SGA
LAW OFFICES

Issue 23

1st December 2016

"One thing is clear: The Founding Fathers never intended a nation where citizens would pay nearly half of everything they earn to the government."

— Ron Paul

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SC: Service Tax: If the person to whom the burden of service tax is ultimately passed on is entitled to challenge levy of service-tax, it would lead to disastrous consequence. Millions of consumers would come and challenge such levy of taxes. Thus, service receiver has no locus standi to challenge service tax circular on Joint Development Agreement. ***(N Bala Baskar- December 14, 2016)***.

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 1798 OF 2005

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COMMERCIAL TAX OFFICER & ORS.
Vs
STATE BANK OF INDIA & ANR.

DIPAK MISRA AND SIVA KIRTI SINGH, JJ.

8th November, 2016

HF ▶ Assessee

Purchase of exim scrips by bank from its holders for purpose of cancellation would render the scrips lose its marketable value as goods and no purchase tax is leviable.

PURCHASE TAX – EXIM SCRIPS(EXPORT IMPORT LICENSE) – CANCELLATION OF - WHETHER BANK IS LIABLE TO PAY PURCHASE TAX ON THE PURCHASE OF UNUTILIZED 'EXIM SCRIPS' FROM HOLDERS – EXIM SCRIPS ISSUED EARLIER BY BANK – SBI DIRECTED BY RBI TO ACCEPT THE UNUTILIZED SCRIPS FROM HOLDERS AFTER PURCHASING THEM ON 20% PREMIUM – LICENSES SURRENDERED CONSEQUENTLY – ASSESSING OFFICER LEVIED TAX ON PURCHASE OF 'EXIM SCRIPS' U/S 4(6) OF THE ACT – ORDER UPHELD BY TRIBUNAL – HIGH COURT RESERVED THE ORDER HOLDING THAT EXIM SCRIPS SURRENDERED DID NOT CONSTITUTE GOODS AS THEY WERE RETURNED FOR CANCELLATION AND THIS ONE TIME AFFAIR OF CANCELLATION DID NOT AMOUNT TO BUSINESS – APPEAL BEFORE SUPREME COURT – HELD: EXIM SCRIPS RETURNED FOR CANCELLATION TO SOVEREIGN AUTHORITY/ GRANTOR CEASED TO BE MARKETABLE INSTRUMENTS – SBI ONLY ACTED AS AGENT OF RBI AND NOT AS A PURCHASER – OWNERSHIP OF GOODS NOWHERE STOOD TRANSFERRED TO SBI – ORDER UPHELD BY SUPREME COURT – APPEAL DISMISSED – *S. 4(6) (iii) OF BENGAL FINANCE ACT, 1941*

Facts

The Respondent SBI Bank and its branches were directed by RBI to purchase back the Exim Scrips, issued earlier in 1991,(Export Import License) from its registered holders on a payment of 20% premium to its holder. This operation was intended to mop out the unutilized Exim Scrips in the hands of its holders. However, the Commercial Taxes Officer levied purchase tax on its assessee- bank on its purchase of Exim Scrips u/s 4(6) of the Act. It was contended by the bank that such Exim Scrips were surrendered for cancellation and could not be treated as purchase. It could not be treated as goods and it had not entered into any transaction but had merely acted as agent of RBI but the order of the officer was further upheld by Tribunal. On writ filed before High court, it was opined that the said Exim Scrips were handed over for cancellation and not to be used as goods. They were reduced to mere

paper with no commercial value. The purchase was a one- time affair and had no continuity involved in such transactions to bring it under the term 'business'. Hence, S. 4(6) (iii) of the 1941 Act was not attracted. Aggrieved by the order, the revenue appealed before Supreme court.

Held:

The exim scrips would be 'goods' when they are transferred by holder to third person for consideration. But when they are returned to grantor or the sovereign authority for cancellation they cease to be a marketable instrument. The SBI was only acting as an agent of RBI and not purchasing the licenses. The object was to mop up the licenses from the market. The 'ownership' in goods was never transferred to SBI. Upholding the orders passed by High court, it is held that SBI is not liable to pay purchase tax. The appeal is dismissed.

Cases referred:

- *Vikas Sales Corporation and another v. Commissioner of Commercial Taxes and another (1946) 4 SCC 433*
- *Commissioner of Sales Tax v. Billion Plastics Pvt. Ltd. [1995] 98 STC 184*
- *State of Tamil Nadu v. Burma Shell Co. Ltd. 31 S.T.C. 426 (S.C.)*
- *District Controller of Stores v. A.C. Taxation Officer 37 S.T.C. 423 (S.C.)*
- *State of Tamil Nadu v. Binny Ltd., Madras 49 S.T.C. 17 (S.C.)*
- *Board of Revenue v. A.M. Ansari 38 S.T.C. 577 (S.C.)*
- *State of Gujarat v. Raipur Manufacturing Co. Ltd. AIR 1967 SC 1066*
- *State of Andhra Pradesh v. H. Abdul Bakhi and Bros. AIR 1965 SC 531*
- *Hindustan Steel Ltd v. State of Orissa AIR 1970 SC 253*
- *Board of Revenue v. A.M. Ansari (1976) 3 SCC 512*
- *P.S. Apparels v. Deputy Commercial Tax Officer, Madras [1994] 94 STC 139*
- *Bharat Fritz Werner Ltd. v. Commissioner of Commercial Taxes [1991] 86 STC 175*
- *H. Anraj v. Government of Tamil Nadu (1986) 1 SCC 414*
- *Sunrise Associates v. Govt. of NCT of Delhi and others (2006) 5 SCC 603*
- *Yasha Overseas v. Commissioner of Sales Tax and others (2008) 8 SCC 681*

Present: ***For Appellant(s):***
Advocates: *Mr. Soumitra G. Chaudhuri, Mr. Parijat Sinha, AOR*

For Respondent(s):
Advocates: *Mr. Pinaki Addy, Mr. Chiraranjan Addey, AOR*

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DIPAK MISRA, J.

1. The seminal question that emerges for consideration in this appeal is whether the State Bank of India (SBI) and its branches, which are registered dealers under the Bengal Finance (Sales Tax) Act, 1941 (for brevity, 'the Act') would be liable to levy of purchase tax under Section 5(6a) of the Act for accepting the Exim Scrips (Export Import Licence) on payment of premium of 20 per cent of the face value of the scrips in compliance with the direction contained in the letter of Reserve Bank of India (RBI) dated 18th March, 1992. The authorities of the revenue as well as the Taxation Tribunal (for short, 'the tribunal') had held against the SBI but the Division Bench of the High Court of Calcutta in a writ petition has dislodged the said conclusion holding, inter alia, that the purchase of Exim scrips by the Bank did not attract the provisions of Section 4(6) (iii) of the Act and resultantly quashed the orders of fora below and issued consequential directions.

2. It is necessary to state the facts in detail to appreciate the controversy at hand. The SBI is a body corporate constituted under the State Bank of India Act, 1955 for the extension of banking facilities in the country and for other public purposes. The bank has to perform

various functions as per the directions issued from time to time by the RBI in keeping with the economic and monetary policies of the Central Government.

3. Policies are notified by the Government of India under the Imports and Exports (Control) Act, 1947, as amended from time to time, and the Imports (Control) Order, 1955, to regulate imports into and exports out of the country and contain different incentive schemes and subsidies to build up foreign exchange resources of the country. As the facts would reveal before July 4, 1991 there was provision for issuance of Replenishment Licences which were referred to as "REP Licences". The objective behind the grant of such licences was to provide the registered exporters the facility of importing essential goods required for the manufacture of the products to be exported. Such licences were made freely transferable and such transfer did not require any endorsement or permission from the licensing authority and only a letter from the transferor the transferee became the lawful holder of the licence and was entitled to either import the goods for which the licence had been issued or sell the licence to someone else.

4. The aforesaid policy remained in vogue till July 3, 1991, when it was substituted by a new policy with effect from July 4, 1991 and the nomenclature of the REP Licence was changed to "Exim Scrip" (Export Import Licence). The provisions governing Exim scrips were more or less the same as those governing REP licences with certain minor variations which are really not pertinent for the purpose of adjudication of the controversy.

5. In March, 1992, the RBI took a policy decision to the effect that the unutilised Exim scrips in the hands of the holders who were willing to dispose of the same should be mopped up through specified branches of the SBI. In pursuance to such a decision, the RBI issued a circular, being No. 12/92 on 27th March, 1992. The said circular is as follows:-

> *"Reserve Bank of India had earlier notified that arrangements were being made to purchase Exim scrips at an appropriate premium from those holders of Exim Scrips who wish to dispose of them. The designated branches of State Bank of India would be purchasing these Exim scrips from March 23, 1992, up to the end of May 1992, at a premium of 20 per cent of the face value. The list of branches which would be purchasing these Exim scrips would be notified by the State Bank of India. The bona fide holder of the Exim scrips should submit an application to the designated branch of the State Bank of India, in the form prescribed by the State Bank of India. The scrips up to the face value of Rs. 5 lakhs will be straightaway purchased by the designated branch of State Bank of India and the premium amount would be paid to the holder of the scrips. Where the face value of the scrips exceeds Rs. 5 lakhs, the concerned branch would send it to the office of the JCCI, which had issued the scrip, for authentication and on receipt of the scrip duly authenticated would pay the amount of premium."*

6. The RBI, pursuant to the circular sent a letter on March 18, 1992 to the Chairman, State Bank of India, Bombay, authorising all designated branches of the said Bank to purchase Exim scrips from holders, who intended to dispose of the same at a premium of 20 per cent of the face value of the Exim scrips, from March 23, 1992, subject to certain terms and conditions. Thereafter, the General Manager (Planning of the International Banking Department of the State Bank of India) communicated to the Deputy Manager, State Bank of India, Overseas Branch, Calcutta, the respondent no.1 herein, on March 21, 1992, forwarding the memorandum of procedure drawn up by the Central Officer of the SBI for the purpose of purchasing the Exim scrips as directed by the RBI. In due course, various holders of Exim scrips sold and/or surrendered their Exim scrips to the Bank and received a premium of 20 per

cent of the face value of the scrips in compliance with the direction contained in the letter of the RBI dated March 18, 1992.

7. In the course of assessment proceedings under the Act for the four quarters ending on March 31, 1993, the Commercial Tax Officer, Park Street Charge informed the assessee that apart from payment of sales tax on the sale of gold and silver, it would also be liable to pay "purchase tax" in respect of purchase of Exim scrips from the holders thereof at a premium of 20 per cent of the face value. Before the assessing authority, it was contended by the SBI that the Exim scrips had not actually been purchased but the same had been surrendered by their holders pursuant to the terms contained in the letter of the RBI dated March 18, 1992. It was also put forth that such surrender could not be treated as purchase for the purpose of levying tax under Section 4(6) of the Act. It was also averred that Exim scrips were not "goods" within the meaning of Section 2(d) of the Act and hence, no purchase tax could be levied under Section 4(6) of the said Act on the surrender of the Exim scrips by its holders. In addition to the above, a specific objection was taken that the Bank had not entered into any transaction on its own which could be regarded as purchase to attract the provisions of Section 4(6) of the Act but had merely acted as an agent of the RBI in terms of the order contained in the above mentioned circular dated March 18, 1992.

8. The assessing officer did not accept the said stand of the Bank and levied purchase tax under Section 5(6a) of the Act, amounting to sum of Rs. 1,00,04,000/- on the total taxable specified price of Rs. 25,00,00,000/-. In the order of assessment, the assessing authority held that the scheme contained in the circular of the RBI dated March 18, 1992, provided for sale of Exim scrips by the holder and purchase by designated bankers and consequently such sale or purchase by the bankers could not by any stretch of imagination be treated as an act of surrender. It was also held that the purchase of the Exim scrips by the bankers from the holders thereof were as much sales as purchase by private importers who availed of the same for import of goods.

9. The aforesaid order of assessment was assailed in an appeal before the Assistant Commissioner, Commercial Taxes, Calcutta (South) Circle, who vide order dated September 19, 1996, rejected the appeal and confirmed the order of assessment. The Bank Manager of the concerned Branch and the Chairman of SBI approached the West Bengal Taxation Tribunal (for short, 'the tribunal'). During the hearing of the appeal it was contended on behalf of the SBI that in order to attract the mischief of Section 4(6)(iii) of the Act, a dealer must be liable to pay tax under Section 4(1), 4(2), 4(4) or 8(3) of the aforesaid Act and since the said Bank was not a dealer under the provisions of the aforesaid Act, it did not have any liability to pay tax under Section 4(6) of the said Act. It was also submitted that the transactions involving recovery of Exim scrips from their holders could not be treated to be "purchases" for the purpose of Section 4(6) of the above Act, but amounted to "surrender" by the holders which had been wrongly equated with "purchase" at the Branch level. A further stand was taken that for Section 4(6) to apply, the purchase must have been made with the intention of re-selling the Exim scrips and that the same would be apparent from proper reading of Clauses (i) and (iii) of Section 4(6) of the above Act. It was argued that if such a construction was not adopted, Clause (iii) of Section 4(6) would be unconstitutional and violative of Article 14 of the Constitution.

10. The tribunal by its order dated 11th February, 1998 rejected all the contentions made on behalf of the appellants and dismissed the appeal preferred by them. As has been stated earlier, the SBI had not levied purchase tax. When the matter travelled to the tribunal, the question arose whether the Bank by payment at a premium of twenty per cent on the face value or unutilised face value thereof was exigible to purchase tax under Section 4(6)(iii) read with Section 5(6) of the Act. The tribunal narrated the facts and noted the stand and the stance

of the assessee and the Revenue and came to hold that the Bank had acted in relation to the impugned transactions as agent of RBI, which is an instrumentality of the Government of India, to accept Exim scrips on payment of a premium to the holders thereof and the activity is thus covered by Section 6(1)(a) and (b); that under Section 6(1)(n) such activity was certainly "incidental" or "conclusive" to the promotion or advancement of the business of the Company, because admittedly the assessee received commission for these transactions; that the stand that the Bank was not a dealer in view of the Banking Regulation Act, 1949 was unacceptable, for when Section 8 of the Act is correctly construed, it would be clear that purchase of Exim scrips was not prohibited by it; that the Exim scrips were goods as has been conclusively settled in ***Vikas Sales Corporation and another v. Commissioner of Commercial Taxes and another (1946) 4 SCC 433***; that the submission to the effect that the purchase is made not for resale and hence, the bank would not be liable for tax does not commend acceptation, for legislature does not contemplate or lay down that Section 4(6)(iii) would apply to purchase for the purpose of only resale but has left the expression unspecified and unqualified; that there is no rationale to restrict it to resale and limit the expression; that Section 4(6)(iii) uses the word "purpose", a purchase for any purpose other than those specified in clauses (i) and (ii) of Section 4(6) would be enough to attract the clause and in the case at hand, RBI's letter dated March 18, 1992 the purpose was to forward the "scrips" to the Joint Chief Controller of Imports and Exports, Government of India, after suitably cancelling them; that use of the purchased scrips by way of cancellation and onward transmission to the Joint Chief Controller was clearly subsequent to completion of the transactions and such use cannot keep the transactions out of the mischief and purview of Section 4(6)(iii); that the transactions were really "surrenders" and not "purchases" is untenable because surrender is also envisaged by operation of law and hence, the concept of "surrender" is inapplicable in the instant case; and that there was enough indication of "sale" and "purchase" and transfer of property in the scrips as is evident from documents that the holder of script was "encashing" them by completely foregoing his "entitlements" under it. After so holding, the tribunal dealt with the concept of business as has been defined under Section 2(1) of the Act, referred to various decisions including ***Commissioner of Sales Tax v. Billion Plastics Pvt. Ltd. [1995] 98 STC 184, State of Tamil Nadu v. Burma Shell Co. Ltd. 31 S.T.C. 426 (S.C.), District Controller of Stores v. A.C. Taxation Officer 37 S.T.C. 423 (S.C.)*** and ***State of Tamil Nadu v. Binny Ltd., Madras 49 S.T.C. 17 (S.C.), Board of Revenue v. A.M. Ansari 38 S.T.C. 577 (S.C.)*** and ***State of Gujarat v. Raipur Manufacturing Co. Ltd. AIR 1967 SC 1066*** and after deliberating on them, posed the question whether mere lack of the element of regularity or frequency, when the other elements are present would it be sufficient to keep take the transactions out of the compass of "business" and opined that where an intention to carry on business was clearly established, mere lack of the element of regularity or frequency would not convert business transactions into non-business transactions and would not make a "dealer" a "non dealer". To arrive at the said conclusion, the tribunal referred to the definition of "dealer" under Section 2(c) of the Act and definition of "business" and other provisions and in that context, referred to ***State of Andhra Pradesh v. H. Abdul Bakhi and Bros. AIR 1965 SC 531 and Hindustan Steel Ltd v. State of Orissa AIR 1970 SC 253*** and came to hold that profit motive is not imperative, because as per law "business" connects some activity actually in the nature of trade or commerce or manufacture which is done not for sport or pleasure or for charity. Thus, there is little difference between the primary or main part of the definition of "business" and its inclusive part which basically means, as in the present context, any trade or commerce or similar activity and any transaction in connection with, or ancillary or incidental to, such trade or commerce. Process of exchange can be completed by the exchange of goods and services for money. The tribunal has observed that in the instant case the purchase of exim scrips was by way of exchange of the scrips, which are financial instruments, for money. Thereafter, the tribunal referred to the meaning of the terms trade and

commerce and stated in Black's Law Dictionary and certain other dictionaries including Aiyer's Judicial Dictionary and eventually came to hold as follows:-

> *"Thus, purchase of exim scrips for money, comprising a large volume (at least Rs. 25 crores) is in every sense a "business" within the meaning of Section 2(1a). That being so, having carried on such a "business" the applicant bank became a "dealer" under section 2(c), even apart from the fact that it was already a registered dealer for sale of gold. Since sale of gold has no connection with purchase of exim scrips, the latter transactions cannot be said to be either in connection with or ancillary or incidental to sale of gold. In our view, the purchase of exim scrips was a separate "business" of the applicant bank. A point was argued on behalf of the bank that it had to undertake this activity under instructions from the Reserve Bank of India. The fact that it was so, indicates that it was carried on as a business and with the intention to carry it on as a business".*

11. Thereafter, it opined that the SBI is not an ordinary businessman, but it is a body created by an Act. Analysing the statutory scheme and the obligation, it proceeded to state thus:

> *"We have to keep this distinction in mind when we consider whether purchase of exim scrips was done by the bank as a business with the intention to do a business. It is undisputed that not only the bank paid money for purchasing exim scrips but also it made some gain by receiving commission out of the transactions. Even without any commission the activity clearly constitutes a "business". Another question is : when the activity was carried on under the instructions of the Reserve Bank of India, can it be said to be a "business"? In the facts of the case, the apparently compulsory nature of purchase of exim scrips was not such as to take it out of the ambit of "business". The bank could not compel any holder of exim scrips to sell the same to it. It was wholly voluntary on the part of a holder to sell scrips to the bank. As soon as a holder exercises his opinion to sell and gives a scrip to the bank, the bank purchases it on payment of money. As already said, the compulsory nature of performance of the duty of purchase of exim scrips emanates from Act of 1955 which created the bank. Unlike any other dealer, the applicant bank could not think of acting beyond the provisions of Act of 1955. That being so, in the special circumstances of the case, the element of compulsion involved in the instruction of the Reserve Bank of India is irrelevant. Apart from that aspect, we may refer to the case of Coffee Board v. Commissioner of Commercial Taxes (1988) 70 S.T.C. 162 (S.C.) in which it was held that there was a sale, where the growers of coffee delivered coffee to the Board, though the growers did not actually sell it. It was a sale by operation of law. The imposition of sales tax on such sale of coffee was upheld. From the above points of view we hold that the purchase of exim scrips by the applicant bank were rightly brought to purchase tax under 1941 Act."*

12. The said order was challenged before the High Court of Calcutta in a writ petition wherein it was contended that the Bank was not a "dealer" within the meaning of Section 2(c) of the Act in respect of the Exim scrips since it does not and/or did not carry on the business of sale or purchase of such Exim scrips; that in the case at hand it was only a solitary case and that too for a brief period from March 23, 1992 to May 31, 1992 but neither before nor after the said period had any such transaction been entered into which could justify the finding of the tribunal that the assessee-Bank had an intention to carry on business in purchase of Exim

scrips and that mere lack of regularity or frequency would not convert a business into non-business and would not make a dealer a non-dealer; that there was no material on record to arrive at the conclusion that it was clearly established that the writ petitioner No. 1, i.e., the SBI, had the intention to carry on business in purchase of Exim scrips; that even if the Bank was to be treated as a dealer, the provisions of Section 4(6)(iii) would have to be related to the business being carried on by the Bank inasmuch as the said provisions would otherwise suffer from vagueness and would expose it to attack on the ground of constitutional validity; that keeping in view the scheme of the Act and the intent and purpose of relevant provision, purchase tax could be levied on a dealer only if he carried on business of buying or selling the goods in question; that whatever may be the nature of the transaction, the Bank had only acted as an agent of the RBI in the transaction relating to Exim scrips and would not, therefore, come within the definition of the expression "dealer" as defined in Section 2(c) of the 1941 Act; that the transaction involving the acquisition of Exim scrips by the Bank could not be said to be a case of purchase but a case of surrender; that the Exim scrip was in substance a licence or a grant from the Sovereign and there could not be any sale of such Exim scrips to the Sovereign and accordingly, when the holder of the Exim scrips gives up his right in favour of the granter it is an act of surrender and nothing else; that SBI had merely acted as an agent of the Sovereign, namely, the department of the Central Government which had issued the Exim scrips, that is, the Joint Chief Controller of Import and Export and under the instruction of the RBI and once the said Exim scrips were surrendered by the holders, the same were required to be cancelled and forwarded to the office of the Joint Chief Controller of Import and Exports who had originally issued the same and in effect the grant under the Exim scrips would, upon cancellation by the Bank, cease to exist, which state of affairs is consistent with the concept of surrender and it was not intended that upon acquisition of the Exim scrips from their holders, the same would be utilised by the Bank for the purpose of either selling the same or using the same for the purpose for which they had been intended. Be it noted learned counsel for the Bank placed reliance on the decisions in ***Raipur Manufacturing Co. Ltd.*** (supra)***, Board of Revenue v. A.M. Ansari (1976) 3 SCC 512*** and ***Billion Plastics Pvt. Ltd.*** (supra).

13. Learned counsel for the Commercial Tax Officer, resisting the submissions of the learned counsel for the Bank contended that the controversy raised by the bank having set at rest by the three-Judge Bench in Vikas Sales Corporation (supra), wherein the Supreme Court had given stamp of approval to the decision in ***P.S. Apparels v. Deputy Commercial Tax Officer, Madras [1994] 94 STC 139.*** It was urged by the revenue that REP Licence are goods and the premium or price received therefrom by transfer thereof was liable to sales tax within the ambit and sweep of Section 4(6)(iii) of the Act and, therefore, the finding recorded by the tribunal that the transaction involving the purchase of Exim scrips by the assessee bank amounted to sale could not be found fault with. It was also canvassed that the intention of the legislature was clear and in view of the authority rendered in ***Vikas Sales Corporation*** (supra), ***P.S. Apparels*** (supra) and the decision in ***Bharat Fritz Werner Ltd. v. Commissioner of Commercial Taxes [1991] 86 STC 175*** nothing really remain to be adjudicated.

14. The High Court analysed the principles in all the authorities cited before it and came to hold that this Court has opined that REP licences/Exim scrips were merchandise and/or goods in the commercial world and were freely bought and sold in the market and hence, no argument could be urged that they do not constitute goods for the purposes of commercial transactions. The High Court referred to the circular dated March 18, 1992, issued by the RBI regarding purchase of Exim scrips by the designated branches of the SBI and opined that the said Exim scrips were handed over to the Bank solely for the purpose of cancellation and not be used as goods for the purpose of commercial transactions. According to the High Court, they were reduced to mere paper having no commercial value. The

Division Bench distinguished the judgments rendered by this Court as well as by the High Courts of Madras and Karnataka. It further proceeded to opine that the purchases by the SBI were not effected in the usual course of business of the Bank, for it was a one-time affair and there was no continuity or regularity involved in such transactions so as to bring the same within the concept of business. The High Court took note of the fact that the Bank was mainly confined to purchase and sale of gold and silver. On behalf of the revenue, it was contended that the bank was a registered dealer under the Act, but the said submission did not weigh with the High Court because as the impugned order would show, it has been persuaded by the decision rendered by the Bombay High Court in ***Billion Plastics Pvt. Ltd.*** (supra). Thereafter, the High Court came to the following conclusion:-

> *"56. ....we are not inclined to accept the arguments advanced on behalf of the Revenue that purchasing of Exim scrips on the direction of the Reserve Bank of India for the purpose of destroying its very commercial nature, amounted to business being carried on by the writ petitioner-Bank in such Exim scrips. There was no question of selling the Exim scrips once they had been purchased by the Bank. The entire transaction appears to be in the nature of a mopping up operation for removing the Exim scrips from the market.*
>
> *57. Having regard to the view taken by us that the purchase of Exim scrips by the writ petitioner-Bank did not attract the provisions of Section 4(6)(iii) of the 1941 Act, we do not think it necessary to go into the other submission of Mr. Ghosh that the aforesaid provisions were either vague or uncertain and thus unconstitutional. We are not, therefore, inclined to dilate further on such point.*
>
> *58. In view of what we have indicated hereinabove, we are unable to sustain the judgment and order of the learned Tribunal and we, accordingly, set aside the same and we also quash the order of assessment dated June 30, 1995 passed by the Commercial Tax Officer, Park Street Charge, as also the order dated September 19, 1996, passed by the Assistant Commissioner, Commercial Taxes, Calcutta (South) Circle, in Appeal case No. A495/1995-96 under Section 20(1) of the Bengal Finance (Sales Tax) Act, 1941".*

The aforesaid conclusion entailed allowing the writ petition preferred before the High Court and resultantly the assessee was discharged from the undertaking given for the purpose of continuation of the interim order initially passed. 15. We have heard Mr. Soumitra G. Chaudhuri, learned counsel for the appellants and Mr. Pradip Kumar Ghosh, learned senior counsel with Mr. Chiraranjan Addey, learned counsel appearing for the respondents. 16. To appreciate the controversy, it is pertinent to extract the communication dated March 18, 1992 sent by the RBI, Exchange Control Department to the Chairman, State Bank of India, Bombay. The said letter is as follows:-

> *"Dear Sir,*
>
> *Purchase of Exim Scrips by designate branches of SBI.*
>
> *This is with reference to our discussion with Shri. B.S. Pandya, General Manager (Domestic & Operations) on the captioned subject. It has been agreed that designated branches of the State Bank of India would commence purchasing 'Exim Scrips', from holders who wish to dispose of them, at a premium of 20 percent on the face value of the scrip & (unutilized face value) from 23rd March 1992, subject to the following terms and conditions:*
>
> *a) The holder of the scrips would be required to submit an application to the designated branch in the form prescribed by the State Bank of India.*

b) State Bank of India would, incorporate, in consultation with their legal department, a suitable indemnity clause in the application form to be submitted by the holder of the scrip.

c) As the scrip is transferred by a letter, State Bank of India would verify the letter in favour of the holder presenting the scrip and would then make payment on the basis of usual banking procedures adopted for identification of the person to whom payment is made.

d) The payment would be rounded off to the nearest rupee and would be made only by means of a Crossed Banker's Cheque.

