEN THE EXEMPTION PERIOD WAS ABOUT TO EXPIRE—REQUEST REJECTED AS THERE ARE NO RULES TO GRANT EXTENSION—WRIT PETITION FILED AFTER THREE YEARS WITHOUT EXPLAINING THE DELAY—WRIT PETITION WITHDRAWN WITH A LIBERTY TO AVAIL OTHER REMEDIES—REPRESENTATION FILED AGAIN—REQUEST REJECTED—ON WRIT PETITION BEFORE HIGH COURT—CONDUCT OF PETITIONER SHOWS IT WAS NOT INTERESTED IN AVAILING THE BENEFIT AS THE EXEMPTION WAS CLAIMED AFTER 2 YEARS—NO EXPLANATION FOR FILING THE WRIT PETITION AFTER 3 YEARS FROM THE REJECTION OF REPRESENTATION—NO PROVISIONS UNDER THE RULES TO EXTEND THE PERIOD OF EXEMPTION—NOTHING ON RECORD TO SHOW THE DELAY IN ISSUANCE OF ELIGIBILITY CERTIFICATE ON ACCOUNT OF RESPONDENTS—COURT IN EXERCISE OF EXTRA ORDINARY JURISDICTION CANNOT DIRECT FRAMING OF RULES—WRIT PETITION DISMISSED. – *PGST (D&E) RULES, 1991*

Facts

Petitioner expanded its existing capacity to manufacture caustic soda and came into commercial production on 18.12.1998 : Being eligible under the Sales Tax Exemption Scheme, an application was filed for issuance of eligibility certificate which was initial rejected as the petitioner failed to fulfil certain requirements. On appeal the matter was remitted back and thereafter eligibility certificate was issued on 22.9.2000 with a validity from 18.12.1998 i.e. the date of commercial production, for a period of 120 months with a maximum limit of Rs.168.66 Crores. The petitioner did not start availing the benefit from the date of issuance of exemption certificate but availed it from 1.4.2003 after a gap of more than 2 years.

As the period of exemption was going to expire, a representation was made by the company on 22.9.2008 seeking extension of the period of eligibility. The said request was rejected vide order dated 24.5.2010. The petitioner did not challenge the said order nor did it avail the statutory remedy under the Act. A Writ Petition was filed in the year 2013 impugning the communication after more than 3 years. The said Writ Petition was dismissed as withdrawn

with a liberty to the petitioner to seek such other remedy as may be available to it, in accordance with law. The petitioner filed another representation which was again rejected against which a writ petition was filed.

Held:

The petitioner did not avail the benefit of exemption for more than 2 years after the issuance of exemption certificate which reflects that it was not interested in availing the benefits. The representation filed by the petitioner was rejected in the year 2010 but Writ Petition was filed to challenge it after a period of 3 years but no explanation has been given for this delay. The said petition was also dismissed as withdrawn and the petitioner filed another representation which was also bound to be rejected. There are no provisions under the Rules by virtue of which the period of benefit could be extended as these clearly provide that benefit has to be from the date of production. There is nothing on record to claim that delay in issuance of eligibility certificate was on account of lapse on the part of respondent. The case cannot be compared with the case of M/s Godrej and Boyce Manufacturing Co. Ltd. as there is specific provision made for it in the Rules. The Court in exercise of extra ordinary jurisdiction cannot direct the authorities to fame the rules. Writ Petition dismissed.

Cases referred:

- *Punjab Alkalies and Chemicals Ltd. v. Government of Punjab and others CWP No. 15831 of 2013*

Present: Mr. Arun Nehra & Mr. Sant Kashyap, Advocates for the petitioner.
Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.

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RAJESH BINDAL, J.

1. The petitioner has filed the present petition impugning the order dated 17.12.2013 (Annexure P-15), whereby the request of the petitioner for extension of period of benefit for exemption from payment of sales tax was rejected.

2. Learned counsel for the petitioner submitted that the petitioner is a public limited company engaged in the manufacture and sale of caustic soda and other in-organic chemicals. It had been promoted by the Punjab State Industrial Development Corporation Limited (for short, 'PSIDC'), which is wholly owned Punjab Government Company. PSIDC holds 44% shares of the petitioner-company. New Industrial Policy, 1996 (hereinafter described as "the 1996 Policy") was notified by the Government on 20.3.1996, which provided for various benefits to the new industrial units as well as the industrial units expanding their capacity. The petitioner company was incorporated in the year 1975 and came into commercial production on 30.1.1984. After the 1996 Policy was notified, the petitioner after making huge investments increased the capacity for manufacturing caustic soda from 100 metric ton per day to 154 metric ton per day. The commercial production started on 18.12.1998. As per the 1996 Policy and the Punjab General Sales Tax (Deferment & Exemption) Rules, 1991 (for short, 'the Rules'), the petitioner is entitled to the benefit for a period of 120 months from the date of production with a cap of 300% of fixed capital investment. After the unit of the petitioner came into commercial production on 18.12.1998, it applied for issuance of eligibility certificate on 4.6.1999, which was granted on 22.9.2000 effective from 18.12.1998 for a period of 120 months or till such time the maximum amount of exemption is availed of, whichever is earlier. Thereafter, application was filed for grant of exemption certificate, which was granted on 3.1.2001. The petitioner started availing the benefit of exemption from payment of tax on 1.4.2003 and during the period of eligibility could avail of benefit to the extent of Rs.58.33 crores only.

3. Before the expiry of the period of eligibility, the Principal Secretary, Department of Industries wrote a DO letter to the Financial Commissioner, Department of Excise and Taxation claiming that period of eligibility be made effective from 1.4.2003, the date from which the petitioner started availing the benefit. Vide letter dated 22.9.2008, the petitioner-company also made a request to the Principal Secretary, Department of Industries in the same line. The issue was considered in the meeting held under the Chairmanship of the then Chief Secretary on 13.1.2010 and it was decided that PSIDC should move a case for extension. Thereafter, PSIDC made a request on 11/26.2.2010 to the Financial Commissioner, Department of Excise & Taxation. PSIDC vide communication dated 3.6.2010 conveyed the petitioner that request for extension of period was rejected by the Department of Excise and Taxation vide memo dated 24.5.2010. Challenging the same, the petitioner filed CWP No. 15831 of 2013—Punjab Alkalies and Chemicals Ltd. v. Government of Punjab and others, which was dismissed as withdrawn on 26.7.2013 with liberty to the petitioner to seek appropriate remedy in accordance with law. Again a representation was made by the company on 16.8.2013 to the Financial Commissioner, Department of Excise and Taxation and Principal Secretary, Department of Industries and Commerce for the same relief, which was rejected vide communication dated 17.12.2013.

4. Impugning the aforesaid communication, learned counsel for the petitioner submitted that there is specified period provided under the Rules for issuance of eligibility certificate and the exemption certificate after the application is filed. The petitioner had fulfilled all the pre-requisite conditions for issuance of eligibility certificate, but still the authorities delayed issuance thereof and as a result, the petitioner could not avail of the benefit to the extent of its entitlement. Once the maximum limit for which the benefit could be availed of by the petitioner had not expired and merely the period had expired, the extension should have been granted. The provision provides for the benefit to be availed from the date of production, which is not possible as issuance of eligibility and exemption certificates will always take some time. As there was delay of 1-1/2 years in issuance of eligibility certificate after the application was filed, the petitioner is entitled to extension for that period. The provisions of the Rules also envisage issuance of provisional eligibility and exemption certificates. Those should have been adhered to. He further referred to the fact that in similar circumstances, ***M/s Godrej & Boyce Mfg. Co. Ltd.***, was granted extension.

5. On the other hand, learned counsel for the State submitted that once the earlier writ petition filed by the petitioner was dismissed giving liberty to the petitioner to avail of its appropriate remedy, the same was not by way of a representation, rather, the petitioner should have availed of its statutory remedy provided under the Punjab General Sales Tax Act, 1948 (for short, 'the Act'). The same could not be a fresh representation. He further submitted that application for issuance of eligibility certificate filed by the petitioner was initially rejected vide communication dated 11.10.1999 as the petitioner failed to complete the requirements. The order was challenged by the petitioner in appeal. The appellate authority remitted the matter back to the competent authority on 23.12.1999 giving liberty to the petitioner to supply the requisite documents. It was thereafter that the petitioner fulfilled the requisite conditions and was issued eligibility certificate on 22.9.2000. The validity thereof as per the provisions of the Rules was from the date of production for a period of 10 years or till such time the petitioner avails of the maximum amount of benefit admissible i.e., Rs. 168.66 crores, whichever is earlier.

6. It was further submitted that though the petitioner was granted exemption certificate on 3.1.2001, however, it did not avail of the benefit immediately thereafter, rather, started the same about more than two years thereafter w.e.f. 1.4.2003. That shows that the petitioner was, in fact, not interested in availing the benefit of exemption from payment of tax. Had the petitioner been serious, it would have claimed the benefit immediately from the date of issuance of exemption

certificate. During this period, the petitioner collected the tax and deposited with the Government. The period of eligibility expired on 18.12.2008. Immediately after the eligibility and exemption certificates were issued to the petitioner, it did not raise the issue regarding the date of entitlement, as the certificates clearly mentioned that the same were valid from the date of production. It was strictly in terms of the provisions of the Rules. First representation by the petitioner was made on 22.9.2008. After considering the fact that PSIDC had substantial stake in the company, the matter was considered at different levels and was finally rejected on 24.5.2010, which was conveyed to PSIDC as well as the petitioner-company. The order was impugned by the petitioner more than three years thereafter by filing CWP No. 15831 of 2013, which was dismissed as withdrawn with liberty to avail of any other remedy in accordance with law. The delay in filing the writ petition impugning the rejection of the claim of the petitioner has not been explained at all. Thereafter, again without availing the statutory remedy as provided for under the Act against the orders passed by the authorities, the petitioner thought of filing fresh representation only, which was again rejected vide communication dated 17.12.2013.

7. The submission is that firstly there is no provision under the Rules, which provide for extension of period of eligibility. The Rules strictly provide that period for availing the benefit will start from the date of production and will end either when the maximum permissible period is over or the maximum permissible amount of benefit is exhausted, whichever is earlier. Though there are provisions for issuance of provisional eligibility and exemption certificates, but the petitioner never invoked the same. In fact, the conduct of the petitioner shows that it was not interested in availing the benefits, as firstly the application for issuance of eligibility certificate was rejected on account of non-compliance of the requisite formalities. Thereafter, when the exemption certificate was issued, the petitioner did not start availing the benefit for a period of more than two years. Further, when request of the petitioner for extension in period of eligibility was rejected, the communication was impugned by filing a writ petition more than three years thereafter. The case of M/s Godrej & Boyce Mfg. Co. Ltd. is different, as there is a provision made in the Rules therefore. It was a case of deferment of tax and not exemption from payment of tax, as in the case of the petitioner. Now the scheme of taxation has changed with the introduction of Value Added Tax. The units, which were allowed exemption or deferment from payment of tax under the Act, were permitted to avail of the benefits under the Punjab Value Added Tax Act, 2005, but it is too late now to grant benefits.

8. Heard learned counsel for the parties and perused the paper book.

9. The facts, which are not in dispute, are that expanded capacity of the petitioner to manufacture caustic soda came into commercial production on 18.12.1998. As per the provisions of the Rules, the petitioner applied for issuance of eligibility certificate for availing the benefit of exemption from payment of tax. The application was initially rejected as the petitioner failed to fulfil the requirements provided for under the Rules. In appeal, the order was set aside and the matter was remitted back vide order dated 23.12.1999. Thereafter, eligibility certificate was issued to the petitioner on 22.9.2000, valid from 18.12.1998, the date of production for a period of 120 months with a maximum limit of Rs. 168.66 crores, whichever expires earlier. The exemption certificate was issued in favour of the petitioner on 3.1.2001. At that stage, the petitioner did not raise any plea regarding extending the period of eligibility from the date of issuance of eligibility or exemption certificates, rather, the conduct of the petitioner shows that it was not interested in availing the benefits. As is evident from the fact that exemption certificate was issued in favour of the petitioner on 3.1.2001, but for the reasons best known to the petitioner, it started availing the benefit only from 1.4.2003, after a gap of more than two years.

10. Though earlier Chairman of the petitioner-company, who was none else than the Secretary of the Department of the Industries, Govt. Of Punjab, wrote a DO letter to the Financial Commissioner, Department of Excise and Taxation for extending the period of eligibility on 11/26.2.2010, however, first representation was made by the company on 22.9.2008 when the period of eligibility was going to expire. The same was considered at various levels keeping in view the fact that in the petitioner-company, PSIDC, which is government owned company, had 44% stake, but still as the request of the petitioner could not be acceded to in view of the clear provisions of the Rules, the same was rejected vide communication dated 24.5.2010. It was conveyed to PSIDC as well as the petitioner. The petitioner kept quiet and was satisfied with the decision so conveyed, though at that time the petitioner could have availed of its statutory remedy under the Act. For the first time, CWP No. 15831 of 2013 was filed in this court impugning the communication dated 3.6.2010, more than three years thereafter. There is no explanation for this delay. The same was dismissed on 26.7.2013 with the following order:

> "After addressing arguments for some time, counsel for the petitioner prays that the writ *petition may be dismissed as withdrawn with liberty to the petitioner to seek such other remedy as may be available to it, in accordance with law. Dismissed as withdrawn with the aforestated liberty."*

11. Even though the representation filed by the petitioner had already been rejected by the authorities and remedy of a second representation, unless the earlier order was set aside by any competent authority, could not be visualised as the remedy available to the petitioner in accordance with law, but still the petitioner preferred representation again to the Financial Commissioner, Department of Excise and Taxation and Principal Secretary, Department of Industries and Commerce, who is none else than the Chairman of the Company. Even that representation was rejected and was bound to be rejected as there are no enabling provisions in the Rules under which the period for which the benefit could be availed of by an industrial unit could be extended for any reason whatsoever, as the Rules clearly provide that benefit has to be from the date of production. Even otherwise, in the case in hand, the petitioner is seeking to claim that there was delay in issuance of eligibility certificate to the petitioner on account of lapse on the part of the respondents. There is nothing on record to suggest that. As per the stand taken by the respondents, the application was initially rejected on account of non-compliance of the requisite formalities. It was only in appeal that the order was set aside and the matter was re-examined.

12. Though the issue regarding provisional eligibility and exemption certificates was sought to be raised, but the fact remains that the petitioner made no effort for issuance thereof. The case of M/s Godrej & Boyce Mfg. Co. Ltd. cannot be compared as for granting the benefit to that company, there is a provision made in the Rules. This court in exercise of extra-ordinary jurisdiction cannot direct the authorities to frame the Rules.

13. For the reasons mentioned above, we do not find any merit in the present petition. The same is, accordingly, dismissed.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 188 OF 2014

JAMUNA FIBRES PRIVATE LIMITED
Vs
STATE OF HARYANA AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

23rd August, 2016

HF ▶ Revenue

Assessee is liable to pay the entire amount of tax benefit availed by it as an exempted unit on the cancellation of Exemption Certificate.

EXEMPTED UNIT – CLOSURE OF BUSINESS DURING CURRENCY OF EXEMPTION PERIOD – CONSEQUENTIAL ORDERS PASSED FOR RECOVERY ON ENTIRE AMOUNT OF TAX BENEFIT AVAILED ALONGWITH INTEREST – APPEAL FILED BEFORE THE TRIBUNAL DISMISSED – ON APPEAL BEFORE HIGH COURT – ASSESSEE NOT ONLY REQUIRED TO REMAIN IN BUSINESS DURING CURRENCY OF EXEMPTION PERIOD BUT ALSO REQUIRED TO MAINTAIN THE REQUISITE PRODUCTION FOR NEXT 5 YEARS AS PER RULE 28-A(11) – ON VIOLATION, FULL AMOUNT OF TAX AVAILED LIABLE TO BE RECOVERED ALONGWITH INTEREST – CONSEQUENTIAL ORDERS PASSED IN PURSUANCE TO CANCELLATION OF EXEMPTION CERTIFICATE ARE NOT TIME BARRED IF THESE ARE NOT ASSESSMENT ORDERS – APPEALS DISMISSED – *RULE 28A OF HGST RULES, 1975*

Facts

The appellant being an eligible industrial unit, was granted exemption from payment of tax with validity from 20.03.1993 to 19.03.2002. The Exemption Certificate of the assessee was cancelled vide order dated 25.10.2006 w.e.f. 1.7.2000. The consequential orders were passed determining the tax liability of the assessee on the basis of earlier assessment orders passed in which the amount was considered as exempt. Appeals filed upto Tribunal failed. On appeal before the High Court.

Held:

Since the unit had discontinued its business for a period exceeding six months, the same amounts to violation of Rule 28-A(9)(i) and therefore Exemption Certificate was liable to be cancelled. The Supreme Court in the case of A.S. Fuels Ltd. Has held that in terms of Rule 28-A(11)(a), a unit even after claiming the benefit will have to remain in production for next 5 years failing which it is liable to pay the entire amount of tax, the benefit of which, was availed alongwith interest. In the present case also, Rule 28-A(11)(a) of the Rules will come into play on account of closure of production by the appellant after it had availed all the benefits up to 30.6.2000. Insofar as the plea with regard to the cases being time barred is concerned, the assessment orders had already been passed on 30.07.2003 and the orders impugned herein were not assessment orders but were the orders passed for payment of tax and interest on

account of violation of conditions laid down in Rule 28-A(11)(a)(i) of the Rules. Accordingly, it cannot be held that the orders demanding tax and interest are barred by limitation. No substantial question of law arises. Appeals dismissed.

