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Issue 11
June 2015

NOMINAL INDEX

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 1906 OF 2007

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COCHIN PORT TRUST
Vs.
STATE OF KERALA

H.L. DATTU, CJI, R.K. AGARWAL AND ARUN MISHRA, JJ

22nd April, 2015

HF ▶ Revenue

DEALER – PORT TRUST – STATUTORY AUTHORITY – PORT SERVICES RENDERED BY APPELLANT TRUST – DEMAND RAISED ON ASSESSMENT FOR SALE OF SCRAP – CONTENTION RAISED THAT APPELLANT NOT A 'DEALER' AND NOT EXIGIBLE TO TAX – PLEA OF PERFORMING STATUTORY FUNCTIONS AND NOT BEING ENGAGED IN TRADING TAKEN UP – DISMISSAL OF APPEALS BEFORE 1ST APPELLATE AUTHORITY AND TRIBUNAL – ORDER UPHELD BY HIGH COURT HOLDING APPELLANT TO BE A 'DEALER' – APPEAL BEFORE SUPREME COURT CONTENDING THAT TRANSACTIONS IN QUESTION BEING INCIDENTAL AND AUXILIARY NOT TO QUALIFY AS BUSINESS SO AS TO DEEM ASSESSEE AS 'DEALER' – HELD DEFINITION OF DEALER AS PER ACT WIDE ENOUGH TO INCLUDE SALE OR TRANSFER CONDUCTED IN COURSE OF BUSINESS OR OTHERWISE – NECESSITY FOR A PERSON TO CARRY ON BUSINESS TO BE PLACED UNDER DEFINITION OF DEALER ABSENT IN THE ACT –PORT TRUST TO FALL WITHIN THE AMBIT OF 'DEALER' UNDER SECTION 2(iii) OF THE ACT AND CONSEQUENTLY ASSESSABLE TO TAX – APPEAL DISMISSED.

The appellant Trust, a statutory authority, constituted for rendering Port services under the Major Port Trusts Act, 1963 was assessed and a demand was raised for the sale of scrap items effected by the assessee. An appeal was filed contending that since the appellant was not engaged in trading and only discharging its statutory functions, it was not a dealer and could not be exigible to tax. However, the appeal was dismissed and appellant was held to be a dealer. The orders of the lower authorities were upheld by the High Court. An appeal before Supreme Court was filed pleading that the assessee is only discharging the statutory functions and is not engaged in any business or trade. The transactions in question being incidental and auxiliary would not qualify as business under the Act so as to deem the assessee as dealer. Also, it was pleaded that in Madras Port Trust case, the Supreme Court has held that the said Port Trust carrying on statutory functions was not exigible to sales tax under Tamil Nadu General Sales Tax Act and as the provisions of TN Act were pari materia with that of the Act, the Major Port Trusts case would apply to the assessee – Cochin Port Trust.

1. *It is held that the definition of dealer in the Act is wide enough to include transactions conducted in the course of business or otherwise and not restricted as perceived in common parlance.*

2. *Distinguishing the judgment passed in the case of Madras Port Trust, it is observed that the definition of dealer in that case is restricted as it lays emphasis on 'carrying on business' whereas as per the Act, it is not mandatory that the person should be engaged in business for effecting sale/transfer for being exigible to tax. Therefore, the assessee Port is held to be a dealer under Section 2(8) of the Act and is assessable to tax under the Act. The appeal is dismissed.*

Case distinguished:

Madras Port Trust case, 4 SCC 630
CST vs Sai Publication Fund, (2002) 4 STC 57.

Present: For the Petitioner: Mr. V. Giri, Senior Advocate, and
Mr. C.N. Sree Kumar
For the Respondent: Ms. Liz Mathew

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H.L. DATTU, CJI.

1. This appeal is directed against the judgment and order passed by the High Court of Kerala at Ernakulam in TRC No. 412 of 2002 and Sales Tax Revision Nos. 321 and 326 of 2005, dated 23.12.2005, whereby and whereunder, the High Court has held that the appellant-assessee is a dealer under the Kerala General Sales Tax Act, 1963 (for short, "the Act") and dismissed the tax revision preferred by the appellant-assessee.

2. The question that arises for consideration in this appeal is whether the appellant-Trust is a dealer under the Act and liable to pay sales tax under the Act on account of certain activities in the nature of sale transactions carried on by it besides its statutory functions. For the sake of convenience and brevity, we would only notice the facts relevant to the discussion with respect to the question(s) before us in this appeal.

3. Brief factual matrix of the case is as follows: The appellant-Trust is a statutory authority constituted for rendering port services under the Major Port Trusts Act, 1963. The appellant-Trust is a registered dealer under the Act and an assessee on the rolls of the Assistant Commissioner (Assessment), Commercial Taxes, Special Circle, Mattancherry. The assessee's specific activity of dealing in scrap items (sales of water to ships, tender forms, firewood, waste paper and disposal of unserviceable equipment) is the subject matter of assessments in the instant appeal for the assessment years 1990-91, 1994-95 and 1997-98.

4. For the aforesaid assessment years, the assessing authority had raised demand notices under the Act for the sales of scrap items effected by the assessee vide assessment orders dated 18.11.1995, 31.03.1999 and 24.10.2001, respectively.

5. The assessee aggrieved by the said assessment orders had approached the Deputy Commissioner (Appeals) in first statutory appeal. The assessee had assailed the assessment orders as illegal and unauthorised on the ground, inter alia, that it is not engaged in any

trading activity and only discharging its statutory functions under the Major Port Trust Act, 1963 and hence, it is not a "dealer" under the Act and cannot be exigible to tax thereunder. The first appellate authority has disposed of the said appeal by separate orders dated 16.01.1998, 28.10.1999 and 25.04.2002 for each assessment year 1990-91, 1994-95 and 1997-98, respectively. The appellate authority has considered the definition of "dealer" under the Act and rejecting the plea of the assessee, held that it is a "dealer" under the provisions of the Act.

6. Aggrieved by the aforesaid order(s), the assessee had preferred T.A. No. 479 of 1998 for the assessment year 1990-91 before the Kerala Sales Tax Appellate Tribunal (for short, "the Tribunal"). The assessee had contended that in the instant case the assessee-Trust is a statutory body merely discharging its functions of rendering port activities and not engaged in any trading activity or "business". The transactions herein are merely causal and incidental sale transactions which only attract sales tax if the registered dealer is otherwise carrying on business under the Act, which is not the case herein and therefore, the assessee cannot be classified as a "dealer" under Section 2(viii) of the Act. Reliance was placed by the assessee on the dictum of this Court in State of T.N. v. Board of Trustees of the Port of Madras, (1999) 4 SCC 630 (Madras Port Trust case). By the order dated 24.09.2001, the Tribunal rejected the aforesaid stand adopted by the assessee and held that the assessee is a "dealer" engaged in activities of sale under the Act and thus, exigible to sales tax.

7. Further, the assessee has approached the Tribunal in T. A. No. 1 of 2000 and T. A. No. 143 of 2003 questioning the orders passed by the first appellate authority for assessment years 1994-95 and 1997-98. The Tribunal has considered the definitions of "dealer" under the Tamil Nadu General Sales Tax Act, 1959 (for short, "the TN Act") and the Act and concluded that since the two definitions are not pari materia, the observations of this Court in Madras Port Trust case would not be applicable to the assessee-Port Trust. The Tribunal has held that the definition of "dealer" under the Act is wide and in light of the activities performed by the assessee, it can be placed in the ambit of "dealer" under the Act and hence be liable to pay sales tax under the Act.