The term 'Exim Scrip' would also cover post paid REP licenses issued up to 29th February 1999 of export proceeds.

e) State Bank of India, Bombay Main Branch, would arrange to get daily details of scrips paid by their various designated branches and then seek reimbursement, on a consolidated basis, daily from Reserve Bank of India, Bombay on the basis of a certificate indicating the total amount paid by them.

f) Designated Branches of SBI would maintain the particulars of scrips paid including the application forms for such period as may be considered necessary. Bombay main branch would maintain the particulars of payments made by their various designated offices on the strength of which reimbursement was claimed by them from RBI, Bombay.

g) The paid scrips would be suitably cancelled and forwarded to the concerned office of J.C.C.I. & E. which had issued the scrips. In the case of scrips of face value up to Rs.5 lakhs, the concerned office of J.C.C.I. & E. should also be asked to conduct a check about genuineness of the scrips cancelled by SBI and report objections, if any, in regard to payments to the concerned designated office of SBI.

h) If in the case of any scrip of the face value up to Rs. 5 lakhs (which is paid without prior check by the office of J.C.C.I. & E.), it later turns out that the scrip was not genuine or not validly issued etc., the matter would have to be pursued by the office of the J.C.C.I. & E. SBI will, however, render whatever assistance is necessary to tract the party to whom payment has been made.

i) SBI would be acting on behalf of the Reserve Bank of India and would be paid commission at the rate at which commission is payable to them for conducting Government business. They would also be paid out-of-pocket expenses including expenses incurred on advertisements notifying designated branches.

2. As desired by you, we have also advised the Chief Controller of Imports & Exports to instruct all his regional offices to render necessary assistance to designated branches of SBI for a smooth implementation of the scheme. He has also been advised to instruct his regional offices in particular that they should promptly (say, within 48 hours) furnish authentication of scrips of face value above Rs. 5 lakhs sent to them and their findings of the check done of scrips up to the face value of Rs. 5 lakhs paid without any prior authentication. He has

also been requested to advise J.C.C.I. & E., Bombay, to assist you with a check list containing important features of the Exim Scrip to check their genuineness."

[Emphasis added]

17. The aforesaid, as is manifest, authorises the SBI to purchase the Exim scrips as an agent of RBI and after payment of the premium at 20% of the value to the holder, the scrip was to be cancelled. Certain formalities were stipulated to be complied by the holder as well as by SBI.

18. Section 2(1a) of the Act defines "business" as follows:-

"business" includes –

(i) any trade, commerce or manufacture or execution of work contract or any adventure or concern in the nature of trade, commerce or manufacture or execution of works contract, whether or not such trade, commerce, manufacture, execution of works contract, adventure or concern is carried on with the motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, execution of works contract, adventure or concern; and

(ii) any transaction in connection with, or ancillary or incidental to, such trade, commerce, manufacture, execution of works contract, adventure or concern;"

19. The term "dealer" has been defined under Section 2(iv)(c), which reads thus:-

"dealer" means any person who carries on the business of selling goods in West Bengal or of purchasing goods in West Bengal in specified circumstances or any person making a sale under Section 6D and includes –

the Central or a State Government, a local authority, a statutory body, a trust or other body corporate which, or a liquidator or receiver appointed by a Court in respect of a person defined as a dealer under this clause who, whether or not in the course of business sells, supplies or distributes directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration.

Explanation 1. – A co-operative society or a club or any association which sells goods to its members is a dealer.

Explanation 2. – A factor, a broker, a commission agent, a del credere agent, an auctioneer, an agent for handling or transporting of goods or handling of document of title to goods or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of selling goods and who has, in the customary course of business, authority to sell goods belonging to principals is a dealer;"

20. Section 2(d) of the Act defines "goods" as follows:-

"goods" includes all kinds of movable property other than actionable claims, stocks, shares or securities"

21. Section 4 of the Act deals with incidence of taxation. Sub-Section (6) of Section 4 of the Act is as follows:-

"(6) Every dealer, who has become liable to pay tax under sub-section (1) or sub-section (2) or sub-section (4) of this section or sub-section (3) of section 8

and is registered under this Act, shall, in addition to the tax referred to therein, be also liable to pay tax under this Act on all his purchases from –

(i) a dealer who is not registered under this Act, of goods other than [gold, rice (Oryza sativa L.) and wheat (Triticcum Vulgare, T. compactum, T. sphaerococcum, T. durum, T. aestivum L., T. dicoccum)], intended for direct use in the manufacture in West Bengal of goods for sale, and of containers and other materials for the packing of goods so purchased or manufactured;

(ii) a registered dealer, to whom a declaration referred to in the proviso to clause (bb) of sub-section (1) of section 5 has been or will be furnished by him in respect of sales referred to in sub-clause (i) or sub-clause (ii) of the said clause, of goods purchased against such declaration, and used by him directly in the manufacture in West Bengal, of goods or in the packing of such goods, when such manufactured goods are transferred by him to a place outside West Bengal or disposed of by him, otherwise than by way of sale in West Bengal.

(iii) any person, whether a dealer or not, who is not registered under this Act, of goods other than gold, rice and wheat intended for a purpose, other than those specified in clause (i).”

22. Section 6C stipulates the liability to payment of purchase tax and rate thereof.

23. We have referred to the aforesaid statutory provisions as the learned counsel for the revenue would stress upon the tenor of the said provisions and submit that respondent Bank is a dealer and once it has purchased something, which is goods, it is liable to pay the purchase tax. In essence, the learned counsel for the State would defend the order passed by the tribunal in entirety and would contend that the High Court has wholly flawed in appreciation of the factual score and the provisions applicable to the transaction.

24. In ***Vikas Sales Corporation*** (supra), the question arose whether the transfer of an Import Licence called REP Licence/Exim Scrip by the holder thereof to another person constitutes a sale of goods within the meaning of and for the purposes of the Sales Tax enactments of Tamil Nadu, Karnataka and Kerala and if it does, it is exigible to sales tax, otherwise not. In the said case, the High Court had taken the view that REP Licences/Exim Scrips constitute goods and, therefore, on their transfer, sales tax is leviable and the judgment of the High Court was founded on the decision of this Court in ***H. Anraj v. Government of Tamil Nadu (1986) 1 SCC 414***. It was contended before this Court that the license/scrips are not goods and hence, they are not property. It was further urged that they represent merely a permission to import goods which permission can be revoked at any time by the licensing authority and, therefore, they are really in the nature of share and securities which have been expressly excluded from the definition of goods in the relevant enactments. Analysing various facets, the three-Judge Bench referred to Para 199 of “Import and Export Policy 1990-93” which deals with Transferability of REP Licences. It reads as follows:-

“199. (1) The REP Licence will be issued in the name of the registered exporter only and will not be subject to ‘Actual User Conditions’. A licence-holder may transfer the licence to another person. The licence- holder or such transferee may import the goods permitted therein.

(2) The transfer of a REP Licence will not require any endorsement or permission from the licensing authority, i.e., it will be governed by the ordinary law. Accordingly, clearance of the goods covered by a REP Licence issued under this policy will be allowed by the Customs authorities on production by

> *the transferee of only the document of transfer of the licence concerned in his name. Whenever a REP Licence is transferred the transferor should give a formal letter to the transferee, giving full particulars regarding number, date and address of the transferee, and complete description of the items of import for which the licence is transferred."*

25. The Court also observed that the relevant features of Exim Scrips are identical to REP Licences. Thereafter, the Court proceeded to state:-

> *"They are bought and sold as such. The original licensee or the purchaser is not bound to import the goods permissible thereunder. He can simply sell it to another and that another to yet another person. In other words, these licences/Exim Scrips have an inherent value of their own and are traded as such. They are treated and dealt with in the commercial world as merchandise, as goods. A REP Licence/Exim Scrip is neither a chose-in- action nor an actionable claim. It is also not in the nature of a title deed. It has a value of its own. It is by itself a property — and it is for this reason that it is freely bought and sold in the market. For all purposes and intents, it is goods. Unrelated to the goods which can be imported on its basis, it commands a value and is traded as such. This is because, it enables its holder to import goods which he cannot do otherwise".*

And again:-

> *"Another contention raised in the written submissions of Shri K.V. Mohan is that even if the said licences/scrips are treated as goods, the tax must be levied at the first point of sale, viz., upon the authority issuing the licence. We cannot agree. The grant of licence by the licensing authority to the registered exporter is not a sale. The sale is when the registered exporter or the purchaser sells it to another person for consideration".*

26. The High Court has distinguished the aforesaid authority by stating that this Court did not have the occasion to consider the effect of purchase of Exim scrips made by SBI, for it was not a part of business regularly carried on by it but was a transaction which was to be undertaken on the direction of the RBI. Exim scrips were no longer available as "goods" for the purpose of commercial transaction and were to be reduced to mere papers having no commercial value whatsoever and such a scenario changed the entire perspective. The High Court has laid emphasis on immediate cancellation of Exim scrips and after cancellation to be sent to the original granting authority.

27. The controversy involved in the case at hand, in our considered opinion, has to be analysed regard being had to the existing factual score. The observations made in ***Vikas Sales Corporation*** (supra), as the aforequoted passages would show, the initial grant of license by the Government to the registered exporters was not a sale. The said finding is significant and it has potency. It is also seen that the said authority extensively relies on the earlier judgment in ***H. Anraj*** (supra) that dealt with the question whether lottery tickets are "goods" and accordingly whether sale thereof would invite sales tax. ***H. Anraj*** (supra) draws distinction between lottery tickets and steamship tickets, railway tickets, cinema tickets, etc. Salmond's Jurisprudence, 12th Edition at pages 338-339 under the heading "The Classes of Agreements" was quoted to draw distinction between three classes, namely, agreements which create rights, agreements which transfer or assign rights, and lastly agreements which extinguish them. Agreements which create rights were divided into two sub- classes, namely, contracts and grants. A contract is an agreement, which creates an obligation or right in personam between the parties, whereas a grant creates a right of another description such as leases, assignments, patents, etc. An agreement, which transfers a right, may be termed generically as an

assignment. However, when a transaction extinguishes a right, it is called a release, discharge or surrender. The distinction between creation of a right by a grant and subsequent transfer or assignment was also highlighted in ***H. Anraj*** (supra) and noted by Sabyasachi Mukherjee, J. (as His Lordship then was) in his concurrent judgment with the following observations:-

> *"41. It was urged before us on behalf of the dealers that by the issue of lottery tickets, the right to participate in the draw is created for the first time in the buyers. In other words, it was urged that by the sale of lottery ticket, the right to participate is created for the first time; if it is considered to be a "grant" and as such a sale of goods, it was contended that such right was not existing before the sale of the lottery ticket. This contention has caused me anxiety from the jurisprudential point of view. 42. I agree with respect that "grant" is an agreement of some sort which creates rights in the grantee and an agreement which transfers rights may be termed as assignment. But the question, is, before the grant, was such a right, namely the right to participate in the draw, existing in the grantor? The point made is that there is no transfer of property involved in the issue of a lottery ticket and it is only after the issue of the lottery ticket that the grantee gets a right to participate. In other words, it was sought to be urged that in a lottery, the promoter sponsoring it does not have any right to participate nor to claim a prize in a draw and these come into existence for the first time by the purchase of lottery ticket when he purchases the ticket and therefore it cannot be said that any transfer of right is involved, but only creation of new right by the grantor in favour of the grantee."*

The observations made in the aforesaid paragraphs that there is no transfer of property involved in a grant, for the rights come into existence after purchase.

28. The decision in the case of H. Anraj (supra) was overruled by the Constitution Bench in ***Sunrise Associates v. Govt. of NCT of Delhi and others (2006) 5 SCC 603*** on several grounds including that there was no distinction between the chance to win and the right to participate in the draw. Such a sub-division was not correct. There was no value in mere right to participate in the draw. Therefore, lottery tickets were not "goods" but were actionable claims. These were merely token of chances purchased and even otherwise the right to participate in the draw was not a moveable property and, therefore, there cannot be any transfer of beneficial interest in a moveable property. The reason being, the right to participate in a lottery draw was an actionable claim. More significant for our purpose would be the observations of the Constitution Bench relating to the word "goods" for imposition of sales tax which, it was observed in the context, would carry its ordinary meaning of the subject matter of ownership and not denote the nature of interest of goods. The word "goods" was used to describe the thing itself. The relevant passages of the Constitution Bench in ***Sunrise Associates*** (supra) on the said aspect read as under:-

> *"35. The word "goods" for the purposes of imposition of sales tax has been uniformly defined in the various sales tax laws as meaning all kinds of movable property. The word "property" may denote the nature of the interest in goods and when used in this sense means title or ownership in a thing. The word may also be used to describe the thing itself. The two concepts are distinct, a distinction which must be kept in mind when considering the use of the word in connection with the sale of goods. In the Dictionary of Commercial Law by A.H. Hudson (1983 Edn.) the difference is clearly brought out. The definition reads thus:*
>
> > *" 'Property'.—In commercial law this may carry its ordinary meaning of the subject-matter of ownership. But elsewhere, as in the sale of*

> *goods it may be used as a synonym for ownership and lesser rights in goods." Hence, when used in the definition of "goods" in the different sales tax statutes, the word "property" means the subject-matter of ownership. The same word in the context of a "sale" means the transfer of the ownership in goods.*
>
> *36. We have noted earlier that all the statutory definitions of the word "goods" in the State sales tax laws have uniformly excluded, inter alia, actionable claims from the definition for the purposes of the Act. Were actionable claims, etc., not otherwise includible in the definition of "goods" there was no need for excluding them. In other words, actionable claims are "goods" but not for the purposes of the Sales Tax Acts and but for this statutory exclusion, an actionable claim would be "goods" or the subject-matter of ownership. Consequently, an actionable claim is movable property and "goods" in the wider sense of the term but a sale of an actionable claim would not be subject to the sales tax laws."*

And, again:-

> *"51. We are therefore of the view that the decision in* ***H. Anraj*** *(supra) incorrectly held that a sale of a lottery ticket involved a sale of goods. There was no sale of goods within the meaning of Sales Tax Acts of the different States but at the highest a transfer of an actionable claim. The decision to the extent that it held otherwise is accordingly overruled though prospectively with effect from the date of this judgment."*

29. We may note with profit that ***Sunrise Associates*** (supra) did not specifically deal with the question of replenishment licences, for the reference made to the Constitution Bench was limited to whether lottery tickets were "goods". The Constitution Bench had specifically observed that they were not called upon to decide the question whether the replenishment licences were "goods." We may usefully refer to the relevant passage:-

> *"29. .. We have not been called upon to answer the question whether REP licences (or the DEPB which has replaced the REP licences) are "goods". Although we have heard counsel at length on this, having regard to the limited nature of the reference, we do not decide the issue. The decision in Vikas Sales (supra) was referred to only because it approved the reasoning in H. Anraj (supra) and not because the referring court disagreed with the conclusion in Vikas Sales (supra) that REP licences were goods for the purposes of levy of sales tax. Indeed REP licences were not the subject- matter of the appeal before the referring court and could not have formed part of the reference. The only question we are called upon to answer is whether the decision in H. Anraj (supra) that lottery tickets are goods for the purposes of Article 366(29-A)(a) of the Constitution and the State sales tax laws, was correct."*

30. Thus, the Constitution Bench did not overrule the decision of the Court in ***Vikas Sales Corporation*** (supra) holding replenishment licences were goods. The Constitution Bench, however, held that the reliance placed in ***Vikas Sales Corporation*** (supra) on the observations in ***H. Anraj*** (supra), which was agreed to and stood overruled, was to this extent bad in law. To clarify, ***Vikas Sales Corporation*** (supra) specifically dealt with the transfer of replenishment licences after they had been issued. However, in ***Vikas Sales Corporation*** (supra) it was opined that the grant of a licence by the licensing authority to a registered exporter was not a sale. Sale will take place only when the registered owner further sells it to another person for consideration. The relevant paragraph of the judgment has been earlier reproduced.

31. A three-Judge Bench of the Court in ***Yasha Overseas v. Commissioner of Sales Tax and others (2008) 8 SCC 681*** had examined the question whether the sale or transfer of replenishment licences and duty entitlement passbooks would attract sale tax. Reliance placed on Sunrise Associates (supra) to contend that the decision in Vikas Sales Corporation (supra) impliedly overruled. The three-Judge Bench did not accept the contention by stating thus:-

> *"40. Thus, on a detailed examination, we are unable to see how the decision in Sunrise (supra) can be said to alter the position in regard to the sale of REP licences as held by the earlier decision in Vikas (supra). It is noted above that the Constitution Bench in Sunrise (supra) firmly and expressly declined to go into the question whether REP licences (or DEPB which replaced REP licences) were "goods". It is indeed true that the Constitution Bench in Sunrise (supra) did not approve the decision in Vikas (supra) insofar as it gave their free marketability as an additional reason to hold that REP licences were not actionable claim but "goods" properly so called. The Constitution Bench held that the assumption that actionable claims were not transferable for value was quite unfounded and the conclusion drawn on that basis was quite wrong. In paras 39 and 40 of the decision, Sunrise (supra) decision gave illustrations of a number of actionable claims which are transferable.*
>
> *41. But to our mind that does not in any way change the position insofar as REP licences are concerned. While examining the three-Judge Bench decision in Vikas (supra) earlier in this judgment it is seen that the Court first came to hold that REP licence/Exim scrip fell within the definition of goods quite independently. The Court found and held that REP licences had their own value; they were freely bought and sold in the market for their intrinsic value and for that reason alone those were goods. (See para 29 of the decision in Vikas (supra) that is reproduced above.) It was only after coming to the conclusion that the Court proceeded to examine the matter in light of the observations made in Anraj (supra) relating to lottery tickets and that too because the Karnataka and the Madras High Courts had heavily relied upon Anraj (supra) decision for holding that the sale of REP licences was exigible to sales tax. On a careful reading of the decision in Vikas (supra) it is apparent that it was the intrinsic value of REP licence that brought it within the definition of goods."*

32. After so stating, the Court specifically referred to the term "goods" as interpreted in Sunrise Associates (supra) to mean the title and ownership of a thing and not the nature of interest in the goods. The question of free-marketability, it was held, was not primarily relevant as per the decision in Sunrise Associates (supra), albeit could be relied upon as an additional reason, for replenishment licences fall within the definition of "goods" quite independently. These licences could have their own intrinsic value and could be freely brought and sold at their market value. There was also a ready market for the sale and purchase of replenishment licences.

33. Thus analysed, the replenishment licences or Exim scrips would, therefore, be "goods", and when they are transferred or assigned by the holder/owner to a third person for consideration, they would attract sale tax. However, the position would be different when replenishment licences or Exim scrips are returned to the grantor or the sovereign authority for cancellation or extinction. In this process, as and when the goods are presented, the replenishment licence or Exim scrip is cancelled and ceases to be a marketable instrument. It becomes a scrap of paper without any innate market value. The SBI, when it took the said instruments as an agent of the RBI did not hold or purchase any goods. It was merely acting as

per the directions of the RBI, as its agent and as a participant in the process of cancellation, to ensure that the replenishment licences or Exim scrips were no longer transferred. The intent and purpose was not to purchase goods in the form of replenishment licences or Exim scrips, but to nullify them. The said purpose and objective is the admitted position. The object was to mop up and remove the replenishment licences or Exim scrips from the market.

34. Be it noted that the initial issue or grant of scrips is not treated as transfer of title or ownership in the goods. Therefore, as a natural corollary, it must follow when the RBI acquires and seeks the return of replenishment licences or Exim scrips with the intention to cancel and destroy them, the replenishment licences or Exim scrips would not be treated as marketable commodity purchased by the grantor. Further, the SBI is an agent of the RBI, the principal. The Exim scrips or replenishment licences were not "goods" which were purchased by them. The intent and purpose was not to purchase the replenishment licences because the scheme was to extinguish the right granted by issue of replenishment licences. The "ownership" in the goods was never transferred or assigned to the SBI.

35. In view of the preceding analysis, the other issues and questions, including the question whether the aforesaid exercise of procuring and cancelling replenishment licences or Exim scrips is "business" within the meaning of the Act, need not be decided. The facts of the case at hand has its distinctive features and, therefore, we unhesitatingly concur with the view of the High Court that the SBI was not liable to levy of purchase tax under the Act.

36. Consequently, the appeal, being devoid of merit, stands dismissed. There shall be no order as to costs.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 44 OF 2012

HARYANA PUMP MANUFACTURERS ASSOCIATION
Vs
STATE OF HARYANA AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

23th November, 2016

HF ▶ Partly Assessee and Partly revenue

Submersible pump sets are tax free upto 30/6/06 and taxable @ 4% from 1/7/06 under HVAT Act, 2003

ENTRIES IN SCHEDULE – SUBMERSIBLE PUMP SETS – SUBMERSIBLE PUMP SETS BELOW 5 HP– NO TAX PAID DEEMING IT FALLING UNDER ENTRY 1(D)(9) OF SCHEDULE B (TAX FREE GOODS)- VIDE NOTIFICATION DATED JUNE 20, 2006 GOODS IN QUESTION CATEGORIZED UNDER SCHEDULE C, ENTRY 71-A, BRINGING THEM TO TAX @4% - CLARIFICATION SOUGHT WHETHER GOODS STOOD TAXABLE AFTER NOTIFICATION THERE BEING TWO COMPETING ENTRIES IN SCHEDULES 'B' AND SCHEDULE 'C' – QUERY ANSWERED STATING GOODS WERE NOW TAXABLE @4% POST NOTIFICATION W.E.F. JULY 1, 2006 AND @12.5% FOR PERIOD UPTO JUNE 30, 2006 (BEFORE NOTIFICATION) AS EXEMPTION WAS ALLOWED ONLY ON PUMP SETS OF 5HP AND ABOVE , NOT BELOW THAT – APPEAL DISMISSED BY TRIBUNAL – APPEAL BEFORE HIGH COURT – HELD: PERUSAL OF ENTRIES SHOWS THAT THE RELEVANT ENTRY OF SCHEDULE B CONTAINS PUMPING SETS OF ALL KINDS AND ALL CAPACITIES – ONLY LIST OF COMPONENTS THEREOF IS EXHAUSTIVE PRESCRIBING LIMITED CAPACITY – CONTENTION OF STATE IS THUS MISCONCEIVED AND NO TAX WOULD BE LEVIABLE BEFORE JUNE 30, 2006 – CONTENTION OF APPELLANT REGARDING THERE BEING TWO COMPETING ENTRIES IS UNACCEPTABLE AS SCHEDULE 'C' CLEARLY SPECIFIES THAT WHATEVER IT CONTAINS STANDS EXCLUDED FROM SCHEDULE B – THEREFORE, W.E.F JULY 1, 2006. GOODS WERE TO BE TAXED @4% - APPEAL DISPOSED OF – *SCHEDULE B, ENTRY 1(D)(9) AND SCHEDULE C, ENTRY 71-A OF HVAT ACT, 2003.*

Facts

The appellant was manufacturing submersible pumps which it deemed to be exempted in view of Entry 1(D)(9) of schedule B (Tax Free goods). Vide notification dated June 20, 2006, entry 71-A was added to schedule C providing for pump sets below 5 HP. A clarification was sought as to whether Submersible pump sets would be included under schedule C w.e.f 1/7/06. The government answered that they were included in schedule C and were taxable @4% w.e.f.1/7/06 and also opined that prior to June 2006 they would be taxable @ 12.5% as the exemption related to submersible pumps of 5 HP and above and not for pumps below 5 HP. The appeal before tribunal was dismissed.

Aggrieved by the orders of Tribunal an appeal is filed before High court challenging it against levy of tax before June 2006.It is contended that

i) post notification there being two competing entries in respect of the product in question, the one beneficial to assessee(one in schedule B) should be preferred and

ii) that prior to the notification the goods were clearly tax free.

Held:

Entry 1(D)(9) in schedule B provides for tax free goods and encompasses pumping sets of all kinds and has a list of components which is exhaustive. The legislature has intended to exempt all pumping sets and no limit is prescribed for its capacity. But for the components, limit is prescribed whereby it is mentioned electric/ diesel pump sets of 5HP and above. Thus, the entry has to be given plain meaning. The contention raised by state that pumping sets of 5 HP and above are exempted, is misconceived.

After 1/7/2007, there is no doubt that the goods in question stood covered by schedule C as it is clearly specified that whatever is contained therein is deemed to have been excluded from schedule B. therefore, the contention that there were two competing entries one in schedule b and one in schedule C is not acceptable.

Thus, submersible pumps used for agricultural purposes fall in entry 1(D)(9) of schedule B upto June 30, 2006. From July 1, 2006, pump sets below 5HP will fall in Entry 71-A in schedule C and will be taxable irrespective of its end use.

Cases referred:

- *Excise and Taxation Officer Vs. M/s T.R. Solvent Oil Pvt. Ltd. and another CWP No. 14869 of 2006, decided on 24.9.2010 (P&H)*
- *Siemens India Limited Vs. The State of Gujarat 1984 (57) STC 1 (Gujarat)*
- *Engineering Traders Vs. The State of Uttar Pradesh and another,(1973) 31 STC 456 (Allahabad)*
- *Karnal Machinery Store Vs. The Assessing Authority, Karnal and others (1973) 31 STC 3 (P&H)*
- *Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India and others 1983 (13) E.L.T. 1566 (S.C.)*
- *Bharat Forge and Press Industries (P) Ltd. Vs. Collector of C.Ex.1990 (45) E.L.T. 525 (S.C.)*
- *Commissioner of Central Excise, Calcutta Vs. Calcutta Springs Ltd.,2008 (229) E.L.T. 161 (S.C.)*
- *State of Madhya Pradesh Vs. Marico Industries Ltd., Civil Appeal No. 8656 of 2015, Decided on 22.7.2016 (SC)*
- *Union of India Vs. Garware Nylons Ltd.1996 (87) E.L.T. 12 (S.C.)*
- *Hindustan Ferodo Ltd. Vs. Collector of Central Excise, Bombay, 1997 (89) E.L.T., 16 (S.C.)*
- *Commissioner of Commercial Tax, U.P. v. M/s A.R. Thermosets (Pvt.) Ltd., 2016(8) SCALE 573*
- *Collector of Central Excise, Shillong v. Wood Craft Products Ltd., (1995) 3 SCC 454*

Present: Mr. Sandeep Goyal and Mr. Rishab Singla, Advocates 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 VATAP Nos. 44, 45, 101, 102, 132, 133, 143, 165 and 166 of 2012, as the legal issues involved therein are common.

2. The facts have been noticed from VATAP No. 44 of 2012. The appeal has been filed by M/s Haryana Pump Manufacturers Association raising the following substantial questions of law:

(i) Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in holding that submersible pumps are covered under Entry

71A of Schedule 'C' and not under Entry 1(D)(9) of Schedule 'B', appended to the HVAT Act, 2003 and therefore taxable @ 4%?