Cases referred:

- *State of Haryana and others vs A. S. Fuels Pvt. Ltd. And another (and other appeals) (2008) 16 VST 546*
- *Stella Industries (P) Limited vs State of Haryana and others (2007) 29 PHT 54*
- *State of Haryana and others vs Stella Industries (P) Ltd Appeal (Civil) No. 11053 of 2007*
- *Sai Beverases (P) Limited, New Delhi vs State of Haryana (2001) 17 PHT 197*
- *State of Haryana vs Sai Beverages (P) Limited Appeal (Civil) No. 19347 of 2001*
- *Gorie Gouri Naidu (Minor) and another vs Thandrothu Bodemma and others (1997) 2 Supreme Court Cases 552*
- *Kalinga Mining Corporation vs Union of India and others (2013) 5 Supreme Court Cases 252*
- *Ballarpur Industries Limited vs State of Punjab and others (2010) 35 PHT 5, VATAP No. 110 of 2013*
- *The State of Punjab and others vs M/s The Patiala Cooperative Sugar Mills Limited, Rakhra, District Patiala, decided on 26.2.2014*
- *Mahavir Techno Ltd., Kurukshetra vs State of Haryana, GSTR No. 9 of 2011 decided on 30.3.2016*

Present: Mr. Sandeep Goyal, Advocate, for the appellant (s).
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

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RAJESH BINDAL, J.

1. This order will dispose of a bunch of appeals bearing VATAP Nos. 188 to 204 of 2014, as the common legal issues are involved. Not only that even the appellant is the same, as the appeals pertain to different periods.

2. The facts have been extracted from VATAP No. 188 of 2014.

3. The appellant has filed the present appeal raising the following substantial questions of law arising out of the order dated 27.11.2013 passed by the Haryana Tax Tribunal at Chandigarh in STA Nos. 160-176 of 2013-14:-

"(i) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in upholding the order of the lower authorities raising the demand prior to the date of cancellation of exemption certificate even though the first appellate authority vide order dated 21.12.2006 had held that tax is recoverable w.e.f. 1.7.2000 and the same had attained finality?

(ii) Whether on the facts and in the circumstances of the case, the order of first appellate authority dated 21.12.2006 (A-7) operates as res-judicata between the parties as the same had neither been challenged by any of the parties and thus, recovery of tax prior to 1.7.2000 is bad in law?

(iii) Whether on the facts and in circumstances of the case, the order of Assessing Authority raising demand is violative of principles of judicial discipline?

(iv) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in making recovery of the tax in terms of Rule 28-A(10)(v) even though the Exemption Certificate has not been cancelled during its validity?

(v) Whether the Ld. DETC could have cancelled the Exemption Certificate vide his order dated 25.10.2006 even though the Exemption Certificate had already lost its validity on 30.6.2000 as per Rule 28-A(6)(b)?"

4. Learned counsel for the appellant submitted that the appellant had set up an industrial unit to manufacture cotton yam. It came into production on 20.3.1993. Being an eligible industrial unit in terms of the provisions of Haryana General Sales Tax Act, 1973 (for short, 'the Act'), the appellant applied for issuance of eligibility certificate claiming the benefit of exemption from payment of tax. The eligibility certificate was issued to the appellant with validity from 20.3.1993 to 19.3.2002. After receipt of eligibility certificate, the appellant applied for issuance of exemption certificate, which was issued on 28.10.1993 entitling the appellant to claim benefit of exemption from payment of tax to the extent of Rs. 72,11,700/-. The appellant continued availing the benefit till the validity of the eligibility certificate as well as the exemption certificate expired. Vide order dated 7.11.2002, passed under Rule 28A(11)(b) of the Haryana General Sales Tax Rules, 1975 (for short, 'the Rules'), the Deputy Excise & Taxation Commissioner, withdrew the entire benefit availed by the appellant on the ground that the appellant unit was required to continue its production for next five years after availing the benefit at the average level of last five years. The appellant was directed to deposit the entire amount of benefit availed of along with interest. The appellant preferred appeal against the aforesaid order to the Joint Excise & Taxation Commissioner (Appeals), who vide order dated 28.1.2005 set aside the order and remitted the case back to the Deputy Excise & Taxation Commissioner for passing a fresh order in terms of the observations made in that order. Thereafter, process was initiated to withdraw the eligibility certificate granted to the appellant. The matter was put up in the meeting of Lower Level Screening Committee held on 11.8.2006. The matter was dropped, however, it was observed that the concerned department should have initiated action at its own level under Rule 28-A of the Rules. Thereafter, the matter was taken up under Rule 28A (4) of the Rules and vide order dated 25.10.2006, the Deputy Excise & Taxation Commissioner, cancelled the exemption certificate granted to the appellant with effect from 1.7.2000 and in view of the Rule 28A(10)(v) of the Rules, the appellant was directed to deposit the entire amount along with interest. The appellant preferred appeal against the aforesaid order to the Joint Excise & Taxation Commissioner (Appeals). The Appellate Authority vide order dated 21.12.2006, upheld the order while noticing the contention raised by learned counsel for the appellant that even though the exemption certificate was cancelled with effect from 1.7.2000, still the assessing authority was demanding the entire amount of tax, even for the period prior thereto. The Appellate Authority upheld the order while noticing that in case the impugned order was being wrongly interpreted by the assessing authority, the order cannot be faulted with.

5. Learned counsel for the appellant further submitted that thereafter vide order dated 11.2.2010, the assessment of the appellant for the year 1997-98 was framed for the first time and demand of tax and interest was raised noticing the fact that the exemption certificate granted to the appellant was not renewed after 1.7.2000. The unit had stopped production. Aggrieved against the order of assessment, the appellant preferred appeal before the Joint Excise & Taxation Commissioner (Appeal), who vide order dated 31.5.2013 dismissed the same. The appeal of the appellant before the Tribunal also met the same fate as the same was dismissed vide order dated 27.11.2013. It is the aforesaid order, which is impugned before this Court raising the aforesaid substantial questions of law.

6. Learned counsel for the appellant submitted that Section 13B of the Act gives power to Government to grant exemption from payment of tax to certain class of industries. In exercise of powers conferred under Section 13B of the Act, Rule 28A was inserted in the Rules. Rule 28A(2)(j) defines eligibility certificate, whereas sub-rule (k) thereof defines exemption certificate. Rule 28A(5) of the Rules provides for the procedure for issuance of eligibility

certificate, whereas sub-rule (6) thereof provides the procedure for issuance of exemption certificate. The validity of exemption certificate is for one year. Sub-rule (7) of Rule 28A of the Rules provides that exemption certificate is to be renewed from year to year, for which application is required to be made on statutory form. Sub-rule (8) of Rule 28A of the Rules provides for the conditions under which eligibility certificate granted to an industrial unit can be withdrawn. If it is so, the exemption certificate is automatically withdrawn and entire amount of tax benefit availed of by the industrial unit is recoverable along with interest or penalty. Sub-rule (9) of Rule 28A of the Rules provides for conditions under which exemption certificate can be cancelled. Sub-rule (10) of Rule 28A provides that on cancellation of eligibility or exemption certificate before it is due for expiry, the entire amount of tax shall become payable. Sub-rule (11) of Rule 28A of the Rules lays down certain conditions, which are applicable on an industrial unit for the period subsequent to the period for which the benefit of exemption has been availed of.

7. Learned counsel for the appellant further submitted that the rates of tax on sale of goods in the course of Inter-State was exempted for the units availing exemption vide notification dated 4.9.1995 issued in exercise of powers conferred under Section 8(5) of the Central Sales Tax Act, 1956 (for short, 'the Central Act').

8. Learned counsel for the appellant while referring to a Division Bench of this Court in ***A. S. Fuels Pvt. Ltd. And another vs State of Haryana and others (2002) 126 STC 48*** submitted that this Court had opined that in case the exemption certificate is withdrawn that is only for the year of its validity as it is to be renewed on year to year basis. However, he submitted that when the matter was taken up before Hon'ble the Supreme Court by the State against the aforesaid judgment, Hon'ble the Supreme Court in ***State of Haryana and others vs A. S. Fuels Pvt. Ltd. And another (and other appeals) (2008) 16 VST 546*** opined that even in that case the entire amount of benefit availed of by the industrial unit can be recovered. Facts in that case were distinguishable as it had come on record that in that case even the eligibility certificate of the party before Hon'ble the Supreme Court had been cancelled. In the case in hand, though the proceedings were initiated for cancellation of eligibility certificate, however, the matter was dropped by the Lower Level Screening Committee.

9. Learned counsel for the appellant further referred to a Division Bench Judgment of this Court in ***M/s Stella Industries (P) Limited vs State of Haryana and others (2007) 29 PHT 54***, where this Court opined that the eligibility certificate cannot be withdrawn after expiry of its currency period. The same was upheld by Hon'ble the Supreme Court as Special Leave to ***Appeal (Civil) No. 11053 of 2007 State of Haryana and others vs M/s Stella Industries (P) Ltd***, filed against the aforesaid judgment was dismissed on 13.12.2007. Reference was also made to judgment of this Court in ***M/s Sai Beverages (P) Limited, New Delhi vs State of Haryana (2001) 17 PHT 197***, in which earlier judgment of this Court ***in A. S. Fuels (P) Limited's case*** (supra) was followed. ***Special Leave to Appeal (Civil) No. 19347 of 2001 State of Haryana vs M/s Sai Beverages (P) Limited*** filed against the aforesaid judgment was also dismissed on 26.11.2001.

10. Further it was submitted that the Deputy Excise & Taxation Commissioner while cancelling the exemption certificate granted to the appellant ordered that the same is cancelled with effect from 1.7.2000. The department was not aggrieved against that order as no further proceedings were taken. Even if the order was wrong, it is final between the parties and is binding on them. In support, reliance was placed upon judgments of Hon'ble the Supreme Court in ***Gorie Gouri Naidu (Minor) and another vs Thandrothu Bodemma and others (1997) 2 Supreme Court Cases 552*** and ***Kalinga Mining Corporation vs Union of India and others (2013) 5 Supreme Court Cases 252***.

11. Another contention raised by learned counsel for the appellant was that the assessment years in question in all the appeals are from 1992¬93 till 2000-2001. Section 28 of the Act provides that the assessment of a dealer can be framed within 5 years of a particular assessment year. Even Rule 28A(10)(ii) of the Rules provides that the assessment of a dealer availing exemption of tax has to be completed by 31st December of the succeeding year. He further submitted that the Haryana General Sales Tax Act was repealed with the enactment of the Haryana Value Added Tax Act, 2003 (for short, 'the VAT Act') with effect from 1.4.2003. The maximum period provided for assessment under Section 15(3) of the VAT Act is 3 years. Even if Section 61 of the VAT Act is read, the maximum period upto which the process for assessment could be stretched can be 3 years from 1.4.2003 and not beyond that. In the case in hand, the assessment was framed much beyond that, hence, barred by limitation. In support of the arguments, reliance was placed upon Division Bench judgments of this Court in ***Ballarpur Industries Limited vs State of Punjab and others (2010) 35 PHT 5, VATAP No. 110 of 2013 The State of Punjab and others vs M/s The Patiala Cooperative Sugar Mills Limited, Rakhra, District Patiala, decided on 26.2.2014 and GSTR No. 9 of 2011 M/s Mahavir Techno Ltd., Kurukshetra vs State of Haryana, decided on 30.3.2016***.

12. As regards the demand raised under the Central Act is concerned, it was submitted that during the period of exemption, the appellant did not charge any tax as per the provisions under the Rules. There is nothing provided for under the Central Act or the notification issued thereunder for demand of tax at any subsequent stage by a dealer, who had claimed the benefit thereof. Hence, no demand can be raised.

13. On the other hand, learned counsel for the State submitted that Rule 28A(9) of the Rules provides for cancellation of exemption/ entitlement certificate under certain specific circumstances. It does not provide for any date from which it could be cancelled. Cancellation means from day one. It was not a case of non-renewal. The consequence of cancellation of exemption / entitlement certificate has been provided for under Rule 28A(10)(v) of the Rules. In the case of the appellant, it had stopped production in the year 2000, during even currency of its eligibility period, whereas in terms of Sub-rule 11 of Rule 28A of the Rules, a unit is required to remain in production even for next five years, after availing the exemption. The Rules cannot be interpreted in the manner sought to be suggested by the appellant. The exemption certificate issued to the appellant was cancelled and as a consequence the demand of tax was raised. There is no illegality in the action of the respondents.

14. Learned counsel for the State further submitted that the orders vide which the demand has been raised against the appellant are merely consequential to the order passed by the Deputy Excise & Taxation Commissioner withdrawing the exemption certificate. Those have been upheld in appeal. She further submitted that the facts of the case in hand and before Hon'ble the Supreme Court in ***A. S. Fuels Pvt. Ltd, 's*** case (supra) were identical and, in fact, support the case of the department. She further submitted that even on the ground of limitation, the orders of assessment cannot be set aside as the language used in Section 28(5) of the Act is that the Assessing Authority shall proceed to assess and not finally pass the order of assessment. There is no limitation prescribed for passing the order. As per the scheme of the Act, the benefits are granted to promote industrialization and also ensure that the industries remain in production for a subsequent period of five years and pay revenue to the State. There is no question of law in the appeals and the same be dismissed.

15. Heard learned counsel for the parties and perused the paper book.

16. The undisputed facts on record are that the appellant industrial unit came into commercial production on 20.3.1993. It was issued eligibility certificate valid from 20.3.1993 to 19.3.2002 for a total sum of Rs. 72,11,700/-. Subsequently exemption certificate was issued on 28.10.1993. Benefit of Rs. 27,95,959/- was availed of by the appellant out of the total

benefit admissible upto June, 2000. The unit stopped production thereafter. The benefits, which were availed of by the appellant during the period of its eligibility have been withdrawn and the amount is sought to be recovered in exercise of powers conferred under the Rules.

17. The relevant provisions of the Act, the Rules and the VAT Act, are extracted below:-

Sections 28 (4) and 28(5) of the Act

Assessment of registered dealer

(1) to (3) xx xx xx

(4) If a dealer, having furnished returns in respect of a period, fails to comply with the terms of a notice issued under sub-section (2), the assessing authority shall, within five years after the expiry of such period, proceed to assess, to the best of his judgment the amount of the tax due from the dealer.

(5) If a dealer does not furnish returns in respect of any period by the prescribed date, the assessing authority shall, within five years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax, if any, due from the dealer.

Rules 28A(2)(j)(k), (6) to 11 of the Rules

"Rule 28A(2)(j) '"eligibility certificate" means a certificate granted in Form ST-72 by the appropriate screening committee to an eligible industrial unit for the purpose of grant of exemption/ deferment;

***Rule 28A(2)(k)** "exemption certificate" means a certificate granted in Form ST-73 by the Deputy Excise and Taxation Commissioner of the district to the eligible industrial unit holding eligibility certificate which entitles the unit to avail of exemption from the payment of sales or purchase tax or both, as the case may be;*

xx xx xx

(6) (a) An eligible industrial unit which has been issued with an eligibility certificate (hereinafter referred to as the applicant unit), shall, within sixty days of its receipt make an application for the grant of exemption or entitlement certificate, as the case may be, in Form ST-71 to the Deputy Excise and Taxation Commissioner of the District in which his unit is located. The application shall be accompanied with an attested copy of the eligibility certificate and other documents mentioned in the application.

No application shall be entertained if not received within time. An application with incomplete or incorrect particulars including the documents required to be attached therewith shall be deemed as having been not made if the applicant fails to complete it on an opportunity afforded to him in this behalf. On receipt of application, the Deputy Excise and Taxation Commissioner shall ask the applicant unit seeking benefit of,-

(i) tax deferment to either execute a mortgage deed in Form ST-74 creating a pari-passu first charge along with financial institutions/banks on the assets of the unit, or to furnish a bank guarantee for 15 per cent of the total benefit to be availed of in a year and a surety bond in Form ST-50 for the balance amount of 85 per cent. The mortgage deed/agreement or bank guarantee shall be valid till the recovery of the entire deferred

amount of tax. The bank guarantee, if expiring early or if furnished on annual basis shall be renewed two months before the date of expiry failing which the unsecured deferred tax shall become due for payment immediately;

(ii) tax exemption, to either execute a surety bond in Form ST-50 equivalent to 15 per cent of the amount of notional sales tax liability sought to be exempted or a bank guarantee for that amount in a year, which shall be valid for the period extending to five years after the expiry of total period of tax exemption).

(b) The Deputy Excise and Taxation Commissioner shall after satisfying himself that the applicant unit is holding a genuine and valid eligibility certificate, has furnished adequate security and that his application is in order will issue him the exemption/entitlement certificate as the case may be, within thirty days of the receipt of the application. One copy of the certificate shall be sent to the Director of Industries or The General Manager, District Industries Centre as the case may be and one copy shall be retained in the record. The certificate issued shall be valid unless cancelled or withdrawn from the date of commercial production or from the date of issue of entitlement/exemption certificate, as the case may be, to the 30th June next or when notional sales tax liability first exceeds the quantum of tax exemption/deferment fixed for the unit, whichever is earlier.

Note: The agreement or the mortgage deed or the bank guarantee, as the case may be, is an important document and shall be entered in a register to be maintained in Form ST-75 by the Deputy Excise and Taxation Commissioner concerned in his personal custody. At the time of transfer of the charge of his office, the Deputy Excise and Taxation Commissioner shall hand over the register as well as the documents to his successor personally against proper receipt and shall send a certified copy of the same to the Excise and Taxation Commissioner by name who will acknowledge its receipt to both the officers.