8. Dissatisfied by the orders passed by the Tribunal, the assessee approached the High Court in TRC No. 412 of 2002 and Sales Tax Revision Nos. 321 and 326 of 2005. The question as to whether the assessee is a "dealer" under the Act which was the cardinal issue before the Tribunal was agitated before the High Court as the main issue by both parties to the lis. The High Court has delved into the said question and also considered whether the Madras Port Trust case decided in the context of the TN Act apply to the assessee-Trust which is governed by the Act. The High Court, in its conclusion, has approved the findings of the Tribunal and dismissed the tax revision(s) filed by the appellant-assessee.

9. Aggrieved by the aforesaid, the assessee is before us in this appeal.

Shri V. Giri, learned senior counsel appearing for the appellant-assessee would submit that the assessee does not fall under the ambit of under Section 2(viii) of the Act and cannot be termed as a "dealer". He would submit that the assessee is only discharging the statutory functions and is not engaged in any "business" or trade. Further, that the transactions in question being incidental and auxiliary would not qualify as business under the Act so as to deem the assessee as "dealer" under the Act. He would draw support from the observations of this Court in Madras Port Trust case wherein this Court has held that the

said Port Trust constituted under the Major Port Trust Act, 1963 and carries on statutory functions, is not exigible to sales tax under the Tamil Nadu General Sales Tax Act, 1959 (for short, "the TN Act"). He would further contend that since the provisions of the TN Act are pari materia with that of the Act, the Madras Port Trust case would squarely apply to the assessee-Cochin Port Trust also.

10. Per contra, Smt. Liz Mathew, learned counsel appearing for the respondent-Revenue would support the judgment and order passed by the High Court and contend that the assessee herein is a "dealer" under the Act engaged in sale of scrap material and therefore, exigible to sales tax under the Act. She would submit that the provisions of the TN Act and the Act are not pari materia and the claim of the assessee requires to be examined in the context of the Act only and not on the basis of the provisions of the TN Act. She would urge that the observations of this Court in Madras Port Trust case would not be applicable to the instant case in light of material difference between the definitions of "dealer" under the provisions of TN Act and the Act.

11. The issue that arises for our consideration and decision in the instant case is whether the assessee-Trust is a dealer under the Act and thus, liable to pay sales tax levied thereunder. At the outset, it is pertinent to notice Section 2(viii) of the Act which defines the term "dealer". The said definition is extracted hereunder:

> *"2(viii) "Dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, transferring the right to use any goods or supplying by way of or as part of any service, any goods directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes:*
>
> > *(a)...*
> >
> > *(b)...*
> >
> > *(c)...*
> >
> > *(d)...*
> >
> > *(e) a person who, whether in the course of business or not, sells; (i) goods produced by him by manufacture, agriculture, horticulture or otherwise; or (ii) trees which grow spontaneously and which are agreed to be severed before sale or under the contract of sale;*
> >
> > *(f) a person who whether in the course of business or not: (1) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or deferred payment or other valuable consideration; (2) transfers property in goods (whether as goods or in some other form) involved in the execution of a works contract; (3) delivers any goods on hire-purchase or any system of payment by instalments; (4) transfers the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; (5) supplies, by way of or as part of any service or in any other manner whatsoever, goods, being food or any other articles for human consumption or any drink (whether or not*

intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

Explanation.-(1) & (2) ...

(g) a bank or a financing institution which, whether in the course of its business or not, sells any gold or other valuable article pledged with it to secure any loan, for the realisation of such loan amount;..." (emphasis supplied)

12. A perusal of the aforesaid definition would indicate that definition of dealer under the Act is an inclusive definition whereby wide range of persons has been placed under the ambit of "dealer". It includes persons involved in carrying on any business or trading activity and transactions effected by them whether in the course of business or not. It is profitable to refer to the decision of this Court in Assistant Commissioner, Ernakulam v. Hindustan Urban Infrastructure Ltd. and Ors., (2015) 3 SCC 735 where this Court has interpreted the said provision. This Court has examined the scope and ambit of the definition of dealer under the Act. The question before this Court was whether an "Official Liquidator" is a "dealer" within the meaning of section 2 (viii) of the Act. This Court in paragraph 26 of the judgment has observed:

"...The definition of "dealer" has also been given a wide ambit. It includes any person carrying on business of, inter alia, buying, selling, supply or distribution of goods, whether directly or otherwise. All modes of payment whether by way of cash, commission, remuneration or other valuable consideration have been included therein. It also includes, inter alia, a casual trader, a non-resident dealer, a commission agent, a broker, an auctioneer and other mercantile agents. Sub-section (f) of the definition further expands the scope of the provision by including within its ambit, an array of transactions, which may or may not be in the course of business. Section 2(viii)(f)(1) expressly includes, within the definition of a "dealer", a person who whether in the course of business or not transfers any goods, whether in the pursuance of a contract or not, for cash or deferred payment."

13. Therein, this Court has noticed the definition of dealer under various fiscal legislations and observed that the widest scope and ambit provided to the "dealer" under the definition clause of the Act is in consonance with the legislative intent to place the persons engaged in activities of sale and trade which would not otherwise fall in the restricted definition of "business". This Court has observed as under:

"34. Section 2(viii)(f) further expands the definition of "dealer" enabling a far wider class of persons to fall within its ambit. It includes any person who transfers any goods, transfers property in goods involved in the execution of a works contract, delivers any goods on hire purchase or any system of payment by installments, transfers the right to use any goods for any purpose and lastly, any food or beverage supplier or service provider, fit for human consumption. The Explanation 1 to sub-clause (f) includes a society, club, firm or an association or body of persons, whether incorporated or not. Explanation 2 includes the Central Government, State Government and any of its apparatus within the scope of this section.

35. Therefore, given the exceptionally wide scope of the definition, prima facie, it can be concluded that any person or entity that carries on any activity of selling goods, could be categorized as a "dealer" under the Act, 1963. To test the aforesaid conclusion in the context of the issue at hand, we would delve into the interpretation ascribed by this Court to the term "dealer". A careful reading of the definition of "dealer" under the Act, 1963, would make it evident that the legislature intended to provide for an inclusive criterion and broaden the ambit of the said classification. The legislature did not propose to restrict the scope of the term as perceived in common parlance."

14. Here, since the definition of "dealer" is wide to include transactions conducted in the course of business or otherwise, to answer the question posed before us, we do not deem it necessary to examine the nature of activity carried out by the assessee-Port Trust in as much as whether it falls under the definition of "business" under the Act or not.

15. In the instant case, the appellant-assessee would place reliance on the decision of this Court in Madras Port Trust case, draw similarity between the provisions of TN Act and the Act and therefore, submit that the observations of the Madras Port Trust would be applicable to the instant case. Therein, the question before this Court was whether the Madras Port Trust is a "dealer" under the TN Act or not. The definition clauses contained in the TN Act under Section 2(g) and 2(d) have been dealt with to examine the aforesaid question. For the sake of clarity, we would refer to Section 2(g) and 2(d) of the TN Act as under:

"Section 2(g) 'dealer' means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes- (i) a local authority... which carries on such business;

(ii) . . .

(iii) a factor, ... or an auctioneer, or any other mercantile agent by whatever name called, ... who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal, or through whom the goods are bought, sold, supplied or distributed;

(iv) to (ix) ...

Explanation (1) ...

Explanation (2).-The Central Government or any State Government which, whether or not in the course of business, buy, sell, supply or distribute goods, directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act;"

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"Section 2(d) 'business' includes,- (i) any trade, or commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a

motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and

(ii) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern."