(ii) Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in upholding the order of Financial Commissioner that submersible pumps are classified under residual entry for the period upto 30.6.2006 when there was no competing entry in Schedule 'C'?

(iii) Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in holding that the order of Financial Commissioner that submersible pumps are classified under Entry 71A of Schedule 'C' after the introduction of Note 4 to Schedule 'C' w.e.f. 1.1.2006?

3. Learned counsel for the appellant submitted that the submersible pumps being manufactured by the members of the appellant's association were exempted from taxation in view of Entry 1(D)(9) of Schedule 'B' of the Haryana Value Added Tax Act, 2003 (for short 'the Act'). Vide notification dated June 20, 2006, Schedule 'C' appended to the Act was amended. Entry No. 71-A was added providing for pumps set below 5 HP. As confusion arose regarding taxability of the pump sets, the same being mentioned even in Schedule 'B' providing for tax free goods, application was filed to the State Government under Section 56(3) of the Act for seeking clarification as to whether the submersible pumps would be covered under Entry No.71-A of Schedule 'C' of the Act, w.e.f. 01.07.2006. Though the issue raised was in the above terms, however, still the Government while answering the query besides opining that Submersible pumps below 5 HP are covered under Entry 71-A Schedule 'C' also opined that these are liable to be taxed @ 12.5% upto June 30, 2006 and @ 4% w.e.f. 01.07.2006. Opinion was expressed on the issue on which neither the clarification was sought nor any submissions made. Aggrieved against that, the appellant preferred appeal before the Haryana Tax Tribunal (for short 'the Tribunal'), who vide order dated 4.10.2011 dismissed the same. It is against the aforesaid order that the present appeal has been preferred by the Association.

4. In the other appeals, orders passed by the Tribunal have been challenged wherein for the period upto June 30, 2006 on submersible pumps upto 5 HP, tax has been levied.

5. Learned counsel for the appellant submitted that Schedule 'B' appended to the Act provides for description of goods which are tax free. Entry-1 in the aforesaid Schedule contains agricultural implements and irrigation equipments used for agricultural purposes. Sub entry 'D' therein provides for power implement and item No.9 contained therein provides for agricultural pumping sets of all kinds including submersible pumps. It also contains list of various components thereof. All the items mentioned in Entry No.9 are tax free. The submission is that the submersible pumps of all kinds mentioned in the entry included submersible pumps upto 5 HP, hence, are exempted from tax. It was being so understood and implemented by the authorities under the Act. Amendment was carried out in Schedule 'C' appended to the Act. Item No.71-A was added regarding submersible pumps upto 5 HP. The issue arose at that stage for which the appellant sought clarification. Before addition of Entry 71-A in Schedule 'C', there was no distinction with reference to capacity of pumping sets for the purpose of exemption. The parts of the pumping sets as have been mentioned in Entry 1(D)(9) of Schedule 'B' cannot be read to mean that submersible pumps upto capacity of 5 HP would be taxable.

6. It was further submitted that once same item is contained in two entries, the one more beneficial to the assessee is to be preferred. As the submersible pumps are mentioned in Entry 1(D)(9) of Schedule 'B' containing tax free items and also Entry 71-A of Schedule 'C' providing for taxable goods, the Entry contained in Schedule 'B' regarding submersible pumps is to be preferred.

7. It was further submitted that when the goods can be covered in a specific entry, there is no need to go to the residual entry. Onus is on the Revenue to establish that the goods fall in a particular entry for the purpose of taxability. If there is any doubt, the benefit is to go to the assessee. There is no scope for any intendment in a taxing statute.

8. In support of the arguments, reliance was placed upon CWP No. 14869 of 2006 titled as ***Excise and Taxation Officer Vs. M/s T.R. Solvent Oil Pvt. Ltd. and another*** decided on 24.9.2010 (P&H); ***Siemens India Limited Vs. The State of Gujarat***, 1984 (57) STC 1 (Gujarat); ***Engineering Traders Vs. The State of Uttar Pradesh and another,*** (1973) 31 STC 456 (Allahabad); ***Karnal Machinery Store Vs. The Assessing Authority, Karnal and others***, (1973) 31 STC 3 (P&H); ***Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India and others***, 1983 (13) E.L.T. 1566 (S.C.); ***Bharat Forge and Press Industries (P) Ltd. Vs. Collector of C.Ex.***, 1990 (45) E.L.T. 525 (S.C.); ***Commissioner of Central Excise, Calcutta Vs. Calcutta Springs Ltd.,*** 2008 (229) E.L.T. 161 (S.C.); Civil Appeal No. 8656 of 2015, ***State of Madhya Pradesh Vs. Marico Industries Ltd.***, Decided on 22.7.2016 (SC); ***Union of India Vs. Garware Nylons Ltd.*** 1996 (87) E.L.T. 12 (S.C.); and ***Hindustan Ferodo Ltd. Vs. Collector of Central Excise, Bombay***, 1997 (89) E.L.T., 16 (S.C.).

9. On the other hand learned counsel for the State submitted that Entry 1(D)(9) as contained in Schedule 'B' is to be read in totality. The items mentioned therein as parts are also to be considered. It clearly mentions about the electric/diesel pump sets of 5 HP and above. This has to be read with the pumping sets. Meaning thereby the pumping sets having capacity of 5 HP and above were exempted from tax upto June 30, 2006 and not below that. The only question raised before the Tribunal was regarding the status of taxability of submersible pumps w.e.f. 1.7.2006. Addition of 71-A in Schedule 'C' was made only on receipt of the representation of the association as earlier the pumping sets were being taxed @ 12.5%. The onus is not on the State rather it is on the assessees as they are trying to claim that the goods manufactured by them fall in Schedule 'B'.

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

11. Relevant entries in Schedules 'B' and 'C' are extracted below:

Schedule 'B'

Sr. No.	***Description of goods***
1	*Agricultural implements and irrigation equipments used for agricultural purposes as detailed below:-*
	D. Power implements *1-8 Non-relevant* *9 Agricultural pumping sets of all kinds including submersible pumps and sprinkler irrigation system equipments and drip irrigation system and their following components, namely:-* *(i) Control units* *(ii) Fertilizer applicator/injecting equipments* *(iii) Dripper/Emitter/Mixee/Sprinkler/Spinner* *(iv) Filteration units:- Mesh/Screen/Sand/Gravel* *(v) Distribution tube/Micro tube* *(vi) Built-in-Drip-in-Linear Low Density Polythylene Pipe* *(vii) Bi-pass tube* *(viii) Accessories like couplers, joints, bend sockets, pressure gauge, regulators etc.* *(ix) Valves*

	(x)	*Prime movers i.e. Electric/diesel pump set of 5 horse power and above with fitting*

Schedule 'C'

Sr. No.	***Description of goods***
	71 A Pump sets below 5 Horsepower.

xx xx xx xx

*(**Note 4:** Goods of the description contained in this Schedule shall be deemed to have been excluded from Schedule B.)*

Inserted vide SO 104/HA 6/2003/S. 59/2005, dated 29.12.2005 w.e.f. 29.12.2005."

12. The appellant in the present case filed application under Section 56(3) of the Act before the State Government seeking clarification on the following issue:

> *"Whether submersible pumps are covered under entry 71-A of Schedule C of the Haryana Value Added Tax Act, 2003 amended on 20.6.2006 with effect from 01.07.2006 vide Notification No. S.O. 58/HA/6/2003/S.59/2006."*

13. A perusal of the aforesaid question shows that the clarification was sought by the appellant on the issue whether the submersible pumps are covered under Entry 71-A of Schedule 'C' as amended on June 20, 2006 effective from 1.7.2006 as prior to that submersible pumps were mentioned only in Entry 1(D)(9) of Schedule 'B' (tax free goods). The government opined that the submersible pumps below 5 HP are covered under Entry 71-A of Schedule 'C' and liable to be taxed @ 4% w.e.f. 01.07.2006. Though no clarification was sought for the period prior thereto but still the government opined that upto June 30, 2006 the rate of tax will be @ 12.5%. It is the general rate of tax applicable to all the goods not specified in any entry.

The opinion of the government was challenged before the Tribunal. The full members of the Tribunal rejected the appeal.

14. What is required to be considered in the present set of appeals is taxability of submersible pumps upto 5 HP upto June 30, 2006 and thereafter.

15. As far as the period upto June 30, 2006 is concerned there is only one entry containing submersible pumps, the same is Entry 1(D)(9) in Schedule 'B', which provides for tax free goods. A perusal of the aforesaid entry shows that it is quite wide in application. It encompasses within it pumping sets of all kinds including submersible pumps and sprinkler irrigation system equipments and drip irrigation system and their specified components. Upto June 30, 2006 there was no other entry containing submersible pump. From a plain reading of the Entry 1(D)(9) in Schedule 'B' it is evident that initially complete systems i.e.

(i) pumping sets including submersible pumps;

(ii) sprinkler irrigation equipments;

(iii) Drip irrigation system,

have been mentioned.

Thereafter a list of components thereof has been provided. The components as provided in the list can be of use for any of the complete sets meant for the purpose of irrigation as mentioned in the Entry. The list of components cannot be said to be exhaustive in the sense that all different parts used for the complete set of agricultural equipments mentioned in the entry have not been provided. However, the exemption will be available to only those components as mentioned in the list if sold separately.

16. The case of the appellant is that the entry clearly includes pumping sets of all kinds including submersible pumps. Hence, even pumps upto 5 HP are included therein whereas the case set up by the State is that once item No. (x) in the list of components electric/diesel pumps set of 5 HP and above is mentioned, that would necessarily mean that the pumping sets only of that capacity would be tax free. In our view, the contention raised by learned counsel for the State is misconceived. The words as contained in the entry have to be given their plain meaning with no addition, substraction or intendment. Item No.(x) in the list of components is 'prime movers' i.e. Electric/diesel pump set of 5 HP and above with fitting. It is not complete pumping set. It is only one of the component for pumping set. Intention of the legislature is clearly evident that while exempting pumping sets, there was no limit prescribed regarding its capacity, whereas while granting exemption to the components thereof, the limit was prescribed in the case of prime movers. The exemption was available only to the electric/diesel pump sets of 5 HP and above. The entry has to be given its true meaning.

17. In ***Commissioner of Commercial Tax, U.P. v. M/s A.R. Thermosets (Pvt.) Ltd.***, 2016(8) SCALE 573, the issue under consideration before Hon'ble the Supreme Court was the rate of tax on bitumen emulsion. Bitumen is in solid form, whereas bitumen emulsion is in liquid form. Bitumen emulsion is a processed bitumen. It comes into existence when bitumen is treated with emulsifiers and other chemicals to attain a liquid form. The stand taken by the revenue was that the word "bitumen" should be given narrow meaning for the reason that the Legislature has not thought it appropriate to use the prefix or suffix like "all", in all forms or of all kinds. Bitumen used in the entry is in generic form. It would be erroneous not to cover a product, which is only a type or form of bitumen and retains all its essential characteristics. The contention was rejected as the entry did not suggest as to what is included or excluded. Bitumen emulsion was opined to be part of the entry containing 'bitumen', as it was found to be only one of the varieties of bitumen. The revenue's stand that residuary entry should be invoked for taxing bitumen emulsion was rejected, relying upon the principle that 'specific entry would override a general entry'. Reference was made to ***Collector of Central Excise, Shillong v. Wood Craft Products Ltd.***, (1995) 3 SCC 454 to opine that resort can be made to a residuary heading when by liberal construction specific Entry cannot cover the goods in question. In this case, electronic cash registers were found to be covered in the entry providing for cash register as one of the goods.

18. As far as the contention raised by learned counsel for the appellant regarding submersible pumps of the capacity upto 5 HP being exempted even after 1.7.2006 despite addition of Entry 71-A in Schedule 'C' is concerned, the contention is misconceived as Note:4 appended to Schedule 'C' clearly provides that the goods of the description contained in Schedule 'C' shall be deemed to have been excluded from Schedule 'B'.

19. Once it is clearly specified in Schedule 'C' itself that whatever contained therein is deemed to have been excluded from Schedule 'B', there is no scope for accepting the contention raised by learned counsel for the appellant that there are two competing entries one contained in Schedule 'B' and one contained in Schedule 'C' and one more beneficial to the assesses should be applied as the entries are mutually exclusive. No doubt submersible pumps are mentioned in Entry 1(D)(9) of Schedule 'B', however, with addition of Schedule 71-A in Schedule 'C' providing for taxability of pumping sets below 5 HP, these stood excluded from entry 1(D)(9) of Schedule 'B'. Hence, there cannot be any dispute regarding taxability thereof after 01.07.2006.

20. As far as the contention raised by learned counsel for the State regarding reduction of tax from 12.5% to 4% on mono block pumps on representation made by association is concerned, from the office file produced by her in Court, it is evident that the matter was considered in the 2nd meeting of the State Level Consultative Committee held on 7.01.2006.

The representation was by Manufactures' Association, Faridabad (the appellant in the present case is Haryana Pump Manufacturers Association, Karnal). The demand raised was for reduction of rate of tax from 12.5% to 4%. The proposal clearly suggested that the mono block and other pumping sets were tax free in Haryana while these were being taxed @ 4% in Punjab and Delhi as per E.C. approved rate. The exemption was available to agricultural pumping sets alone. The other pump sets were being taxed @ 12.5%. The proposal was to reduce the rate of tax on non-agricultural mono block and submersible pumps and parts thereof to bring it at par with the rates of taxes in the neighbouring States.

21. In the case in hand the dispute upto 30.6.2006 is not pertaining to pumping sets which are not for agricultural use. Entry 1(D)(9) in Schedule 'B' talks about only agricultural implements and pumping sets are also defined as agricultural pumping sets of all kinds and the issue being considered herein is only regarding taxability of agricultural pumping sets and not other pumping sets. However, the position was changed after addition of Entry 71-A in Schedule 'C'. The proposal in the meeting which was accepted was to tax all types of pumping sets below 5 HP at uniform rate of 4%. The relevant part of the proposal is extracted below:

> *"As seen from the table above, mono block and other pump sets are tax free in Haryana while taxable @ 4% Punjab and Delhi as per EC approved rate. However, in Haryana this exemption is available to agricultural pump sets alone. Thus while agricultural pump sets are exempt in Haryana, other pump sets are taxable @ 12.5% while these are taxable @ 4% in Punjab and Delhi. It is therefore, proposed that rate of tax on non-agricultural centrifugal, mono block and submersible pumps and parts thereof may be reduced to 4%. As pump sets for industrial use can be purchased on payment of tax @ 4% and those for agriculture use are exempt from tax, the reduction in rate of tax will affect small segment of market only i.e. like those used in homes etc. and financial implications of the proposal will not be very significant.*
>
> *It may be further added that it would be difficult to enforce a rate of tax on a commodity based upon user principle. There is no mechanism to check whether a pump is being sold for agricultural purposes or non-agricultural purposes. So it appears advisable either to tax all types of pump sets at a uniform rate of 4% or if the Government does not wish to tax pump sets for agricultural purposes at all, then to exempt pump sets of 5 HP and above from tax and tax pump sets of lower capacity which are not generally used for agricultural purposes @ 4%."*

22. A perusal of the aforesaid note shows that it noticed that agricultural pump sets were exempted from payment of tax in Haryana whereas other pump sets were taxed @12.5%. On the other hand, tax on such pumps in the neighbouring State was 4%. It was in the light of these facts that the amendment was carried out while adding Entry 71-A in Schedule 'C' taxing pump sets below 5 HP uniformly. It was for the reason that in agriculture normally the pump sets above 5 HP capacity are used.

23. For the reasons mentioned above, in our opinion, submersible pump sets used for agricultural purposes fall in Entry 1(D)(9) of Schedule 'B' upto June 30, 2006, hence tax free. From 1.7.2006 onwards pump sets below 5 HP capacity will fall in Entry 71-A in Schedule 'C', hence will be taxable irrespective of its end use. The substantial questions of law are answered accordingly.

24. Before parting with the judgment, this Court would like to observe that the Secretary of the Department concerned should have limited his opinion only on the issue it was sought and should not have travelled beyond that unless the issue is specifically raised at the time of hearing by the parties and on which clarification was sought.

25. The appeals are disposed of.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 73 OF 2011

S. R. FOILS AND TISSUE LTD
Vs
STATE OF HARYANA AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

27th October, 2016

HF ▶ Assessee

Paper napkins fall under category of paper in schedule C and not under residual entry.

ENTRIES IN SCHEDULE – PAPER NAPKINS – APPELLANT MANUFACTURING PAPER NAPKINS, KITCHEN WIPES ETC. CLARIFICATION SOUGHT REGARDING RATE OF TAX – HELD TO BE FALLING UNDER RESIDUAL ENTRY AND NOT UNDER SCHEDULE C AS CONTENDED BY APPELLANT – APPEAL BEFORE HIGH COURT – HELD: ENTRY 57 OF SCHEDULE C CONTAINS PAPER, PAPER BOARD AND NEWSPRINT – NO INCLUSION OR EXCLUSION MENTIONED IN IT – THEREFORE, SAID GOODS WOULD FALL UNDER SCHEDULE C THERE BEING NO COMPETING ENTRY – RESIDUAL ENTRY IS TO BE INVOKED WHEN AFTER LIBERAL CONSTRUCTION TO THE SPECIFIC ENTRY, THE PRODUCT CANNOT BE FOUND FORMING PART THEREOF – *ENTRY 57 , SCHEDULE C, HVAT ACT, 2003*

Facts:
The Appellant is engaged in business of manufacture and sale of tissue paper, napkin, toilet paper rolls, kitchen wipes and facial tissues. On seeking clarification, it was opined that on the basis of its end use the said goods were to fall under the Residual entry and were taxable @12.5% instead of falling under schedule C as contended by the appellant. The Tribunal upheld the order of the Commissioner. An appeal is thus filed before the High court.

Held:
Entry 57 in schedule C only prescribes Paper, Paper Board and Newsprint. It doesn't provide for any inclusions or exclusions. It does not provide for any user test. The goods in question do not lose their characteristic as a paper. There is no competing entry and the Residual Entry can be invoked only when with liberal construction to the specific entry, the product could not be forming part thereof. Thus the said goods fall under schedule C. The appeal is disposed of.

Cases referred:
- *Cochin Cadalas (P) Ltd. v. State of Kerala, (2008) 16 VST 319 (Ker)*
- *Commissioner of Sales Tax v. Agarwal & Co., 1983 (12) ELT 116 (Bom.)*
- *Standard Pencils (P) Ltd. v. Collr. of C. Ex., Madras, 2002 (145) ELT 278 (SC)*
- *Porritts & Spencer (Asia) Ltd. v. State of Haryana, (1978) 42 STC 433 (SC)*
- *Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India and others, 1983 (13) ELT 1566 (SC)*
- *Goyal Motor Parts v. State of Punjab and another, (2011) 38 VST 159*

- *Commissioner of C. Ex., Meerut v. Maharshi Ayurveda Corpn. Ltd., 2006 (193) ELT 10 (SC)*
- *State of Uttar Pradesh and another v. M/s Kores (India) Ltd., (1976) 4 SCC 477*
- *State of Orissa v. Gestetner Duplicators (P) Ltd., (1974) 33 STC 333 (Orissa)*
- *Commissioner of Sales Tax, U. P. v. Masneill and Barry Ltd., Kanpur, AIR 1986 SC 386*
- *STA No. 36 of 2010-- 3M India Limited v. State of Karnataka, decided on 30.8.2012*
- *STRP Nos. 389-435 of 2012-- M/s Raman Boards Ltd. v. The State of Karnataka, decided on 20.8.2014*
- *Mukesh Kumar Aggarwal & Co. v. State of Madhya Pradesh and others, (1988) 68 STC 324*
- *Annapurna Carbon Industries Co. v. State of Andhra Pradesh, (1976) 37 STC 378*
- *Commnr. of Central Excise, Cochin v. M/s Mannampalakkal Rubber Latex Works, 2007 (217) ELT 161*
- *Civil Appeal No. 2650 of 2016--Commissioner of Commercial Tax, U. P. v. M/s A. R.Thermosets (Pvt.) Ltd., decided on 6.9.2016*
- *Kilburn & Co. Ltd. v. Commissioner of Sales Tax, U. P., Lucknow, (1973) 31 STC 625*
- *Bharat Petroleum Corporation Ltd. v. N. R. Vairamani, (2004) 8 SCC 579*
- *Inbasegaran and another v. S. Natarajan (Dead) thr. Lrs., 2014(4) RCR (Civil) 872*
- *Collector of Central Excise, Shillong v. Wood Craft Products Ltd., (1995) 3 SCC 454*

Present: Mr. Amar Pratap Singh, Advocate for the appellant.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

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RAJESH BINDAL, J.

1. The present appeal was admitted for consideration of following substantial question of law on 27.1.2012, arising out of the order dated 29.7.2011, passed by Haryana Tax Tribunal at Chandigarh (for short, 'the Tribunal') in Sales Tax Appeal No. 105 of 2010-11:

> *"Whether the tissue paper would be covered by Entry 57 Schedule 'C' of the Haryana Value Added Tax Act, 2003, which is assessable at the rate of 4% or it is assessable under the Residue Entry at the rate of 12.5% ?"*

Arguments of the appellant

2. Learned counsel for the appellant submitted that the appellant is engaged in the business of manufacture and sale of tissue paper, napkin, toilet paper rolls, kitchen wipes and facial tissues. All along, the goods being manufactured by the appellant were being considered to be part falling in Entry 57 of Schedule 'C' of the Haryana Value Added Tax Act, 2003 (for short, 'the Act') leviable to tax @ 4%. The appellant filed application dated 19.11.2009 under Section 56(3) of the Act to the State Government for clarification, as to under which Entry the aforesaid goods being manufactured by the appellant would fall and the rate of tax leviable thereon. The Financial Commissioner and Principal Secretary to the Government of Haryana, Excise and Taxation Department, vide order dated 18.1.2010, opined that the goods being manufactured by the appellant were not forming part of Entry 57 of Schedule 'C' of the Act, hence, would be taxable @ 12.5%, being unclassified goods. The order was challenged before the Tribunal. The Tribunal, vide order dated 29.7.2011, dismissed the appeal. The order is under challenge before this court.

3. Learned counsel for the appellant submitted that firstly the Financial Commissioner and Principal Secretary to Government of Haryana, Excise & Taxation Department had gone wrong in observing that the end use of the product is to be seen for the purpose of its classification. On his own imagination, he had added words in the Entry which, in fact, do not exist. Reference to Entry in Central Excise Tariff was totally un-called for. Even the Tribunal had gone wrong in taking into consideration the purpose for which the product is being used. It is no where in the Entry, whereas in certain entries, wherever the Legislature wanted to put a condition regarding use of the product, as mentioned in the Entry, has specifically been mentioned therein. Reliance upon the judgment of Karnataka High Court in Super Market v. State of Karnataka, (1997) 104 STC 15 is totally misplaced for the reason that entries in

Karnataka Sales Tax Act, 1957 are totally different. One of the Members of the Tribunal had given different reasoning for reaching to the same conclusion, but even that cannot be sustained in judicial scrutiny. The Entry is quite wide. It does not specify any particular use of the product mentioned therein, namely, 'paper'. 'Paper' has multiple uses and with the change in time and technology, it will continue to have more uses. Same product may be used by different persons for different purposes, hence, use cannot be a determinative factor for the purpose of taxation or to find out as to whether the product falls in Entry 'A" or Entry 'B'. There is no scope for intendment in a taxing statute. Words have to be given their purposive meaning. Residuary Entry is to be invoked only if the product does not fall in the specific Entry. Heavy onus in that case is on the State. Common parlance test is to be applied with reference to the persons, who are dealing in the product. As per the market survey conducted by the appellant, which was placed before the authorities, the goods manufactured by the appellant are treated as 'paper'. To limit the product 'paper', as mentioned in the Entry, only to the extent of use for writing or printing, drawing, packing or decorating or wall paper is not legally sustainable, as Entry 57 of Schedule 'C' of the Act does not specify any such uses.

4. In support of his arguments, reliance was placed upon Division Bench judgment of Kerala High Court in ***Cochin Cadalas (P) Ltd. v. State of Kerala***, ***(2008) 16 VST 319 (Ker)***, where craft paper was held to be included in the Entry merely mentioning paper. Reliance was also placed upon the judgment of Bombay High Court in ***Commissioner of Sales Tax v. Agarwal & Co., 1983 (12) ELT 116 (Bom.)***, where skimmed milk powder was held to be falling in the Entry providing for "milk whole of separated or reconstituted." It was given purposive interpretation. Judgment of Hon'ble the Supreme Court in ***Standard Pencils (P) Ltd. v. Collr. of C. Ex., Madras, 2002 (145) ELT 278 (SC)*** was relied upon where pencil form of 'Kum Kum' was held to be falling in the Entry mentioning 'Kum Kum'. It was not held to be limited to 'Kum Kum' in powder, liquid or sticker form. Reference was also made to judgment of Hon'ble the Supreme Court in ***Porritts & Spencer (Asia) Ltd. v. State of Haryana, (1978) 42 STC 433 (SC)***, where dryer felts were held to be textile. In support of the plea that end use is not relevant, reference was made to the judgment of Hon'ble the Supreme Court in ***Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India and others, 1983 (13) ELT 1566 (SC)*** and Division Bench judgment of this court ***Goyal Motor Parts v. State of Punjab and another, (2011) 38 VST 159***.

5. It was further submitted that if the goods can be covered in the Entry specifically providing for a product by giving liberal construction, the residuary Entry providing for higher rate of tax should not be resorted to. In that event, heavy onus is on the revenue. In support, reliance was placed upon ***Commissioner of C. Ex., Meerut v. Maharshi Ayurveda Corpn. Ltd., 2006 (193) ELT 10 (SC)***.

Arguments of the State

6. In response, learned counsel for the State submitted that a plain reading of the Entry would give a meaning that word 'paper' used therein has reference to writing or printing, drawing, packing or decorating or wall paper and none else. The foiled paper being manufactured by the appellant will not fall in the Entry by any stretch of imagination. While relying upon the judgment of Hon'ble the Supreme Court in ***State of Uttar Pradesh and another v. M/s Kores (India) Ltd., (1976) 4 SCC 477***, it was submitted that carbon paper in that case was not held to be 'paper' and Hon'ble the Supreme Court opined that 'paper' is understood to mean a substance which is used for bearing writing, or printing, or for packing, or for drawing on, or for decorating, or covering the walls. The product being manufactured by the appellant does not fall in any of the aforesaid categories, hence, will not be covered under the Entry. In ***State of Orissa v. Gestetner Duplicators (P) Ltd., (1974) 33 STC 333 (Orissa)***, stencil paper was not held to be 'paper'. In ***Commissioner of Sales Tax, U. P. v. Masneill and***

Barry Ltd., Kanpur, AIR 1986 SC 386, 'ammonia paper' and 'ferro paper' was not held to be forming part of the Entry, which provided for 'paper' other than hand-made paper. The judgment of Karnataka High Court in ***Super Market's*** case (supra) is clearly against the appellant, as in that case even 'tissue paper' was held to be not falling in the Entry providing for 'paper'. Regarding interpretation of entries with reference to paper or its products, reference was further made to judgments of Karnataka High Court in ***STA No. 36 of 2010-- 3M India Limited v. State of Karnataka***, decided on 30.8.2012 and ***STRP Nos. 389-435 of 2012-- M/s Raman Boards Ltd. v. The State of Karnataka***, decided on 20.8.2014. She further submitted that the judgments sought to be relied upon by the appellant are distinguishable on facts. While mentioning the goods in different Schedule, their use is always considered. It is on that basis only the rates of tax are determined.