(7) (a) The exemption certificate or the entitlement certificate, as the case may be, shall be renewed from year to year for which the industrial unit shall make an application to the Deputy Excise and Taxation Commissioner incharge of the district by the 31st May in Form ST-71. The application shall be accompanied with exemption/entitlement certificate, additional security as specified in sub-clauses (i) and (ii) of clause (a) of sub-rule (6) equal to fifteen per cent of the declared national sales tax liability of the current year and the difference between the actual and the declared notional sales tax liability of the previous year in the case of sales tax exemption and equivalent, to the extent of estimated tax liability of the current year and difference between actual and estimated tax liability of previous year in case of tax deferment, as also other documents mentioned in the application.

The Deputy Excise and Taxation Commissioner after making such enquiries as are necessary, and after satisfying himself that the applicant is a bonafide industrial unit and has not misused the exemption/ entitlement certificate, shall renew the exemption/ entitlement certificate within 30 days of the making of the application for renewal failing which the certificate shall remain valid until the renewal is refused or the certificate otherwise expires. The exemption/entitlement certificate on renewal shall unless cancelled or withdrawn be valid from 1st of July of the year in which the application is made

if it is in time or otherwise from the date of application to 30th June, next or when the eligibility certificate expires or the cumulative notional sales tax liability first exceeds the quantum of tax exemption/deferment fixed for the unit, whichever is earlier.

(b) If the Deputy Excise and Taxation Commissioner incharge of the district finds that the application for renewal of exemption/entitlement certificate is not in order or the particulars contained in the application are not correct and complete or the applicant is not a bona fide industrial unit or has misused exemption/entitlement certificate or has not complied with any of the directions given to it by him within the specified time, he may reject the application after giving the applicant an opportunity of being heard.

(c) An appeal against the order passed by the Deputy Excise and Taxation Commissioner under clause (b) of this sub-rule shall lie to the Excise and Taxation Commissioner, Haryana, if preferred within thirty days of the communication of the order appealed against.

(8)(a) The eligibility certificate granted to an industrial unit shall be liable to be withdrawn at any time during its currency by the appropriate screening committee, in the following circumstances –

(i) if it is discovered that it has been obtained by fraud, deceit, misrepresentation, mis-statement or concealment of material facts;

(ii) discontinuance of its business by the unit or closing down of its business for a continuous period exceeding six months except in case of fire, flood and other natural calamities, riots, strike or lock-out which in the opinion of the committee concerned is beyond the control of the unit;

(iii) disposal or transfer by the unit of any of its fixed assets adversely affecting its manufacturing or production capacity:

Provided that no order of withdrawal of the eligibility certificate shall be made without affording a reasonable opportunity of being heard to the affected unit.

(b) When the eligibility certificate is withdrawn, the exemption/entitlement certificate shall be deemed to have been withdrawn from the 1st day of its validity and the unit shall be liable to payment of tax, interest or penalty under the Act as if no entitlement certificate had ever been granted to it.

(9) The exemption/entitlement certificate granted to an eligible industrial unit shall be liable to be cancelled by the Deputy Excise and Taxation Commissioner concerned in the following circumstances, after affording an opportunity of being heard to the unit –

(i) discontinuance of its business by the unit at any time for a period exceeding six months or closing down of its business during the period of exemption/deferment;

(ii) disposal by the unit of any of its fixed assets mortgaged with the government in the Excise and Taxation Department;

(iv) Failure to furnish adequate security by the unit as required under the rules;

(v) failure of the unit to make payment of the deferred amount on the date of payment,

(vi) contravention of any of the provisions of the Act and/or the rules or conditions of the eligibility certificate or the exemption/entitlement certificate by the unit;

(vii) when the appropriate committee, which sanctions the eligibility certificate recommends that the exemption/ entitlement certificate of the unit be cancelled for reasons to be recorded in writing.

(10)(i) The eligible industrial unit shall continue to be liable to file the returns in the manner prescribed under the Act, and the rules and its failure to do so shall expose it to penalty as provided in the Act.

(ii) The assessment of an eligible industrial unit holding exemption/entitlement certificate shall be framed in accordance with the provisions of the Act and Rules framed thereunder as early as possible and shall be completed by the 31st December, in respect of the assessment year immediately preceding thereto and the additional demand so determined, if, any, shall be paid as per the provisions of the Act and the Rules.

(iii) The State Government may appoint special assessing authority for framing assessment of units mentioned in the preceding clause.

(iv) Notwithstanding the provisions relating to payment of tax due, according to returns, the eligible industrial unit which has availed of the benefit of sales tax deferment shall make payment of the deferred amount after the expiry of a period of five years to the extent of the amount deferred, every quarter or month, as the case may be, within the period specified in the rules.

(v) On cancellation of eligibility certificate or exemption/entitlement certificate before it is due for expiry, the entire amount of tax exempted/ deferred shall become payable immediately, in lumpsum, and the provisions relating to recovery of tax, interest and imposition of penalty shall be applicable in such cases.

(11)(a) The benefit of tax-exemption/deferment under this rule shall be subject to the condition that the beneficiary/industrial unit after having availed of the benefit, -

(i) shall continue its production at least for the next five years not below the level of average production for the preceding five years, and

(ii) shall not make sales outside the State for next five years by way of transfer or consignment of goods manufactured by it.

(b) In case the unit violates any of the conditions laid down in clause (a), it shall be liable to make, in addition to the full amount of tax-benefit availed of by it during the period of exemption/deferment, payment of interest chargeable under the Act as if no tax exemption/deferment was ever available to it:

Provided that the provisions of this clause shall not come into play if the loss in production is explained to the satisfaction of the Deputy Excise and Taxation Commissioner concerned as being due to the reasons beyond the control of the unit:

Provided further that a unit shall not be called upon to pay any sum under this clause without having been given reasonable opportunity of being heard."

18. A perusal of the scheme of Rule 28A(5) of the Rules provides for procedure for issuance of eligibility certificate, whereas Sub-Rule (6) thereof provides for issuance of exemption certificate. It further provides that the exemption certificate issued shall be valid unless cancelled or withdrawn from the date of commercial production or from the date of issue of exemption certificate as the case may be to the 30th June next year or when notional sales tax liability first exceeds the permissible limit, whichever is earlier.

19. Sub-rule (7) of Rule 28A of the Rules provides for procedure for renewal of exemption certificate. As per the scheme year to year renewal of exemption certificate is required to keep a track of the annual benefit availed of by the unit as even if the eligibility certificate is still valid, the moment maximum permissible limit of benefit is exhausted, the unit is not entitled to any benefit thereafter, even if the period is still remaining.

20. Sub-rule (8) of Rule 28A of the Rules provides that the eligibility certificate granted to an industrial unit shall be liable to be withdrawn at any time during its currency by the appropriate screening committee under certain specified conditions. On withdrawal of eligibility certificate, the exemption/ entitlement certificate shall be deemed to have been withdrawn and the entire amount of tax, interest or penalty shall become payable.

21. Sub-rule (9) of Rule 28A of the Rules provides for cancellation of exemption/ entitlement certificate under certain specified conditions and one of them being discontinuance of its business by the unit for a period exceeding six months or closing down its business during the period of exemption/ deferment.

22. Sub-rule (10) of Rule 28A of the Rules provides that every eligible industrial unit shall be liable to file returns in the manner prescribed under the Act and on failure shall be liable to penal action. Assessment of such unit is to be framed in accordance with the provisions of the Act and the Rules framed thereunder and is to be completed by 31st December in respect of the assessment year immediately proceeding thereto. It further provides that on cancellation of eligibility or exemption/ entitlement certificate before it is due for expiry, the entire amount of tax exempted/ deferred shall become payable in lumpsum. The provisions relating to levy of interest and penalty shall also be applicable.

23. Sub-rule (11) of Rule 28A of the Rules provides that the benefits availed under Rule 28A of the Rules shall be subject to the conditions that the beneficiary unit after availing the benefit remains in production for next five years not below the level of average production for the preceding five years and shall not make any sales outside the State by way of consignment of goods for next five years. In case of violation of the conditions, full amount of tax availed of during the period of exemption shall be recoverable along with interest.

24. Withdrawal of eligibility certificate or cancellation of exemption/ deferment certificate may be during its currency as envisaged in Rule 28A(8) and 28A(9) of the Rules but Rule 28A(11) of the Rules operates after the expiry of both the certificates. It contains conditions which are applicable after the entire benefit has already been availed of.

25. In the case in hand, the facts as noticed above are that the period of eligibility of the appellant was from 20.3.1993 to 19.3.2002. The unit had stopped production in July, 2000. Out of the total amount of Rs. 72,11,700/-, the benefit to the extent of Rs. 27,95,959/- was availed upto 30.6.2000. There was violation of Rule 28A(9)(i) of the Rules as the unit discontinued its business for a period exceeding six months during the period of exemption. Hence, the exemption certificate was liable to be 'cancelled'. In ***A. S. Fuels Pvt. Ltd, 's*** case (supra), a Division Bench of this Court opined that the exemption certificate is renewed on year to year basis. It can be cancelled during its currency and as a result the demand of tax only for that year could be raised and not for the earlier period. When the matter went before Hon'ble the Supreme Court, it was opined that this Court had failed to take notice of the provisions of Rule

28A(11)(a) in terms of which a unit even after claiming the benefit will have to remain in production for next five years and on failure, to pay the entire amount of tax, the benefit of which was availed of in addition to interest. It was further noticed therein that the eligibility certificate granted to the unit had also been withdrawn. In the case in hand as well as on the admitted facts, Rule 28A(11)(a) of the Rules will also come into play on account of closure of production by the appellant, after it had availed of the benefits upto 30.6.2000.

26. As far as the contention raised by learned counsel for the appellant regarding the assessment being time barred is concerned, the assessment years involved in these cases are from the years 1992-93 to 2000-2001. As per Sections 28(4) and (5) of the Act, the assessing authority could proceed to frame assessment for any period within five years from the last date of filing of returns. The contention of the learned counsel for the appellant is that the orders of assessment having been passed even after a period of three years of the enactment of VAT Act with effect from 1.4.2003 are time barred. The contention of learned counsel for the appellant may be meritorious if the order dated 11.2.2010 passed by the assessing authority was an order of assessment. However, a perusal of the order shows that in fact, it is not an assessment order, rather an order passed for demand of tax and interest on account of violation of conditions laid down in Rule 28A(11)(a)(i) of the Rules, which specifically provides that in case after availing the benefits, the unit does not remain in production for next five years, the entire amount of tax benefits availed of, shall be payable along with interest. The relevant part of the order is extracted below:-

Assessment year	Tax originally Assessed / taken vide Assessing Authority's orders dated 30.07.2003	Interest under section 25 (5) of the Haryana General Sales Tax Act, 1973		Total Tax & Interest
		Period	Amount	
1997-98	155006.00	October 1997 to February, 2010	345663.00	500669.00
	155006.00		345663.00	500669.00

27. This rule operates in a totally different field and has its own application. The contention that the withdrawal of exemption certificate is possible only during its currency and consequently the tax payable, will not be applicable in this case as this has operation after the benefit had been availed of and the currency of eligibility as well as exemption certificate is already over. The order further suggest that for the assessment year in question, the tax had already been calculated by the assessing authority vide order dated 30.7.2003 and it was that amount only which was sought to be recovered along with interest thereon. The order is not in the form of assessment order as framed in terms of provisions of the Act specifying the gross turnover and thereafter granting rebates and applying rate of tax for the purpose of final assessment.

28. For the reasons mentioned above, we do not find any merit in the present appeals. No substantial question of law arises. The appeals are accordingly dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 4215 OF 2016

LAQSHYA MEDIA PVT. LTD.
Vs
STATE OF PUNJAB AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

23rd August, 2016

HF ▶ Assessee

In the absence of any machinery provision under the Act or the Rules, the recovery of Advertisement Tax by Municipal Corporation cannot be legally sustained.

ADVERTISEMENT TAX – MUNICIPAL CORPORATION – NO MECHANISM FOR RETURNS, ASSESSMENT OR RECOVERY THEREOF – NO POWERS UNDER THE ACT OR THE RULES TO DEMAND ANY TAX FROM THE PETITIONER WHO HAS DISPLAYED ADVERTISEMENT – DEMAND OF TAX CANNOT BE LEGALLY SUSTAINED – HENCE SET ASIDE. *PUNJAB MUNICIPAL CORPORATION S ACT, 1976.*

The petitioner entered into a concession agreement with the company in which Municipal Corporation, Ludhiana held majority shares. Through this agreement, the permission was granted to the petitioner for display of advertisements. A demand notice was issued by Municipal Corporation Ludhiana asking the petitioner to pay advertisement tax under the provisions of Punjab Municipal Corporations Act, 1976 stating that it was the duty of the petitioner to pay advertisement tax as per the agreement. The petitioner sent a legal notice claiming that the demand of advertisement tax was illegal. On filing a writ petition, the Corporation was directed to decide the legal notice by passing a speaking order which was decided vide impugned order. The main plea of the petitioner is that in absence of any procedure or mechanism for filing of Return, assessment of tax and recovery thereof, the levy of tax is not legal in view of various judgments of Hon'ble Supreme Court. On filing of writ petition against the order rejecting plea of petitioner, the High Court held:

The Notice issued by Municipal Corporation for deposit of tax on advertisement cannot be said to be authorised if read in consonance with the provisions of Sections 123, 126 and 135 of the Act. Even though Section 135 of the Act envisages issuance of a Demand Notice for recovery of Advertisement Tax due on a prescribed form, however, no form, as such, was referred to. There is no procedure prescribed in the Act or the Rules regarding filing of Return, assessment of tax and consequential recovery thereof. The impugned order has not been passed in exercise of powers conferred under any of the provisions of the Act, Rules or by-laws framed thereunder. Accordingly, the demand of tax on advertisement from the petitioner cannot be legally sustained and hence the same is set aside. The petition stands disposed of.

Cases referred:

- *Kunnathat Thathunni Moopil Nair etc, v. State of Kerala and another AIR 1961 SC 552;*
- *State of A. P. v. Nalla Raja Reddy and others. AIR 1967 SC 1458*
- *Commissioner Central Excise and Customs Kerala v. M/s Larsen & Toubro Ltd.. AIR 2015 SC 3600*
- *State of Punjab and others v. Bhatinda District Coop. Milk P. Union Ltd., (2007) 11 SCC 363*
- *Jagannath Baksh Singh v. State of U.P., AIR 1962 SC 1563*
- *Brij Mohan Gupta v. State of Haryana and another, 2015(4) RCR (Civil) 318*
- *Rai Ramkrishna v. State of Bihar, AIR 1963 SC 1667*
- *A.P. v. Nalla Raja Reddy. AIR 1967 SC 1458*
- *Heinz India (P) Ltd. v. State of U. P. (2012) 5 SCC 443*
- *K.T. Moopil Nair v. State of Kerala [AIR 1961 SC 552]*

Present: Mr. Piyush Kant Jain, Advocate for the petitioner.
Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.
Mr. Ashok Kumar Bazaz, Advocate for respondents No. 2 to 4.

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RAJESH BINDAL, J.

1. The petitioner has filed the present petition seeking quashing of the order dated 22.1.2016 (Annexure P-16), passed by the Commissioner, Municipal Corporation, Ludhiana, demanding advertisement tax amounting to Rs. 41,77,500/-.

2. Learned counsel for the petitioner submitted that the petitioner entered into a concession agreement with M/s Ludhiana City Bus Services Ltd. (for short, 'the Company') on 26.5.2008. In terms of the agreement, the petitioner was granted concession to design, build and maintain bus shelters at different places, which were to be transferred to the Company free of charge after expiry of the concession period. The petitioner was given right to display advertisements.

3. It was argued that the petitioner was earlier issued letters dated 5.1.2015, 22.1.2015, 8.4.2015 and 17.8.2015 raising illegal demand of advertisement tax. Those were impugned by filing CWP No. 20050 of 2015. The writ petition was disposed of on 21.9.2015 with a direction to the authorities to decide the legal notice dated 19.8.2015 got served by the petitioner by passing a speaking order. The petitioner was further directed to deposit Rs. 25,00,000/-. The needful was done. The legal notice was disposed of by respondent No. 3 by passing order dated 22.1.2016, which has been impugned in the present petition.

4. Learned counsel for the petitioner, while challenging the aforesaid order, submitted that Section 90 of the Punjab Municipal Corporation Act, 1976 (for short, 'the Act') provides for taxes, which can be imposed by the Corporation. It includes tax on advertisement. Sub-section (3) thereof provides that taxes as specified in sub-sections (1) and (2) shall be levied at such rates as may, from time to time, be specified by the Government by notification and shall be assessed and collected in accordance with the provisions of the Act and the bye-laws made thereunder. Stress was laid regarding assessment and collection of the tax in accordance with the provisions of the Act and the bye-laws made thereunder claiming that there is no procedure provided for assessment and collection and no bye-laws have been framed. Sub-section (4) of Section 90 of the Act provides that even the Government may, by special or general order, direct a Corporation to impose any tax, as provided for in sub-section (1) thereof, if not already imposed.

5. Section 122 of the Act was referred to, which specifically deals with tax on advertisements. It provides that every person liable to pay tax under specified conditions shall pay the same calculated at such rate, as may be specified by the Government. Sub-section (2) thereof provides that tax leviable under this sub-section shall be payable in advance in such

number of instalments and in such manner, as may be determined by the bye-laws made in this behalf. "Bye-law" has been defined under Section 2(4) of the Act to mean a bye-law framed under the Act by notification in the official gazette. Section 399(1)(A)(7) of the Act was referred to, which provides for framing of bye-laws with reference to submission of returns by the person liable to pay any tax under the Act. Section 399(1)(A)(8) of the Act provides for framing of bye-laws for any other matter relating to levy, assessment, collection, refund or remission of taxes under the Act.