16. This Court in the said decision has elaborately considered various provisions of the TN Act in the context of the Major Port Trusts Act, 1963. This Court has noticed that port trusts are not established for carrying on business and thereafter, referred to the various activities of the Madras Port Trust and observed that its activities and services only indicate that the activity in question, that is, the sales of unserviceable or unclaimed goods is infinitesimal as compared to the very large range of the activities and services it is supposed to render. This Court has therefore concluded that the Madras Port Trust is not involved in any activity of "carrying on business" as provided for under Section 2 (g) read with Section 2(d) of the TN Act and therefore, it is not a "dealer' within the meaning of Section 2(g) of the TN Act.

17. In our considered view, the aforesaid decision of this Court would not enure to the benefit of the assessee in the instant case. The said decision was rendered on the basis of the question whether the Port Trust is carrying on "business" under the TN Act and if it is a "dealer" under the TN Act so as to be exigible to tax thereunder. The aforesaid conclusion emanates from the stark distinction of definition of "dealer" under the TN Act and the Act. The definition under the Act is a wider definition while the TN Act as it then stood, provides for a very restricted meaning of the term "dealer". A comparison of the definition clauses in the Act and the TN Act would show that the requirement of "carrying on business" by buying, selling, supplying or distributing goods directly or otherwise whether for cash or deferred payment or for commission, remuneration or other valuable consideration was a necessary ingredient of a dealer under the TN Act, but clauses like (e), (f) and (g) of Section 2(viii) of the Act were absent in the TN Act. Thus, the said definitions are not pari materia.

18. In the Madras Port Trust case, this Court has laid emphasis on the expression "carrying on business" in the context of the TN Act, and it is in that context it has reached the conclusion that the Madras Port Trust is not engaged in any business which is a necessary prerequisite under the definition of a "dealer" under the TN Act. In the Act herein, the necessity of a person carrying on business to be placed under the definition of "dealer" is absent. The definition expressly includes the persons who whether in course of business or not engage in the sale or transfer of goods and thus, does not mandate the requirement of conducting business for a person to be exigible under the Act. The contradistinction between the definition of "dealer" under the TN Act and the Act makes it abundantly clear that the observations of this Court in Madras Port Trust case, which refer to the definition of TN Act and interprets it to reach the conclusion of the Trust not being exigible to tax, cannot be accepted in the instant case.

19. Further, it is brought to our notice that in Madras Port Trust case the applications were preferred by the Port Trusts of Cochin, Kandla and Calcutta before this Court for intervention. However, this Court has only permitted them to support the submissions of the Madras Port Trust in the context of the Tamil Nadu statute and in paragraph 6 of the said judgment observed that the exigibility of the said Port Trusts under the respective State

enactments is not examined thereunder. Therefore, this Court has only referred to the provisions of TN Act and not examined the scope of the Act vis-à-vis the assessee-Port Trust in Madras Port Trust case.

20. It is further pertinent to notice that the TN Act was amended by Act 22 of 2002 whereby explanation (3) was added to definition clause 2(g) of the TN Act. By the said amendment the Madras Port Trust has now been declared as a dealer under the TN Act. Explanation (3) states that if the port trust disposes of any goods including unclaimed or confiscated or unserviceable or scrap surplus, old or obsolete goods or discarded material or waste products whether by auction or otherwise directly or through an agent for cash or for deferred payment or for any other valuable consideration, notwithstanding anything contained in the TNGST Act, it shall be deemed to be a dealer for the purpose of the Act. Therefore, by amendment act the legislature has specifically brought in Port Trust also within the definition of "dealer" under Section 2(g) of the Act and thus, the substratum of the judgment in Madras Port Trust case has been lost.

21. Shri Giri has relied upon the decision of this Court in CST v. Sai Publication Fund, (2002) 4 SCC 57 and submitted that where the main activity is not a business then any incidental or ancillary transaction would only amount to business if an independent intention to carry on business in the incidental or ancillary transaction is established. In the said case, the provisions of Bombay Sales Tax Act, 1959 were examined to ascertain whether the ancillary activity of publication and sale of books by Saibaba Trust amounted to "business" under the said Act, when the dominant activity of the said Trust was non-profit dissemination of message of Saibaba. Therein the Court has examined the definition of dealer under Section 2(11) of the said Act and observed that every person is not a "dealer" but only those persons "who carry on the business" by buying or selling goods are regarded as "dealers". Thus, under the said Act, from the very definition of dealer, it follows that a person would not be a dealer in respect of the goods sold or purchased by him unless he carries on the business of buying and selling such goods. In the instant case, the definition of dealer under Section 2(viii) is wide and specifically includes persons who have effected sale or transfer of goods irrespective of the said sale or transfer being in course of business or not. Therefore, the dictum of this Court in the said decision would also not be applicable in the instant case.

22. Therefore, in light of the foregoing discussions, we are of the considered opinion that the activities of the assessee in respect of buying, selling, supplying or distributing goods, executing works contract, transferring the right to use any goods or supplying by way of or as part of any service, any goods directly or otherwise, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration, whether in course of business or not, would fall within the purview of Section 2(viii) of the Act. Hence, the assessee-Port Trust would fall within the meaning of "dealer" under Section 2(viii) of the Act and is consequently assessable to tax under the Act. We are of the considered opinion that the High Court has not committed any error, whatsoever, and therefore, the civil appeal being devoid of any merit requires to be dismissed.

23. In the result, the appeal is dismissed and the judgment and order passed by the High Court is confirmed. No costs.

Ordered accordingly.

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 8192 OF 2003

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VIKRAM CEMENT & ANR.
Vs.
STATE OF MADHYA PRADESH & ORS.

A.K. SIKRI AND ROHINTON FALI NARIMAN JJ

17th March, 2015

HF ▶ Assessee-appellant

CONSTITUTION OF INDIA – VALIDITY OF NOTIFICATION – VIRES – UNJUST ENRICHMENT – REFUND – ENTRY TAX DULY PAID AT RATES PRESCRIBED TILL YEAR 1999 – NOTIFICATION ISSUED IN YEAR 1999 LOWERING RATE OF TAX (1%) FOR PERIOD OF 6 MONTHS FOR THE YEAR 1997 – EXPLANATION APPENDED REGARDING NON-REFUNDABILITY OF TAX ALREADY PAID BY DEALERS AT HIGHER RATE FOR THE CONCERNED PERIOD – APPELLANT HAVING PAID TAX ALREADY AT HIGHER RATE DENIED REFUND THEREBY – CHALLENGE AGAINST THE EXPLANATION ON BASIS OF VIOLATION OF ARTICLE 14 – HELD BY SUPREME COURT, THE IMPUGNED EXPLANATION CREATED TWO CATEGORIES OF TAXPAYERS PAYING TAX AT DIFFERENT RATES EVEN THOUGH IDENTICALLY PLACED – NO REASONABLE RELATION COULD BE FIGURED OUT OF SUCH CLASSIFICATION TO THE OBJECT OF LEGISLATION – EXPLANATION HELD DISCRIMINATORY IN NATURE AND VIOLATIVE OF ARTICLE 14 – NO REASON BEING STATED BY GOVT. FOR NON-REFUND, IT IS PRESUMED THAT RATE OF TAX AT THE LOWER RATE WAS APPLICABLE DURING THE RELEVANT PERIOD – ASKING HIGHER RATE IS THUS, VIOLATIVE OF ARTICLE 265 – QUESTION OF UNJUST ENRICHMENT TO BE GONE INTO WHILE DECIDING ENTITLEMENT FOR REFUND – IMPUGNED EXPLANATION QUASHED AND HELD UNCONSTITUTIONAL – ARTICLE 14 AND ARTICLE 265 OF THE INDIAN CONSTITUTION.