Reply by the appellant

7. In response, learned counsel for the appellant submitted that none of the judgments sought to be referred to by learned counsel for the State is relevant. Much water has flown ever since the matter was decided by Hon'ble the Supreme Court in ***M/s Kores (India) Ltd.'s*** case (supra), where the assessment year involved was 1956-57. With the change in technology, how the paper is now understood, and its multiple uses has undergone a dramatic change, otherwise the issue therein was whether carbon paper was 'paper' or not. The words used by Hon'ble the Supreme Court in the judgment are not to be read as a statute, once the uses to which 'paper' can be put to have not been mentioned in the Entry. In ***M/s Raman Boards Ltd.'s*** case (supra), the goods under consideration before the court were 'paper products' and not 'paper' as such, hence distinguishable.

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

Discussion

9. Though at the time of admission, this court had framed the issue, as has been reproduced in paragraph No. 1 in the judgment, however, the same needs to be re-framed keeping in view the issue, which was raised by the appellant before the Financial Commissioner and Principal Secretary to the Government of Haryana, Excise and Taxation Department, in the application filed by it under Section 56(3) of the Act. The same is as under:

> *"Whether the tissue papers and its forms, namely, tissue paper, napkin, toilet paper rolls, kitchen wipes and facial tissues fall under Entry 57 of Schedule C of the Act ?"*

10. The relevant Entry under consideration in the present appeal are extracted below:

" SCHEDULE C

[See sub-clause (iii) of clause (a) of sub-section (1) of section 7]

Sr. No.	*Description of goods*

xx xx xx

57. Paper, paper board and newsprint"

11. A clarification was sought by the appellant by filing application under Section 56(3) of the Act to the Financial Commissioner and Principal Secretary to the Government of Haryana, Excise & Taxation Department. Vide order dated 18.1.2010, the Financial Commissioner opined that the Entry uses the generic term 'paper', hence, the items covered therein would be craft paper, news print paper etc. The products being manufactured by the appellant are meant for specific purpose, hence, could not be included. Reference was also made to Central Excise Tariff entries. The opinion expressed by the Financial

Commissioner and Principal Secretary to the Government of Haryana was upheld in appeal filed by the appellant before the Tribunal vide order dated 29.7.2011. Four out of five Members of the Tribunal, while relying upon the judgment of Karnataka High Court in ***Super Market's*** case (supra), where the product, classification of which was the issue, was regarding paper napkin. It was found to be not forming part of the Entry containing 'paper', but was found to be forming part of the Entry containing toilet articles.

Case law

12. In ***Mukesh Kumar Aggarwal & Co. v. State of Madhya Pradesh and others, (1988) 68 STC 324*** and ***Annapurna Carbon Industries Co. v. State of Andhra Pradesh, (1976) 37 STC 378***, Hon'ble the Supreme Court opined that "user test", i.e., the test, the use to which the goods can be put, can also be considered in interpreting an item in taxing statute. However, this rule of interpretation has got its own limitations. Certain goods may be put to different uses by different persons. That cannot entitle the revenue to apply different rules of tax to the sales of the very same product by different dealers depending on the use to which they will be put by the purchasers. The particular use to which an article can be applied in the hands of a special consumer is not determinative of the nature of the goods.

13. In ***Commnr. of Central Excise, Cochin v. M/s Mannampalakkal Rubber Latex Works, 2007 (217) ELT 161***, Hon'ble the Supreme Court opining on an Entry under the Central Excise Tariff Act, 1985, opined that there are two types of tests – one is test of 'composition' and one is test of 'end-user'. Generally in matters of classification, 'composition test' is an important test and 'end-user test' would apply only if the Entry says so.

14. The aforesaid judgment was cited with approval in latest judgment of Hon'ble the Supreme Court in ***Civil Appeal No. 2650 of 2016--Commissioner of Commercial Tax, U. P. v. M/s A. R.Thermosets (Pvt.) Ltd.***, decided on 6.9.2016.

15. In ***M/s Kores (India) Ltd.'s*** case (supra), the assessment year involved in the judgment was 1956-57. It was a case under U. P. Sales Tax Act, 1948. The issue under consideration before Hon'ble the Supreme Court was "whether carbon paper is paper falling within the purview of 'paper'.....?" In considering the aforesaid issue, Hon'ble the Supreme Court referred to various dictionaries for meaning of word 'paper'. It was noticed that word 'paper' is understood as meaning a substance which is used for bearing writing, or printing, or for packing, or for drawing on, or for decorating, or covering the walls. Hon'ble the Supreme Court went on to examine what carbon paper was. It was manufactured by coating the tissue paper with a thermosetting ink (made to a liquid consistency) based mainly on wax, non-drying oils, pigments and dyes by means of a suitable coating roller and equalising rod and then passing it through chilled rolls. It can be used only between two sheets of paper in order to reproduce on the lower sheet that what is written or typed on the upper sheet, i.e., making carbon copy. Referring to the judgments of different High Courts dealing with 'ammonia paper and ferro paper' ***[Kilburn & Co. Ltd. v. Commissioner of Sales Tax, U. P., Lucknow, (1973) 31 STC 625]*** and 'stencil paper' [***Gestetner Duplicators (P) Ltd.'s*** case (supra)], it was opined that carbon paper cannot be said to be a paper. The word 'paper' as such was not defined in the Act. The definition, as referred to in various dictionaries, was not exhaustive as it has used the word 'etc.' towards end.

16. The consistent opinion expressed by Hon'ble the Supreme Court is that the observations made in a judgment must be read in the context in which they appear to have been stated. The judgments are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary to embark into lengthy discussions, which is meant to explain and not to define. Judges interpret words of statutes; their words are not to be interpreted as statues. Reference can be made to judgments of Hon'ble the Supreme Court in

Bharat Petroleum Corporation Ltd. v. N. R. Vairamani, (2004) 8 SCC 579 and ***Inbasegaran and another v. S. Natarajan (Dead) thr. Lrs., 2014(4) RCR (Civil) 872***.

17. The judgment of Karnataka High Court in ***Super Market's*** case (supra), where the issue under consideration was rate of tax applicable to paper napkin. The assessee claimed that it was covered under Entry at Sr. No. 125, whereas the department claimed that it was covered under Entry at Sr. No. 65. Both the entries read as under:

> *"Sl. No. 65.- Toilet articles except toilet soaps and such other toilet articles as may be specified by the State Government by Notification in the Official Gazette.*
>
> *xx xx xx*
>
> *Sl. No. 125.- All kinds of paper including arbon paper, blotting paper, water proof paper, PVC coated paper, ferro paper, ammonia paper, stencil paper but excluding paper falling under serial number 55, pulp boards, art boards, duplex boards, triple boards, card boards, corrugated boards, and the like, cellophane."*

18. 'Paper napkin' was found to be covered under Entry at Sr. No. 55 containing toilet articles. Reference was made to judgment of Hon'ble the Supreme Court in ***M/s Kores (India) Ltd.'s*** case (supra). It was a case of two competing entries for classification.

19. In ***Cochin Cadalas (P) Ltd.'s*** case (supra), the issue under consideration before Kerala High Court was as to whether 'craft paper' was paper falling in Entry 94(i) or will be covered under Entry 94(ii) of the First Schedule to the Kerala General Sales Tax Act, 1963, which are extracted below:

Sr. No.	Description of goods	Point of levy	Rate of tax
94(i)	Paper	At the point of first sale in the State by a dealer who is liable to tax under Section 5	4.00%
94(ii)	Newsprint, cardboard, paper products, note books and printed materials including greeting cards	Do	5.00%

20. Referring to the judgment of Hon'ble the Supreme Court in ***Mukesh Kumar Aggarwal Co.'s*** case (supra) that 'user test', though may be logical but inconclusive, it was opined that when a generic name is used in the Entry without any further clarification regarding inclusion or exclusion in the expression 'paper', it shall include all kinds of paper. The other Entry defining different kinds of paper would automatically be excluded from the first Entry. It was further opined therein that in a taxing statute, there is no room for any intendment. The words must be given true meaning. Relevant paras thereof are extracted below:

> *"..... Item 94 of the First Schedule to the Act is in two parts. Item 94(i) speaks of 'paper'. It is appropriate to state that the normal legislative practice whenever such expressions are used in the entries attached to the Schedule to the Act, is to use the expression immediately after using generic name of the commodity, 'paper of all kinds', but, whenever they included or excluded certain types of paper, it was made clear by appropriate provision. In the absence of any inclusion or exclusion in the expression "paper", it can be said that it included all kinds of paper. Sub-entry (ii) in item No. 94 of the First Schedule to the KGST Act, speaks of newsprint, cardboard, paper products, note books and printed materials including greeting cards. Therefore, such of those*

commodities which are enumerated in sub-entry (ii) of entry 94 of the First Schedule to the KGST Act are excluded from sub-entry (i) of entry 94 of the Act, which speaks of paper.

It is now well-settled that in a taxing statute, there is no room for any intendment and regard must be had to the clear meaning of the words....."

[Emphasis supplied]

It was also a case of two competing entries.

21. In ***M/s A. R. Thermosets (Pvt.) Ltd.'s*** case (supra), the issue under consideration was the rate of tax on bitumen emulsion. Bitumen is in solid form, whereas bitumen emulsion is in liquid form. Bitumen emulsion is a processed bitumen. It comes into existence when bitumen is treated with emulsifiers and other chemicals to attain a liquid form. The stand taken by the revenue was that the word "bitumen" should be given narrow meaning for the reason that the Legislature has not thought it appropriate to use the prefix or suffix like "all", in all forms or of all kinds. Bitumen used in the entry is in generic form. It would be erroneous not to cover a product, which is only a type or form of bitumen and retains all its essential characteristics. The contention was rejected as the entry did not suggest as to what it is included or excluded. Bitumen emulsion was opined to be part of the entry containing 'bitumen', as it was found to be only one of the varieties of bitumen. The revenue's stand that residuary entry should be invoked for taxing bitumen emulsion was rejected, relying upon the principle that 'specific entry would override a general entry'. Reference was made to ***Collector of Central Excise, Shillong v. Wood Craft Products Ltd., (1995) 3 SCC 454*** to opine that resort can be made to a residuary heading when by liberal construction specific Entry cannot cover the goods in question. In this case, electronic cash registers were found to be covered in the entry providing for cash register as one of the goods.

22. If the case of the appellant is considered in the light of enunciation of law, as referred to above, Entry 57 in Schedule 'C' only prescribes 'paper', 'paper board' and 'newsprint'. It does not provide for any inclusions or exclusions. It further does not provide for any user test. The word 'paper' used in the Entry is in generic form, which will include all types of paper, which has its essential characteristics. It is not in dispute that even the tissue paper, napkin, toilet paper rolls etc. retain the essential characteristics of paper. It is only that it is in different strength and is used for different purposes. There is no competing entry to find out whether product falls in entry 'A' or 'B'. The residuary entry is to be invoked in case, with liberal construction to the specific entry, the product could not be found to be forming part thereof.

23. For the reasons mentioned above, the substantial question of law, as referred to above, is answered in favour of the appellant and against the revenue.

24. The appeal stands disposed of accordingly.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 7453 OF 2003

KAUR SAIN SPINNERS LTD.
Vs
STATE OF PUNJAB AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

10th November, 2016

HF ▶ Assessee

Benefit accrued to a person cannot be revoked when petitioner invested substantially on the basis of promised benefit of exemption on the principles of Promissory Estoppel.

PROMISSORY ESTOPPEL – EXEMPTION NOTIFICATION – NEW INDUSTRIAL POLICY ISSUED IN 1996 GRANTING EXEMPTION TO INDUSTRIES – EXEMPTION GRANTED TO PETITIONER COMPANY – HUGE STEPS TAKEN IN THE DIRECTION OF SETTING UP OF UNIT TILL YEAR 2002 – NOTIFICATION DATED 17/6 2002 AND 21/10//2002 ISSUED TO THE DETRIMENT OF PETITIONER WHEREBY IT WAS LAID DOWN THAT NO EXEMPTION WAS TO BE GRANTED TO UNITS COMING INTO PRODUCTION AFTER 30/6/2002- WRIT FILED – HELD : PROMISSORY ESTOPPEL TO BE APPLIED – ENOUGH STEPS TAKEN BY PETITIONER TO SET UP UNIT ON BASIS OF PROMISE MADE BY STATE TO GRANT EXEMPTION – PRODUCTION COMMENCED SOON AFTER FOUR MONTHS OF SPECIFIED DATE OF 30/6/2002 - BENEFIT NOT BE WITHDRAWN BY ISSUING SUBSEQUENT NOTIFICATIONS – NO LACK OF EFFORT SEEN ON PART OF PETITIONER – THEREFORE, BENEFIT UNDER THE NEW INDUSTRIAL POLICY AND NEW INCENTIVES CODE TO BE GRANTED - WRIT ALLOWED - *PUNJAB INDUSTRIAL INCENTIVES CODE UNDER THE INDUSTRIAL POLICY, 1996.*

Facts

The petitioner is incorporated with the objective to carry on business as manufacturer, processor, dealer, buyer seller of hosiery goods and knitting yarn and fabrics of various kinds. The state had notified 'New Industrial Policy 1996' offering fresh incentives to industries. 'Incentives code' was also set out for implementation of the scheme. The petitioner- company was incorporated in 1997 and obtained a certificate of commencement of business in that year. It acquired land and had applied for grant of industrial licence which was granted in 1998.Loan was sanctioned in 2002. Order for supply of machinery and setting up of plant was placed in 2002. Most of construction work was completed in 2002.Registration under CST act and PGST Act was sought. The validity of letter of intent was extended from upto 2002.

However, a notification was issued in 26/4/2000 making amendments in incentives code as per which exemption was to be granted if required steps were taken by 30/4/2002.Subsequently, though confirming eligibility of grant of exemption at an earlier date, the petitioner was informed that as per notification dated 17/6/2002 certain amendments were made to notification dated 26/4/2002 as per which an additional condition was imposed that the unit

was required to come into production by 30th June, 2002.There was no such condition of commencing business by a particular date to be eligible for exemption before. The petitioner filed representations which were rejected. As per Notification dated 12/9/2002 no sales tax based incentives were to be granted to units which came into production after 30/6/2002.

Hence, a writ is filed in this regard praying for quashing of such notifications and letters declaring the company ineligible for exemption.

Held:

It is clear that the petitioner had made substantial progress towards completion of the project before the issuance of notification dated 17/6/2002 and 12/9/2002. Further, it is evidenced by the fact that shortly thereafter it was able to commence its production on 21/10/2002 and within four months of date specified i.e. 30/6/2002.

The petitioner irretrievably altered its position in pursuance of the promise of the government and made substantial investment before the notification. They could not operate in detriment and the petitioner could not be denied the promised benefit.

It is not possible to agree that the petitioner took no timely steps to set up the unit. On the ground of Promissory Estoppel, the petitioner is to be granted benefit under the industrial policy, 1996, incentives code, 1996. The respondents are directed to reconsider the claim of the petitioner for grant of sales tax exemption as per the industrial policy 1996 and notification dated 30/4/2000

Cases referred:

- *Mahabir Vegetable Oils Pvt Ltd. and another v. State of Haryana and others, (2006) 3 SCC 620*
- *Manuelsons Hotels (P) Ltd. x. State of Kerala, (2016) 6 SCC 766*
- *Devi Multiplex and another v. State of Gujarat and others, (2015) 9 SCC 132*
- *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409*
- *Ashoka Smokeless Coal India (P) Ltd. v. Union of India, (2007) 2 SCC 640*
- *State of Bihar v. Kalyanpur Cement Ltd., (2010) 3 SCC 274*
- *MRF Ltd. v. CST, (2006) 8 SCC 702*
- *S.V.A. Steel Re-Rolling Mills Ltd. and others v. State of Kerala and others, (2014) 4 SCC 186*

Present: Mr. Sandeep Goyal, Advocate for the petitioner.
Mr. Piyush Bansal, DAG, Punjab.

******

RAJESH BINDAL, J.

1. The petition has been filed praying for directions that notifications dated 17.06.2002 and 12.09.2002 (Annexures P-17 and P-20) be treated as inoperative qua the petitioner-Company on the doctrine of promissory estoppel and that the respondent -State of Punjab be restrained from going back on its promise of providing sales-tax exemption to the petitioner Company as per the Industrial Policy, 1996 and subsequent notifications.

2. The petitioner has also prayed for quashing the letters dated 24.09.2002 (Annexure P-19) and 04.12.2002 (Annexure P-21), whereby the petitioner company has been informed that it is ineligible for grant of sales tax exemption.

3. The petitioner is a limited company incorporated with the objective to carry on business as manufacturer, processor, dealer, distributor, agent, buyer, seller, importer and exporter of hosiery goods, knitting yam and fabrics of various kinds.

4. The Government of Punjab, Department of Industries had notified a Package of Incentives-1992 on 28.09.1992 for attracting fresh investment to boost growth of industries in the State. As these incentives did not yield the desired results, the State on 20.03.1996 notified

'New Industrial Policy, 1996' (for short "Industrial Policy, 1996") offering fresh incentives to the industries. To implement the scheme of incentives set out in the 'Industrial Policy 1996', the State Government on 01.06.1996 notified rules known as 'Punjab Industrial Incentives Code under the Industrial Policy 1996' (for short "Incentives Code, 1996"). The eligibility, quantum of entitlement and procedure for grant of sales-tax exemption/deferment is prescribed in this Code as under:-

> ***"3. Commencement and applicability***
>
> *3.1 These rules shall come into force with effect from 1st April, 1996.*
>
> *3.2 These rules shall be applicable to such of the units which come into production for the first time, on or after 1st April, 1996 or undertake expansion/modernisation after 1.4.1996.*
>
> ***5. Eligibility for incentives***
>
> *The Incentives shall be granted to the units set up in A' and B' category area, provided that no incentives shall be allowed in B' category areas to the industrial units that are included in Annexure-II & in A' category areas to the Industrial Units that are included in Annexure-III.*
>
> *5.1 Self financed units that are set up without mobilising funds from the Capital market through issue of shares, debentures, bonds, etc. shall not be eligible for any incentive.*
>
> *However, self financed units which only avail of working capital limits from a scheduled bank shall be eligible for incentives only if their project report is appraised by the bank and the fixed capital investment made by them is certified by it.*
>
> *5.2 Those units which do not have their own land and*
>
> *building, incentive would be allowed, if such units have lease/rent deed for land/building occupied by them for a period not less than 10 years.*
>
> ***6.3 Interest Subsidy or Sales Tax Exemption or Sales Tax Deferment:***
>
> *Subject to the provisions of rule 5, a unit shall opt in form III(i) for availing either interest subsidy or Sales tax Exemption or Sales Tax deferment. The option shall be submitted to the District Officer, within six months of commencement of commercial production.*
>
> *I) Interest Subsidy*
>
> *X X X*
>
> *II) Exemption from Sales Tax or Deferment of Sales Tax:*
>
> ***a)** Eligibility:*
> *Subject to provision of rule 5, exemption/deferment from Sales-Tax shall be admissible to an industrial unit, registered as a dealer under Punjab General Sales Tax/Central Sales Tax Act, provided the unit has opted to avail Sales Tax exemption or deferment.*
> *Existing Small Scale Unit undergoing expansion in terms of rule 2.5, shall also be subject to provision of rule 5, eligible for Sales Tax exemption or deferment.:*
> ***b)** Quantum of entitlement:*

For calculating the entitlement of the unit to Sales Tax exemption/deferment, Punjab/Sales Tax Central Sales Tax and Purchase Tax, wherever applicable shall be taken into account.
The amount of Sales Tax exemption/deferment to which a unit is entitled shall be calculated with reference to the following table:-

Area Category	*Quantum of benefit*	*Total time limit within which concession shall be available from the date of commencement of commercial production*
"A"	*300% of FCI*	*120 months*
"B"	*150% of FCI*	*84 months*

In case of exemption, the quantum of benefit shall be worked out on additional fixed capital investment made for expansion.

The amount of Sales Tax collected and retained by the unit under the deferment scheme shall be repaid by the unit to the Sales Tax Department in three equal annual installments in the 11th, 12th and 13th years or 8th, 9th and 10th year from the date of commencement of benefit as per applicability.

xxxxxxxxxxxxx

c) *Procedure:*

i) *The applicant unit would apply to the District*

Officer within six months from the date of starting commercial production in form T-I alongwith the following documents.

- *Registration Certificate with the department of industries or any other competent authority, if applicable.*
- *Attested copy of conveyance deed/lease/rent deed of the land/building under the unit, if applicable.*
- *Sales Tax Registration Certificate.*
- *Form "A" issued by Registrar of Firms and Societies/Special Power of Attorney/copy of resolution by the Board, whichever is applicable.*
- *Certificate regarding FCI as appraised by the financial institution/scheduled bank, ii) General Manager, District Industries Centre or a Gazetted Officer nominated by him will receive the application.*

ii) *The application would be checked then and there are deficiencies, if any, would be pointed out to the applicant in writing on the spot. The applicant would also be given a definite time period not exceeding eight weeks to rectify the deficiencies so pointed out.*

iv) *In case the deficiencies are not removed within the specified time as mentioned above, the claim would be filed by the General Manager, under intimation to the party through a Registered AD, a copy of which would be sent to the Directorate.*

v) *The District Officer, on verifying the complete application so submitted and satisfying himself regarding the genuineness of the claim, shall issue a certificate of the eligibility within 15 days in form T-II for claiming this benefit from the Department of Excise & Taxation*

7. Incentives to Large & Medium Units

7.1 Investment Incentive (Capital Subsidy)

Subject to the provisions of Rule 5, new Large & Medium units sat up only in A' category areas as mentioned in Annexure-I, shall be entitled to Investment Incentive @ 30% of Fixed Capital Investment subject to maximum of Rs.50.00 lacs.

7.2 Existing Large & Medium Units set up in A' category areas, which undertake expansion as prescribed in rule 2.5, shall be entitled to Investment Incentives subject to provisions contained in Rule 2.20 & rule 5 and as per the limits indicated in Rule 7.1 above.

7.3 Existing large and medium units set up in B' category areas, which undertake expansion as prescribed rule 2.5 shall be entitled to Investment Incentive subject to the provisions contained in Rule 2.20 and Rule 5 and at rate of 20% of Fixed Capital Investment subject to a maximum ofRs.30 lacs.

7.4 ....

7.5 Exemption from Sales Tax or deferment of Sales Tax

a) Eligibility, Quantum of entitlement and procedure for grant of Sales Tax exemption or Sales Tax deferment shall be as prescribed in rules 6.3(11).

b) The eligible units with fixed capital investment of over Rs.100 Crore shall be entitled to select the block of 7 or 10 years within the first 10 or 13 years of going into commercial production."

5. It is the case of the petitioner that in order to avail of the incentives provided by the Code, the petitioner - company was incorporated on 18.9.1997 and it obtained a certificate of Commencement of Business on 25.09.1997. For setting up the unit, it acquired land measuring 43,600 sq. yards on 24.10.1997 and 28.10.1997, at a cost of Rs. 20,50,000/-. Some additional land measuring 1,100 sq. yards was purchased in the year 2001.

6. As the company was to operate in the Medium Scale, it applied for grant of Industrial Licence under the Industries (Development and Regulation) Act, 1951 (for short " the 1951 Act") which was granted vide letter dated 10.7.1998. Permission was accorded to manufacture acrylic yam with installed capacity of 12,672 spindles . The total cost of the unit was estimated at Rs.1,761 lacs.

7. The petitioner - company applied for loan of Rs.6.00 crores to Canara Bank Ludhiana in the year 1997, but the loan could not be availed because higher rate of interest was proposed to be charged which was not acceptable to the company. The petitioner thereafter applied for loan to Oriental Bank of Commerce, Ludhiana on 31.1.2002 which was sanctioned vide letter dated 5.9.2002. Order for the supply of machinery was placed with M/s Laxmi Machine Works Ltd., Coimbatore in May 2001 and order for setting up for the plant was given to M/s Draft Air (India) Pvt. Ltd. New Delhi in Jan. 2002. Contract for constmction of the building was given to M/s R.S. Builders and Engineers Ltd. of Ludhiana on 7.2.2002. Most of the construction work was completed in the 1st half of the year 2002.

8. The company applied for registration under the Central Sales Tax Act, 1956 (for short "the Central Act") and the Punjab General Sales Tax Act, 1948 (for short "the State Act")

which was granted on 2.3.2002 and 21.3.2002, respectively. The validity of the letter of intent dated 10.7.1998 which was initially valid for three years was further extended by the Govt, of India Ministry of Textiles upto 31.12.2002. Deposit of Rs.40,000/- was made with the Punjab Pollution Control Board for seeking clearance for setting up of industry on 6.2.2002. An amount of Rs.1,42,500/- was deposited on 2.3.2002 as earnest money with the Punjab State Electricity Board for availing power connection of 1,425 KWs.

9. The Government of Punjab, Department of Industries and Commerce, issued notification dated 26.4.2000 (Annexure P-11) making certain amendments to the Incentives Code of 1996. As per this notification, for the grant of Sales-tax exemption/deferment the following effective steps were required to be taken by 30.04.2000:

a) registration with the Department of Industries and Commerce;

b) purchase of land for the project;

c) submission of loan application with the financial institution

It was also stipulated that the units for which the industrial license was required, the grant of such industrial license by 30.04.2000 would be considered sufficient collective step for the purpose of granting Sales Tax Exemption/ Deferment.

The notification dated 26.4.2000 reads as under:-

"GOVERNMENT OF PUNJAB

DEPARTMENT OF INDUSTRIES & COMMERCE

NOTIFICATION

No. 15/45/9605/IB-2045 *Dated: 26th April, 2000*

The Government of Punjab is pleased to make the following amendments with regard to sales tax exemption or deferment under the "Punjab Industrial Incentive Code under the Industrial Policy, 1996" notified vide Nol.Inc.II/15/43/96- S/IB/4170 dated 1.6.1996 as under: -

Sales Tax Exemption or Sales Tax Deferment:

No sales tax based incentive i.e. Sales Tax Exemption or Deferment from the Sales Tax will be granted to any new industrial unit or existing unit undertaking expansion except the following:-

(i) Information Technology units shall continue to get sales tax exemption/deferment as provided in the Information Technology Policy notified vide No. 15/4/99 51B/2174 dated: 5.3.2000.

(ii) In case there are recommendations by BIFR regarding Sales Tax Exemption/Deferment, the same shall be considered by the Empowered Committee for adoption not withstanding the abolition of Sales Tax Exemption/Deferment.

(iii) Units which may have taken following effective steps or which may take the effective steps by 30th April, 2000 will also be eligible for grant of Sales Tax Exemption/Deferment, after coming into production :-

a) Registration with Department of Industries & Commerce.

b) Purchase of land for the project:

c) Submit loan application with the Financial Institution.