6. As regards rate of tax, learned counsel for the petitioner referred to the notification dated 17.5.2005, issued by the Government of Punjab, specifying rates of tax on advertisements, which was revised vide notification dated 15.12.2014.

7. It was further argued that despite all these enabling provisions specifically requiring framing of bye-laws for levy, filing of returns, assessment, collection, refund etc. with reference to the taxes leviable under the Act, no bye-laws have been framed, in the absence of which the tax on advertisement could not be demanded, as the levy would take the character of being confiscatory.

8. The Punjab Municipal Outdoor Advertisement Policy, 2012 was referred to by learned counsel for the petitioner to submit that the same provides only the provisions regarding advertisement and the safeguards to be taken for the purpose. It also provides for mode of allotment thereof.

9. In the aforesaid factual matrix, the contention is that the demand and recovery of tax under any statute will arise only after the procedure for filing of return, assessment, appeals, penalties, interest and consequence of default are provided. In the absence of these machinery provisions, direct demand raised by respondent No. 3 is violative of Article 265 of the Constitution of India. Without affording proper opportunity of hearing and framing any assessment of tax, directly demand notice was issued. It was further argued that even the order now passed is on the legal notice got served by the petitioner, on a direction issued by this court earlier. Otherwise, the provisions of the Act do not provide for passing of any order. The order refers to size of advertisement as per agreement without even ensuring actual size and number of advertisements and as to whether those advertisements were in place or not. Merely because a right had been given in the concession agreement, the same would not mean that all the advertisements had been put in place. The tax could possibly be levied only if the advertisement was there and not merely on the basis that concession agreement enabled the petitioner to put those advertisements. Further, relying upon the judgments of Hon'ble the Supreme Court in ***Kunnathat Thathunni Moopil Nair etc, v. State of Kerala and another. AIR 1961 SC 552; State of A. P. V. Nalla Raja Reddy and others AIR 1967 SC 1458*** and ***Commissioner Central Excise and Customs, Kerala v. M/s Larsen & Toubro Ltd., AIR 2015 SC 3600***, it was submitted that the demand being confiscatory in the absence of machinery provisions, the same deserves to be set aside.

10. Still further, it was submitted that reference to the provisions of Sections 146 and 147 of the Act by the respondents in the reply is totally misplaced, as there is no assessment of tax, for which the provisions will apply. The provisions of Municipal Account Code, 1930 are also of no relevance as it talks of maintenance of record and does not prescribe any procedure for assessment.

11. Raising the issue of delay, it was submitted that notice for the first time for demanding tax for the year 2008 onwards was issued in the year 2015, hence, the same was time-barred, as even assessment could be framed within a reasonable time. In support of this argument, reliance was placed upon ***State of Punjab and others v. Bhatinda District Coop. Milk P. Union Ltd., (2007) 11 SCC 363***.

12. Learned counsel for respondents No. 2 to 4, while referring to the provisions of Section 122 of the Act, submitted that the provisions are quite explicit. For taxes, the person liable, taxable event and the rate of tax is to be defined. All three para-meters are fulfilled in the present case. Section 122 of the Act defines the person and the eventuality in which the tax is leviable. The rate of tax is to be specified by the Government. The needful was done by issuing notifications dated 17.5.2005 and 15.12.2014. Sub-section (2) of Section 122 of the Act provides that advertisement tax is payable in advance. Even if the number of instalments have not been specified by framing bye-laws, that will not make the section unworkable and levy non-est. Section 123 of the Act prohibits advertisement without written permission of the Commissioner of the Municipal Corporation. It further provides that such a permission shall not be granted in case the advertisement contravenes any bye-law made under the Act or the tax, if any, due in respect of the advertisement has not been paid. It further provides that permission is to be granted only for the period for which tax has been paid. Section 126 of the Act provides for powers of the Commissioner in case any advertisement is displayed in violation of the provisions of Section 123 of the Act. Such an advertisement can be directed to be removed immediately. The provisions of the Act, in fact, are self assessment provisions. It is only on failure of a person liable to pay tax that a bill is sent in terms of the provisions of Section 135 of the Act. It provides the particulars of the tax and the period for which the same is demanded. Sub-section (4) of Section 135 of the Act provides that the tax, if not paid, after it becomes due, the Commissioner may issue a notice of demand. Section 138 of the Act provides for procedure for recovery of tax, if not paid. Section 146 of the Act provides for appeal against any levy or assessment of tax, whereas Section 147 of the Act provides for pre-condition for entertainment of appeal. It was submitted that complete machinery has been provided under the Act for levy, the person liable to pay tax, incidence of tax and rate of tax. Further procedure for assessment, demand notice, recovery and penalty have also been provided, hence, the contention that there are no machinery provisions is totally misconceived. In support of the plea, reliance was placed upon the judgment of this court in ***Brij Mohan Gupta v. State of Haryana and another, 2015(4) RCR (Civil) 318***.

13. Heard learned counsel for the parties and perused the paper book.

14. The relevant provisions of the Act are reproduced hereunder:

*"**2. Definitions**- In this Act, unless the context otherwise requires,-*

xx xx xx

***(4)** "bye-law" means a bye-law made under this Act, by notification in the Official Gazette;*

xx xx xx

***90. Taxes to be imposed by Corporation under this Act and arrangement of certain taxes collected by Government- (1)** The Corporation shall, for the purposes of this Act, levy the following taxes:-*

xx xx xx

***(d)** a tax on advertisements other than advertisements published in newspapers;*

xx xx xx

***(3)** The taxes specified in sub-section (1) and sub-section (2) shall be levied at such rates as may, from time to time, be specified by the Government by notification and shall be assessed and collected in accordance with the provisions of this Act and the bye-laws made thereunder.*

xx xx xx

122. Tax on advertisement.- (1) *Every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, boarding, frame, post or structure or upon or in any vehicle any advertisement or, who displays any advertisement to public view in any manner whatsoever, visible from a public street or public place (including any advertisement exhibited by means of cinematograph), shall pay for every advertisement which is so erected, exhibited, fixed or retained or so displayed to public view, a tax calculated at such rates, as may from time to time, be specified by the Government:*

Provided that no tax shall be levied under this section on any advertisement which-

(a) *relates to public meeting, or to an election to Parliament or Legislative Assembly or the Corporation or to candidature in respect of such election; or*

(b) *is exhibited within the window of any building if the advertisement relates to the trade, profession or business carried on in that building; or*

(c) *relates to the trade, profession or business carried on within the land or building upon or over which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held on or upon or in the same; or*

(d) *relates to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or*

(e) *relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration; or*

(f) *relates to any activity of the Government or Union of India or the Corporation.*

(2) The tax on any advertisement leviable under this section shall be payable in advance in such number of instalments and in such manner as may be determined by bye-laws made in this behalf.

123. Prohibition of advertisements without written permission of Commissioner- (1) *No advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, boarding, frame, post or structure or upon in any vehicle or shall be displayed in any manner whatsoever in any place within the City without the written permission of the Commissioner granted in accordance with bye-laws made under this Act.*

(2) The Commissioner shall not grant such permission, if-

(a) the advertisement contravenes any bye-law made under this Act; or

(b) the tax, if any, due in respect of the advertisement has not been paid.

(3) Subject to the provisions of sub-section (2), in the case of an advertisement liable to the advertisement tax, the Commissioner shall grant permission for the period to which the payment of the tax relates and no fee shall be charged in respect of such permission.

xx xx xx

126. Power of Commissioner in case of contravention.- *If any advertisement is erected, exhibited or fixed, retained in contravention of the provisions of section 123, the Commissioner may require the owner or occupier of the land, building, wall, boarding, frame, post or structure or vehicle upon, or over in which the same is erected, exhibited, fixed or retained, to take down or remove such advertisement or may enter any land, building, property or vehicle and have the advertisement dismantled, taken down or removed or spoiled, defaced or screened.*

xx xx xx

135. Presentation of bill.- *(1) When any tax has become due, the Commissioner shall cause to be presented to the person liable for the payment thereof, a bill for the amount due: Provided that no such bill shall be necessary in the case of –*

(a) a tax on vehicles and animals;

(b) a theatre-tax; and

(c) a tax on advertisements.

(2) Every such bill which shall be in prescribed form shall for the purposes of this Act, be considered a notice of demand shall specify the particulars of the tax and the period for which the charge is made.

(3) If the amount specified in the bill is paid within a period of fifteen days from the presentation thereof a rebate of five per cent shall be allowed in the amount of tax.

(4) If the tax on vehicles and animals or the theatre tax or the tax on advertisements is not paid after it has become due, the Commissioner may cause to be served upon the person liable for the payment of the same a notice of demand in the prescribed form.

(5) For every notice of demand served under sub-section (4) a fee of such amount not exceeding five rupees as may be determined by bye-laws made in this behalf shall be payable by the person on whom the notice is served and shall be included in the costs of recovery.

xx xx xx

138. Manner of recovering tax.-- *Any sum due on account of tax payable under this Act may be recovered, together with costs of recovery, through the following processes by the Competent Authority,-*

(a) by service of writ of demand on the defaulter;

(b) by distraint and sale of a defaulter's movable property;

(c) by the attachment and sale of defaulter's immovable property;

(d) in the case of octroi and toll, by the seizure and sale of goods and vehicles; and

(e) in the case of taxes on land and buildings, by the attachment of rent due in respect of the property or any other property owned by the defaulter.

xx xx xx

146. Appeal against assessment, etc.- *(1) An appeal against the levy or assessment of any tax, other than tax on building and land under this Act shall lie to the Divisional Commissioner who shall decide the same after giving to the appellant an opportunity of being heard either within the local area of the City or his head-quarters.*

(2) If, before or on the hearing of an appeal under this section, any question of law or usage having the force of law or construction of a document arises, the Divisional Commissioner on his own motion may, or on the application of any party to the appeal, shall, draw up a statement of the facts of the case, and the question so arising, and refer the statement with his opinion on the question for the decision of the High Court.

(3) On a reference being made under sub-section (2), the subsequent proceedings in the case shall be, as nearly as may be, in conformity with the rules relating to references to the High Court contained in Order XLVI of the First Schedule to the Code of Civil Procedure, 1908.

(4) In every appeal, the costs shall be in the discretion of the appellate authority.

(5) Costs awarded under this section to the Corporation shall be recoverable by the Corporation as an arrear of tax due from the appellant.

(6) If the Corporation fails to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof, the appellate authority may order the Commissioner to pay the amount to the appellant.

147. Conditions of right to appeal.-*No appeal shall be entertained under Section 146, unless-*

(a) the appeal is, in the case of tax on lands and buildings, brought within thirty days next after the date of authentication of the assessment list under section 101 (exclusive of the time requisite for obtaining a copy of the relevant entries therein), or as the case may be, within thirty days of the date on which an amendment is finally made under Section 103, and, in the case of any other tax, within thirty days next after the date of the receipt of the notice of assessment or of alteration of assessment or, if no notice has been given, within thirty days after the date of service of the first notice of demand in respect thereof:

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within that period.

(b) the amount, if any, in dispute in the appeal has been deposited by the appellant in the office of the Corporation.

399. Powers to make bye-laws.- *(1) Subject to the provisions of this Act the Corporation may in addition to any bye-laws which it is empowered to make by any other provision of this Act, make bye-laws to provide for all or any of the following matters, namely,—*

A. Bye-laws relating to taxation;

xx xx xx

(7) *the submission of returns by the persons liable to pay any tax under this Act;*

> ***(8)*** *any other matter relating to the levy, assessment, collection, refund or remission of taxes under this Act:*
>
> *xx xx xx"*

15. As per the scheme of the Act, especially regarding taxation, Section 90(1)(d) of the Act enables the Corporation to levy tax on advertisements other than advertisements published in newspapers. Sub-section (3) thereof provides that taxes as specified shall be levied at such rates as may be specified by the Government from time to time by notification issued in this behalf. It shall be assessed and collected in accordance with the provisions of the Act and the bye-laws framed thereunder.

16. Section 122 of the Act defines the person liable to pay tax and the taxable event. It states that every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, boarding, frame, post or structure or upon or in any vehicle any advertisement or, who displays any advertisement to public view in any manner whatsoever, visible from a public street or public place, shall pay for every advertisement which is so erected, exhibited, fixed or retained or so displayed to public view, a tax calculated at such rates, as may from time to time, be specified by the Government. Proviso thereto provides exception where no tax is levied under this section. Sub-section (2) thereof provides that tax on advertisement is payable in advance in such number of instalments and in such manner, as may be determined by the bye-laws, to be made in this behalf. It is not in dispute that no bye-laws have been framed under the provisions as none were referred to at the time of hearing.

17. Section 123 of the Act prohibits erection, exhibition etc. of any advertisement without written permission of the Commissioner, which is not to be granted, inter-alia, in case the tax, if any, due in respect of the advertisement has not been paid. The rates of advertisement tax, as envisaged in Section 122 of the Act have been specified by the Government vide notification dated 17.5.2005 (Annexure P-8). It mentions the size of the advertisement and the rate of tax. Sub-section (3) of Section 123 of the Act provides that in case of an advertisement liable to tax, the Commissioner shall grant permission for the period to which the payment of the tax relates.

18. Section 126 of the Act provides that in case any advertisement is exhibited or retained in contravention of the provisions of Section 123 of the Act, the Commissioner may require the owner or occupier to remove the same. On failure, he can get it dismantled or removed.

19. Section 135 of the Act provides that in case tax on advertisement has become due, the Commissioner may serve notice on the person liable to pay the same in prescribed form. Nothing from the Act or the Rules has been referred to show that any form has been prescribed for issuing such notice.

20. Section 138 of the Act provides for the manner of recovery of taxes.

21. Section 146 of the Act provides for appeal against the levy or assessment of any tax other than the tax on building and land, whereas Section 147 of the Act provides for condition for entertainment of appeal.

22. Even though Section 399 of the Act enables the Corporation to frame bye-laws, which includes the bye-laws relating to taxation regarding submission of returns, levy, assessment, collection, refund or remission, no Rules were referred at the time of hearing, which may have been framed for the purpose of levy, assessment and collection of tax leviable.

23. The concession agreement was executed between the Company and the petitioner for design, finance, construction, maintenance and transfer of bus shelters on DBMT basis for City Bus Service. The Company has been incorporated through equity contribution by

Municipal Corporation and Punjab Infrastructure Development Board. The petitioner has been awarded the contract to design, finance, build and maintain bus shelters during the concession period and at the end of the concession period, transfer at no cost to the Company the bus shelters along with all facilities and amenities attached thereto. At that stage, the agreement would stand terminated. The petitioner, namely, the concessionaire has been given exclusive advertisement rights on the bus shelters and right to market advertising space, collect and appropriate revenue in this behalf. The agreement also defines the maximum limit and the area of advertisement on each bus shelter. It is the liability of the concessionaire to pay all taxes.

24. As per the scheme of the Act, certain taxes are to be paid in advance, may be in instalments to be specified in terms of the bye-laws to be framed in this behalf, whereas certain taxes are to be paid after assessment. The taxes, which are payable in advance, are taxes on vehicles and animals and taxes on advertisements. It is only after payment of these taxes that necessary permission is granted. That is the reason that the Act does not even envisage assessment of these types of taxes. The only stringent provision provided is that in case any one erects or exhibits any advertisement in contravention to the provisions of Section 123 of the Act, which prohibits advertisements without permission of the Commissioner, which can be granted only on payment of tax, is that the person concerned can be directed to remove the same or it can be got removed by the Commissioner. No provision of the Act or bye-laws have been referred to, which provide for assessment and collection of tax that too after affording opportunity of hearing. Section 135(4) of the Act provides for issuance of demand notice directly without there being any provision for show cause notice and hearing before passing order of assessment and consequently demand notice. Even the number of instalments for payment of tax in advance, as are to be specified by framing bye-laws in terms of Section 122(2) of the Act, have also not been referred to. Appeal is also maintainable against levy or assessment of tax. One of the stringent condition laid down in Section 147 of the Act is that amount in dispute has to be deposited before the appeal can be entertained. In the absence of any assessment or levy, no appeal can possibly be maintained.

25. The levy and recovery of tax in the absence of machinery provisions in a taxing statute has been considered by Hon'ble the Supreme Court from time to time. The issue was considered by Hon'ble the Supreme Court in ***Kunnathat Thathunni Moopil Nair's*** case (supra), wherein it was observed as under:

> *"9. ... Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher civil court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of Section 3 of the Madras Revenue Recovery Act, 1864, the landholders may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the Executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-iudicial character...."* *(Emphasis supplied)*

26. In ***Jagannath Baksh Singh v. State of U.P., AIR 1962 SC 1563***, Hon'ble the Supreme Court was examining the constitutional validity of the U.P. Large Land Holdings Tax

Act (31 of 1957). Dealing with the argument that the Act did not make a specific provision about the machinery for assessment or recovery of tax, the Court observed as under:

> *"17. ... if a taxing statute makes no specific provision about the machinery to recover tax and the procedure to make the assessment of the tax and leaves it entirely to the executive to devise such machinery as it thinks fit and to prescribe such procedure as appears to it to be fair, an occasion may arise for the courts to consider whether the failure to provide for a machinery and to prescribe a procedure does not tend to make the imposition of the tax an unreasonable restriction within the meaning of Article 19(5). An imposition of tax which in the absence of a prescribed machinery and the prescribed procedure would partake of the character of a purely administrative affair can, in a proper sense, be challenged as contravening Article 19(l)(f)."* *(Emphasis supplied)*

27. In ***Rai Ramkrishna v. State of Bihar, AIR 1963 SC 1667***, Hon'ble the Supreme Court was examining the constitutional validity of the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961. Reiterating the view taken in ***Kunnathat Thathunni Moopil Nair's case*** (supra), Hon'ble the Supreme Court held that a statute is not beyond the pale of limitations prescribed by Articles 14 and 19 of the Constitution and that the test of reasonableness prescribed by Article 304(b) is justiciable. However, in cases where the statute was completely discriminatory or provides no procedural machinery for assessment and levy of tax or where it was confiscatory, the Court would be justified in striking it down as unconstitutional. In such cases the character of the material provisions of the impugned statute may be such as may justify the Court taking the view that in substance the taxing statute is a cloak adopted by the legislature for achieving its confiscatory purpose.