The Entry Tax was being duly paid by the appellant on entry of coal, gypsum and bauxite required for manufacturing of cement. In the year 1999, the rate of tax was 2.5%, 2% and 10% respectively on these materials. A Notification dated 4/5/1999 was issued reducing the rate of tax to 1% for the period 1/5/1997 to 30/9/1997. The rate of tax prior to this period and after this period remained as earlier. An Explanation was appended to the Notification stating that the amount already paid by the dealer at higher rate shall not be refunded. Since the appellant had already paid higher rate, which was now reduced to 1% vide Notification, it claimed refund of excess tax paid but was denied refund due to the Explanation. The Validity of the Explanation was challenged before the High Court but the writ was dismissed in view of the judgment passed in the case of Century Textiles and Industries Ltd. vs State of Madhya Pradesh and others. An appeal is filed before Supreme Court challenging on grounds of violation of Article 14. Allowing the appeal, it is held as under:

(i) *The explanation appended to the Notification results in invidious discrimination towards those who have paid the tax at a higher rate, like the appellant, with*

those category of persons who paid the tax @ 1% and were defaulters. This has resulted in carving out two categories of taxpayers paying tax at different rates even though identically situated, which is violative of Article 14. There seems no objective except that the Govt. did not intend to refund the tax already collected from those who have paid it at higher rate as no explanation is given by the authorities in this regard. It was held that the classification must not be arbitrary but must be rational based on some qualities and characteristics which have a reasonable relation to the object of the legislation. Thus, the impugned explanation was held to be discriminatory in nature.

(ii) Also, no reasons have come in the counter affidavit filed by the State as to why there was a necessity of adding such an explanation for not refunding the excess amount. It is, therefore, presumed that rate of 1% was applicable for the relevant period and asking any person to pay at a higher rate would be violative of Article 265 of the Constitution.

(iii) In order to determine as to whether a particular dealer is entitled to refund or not, the govt. can go into the issue of unjust enrichment while considering his application for refund. It cannot be presumed that the burden was positively passed on to the buyers by these dealers and, therefore, they are not entitled to refund.

The impugned explanation in the Notification is unconstitutional and thereby quashed.

Present: For the Petitioner: Mr**.** Niraj Sharma

For the Respondent: Mr. C.D. Singh

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A.K. SIKRI, J.

1. The bare minimum facts which are required to be mentioned to decide this appeal are recapitulated, in brief, hereinbelow:

2. The appellant Nos. 1 and 2 are the units of Grasim Industries Limited, which carries on manufacture and sale of cement. It requires raw material in the form of coal, gypsum and bauxite. On the aforesaid raw materials, the appellants had been paying entry tax for entry of these goods in the territory of the State of Madhya Pradesh under M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (hereinafter called the 'Entry Tax Act'). In the year 1997, the entry tax on the aforesaid items of raw materials payable under the Act was at the following rates:

COAL - 2.5%
GYPSUM - 2%
BAUXITE - 10%

In the year 1999, respondent No.1 - State issued Notification No. A-3-80-98-ST-V (49) dated 4.5.1999. By this Notification it reduced the rate of entry tax, namely, coal, gypsum and bauxite by making the entry tax payable at the rate of 1% only. This Notification remained in force for a limited period, that is from 1.5.1997 to 30.09.1997. The rate of entry tax prior to

1.5.1997 and after 30.09.1997 remained the same, namely, 2.5%, 2% and 10% for coal, gypsum and bauxite respectively.

3. We are concerned here with the aforesaid period when entry tax payable was @ 1% only. However, while reducing the entry tax to 1%, in the same very Notification an Explanation was also appended stating that the amount which is already paid by the dealer at the higher rate shall not be refunded. This Explanation is worded in the following terms:

> *"Explanation - The amount shall not be refunded in any case on the basis that the dealer had paid the tax at a higher rate."*

As the Notification was issued only in May 1999 and it realted to the past period, i.e. 1.5.1997 to 30.09.1997 and the entry tax is payable at the point of entry of the goods into the State, as and when the appellants were bringing the aforesaid raw material into the State of Madhya Pradesh, they had been paying the entry tax. During the period 1.5.1997 to 30.09.1997, they had paid the entry tax at the rate which was prevalent at that time, though reduced to 1% vide the Notification dated 4.5.1999. In this manner, according to the appellants, though they had paid the entry tax at the higher rate, which was now reduced to 1% vide the aforesaid Notification, they became entitled to get the refund of the excess amount paid, but were still deprived of that refund because of the aforesaid Explanation.

4. Naturally, being aggrieved by the said Explanation, the appellants challenged the validity of the Explanation by filing writ petition in the High Court of Madhya Pradesh. The challenge was led primarily on two counts: (i) in the first instance, it was pleaded that this Explanation was arbitrary and discriminatory being violative of Article 14 of the Constitution inasmuch as the classification which has carved out because of the said explanation had the effect of treating the appellants and others who had paid tax at a higher rate, differently from those who had not paid the tax at all and were defaulted. It was argued that such a classification was not based on any intelligible differentia and had no nexus with any objective sought to be achieved. A number of judgments in support of this contention were cited in the High Court. (ii) The second argument raised was that it amounted to exaction of tax at a higher rate, namely, at the rate of 2.5%, 2% and 10% for coal, gypsum and bauxite respectively, though the rate fixed ultimately for the period in question by the Notification dated 4.5.1999 was 1%. Therefore, such an 'Explanation' in the Notification was in the teeth of Article 265 of the Constitution and per se illegal.

5. The High Court, though took note of the aforesaid arguments, did not deal with these arguments in the manner in which these submissions were made and dismissed the writ petition vide impugned judgment dated 11.9.2002 only on the ground that identical issue had been considered by its own Division Bench earlier in the case of ***Century Textiles and Industries Ltd. v. State of Madhya Pradesh & Ors.***[1] To be fair to the High Court, we would also mention that the High Court has referred to another judgment of this Court in ***Indian Oil Corporation v. Municipal Corporation, Jullundhar***[2] and having relied upon the observations in the said case to the effect that where the octroi duty had already been collected, there was no question of any equity in favour of the Indian Oil Corporation to claim the refund thereof.

6. Learned counsel appearing for the appellants has placed before us the same arguments which were advanced before the High Court with the plea that the High Court did

not even consider those arguments appropriately. He submitted that it was a clear case of discrimination qua the appellants who had faithfully paid the tax and, therefore, the provisions of Article 14 of the Constitution will squarely attract in the facts of the present case. The learned counsel for the State, on the other hand, referred to the reasoning given by the High Court in the impugned judgment in support of his submissions while countering the arguments by the learned counsel for the appellants.

7. After giving our thoughful consideration to the issue involved, we are of the view that there is force in the submission of the learned counsel for the appellants. The Explanation attached to Notification dated 4.5.1999, or for that mater the Notification dated 5.7.1999, which states that the amount shall not be refunded in any case on the basis that dealer had filed the tax at a higher rate, results in invidious discrimination towards those who have paid the tax at a higher rate, like the appellants, when compared with that category of the persons who were defaulters and have now been allowed to pay the tax at the rate of 1% for the relevant period. The consequence is that it carves out two categories of tax payers who are made to pay the tax at different rates, even though they are identically situated. There is no basis for creating these two classes and there is no rationale behind it which would have any causal connection with the objective sought to be achieved. It would be pertinent to mention that on repeated query made by this Court to the learned counsel for the respondents, he could not explain or show from any material on record as to what led the authorities to provide such an Explanation. Therefore, it becomes apparent that there is no objective behind such an Explanation appended to the Notification dated 4.5.1999 which is sought to be achieved, except that the Government, after collecting the tax from those who had paid at a higher rate, did not intend to refund the same. This can hardly be countenanced, more so when it results in discrimination between the two groups, though identically situated.