OR

Units for which the industrial license is required, the grant of such industrial license by 30th April, 2000 will be considered sufficient

collective step for the purpose of granting Sales Tax Exemption/ Deferment as above.

(iv) Industrial units which have already been granted exemption/deferment under the Industrial Policy of the State Government will continue for the benefit till the expiry of the concession period.

(v) Industrial units which have already gone into production are eligible for the same. The Ex-emption/deferment in terms of the Rules 6.3 and 7.5 of the Punjab Industrial Incentive Code under the Industrial Policy, 1999. Such calls and those units which may go into production by 30th April, 2000 shall be granted Sales Tax Exemption/Deferment, if otherwise eligible.

This notification shall be effective from 1st May, 2000.

sd/- R. I. Singh
Secretary to Government, Punjab
Department of Industries and Commerce "

10. The petitioner addressed a letter dated 22.6.2000 to the General Manager, District Industries Centre, Ludhiana enquiring as to whether it was eligible for sales tax exemption as per the Industrial Policy, 1996 and Incentives Code, 1996. After repeated reminders the General Manager vide letter dated 7.5.2001 (Annexure P-15) informed the petitioner that as all the requirements regarding eligibility for sales tax exemption as per notification dated 26.4.2000 had been fulfilled, it would be eligible for grant of the same.

11. However, subsequently, the General Manager vide letter dated 28.6.2002 (Annexure P-16) informed the petitioner that a notification dated 17.6.2002 (Annexure P-17) had been issued and that sales tax exemption would be given according to this notification.

12. As per this notification dated 17.06.2002, certain amendments were made to the earlier notification 26.4.2000 which are as under:

"1) Clause (1) of the notification is deleted.

2) Clause (2) of the notification is deleted.

3) Clause (3) of the notification is substituted as under:-

'Units which may have taken following effective steps of which may take Exemption/Deferment, provided such units come into production by 30th June 2002.

a) Registration with Department of Industries & Commerce of with any other designated Department including in the case of licensed items the obtainment of such industrial licence.

b) Purchase of land for the project.

c) Submit loan application with the Financial Institution "

13. Thus, as per the notification dated 17.6.2002, in addition to the earlier conditions of registration with the Department of Industries and Commerce, purchase of land for the project and submission of loan application with the financial institution, an additional condition was imposed viz. that the unit was required to have come into production by 30th June 2002.

14. To give effect to the above notification, the Punjab General Sales Tax (Deferment and Exemption) (Second Amendment) Rules, 2002 were notified on 12.9.2002, which are reproduced as under:-

"Vide notification dated 12th September 2002, the Government of Punjab Department of Excise and Taxation the Punjab General Sales Tax (Deferment and Exemption) (Second Amendment) Rules, 2002 were notified whereby in the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991, in rule 3, after sub-rule (2), the following shall be added, namely:- '(3) Notwithstanding anything contained in any other provision of these rules,

(i) no sales tax based incentives that is Sales Tax Exemption or Deferment from the sales tax will be granted to any new industrial unit or existing unit undertaking expansion except the unit which had taken the following effective steps by 30th April, 2000.

(a) Registration with the Department of Industries and Commerce or with any other designated Department in-cluding, in the case of licensed items, the obtainment of such industrial license,

(b) Purchase of land for the project;

(c) Submit loan application with the financial institution.

Provided such units had come into production by 30th June, 2002.

ii) Industrial units, which have already been granted Ex-emption/Deferment under the Industrial Policy of the State Government, will continue to get this benefit till the expiry of the concession period.

Hi) Only those industrial units which have already gone into production by 30th June 2002 shall be granted Sales Tax Ex-emption/Deferment, if otherwise eligible. "

By this amendment a new Sub-Rule (3) was added, which was a non obstante provision. As per this, notwithstanding anything contained in any provision of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (for short "the Deferment and Exemption Rules, 1991"), no sales tax incentive would be granted to any new industrial unit except the units which had taken the following effective steps by 30.04.2000.

(a) Registration with the Department of Industries and Commerce or with any other designated Department in-cluding, in the case of licensed items, the obtaining of such industrial license,

(b) Purchase of land for the project;

(c) Submit loan application with the financial institution.

Additionally, such units should have commenced production by 30.06.2002.

Before this amendment Rule 3 was as under:

"CONDITIONS FOR ELIGIBILITY

(1) Deferment of, or exemption from the payment of tax under the Act shall be admissible to a unit, -

(i) 3-b [excluding the units which has been set up in A' category area, in respect of which] an eligibility certificate has been granted by the competent authority of the Department of Industries and which has not been included in the negative list;

(ii) for a period not exceeding one hundred and eight months, eighty-four months and sixty-months, respectively in respect of the units located in A' Growth, B' Growth and C' Growth Area

and for a period of one hundred and twenty months in respect of F Group of Industries;

(iii) [********]

(2) The deferment of, or exemption from the payment of tax shall become admissible only after the issue of the certificate of eligibility in form ST(D and E). Ill by the prescribed authority in charge of the district in the department of Excise and Taxation. "

15. Thus, before this amendment, apart from the conditions of applicability of these Rules as specified in Rule 1(3) namely that they would apply to units which came into production for the first time on or after the first day of April, 1989 or after the first day of October, 1992 or after the first day of April, 1996 etc. there was no condition of commencing production by a particular date to be eligible for sales tax exemption.

16. Meanwhile, the petitioner submitted representation dated 28.06.2002 (Annexure P-16) to the General Manager, District Industries Centre, Ludhiana informing that the petitioner had taken various steps like buying land, getting licence from the Government of India, availing credit facilities from the bank, applying for electric connection and certificate from the Pollution Control Board, placing orders for plant and machinery and also substantially completing the construction. It had already spent about to 8 crores. In the light of these, it was requested that the petitioner's case be treated separately and the time for commencement of production for availing the incentive, in its case, be extended till 31.12.2002. This representation was rejected on 24.9.2002 stating that the petitioner was not eligible for sales tax exemption in terms of notification dated 17.06.2002 wherein the cut off-date for start of production was 30.06.2002.

17. Yet another representation submitted by the petitioner for extension of date for starting production to 31.12.2002 was rejected vide letter dated 4/5.12.2002 (Annexure P-21) of the Joint Secretary Government of Punjab, Department of Excise & Taxation. In justification of the rejection it was mentioned that as per the National Consensus arrived at in the meeting of the Empowered Committee of State Finance Ministers, no sales tax related incentives were to be granted after 30.4.2000 except to units in pipe line. As per government notification dated 12.9.2002 no sales tax based incentives were to be granted to units which came into production after 30.6.2002.

18. Meanwhile, during this period, the petitioner unit commenced production on 21.10.2002.

19. The petitioner submitted yet another representation dated 13.12.2002 (Annexure P-23) to the Hon'ble Chief Minister of Punjab requesting to extend the required date of commencement of production for availing sales tax exemption upto 31.12.2002, but without any positive result.

20. Hence, this writ petition praying for a direction that the notifications dated 17.6.2002 and 12.9.2002 be declared to be inoperative qua the petitioner company and the letters dated 24.9.2002 and 4.12.2002 informing the petitioner that it is ineligible for grant of sales tax exemption be quashed and the respondents be directed to grant sales tax exemption to the petitioner company.

21. Ld. Counsel for the petitioner has argued that it was in pursuance to the incentives announced in 'Industrial Policy 1996', and the Incentives Code, 1996 that the petitioner decided to set up the spinning unit to manufacture Acrylic Yarn. It purchased 43,600 square yards of land in village Arrencha, Doraha, District Ludhiana on 24.10.1997 and 28.10.1997 at the approximate cost of Rs. 20,50,000/-. It purchased additional 1,100 square yards of land in the

year 2001. It obtained Industrial licence under the 1951 Act, on 10.7.1998. Its initial validity was three years which was subsequently extended up to 31.12.2002. It obtained registration under the Central and the State Act on 2.3.2002 and 21.3.2002, respectively. It obtained NOC from the Punjab Pollution Control Board on 10.7.1998, which was further extended till 10.9.2002. It got a temporary electric connection for 70 kilowatt for construction and applied for 1,425 kilovolt electric connection on 2.3.2002. It applied to the Canara Bank for availing credit / loan facility in the year 1998, but due to non-agreement on the rate of interest, the proposal did not fructify. Subsequently, the petitioner applied for availing loan from Oriental Bank of Commerce on 30.4.2002 and credit facility of Rs.6.00 crore in shape of term loan and Rs.4.00 crore as working capital was sanctioned on 27.8.2002.

22. As per the Incentives Code of 1996, the incentives including sales tax deferment/ exemption would be available to new industrial units that came into production or undertook expansion on or after 1.4.1996. There was no further condition regarding commencing production before a particular date. The industry could apply for the incentives within six months of the date of starting commercial production. It was only vide the notification dated 24.6.2000 that it was specified that the sales tax exemption or sales tax deferment would be available in the case of units, which took the following three effective steps, before 30.4.2000 namely (a) registration with the department of Industry and Commerce (b) purchase of land for the project and (c) submission of loan application with the financial institution. For units for which industrial licence is required, the grant of industrial licence by 30.4.2000 would be considered sufficient step for the purpose of granting sales tax exemption or deferment.

23. After the issuance of the aforesaid notification, on the petitioner's query the General Manager, District Industries Centre, Ludhiana vide his letter dated 7.5.2001 confirmed to the petitioner, that as it fulfilled the terms and conditions of the notification dated 26.4.2000, it would be eligible for sales tax exemption under the Industrial Policy 1996. Being thus assured the petitioner went ahead with his project. Order for supply of machinery was placed in May, 2001 and order for setting up of the plant was given in January, 2002. Contract for construction of the factory building was given on 7th February, 2002. The petitioner had completed more than half of the construction in the first half of 2002. All this 1 happened before the notification of 17.6.2002. The unit finally commenced production on 21.10.2002.

24. Ld. Counsel contended that the rejection of the claim of the petitioner for sales tax exemption is wholly illegal. The petitioner had made huge investment in setting up of the project in furtherance of the promise made by the State Government in the Industrial Policy, 1996 and Incentives Code, 1996. Further the General Manager, DIC Ludhiana, having clarified that the petitioner would be eligible for sales tax exemption, his case could not be rejected on the basis of a condition subsequently imposed vide notification dated 17.6.2002 and the amendment made to the Deferment & Exemption Rules, 1991 on 12.9.2002. He argued that these subsequent notifications would not operate qua the petitioner as his claim for sales tax exemption had accrued before the issuance of the said notifications. In this behalf, Ld. Counsel for the petitioner has placed reliance on the following decisions:

Mahabir Vegetable Oils Pvt Ltd. and another v. State of Haryana and others, (2006) 3 SCC 620
Manuelsons Hotels (P) Ltd. x. State of Kerala, (2016) 6 SCC 766
Devi Multiplex and another v. State of Gujarat and others, (2015) 9 SCC 132

25. On the other hand, Ld. State counsel argued that it was in pursuance of National Consensus arrived at in the meeting of the Empowered Committee of State Finance Ministers that no sales tax related incentives be granted after 30.4.2000 except to units in the pipeline, that the State of Punjab issued the notification dated 17.06.2002 and amended the Deferment & Exemption Rules, 1991 on 12.9.2002 that no sales tax based incentive would be granted to those units, which come into production after 30.6.2002. He further stated that it is always open for the State to withdraw any exemption or incentive offered earlier and there can be no

claim that an incentive once given should continue forever. He further argued that the petitioner after purchase of land in the year 1997 did not take any effective steps to start production. It was only in May, 2001 that the petitioner placed order for the supply of machinery and other steps regarding construction were taken after January, 2002. Moreover, it submitted its application for grant of credit/loan facility to Oriental Bank of Commerce OBC on 31.1.2002, which was sanctioned on 5.9.2002. He further stated that as the unit started production on 21.10.2002 i.e., after the notifications dated 17.6.2002 and 12.9.2002, its case would be governed by these notifications.

26. Heard Ld. Counsel for the parties and perused the record.

27. The law on the doctrine of promissory estoppel is well settled.

In ***Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., (1979) 2 SCC 409*** Hon'ble the Supreme Court explained the doctrine as under:

> *"24.....The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the Constitution. It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Everyone is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith "? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negatived in the Indo-Afghan Agencies case and the supremacy of the rule of law was established. It was laid down by this Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it on the ground that such promise may fetter its future executive action. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between*

the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an ex parte appraisement of the circumstances If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability: the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position " provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide Emmanuel Avodeji Ajaye v. Briscoe. "

Recently, this view was reiterated by Hon'ble the Supreme Court in ***Manuelsons Hotels's*** case (supra) , as under:

> ***"19.*** *In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject-matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court in Commonwealth of Australia v. Verwayen [Commonwealth of Australia v.Verwayen, (1990) 170 CLR 394 (Aust)] , by Deane, J. in the following words:*
>
> > *"1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law, the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.*
> >
> > *2. The central principle of the doctrine is that the law will not permit an unconscionable—or, more accurately, unconscientious—departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.*
> >
> > *3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.*
> >
> > *4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party:*
> >
> > > *(a) has induced the assumption by express or implied representation;*
> > >
> > > *(b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;*

(c) *has exercised against the other party rights which would exist only if the assumption were correct;*

(d) *knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.*

Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within Category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within Category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. *The assumption may be of fact or law, present or future. That is to say, it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).*

6. *The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppel" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).*

7. *Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).*

8. *The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the*

> *outer limits within which the relief appropriate to do justice between the parties should be framed. ”* *(emphasis supplied)*
>
> ***20.*** *The above statement, based on various earlier English authorities, correctly encapsulates the law of promissory estoppel with one difference—under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppel—one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact or law will be deemed to have taken place so as to afford relief to the wronged party. ”*

28. In the present case, it is clear from the record that acting on the promise of incentives incorporated in the Industrial Policy, 1996 and the Incentives Code, 1996, the petitioner undertook a series of steps to set up the unit commencing with the purchase of 43,600 square yards of land on 24.10.1997 and 28.10.1997 at approximate cost of Rs.20,50,000/-. It purchased additional 1,100 square yards of land in the year 2001. It obtained Industrial Licence under the 1951 Act, on 10.7.1998. The initial validity of the Licence was three years which was subsequently extended up to 31.12.2002. It obtained registration under the Central Act and the State Act on 2.3.2002 and 21.3.2002, respectively. It obtained NOC from the Punjab Pollution Control Board on 10.7.1998, which was further extended till 10.9.2002. After its application to Canara Bank for availing credit / loan facility in the year 1998, did not fructify due to non-agreement on the rate of interest, the petitioner applied for availing loan from Oriental Bank of Commerce on 31.1.2002 and credit facility of Rs.6.00 crore in shape of term loan and Rs.4.00 crore as working capital was sanctioned on 5.9.2002.

In response to the petitioner's query the General Manager, District Industries Centre, Ludhiana vide his letter dated 7.5.2001 confirmed to the petitioner that as it fulfilled the terms and conditions of the notification dated 26.4.2000, it would be eligible for sales tax exemption under the Industrial Policy 1996. On this assurance the petitioner went ahead with his project. . Order for supply of machinery was placed in May, 2001 and order for setting up of the plant was given in January, 2002. Contract for construction of the factory building was given on 7th February, 2002. Most of the construction was completed in the first half of the year 2002. The unit finally commenced production on 21.10.2002.

30. Thus, it is clear that the petitioner had made substantial progress towards completion of the project before the issuance of the notification dated 17.6.2002 and the amendment dated 12.9.2002 to the Deferment & Exemption Rules, 1991. This is further evidenced by the fact that it was able to commence production within a short period after these notifications i.e., on 21.10.2002, and within four months of 30.06.2002, the date specified in these notifications.

31. In these circumstances, in our view, Ld. Counsel for the petitioner is right in urging that as the petitioner had irretrievably altered its position in pursuance of the promise of the Government and made substantial investment before the issuance of the later notifications, they could not operate to its detriment and it could not be denied the promised benefit.

32. A somewhat similar situation arose in ***Mahabir Vegetable Oils's*** case (supra). In that case the appellants were owners of solvent extraction plants. The State of Haryana had announced an Industrial Policy for the period from April 1, 1988 to March 31, 1997 wherein, besides other incentives, sales tax exemption was to be given to the industries set up in backward areas in the State. Rules 28A to 28C to the Haryana General Sales Tax Rules, 1975 (for short "the Rules") specified the class of industries, period and other conditions for exemption/deferment from payment of tax. As per these Rules the operative period was from 1st April, 1988 to 31st March, 1997. Schedule III contained a negative list of industries. Solvent extraction plant was not included in this list. On 3-1-1996, the State notified its intention to amend the Rules and circulated the draft Rules for information of persons likely to be affected thereby so as to enable them to file ob-jections and suggestions thereto. Amendments in the terms of the said draft Rules were notified on 16-12-1996 and solvent extraction plant was included in Schedule III. Note 2 was appended to Schedule III as per which industrial units in which investment had been made up to 25% of the anticipated cost of the project and which had been included in the negative list for the first time would be entitled to the sales tax benefits related to the extent of investment made up to 3-1-1996. On 28-5-1997 the said Rules were amended, inter alia, by omitting Note 2 deeming it to have always been omitted.

33. The appellant had purchased land measuring 30 kanals 17 marlas in the month of August 1995 to set up the unit. It also obtained registration under the provisions of the Haryana General Sales Tax Act, 1973 and the Central Sales Tax Act, 1956 on 6-9-1995. On 13-8-1996 it applied for a no-objection certificate from the Haryana State Pollution Control Board. On 15-8-1996, it entered into an agreement with a firm of consultants for supply and erection of the plant for a sum of Rs.55,55,000 and Rs.22,75,000 respectively and advances were paid on different dates. On 6-9-1996, civil construction work started at site. On 26-9-1996, process of installation of the plant started at the site. On 26-3-1997, the appellant started the trial production and commercial production commenced on 29-3-1997.

34. Thus, even though the appellant had made 45% of the total in-vestment as on 16.12.1996 as against the requirement of 25% of the anticipated cost as per Note-2, its claim for grant of exemption from payment of sales tax was rejected on the ground that the solvent extraction plants were included in the negative list with effect from 16-12-1996 and Note 2 was deleted vide notification dated 28-5-1997 deeming it to have been always omitted.

35. Hon'ble the Supreme Court held that the appellants were entitled to the benefit of Note 2. It held that by reason of Note 2, certain rights were conferred on the appellant. The amendments carried out in 1996 as also the subsequent amendments made prior to 2001, could not have taken away the rights of the appellant with retrospective effect The Court observed as under:

> ***"38.*** *The promises/representations made by way of a statute, therefore, continued to operate in the field. It may be true that the appellants altered their position only from August 1996 but it has neither been denied nor disputed that during the relevant period, namely, August 1996 to 16-12-1996 not only have they invested huge amounts but also the authorities of the State sanctioned benefits, granted permissions. Parties had also taken other steps which could be taken only for the purpose of setting up of a new industrial unit. An entrepreneur who sets up an industry in a backward area unless otherwise prohibited, is entitled to alter his position pursuant to or in furtherance of the promises or representations made by the State. The State accepted that equity operated in favour of the entrepreneurs by issuing Note 2 to the notification*

dated 16-12-1996 whereby and where under solvent extraction plant was for the first time inserted in Schedule III i.e. in the negative list.

***39.** Both the provisions contained in Schedule III and Note 2 formed part of subordinate legislation. By reason of the said note, the State did not deviate from its professed object. It was in conformity with the purport for which original Rule 28-A was enacted.*

***40.** We, in this case, are not concerned with the quantum of exemption to which the appellants may be entitled to, but only with the interpretation of the relevant provisions which arise for consideration before us.*

***44.** By reason of Note 2, certain rights were conferred. Although there lies a distinction between vested rights and accrued rights as by reason of a delegated legislation, a right cannot be taken away. The amendments carried out in 1996 as also the subsequent amendments made prior to 2001, could not, thus, have taken away the rights of the appellant with retrospective effect. "*

36. The appeals were allowed and the matter was remitted to the Director of Industries to consider it afresh.

37. In ***Ashoka Smokeless Coal India (P) Ltd. v. Union of India, (2007) 2 SCC 640***, Hon'ble the Supreme Court upheld the claim of the companies to incentives on the ground of promissory estoppel by observing as under:

***"173.** We have noticed hereinbefore that smokeless coal operators had set up their units at the behest of the coal companies. Those who had set up their units in the erstwhile States of Bihar and West Bengal evidently did so at the behest of the companies having been encouraged therefor. It was done to share the burden of coal companies to supply soft coke to the small consumers. Doctrine of promissory estoppel would, therefore, be applicable.*

***174.** The States concerned also intended to grant incentives to such industrial units by way of waiver and/or deferment of payment of sales tax wherefor Rule 28-A in the Sales Tax Rules was introduced. Sales tax laws enacted by the States contain a provision empowering the State to grant such exemption.*

***175**. The relevant provisions of the Act and the rules framed thereunder indisputably were made keeping in view the industrial policy of the State. Such industrial policies by way of legislation or otherwise, subject of course to the provisions of the statute have been framed by several other States. "*

***176.** In Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. this Court rejected the plea of the State to the effect that in the absence of any notification issued under Section 4-A of the U.P. Sales Tax Act, the State was entitled to enforce the liability to sales tax imposed on the petitioners thereof under the provisions of the Sales Tax Act and there could be no promissory estoppel against the State so as to inhibit it from formulating and implementing its policy in public interest.*

***177.** The question came up for consideration before this Court in Pournami Oil Mills v. State of Kerala wherein it was held: (SCC p. 732, para 7)*

> *"7. Under the order dated 11-4-1979, new small-scale units were invited to set up their industries in the State of Kerala and with a view to boosting of industrialisation, exemption from sales tax and purchase tax for a period of five years was extended as a concession and the five-*

> *year period was to run from the date of commencement of production. If in response to such an order and in consideration of the concession made available, promoters of any small-scale concern have set up their industries within the State of Kerala, they would certainly be entitled to plead the rule of estoppel in their favour when the State of Kerala purports to act differently. Several decisions of this Court were cited in support of the stand of the appellants that in similar circumstances the plea of estoppel can be and has been applied and the leading authority on this point is the case ofM.P. Sugar Mills. On the other hand, reliance has been placed on behalf of the State on a judgment of this Court in Bakul Cashew Co. v. STO. In Bakul Cashew Co. case this Court found that there was no clear material to show any definite or certain promise had been made by the Minister to the persons concerned and there was no clear material also in support of the stand that the parties had altered their position by acting upon the representations and suffered any prejudice. On facts, therefore, no case for raising the plea of estoppel was held to have been made out. This Court proceeded on the footing that the notification granting exemption retrospectively was not in accordance with Section 10 of the State Sales Tax Act as it then stood, as there was no power to grant exemption retrospectively. By an amendment that power has been subsequently conferred. In these appeals there is no question of retrospective exemption. We also find that no reference was made by the High Court to the decision in M.P. Sugar Mills case. In our view, to the facts of the present case, the ratio of M.P. Sugar Mills case directly applies and the plea of estoppel is unanswerable. ”*

> ***180.*** *Mangalore Chemicals and Fertilisers Ltd. v. CCT is a case where this Court had the occasion to consider as to whether subsequent change in the eligibility criteria can undo the eligibility for the condition stipulated in the earlier notification and answered the same in the negative.*

> ***181.*** *This Court reaffirmed the legal position in Pawan Alloys & Casting (P) Ltd. v. U.P. SEB holding: (SCCp. 294, para 62)*

> > *“62. As a result of the aforesaid discussion on these points the conclusion becomes inevitable that the appellants are entitled to succeed. It must be held that the impugned notification of 31-7-1986 will have no adverse effect on the right of the appellant new industries to get the development rebate of 10% for the unexpired period of three years from the respective dates of commencement of electricity supply at their units from the Board with effect from 1-8-1986 onwards till the entire three years’ period for each of them got exhausted. This result logically follows for the appellants who have admittedly entered into supply agreements with the Board as new industries prior to 1-8-1986. ’’*

> ***182.*** *The question came up for consideration before this Court recently in State of Punjab v. Nestle India Ltd. wherein this Court surveyed the growth of the said doctrine and held the doctrine to be applicable to legislative action also.*

38. In ***State of Bihar v. Kalyanpur Cement Ltd., (2010) 3 SCC 274***, the Supreme Court rejected the justification of the State to deny the tax exemptions promised in the Industrial policy of 1995 based on a change in policy advocated at the Chief Ministers’ Conference and held that the discontinuance of the sales tax exemptions w.e.f., 1.1.2000 could not have

affected the rights of the respondent company under the Industrial Policy, 1995. It was observed as under:

> ***"79.*** *We are also unable to accept the submission that the decisions dated 6-1-2001 and 5-3-2001 had been taken due to the change in the national policy. This was sought to be justified by Dr. Dhavan on the basis of the Conferences of Chief Ministers/Finance Ministers. It is settled law as noticed by Bhagwati, J. in Motilal Padampat that the Government cannot claim to be exempt from the liability to carry out the promise on some indefinite and undisclosed ground of necessity or expediency. The Government is required to place before the Court the entire material on account of which it claims to be exempt from liability. Thereafter, it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from liability. It is only when the Court is satisfied that the Court would decline to enforce the promise against the Government. However, the burden would be upon the Government to show that it would be inequitable to hold the Government bound by the promise. The Court would insist on a highly rigorous standard of proof in the discharge of this burden.*
>
> ***80.*** *In the present case, the claim of the Government is based on a change in policy advocated in the Chief Ministers' Conference. These Conferences had taken place before the affidavit was filed on 5-12-2001. Therefore, the High Court concluded that the Government has not been candid in disclosure of the reasons for passing the Order dated 6-1-2001. In our opinion, the aforesaid decisions with regard to the discontinuance of the sales tax exemptions from 1-1-2000 could not have affected the rights of the Company under the Industrial Policy, 1995. Necessary application was made to the Government seeking exemption on 21-11-1997. For more than three years, the Company and the financial institutions had been assured by the Government that the notification will be issued forthwith. However, it was not issued. We are of the opinion that the action of the appellants is arbitrary and indefensible... ....*
>
> ***88.*** *The four reasons given in support of the decision are clearly arbitrary. It was no longer open to the appellant not to issue the notification on the ground that the Policy had lapsed on 31-8-2000. The second reason that the exemption could not be granted to the Company as no notification had been issued under Clause 24 cannot be accepted as the appellant State cannot be permitted to take advantage of its own wrong. The third reason given is that the State-Level Empowered Committee (SLEC) had not approved the rehabilitation package. This clearly is against the record which has been examined by us in the earlier part of the judgment. Not only was the exemption recommended by the competent Committees under the Industrial Policy, 1995, emphatic assurances were given that the notification will be issued within a very short period. The fourth reason with regard to the resolution passed at the Chief Ministers' Conference is equally extraneous to the issue. The Company had made the application for exemption at a much prior time in 1997. No material has been placed either before the High Court or before this Court about the legal enforceability of the resolutions passed at the Chief Ministers' Conference. In our opinion the decision-making process which culminated in passing of the Orders dated 6-1-2001 and 5-32001 is seriously flawed, therefore, the same have been justifiably quashed by the High Court."*

39. In ***MRF Ltd. v. CST, (2006) 8 SCC 702***, the action of the State Government to withdraw the benefit of tax exemption granted in terms of the Industrial policy was held to be arbitrary and unreasonable. :

> *"39. MRF made a huge investment in the State of Kerala under a promise held to it that it would be granted exemption from payment of sales tax for a period of seven years. It was granted the eligibility certificate. The exemption order had also been passed. It is not open to or permissible for the State Government to seek to deprive MRF of the benefit of tax exemption in respect of its substantial investment in expansion in respect of compound rubber when the State Government had enjoyed the benefit from the investment made by MRF in the form of industrial development in the State, contribution to labour and employment and also a huge benefit to the State exchequer in the form of the State's share i.e. 40% of the Central excise duty paid on compound rubber ofRs 177 crores within the State of Kerala. The impugned action on the part of the State Government is highly unfair, unreasonable, arbitrary and, therefore, the same is violative of Article 14 of the Constitution of India. The action of the State cannot be permitted to operate if it is arbitrary or unreasonable. This Court in E.P. Royappa v. State of T.N. observed that where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Equity that arises in favour of a party as a result of a representation made by the State is founded on the basic concept of "justice and fair play". The attempt to take away the said benefit of exemption with effect from 15-1-1998 and thereby deprive MRF of the benefit of exemption for more than 5 years out of a total period of 7 years, in our opinion, is highly arbitrary, unjust and unreasonable and deserves to be quashed. In any event the State Government has no power to make a retrospective amendment to SRO No. 1729/93 affecting the rights already accrued to MRF thereunder. "*

40. In ***S.V.A. Steel Re-Rolling Mills Ltd. and others v. State of Kerala and others, (2014) 4 SCC 186***, the Supreme Court emphasized that before laying down any policy which would give benefits to its subjects, the State must think about pros and cons of the policy and its capacity to give the benefits because it would be in violation of the principles of promissory estoppel, besides being unfair and immoral on the part of the State not to act as per its promise. The Court pointed out that before setting up any industry, the industrialist considers several factors including the incentives offered by any State which factor must be kept in mind by the Court in deciding cases of this nature.