28. In State of ***A.P. v. Nalla Raja Reddy. AIR 1967 SC 1458***, Hon'ble the Supreme Court was examining the constitutional validity of the Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act, 1962 (22 of 1962) as amended by the Amendment Act (23 of 1962). Noticing the absence of machinery provisions in the impugned enactments, it was observed as under:

> *"22. ... if Section 6 is put aside, there is absolutely no provision in the Act prescribing the mode of assessment. Sections 3 and 4 are charging sections and they say in effect that a person will have to pay an additional assessment per acre in respect of both dry and wet lands. They do not lay down how the assessment should be levied. No notice has been prescribed, no opportunity is given to the person to question the assessment on his land. There is no procedure for him to agitate the correctness of the classification made by placing his land in a particular class with reference to ayacut, acreage or even taram. The Act does not even nominate the appropriate officer to make the assessment to deal with questions arising in respect of assessments and does not prescribe the procedure for assessment. The whole thing is left in a nebulous form. Briefly stated under the Act there is no procedure for assessment and however grievous the blunder made there is no wav for the aggrieved party to get it corrected. This is a typical case where a taxing statute does not provide any machinery of assessment."* *(Emphasis supplied)*

29. In ***Heinz India (P) Ltd. v. State of U. P. (2012) 5 SCC 443***, Hon'ble the Supreme Court observed as under:

> *"This Court has in a long line of decisions rendered from time to time, emphasised the importance of machinery provisions for assessment of taxes and fees recoverable under a taxing statute. In one of the earlier decisions on the subject a Constitution Bench of this Court in* ***K.T. Moopil Nair v. State of***

> ***Kerala [AIR 1961 SC 552]*** *examined the constitutional validity of the Travancore-Cochin Land Tax Act (15 of 1955). While recognising what is now well-settled principle of law that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, this Court found that the enactment in question was violative of Article 14 of the Constitution for inequality was writ large on the Act and inherent in the very provisions under the taxing section thereof. Having said so, this Court also noticed that the Act was silent as to the machinery and the procedure to be followed in making the assessment. It was left to the executive to evolve the requisite machinery and procedure thereby making the whole thing, from beginning to end, purely administrative in character completely ignoring the legal position that the assessment of a tax on person or property is a quasi-judicial exercise."*

30. All the aforesaid judgments were referred to with approval by Hon'ble the Supreme Court in ***M/s Larsen & Toubro Ltd.'s case*** (supra), where charge of service tax on the indivisible works contracts prior to 1.6.2007 was set aside as the Finance Act, 1994 did not lay down charge or machinery provisions to levy and assess service tax on these transactions.

31. In the case in hand, the Company which entered into the concession agreement with the petitioner is a company in which the Corporation itself holds majority shares. It had granted permission for display of advertisements. Initially, the letter was sent to the petitioner requiring it to pay the advertisement tax from the date of agreement within 7 working days and also furnish the details of advertisements displayed and the location thereof. The aforesaid letter is stated to be 5.1.2015. As the document has been placed on record, it was not signed by any one. It was replied to by the petitioner vide letter dated 13.1.2015, to which the Assistant Commissioner(s), Municipal Corporation, Ludhiana, vide letter dated 22.1.2015 responded by stating that it was the duty of the petitioner to pay advertisement tax as per the agreement and in case of failure, proceedings for removal of the advertisements and also for terminating the contract shall be initiated. It was followed by another letter dated 8.4.2015 from the Assistant Commissioner(s), Municipal Corporation requiring the petitioner to deposit the amount of tax mentioned in the notice. On failure, proceedings for removal of advertisement and for terminating the contract were to be initiated. There is another notice dated 17.8.2015 issued under the signatures of Superintendent (H.Q.), Municipal Corporation, Ludhiana in the same line.

32. The petitioner got a legal notice dated 19.8.2015 issued to the Municipal Corporation and the Company claiming that demand of advertisement tax was illegal. Thereafter, the petitioner filed CWP No.20050 of 2015 in this court, which was disposed of on 21.9.2015 without any expression of opinion with a direction to respondent No. 2 therein to take a final decision on the legal notice got served by the petitioner. The petitioner was further directed to deposit a sum of Rs. 25,00,000/-. The needful was done by the petitioner and the Municipal Corporation decided the legal notice got served by the petitioner vide impugned order dated 22.1.2016 holding the advertisement tax to be payable by the petitioner.

33. In the case in hand, the Municipal Corporation issued notice for deposit of tax on advertisement. Such a notice cannot be said to be authorised, if read in consonance with the provisions of Sections, 123, 126 and 135 of the Act. As has already been noticed, in case there is violation by any person in erecting or displaying any advertisement, the only power conferred on the Commissioner is either to get it removed or remove the same. Even though Section 135 of the Act envisages issuance of a demand notice for recovery of the advertisement tax due on a prescribed form, however, no form, as such, was referred to. There is no procedure prescribed in the Act or the Rules regarding filing of returns, assessment of tax and consequently recovery

thereof. The order, which has been impugned in the present petition, has not been passed in exercise of powers conferred under any of the provisions of the Act, Rules or by-laws framed thereunder, but it was in pursuance to the directions issued by this court for disposal of the legal notice got issued by the petitioner.

34. For the reasons mentioned above, in our opinion, the manner in which the demand of tax on advertisement has been raised from the petitioner cannot be legally sustained, hence, the same is set aside. The impugned order dated 22.1.2016 is quashed. However, the same shall not debar the competent authority, if any, to raise demand against the petitioner if permissible in law by following the prescribed procedure.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 35 OF 2012

AMIT FILLING STATION
Vs
STATE OF HARYANA AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

9th August, 2016

HF ▶ Assessee

Duplicate tax invoices produced subsequent to assessment proceedings are directed to be considered for determining claim of the assessee.

ASSESSMENT – INPUT TAX CREDIT TAX INVOICES AND STATUTORY FORMS – PRODUCTION OF AFTER FRAMING OF ASSESSMENT – NON PRODUCTION OF TAX INVOICES AND STATUTORY FORM VAT C-4 – CONSEQUENTLY, ASSESSMENT FRAMED DENYING INPUT TAX CREDIT TO APPELLANT - FAILURE TO FETCH DUPLICATE COPIES THEREOF LEADING TO FAILURE BEFORE FIRST APPELLATE AUTHORITY – APPEAL FILED BEFORE HIGH COURT ALONGWITH DUPLICATE DOCUMENTS TO SUPPORT CLAIM – HELD: IN VIEW OF EARLIER JUDGMENTS AND FACT THAT DUPLICATE COPIES ARE PRODUCED, ASSESSMENT AUTHORITY IS DIRECTED TO DETERMINE FRESH TAX LIABILITY AND GRANT BENEFIT IN CASE PAYMENT OF INPUT TAX IS CONFIRMED. APPEAL ALLOWED – *SECTION 8(3) OF HVAT ACT, 2003.*

Facts

The appellant had purchased petroleum products for which tax was paid. As the tax invoices were lost, the same could not be produced before assessing authority. The Input Tax Credit was disallowed. Subsequently, it obtained the duplicate copies of the statutory forms and the tax invoices from selling dealer. An appeal is thus filed before the High court alongwith the duplicate copies having been put on record for their consideration by Assessing Authority.

Held:

In view of earlier judgments and in view of the fact that the duplicate copies are submitted, the appeal is accepted. Matter is remitted back to assessing authority for fresh determination of tax liability after furnishing of tax invoices and statutory form VAT C-4 by appellant. If payment of input tax is confirmed, the benefit is to be granted to appellant.

Cases referred:

- *Jai Hanuman Stone Crushing Mills Versus State of Haryana and others 2014 (71) VST 199 (P&H)*
- *New Devi Grit Udvog Versus State of Haryana and others, VATAP No. 37 of 2014, decided on 8.9.2015*

Present: Mr. Rajiv Agnihotri, Advocate for the appellant.
Ms. Mamta Singla Talwar, DAG Haryana.

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RAJESH BINDAL, J.

1. The assessee has filed the present appeal arising out of an order dated 09.11.2011 passed by Full Bench of the Haryana Tax Full Member Tribunal, in STA No. 425 of 2010-11, raising the following substantial questions of law:

(i) Whether in the facts and circumstances of the case, the tax invoices and C-4 certificates obtained subsequently to assessment proceedings, can be produced at the stage when the matter is pending before Hon'ble High Court?

(ii) Whether in the facts and circumstances of the case when there is a sufficient reason for not producing the Tax invoices and C-4 Certificates which were lost during transit during the pendency of assessment proceedings, if subsequently received can be produced to claim the benefit of input tax which stands already deposited with the department?

2. Learned counsel for the appellant submitted that during the year in question the appellant had purchased petroleum products from M/s Hindustan Petroleum Corporation Ltd, for which tax was paid. The input tax credit was not allowed by the Assessing Authority as the tax invoices were lost. The appellant failed before the First Appellate Authority and the Tribunal as he could not get duplicate copy of tax invoices and statutory VAT-C-4 by that time. Subsequently the appellant obtained duplicate copy from the Selling Dealer and also VAT-C-4 in original.

3. It was further submitted that in response to an inquiry made by the appellant under the Right to Information Act, 2005, it was clarified by the Information Officer in the Excise and Taxation Department, Ambala, that the tax on the goods which were purchased by the appellant from ***M/s Hindustan Petroleum Corporation Ltd.***, had infact been paid. Referring to a judgment of this Court in ***Jai Hanuman Stone Crushing Mills Versus State of Haryana and others 2014 (71) VST 199 (P&H)***, it was submitted that the statutory form and invoices can be produced at any stage of proceedings to claim the benefit of input tax credit. After the appellant got duplicate tax invoices from the Selling dealer and statutory form VAT-C-4 in original, the copies thereof have been placed on record along with the present appeal. A Division Bench judgment of this Court in VATAP No. 37 of 2014. ***New Devi Grit Udvog Versus State of Haryana and others, decided on 8.9.2015*** is referred to submit that even if there is some error in the documents furnished by the dealer claiming input tax credit, the same is not fatal. The issue is to be examined by the Assessing Authority to find out from other material whether the tax has actually been paid by the Selling Dealer of which input tax credit is being claimed by the Buying Dealer.

4. On the other hand, learned counsel for the State did not dispute the proposition of law as laid down in the aforesaid judgments. However, she submitted that the requisite documents should have been produced by the appellant at the appropriate time before the Assessing Authority to claim benefit of input tax credit.

5. We have heard learned counsel for the parties and perused the paper book.

6. The issue sought to be raised by learned counsel for the appellant is that it had paid tax on purchase of petroleum products from ***M/s Hindustan Petroleum Corporation Ltd***. The tax invoices were lost. Hence, the same could not be produced before the Assessing Authority or even the Appellate Authority. Duplicates thereof were sought from the Selling Dealer in addition to statutory VAT-C-4, which were initially not issued by the Selling Dealer. It was claimed that the aforesaid documents clearly establish that the appellant had paid tax on

purchase of petroleum products to the Selling Dealer. The copies of the tax invoices and the statutory form VAT-C-4 have been placed on record with the present appeal.

7. In ***Jai Hanuman's case (supra)***, this Court opined that the forms can be produced even before the Appellate Authority. The dealer therein was granted permission to produce the same before the Assessing Authority, who was to determine the tax liability after considering those forms.

8. In ***New Devi Grit Udyog's case (supra)*** the claim of input tax credit was sought to be rejected on the ground of some error in tax invoices. This Court opined that it is not fatal as the fact that the tax on purchase of goods has been paid to the Selling Dealer who had further deposited with the State can be verified. In case tax was actually paid, the dealer should not be denied the benefit of input tax credit.

9. It was further pointed out by learned counsel for the appellant that in response to query under the Right to Information Act, 2005, the information was given that the Selling Dealer has deposited the tax collected from the appellant on the sale of petroleum products.

10. Keeping in view the aforesaid proposition of law and the fact that the appellant has produced the duplicate tax invoices and the statutory form VAT-C-4, along with the present appeal, in our view the appeal deserves to be accepted. The impugned orders passed by the Authorities are set aside. The matter is remitted back to the Assessing Authority for fresh determination of tax liability of the appellant after the appellant furnishes duplicate tax invoices and original statutory form VAT-C-4. In case payment of input tax is confirmed, the benefit be granted to the appellant.

11. The substantial questions of law are also answered accordingly.

12. The appellant is directed to appear before the Assessing Authority, on 9.9.2016.

13. The appeal stands disposed of accordingly.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 33 OF 2010

VARUN EXPORT
Vs
STATE OF PUNJAB

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

17th August, 2016

HF ▶ Assessee

No point dismissing the appeal against the order condoning the delay on part of state as the appellant – assessee would apparently succeed on merits.

APPEAL – CONDONATION OF DELAY – ASSESSMENT – LIMITATION – ASSESSMENT YEAR 1996-76 – ASSESSMENT ORDER PASSED IN YEAR 2002 – APPEAL FILED BEFORE DETC ACCEPTED AS ASSESSMENT ORDER STOOD TIME BARRED – APPEAL FILED BY STATE AFTER DELAY OF 1485 DAYS – DELAY CONDONED BY TRIBUNAL AND MATTER DIRECTED FOR HEARING – APPEAL BEFORE HIGH COURT AGAINST THE ORDER OF TRIBUNAL CONDONING SUCH A LONG DELAY ON PART OF STATE - HELD: EVEN IF APPEAL IS DISMISSED IN FAVOUR OF STATE, THE APPELLANT – ASSESSEE WOULD SUCCEED ON MERITS AS ASSESSMENT ORDER IS TIME BARRED IN VIEW OF AN EARLIER JUDGMENT PASSED BY THE HIGH COURT – THEREFORE, APPEAL ALLOWED UPHOLDING ORDER OF DETC – NO POINT REMITTING THE MATTER BACK TO TRIBUNAL – *SECTION 11(4) OF PGST ACT, 1948*

Facts

Assessment for the year 1996-97 was framed in the year 2002. The DETC set aside the assessment order finding them to be beyond limitation as provided in Sec 11(4) of the Act. The state filed an appeal against the order before Tribunal along with application for condonation of delay of 1485 days. The Tribunal condoned the delay and remitted the matter to DETC for deciding on merits. Aggrieved by the order of Tribunal, the appellant filed an appeal before High court whereby the appeal was accepted and set aside the order of Tribunal. The matter was remitted back to Tribunal for fresh decision. The Tribunal accepted the application of State seeking condonation of delay and directed the appeals be heard on merits. Thus, aggrieved by the order of Tribunal condoning such a huge delay on part of department, an appeal is filed before High court against the order of Tribunal

Held:

The assessment order passed stands time barred as the order ought to have been passed within a limitation period of three years.

It would be a futile exercise to remit the matter back to Tribunal as, on merits, the appellant is entitled to get relief in view of judgment passed in Patiala Cooperative Sugar Mills Ltd. since the assessment order is time barred in view of Section 11(4) of PGST Act. Without going into the issue of delay of filing of appeal, the matter is concluded on merits as the issue stands

covered in favour of appellant. The order of DETC is upheld and appeal filed by State before Tribunal is dismissed.

Cases referred:

- *Vedabai alias Vaijayantabai Baburao Patil vs. Shantaram Baburaon Patil and others, AIR 2001 SC 2582*
- *Hansaflon Plasto Chem. Ltd. vs. State of Haryana and others, (2012) 43 PHT 182 (P&H),*
- *State of Punjab and another vs. M/s Tata Iron & Steel Co. Ltd., (2011) 38 PHT 391 (P&H)*
- *Paliwal Overseas Pvt. Ltd. vs. State of Haryana, VATAP No.3 of 2012*
- *State of Haryana vs. Windorz India Pvt. Ltd., VATAP No.41 of 2014*
- *The State of Punjab vs. Jain Bharat Industries, VSTI 2008 C-248*
- *The State of Punjab vs. Ganesh Oil Mills, VSTI 2008 C-251*
- *State of Punjab and others vs. Patiala Cooperative Sugar Mills Limited, (2015) 50 PHT 118 (P&H)*
- *State of Nagaland vs. Lipok Ao and others, (2005) 3 SCC 752*
- *State of Haryana vs. Chandra Mani and others, (1996) 3 SCC 132*
- *State of Bihar and others vs. Kameshwar Prasad Singh and another, 2000 (2) RSJ 712*

Present: Mr. Avneesh Jhingan, Advocate, for the appellant(s).
Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

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RAJESH BINDAL, J.

1. This order will dispose of a bunch of appeals bearing VATAP Nos.33 to 35, 80 to 83, 85 and 87 to 96 of 2010, as common questions of law and facts are involved therein.