8. The law on the scope and meaning of Article 14 of the Constitution has now been well articulated. We may gainfully refer to the case of ***D.S. Nakara & Ors. v. Union of India***[3], wherein this Court observed as under:

> *"10. The scope, content and meaning of Article 14 of the Constitution has been the subject-matter of intensive examination by this Court in a catena of decisions. It would, therefore, be merely adding to the length of this judgment to recapitulate all those decisions and it is better to avoid that exercise save and except referring to the latest decision on the subject in Maneka Gandhi v. Union of India[4], from which the following observation may be extracted:*
>
> > *"...what is the content and reach of the great equalising principle enunciated in this Article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits....Article 14 strikes at arbitrariness in State action and ensure fairness and equality of treatment. The principle of reasonableness, which legally as well as*

> *philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."*
>
> *11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz. (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question [See* ***Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & Ors.****[5]]. The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus, i.e. casual connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.* (emphasis supplied)"

9. In ***Re.: Special Courts Bill, 1978***[6], this Court undertook a survey of plethora of decisions touching upon the 'Equality' doctrine enshrined in Article 14 of the Constitution and culled out certain principles. In principle No.3, the Court highlighted that though classification was permissible and it was not for the Courts to insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case, but, at the same time, classification would be treated as justified only if it is not palpably arbitrary. It was also emphasized that the underlined purpose in Article 14 of the Constitution was to treat all persons similarly circumstanced alike, both in privileges conferred and liabilities imposed. Following was the emphatic message given by the Court:

> *"(4)...It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same. (emphasis supplied)"*

Another principle which was restated was that the classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all persons grouped together and not in others who are left out, but those qualities and characteristics must have reasonable relation to the object of the legislation.

10. Article 14 eschews arbitrariness in any form. This principle was eloquently explained in ***EP. Royappa v. State of Tamil Nadu***[7] holding that the basic principle which informs both Articles 14 and 15 is equality and inhibition against discrimination. We would like to quote the following passage from that judgment as well, which is as under:

> *"From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. 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, and if it affects any matter relating to public employment, it is also violative of Article 14. Article 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment."

On the application of the aforesaid principles to the facts of the present case, the irresistible conclusion is that the Explanation is highly discriminatory in nature.

11. The matter can be looked into from another angle as well, which will yield the same results.

12. We have to keep in mind that vide Notification dated 4.5.1999, it is the rate of entry tax on the aforesaid raw materials which is reduced to 1%. The effect of that would be that any person bringing raw materials, viz. coal, gypsum and bauxite, within the State of Madhya Pradesh was liable to pay the entry tax only at the rate of 1%. Once this aspect is kept in mind, the legal effect thereof has to be that all the persons including the appellants, who had already paid the tax, were supposed to pay the tax at the rate of 1% only. Therefore, if they had paid the tax at a higher rate, they were entitled to the refund of excess amount of tax paid. No reasons are coming forth in the counter affidavit filed by the State either in the High Court or in this Court or in any other form as to why there was a necessity of adding such an Explanation for not refunding the excess amount paid by the dealer in excess of 1% which was the entry tax legally payable for this period. Once we consider the matter from this angle, it also becomes clear that as the entry tax payable was at the rate of 1% only, asking any person to pay at a higher rate would be clearly violative of Article 265 of the Constitution.

13. Article 265 of the Constitution has to be read along with Article 14 in the given context. This co-relation between the two provisions is beautifully brought out in ***Kunnathat Thathunni Moopil Nair v. State of Kerala & Anr.***[8] as under:

"10. The most important question that rarises for consideration in these cases, in view of the stand taken by the State of Kerala, is whether Art. 265 of the Constitution is a complete answer to the atack against the constitutionality of the Act. It is, therefore, necessary to consider the scope and effect of that Article. Article 265 imposes a limitation on the taxing power of the State in so far as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative competence of the Legislature imposing a tax and authorising the collection thereof and, secondly, the tax must be subject to the conditions laid sown in Art. 13 of the Constitution. One of such conditions envisaged by Art. 13(2) is that the Legislature shall not make any law which takes away or abridges the equality clause in Art.14, which enjoins the State not to deny to any person equality before the law or the equal protection of the laws of the country. It cannot be disputed that if the Act infringes the provisions of Art.14 of the Constitution, it must be struck down as unconstitutional. For the purpose of these cases, we shall assume that the State Legislature had the necessary competence to enact the law, though the petitioners have seriously challenged such a competence. The guarantee of equal protection of the laws must extend even to taxing

statutes. It has not been contended otherwise. It does not mean that every person should be taxed equally. But it does not mean that if property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation, may fall equally on all persons holding that kind and extent of property. If the taxation, generally speaking, imposes a similar burden on everyone with reference to that particular kind and extent of property, on the same basis of taxation, the law shall not be open to attack on the ground of inequality, even though the result of the taxation may be that the total burden on different persons may be unequal. Hence, if the Legislature has classified persons or properties into different categories, which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal. Similarly, different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Art. 14 will not be in the way of such a classification resulting in unequal burdens on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property. It must, therefore, be held that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Art. 14, though the Courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in way that the Court might think more just and equitable. The Act has, therefore, to be examined with reference to the attack based on Art. 14 of the Constitution."

14. At this stage, we would like to refer to another judgment of this Court which is quite proximate to the situation at hand, namely**, *Corporation Bank v. Saraswati Abharansala & Anr.***[9] That was case where rate of Sales Tax was reduced from 1% to 0.5% vide SRO No. 1075/99 dated 27.12.1999, which was given retrospective effect from 1.4.1999. The respondent in that case, who had paid the sales tax @ 1% for the period 6.4.1999 to 10.12.1999, claimed refund of the excess tax paid, i.e. over and above 0.5%. This request was rejected by the Assistant Commissioner, Sales Tax. The assessee filed the writ petition challenging the order of the Assistant Commissioner, which was dismissed by the Single Judge of the High Court. However, the assessee's intra-court appeal was allowed by the Division Bench directing the authorities to refund the excess amount collected. The said decision of the Division Bench was upheld by this Court in the aforesaid judgment holding that non-refund would not only offend equality clause contained in Article 14 of the Constitution, it would also be in the teeth of Article 265 of the Constitution which mandates that no tax shall be levied or collected, except by authority of law. Following passages from the said judgment are worth a quote:

"20. Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by authority of law.

21. In terms of the said provision, therefore, all acts relating to the imposition of tax providing, inter alia, for the point at which the tax is to be collected, the rate of tax as also its recovery must be carried out strictly in accordance with law.

22. If the substantive provision of a statute provides for refund, the State ordinarily by a subordinate legislation could not have laid down that the tax paid even by mistake would not be refunded. If a tax has been paid in excess of the tax specified, save and except the cases involving the principle of 'unjust enrichment', excess tax realized must be refunded. The State, furthermore, is bound to act reasonably having regard to the equality clause contained in Article 14 of the Constitution of India.

23. It is not even a case where the doctrine of unjust enrichment has any application as it is not the case of the respondent/Setate that the buyer has passed on the excess amount of tax collected by it to the purchasers.

24. In view of the admitted fact that tax had been collected and paid for the period 6th April, 1999 and 10th December, 1999 @ 1% of the price which having been reduced from 1st April, 1999 to 0.5%, the State, in our opinion, is bound to refund the excess amount deposited with it."