> *"30. Before laying down any policy which would give benefits to its subjects, the State must think about pros and cons of the policy and its capacity to give the benefits. Without proper appreciation of all the relevant factors, the State should not give any assurance, not only because that would be in violation of the principles of promissory estoppel but it would be unfair and immoral on the part of the State not to act as per its promise.*
>
> *31. In the instant case, the respondent State was conscious about the fact that there was a problem with regard to supply of electricity in the State of Kerala and possibly for that reason industries which depended much upon electricity as a source of power were not inclined to establish new industries in the State of Kerala. Before setting up an industry, the entrepreneur or the industrialist considers several factors and thereupon takes several decisions like place of business, capacity at which production should be made, type of raw material,*

etc. After considering all these factors, a final decision is taken with regard to setting up of an industry. For a new entrepreneur, such a decision is of vital importance because if he fails in his estimates or in consideration of all the relevant factors, there are all chances that he would fail not only in his business but he would completely ruin himself. Thus, one can very well appreciate that the appellants must have thought about all relevant factors, including the incentives offered by the respondent State and might have decided to set up their industries in the respondent State. While deciding this case, this Court would invariably keep in mind the circumstances in which the appellants had set up their industries in the State of Kerala.

32. In view of the incentives and assurances given to the appellants along with others, who were desirous of setting up new industries, the appellants set up their new units which were much dependent upon continuous supply of electricity. One of the appellants is a Steel Re-rolling Mill. In steel industry, when the industry is concerned with making of steel or re-rolling of steel, it requires lot of power and energy, and electricity being one of the important sources of power, the appellant was much dependent on continuous supply of electricity, which had been assured to it by the respondent State. "

41. Based on the aforesaid decisions of Hon'ble the Supreme Court we feel that the petition deserves to succeed. We do not find any merit in the arguments on behalf of the State in justification of the rejection of the claim of the petitioner, namely the consensus at the Empowered Committee of State Finance Minister or that the State has the liberty to withdraw the promised incentive at any time. Nor, on the facts as they have emerged, is it possible to agree with the Ld. State Counsel the the petitioner has been lax or took no timely steps in proceeding to set up the unit.

42. Thus, this writ petition is allowed.

It is held and declared that the petitioner company would be entitled to the benefit of sales tax exemption as per the Industrial Policy 1996, Incentives Code, 1996 and the notification dated 30.4.2000 on the ground of promissory estoppel and the said benefit cannot be denied to the petitioner on the basis of the subsequent notifications dated 17.6.2002 and 12.9.2002.

The letters dated 24.9.2002 and 04.12.2002 rejecting the claim of the petitioner for sales tax exemption are quashed.

The respondents are directed to re-consider the claim of the petitioner for grant of sales tax exemption as per the Industrial Policy 1996, Incentives Code, 1996 and the notification dated 30.4.2000.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 636 OF 2013

AGGARWAL SWEET HOUSE
Vs
STATE OF PUNJAB

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

22nd November, 2016

HF ▶ Partly revenue and partly dealer

Penalty imposed for misdescription on Mirchi Namkeen and Khand Goli reduced to the extent of consignment related to Mirchi Namkeen.

PENALTY – ATTEMPT TO EVADE TAX – MISDESCRIPTION OF GOODS - VEHICLE CARRYING TWO TYPES OF ITEMS – GOODS ALLEGED TO BE MURMURE AND KHAND GOLI WHICH ARE TAX FREE – DEPARTMENT CONTENDED THAT GOODS WERE 'MIRCHI NAMKEEN' INSTEAD OF 'MURMURE' – PENALTY IMPOSED ON THE WHOLE LOT OF GOODS FOR MISDESCRIPTION OF GOODS – APPEAL BEFORE TRIBUNAL – PENALTY REDUCED TO THE EXTENT OF LIABILITY TO PAY TAX ON MIRCHI NAMKEEN THEREBY EXCLUDING KHANDGOLI – APPEAL PARTLY ACCEPTED – *S. 51(7)(B) OF PVAT ACT, 2005*

Facts

The vehicles carried goods namely 'Khand goli' and 'murmure'. The department disputed that the trucks carried 'Mirchi namkeen' instead of 'murmure'. Penalty was imposed u/s 51 on the grounds that though murmure was tax free but the item in question was mirchi namkeen.

Held

On appeal before Tribunal, it is held that goods loaded in the vehicle i.e. mirchi namkeen were liable to be taxed but 'khand goli' was tax free. Therefore, penalty ought to be imposed on mirchi namkeen. On segregating the prices of both items, penalty is imposed on only one and not on collective price. Thus penalty is reduced and appeal is partly accepted.

Present: Mr. Avneesh Jhingan, Advocate alongwith Mrs. Tanvi Gupta, Advocate counsel for the appellant.

Mr. N.K. Verma, Sr. Dy. Advocate General for the State.

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

1. This is an appeal against the order dated 22.7.2013 passed by the Deputy Excise and Taxation Commissioner(A) Ludhiana Division, Ludhiana, dismissing the appeal against

the order dated 15.9.2009 passed by the Assistant Excise and Taxation Commissioner, Information Collection Centre, Shambhu (I), Patiala imposing penalty of Rs. 47,200/- u/s 51(7)(b) of the Punjab Value Added Tax Act, 2005.

2. It is not in dispute that there were two types of goods in the vehicles i.e. "Khand goli" and "Murmures". However the respondents dispute that the trucks did not contain Murmure but it was "Mirchi Namkeen". It is also not in dispute that "Khand goli" and "Murmures" are tax free in the light of the item no. 60 of schedule-A appended to the Punjab Value Added Tax Act, 2005, item no. 60 of the schedule-A reads as under:

> ***Schedule-A:***
>
> *60:- "Reori, gajakas, misri, candi or cooza, golies, boora, marunda, ilachi dana, murmure and rice layee"*

3. On critical examination of the item No. 60 of the schedule-A, it can very well be observed that legislature intended to exempt the Cheap sweet meats including Golis from Value Added Tax Act. Khand goli includes golies and "Goli" as mentioned this item could either be Khand Goli or namkin Goli. Therefore, no tax can be imposed on Khand goli, which the appellant was carrying in the vehicles.

4. As regards the "Murmure", the department has seriously disputed that it was not "Murmure" but was "mirchi Namkeen". It is also not in dispute that "mirchi Namkeen" do not fall in the category of item no. 60 of schedule-A appended to the Punjab VAT Act, 2005 and is taxable. On further probe of the record, it has come out that the other goods loaded in the trucks were "mirchi Namkeen" which were liable to be taxed. The appellant having not paid the tax on "mirchi Namkeen" was liable to pay penalty. If we segregate the price of "Khand goli" and "mirchi Namkeen", then the price of the "mirchi Namkeen", which, the appellant was carrying, comes to Rs. 89,479/-, over which the appellant was liable to pay penalty u/s 51(7)(b) of the Punjab Value Added Tax Act 2005.

5. Resultantly, this appeal is partly accepted and the penalty imposed is reduced to Rs. 26,850/- against the appellant.

6. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 383 OF 2015

ATAM VALLABH TUBES PVT. LTD.
Vs
STATE OF PUNJAB

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

8th September, 2016

HF ▶ Revenue

No plausible explanation tendered for the delayed production of documents related to goods in transit leading to upholding of penalty.

**PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT INTERCEPTED AT BHAWANIGARH – ALLEGEDLY IN TRANSIT TO INDORE FROM GOBINDGARH- NO DOCUMENTS PRODUCED – GOODS DETAINED – VEHICLE KEPT FOR REPAIR AT THE DESTINATION OF INTERCEPTION AS CONTENDED- EXPLANATION TENDERED THAT DOCUMENTS COULD NOT BE PRODUCED BEFORE THE OFFICER AS THE DRIVER HAD LEFT THE VEHICLE WITH THE CO -DRIVER WHO WAS UNAWARE OF THEIR WHEREABOUTS – INVOICE OF AN EARLIER DATE PRODUCED DURING PROCEEDINGS – NO AFFIDAVIT OF THE DRIVER LEAVING THE TRUCK PRODUCED – RECEIPT OF REPAIR OF VEHICLE ISSUED TO THE DRIVER FOUND DOUBTFUL – DOCUMENTS PRODUCED AFTER SIX DAYS SEEMS TO BE AN AFTERTHOUGHT – HAD DOCUMENTS BEEN PRESENT IN THE TRUCK , THEY COULD HAVE BEEN SEARCHED BY THE CO DRIVER FOR PRODUCTION – PENALTY UPHELD- APPEAL DISMISSED – *S 51 OF PVAT ACT*

Facts

The goods were in transit from Mandi Gobindgarh to Indore allegedly when it was intercepted on 23/8/2013 near Bhawanigarh by mobile wing officer. No documents were produced. During the proceedings two bills dated 19/8/2013 and 20/8/2013 were produced. It was contended that the driver left the destination the same day but the vehicle had developed some mechanical defect and could not proceed further causing a delay of three days. However, no plausible explanation was tendered regarding late submission of bills. Penalty was imposed u/s 51 of the Act. On dismissal, an appeal is filed before Tribunal contending that after repairing of vehicle the journey was started but driver 'A' received a phone call from his house and went back to his village. Thereafter, the vehicle was apprehended and co- driver 'B' was not aware as to where the documents were kept.

Held:

No affidavit has been placed to support the plea that driver A went back to his village. It is not convincing that co -driver B did not know about the documents. Had documents been in the truck, he would have searched and handed over them to the officer. No enquiry regarding it

was made from driver A on phone. The documents were produced on 29/8/2013 i.e. after six days. Non production of documents goes a long way to suggest that the documents were manipulated and goods were not covered with proper documents. The repair charges receipt produced does not show if it was issued to driver A. The inference drawn is that the appellant had an intention to evade the tax. The appeal is thus dismissed

Present: Mr. R.K. Malhotra, Advocate Counsel for the appellant.
Mr. N.K.Verma, Sr. Dy. Advocate General for the State.

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

1. Vide order dated. 2.9.2013, the Assistant Excise and Taxation Commissioner, Mobile Wing, Punjab Chandigarh imposed the penalty to the tune of Rs.2,86,844/- upon the appellant U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005. The appeal against the said order was also dismissed by the First Appellate Authority on 6.4.2015.

2. Factual matrix of this case is that on 23.8.2013. Shri Harpreet Singh, Excise and Taxation Officer, Mobile Wing, Punjab, Chandigarh intercepted a vehicle No. HR-58A-6521 at Bhawanigarh-Samana Road, Near Bhawanigarh which was loaded with Iron Pipe Goods, it was disclosed by Shri Kulwinder Singh, Caretaker of the vehicle that the goods were being taken away from Gobindgarh to Indore. After recording the statement of Shri Kulwinder Singh, the vehicle was detained. The driver failed to produce any documents accompanying the goods. The case was forwarded to the Designated Officer who also issued notice U/s 51 (6) (a) of the Punjab Value Added Tax Act, 2005 to the owner of the goods, in response to which Mr. R.K.Bassi, Advocate appeared before him on 24.8.2013 and furnished bill No. 123 & 125 dated 19.8.2013 and 20.8.2013 relating to the goods. Thereafter, the Designated Officer also issued notice U/s 51 (7) (b) of the Act for 29.8.2013. In response to which Mr. R.K.Bassi, Advocate appeared and the case was adjourned to 2.9.2013. On 2.9.2013, Mr. R.K.Bassi, Advocate, in his written submissions submitted that the appellant sold the goods in two installments by two bill Nos. 123 & 125 dated 19.8.2013 and 20.8.2013 respectively amounting to Rs.3,69,437/- and Rs.6,08,851/- respectively. The driver left for destination on the same day. However, the vehicle developed some mechanical defect at Bhawanigarh-Samana Road, Near Bhawanigarh, therefore, the vehicle could not proceed further. Since, he could not submit any explanation for late of submission of bills and keeping in view, the other circumstances, the Assistant Excise and Taxation Commissioner, Mobile Wing, Punjab, Chandigarh vide order dated 2.9.2013 imposed penalty to the tune of Rs.2,86,844/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005. The appellant filed the appeal against the said order which was dismissed.

3. Hence, this regular second appeal.

4. Arguments heard. Record perused.

5. There is no denying a fact that the appellant had sold the goods i.e. E.R.W. Pipes to M/s Khandelwal Agencies Pvt. Ltd., Raradevi Road, Siyaganj, Indore (M.P.). Vide Invoice No.123 dated 19.8.2013 and 125 dated 20.8.2013 for a total sum of Rs.9,78,288/-. It is also not disputed that though the vehicle after loading the goods had started on 20.8.2013 but it did not cross the boarders within these three days. The case of the appellant is that the vehicle had developed the defect near Amloh because of which the engine was not carrying the load, therefore, the same was parked at the workshop of Punjab Automobile Engineers & Fabricators, Nabha Road, Amloh for repairs. Ultimately, the vehicle was repaired on 22.8.2013. As such, they started for the destination on 23.8.2013, when both the drivers i.e. Ram Partap and Kulwinder Singh started for Indore alongwith the said truck and reached near Bhawanigarh. Sh. Ram Partap received telephonic massage from his house, therefore, he went back to his village Halla, but, thereafter, the vehicle was apprehended by the Excise and Taxation Officer, Mobile Wing on 23.8.2013. Since, the driver Kulwinder Singh did not know as to where Ram Partap had placed the bills, therefore, he could not produce any e-declaration or other documents. Eventually, it has been urged that as the e-declaration was made on 19.8.2013 therefore, there was no intention of the appellant to evade the tax.

6. Having heard the aforesaid contentions, this Tribunal does not find itself in agreement with the plea set-up by the appellant Admittedly, Ram Partap alongwith Kulwinder Singh were the drivers of Truck No. HR-58A-6521, The driver did not produce any documents before the Detaining or Designated Officer from 23.8.2013 to 28.8.2013. But to talk of the invoices and G.R. e- declaration was also not produced. The documents were produced only on 29.8.2013. The only explanation regarding the non furnishing of the documents is that on receipt of the telephonic call, Ram Partap had left the truck and went to his house, but unfortunately, no affidavit of Ram Partap has been placed on the record in order to support this plea. Had Ram Partap left the vehicle on the day when the truck was apprehended, then he would have explained the circumstances under which, he had left for his house. It is also not convincing that Kulwinder Singh did not know about the documents. He has admitted that he was the co-driver, in such situation, Kulwinder Singh is not expected have no knowledge about the whereabouts of the documents. Had these been in the truck, then he would have searched these and handed over to the same to the Detaining Officer and if he did not know about the location of the documents, then he would have enquired about the same from Ram Partap on phone. No doubt, Kulwinder Singh stated in his affidavit that he was not allowed to talk to Ram Partap at that time but he talked later and came to know that the documents were in the truck then in that situation, he would have produced the documents on the same day or the next day before the Detaining Officer, but the appellant did not produce the said documents before the Detaining Officer and the same were produced before the Designated Officer on 29.8.2013, In these circumstances, the documents could be manipulated within six days for producing the same. The non production of documents goes a long way to establish that the documents so produced later are manipulated and goods were not covered by the proper and genuine documents. Even the affidavit filed by Kulwinder Singh appears to be an after thought as the same was not produced on 29.8.2013 before the Designated Officer. The affidavit filed by Kulwinder Singh appears to have been prepared in consultation with the counsel for the appellant. Kulwinder Singh admits that he went to Chandigarh to see the Detaining Officer on 24.8.2013, but on that day there was a holiday. He again went to Chandigarh on Monday but no affidavit was filed by Kulwinder Singh on that day.

7. Mr. N.K.Verma, Sr. Dy. Advocate General for the State has stated that the case proves misuse, manipulation and forgery of the documents. Having considered the contention, the same appears to be deplete with merit. The GRs as produced on the record are not original but carbon copies of the original. The goods are shown to be loaded within two days in one truck. In that situation, truck must have started for the destination on 20th August, 2013, therefore, the GR could be only one and not two, but in the present case, two GRs No.302 and 303, dated 19.8.2013 and 20.8.2013 were prepared. It is also revealed from the documents that between 19.8.2013 and 20.8.2013, only one truck were dispatched by the transport company, which is not practically improbable? The other plea raised by the appellant is that the vehicle remained parked from 20.8.2013 to 22.8.2013 at Punjab Automobile Engineer and Fabricators, Amlph in connection with repairs. It is also not convincing and does not appeal to the reason. Even according to the appellant, Ram Partap got the vehicle repaired and issued a receipt for Rs.1700/- being the repair charges. The receipt so produced does not indicate if it was issued to Ram Partap, Driver. In such circumstances so prevailing over the case, the plea setup by the appellant that he had no intention to evade the tax, does not stand established. But the documents prove that the driver was not in-possession of any documents relating to the goods at the relevant time, therefore, inference would be drawn that the appellant had intention to evade the tax.

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

9. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 59 OF 2016

SALASAR TRADERS
Vs
STATE OF PUNJAB

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

20th September 2016

HF ▶ Revenue

No evidence to show that adverse material found against appellant was actually prepared by his accountant in connivance with the driver for ulterior purposes.

PENALTY - CHECK POST – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT – DOCUMENTS PRODUCED SHOWING UNDER VALUATION AND LESS WEIGHT OF GOODS – ON SEARCH ANOTHER SET OF INVOICES OF SAME NUMBER AND SAME DATE RECOVERED SHOWING RAISED QUANTITY AND WEIGHT OF GOODS – PENALTY IMPOSED U/S 51 – APPEAL BEFORE TRIBUNAL – CONTENTION RAISED THAT TWO SETS OF INVOICES KEPT BY ACCOUNT OF THE APPELLANT TO SETTLE PERSONAL SCORE AGAINST HIM IN CONNIVANCE WITH THE DRIVER – APPELLANT PLEADED TO BE IGNORANT ABOUT TWO SETS OF DOCUMENTS -ARGUMENT NOT EVIDENCED - NO CONNIVANCE ESTABLISHED – NOTHING IN RECORD TO SHOW ENMITY WITH ACCOUNTANT – ATTEMPT TO EVADE TAX ESTABLISHED – PENALTY UPHELD – APPEAL DISMISSED *– S 51 OF PVAT ACT, 2005*

Facts

The appellant is engaged in sale and purchase of dry fruits. It sold the same to a big business company. The goods were in transit. It was detected by the officer that there was difference in quantity mentioned in GR and in bills produced by driver. On search, the other set of bills with same invoice number and same date were recovered showing higher quantity of goods being taken. Penalty was imposed u/s 51 for attempt to evade tax. On first appeal, it was observed that the GR showed correct weight and documents were voluntarily produced thus the appellant could be penalized only for difference in two set of documents. An appeal before Tribunal is filed.

Held:

The contention that the wrong set of invoices was purposely kept by his accountant in connivance with the driver to settle personal scores against him has not been proved. Nowhere it is indicated that the bills were prepared by the accountant. Fact of connivance with the driver is also not established. The intimation to evade tax commenced the moment, the double set of invoices were prepared. All this shows that the two sets showing huge difference in rate and weight were presented with an intention to evade tax. The appeal is dismissed.

Present: Mr. D.K. Singla, Advocate alongwith Mr. Kavinder Kumar Singla, Advocate Counsel for the appellant.

Mr. B.S. Chahal, Dy. Advocate General for the State.

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

1. The Excise and Taxation Officer-cum-Designated Officer- Incharge Information Collection Center Jharmari (Lalru) (herein referred as Designated Officer), vide his order dated 7.10.2015, imposed a penalty to the tune of Rs.32,86,702/- against the appellant U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005. On appeal, the Deputy Excise and Taxation Commissioner-cum- Joint Director (Investigation), Patiala, (herein referred as the First Appellate Authority), while partly accepting the appeal, reduced penalty to Rs.21,60,512/-.

2. Still aggrieved, the appellant has come up in this second appeal.

3. Briefly stated, the facts are that M/s Salasar Trading is registered firm of Jaipur. It has been engaged in the sale and purchase of dry fruits. It sold dry fruits to Metro Cash and Carry India Pvt. Ltd., Zirakpur, Mohali vide invoice No.2468 and 2469 both dated 27.9.2015 for a sum of Rs.81,88,126-70 and Rs. 17,97,240/- respectively. The purchasing dealer is a big business company running a big Mall of retail and whole sale of variety of goods ° including the dry fruits.

4. On 28.9.2015, when the driver while carrying the goods in truck bearing No.HP-64-7754 reached ICC Jharmari, the Detaining Officer confronted the driver with the genuineness of the transaction whereupon Nagraj Sharma, representative of the firm, could not give any plausible explanation. On examination of the goods, it was detected that there was difference in quantity mentioned in the GR and the quantity mentioned in the bills which were presented by the driver before the incharge of ICC Jharmari. At the time of detention, the driver presented bill No. 2468, dated 27.9.2015 for Rs.22,93,039/-showing the quantity as 6005Kg and the bill No.2469 dated 27.9.2015 for a sum of Rs.4,90,620/- showing the quantity of the goods as 1000Kg. However, on further search of the vehicle, the other set of bills containing the same numbers i.e. 2468 and 2469 and of the same date i.e 27.9.2015 were recovered. The second sets of bills showing the amount of Rs.81,88,126/- showing the quantity as 10505Kg, dated 27.9.2015 and bill No.2469 for Rs. 17,97,240/- showing the quantity 2000Kg appeared to be corresponding to the goods.

5. Finding the serious deficiency in the aforesaid two sets of invoices, the appellant was "directed to appear before the Detaining Officer on 30.9.2015. On the said date, Sh. Krishan Kumar, proprietor of Salasar Traders, Jaipur (Rajasthan) appeared-before the Detaining officer alongwith Sh. Nagraj Sharma. When confronted with the adverse material appearing against him, he failed to make any plausible explanation. After thorough examination of the goods as well as the documents produced before him, the Designated Officer observed that the goods were intentionally and consciously under priced within intention to evade the tax, the goods were meant for trade, the excess goods almonds were not disclosed at the ICC in order to evade the tax due and payable under the Act and all this was done in a planned manner by raising double set of invoices with different rate and weight. Consequently, the appellant was imposed penalty to the tune of Rs.32,86,702/- U/s 51 (7) (b) of the Act.

6. On appeal, the Deputy Excise and Taxation Commissioner, while observing that since the-GR was showing the correct weight and documents were voluntarily produced, therefore, the appellant could be penalized for the difference in two sets of documents. The total correct of value of the goods as per second set of invoices produced by the-appellant was

Rs.99,85,366/-. But according to the first set of invoices, total value of goods was Rs.27,83,659/- therefore, the penalty U/s 51 (7) (b) of the Act could be imposed upon Rs.99,85,366-27,83,659=72,01,707/-. Resultantly, the First Appellate Authority, while partly accepting the appeal, directed the appellant to deposit the penalty of Rs.21,60,512/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

7. Hence this second appeal.

8. The counsel for the appellant, in order to justify the transaction" regarding dry fruits loaded-in "the truck bearing No.HP-64-7754, has urged that the appellant was not in the knowledge of two sets of bills which the driver was carrying, but he was conveyed by the driver that, there were two sets of bills with the consignment and both having the same numbers i.e.2468 and 2469 and of the same date i.e. 27.9.2015. Out of these two sets of bills, the invoices bearing the amount of Rs.81,88,126/- and Rs. 17,97,240/- were correct and the other set bearing the same numbers showing the price and Rs.22,93,09,336/- and Rs.4,90,620/- was not correct and the same was not issued by the appellant firm. The appellant appeared before the Detaining Officer on 30.9.2015 and had disclosed that the mischief was played by their accountant Dinesh Kumar in connivance with Nagraj Sharma. Dinesh Kumar was having strained relations with the appellant, therefore, he had reported against him at Police Station on 8.9.2015. As such due to strained relations Dinesh Sharma was nursing grudge and he got two sets of invoices prepared and consequently, he in connivance with Nagraj Sharma, sent the latter with the driver who intentionally presented the false sets of invoices at the ICC. The Detaining Officer did not bother to look into the plea setup by him. Since the appellant had supplied the goods on the basis of the genuine purchase orders to M/s Metro Cash and Carry India Pvt. Ltd. Zirakpur. The payment was also made through the banking channels, therefore, the question of evasion of tax did not arise.

9. To the contrary, the State Counsel has urged that the appellant intentionally prepared two sets of bills bearing the same -numbers which is a proof of the fact that the appellant was maintaining two parallel account books. Both the sets of invoices were signed by one and the same person. It is not disputed that the invoices were signed by their own employer. No daily dairy report has been lodged against Dinesh Kumar in order to prove that the complaint was lodged against him in the Police Station. The application so produced by the Krishan Kumar Proprietor of Salasar Traders (appellant) at later stage appears to have been manipulated, because neither it bears the name of the police officer nor the date of endorsement. No enmity with Nagraj Sharma has been pointed out which prompted him to present the false set of invoices. Consequently, he has urged that no better case could be there regarding evasion of tax then the present one.