2. The appellants have approached this Court raising the following substantial questions of law:-

i. *Whether in the facts and circumstances of the case the order of the tribunal annexure 'A-6' is not a Non Speaking order?*

ii. *Whether in the facts and circumstances of the case, the Department has explained the delay by a 'sufficient cause' and has been able to show due diligence in perusing the remedy?*

iii. *Whether in the facts and circumstances of the case, the decision of the Tribunal in K. Ajesh and Company which was not a binding precedent and was under challenged before the High Court by the department could form a 'sufficient cause' for condonation of delay?*

iv. *Whether in the facts and circumstances of the case, the prejudice being caused to the dealer by condonation of such a long delay was not factor to the considered.*

v. *Whether in the facts and circumstances of the case tribunal ought to considered the objection raised by the dealer against condoning the delay and should have decided the same?*

vi. *Whether in the facts and circumstances of the case delay of 1485 days is not a long delay?*

vii. *Whether in the facts and circumstances of the case decision of K. Ajesh came on 10.01.2005 and last notice for revision was received for 31.1.2005. Even sanction was given by the Govt. in December, 2006 still the appeals had been filed on 26.11.2007 after more than four years still it could be said the department had been diligent in perusing the remedy and delay should be condoned?*

viii. Whether in the facts and circumstances of the case the tribunal is justified in granting a special status to State for condoning such a long delay?

3. The detail of assessment years involved and the dates on which assessment orders were passed in the bunch of appeals are as under:-

Sr. No.	Case No.	Name of the Appellant	Assessment year	Assessment order
1.	VATAP No.33/2010	M/s Varun Export	1996-97	29.04.2002
2.	VATAP No.34/2010	M/s Sachdeva Oil and Chemicals Pvt. Ltd.	1992-93	16.04.2002
3.	VATAP No.35/2010	M/s Varun Export	1995-96	29.04.2002
4.	VATAP No.80/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1983-84	22.04.2002
5.	VATAP No.81/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1984-85	22.04.2002
6.	VATAP No.82/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1995-96	22.04.2002
7.	VATAP No.83/2010	M/s Varun Export	1994-95	29.04.2002
8.	VATAP No.85/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1988-89	22.04.2002
9.	VATAP No.87/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1989-90	22.04.2002
10.	VATAP No.88/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1992-93	22.04.2002
11.	VATAP No.89/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1991-92	22.04.2002
12.	VATAP No.90/2010	M/s Varun Export	1995-96	29.04.2002
13.	VATAP No.91/2010	M/s Sachdeva Oil Sons Chemicals Pvt. Ltd.	1994-95	16.04.2002
14.	VATAP No.92/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1994-95	22.04.2002
15.	VATAP No.93/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1990-91	22.04.2002
16.	VATAP No.94/2010	M/s Sachdeva Oil and Chemicals Pvt. Ltd.	1991-92	16.04.2002
17.	VATAP No.95/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1996-97	22.04.2002
18.	VATAP No.96/2010	M/s Sachdeva and Sons Rice Mills Pvt. Ltd.	1993-94	22.04.2002

4. Learned counsel for the appellants submitted that the assessments for the years in question as framed by the assessing authority, were time barred, if considered in the light of the provisions of Section 11 (4) of the Punjab General Sales Tax Act, 1948 (for short, 'the Act'). The appellants preferred appeals before the Deputy Excise and Taxation Commissioner (Appeals), who vide orders passed on different dates, set aside the orders of assessment and found that the orders were beyond the period of limitation as provided under Section 11 (4) of the Act. Finally, aggrieved against the orders passed by the Deputy Excise and Taxation Commissioner (Appeals), the State preferred appeals before the VAT Tribunal, Punjab (for short, 'the Tribunal'). Along with the appeals, applications seeking condonation of delay of 1,485 days in filing the thereof, were also filed. The Tribunal in the first round of litigation, vide order dated 3.7.2008, accepted the applications seeking condonation of delay in filing the appeals and consequently, the appeals were also accepted on merits. Considering the fact that the Deputy Excise and Taxation Commissioner (Appeals) had not decided the appeals on merits, remitted the cases back to him for fresh decision on merits. Aggrieved against the order, the appellants preferred appeals bearing VAT Appeal No.2 of 2009 decided on 18.3.2009, 37 to 52 of 2009 decided on 13.8.2009 and 75 of 2009 decided on 15.2.2010 before this Court. This Court while accepting the appeals set aside the order passed by the Tribunal and remitted the cases back to the Tribunal for fresh consideration. Thereafter, the Tribunal again vide order dated 8.10.2009, accepted the applications filed by the State seeking condonation of huge delay in filing the appeals and directed that the appeals be listed for final hearing.

5. Impugning the aforesaid orders, learned counsel for the appellants submitted that there was no ground made out in the applications seeking condonation of huge delay of 1,485 days, hence, the same could not be condoned. The facts mentioned in the applications merely suggested that at different stages, the officers of the Department had been sleeping. Even if, the State is given latitude in condonation of delay, the same cannot be to the extent sought in the case in hand. In support of the plea, reliance has been placed upon the judgment of Hon'ble the Supreme Court in ***Vedabai alias Vaijayantabai Baburao Patil vs. Shantaram Baburaon Patil and others, AIR 2001 SC 2582***, and judgments of this Court in ***M/s Hansaflon Plasto Chem. Ltd. vs. State of Haryana and others, (2012) 43 PHT 182 (P&H), State of Punjab and another vs. M/s Tata Iron & Steel Co. Ltd., (2011) 38 PHT 391 (P&H), VATAP No.3 of 2012 - M/s Paliwal Overseas Pvt. Ltd. vs. State of Haryana, decided on 21.8.2012*** and ***VATAP No.41 of 2014 - State of Haryana vs. M/s Windorz India Pvt. Ltd., Faridabad and another***, decided on 22.9.2014.

6. He further submitted that in ***The State of Punjab vs. M/s Jain Bharat Industries. Raman Mandi, District Bathinda, VSTI 2008 C-248*** and ***The State of Punjab vs. M/s Ganesh Oil Mills, Maur Mandi, District Bathinda, VSTI 2008 C-251***, the Tribunal had dismissed the applications filed by the State seeking condonation of delay of six years on similar grounds. It was further submitted that it would be appropriate, if the matters are considered by this Court on merits. In terms of the Division Bench judgment of this Court in ***State of Punjab and others vs. Patiala Cooperative Sugar Mills Limited, Rakhra, District Patiala, (2015) 50 PHT 118 (P&H)***, the assessment orders passed by the assessing authority were clearly barred by limitation. There was no error in the appellate order passed by the Deputy Excise and Taxation Commissioner (Appeals). Before Section 11 of the Act was amended w.e.f. 3.3.1998, there was no limitation provided for framing of assessment. After the amendment, three years period was prescribed. This Court opined that three years can be taken as period of limitation for framing assessment after the amendment. It was opined that for the assessment years upto 1997-98, the assessment could be framed only upto April, 2001 and not thereafter. In all these appeals, assessments years involved are from 1983-84 to 1996-97 and the assessments were framed on different dates in April, 2002. Hence, the orders passed by the First Appellate Authority,

namely, the Deputy Excise and Taxation Commissioner (Appeals) were not illegal and do not call for any interference by the Tribunal, even if the matter is remitted back and is considered by the Tribunal on merits.

7. On the other hand, learned counsel for the State while referring to the judgments of Hon'ble the Supreme Court in ***State of Nagaland vs. Lipok Ao and others, (2005) 3 SCC 752***, ***State of Haryana vs. Chandra Mani and others, (1996) 3 SCC 132*** and ***State of Bihar and others vs. Kameshwar Prasad Singh and another, 2000 (2) RSJ 712*** submitted that the applications for condonation of delay filed by the State were rightly allowed by the Tribunal. The machinery in the State being impersonal, the words 'sufficient cause' should be given liberal consideration. Ultimately, the revenue of the State is concerned, it is the public exchequer, which will suffer. As far as merit of the controversy is concerned, in response to the contention raised by counsel for the appellants, learned counsel for the State could not dispute the fact that the dates on which, the assessment orders were passed by the assessing authority for the assessment years in question, the same were time barred, if considered in the light of the judgment of this Court in ***Patiala Cooperative Sugar Mills Limited's*** case (supra).

8. Heard learned counsel for the parties and perused the paper book.

9. The undisputed facts, which are on record are that in the case of the appellants, the assessment for the years from 1983-84 to 1996-97 were framed by the assessing authority by passing orders on different dates in April, 2002. The details are mentioned in para No.3 of the judgment. The issue regarding limitation for passing the orders of assessment was considered by the Division Bench of this Court in ***Patiala Cooperative Sugar Mills Limited's*** case (supra) and it was opined that the assessments upto the years 1997-98 could not validly be passed after April, 2001. Relevant para thereof is extracted below:-

> *"14. As noticed before, there was no limitation prescribed under Section 11 of the PGST Act for passing an assessment order before the amendment. Therefore, the period of three years prescribed for passing an assessment order would be counted for all those assessment years as per the amended provision effective from 3.3.1998. In other words, in respect of assessment years falling upto 1997-98, no assessment order could be validity passed after 30.4.2001."*

10. In the cases in hand, the Deputy Excise and Taxation Commissioner (Appeals) had set aside all the assessment orders taking the same view. However, the State preferred appeals before the Tribunal along with applications seeking condonation of delay of 1,485 days. This is the second round of litigation. In the first round, the applications for condonation of delay was allowed by the Tribunal and consequently, the appeals were remitted back to the Deputy Excise and Taxation Commissioner (Appeals) for fresh decision on merits. The order was set aside by this Court. On re-consideration, the Tribunal again accepted the applications seeking condonation of delay and directed the matter to be listed for hearing on merits.

11. Considering the totality of the facts, as noticed above, in our opinion, it will be futile exercise, if the matters are remitted back to the Tribunal, even if the present appeals are dismissed. On merits also, the appellants are entitled to get relief in view of the judgment of this Court in ***Patiala Cooperative Sugar Mills Limited's*** case (supra), as all the assessment orders are barred by limitation as prescribed in Section 11 (4) of the Act. All the assessment orders were passed beyond the period of limitation as prescribed in Section 11 (4) of the Act.

12. Hence, without going into the issue of delay in filing the appeals by the State before the Tribunal, we deem it appropriate to conclude the matters here finally as on merits the issue is covered in favour of the appellants. Even if, we take a lenient possible view in favour of the State in dealing with applications for condonation of delay and dismiss the present appeals, the matter will have to be considered on merits by the Tribunal. In view of conceded position in

law as per judgment of this Court in ***Patiala Cooperative Sugar Mills Limited's*** case (supra), all the assessment orders passed by the assessing authority were beyond the period of limitation, hence, could not be legally sustained. The orders passed by the Deputy Excise and Taxation Commissioner (Appeals) were strictly in conformity with the aforesaid judgment of this Court. Hence, without opining on the issue of limitation we find that even if the appeals filed by the State before the Tribunal are considered on merits, those are totally mis-conceived. We instead of throwing the parties to another round of litigation and keeping in view the settled position of law on merits of controversy, dispose of the bunch of appeals while upholding the orders passed by the Deputy Excise and Taxation Commissioner (Appeals) and dismissing the appeals filed by the State before the Tribunal even on merits.

6. The appeals stand disposed of, accordingly.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 73 OF 2009

STATE OF PUNJAB AND ANOTHER
Vs
INDO ARYA CENTRAL TRANSPORT LTD. AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

16th August, 2016

HF ▶ Dealer

Goods in transit being carried through goods train cannot be detained u/s 51 as it is excluded from the definition of 'goods vehicle' given in the Act.

PENALTY – ATTEMPT TO EVADE TAX – GOODS VEHICLE – GOODS TRAIN – GOODS IN TRANSIT CARRIED THROUGH RAILWAY – GOODS CHECKED BY OFFICER OF MOBILE WING – GOODS DETAINED FOR IMPROPER DOCUMENTS – APPEAL BEFORE TRIBUNAL ACCEPTED - APPEAL FILED BEFORE HIGH COURT BY STATE CONTENDING THAT TRIBUNAL HAD ERRED IN HOLDING THAT S 51 COULD NOT BE INVOKED WHEN GOODS ARE CARRIED THROUGH TRAIN – HELD; SECTION 51 IS NOT APPLICABLE WHEN GOODS ARE CARRIED BY SUCH VEHICLES - AUTHORITY WAS NOT COMPETENT TO CHECK SUCH GOODS IN TRANSIT - DEFINITION OF 'GOODS VEHICLE' AS GIVEN IN S.2(i) OF THE ACT CLEARLY INDICATES THAT VEHICLES THAT RUN ON FIXED RAILS ARE EXCLUDED FROM THIS DEFINITION- HENCE, GOODS IN QUESTION BEING CARRIED UPON FIXED RAILS COULD NOT BE DETAINED U/S 51 OF THE ACT – APPEAL DISMISSED – PENALTY DELETED – *SEC 51 AND SEC 2(i) OF THE PVAT ACT*

Facts

The goods were being carried from Goa to Batala by the Goods Train. Those were checked at Railway Station, Batala by ETO (MW). Documents were produced by the owners. Penalty u/s 51 was imposed on the ground that the goods were not accompanied by proper documents. An appeal was filed before Tribunal which was accepted in favour of the Dealer and penalty was set aside. Aggrieved by the Order, the State has filed an appeal before High Court contending that the Tribunal had erred in holding that Section 51 could not be invoked as the goods were being transported through Railways.

Held:

The term "goods vehicle" has been defined in Sec.2(i) of the Act to mean mechanically propelled vehicles adapted for use upon roads but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or any other enclosed premises.

The language of Sec.2(i) is clear to the effect that these are types of vehicles which are excluded from the definition of goods vehicles. As per Sec.51 of the Act, the authority was not competent to check such goods in transit. Therefore, the goods being transported in a vehicle

running upon fixed rails could not be detained under Section 51 of the Act at that relevant time. The appeal is dismissed.

Cases referred:

- *Senior Divisional Commercial Manager and others Versus State of Punjab and others, CWP No. 16043 of 2005 decided on 16.5.2008*
- *International Switch-Gears Versus Union Territory of Chandigarh and another, 1998 (109) STC 75*

Present: Mr. Piyush Bansal, DAG Punjab.
Mr. Vikram Anand, Advocate for respondent No.l.
Mr. Rishabh Kapoor, Advocate for
Mr. Saurabh Kapoor, Advocate for respondent No. 2.
Mr. K.L. Goyal, Sr. Advocate with
Mr. Sandeep Goyal, Advocate for respondent No.3.

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RAJESH BINDAL, J.

1. The State has filed the present appeal raising the following substantial questions of law, arising out of order dated 8.6.2009 passed by the Value Added Tax Tribunal, Punjab, Chandigarh (for short 'the Tribunal'):

(i) Whether the order of the Tribunal is in accordance with law settled by this Hon'ble High Court in case of Senior Divisional Commercial Manager Vs. State of Punjab and others?

(ii) Whether the order of the Tribunal is in accordance with law settled by this Hon'ble High Court in case of Mool Chand Chunni Lai Vs. Manmohan Singh, AETO (1977) 40-STC- 238?

(iii) Whether the Tribunal has rightly interpreted the provisions of Section 6 (2) of the CST Act, 1956 when no document of transfer of title of the goods during the transit of the consignments was produced by the Respondent?

(iv) Whether the penalty was rightly imposed under Section 51 (7) of the Act on the transporter when the goods were owned by the transport company itself and were got released by furnishing security in accordance with provision of law?

(v) Whether the Tribunal has made Section 51(7) redundant by referring the case to the concerned Assessing Authority?

(vi) Whether the order passed by the Tribunal is sustainable in law under the facts and circumstances of the case?

2. The facts of the case as are evident from the order passed by the Tribunal are that the goods train rake carrying pig iron was checked at Railway Station, Batala, on 16.10.2007 by the ETO (MW) Jalandhar. The goods were found to be pig iron. These were being transported from Kalem (Goa) to Batala Railway Station in 34 flat wagons, having 2 containers on each vehicle weighing 27.5 M.T. each.

3. On demand, owner of the goods produced 12RRs bearing Nos.710443 to 710454 dated 09.10.2007 showing consignor to be M/s Indo Arya Central Transport Ltd. Kalem and consignee M/s Indo Arya Central Transport Ltd. Batala. Opining that the goods were not accompanied by proper and genuine documents and there was an attempt to evade tax, after hearing the parties, the Assistant Excise and Taxation Commissioner, Mobile Wing, Jalandhar,

vide order dated 02.11.2007 imposed penalty of Rs. 90,63,406/- under Section 51(6)(a) of the Punjab VAT Act, 2005 (for short 'the Act').

4. Aggrieved against the order, the respondent No.l preferred appeal before the Deputy Excise and Taxation Commissioner (Appeal), Jalandhar, who vide order dated 29.2.2008 dismissed the same. That order was challenged by respondent No.l before the Tribunal, who vide order dated 8.6.2009, accepted the appeal and set aside the penalty. It is the aforesaid order which has been impugned in the present appeal by the State.

5. Learned counsel for the State submitted that the Tribunal had gone wrong in deciding the issue that the provisions of Section 51 could not be invoked and the goods could not have been detained, the same being transported through railways. While referring to the provisions of Section 51 of the Act read with definition of goods carriage as contained in Section 2 (1) thereof, it was submitted that the exclusion clause in the definition of goods vehicles is relating to the vehicle running on fixed rails which is used only in a factory. The word "or" used therein would mean that the exclusion clause is in continuity and not in two independent parts, otherwise the word 'and' would have been used in between. In support of the plea that the goods being transported by railway can be detained under Section 51 of the Act, reliance was placed upon a Division Bench judgment of this Court in ***CWP No. 16043 of 2005 Senior Divisional Commercial Manager and others Versus State of Punjab and others, decided on 16.5.2008***. He further submitted that if this issue goes against the State, then no further issue arises in the present appeal.