15. It is possible, as was sought to be argued by the learned counsel for the State, that while adding this Explanation the Government had kept in mind the principle of unjust enrichment. Presumably because of this reason, the High Court also referred to the judgment in the case of ***Indian Oil Corporation*** **(supra)**. However, on such a presumption alone, there cannot be any justification for adding the Explanation of the nature mentioned above. In order to determine as to whether a particular dealer is in fact entitled to refund or not, the Government can go into the issue of unjust enrichment while considering his application for refund. That would depend on the facts of each case. It cannot be presumed that the burden was positively passed on to the buyers by these dealers and, therefore, they are not entitled to refund.

16. For all the aforesaid reasons, we are of the opinion that the impugned Explanations in the Notifications dated 4.5.1999 and 5.7.1999 are unconstitutional. We, accordingly, allow the appeal and quash the said Explanations.

No costs.

PUNJAB & HARYANA HIGH COURT

CWP NO. 8872 OF 2015

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RALSON (INDIA) LTD.
Vs.
UNION OF INDIA AND OTHERS

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA J

6th May, 2015

HF ▶ None

ALTERNATE REMEDY – WRIT – EXEMPTION - NOTIFICATION REGARDING EXEMPTION ISSUED – EXEMPTION DENIED UNDER CUSTOMS ACT – DISMISSAL OF FIRST APPEAL - WRIT FILED SEEKING EXEMPTION AND MODIFICATION OF NOTIFICATION – ISSUE TO BE DECIDED IN SECOND APPEAL INSTEAD OF FILING OF WRIT – ALTERNATE REMEDY TO BE AVAILED – SEPARATE WRIT PETITION FOR RAISING OTHER CONTENTIONS OPEN TO BE FILED IN CASE OF FAILURE BEFORE TRIBUNAL – FIT CASE OF CONDONING DELAY – PETITIONER GIVEN LIBERTY FOR REVIVAL OF THE WRIT IN CASE SECOND APPEAL NOT HEARD ON MERITS – WRIT DISPOSED OF.

A writ was filed contending that the petitioner was entitled to exemption from duty under the Customs Act pursuant to the notification dated 11.09.2009. But this exemption was not granted by the authorities below and the first appeal filed by the petitioner was dismissed. On a writ before High Court:-

It has been held by the Hon'ble high Court that this issue could be decided by the appellate authority.

Also an order for directing the respondents to modify the notification was sought by the petitioner. The petitioner is disposed of by leaving the petitioner to avail the alternate remedy of the second appeal. In case it does not succeed, a separate writ petition can be filed to raise other contentions . It is held that this is a fit case for condoning the delay. But if not heard on merits by the second appellate authority, this writ could be revived.

Present: Mr. Atul Gupta, Advocate,
Mr. Amar Partap Singh, Advocate,
Mr. Bhargav Mansatta, Advocate,
Mr. Amrinder Singh, Advocate, for the petitioner.

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S.J. VAZIFDAR, A.C.J.

1. The petitioner has challenged an order dated 28.01.2015 passed by the respondent No. 5 – Commissioner (Appeals) against the order in original passed by the Additional Commissioner of Customs imposing duty under Section 28 of the Customs Act, 1962.

2. We see no reason to interfere with the order in this writ petition as the petitioner has an alternate remedy of filing a second appeal before the Tribunal.

3. It is admitted that under the notification dated 11.09.2009 issued under Section 25 of the Customs Act, 1962, no exemption has been granted in respect of the safeguard duty under Section 8C of the Customs Tariff Act, 1975. Admittedly, pursuant to this notification, duty was imposed under Section 8C of the Customs Tariff Act, 1975. The petitioner contends that it is entitled to exemption from duty even under the Customs Act in view of the Foreign Trade Policy issued under Section 5 of the Foreign Trade Development & Regulation Act, 1992. Under para 4.1.4 of the Policy, advance authorizations are exempted from the payment of basic customs duty, additional customs duty etc. It is, however, also provided that imports for supplies covered under paragraph 8.2(h)(i) will not be exempted from payment of applicable anti-dumping and safeguard duty, if any. This issue can be decided by the appellate authority. We, therefore, see no reason to entertain the writ petition.

4. The petitioner has also sought an order directing the respondents to modify the notification issued under Section 25 of the Customs Act, 1962 to grant an exemption also from the safeguard duty levied under Section 8C of the Customs Tariff Act, 1975. It was contended that this relief cannot be granted by the authorities in the event of the petitioner not succeeding before the authorities in the second appeal. The show cause notice was issued on 24.05.2013. In the event of the petitioner succeeding before the second appellate authority in respect of the contention that in view of the Foreign Trade Policy it would be entitled to exemption even from the safeguard duty under Section 8C, it would not be necessary to go into the other questions raised by the petitioner.

5. In these circumstances, the writ petition is disposed of by leaving the petitioner to avail the alternate remedy of the second appeal. It is, however, clarified that in the event of the petitioner not succeeding in the second appeal, it would be open to it to raise the other contentions by way of a separate writ petition. In the event of the second appellate authority having the power to condone the delay, this is a fit case where the delay ought to be condoned. However, in the event of the second appeal not being heard on merits, the petitioner would be at liberty to have this writ petition revived.

PUNJAB & HARYANA HIGH COURT

CWP NO. 9630 OF 2015

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SAFFRON POLYTECH PVT. LTD
Vs.
STATE OF HARYANA & OTHERS

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA J

14th April, 2015

HF ▶ Petitioner

STAY OF RECOVERY – SECURITY – NOTICE ISSUED FOR RECOVERY – PENDENCY OF APPEAL BEFORE TRIBUNAL DUE TO IT NOT BEING CONSTITUTED – WRIT FILED – RESPONDENTS DIRECTED TO DECIDE IF SECURITY OFFERED AND ACCEPTED EARLIER STILL VALID – RECOVERY STAYED TILL PENDENCY OF SUCH DECISION AND ONE WEEK THEREAFTER – PETITIONER REFRAINED FROM DISPOSING ITS IMMOVABLE PROPERTIES TILL THEN – *SECTION 33(5) OF HVAT ACT.*

An appeal was filed against the notice for recovery before Tribunal. Since Tribunal was not constituted, a writ is filed. The writ is disposed of directing the concerned officer of the respondents to decide whether security offered and accepted earlier is adequate or not. The recovery is to be stayed till pendency of such decision and one week thereafter. The petitioner is also refrained from disposing of its immovable properties or encumbering them in any manner till then.

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.
Ms. Mamta Singla Talwar, Assistant Advocate General, Haryana.

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S.J.VAZIFDAR,ACTING CHIEF JUSTICE

1. As in several other cases, the only reason that this petition has been filed is because the Tribunal under the Haryana Value Added Tax Act, 2003 has not been constituted. The appeal filed by the petitioner, therefore, cannot proceed before the Tribunal at this stage. The petition is disposed of by passing an order similar to the one passed in several other matters including CWP56162015.

2. The writ petition is, therefore, disposed of by directing the concerned officer of the respondents to decide whether the security offered by the petitioner and accepted earlier is even now valid and adequate or not. Till such decision is taken and for a period of one week thereafter, the recovery shall not be made pursuant to the notice dated 01.04.2015. Till then, in any event, the petitioner shall not dispose of its immovable properties or encumber the same in any manner whatsoever.