10. Arguments heard. Record perused.

11. There is no denying a fact that the truck No. Hp-64-7754 was loaded with dry fruits on 27.9.2015 from Jaipur for supply to metro Cash and Carry India ltd. and when reached ICC Jharmari on 28.9.2015, it was detained by the incharge of the ICC on the following twin grounds:-

1. The goods were under valued.
2. The goods were excess in quantity.

12. It is also not in dispute that the driver concealed the other set of' invoices No. 24/58 and 2469-of the same date showing the actual value of the goods but produced the second false set of invoices. The summery of both sets of invoices is detailed as under:-

Date	Bill No.	Correct Bill (Amount)	Correct Bill (Quantity)	Second Bill(Amount)	Second Bill (Quantity)	Qty as per G.R.
27.9.2015	2468	81,88,126.00	10505 KG	22,93,039.00	6005 KG	
27.9.2015	2469	17,97,240.00	2000 KG	4,90,620.00	1000 KG	
Total		99,85,366.00	12505 KG	27,83,659.00:	7005 KG	12500 KG

13. The appellant was summoned to appear before the Detaining Officer on 30.9.2015 and he appeared and failed to explain about the custody' of two sets of invoices by the driver as well as the verification report made on 28.9.2015 regarding excess quantity and under valuation of the goods. The report reads as under:-

i. There were 5495 Kgs of excess goods i.e. Almonds. The vehicle carried 12,500/-Kgs of Dry Fruits, whereas invoices presented at the ICC and in respect of which Form VAT-36 was got generated, disclosed the weight of Almonds as 7005/-Kgs. The price of Almonds, disclosed in the subsequently recovered invoices was 828.44/-Kgs and same appeared to be correct. So value of excess Almonds amounted to Rs.45,52,278/-.

ii. The 7005 Kgs of dry fruit mentioned in the invoices presented at the ICC i.e. 2468 & 2469 and in respect of which Form VAT-36 was got generated (Details mentioned in the documents produced) was under priced to the tune of Rs.24,50,500/-.There was huge difference in Basic price per Kg between the invoices presented at the ICC and the invoices recovered during physical verification. For example as per invoice No. 2468 presented at the ICC, the price per Kg of cashew premium (W240) code No. 354027 was Rs.403.63 against Rs.703.63 mentioned in subsequently recovered invoice No.2468. It is evident that the goods were intentionally and consciously under priced in order to evade tax due under the Act ibid. Same was the position with respect to other items. The relevant details are as below:-

Under-valuation of dry fruits disclosed in documents presented at ICC

Code as per Invoice	Item	Weight	Difference in price both set of invoice	Amount
354027	Cashew premium	500Kg	Rs.300	1,50,000/-
354029	Cashew Spilit	250 Kg	Rs.300	75,000/-
354023	Raisn yellow	255 Kg	Rs.100	25,500/-
354022	Raisn Green	500 Kg	Rs.100	50,000/-
354021	Almond Standard	1000 Kg	Rs.400	4,00,000/-
354040	Almond American	120 tin (25 Kg)	Rs. 10,000/-	12,00,000.-
354035	Cashew 4 pieces	50 tin (10 Kg)	Rs.3000/-	1,50,000/-

326287	Almond Premium	1000 KG	Rs.400/-	4,00,000/-

iii. Under these facts and circumstances, there was no necessity to procure three quotations.

iv. The goods were undervalued intentionally and consciously in order to evade tax due under the Act ibid. Similarly, the excess goods i.e. Almonds were not disclosed at the ICC in order to evade tax due under the Act ibid. Planned efforts were made to transport the 5495 Kgs of almonds worth Rs. 45,52,278/-, without reporting at ICC under the cover of invoices presented at the ICC. Had the goods been .not checked and detained, the state would have suffered huge revenue loss, as these goods would have gone unaccounted. All this was done in a planned manner by raising double set of invoices with different rate and weight and by sending a representative with the vehicle to ensure that the real documents are not disclosed.

14. Since Krishan Kumar, Proprietor of the firm failed to explain the aforesaid documents and circumstances prevailing against him, the case was forwarded to the Designated Officer who also issued notice U/s 51 (7) (b & c) of the Punjab Value Added Tax Act, 2005. In response to which Krishan Kumar appeared before the Designated Officer. After examining the whole case, he imposed penalty to the tune of Rs.32,86,702/-. However, the Deputy Excise and Taxation Officer-cum- Joint Director (Investigation) while deducting the price as shown in the first set of invoices from the second set of invoices, be reduced the penalty to Rs.21,60,512/- U/s 51 (7) (b) of the Act.

15. The arguments as raised by the Counsel for the appellant can't be accepted for the reason that the appellant has failed to establish any enmity against the accountant of the firm who signed both the sets of bills. No enmity against Dinesh Kumar has been alleged or proved on the record except the oral contention that he was in league with Dinesh Kumar. No documentary proof has been brought on the record except one application given by Krishan Kumar against Dinesh Kumar at Police Station Vidhyadhar Nagar, Jaipur (Rajasthan). The-application appears to be false and manipulated on account of two reasons viz; firstly ho DDR was got recorded on the basis of the said application. Such application could be got signed and anti dated, secondly had there been any enmity between Dinesh Kumar, Accountant and proprietor of the firm then he would not have allowed him to work at this prestigious post. The allegations are dated 8.9.2015 as is revealed from the application whereas, the invoices were issued on 27.9.2015. Even after 27.9.2015, no complaint was lodged against Dinesh Kumar for causing loss to the appellant.

16. It may further be noticed that two sets of invoices, including one which was recovered from the truck, bear the same date and same number and have been signed by the same office bearer. The invoices do not indicate if the same were prepared by Dinesh Kumar. The perusal of both sets of invoices reveals that the firm was maintaining two parallel account books or it copied the invoices in a very intelligent way. Though the firm has alleged that the false set of invoices were presented at the ICC in connivance with Nagraj Sharma yet this connivance also does not stand established from the record. Rather no motive has been-attributed to Nagraj Shrama for doing so. No doubt Nagraj who was accompanying the vehicle in question, presented the invoices at the ICC. But why he would go all the way to present the false set of invoices and then why he would carry the second set with him. Even Krishan Kumar also did not make any statement before the Detaining Officer regarding presenting of the false invoices Therefore, the plea raised by the appellant that the false invoices were prepared by the accountant Dinesh Kumar with connivance of Nagraj is manipulated and an

after thought. The intimation to evade the tax commenced the moment, the double set of invoices were prepared. All this shows that the two sets showing huge difference in rate and weight were presented with an intention to evade the tax.

17. As already explained in the proceeding paras, the vehicle carried 12505 Kg of dry fruit whereas the invoice No.2468 and 2469 as presented before the authorities were showing weight 7005 Kg. Similarly, the price of almonds disclosed in the subsequently recovered invoice was Rs.81,88,126/-.

18. Thus the value of the almonds exceeded by Rs.45,52,278/-. These goods were being transported "without proper and genuine documents in contravention of the provisions of Section 51 (2 & 4) of the Punjab, Value Added Tax Act, 2005, therefore, the Tribunal is of the considered opinion that the goods were under valued intentionally with intention to evade or avoid the tax.

19. Resultantly, finding no merit in the appeal, the same is hereby dismissed. The findings returned by the First Appellate Authority stand confirmed.

20. Pronounced in open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 404 OF 2015

KARTAR AGRO INDUSTRIES PVT. LTD.
Vs
STATE OF PUNJAB

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

26th November, 2016

HF ▶ Assessee

No penalty can be imposed by the AETC in case the Detaining Officer does not forward the case to him with his report U/s 51(7) of PVAT Act.

PENALTY—ATTEMPT TO EVADE TAX—GOODS DETAINED AT ICC BY OFFICER A AND NOTICE ISSUED—NO REPORT FOR IMPOSITION OF PENALTY FORWARDED BY THE DETAINING OFFICER TO AETC—REPORT SENT BY OFFICER B WHO HAD NOT DETAINED THE GOODS—PROCEEDINGS FOR IMPOSITION OF PENALTY VOID ABINITIO—CONDUCT OF AETC DEPRECATED FOR IMPOSING THE PENALTY IN CONSPICUOUS MANNER—DECLARATION OF GOODS AT ICC FALLING ON THE ROUTE NOT NECESSARY IF GOODS ARE REPORTED AT THE EXIT ICC—PENALTY IMPOSED @50% IN THE PROCEEDINGS BEING CONDUCTED U/S 51(7)(B) NOT JUSTIFIED—PENALTY DELETED—APPEAL ALLOWED — *SEC.51 PVAT ACT*

A Harvester Combine approached ICC Madhopur while going towards Jammu and produced documents before the Detaining Officer Sh. Rajwinder Bajwa, ETO. Goods were detained and show cause notice was issued in response to which the assessee appeared and produced the necessary papers. He did not forward the case to the AETC U/s 51(7)(a). Record on the file reveals that one Sh. Mahesh Kumar, ETO prepared the report and forwarded the case to AETC whereas he was not the detaining officer and was not aware of the facts of the case. AETC impose the penalty on the ground that the Assessee did not report he goods at the ICCs falling on the route and also on the ground that there were certain discrepancies in the documents. On appeal before Tribunal held:-

*On a bare reading of the Sec.51(7)(a) and 51(7)(b) it transpires that the "**officer detaining the goods**" can only forward the case as he has to record the statement of the driver and issue the notice requiring the owner of the goods to satisfy him qua genuineness of the transaction. Thereafter he is required to forward the proceedings to the Designated Officer for conducting necessary enquiry. Legislature has not authorized any person except the Detaining Officer to submit a report within 72 hours as he is the only person to witness the detention and knew about the circumstances in which the vehicle was detained. The present case is one of the worst examples of hanky panky on the part of AETC as on the date of detention not only the Detaining Officer issue the notice but even the AETC issued the notice where as the proceedings were not even forwarded to him.*

The case made out by the department that the vehicle did not report at the ICC is also not correct as the Detention report reveals that driver has not crossed the ICC Madhopur. Moreover the combine being a slow moving vehicle could not be driven so fast that it could not be stopped. The objection regarding E-Declaration is also not correct as no such E-Declaration was required to be made in the case. The penalty to the tune of 50% of the value of goods could not be imposed where the proceedings have been forwarded to the AETC U/s 51(7)(b) where the maximum penalty is 30% of the value of goods.

On examination of case as a whole the impugned order cannot be sustained and the same deserve to be quashed. Consequently the penalty is quashed and respondents are directed to refund the penalty if so deposited by the Assessee.

Present: Mr. K.L. Goyal, Sr., Advocate alongwith Mr. Varun Chadha, Advocate
Counsel for the appellant.

Mr. B.S. Chahal, Dy. Advocate General for the State.

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

1. Vide order dated 9.1.2013, Assistant Excise and Taxation Commissioner-cum-Designated Officer, ICC Madhopur imposed a penalty of Rs. 10,40,500/- upon the appellant U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

2. The appeal against the said order was dismissed by the First Appellate Authority on 7.6.2014.

3. On 27.12.2012, when the driver alongwith self Propelled Combine having temp, registration No. PB-ll-AX-3420 without stopping the said vehicle at the ICC Madhopur started going towards, Jammu, it was chased and got stopped by the Detaining Officer. The driver when confronted, he produced the following documents before the Detaining Officer:-

1. Bill No. 1060, dated 25.12.2012 of M/s Kartar Agro Industries Pvt. Ltd.,Village Bhadson, Tehsil Nabha, District Patiala for Rs. 20,80,952/- issued in the favour of Jammu and Kashmir Indus Development Corporation Ltd., House No. 7, Ramesh Market, Shastri Nagar, Jammu.
2. Copy of agreement between M/s Kartar Agro Industries Pvt. Ltd. "and Jammu and Kashmir Indus Development Corporation Ltd.
3. Form 22 and Form 21 (sale certificate).
4. Temporary certificate of registration.
5. Insurance documents with validity for one month.
6. Form No. ST-XXXVI.

4. On examination of the aforesaid documents, the detaining officer noticed that the driver was coming from Bhadson, District Patiala but he did not furnish information at two ICCs falling on the way i.e. ICC Harsa Mansar and another ICC Sai Kullian and he tried to jump ICC at Madhopur. It was also found that self propelled combine was sold to Jammu and Kashmir Agro Indus Development Corporation Ltd. against Form "C" and the tax @ 2% was charged in place of 6.05% as applicable in the State of Punjab on the ground that as per agreement with J & K Corporation. The corporation had made the purchase for M/s Farm Manager Seed Multiplication, Farm Chakroi and Farm Manger Seed Multication, Farm Chinor,

Jammu but the Sale Certificate produced by the appellant was bearing the address of Shastri Nagar, Jammu. Thus, the Detaining Officer doubted that the vehicle was purchased by the Corporation not for further sale to any other department as alleged in the agreement. Fie further doubted that the copy of the declaration was false as appellant 'had mentioned agricultural implements in place of self propelled combine for the reason that the Agricultural Implements were tax free in the State of Punjab. It was further observed by him that supply order given by the taxable person indicated the following particulars:-

Price of combine	23,50,000/- (inclusive of all taxes)
Less discount	50,000/-
Less 5%	21,85,000/-
Less VAT on 2185000/-	1,04,047/-
Balance price inclusive of CST	20,80,952/-

5. From the above supply order, it was detected that the taxable person had given discount on account of VAT @ 5% and he did not charge any VAT from the appellant and the appellant charged CST @ 2%. The detaining officer also recorded the statement of Sh. Harbans Singh Driver, and issued notice U/s 51 (6) (c) of the Punjab Value Added Tax Act. Consequently, the papers were placed before the Designated Officer who also issued notice to the owner.

6. Ultimately, the Designated Officer, after going through the statement of the driver, detention report and the documents submitted by the driver as also the reply filed by the appellant observed that the appellant tried to evade the payment of tax by not giving information at the ICC inspite of the fact that he had crossed two ICCs and also tried to jump ICC Madhopur. He also observed that e-ICC form generated was for agricultural implements and not for self propelled combine which is taxable in the State of Punjab. Thus, he deserves to impose penalty. Consequently, the penalty was imposed.

7. Feeling aggrieved by the said order, the appellant filed the appeal which was dismissed on 7.6.2014, hence this second appeal.

8. Arguments heard. Record perused.

9. The counsel for the appellant has urged that section 51 (2) is applicable only if the goods are carried in a goods vehicle. It is not applicable, where the goods are a vehicle. The appellant was not supposed to inform the ICCs falling on the way. However, he was supposed to inform the last ICC before crossing the State and he accordingly informed at ICC, Madhopur. It was further argued that the driver having all the documents relating to the transaction including the temporary registration under the Motor Vehicles Act, therefore the transaction can't remain out of the account books. The goods were duly insured, therefore, it can't be said that there was any attempt to evade tax. The CST was correctly charged. The law did not require the of e-trip, therefore, the irregularity, if any, in e-trip is of no consequence. The appellant had produced the books of account as also the written submissions; therefore, the order could not be passed ex-parte. The speed of the Harvesting Combine was not more then 10 Kms per hour, therefore, it could not jump the ICC. The detention is not by the officer who had forwarded the case to the Designated Officer. It means that the person who had detained the goods was not agreeable to submit the report to the Designated Officer. The Excise and Taxation Officer referred the case to the Assistant Excise and Taxation Commissioner on 30.12. 2012 but the notice was issued by him on 27.12.2012. All this goes to- show that "the signatures of the driver were taken on 27.12.2012 itself and the penalty was predetermined.

10. In the end, the appellant has prayed for accepting the appeal.

11. To the contrary, Sh. B.S. Chahal, Dy. Advocate General for the State has urged that the appellant tried to suppress the goods as well as the information regarding the transaction. There is an intention to evade the tax. Forwarding the report by the other person then the Detaining Officer was merely an irregularity which would not affect merits of the case. The e-trip indicates that the appellant did not make the payment of tax on the transaction in the State of Punjab. The goods were not accompanied by genuine documents. The CST was also not properly paid, ultimately he has prayed for dismissal of the case.

12. The prime contention raised by the Counsel for the appellant to the effect that the law could be set in motion by the Designated Officer only on the report made by the Officer Detaining i.e. Detaining Officer who had the first hand information regarding the facts and circumstances of the case and he was to satisfy himself regarding the suspicious circumstances and fitness of the case for forwarding the same to the Designated Officer. But in the present case, the officer who had detained the vehicle, did not forward the case, therefore, the proceedings as initiated by the Designated Officer were void abinitio. Having considered this contention," the same convinces the mind of the Tribunal. The vehicle was detained on 27.12.2012 by Mr. R.Bajwa, Excise and Taxation Officer, ICC, Madhopur and issued notice to the owner of the goods for 28.12.2012. The notice was received by Harbans Singh, Driver of the vehicle. The order sheet reveals that on 29.12.2012, the case was not attended by the Detaining Officer. The same remained in abeyance upto 29.12.2012. The order sheet further transpires that one Mahesh Kumar prepared the detention report in the absence of the appellant. He also did not record as to under what circumstances; the case was required to be forwarded to the Designated Officer. He also did not record his satisfaction regarding the fitness of the case to be forwarded to the Designated Officer. No doubt, there is a statement of Harbans Singh Driver on the record, but the same does not bear the signatures of the either R.Bajwa or Mahesh Kumar. It appears to have been recorded on 27.12.2012, but the detention order does not make any reference to the statement of Harbans Singh. Even otherwise, Mahesh Kumar having not detained the vehicle and having no first hand information 'regarding the facts and circumstances under which the vehicle was detained, forwarded the case 'for the reasons best known to him, therefore, such a detention report could not be subjected to action by the Designated Officer. There is lot of hanky panky in the case as B.K.Rathak, Assistant Excise and Taxation Commissioner has been playing active role behind the detention of the vehicle as is apparent from a notice dated 27.12.2012 issued to the owner of the goods on the date of detention. It is surprising to note that how Shri B.K.Pathak, Assistant Excise and Taxation Commissioner came into picture on the date of detention i.e. 27.12.2012 when the case was not forwarded to him. From these circumstances, only inference which could be drawn is that it was all in connivance of B.K.Pathak (Designated Officer) that he got the case forwarded to him from Shri Mahesh Kumar instead of Mr. Rajwinder Bajwa, Excise and Taxation Officer, ICC, Madhopur who had detained the vehicle. Notwithstanding the fact that Mahesh Kumar was not competent to forward the case, the Designate Officer did not make any further enquiry and awarded penalty on the basis. As regards to the preposition that it was only on initiation of the Designated Officer, the Designated Officer could issue notice. I need to reproduce Section 51 (7) (a) & (b) of the Act as under:-

51 (7) (a) The officer detaining the goods under sub-section (6), shall record the statement, if any, given by the consignor or consignee of the goods or his representative or the driver or other person incharge of the goods vehicle and shall require him to prove the genuineness of the transaction before him in his office within the period of seventy two hours of the detention. The said officer shall, immediately thereafter, submit the proceedings alonawith the concerned records to the designated Officer for conducting necessary enquiry in the matter;

(b) The designated Officer shall, before conducting the enquiry, serve a notice on the consignor or consignee of the goods detained under clause (a) of sub-section (6), and give him an opportunity of being heard and if, after the enquiry, such officer finds that there has been- an attempt to avoid or evade the tax due or likely to be due under this Act, he shall, by order, impose on the consignor or consignee of the goods, a penalty which shall be equal to thirty per cent of the value of the goods. In case he finds otherwise, he shall order release of the goods and the vehicle, if not already released, after recording reasons in writing and shall decide the matter finally within a period of fourteen days from the commencement of the enquiry proceedings.

13. On bare reading of the Section, it transpires that the words "officer detaining the goods" "connotes the person who had detained the goods and not his successor in interest. The Section further indicates that the Designated Officer could forward the case and not his predecessor and successor, for the reasons viz; firstly; he has to record, the statement of driver; secondly; issue notice requiring the owner of the goods to satisfy him qua genuineness of the transaction, thereafter, he would forward the proceedings alongwith concerned record to the Designated Officer for conducting necessary, enquiry by providing him an opportunity to the appellant of being heard. The legislature in its wisdom did not authorize any other person except the "Detaining Officer" to submit a report within 72 hours as he is the only person to witness the detention and knew about the circumstances in which the vehicle was detained. Had the successor or any other person except the Detaining Office been competent to forward the proceedings, then he must have been authorized by the legislature to be competent to forward the case. But in the present circumstances, Mahesh Kumar neither participated in the proceedings nor held the enquiry or heard the appellants or examined the documents, therefore detention report submitted by him was without authority. The present case is one of the worst examples of hanky panky on the part of the Designated Officer. On the very first day of detention, not only Mr. Rajwinder Bajwa, issued notice regarding detention of goods to the owner of the goods, but the Assistant Excise and Taxation Commissioner also issued notice to the owner of the goods, which highlights the malafide of the Assistant Excise and Taxation Commissioner and indicates the bias with which he got forwarded the case from Mahesh Kumar. Had Mr. Rajwinder Bajwa (Detaining Officer) been satisfied, then he must have forwarded the case to the Designated Officer.

14. Consequently, it would be held that the order passed by the Designated Officer was pre-determined and biased. It may further be observed that the case set by the Department is that the driver did not report at the ICC and ran away is not in any manner possible. The detention report reveals that the driver had not crossed the ICC, Madhopur without giving any information. There is nothing on the record that he had run way, therefore, the observations made in the order by the Designated Officer that the vehicle was got stopped after chase are not correct. The driver might be finding a suitable place for parking combine, but no inference, in aforesaid circumstances of the case, can be drawn that this slow moving vehicle could be driven so fast that it could not be stopped. The driver must be finding the place to park the vehicle in order to submit information at the ICC.

15. The penalty order has been passed solely on the ground that no information was given at the ICC and that the e-declaration submitted by the appellant is discrepant as it reveals another item i.e. agricultural implements which are free in the State of Runjab. As regards, the "e-declaration" submitted by the appellant, it may be observed that no such "e-declaration" was required to be made in the case. Therefore, even if e-declaration was submitted, then it would of no consequence. As regard, the non furnishing of information at any of ICC's i.e. Harsa Mansar and ICC Sai Kullian falling on way, it may be observed that there was no requirement of law to generate the information at every ICC falling on the way to another State. Since it

was an interstate sale and therefore the information was to be given at the last ICC before cross the home State. The vehicle was carrying proper and genuine documents. The transaction was a sale to semi Government undertaking against a proper written purchase order. The information was given to the Distt. Transport Officer and a temporary number was got issued. The vehicle could not 'be registered without valid sale bill, therefore, the nature of the transaction is such that that it could not be kept out of the account books. In any case, since there is no proper evidence coming forward that the appellant tried to jump the ICC. He could not be condemned for the allegation.

16. An other major defect in the case is that the Designated Officer recorded in his order, that .the Detaining Officer had forwarded the proceeding to him on 30.12.2012 with the recommendation for taking action under section 51(7)(b) of the Punjab Value Added Tax Act, 2005. The Penalizing Officer imposed the penalty to the extent of 1/2 of the value of the goods u/s 51(7)(b) of the Act which is against the spirit of this section as the .penalty more than 30% of the value of the goods could not be imposed under the said section "Thus, in these circumstances, the order of penalty can not be sustained.

17. Having examined the case as a whole and the orders passed by the authorities below, this Tribunal is of the opinion that the impugned orders have been passed against facts and the spirit of the law of land, therefore the same deserve to be quashed. Consequently, the impugned orders are quashed.

18. Resultantly, this appeal is accepted, impugned order of penalty is quashed and the respondents are directed to refund the penalty if so deposited by the appellant.

19. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 56 OF 2015

KIRPAL EXPORTS
Vs
STATE OF PUNJAB

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

6th September, 2016

HF ▶ Revenue

Sale of pre-owned car is taxable under the Punjab VAT Act during the year 2005-06

SALE – OLD AND USED CAR – CAR PURCHASED ON THE PAYMENT OF TAX – RE-SALE OF CAR BY THE DEALER – NO PROVISION UNDER THE ACT WHICH GIVES EXEMPTION FROM PAYMENT OF TAX ON THE RE-SALE OF CAR – SALE OF PRE-OWNED CAR NOT TAX-FREE DURING THE RELEVANT PERIOD – NO INPUT TAX CREDIT CAN BE GRANTED IN ABSENCE OF ORIGINAL PURCHASE INVOICE – NO GROUND TO INTERFERE IN THE APPEAL – LEVY OF TAX, PENALTY AND INTEREST UPHELD. *SECTION 2(1)(ZF) AND SECTION 13 OF PVAT ACT, 2005.*

Assessee purchased a car in the year 1994 and sold it during the year in question i.e. 2005-06. There is no provision under the Act which grants exemption from payment of tax on the sale of old car. During the relevant period there was no exemption. Original purchase invoice has also not been produced and therefore no Input Tax Credit can be granted to the assessee. Finding no merit in the appeal, the same is dismissed.

Present: Mr. Mavpreet Singh, Advocate Counsel for the appellant
Mr. B.S. Chahal, Dy. Advocate Counsel for the State.

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

1. This appeal is directed against the order dated 23.5.2011 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana (herein referred as the First Appellate Authority) dismissing the appeal against the order dated 20.11.2009 passed by the Assessing Authority, Ludhiana-II levying tax of Rs.l,13,476/-+ penalty of Rs.78,043/- + interest of Rs. 19,510/- U/s 53 and 32 of the Punjab Value Added Act, 2005 respectively.

2. The Tribunal also dismissed the appeal on 27.2.2012.

3. Still feeling aggrieved, the appellant knocked the door of the Hon'ble Punjab and Haryana High Court which was allowed on 13.10.2015. Hon'ble High Court issued a directions to the Tribunal to decide the case afresh by passing a speaking order after providing an opportunity of hearing to the appellant.

4. Hence, the appellants are before the Tribunal against the judgment dated 23.5.2011 passed by the First Appellate Authority.

5. The factual background of the case is that the appellant sold a pre-owned car for Rs.6,24,341/-, but he did not deposit the tax payable on the sale of car, therefore, the tax and penalty were imposed against him by the Assessing Authority while framing the assessment for the year 2005-06. The appeal filed by the appellant was also dismissed on 23.5.2011.

7. Arguments heard. Record perused.

8. The Counsel for the appellant in addition to the written arguments have further submitted the authorities below fell in error in imposing the tax upon the appellant because he had purchased the car in the year 1994, therefore the payment of tax" at the time of resale would amount to double taxation. The assessment is time barred. The ITC was wrongly rejected that too without examining the transaction from the computer. On the other hand, the State Counsel has contended that the only issue involved in the case is whether the appellant was liable to pay the tax on the resale of the car.

9. Having heard the arrival contentions, the Tribunal finds itself in agreement with the contentions raised by the Deputy Advocate General Punjab and also the judgment passed by the authorities below. Both the authorities have observed that on the resale of the car, the appellant was liable to pay the tax. It is also revealed from entry serial No. 66 of the Schedule "A" appended Punjab Value Added Tax Act, 2005 that the tax is payable on the resale of the car under the Punjab General Sales Tax Act. There is nothing on the record to show that tax was not payable on the resale of the car at the relevant time therefore, it could reasonably be inferred that it was sold during the period, when pre owned car was not tax free item. This is also revealed from the impugned orders that the original purchase invoice was not produced by the appellant, therefore, no ITC could be granted to him. The appellant was also asked to explain about the specific date of sale of car but he did not deny that the car was sold at the time when it was taxable.