6. On the other hand, learned counsel for respondent No. 1 submitted that as per provisions of Section 51 of the Act, goods could be detained in transit in case transported in a goods vehicle. The goods vehicle has been defined under Section 2 (i) of the Act. The vehicle running upon fixed rails is specifically excluded therefrom. In the case in hand, the goods when checked by the ETO (MW) were in a goods train rake and were checked at the Railway Station. The Officer concerned could not invoke jurisdiction under Section 51 of the Act. Hence, the order of penalty has rightly been set aside by the Tribunal. He further submitted that the judgment of this Court in ***Senior Divisional Commercial Manager's*** case (supra) as referred to by learned counsel for the State is distinguishable on facts as in that case the goods were being transported in a Tempo from the place of booking by an agent to the Railway Station. Those were not intercepted during transit in a wagon on fix rail as was in the case in hand. He further referred to a Division Bench judgment of this Court in ***1998 (109) Sales Tax Cases 75, International Switch-Gears Versus Union Territory of Chandigarh and another***, wherein detention of goods being carried on a handcart was held to be bad and consequently the penalty notice was set aside. At that time the goods vehicle did not include handcart.

7. Heard learned counsel for the parties and perused the paper book.

8. The substantial question of law which arises in the present appeal is as under:

> *"Whether the goods being transported in a vehicle running upon fixed rails can be detained under section 51 of the VAT Act."*

9. To appreciate the contentions being raised by learned counsel for the parties it would be appropriate to refer to the relevant provision of the VAT Act.

> ***SECTION 51. ESTABLISHMENT OF INFORMATION COLLECTION CENTRES OR CHECK POSTS AND INSPECTION OF GOODS IN TRANSIT:***
>
> *(1) If, with a view to prevent or check avoidance or evasion of tax under this Act, the State Government considers it necessary so to do, it may, by notification, direct for the establishment of a check post or, information collection centre or both at such place or places, as may be specified in the notification.*

(2) The owner or person Incharge of a goods vehicle shall carry with him a goods vehicle record, goods receipt, a trip sheet or a log-book, as the case may be, and a sale invoice or bill or cash memo, or delivery challan containing such particulars, as may be prescribed, in respect of such goods meant for the purpose of business, as are being carried in the goods vehicle and produce a copy each of the aforesaid documents to an officer Incharge of a check post or information collection centre, or any other officer not below the rank of an Excise and Taxation Officer checking the vehicle at any place:

PROVIDED THAT a person selling goods from within or outside the State in the course of inter-State trade or commerce, shall also furnish or cause to be furnished a declaration with such particulars, as may be prescribed:

PROVIDED FURTHER THAT a taxable person, who sells or dispatches any goods from within the State to a place outside the State or imports or brings any goods or otherwise receives goods from outside the State, shall furnish particulars of the goods in a specified form obtained from the designated officer, duly filled in and signed.

Section 2. (1) "goods vehicle" includes-

(i) any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer constructed or adapted for use for the carriage of goods and any vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or any other enclosed premises; and

(ii) any animal-driven or man-driven vehicle used for the carriage of goods solely or with passengers; (emphasis supplied).

10. A perusal of Section 51 of the Act shows that the owner or person incharge of goods vehicle shall carry with him specified documents with respect to the goods being carried in the goods vehicle which are meant for the purpose of business. Copies of the documents as enumerated in Section 51 (2) of the Act are to be produced at the Information Collection Center or before any Officer not below the rank of an Excise and Taxation Officer checking the vehicle at any place.

11. The term "goods vehicle" has been defined in Section 2 (i) of the Act to mean any mechanically propelled vehicle adapted for use upon roads but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or any other enclosed premises.

12. It is not disputed in the present appeal that the goods were checked when these were in wagons on fixed rails. In terms of the provision of Section 51 of the Act, the authority was not competent to check such goods in transit.

13. A Division Bench judgment of this Court in ***International Switch Gears's case (supra)***, set aside the notice and initiation of proceedings under Section 14-B of the Punjab General Sales Tax Act (46 of 1948), where the goods were being transported in animal driven cart. The same being not covered in the definition of motor vehicle at the relevant time. This Court opined that the action of the authorities was without jurisdiction. The relevant para thereof is extracted below:

> *".....It cannot, therefore, be accepted, as argued by Shri Sawhney, that sub-section (6) of section 14-B would be attracted even in the case of an animal-driven cart carrying the goods. In sub-section (7) again, the officer detaining the goods has been empowered to record the statement of the owner of the goods or his representative or the driver or other person in-charge of the goods vehicle or vessel. In these circumstances, the plea put forward by Shri Sawhney that vehicles other than goods vehicles are also covered under Section 14-B of the Act cannot be accepted. Since "goods vehicle" has been defined as a "motor vehicle", there is no room for any doubt that section 14-B is applicable to a situation where certain goods are being carried in a motor vehicle or a vessel. As the primary condition in the case of the present petitioner is found to have not been fulfilled, the initiation of proceedings and issuance of notice under Section 14-B of the Act are held to be without jurisdiction and bad in law....."*

14. The contention raised by learned counsel for the appellant that the exception as carved out in the definition of 'goods vehicle' is to be read in one part namely that the vehicle running upon fixed rails has to have a relation with a vehicle of special type adapted for use only in a factory or any other enclosed premises, is merely to be noticed and rejected. A plain reading of the exception clause shows that it is in two parts having no relation with each other. These being:-

(i) the vehicle running upon fixed rail;
(ii) the vehicle of a special type adapted for use only in a factory or any other enclosed premises.

15. The language of Section is clear to the effect that these are types of vehicles, which are excluded from the definition of 'goods vehicle.'

16. The earlier judgment of this Court in ***Senior Divisional Commercial Manager's case*** (supra), as referred to by learned counsel for the State, is distinguishable on facts as the detention of goods therein was while those were being transported in three tempos on road. The facts were that the goods were booked at the northern railway city booking agency located in the city and were being carried therefrom to the railway station in tempos. The plea sought to be raised by the petitioner therein was that the goods belonged to railways, hence, could not be detained. The argument was rejected.

17. For the reasons mentioned above, the present appeal is dismissed. The question as framed in Para No. 1 is answered in negative opining that the goods being transported in a vehicle running upon fixed rails could not be detained under Section 51 of the Act, at the relevant time.

———

PUNJAB & HARYANA HIGH COURT

CWP 11835 OF 2000

MODERN FEED INDUSTIRES
Vs
STATE OF HARYANA AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

23rd August, 2016

HF ▶ Assessee

Rejecting the issuance of eligibility certificate merely on the ground that the petitioner is manufacturer of tax free goods cannot be legally sustained.

EXEMPTION – ELIGIBILITY CERTIFICATE – TAX FREE GOODS / CATTLE FEED — PETITIONER'S UNIT MANUFACTURING CATTLE FEED, (TAX FREE GOODS)- APPLICATION FILED FOR ISSUANCE OF ELIGIBILITY CERTIFICATE IN TERMS OF RULE 28-A OF THE RULES REJECTED – QUESTION ARISEN FOR CONSIDERATION IS WHETHER MANUFACTURER OF TAX FREE GOODS CAN BE ISSUED ELIGIBILITY CERTIFICATE - HELD YES, - NEITHER THE PRODUCT 'CATTLE FEED' NOR THE UNIT MANUFACTURING TAX FREE PRODUCTS IS MENTIONED IN THE NEGATIVE LIST AS PROVIDED BY THE STATE TO DISENTITLE CERTAIN PRODUCTS FROM THE BENEFIT – BENEFIT TO BE AVAILED BY ISSUANCE OF ELIGIBLE CERTIFICATE IS A STAGE SUBSEQUENT THERETO AND CANNOT BE DENIED ON MERE BASIS THAT NO TAXABLE TURNOVER EXISTED IN CASE OF PETITIONER'S UNIT – HENCE, REJECTING ISSUANCE OF ELIGIBILITY CERTIFICATE MERELY FOR THE FACT THAT THE PRODUCT WAS ALREADY TAX FREE IS NOT RIGHT - WRIT ALLOWED- *RULE 28 –A OF HGST RULES, 1973*

Facts

The petitioner is engaged in manufacturing of cattle feed. The unit came into production in year 1996.The petitioner applied for issuance of Eligibility Certificate as per provision of Rule 28 – A of the Rules which was rejected by both Lower Level and Higher Level Screening Committee. Due to this rejection it cannot purchase raw material without payment of tax on purchases.. The petitioner has contended before the High court that the Rules contained a negative list whereby the manufacturers of certain products were not entitled to the benefits under the Rules. The product of petitioner is not mentioned therein. It is submitted that the Rules do not provide that Eligibility Certificate cannot be issued to a unit manufacturing tax free products whereas the department has argued that the idea behind the provision was to grant exemption on sale tax and not on purchase tax and the product manufactured by the petitioner was already tax free thereby requiring no exemption.

Held:

A perusal of the negative list shows that neither the product cattle feed nor the unit manufacturing tax free products is mentioned therein which means there is no bar to issue Eligibility Certificate to a unit engaged in manufacturing of cattle feed or any product that is tax free on that date.

The state contended that there is no taxable turnover on which exemption is to be availed; it is futile to grant exemption in such a case. The court has held that the benefit which an industrial unit may avail after issuance of eligibility certificate is a stage subsequent to the issuance thereof.
Therefore, rejecting the issuance of eligibility certificate merely on the ground that the petitioner is manufacturer of tax free goods cannot be legally sustained. The writ is allowed and authorities are directed to do the needful.

Cases referred:

Present: Mr. Sandeep Goyal, Advocate, for the petitioner (s).
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

******

RAJESH BINDAL, J.

1. This order will dispose of two petitions bearing CWP Nos. 11835 of 2000 and 3100 of 2002, as identical issue is involved.

2. The facts have been extracted from CWP No. 3100 of 2002.

3. Challenge in the present petition is to the orders passed by the Lower Level Screening Committee and the Higher Level Screening Committee as constituted under the Haryana General Sales Tax Rules, 1975 (for short, 'the Rules').

4. Learned counsel for the petitioner submitted that the petitioner is a partnership firm engaged in the business of manufacture of cattle feed. The unit set up for the purpose came into commercial production on 23.5.1996. Section 13-B of the Haryana General Sales Tax Act, 1973 (for short, 'the Act') enables the State Government to provide for tax incentives. In exercise of powers conferred under the aforesaid provisions, Rule 28-A was inserted in the Rules. In terms of the aforesaid provisions, the petitioner applied for issuance of eligibility certificate vide application dated 19.8.1996, which was taken up in the meeting of the Lower Level Screening Committee held on 28.10.1997 and rejected the same. The appeal filed against the order of the Lower Level Screening Committee was also rejected by the Higher Level Screening Committee in the 74th meeting held on 18/19.6.2001, which was communicated to the petitioner vide memo dated 3.10.2001.

5. Challenging the aforesaid communication, learned counsel for the petitioner submitted that Rule 28-A(2)(f) of the Rules defines eligible industrial unit, whereas Rule 2(n) thereof defines notional sales tax liability. The ground on which the application of the petitioner for grant of eligibility certificate has been rejected is totally contrary to the provisions of Rules. The Rules contained a negative list specifying the products, the manufacturers of which are not entitled to the benefits under the Rules. The product of the petitioner is not mentioned therein. Even if on the product manufactured by the petitioner, there is no tax leviable on sale thereof, still in terms of the provisions of the Act and the notification issued thereunder providing rates of tax on the raw material purchased by the petitioner, he would have been entitled to purchase the same without payment of tax. Merely for the reason that the eligibility certificate has not been issued to the petitioner, it has been denied the benefit of purchasing raw material without payment of tax. On a query by the department, the petitioner had specifically mentioned certain goods which were to be used as raw material, some of which were tax free and some were taxable.

6. Learned counsel for the petitioner further referred to a communication dated 1.3.1993 from the Excise and Taxation Commissioner clarifying that the units manufacturing tax free products are entitled to benefit of exemption from tax. He further submitted that the

aforesaid communication was superseded vide communication dated 31.7.1997 issued by the Commercial Taxation Commissioner. The Unit of the petitioner had come into production prior thereto. He further submitted that even if on a date, application for issuance of eligibility certificate is filed, the product being manufactured by that unit may be tax free but subsequently tax may be levied on that. But at that stage, it may not be entitled to file application. This is not the scheme of the Act and the Rules as for the purpose of issuance of eligibility certificate, there is no such bar. Even otherwise, as per proviso appended with Rule 28A (4)(a) of the Rules, in case of exemption, the benefit shall extend to tax on gross turnover and in the case of deferment, it shall extend to tax on the taxable turnover. Gross turnover has been defined in Section 2(gg) of the Act, whereas the taxable turnover has been defined in Section 2(p) of the Act. The assessment is framed as per Section 27 of the Act, which initially starts from gross turnover, which includes even the goods which are tax free. He further submitted that at the stage of issuance of eligibility certificate, none of the provisions of the Rules provided that it could not be issued to a unit manufacturing tax free goods. Hence, the orders passed by the Committees deserve to be set aside.

7. On the other hand, learned counsel for the State submitted that idea behind incorporating the Rules was to give benefit of exemption from payment of sales tax on the goods manufactured by an industrial unit. In case the goods are otherwise tax free, there is no question of giving any benefit. She further submitted that Section 28A(4)(a) of the Rules provides that the benefit for the purpose of arriving at the limit of tax exemption/ deferment, the notional tax liability is to be considered, which means amount of tax payable on sale of that product. Once there is no tax payable on the furnished product, there is no use in issuing the eligibility certificate. The idea behind the scheme was to give exemption from payment of tax on sales and not on purchases. As per item 66 in Schedule-B of the Act, the goods manufactured by the petitioner are tax free. The benefit of exemption from payment of purchase tax has been given to the exempted units, whose products are taxable and not tax free.

8. In CWP No. 11835 of 2000, additional contention raised by learned counsel for the State was that the petitioner therein had sought clarification, which was given vide communication dated 31.7.1997 and the petitioner therein having not availed of remedy against that clarification, the petition was not maintainable.

9. To this argument of learned counsel for the State, learned counsel for the petitioner submitted that the communication dated 31.7.1997 was not in response to the clarification sought by the petitioner as the letter written by the petitioner seeking clarification itself was dated 31.7.1997. He further submitted that clarification dated 31.7.1997, as has been referred to by learned counsel for the State was not communicated to the petitioner therein.

10. Heard learned counsel for the parties and perused the paper book.

11. Relevant provisions of the Haryana General Sales Tax Act, 1973 and the Haryana General Sales Tax Rules, 1975, are reproduced hereunder:-

Section 13-B of the Act

(POWERS TO EXEMPT CERTAIN CLASS OF INDUSTRIES

The State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, exempt such class of industries from the payment of tax, for such period either prospectively or retrospectively and subject to such conditions as may be prescribed.

Rule 28A(2)(f) of the Rules

"(f) *'"eligible industrial unit" means:-*

(i) *a New Industrial unit or expansion or diversification of the existing unit, which –*

(I) *has obtained certificate of registration under the Act;*

(II) *is not a public sector undertaking where the Central Government held 51% or more shares;*

(III) *is not availing the incentive of interest free loan from the Industries Department for investment after the 1st day of April, 1988;*

(IV) *is not included in Schedule III appended to these rules except the tiny units set up in a rural area on or after 1st April, 1992, in which capital investment in plant and machinery including market price of plant and machinery taken on lease or otherwise, does not exceed rupees five lakhs, shall not form part of Schedule III.*

(V) *is not availing or has availed incentive of exemption under section 13 of the Act;*

(ii) *a sick industrial unit recommended by the High Powered Committee for the grant of fiscal relief either in the form of exemption from the payment of sales tax or purchase tax or both or deferment of tax.*

xx xx xx

Rule 28A (2)(n) of the Rules-

(n)- "notional sales tax liability" means –

(i) *amount of tax payable on the sales of finished products of the eligible industrial unit under the Local Sales Tax Law but for an exemption computed at the maximum rates specified under the Local Sales Tax Law as applicable from time to time; and*

Explanation: The sales made on consignment basis within the State of Haryana or branch transfer within the State of Haryana shall also be deemed to be sales made within the State and liable to tax;

(ii) *amount of tax payable under the Central Sales Tax Act, 1956, on the sales of finished products of the eligible industrial unit made in the course of inter-State trade or commerce computed at the rate of tax applicable to such sales as if these were made against certificate in Form C on the basis that the sales are eligible to tax under the said Act.*

Explanation: The branch transfers or consignment sales outside the State of Haryana shall be deemed to be the sale in the course of inter-State trade or commerce.

Note: The expression and terms, if any appearing in this rule not defined above shall unless the context otherwise requires carry the same meaning as assigned to them under the Act and rules made thereunder.

xx xx xx

Rule 28A(4)(a)

(4)(a) Subject to other provisions of this rule, the benefit of tax exemption or deferment shall be given to an eligible industrial unit holding exemption or entitlement certificate,

as the case may be to the extent, for the period, from year to year in various zones from the date of commercial production or from the date of issue of entitlement/ exemption certificate as may be opted as given ahead.

PROVIDED that in the case of exemption the benefit shall extend to tax on gross turnover and in the case of deferment, it shall extend to tax on the taxable turnover of goods manufactured by the unit:

xx xx xx

Explanation 1: For the purpose of arriving at the limit of tax exemption/deferment, the national sales tax liability of the unit shall be taken into consideration.