PUNJAB & HARYANA HIGH COURT

CWP NO. 5625 OF 2014

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JALANDHAR IRON & STEEL MERCHANTS ASSOCIATION (REGD.)
Vs.
STATE OF PUNJAB AND OTHERS

RAJIVE BHALLA AND AMOL RATTAN SINGH, JJ

20st May, 2015

HF ▶ Petitioner - dealer

DELEGATED LEGISLATION – RULE 21(8) PVAT RULES – WHETHER ULTRAVIRES THE PROVISIONS OF THE ACT – ITC @ 4% AVAILABLE ON PURCHASE OF GOODS MEANT "FOR SALE" AS PER 1ST PROVISO TO SECTION 13 – INSERTION OF RULE 21(8) TO PROVIDE REDUCED RATE OF ITC (2%) ON "SALE" OF GOODS LYING IN STOCK W.E.F. 21.01.2014 – WRIT FILED CHALLENGING THE POWER OF STATE TO NOTIFY SUCH A RULE WITHOUT ENABLING PROVISION IN THE STATUTE ON THAT DATE – HELD ENABLING PROVISION I.E. AMENDMENT OF PROVISO TO SECTION 13 CAME INTO FORCE ON 1.4.2014 – IN BETWEEN THE PERIOD OF 21.1.2014 TO 1.4.2014 RULE COULD NOT BE NOTIFIED IN ABSENCE OF STATUTORY POWER TO EMPOWER THE STATE TO NOTIFY SUCH A RULE – WRIT ALLOWED – RULE 21(8) HELD ULTRA VIRES THE PROVISIONS OF ACT - *SECTION 13 OF PVAT ACT AND RULE 21 OF PVAT RULES*.

As per section 13(1) of PVAT Act, 2005, a taxable person i.e. a dealer was entitled to ITC on purchases made during the tax period. The 1st proviso to Section 13, before amendment stated that ITC shall not be available unless goods are "for sale" within the State or intra-State or commerce etc.

The rate of taxation on iron and steel goods was reduced from 4% to 2% w.e.f. 25.1.2014. In the exercise of its rule making powers State inserted Rule 21(8) providing for reduced ITC on Stock held on that day. This meant that the goods that had already earned ITC lying in stock with the dealer, at the time of purchase would be reduced by reference to the reduced rate of tax, in force, on the date of sale. Aggrieved by the said amendment, a writ was filed. It was contended before the High Court that on the date of coming into force of Rule 21(8), there was no enabling provision in the Act to empower the State to reduce the rate of ITC already earned by reference to the sale of goods lying in stock or the reduced rate of tax. The amendment of 1st proviso to Section 13 of the Act which empowered notifying of such a rule came into effect on 1.4.2014. Rule 21(8) could, therefore, not come into force before amendment of the 1st proviso to Section 13. Allowing the writ, it is held that the State by enacting rule 21(8) has reduced the ITC already earned from 4% to 2%. But on 21.1.2014, there was no provision in the statute that empowered the State to enact such a rule as the amendment of proviso to Section 13 which conferred the power on State to do so came into force on 1.4.2014. The subordinate legislation could not be notified in the absence of statutory power to empower a

State to notify such a rule between 21.1.2014 to 1.4.2014. Therefore, such amendment could not be enforced before 1.4.2014 to take away a vested right already determined without statutory sanction. Writ allowed.

Present: Mr. Sandeep Goyal, Advocate, and Mr. J.S Bedi, Advocate, for the petitioner.
Mr. Piyush Kant Jain, Addl. A.G, Punjab.

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RAJIVE BHALLA, J.

1. By way of this order, we shall dispose of CWP-5625-2014, CWP-6042-2014, CWP-6046-2014, CWP-6085-2014, CWP-6221-2014, CWP-6222-2014, CWP-6251-2014, CWP-7907-2014, CWP-7951-2014, CWP-8025-2014, CWP-8095-2014, CWP-8141-2014, CWP-9229-2014, CWP-26767-2014, CWP-3222015 and CWP-3712015 as counsel for the parties state that common questions of law arise for adjudication. For the sake of convenience, facts are being taken from CWP-5625 -2014.

2. The petitioner association prays for issuance of a writ of certiorari, declaring Rule 21(8) of the Punjab Value Added Tax Rules, 2005 (hereinafter referred to as the 'Rules') and clarification, Annexure P4, ultra vires and/or inapplicable to the input tax credit already earned.

3. Counsel for the petitioner submits that Section 13(1) of the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the 'Act') provides that a taxable person i.e. a dealer, is entitled to input tax credit on purchases made during the tax period, subject however to such conditions as may be prescribed. The first proviso to Section 13 of the Act, before it was amended, clarified that input tax credit shall not be available unless the goods are "for sale" within the State or in the course of interState trade or commerce etc. Section 13(5) of the Act places certain impediments on the right to claim input tax credit i.e. sets out a negative list which does not apply to iron and steel merchants. Section 15 of the Act which bears the title "Net tax payable by a taxable person" provides that the net tax payable for the tax period shall be determined by deducting the amount of input tax credit available to such person and would include input tax credit carried forward from the preceding tax period, if any.

4. The input tax credit was, therefore, earned by a taxable person on the date of purchase of taxable goods during a particular tax period and fructified into a tangible right on the date of purchase, provided the goods were "for sale" etc. but did not relate to the stock in hand or any reduced rate of tax. The State of Punjab, however, reduced the rate of taxation on iron and steel goods from 4% to 2% w.e.f. 25.01.2014 and in the exercise of its rule making powers notified Rule 21(8), on 21.01.2014 but w.e.f 01.04.2014, to provide that input tax credit on goods lying in stock as input or output would earn input tax credit on the "sale" etc. of such goods "at the reduced rate of tax". The effect of this amendment is that goods that had already earned input tax credit, lying in stock with a dealer, at the time of purchase would be reduced by reference to the reduced rate of taxation, in force on the date of the sale.

5. Counsel for the petitioner further submits that on the date of coming into force of Rule 21(8) there was no enabling provision in the Act, that empowered the State to reduce the rate of input tax credit already earned by reference to the sale of goods lying in stock or the reduced rate of tax. The amendment in the Act empowering the State of Punjab, to notify such a rule i.e. the first proviso to Section 13 of the Act came into effect on 01.04.2014. The new proviso deleted the words "are for sale" and replaced them with the words "are sold". Similarly, the words "for use in the manufacture" etc. were replaced with the words "are used in the manufacture" etc., thereby enabling the State in the exercise of its rule making power to reduce input tax credit already earned on stock in trade, by reference to the reduced rate of

taxation in force on the date of sale. The amended proviso to Section 13 of the Act having come into effect from 01.04.2014, the amendment in Rule 21(8) of the Rules could not come into force before the amendment of the first proviso to Section 13 of the Act. The State of Punjab has, however, applied Rule 21(8) of the Rules, before the amendment of the proviso to Section 13 of the Act. Counsel for the petitioner refers to the tax payers' guide issued by the State of Punjab to assert that it is clearly recorded that there is no condition that goods covered by purchases should be sold or used, thereby clearly inferring an admission on the part of the State that input tax credit is not relatable to the reduced rate of tax.

6. Counsel for the petitioner further submits that the petitioner association made a representation to the Government but instead of accepting the illegality perpetuated by the amendment, a clarification has been issued which further complicates the matter.

7. Counsel for the State of Punjab submits that input tax credit is available only when the dealer further sells the goods. This apart, Section 13 of the Act clearly postulates that input tax credit can be earned in such manner and subject to such conditions as may be prescribed. The State was, therefore, well within its power to notify Rule 21(8) of the Rules and prescribe further terms and conditions for availing input tax credit. The amendment applies only to the rate prevalent on the date of sale of stock in hand and, therefore, does not in any manner affect the rights of a dealer or in any manner reduce input tax credit on transactions that have already concluded. Counsel for the State of Punjab relies upon the following judgments:

1. United Riceland Limited Vs. State of Haryana and another (2011) 2 SCC 423;
2. R.K.Garg Vs. Union of India and others (1981) 4SCC 675; and
3. Union of India and others Vs. Nitdip Textile Processors Private Limited and another (2012) 1 SCC 226.