10. No other arguments have been raised.

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

12. Pronounced in the open court.

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OFFICE CIRCULAR (Punjab)

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MANNUAL ISSUANCE OF STATUTORY FORMS FOR YEAR 2016-17

OFFICE OF THE EXCISE & TAXATION COMMISSIONER, PUNJAB

To

1. Add. Excise Taxation Commissioner-1, Punjab
2. Add. Excise & Taxation Commissioner, VAT-1 & VAT-2, Punjab
3. Director (Investigation)
4. All Deputy Excise & Taxation Commissioner (Divisional Head)
5. All Deputy Excise & Taxation Commissioner (Appeals)
6. All Assistant Excise & Taxation Commissioner (Head of Districts)

No. 671 dated 04.10.2016

Subject: Directions regarding working of office in transparent and correct manner

Ref: In continuation of Letter No. PA/ETC/2016/663 dt 14.9.16 of this office .

It is hereby decided that statutory forms i.e. 'C', 'F', 'H', 'I', 'E-1' & 'E-2' required under the CST Act, 1956 for the year 2016-17 shall be given manually.

Sd/-
Excise & Taxation Commissioner, Punjab

PUBLIC NOTICE (Punjab)

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PUBLIC NOTICE REGARDING EXTENSION OF LAST DATE OF FILING OF VAT-20 FOR FINANCIAL YEAR 2015-16

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION

PUBLIC NOTICE

KIND ATTENTION: DEALERS/CHARTERED ACCOUNTANTS/LAWYERS/OTHER STAKEHOLDERS

This is to inform all the concerned that the last date of e-filing of annual statement in Form VAT-20 for the year 2015-16 has been extended till 20th December, 2016.

Dated: 10th December, 2016 Excise & Taxation Commissioner, Punjab

PUBLIC NOTICE (Punjab)

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PUBLIC NOTICE REGARDING GST

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION

PUBLIC NOTICE

KIND ATTENTION:DEALERS/CHARTERED ACCOUNTANTS/LAWYERS/OTHER STAKEHOLDERS

1. As you are aware that Goods and Services Tax (GST) is likely to be implemented with effect from April 1, 2017.
2. For the smooth transition from VAT regime to GST regime, GST migration process has been started by the State of Punjab.
3. In light of this, every dealer will be required to login to the GST Portal i.e **www.gst.gov.in** from 16th December, 2016 onwards. This facility is available till 31st December, 2016.
4. Provisional Login Ids and Passwords will be provided by the Department of Excise and Taxation to all the registered dealers.
5. Provisional Login Ids and Passwords will be available in the offices of Assistant Excise and Taxation Commissioners. Dealers can collect the sealed envelopes containing provisional login ids and passwords from 9:00 am to 5:00 pm from the respective ward in-charges.
6. The provisional login ids and passwords can be collected by the dealer himself or any of his legal representative on furnishing of authorization letter.(Copy of authorization letter is available on Department's website i.e. www.pextax.com)
7. Step by Step "User Guide for migration to GST" is available on the Department's website i.e **www.pextax.com**.
8. As most of the dealers do not have digital signatures/ e-signatures, they shall complete all the other steps prior to digital signatures/e-signatures. It shall kindly be noted that these steps shall be completed between 16th December, 2016 to 31st December, 2016.
9. For any query dealers may call at helpline no-0124-4688999/0175-2225192 or email at **helpdesk@gst.gov.in.**

Dated: 8-12-16 Excise & Taxation Commissioner, Punjab

SGA
LAW OFFICES

CIRCULAR (Haryana)

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FAQS RELATING TO THE HARYANA ALTERNATIVE TAX COMPLIANCE SCHEME FOR CONTRACTORS, 2016

Q1. Who can opt for this Scheme?

Ans. A Contractor (as defined in clause 2(l)(d) of the Scheme) who has conducted the business (as defined in clause 2(l)(c) of the Scheme) can opt for the Scheme. In general terms, a builder or a developer has been defined as a contractor under the Scheme. So, only a builder or a developer can opt for the Scheme.

Q2. Does the scope of the Scheme apply to whole of gross turnover for those who opt for the Scheme?

Ans. The scope of the Scheme applies only to the aggregate amount relating to the business (as defined in clause 2(l)(c) of the Scheme) conducted by the contractor. So, gross turnover relating to other businesses conducted by the dealer will not come within the scope of the Scheme.

Q3. From what date the Scheme can be opted and for what period?

Ans. The Scheme can be opted for any period which may commence with any financial year (to be chosen by the applicant contractor i.e. developer/builder) and ending with 31.03.2014. However, once opted from a particular year then the Scheme shall be deemed to have been opted for all the subsequent financial years upto 31.03.2014. For example if a contractor opts from the financial year 2003-2004, in that case the Scheme shall also apply for all financial years from 2003-2004 to 2013-2014. The Contractor will have to pay the amount as per the Scheme for each year upto 2013-2014.

Q4. Can the applicant pick and choose the financial year(s) for opting the Scheme within the period of the scheme?

Ans. No, the applicant contractor cannot pick and choose the financial year(s) for opting the Scheme. However, the applicant has a choice to pick any financial year from which the Scheme shall be applicable to him. Once opted for a particular year, the Scheme shall be applicable for all the subsequent financial years upto and including 2013-2014 as also explained in answer to Question No.3 above.

Q5. Is there any prescribed format for making an application to opt for the Scheme?

Ans. Yes, an applicant has to submit the application online, for opting the Scheme, in a prescribed format in Form TC-1. (clause 5 of the Scheme)

Q6. Whether the Scheme can be opted for the financial year for which assessment/revision/reassessment has become final?

Ans. Yes, a contractor may apply for the Scheme for any financial year even if the assessment/revision/reassessment of that year has become final provided the financial year is covered within period under the Scheme. Once the commencement year is opted, the contractor

will be deemed to have opted for all the subsequent financial years upto 2013-2014 and will have to pay amount payable as per Scheme irrespective of the fact whether the assessments/reassessments/revision/appeal for those subsequent years have become final and whether or not the contractor has cleared all the dues relating to those financial years.

Q7. Whether the Scheme can be opted for financial year where the assessment has not been framed?

Ans. Yes, a contractor may apply for the Scheme for any financial year even if the assessment for that year has not been framed provided the financial year is covered within period opted under the Scheme. A contractor may apply for a particular year even if the contractor is not registered under the HVAT Act, 2003 during that year and even if no notice for assessment as an unregistered/registered dealer has been issued by the Assessing Authority.

Q8. Whether the Scheme can be opted for the financial year wherein the order is pending under proceedings of reassessment, revision or appeal?

Ans. Yes, a contractor may apply for the Scheme for a particular financial year even if the order is pending under proceedings of reassessment, revision or appeal, provided the financial year is covered within the period opted under the Scheme.

Q9. Can any part of aggregate turnover be considered in two financial years and hence taxed twice?

Ans. No. There is no possibility of any part of aggregate turnover being taxed twice. Since under the Scheme, only the revenue recognized for construction (business as defined in the Scheme), during a particular year, is to be considered for taxation, therefore, any amount whether received in the past or receivable in future will not be taxed unless it is appropriated against said construction activity for the year. Hence it shall be taxed only once during the financial year it is appropriated against the construction activity because a particular construction activity cannot be attributed to two different financial years.

Q10. Whether revenue recognized on account of sale of completed units will be a part of the aggregate amount?

Ans. No. The revenue recognized on account of units constructed not in pursuance of an agreement but sold after completion will not be part of aggregate amount (as defined under the Scheme), so it will not be taxed under the Scheme.

Q11. Whether any case covered and opted under the Scheme can be further taken up in any proceedings by the department once the contractor has discharged his liability under this Scheme in full?

Ans. No. No such case under the Scheme will be taken up by the department in any proceedings where the provisions of the Scheme have been appropriately complied with.

Q12. Whether separate applications are to be submitted for each financial year for which Scheme is opted?

Ans. No. A contractor has to apply for all the financial years falling under the opted period of the Scheme in only one application in a prescribed form in TC-1.

Q13. What if the booked unit is cancelled and booking amount is refunded?

Ans. Since, construction work was done in pursuance to the agreement, the tax would be levied by including the amount (corresponding to construction work of the booked unit) in the aggregate amount, and once the tax has been levied because of incorporation of goods, it cannot be refunded even if the booked unit is cancelled because the goods once incorporated cannot be returned as such.

Q14. Whether External Development Charges (EDC) and Internal Development Charges (IDC) will form part of the aggregate amount?

Ans. Since these expenses are relatable to development of the land and are to be borne by the developer/builder, therefore, will add to the cost of the unit which is ultimately passed on to the buyer and hence will form part of the aggregate amount subject to the provisions of aggregate amount as defined in the Scheme.

Q15. Whether, Club Membership charges, Electricity, Gas & Water charges will form part of the aggregate amount?

Ans. If the services are forming part of the sale agreement and are to be necessarily provided in the unit to treat it as completed, these will form part of the aggregate amount. However, in case these services are optional and the constructed unit is to be handed over even if these services are not taken, then these will not form part of the aggregate amount.

Q16. Whether Service Tax will be part of the aggregate amount?

Ans. Since levy of service tax upon the builder/developer is in consequence of and subsequent to the services provided i.e. construction and delivery of the unit, therefore, service tax will not form part of aggregate amount.

Q17. Whether, Transfer charges will form part of the aggregate amount?

Ans. Transfer charges will form part of the aggregate amount to be charged from the subsequent buyer (Transferee) as any construction work after - that is in pursuance to the new agreement with the transferee.

Q18. Whether any 'No Dues' Certificate or copy of order will be issued by the department after acceptance of the application for opting the scheme?

Ans. Yes, a formal order accepting the application (for opting the Scheme) will be passed by the Deputy Excise & Taxation Commissioner (ST) of the concerned district, copy of which will be provided to the applicant for discharging further liabilities under the Scheme.

Q19. Whether Tax, Penalty and Interest may be adjusted against the liability under the Scheme?

Ans. Since, the amount payable under the Scheme is to be calculated on the aggregate amount for the business carried out during the year (as per clause 4(1) of the Scheme), therefore, the tax, interest, penalty paid by the contractor relating to the business (as defined in the Scheme) will only be adjusted against the liability under clause 4(2) of the Scheme. Tax, interest, penalty relating to other businesses will not be adjusted against the liability under the Scheme.

Q20. Whether the amount of tax collected from buyers consequent to earlier creation of additional demand by the tax authority will be treated as amount payable under proviso to clause 4(1) of the Scheme?

Ans. No. The amount of tax collected from buyers consequent to earlier creation of additional demand by the tax authority will not be treated as amount payable under proviso to clause 4(1) of the Scheme and shall be adjustable as per clause 4(2) of the Scheme.

R.B.S. Tewatia
Addl. Excise & Taxation Commissioner (P/R),
Haryana, Panchkula

ORDER (Haryana)

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EXTENSION OF PERIOD FOR FURNISHING OF ONLINE ANNUAL RETURNS

ORDER

Consequent upon implementation of electronic governance under subsection (1) of Section 54-A of the Haryana Value Added Tax Act, 2003 vide order dated 05.08.2015, I am satisfied that circumstances exist for extension of period prescribed for furnishing of online annual returns. Therefore, in exercise of powers conferred upon me under sub-section (3) of Section 54-A of the Haryana Value Added Tax Act, 2003. I, Shyamal Misra, IAS, Excise & Taxation Commissioner, Haryana, do hereby extend the period for filing online annual returns for the year 2015-16 upto 10.12.2016.

Sd/-
(SHYAMAL MISRA)
Excise & Taxation Commissioner,
Haryana, Panchkula

Panchkula,
Dated 30.11.2016

SGA
LAW OFFICES

ORDER (Haryana)

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THE LAST DATE FOR FILING OF ANNUAL RETURN (R2) FOR THE YEAR 2015-16 EXTENDED TO 31.12.2016

ORDER

Consequent upon implementation of electronic governance under subsection (1) of Section 54-A of the Haryana Value Added Tax Act, 2003 vide order dated 05.08.2015, I am satisfied that circumstances exist for extension of period prescribed for furnishing of online annual returns. Therefore, in exercise of powers conferred upon me under sub-section (3) of Section 54-A of the Haryana Value Added Tax Act, 2003. I, Shyamal Misra, IAS, Excise & Taxation Commissioner, Haryana, do hereby extend the period for filing online annual returns for the year 2015-16 upto 31.12.2016.

Sd/-
(SHYAMAL MISRA)
Excise & Taxation Commissioner,
Haryana, Panchkula

Panchkula,
Dated 09.12.2016

PUBLIC NOTICE (Haryana)

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PUBLIC NOTICE FOR MIGRATION OF EXISTING REGISTERED DEALERS UNDER HVAT TO GST

PUBLIC NOTICE

EXCISE AND TAXATION DEPARTMENT, HARYANA
(Migration of Existing Registered Dealers under HVAT to GST)

As you are aware that Goods and Services Tax (GST) is to be implemented from 1st April 2017. GST provides for provisional registration of all existing dealers under HVAT Act, 2003 whose PAN has been validated with the CBDT (Central Board of Direct Taxes). This process of enrolment of existing registered dealers of Haryana under HVAT Act, 2003 to the GST System will commence from 16th December 2016 and end on 31st December 2016.

For the purpose of obtaining provisional registration under GST, the existing dealers are being provided a provisional ID and Password. This provisional ID and Password are available on the official website of the department i.e. www.haryanatax.gov.in. The provisional ID and Password can be accessed from their login dashboard. The provisional ID and Password can also be obtained from the concerned district office after submitting the certified photocopy of PAN of the Firm/Proprietor, as the case maybe.

- The existing registered dealers are required to register themselves on GST System portal i.e. www.gst.gov.in using this provisional ID and Password within the stipulated time period from 16th December 2016 to 31st December 2016.
- The dealers shall be required to furnish their mobiles no and email id of the authorized signatory of the business entity at the time of registration on GST System Portal.
- An Application Reference Number (ARN) will be provided to the dealers for future reference after successful registration in the GST System portal.
- A provisional Registration Certificate will be provided to only those dealers who have successfully registered themselves in the GST System Portal as mentioned above.
- No fee shall be charged from the existing registered dealers for getting themselves registered in GST System Portal.

Further for any query/information contact the helpdesk established at DETCs (ST) office of the concerned district.

Excise & Taxation Commissioner,
Haryana, Panchkula

NOTIFICATION (Haryana)

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APPOINTMENT OF CHAIRMAN AND MEMBER OF THE HARYANA TAX TRIBUNAL

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

Notification

The 24th November, 2016

No. S.O. 55/H.A. 6/2003/S. 57/2016.— In exercise of the powers conferred by sub-section (1) of Section 57 of the Haryana Value Added Tax Act, 2003 (Act 6 of 2003), the Governor of Haryana hereby appoints Justice L.N. Mittal (Retired) to be the Chairman, Sh. Sukhpal Singh Kang R/o House No. 223, Sector-18, Chandigarh and Sh. Sachin Jain, Advocate, 698/8, Ganga Bagh, Hansi to be members of the Haryana Tax Tribunal with immediate effect for the purpose of performing the functions and exercising the powers of the Tribunal under the said Act and makes the following amendment in the Haryana Government, Excise and Taxation Department, Notification No. S.0.78/H.A. 6/2003/S. 57/2003, dated the 15th May, 2003, namely:-

Amendment

In the Haryana Government, Excise and Taxation Department, Notification No. S.O. 78/H.A. 6/2003/ S. 57/2003, dated the 15th May, 2003, in serial number 1, for items (1), (2) and (3) and entries thereagainst, the following items and entries there against shall be substituted, namely:-

(1)	Justice L.N. Mittal (Retd.)	:	Chairman
(2)	Sh. Sukhpal Singh Kang	:	Member
(3)	Sh. Sachin Jain	:	Member

Note: The above appointments are subject to the outcome of the Civil Writ Petition No. 21668 of 2011, pending in the Hon'ble Punjab and Haryana High Court at Chandigarh.

SANJEEV KAUSHAL,
Additional Chief Secretary to Government Haryana,
Excise and Taxation Department.

NOTIFICATION (Haryana)

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AMENDMENT IN ENTRY 72 OF SCHEDULE 'C' APPENDED TO THE HVAT ACT, 2003 TO INCLUDE 'ALL TYPES OF RAILWAY TRACK MACHINES

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

Notification

The 9th November, 2016

No. 22/ST-1/H.A. 6/2003/S.59/2016. - Whereas, the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 59 read with proviso to said sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following amendment in Schedule C appended to the said Act with effect from the 1st April, 2016, namely:-

AMENDMENT

In the Haryana Value Added Tax Act, 2003 (6 of 2003), in Schedule C, under columns 1 and 2, for serial number 72 and entries thereagainst, the following serial number and entries thereagainst shall be substituted, namely:-

"72 Rail Coaches, engines, wagons and all types of railways track machines, spares and parts thereof";

SANJEEV KAUSHAL,
Additional Chief Secretary to Government, Haryana,
Excise and Taxation Department.

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NOTIFICATION (Haryana)

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AMENDMENTS IN THE PUNJAB ENTERTAINMENT DUTY ACT, 1955 AND REVISION IN RATES OF ENTERTAINMENT DUTY

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

Notification

The 9 November, 2016

No. 23/Entt.1/P.A.16/1955/S.3/2016. - In exercise of the powers conferred by sub-section (1) read with the first proviso to Sub-section (2) of section 3 of the Punjab Entertainment Duty Act, 1955 (Punjab Act 16 of 1955), the Governor of Haryana hereby makes the following amendment in the Haryana Government, Prohibition, Excise and Taxation Department, Notification No.S.O.89/P.A.16/55/S.3/2001, dated the 29th June, 2001, namely:-

Amendment

In the Haryana Government, Prohibition, Excise and Taxation Department, Notification No.S.O.89/P.A.16/55/S.3/2001, dated the 29th June, 2001, -

(i) serial number (ia) and entries thereagainst shall be omitted; and

(ii) under column "Rate of Duty", against serial number (ii), for the words "twenty five percent", the words "fifteen percent" shall be substituted.

SANJEEV KAUSHAL,
Additional Chief Secretary to Government, Haryana,
Excise and Taxation Department.

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INCOME TAX DEPARTMENT TO USE ANALYTICS TO LOOK FOR DISCREPANCIES IN BANK ACCOUNTS

MUMBAI: For the first time, the income-tax department will use big data analytical tools to go through personal bank deposits to segregate black money holders from genuine tax-payers, two people in the know have said.

While the government has used big data analytical tools for corporate tax reporting in some cases in the past, this is the first time that it will use analytics on such a large scale to sieve through personal taxes.

"It's practically impossible for tax officials to go through all the data obtained from banks and compare it with other tax-related data. Analytics is being used to look at discrepancies. This would then be scrutinised by experienced tax officials," a person close to the development said.

It is expected that the tax department would collate and compare data from corporate tax and personal tax as well.

Big data analytical tools will compare the tax returns of individuals, tax paid by companies owned by some people and other tax-related data with data collected from banks on how much money was deposited by individuals.

If discrepancies are observed, these analytical tools will raise red flags. Tax officers could then issue notices to individuals based on this after December 31.

Talking to ET, another person close to the development, said, "What the analytics tool can throw up is not just the cash deposited in banks by an individual, but details of the income tax paid over the years, corporate tax paid by his company, number of employees he has and whether they too have deposited money recently. Every detail of the individual's tax history can be known."

The government will target only suspicious bank deposits. The Lok Sabha had last week passed a bill to amend Section 115BBE of the Income Tax Act. Section 115 BBE deals with unexplained deposits in banks and how it should be taxed. According to the amendment, tax officers can now tax such deposits at 60% (plus cess) as against 30% earlier. The new tax law is applicable from April 1, this year. ET was the first to write on November 17 that government was looking to introduce higher tax rate at about 50% to 70% on those depositing black money in bank accounts.

Industry trackers say that lack of mention of a threshold in the amendment to the Income Tax Act could mean everyone who deposited money in banks since April 1, 2016, may be questioned by the taxman.

While the tax department would minimise questioning genuine cash depositors, tax officers are looking to invoke something called limited scrutiny, say insiders. "Limited scrutiny means only one or two questions would be asked pertaining to the source of bank deposits. Nothing else would be scrutinised," said the person close to the development.

Courtesy: The Economic Times
9th December, 2016

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THESE 34 COMPANIES WILL MAKE YOUR GST PLAY LESS TAXING

BENGALURU/NEW DELHI: The Goods and Services Tax Network (GSTN) which is building the technological infrastructure for the implementation of GST, has finalised 34 companies as the GST Suvidha Providers (GSPs), which will offer support and services to help tax payers and businesses in compliance.

The GSTN had released an initial list of 48 companies from over 200 applications it had received last month.

These companies, which were shortlisted based on eligibility criteria, had to move through the second round of qualification by showcasing their technical capabilities through a demonstration of a functioning model as a GSP with effective tax payer-oriented services.

Several leading tech companies such as TATA Consultancy Services, Tally Solutions, Deloitte Touche Tohmatsu India LLP, and Mastek Limited have been selected as GSPs. An official of GSTN said that after the selection process, they will sign agreements with the selected companies post which an on-boarding session will be held.

"It will be to familiarise them with the law and the rules but we are not giving them any target for roll out. It will be upto the efficiency and ability of each one of them to build their own interfaces."

The person added that during the demos some companies were very well prepared and seemed ready with everything so they should not take much time to launch.

The on-boarding session will be held sometime in Delhi next week.

"We are happy to have progressed to the next stages of acquiring a GSP Licence, and hope to be one of the major solution providers for the country," said Bharat Goenka, managing director at Tally Solutions.

"The GST Law continues to be a major concern due to the Input Credit rules, which will wipe out almost the entire SME market – and we are hoping that by the time the technology solutions are done, this problem is corrected. We remain at the forefront to champion this cause – both for getting the best possible technology out, and the best possible law out for the businesses of the country," he added.

The criteria for eligibility to be a GST Suvidha Provider was considered stringent by many in the industry, as it did not allow smaller companies and startups to join in what is seen as a revenue-generating opportunity.

Only an IT/ITeS or financial company with paid-up (raised capital) of at least Rs 5 crore and an average turnover of at least Rs 10 crore during the last three financial years was eligible to become a GST Suvidha Provider.

However, companies that cannot apply to be a GST Suvidha Providers could route their services through NSDL, the National Securities Depository and other qualified service providers.

Some of the other shortlisted GSPs include Ernst & Young LLP, Cygnet Infotech Private Ltd, Vayana Private Limited and Karvy Data Management Services Limited. The entire list is available on the GSTN website.

Meanwhile the registrations on the portal have crossed 7 lakh with 70 per cent of taxpayers from Gujarat already registered and 30 per cent of those from Maharashtra.

Big states such as Delhi and UP are expected to start registering from next week onwards.

Courtesy: The Economic Times
9th December, 2016

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GOVT MAY PUT GST EMPOWERMENT ISSUES TO VOTE

With time running out for adopting the goods and services tax (GST), the thorny issue of dual control may end up being put to vote, even though finance minister Arun Jaitley has been citing 'consensus' as the way forward for all issues pertaining to the new tax structure.

There has been no consensus on the issue of dual control— whether the centre or the state will have authority on GST assessees — until now. Moreover, the recent demonetisation exercise has derailed what has hitherto been a smooth exercise, sources said.

West Bengal finance minister Amit Mitra, who is the chairman of the empowered committee of state finance ministers on GST, had in fact said in a recent interview that the rollout of the tax reform would have to be deferred as the economy has been disrupted by the demonetisation exercise.

On December 2, the finance minister had said at the Hindustan Times Leadership Summit that there was a constitutional compulsion to roll out the new tax structure before September 2017. "You have a constitutional compulsion to have a GST in place before September 16, 2017. otherwise the country doesn't run...therefore our intention is that it gets implemented from April 1, 2017," he had said.

However, it is not clear whether the government will put the issue to vote in the next GST Council meeting slated for December 11 and 12.

The ongoing session of Parliament is till December 16, and sources said it may be difficult for the government to get Parliament's approval within this session.

The previous meeting of the GST Council, held on December 2 and 3, had remained inconclusive as state finance ministers showed discontentment over demonetisation and sought a discussion on the same. They also escalated matters to seek higher compensation in the wake of the demonetisation.

"The issue of dual control seems to be moving towards voting as there is little time left, but putting an issue to vote will also leave a bad taste," a senior government official, who did not wish to be identified, told HT.

At the recent Petrotech summit, Jaitley said that while most major issues have been sorted out, cross-empowerment is one area that needs to be resolved.

Besides, three GST legislations — CGST, IGST and compensation law — also need to be finalised for these to be introduced in Parliament.

Courtesy: The Hindustan Times
10th December, 2016

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GST CAN BE IMPLEMENTED ANYTIME UNLIKE INCOME TAX: JAITLEY

Amid signs of slippage of the April 1 GST rollout target, Finance Minister Arun Jaitley on Saturday said pending resolution of "turf" issues, GST is a transactional levy that unlike income tax can be implemented anytime during the year.

The Goods and Services Tax (GST), he said, can be implemented anytime between April 1 and September 16, 2017, in accordance with the constitutional amendment legislation that allows a national sales tax by subsuming central and state levies.

The GST Council has resolved 10 issues and only one pertaining to administration of tax is pending, he said. "It is a transactional tax and not an income tax. Transactional tax can start in any part of the financial year and therefore, the range of timing when it has to come into force because of constitutional necessity is April 1, 2017 to September 16, 2017. Hopefully, the earlier we do, the better it is for the new taxation system," Jaitley said at the annual general meeting (AGM) of FICCI here.

After Parliament passed the landmark constitutional amendment in August and more than half of state legislatures ratified it by mid-September, several key decisions have been taken by the GST Council headed by Jaitley and comprising state representatives.
Jaitley alluded to "certain kinds of turf issues" that are yet to be resolved. "But the constitutional embargo is very clear. The entire amendment was notified on September 16, 2016, and it permits the old taxation regime to continue for a period of one year, " he said.

"So on September 16, 2017, as far as the current mode of taxation is concerned, the curtain will be down. Therefore, neither the Centre not the state can go in for collection." According to the finance minister, there are about ten important decisions that have already been taken through consensus. The legislations which have to be passed by Parliament and state legislatures are currently in the process of being drafted.

"I don't see any major difficulty for these legislations being finally approved," he said. The only issue remaining "is a very small in the larger frame of things" and the tax administration is under discussion of the GST Council as three major and some minor taxes are being merged into one.

Jaitley suggested there is a need that each assessee is assessed only once since central taxes like excise and service tax and state levies like VAT are being subsumed into one.

"You have the pre-existing (tax) machinery of the Centre and states. (It has to be decided) how the burden of this assessment is going to be shared between the Centre and states and how we cross-empower both the Centre and states," he said further.

Saying GST will usher in a common taxation and should lead to a federal bureaucracy, Jaitley felt that both the Centre and states should figure out sharing of the tax assessment. Ideally, he said, it should be proper for the issues to be resolved at the beginning of financial year on April

1 for the new regime to kick in. "But then, in any case, nobody has the luxury of time," he cautioned.

Courtesy: Times NOW
17th December, 2016