Notification dated 30.12.1987

LIST OF GOODS
TAXABLE AT FIRST STAGE IN HARYANA
(AS ON UPTODATE)

Notn. No. S.O. 156/H.A.20/73/S. 18/87 Dated 30th Dec. 1987

In exercise of the powers conferred by section 18 of the Haryana General Sales Tax Act, 1973 and all other powers enabling him in this behalf, and in supersession of Haryana Government, Excise and Taxation Department, Notification No. S. O. 98/H.A.20/73/2.18/73 dated the 5th May, 1973 as amended from time to time, the Governor of Haryana hereby directs that the tax under section 15 of the said Act be levied, with effect from the 1st date of January, 1988, at the first stage of sale on the following goods, namely

1. to 3 xx xx

4. Molasses

5. to 36 xx xx

37. Vegetable oil, Oils cakes and deoiled cakes.

38. to 82. Xx xx

SALES TAX RATES IN HARYANA W.E.F. 4th March, 2000

(As amended upto date)

Sr. No.	*Description of goods*	*Rate of tax(in percentage)*
1.	*2.*	*3.*
1 to 137	*xx*	*xx*
138.	*Goods leviable to tax at the stage of first sale Nil when sold to a registered dealer who is availing exemption from tax under the industrial policy of the State Government, for the purpose of use in manufacture or processing of goods by him for sale or for the purpose of use in packing in the goods manufactured or processed by him subject to furnishing a declaration appended to this notification by him.*	
	xx xx xx	

SALES TAX RATES FROM 01.04.1996 to 03.03.2000

Sr. No.	*Description of goods*	*Tax Rate in %*
1.	*2.*	*3.*
1. to 26	*xx*	*xx*
27 (a) and (b)	*xx*	*xx*

(c) Goods leviable to tax at the stage of Nil first sale when sold to a registered dealer who is availing exemption from tax under the industrial policy of the State Government, for the purpose of use in manufacture or processing of goods by him for sale or for the purpose of use in packing of the goods manufactured or processed by him subject to furnishing a declaration in form STD-4 appended to this notification, by him.

28. to 80. *xx* *xx*

SCHEDULE- B

(See Sections 6 and 15)

Sr. No.	*Description of goods*	*Conditions and Exceptions*
1.	*2.*	*3.*
1 to 66	*xx*	*xx*

67. Cattle feed, that is to say, a mixture of rice polish, rice bran deoiled, gram churi, mustard extraction, molasses, barley, sprout, salt, mineral mixture, urea and damaged wheat.

68 to 82. *xx* *xx*

12. The case set up by the petitioner is that the unit set up by him for manufacture of cattle feed came into commercial production on 23.5.1996. As intimated, the raw material required for manufacturing cattle feed was deoiled cake, rice bran, chemicals, barley, malt sprout bardana, molasses, etc. The application was considered by the Lower Level Screening Committee in its meeting held on 28.10.1997 and the same was rejected opining that the product being manufactured by the petitioner was already exempted from payment of sale tax, hence, not entitled to issuance of eligibility certificate. Reference was also made to the communication received from Commercial Taxation Commissioner dated 31.7.1997. The opinion of the Higher Level Screening Committee was also in the same terms.

13. Section 13-B of the Act empowers the State Government to exempt any class of industry from payment of tax in the interest of industrial development of the State. Prior to the amendment in Section 13-B of the Act vide Act 13 of 1989, the words used were 'from payment of sales tax', however, the word 'sales' before the word 'tax' were omitted.

14. In exercise of powers conferred under the aforesaid section, Rule 28-A of the Rules was added in the Rules vide amendment dated 17.5.1989. It was with retrospective effect from 1.4.1988.

15. A perusal of the definition of 'eligible industrial unit' as provided in Rule 28A of the Rules shows that there are certain pre-conditions attached, which are:

(i) Registered under the provisions of the Act;

(ii) is not a public sector undertaking in which Central Government holding is 51% or more share;

(iii) is not availing the incentives of interest free loan from the Industries Department for investment after 1.4.1988;

(iv) is not included in Schedule III appended to these rules except the tiny units set up in a rural area on or after 1st April, 1992, in which capital investment in plant and machinery including market price of plant and machinery taken on lease or otherwise, does not exceed rupees five lakhs, shall not form part of Schedule III;

(v) is not availing or have availed exemption under Section 13 of the Act; and

(vi) a sick industrial unit recommended by the High Powered Committee for the purpose of grant of benefits.

16. Sub-rule 5 of Rule 28A of the Rules provides for procedure for filing of application for issuance of eligibility certificate. Schedule III attached with Rule 28A of the Rules provides a list which is defined as negative list in Rule 28A(2)(o) of the Rules. As per the definition of eligible industrial unit, any manufacturer of the products as mentioned in Schedule- Ill is not entitled to the benefits envisaged under Rule 28A of the Rules. The Schedule-Ill as applicable on the relevant date is extracted below:-

Sr.No.	Industries/class of industries
1.	Oil expellers (including units set up under Rural Industries Scheme)
2.	Dali Mills and Rice Mills (including units set up under Rural Industries Scheme)
3.	Steel and Wooden furniture.
4.	Stone Crushers (including units set up under Rural Industries Scheme)
5.	Power cables except XLP cables and fibre optic cables.
6.	Paraffin wax based industries excluding chlorinated Paraffin wax and the industry where the paraffin wax is required in nominal quantity, i.e., only upto 5% of the total raw material consumed by the unit
7.	Corrugation of G.P./B.P. Sheets
8.	Caustic soda units except those based on membrance cell technology.
9.	Simple fabricated items like trunks, buckets, gamlas, windows, grills, trussess, etc.
10.	Ethanol (Ethyl Alcohol) based industries except non¬molasses alcohal industries.
11.	Khandsari units
12.	Bricks made of ordinary earth including mechanised bricks where the ordinary of earth content is more than 50%.
13.	Thinners.
14.	Induction and ARC Furnance with more than 0.5 MT capacity.
15.	AAC/ ACSR conductors.
16.	L. P. Gas cylinders
17.	Non-graded C.I. Casting.
18.	Roller Flour Mills.

19.	Re-rolling of mild steel, re-rolling of special steel like EN-42 is not covered under the negative list.
20.	Cotton ginning and pressing (including units set up under Rural Industries Scheme)
21.	All servicing units not providing service directly to the industry for production.
22.	Soft drinks (aerated water)
23.	Asbestos Products.
24.	Fermentation and Distillary/ Brewery.
25	Solvent Extraction Plants.
26	Oil Refinery (edible and non-edible).
27	Vegetable Ghee.
28	Ice Plants (including cold Storage).
29.	Cotton spinnig mill (except units set up in Hisar and Sirsa Districts)
30.	Fertilizer (Nitrogen Phosphate).
31.	Sugar.
32.	Cement.
33	Alluminium (Primary stages).
34.	Thermal Power
35.	Oil Refinery.
36.	Sulphuric acid.
37.	Tanneries.
38.	Copper Smelter.
39.	Zinc Smelter.
40.	Iron and Steel (Primary stage)
41.	Pulp and paper
42.	Dyes and Dye intermediates.
43.	Pesticides manufacturing and formulations.

Note: -1: The above list shall not be applicable to the industrial units set up under the Rural Industries Scheme except the units covered under any of the entries mentioned at serial number 1, 2, 4, and 20.

Note -2 The Industrial Units in which investment has been made upto 25% of the anticipated cost of the project and which have been included in the above list for the first time shall be entitled to the sales tax benefit related to the extent of investment made upto the 3rd of January, 1996. Only those assets will be included in the fixed capital investment which have been installed or erected at site and have been paid for. The anticipated cost of the project will be taken on the basis of documents furnished to a financial institution or banks for drawing a loan and which have been accepted by the financial institution or bank concerned for sanction of loan.

17. A perusal of the aforesaid list shows that the neither the product being manufactured by the petitioner, namely, cattle feed, nor the unit engaged in manufacturing of tax free products, is mentioned therein. Meaning thereby there is no bar as such to issue eligibility certificate to a unit engaged in manufacture of cattle feed or for that matter any product which may be tax free on the date, the eligibility certificate is issued, in case specifically not mentioned in the negative list. It merely be noticed here that the product which may be tax free today may be taxable tomorrow.

18. The contention raised by learned counsel for the State that the benefit of exemption from payment of tax being available on the taxable turnover and there being no taxable turnover of the petitioner, it is exercise in futile to issue him eligibility certificate, is merely to be noticed and rejected, for the reasons that the quantum of benefit or type of benefit which the industrial unit may avail after issuance of eligibility certificate is a stage subsequent to the issuance thereof. As has already been referred to by the petitioner that in terms of notification issued by the Government, an eligible industrial unit availing exemption from payment of tax may be entitled to purchase goods without payment of tax. In the overall scheme, the object may be to promote industrialisation. This Court is not opining on the issue as to whether the petitioner will be entitled to any benefit and how the benefit, if any available, under the Rules will be calculated, as this is not the stage for that as only issue under consideration before this Court is as to whether the petitioner can be denied issuance of eligibility certificate.

19. It may further be added that even the view of the Excise & Taxation Commissioner was also same as circulated by memo dated 1.3.1993. The same was changed vide subsequent memo dated 31.7.1997, without there being any change in law.

20. The contentions raised by learned counsel for the State in CWP No. 11835 of 2000 that the petitioner therein sought clarification and the same having been given against the petitioner and he having not availed of remedy against that is debarred from raising the issue again, is to be noticed and rejected. It was stated by learned counsel for the petitioner that the letter of request given by him was dated 31.7.1997 and on the same day a letter was written by the Commercial Taxation Commissioner, Haryana, the Deputy Excise & Taxation Commissioner, Kurukshetra. It was not even addressed to the petitioner nor its copy was supplied to him, hence, the contention is misconceived.

21. For the reasons mentioned above, we find merit in the present petitions. The same are accordingly allowed. The imugned orders passed by the Lower Level Screening Committee and the Higher Level Screening Committee are quashed. The rejection of the case of the petitioner for issuance of eligibility certificate merely on the ground that the petitioner is manufacturer of tax free goods cannot be legally sustained. The authorities are directed to do the needful.

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PUBLIC NOTICE

PUBLIC NOTICE REGARDING GENERATION OF E-ICC SERVICES FOR VAT-12 HAS BEEN DISCONTINUED w.e.f. 24-08-16

PUBLIC NOTICE

All e-ICC users (Dealers/Transporters) are requested to use old e-ICC link available under old Covis E-Services on www.pextax.com for generation of VAT-35/ VAT-36 form with immediate effect, as the generation of e-ICC services for VAT-12 has been discontinued w.e.f. 24-08-16.

Helpline NOs are:
- 0175-2225192
- 0175-2300419

CEO ETTSA

NOTIFICATION (Punjab)

ORDINANCE REGARDING AMENDMENT IN SECTION 68 OF PUNJAB VAT ACT

GOVERNMENT OF PUNJAB
DEPARTMENT OF LEGAL AND LEGISLATIVE AFFAIRS

Chandigarh: 17.08.2016

NOTIFICATION

No. 27-Leg./2016 - The following Ordinance of the Governor of Punjab, promulgated under clause (1) of article 213 of the Constitution of India on the 12th day of August, 2016, is hereby published for general information:-

THE PUNJAB VALUE ADDED TAX (AMENDMENT) ORDINANCE, 2016
(Punjab Ordinance No. 5 of 2016)

Promulgated by the Governor of Punjab in the Sixty-seventh Year of the Republic of India

AN

ORDINANCE

further to amend the Punjab Value Added Tax Act, 2005

Whereas, the Legislative Assembly of the State of Punjab is not in session and the Governor is satisfied that circumstances exist, which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Punjab is pleased to promulgate the following Ordinance, namely:-

Short title and commencement

1. (1) This Ordinance may be called the Punjab Value Added Tax (Amendment) Ordinance, 2016.

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

Amendment in section 68 of Punjab Act 8 of 2005

2. In the Punjab Value Added Tax Act, 2005, in section 68, in sub-section (7), for the words "shall not be stayed", the words and signs "may be stayed, for the reasons to be recorded in writing after hearing the State," shall be substituted.

PROF. KAPTAN SINGH SOLANKI,
Governor of Punjab

VIVEK PURI,
Secretary to Government of Punjab,
Department of Legal and Legislative Affairs

OFFICE ORDER

ORDER REGARDING ADVANCE TAX EXEMPTIONS

OFFICE OF THE EXCISE & TAXATION COMMISSIONER, PUNJAB PATIALA

To

All the Deputy Excise & Taxation Commissioners
In the State of Punjab
No. PA/Addl. ETC 16/Sept.17 Dated: 12.08.2016

Sub: Regarding Advance Tax Exemptions

The practice of approving of exemption / reduction in advance tax cases by the senior officer of the head office has been discontinued forthwith. Now you are to decide the case at your own level. The order are to be implemented immediately and receipts of the communications should be acknowledged.

Addl. Excise & Taxation Commissioner (Vat)
For Excise & Taxation Commissioner, Pb.

CC
PA to ETC

SGA
LAW OFFICES

OFFICE ORDER

INSTRUCTIONS REGARDING CLUBBING OF SCRUTINY & ASSESSMENT FILES

OFFICE OF EXCISE AND TAXATION COMMISSIONER, PUNJAB

TO

1. The Dy. Excise and Taxation Commissioners,
   Incharge of the Division.

2. The Asstt. Excise and Taxation Commissioners,
   Incharge of the Districts.

DP0103403 / 99333, 35, 36, 37, 38, 39, 41, 42, 44, 45,
47, 48, 50, 52, 53, 55, 56, 58, 59, 60, 61, 63, 64, 67,
69, 71, 74, 78, 80, 83, 88, 91, 95 Dated: 22.1.2016

Subject: Instructions regarding clubbing of Scrutiny & Assessment files.

MEMORANDUM

If a dealer submits any documents as required by the Designated Officer during Scrutiny proceedings & the same case is again taken up for framing of assessment then both these files be clubbed together and the dealer should not be asked to submit these documents again.

2. The reason of demand in scrutiny should be mentioned in the TDN issued on the basis of scrutiny.

3. All the notices of scrutiny/assessment or any other notice issued shall be entered in the Central Dispatch register of the district and the same number shall be mentioned in the notice itself.

4. Further the Designated Officers shall mention the number of their ward alongwith his/her Name and Designation in all the notices issued to the dealers.

5. These instructions shall be meticulously implemented.

Dy. Excise and Taxation Commissioner (VAT)
For Excise & Taxation Commissioner, Punjab

SGA
LAW OFFICES

NOTIFICATION (Punjab)

NOTIFICATION REGARDING AMENDMENT IN SCHEDULE A, B AND E

PART III
GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 29th August, 2016

No. S.O.63/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 the provisions of 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 Schedules 'A', 'B' and 'E', appended to the said Act, with immediate effect by dispensing with the condition of previous notice, namely:-

AMENDMENT

1. In Schedule 'A', after Serial No. 89 and entries relating thereto, the following serial number shall be inserted, namely:-

"90 Haldi."

2. In Schedule 'B', after Serial No. 174 and the entries relating thereto, the following serial number shall be inserted, namely:-

"175. Battery powered e-motor cycle, e-scooter and e-rickshaw not exceeding 1500 watts."

3. In Schedule 'E', in Serial No. 15,-

(i) For item 19 and the entries relating thereto, the following item shall be substituted, namely:-

"19.	Spices of all varieties and forms including aniseed and dry chillies except haldi, Jeera, Ajwain, Kali Mirch and Dhania	6.25%"

(ii) after item No. 25 and entries relating thereto, the following item shall be inserted, namely:-

"26.	Jeera, Ajwain, Kali Mirch and Dhania	4%"

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

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PRESIDENT TO NOTIFY GST COUNCIL AS GOA BECOMES 15TH STATE TO RATIFY BILL

Goa Chief Minister Laxmikant Parsekar termed the GST Bill as "historical, revolutionary and far sighted".

Goa on Wednesday became the 15th state to ratify the Goods and Services Tax (GST) Constitution Amendment Bill, paving the way for the legislation to be notified by the President to the GST Council. During a day-long session of the assembly convened today, all the members of the House unanimously passed the resolution ratifying the GST with Opposition MLAs cautioning the state government over implication of the new tax regime in Goa.

Ruling out any negative impact on the new tax regime, Goa Chief Minister Laxmikant Parsekar said it would instead help sectors like service and tourism, bringing in more revenue to the state. He said the Centre has already assured to compensate for five years, if there is any loss in revenue during implementation of GST.

Parsekar termed the GST Bill as “historical, revolutionary and far sighted”. “Many thought that NDA with no majority in the Rajya Sabha would not be able to pass the Bill in the Upper House. But Prime Minister Narendra Modi managed to overcome this barrier,” he said.

The Chief Minister also thanked all the Opposition parties for helping to pass the GST bill in Parliament and also in the (different) state assemblies.

“At least 50 per cent of the states need to ratify this Bill in their Houses. Out of 29 states, Goa became the 15th state to do it, making it a historical occasion,” Parsekar said. He claimed that the GST implementation will help the economic growth of the state. Speaking in detail, Parsekar said Goa is a service driven state but was not benefiting from the (service) tax.

“There are many manufacturing industries in the state. But their corporate offices are in other states due to which those states were benefiting. The GST has provisioned that at least 50 per cent of the service tax from the industries should come to Goa,” the chief minister said. Parsekar calculated that at least Rs 1,000 crore would be annually added to the state exchequer in form of Service Tax.

He pointed out that the taxation on petroleum products, alcohol and brewery, royalty on minerals, vehicle tax and stamp duty will remain in the mandate of state government as it is kept out of GST.

Courtesy: The Indian Express
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