We have heard counsel for the parties and perused provisions of the Act and the Rules.

The question that calls for an answer is whether on 21.01.2014, the Act empowered the State to notify Rule 21(8) of the Rules?

The Punjab Value Added Tax Act, 2005, provided before the first proviso to Section 13 of the Act was amended, that a person who purchases goods from another taxable person would earn input tax and would be entitled to off set this amount as "input tax credit" against his tax liability. To understand the concept of "input tax" and "input tax credit" and answer the question posed, it would be appropriate to reproduce the definitions of "input tax, input tax credit, output tax, return, return period, reverse input tax credit and the right to claim input tax credit, it would be necessary to reproduce relevant provisions of the Act and the Rules, which read as follows:

"Section 2

*(o) "**input tax**" in relation to a taxable person means value added tax (VAT), paid or payable under this Act by a person on the purchase of taxable goods for resale or for use by him in the manufacture or processing or packing of taxable goods in the State.*

*(p) "**input tax credit**" means credit of input tax (in short referred to a ITC) available to a taxable person under this Act.*

*(s) "**output tax**" in relation to a taxable person means the tax charged or chargeable or payable in respect of sale and/or purchase of goods, as the case may be, under this act;*

*(zc) "**return**" means a true and correct account of business pertaining to the return period in the prescribed form;*

*(zd) "**return period**" means the period for which returns are to be furnished by a person; (ze) "**reverse input tax credit**" means an amount of input tax credit, which is required to be reversed by a taxable person on account of:-*

- *(i) Credit note for output tax received from the seller of goods on purchases in respect of which input tax credit is claimed;*
- *(ii) Goods, returned subsequent to availing the input tax credit;*
- *(iii) Goods, subsequently not used in accordance with the conditions prescribed for availing input tax credit; and*
- *(iv) Having availed the credit required to reverse the same in accordance with the provisions of sub sections (8) and (9) of section 13.*

(zm) "tax period" means a period for which a person is required to pay tax under this Act or the rules made thereunder."

Section 13 (as it existed before the amendment)

INPUT TAX CREDIT

(1) A taxable person shall be entitled to the input tax credit, in such manner and subject to such conditions, as may be prescribed, in respect of input tax on taxable goods, including capital goods, purchased by him from a taxable person within the State during the tax period: Provided that such goods are for sale in the State or in the course of interState trade or commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State or in the course of interState trade or commerce or in the course of export:

Provided further that a taxable person shall be entitled to partial input tax credit in any other event, as may be provided in this section in such manner and subject to such conditions as may be prescribed:

Provided further that if, purchases are used partially for the purposes specified in this subsection and the taxable person is unable to identify the goods used for such purposes, then the input tax credit shall be allowed proportionate to the extent, these are used for such purposes, in the prescribed manner:

Provided further that input tax credit in respect of purchase tax paid or payable by a taxable person under section 19, shall be allowed subject to the conditions laid therein.

(2) Input tax credit shall be allowed only to the extent by which the amount of tax paid in the State exceeds four percent on purchase of goods –

(a) sent outside the State other than by way of sale in the course of interState trade or commerce or in the course of export out of territory of India; and

(b) used in manufacturing or in packing of taxable goods sent outside the State other than by way of sale in the course of interState trade or commerce or in the course of export out of the territory of India.

(3) Where a taxable person sends any goods as such or after being partially processed for further processing on job work basis, he shall debit the ITC by four percent of the value of such goods. If such goods after processing are received back by such person, the ITC debited at the time of despatch, shall be restored. Such person shall, however, be required to produce proper evidence in the shape of records, challans or memos or any other document evidencing receipt of such goods, whenever asked for

(4) Input tax credit on furnace oil, transformer oil, mineral turpentine oil, water methanol mixture, naphtha and lubricants, shall be allowed only to the extent by which the amount of tax paid in the State exceeds four per cent:

Provided that these goods are used in production of taxable goods or captive generation of power.

(5) A taxable person under this section, shall not qualify for input tax credit in respect of the tax paid on purchase of,

(a) automobiles including commercial vehicles, two wheelers, three wheelers and spare parts for the repair and maintenance thereof, unless the taxable person is in the business of dealing in such automobiles or spare parts;

(b) petrol, diesel, aviation turbine fuel, liquefied petroleum gas and condensed natural gas, unless the taxable person is in the business of selling such products;

(c) civil structure and immovable goods or properties;

(d) office equipment and building material, unless the taxable person is in the business of dealing in such goods;

(e) furniture fixtures including electrical fixtures and fittings, unless the taxable person is in the business of such goods;

(f) airconditioning units, air circulators and refrigeration units, unless the taxable person is in the business of dealing in such goods or where airconditioning, air circulating or refrigeration is essential for sale or storage of taxable goods or in the manufacturing process of taxable goods;

(g) weigh bridge, except when installed inside the manufacturing premises for use in the manufacturing process of taxable goods;

(h) goods used in manufacture, processing or packing of goods specified in Schedule 'A';

(i) goods used in generation, distribution and transmission of electrical energy unless such generation, distribution and transmission of electrical energy is for captive consumption, in which case, it would be allowed subject to the provisions of subsection (4) of this section;

(j) the provisions of food, beverage and tobacco products, unless the taxable person is in the business of selling food, beverage and tobacco products; and

(k) goods used for personal consumption or gifts.

(6) A person, who was earlier registered for VAT and has subsequently got himself registered for TOT, shall reverse the input tax credit availed by him before such change of option, on the stock of goods held by him on the day, when he is registered as a registered person.

(7) A person, who was earlier registered for TOT and has subsequently got himself registered for VAT, shall not be entitled for input tax credit on the stock of goods held by him on the day, when he got registered as a taxable person and shall be liable to pay TOT on such stock, if sold within thirty days from such date.

(8) A person, who exports goods out of India and has claimed refund of input tax under sub–section (2) of section 18, shall reverse the input tax credit, if any, availed by him on such goods.

(9) A person shall reverse input tax credit availed by him on goods which could not be used for the purposes specified in subsection (1) of this section or which remained in stock at the time of closure of the business.

(10) Where the selling taxable person has made any modification in respect of a sale by issuance of debit or credit note on the invoice book, the purchasing taxable person shall make necessary adjustment of input tax credit availed.

(11) Input tax credit shall be nontransferable, except where the ownership of the business of a person is entirely transferred.

(12) Save as otherwise provided hereinafter, input tax credit shall be allowed only against the original VAT invoice and will be claimed during the period in which such invoice is received.

(13) In case the original VAT invoice is lost or mutilated, the input tax credit will be available only after the designated officer has determined the credit in the prescribed manner.

(14) If upon audit or cross verification or otherwise, it is found that a taxable person has made a false input tax credit claim, the Commissioner or the designated officer, as the case may be, shall order for recovery of the whole or any part of such input tax credit, as the case may be, without prejudice to any action or penalty provided for in this Act.

(15) The onus to prove that the VAT invoice on the basis of which, input tax credit is claimed, is bonafide and is issued by a taxable person, shall lie on the claimant.

17. Section 2(o) of the Act defines "input tax" as the value added tax paid or payable on the purchase of taxable goods meant for resale or for use to manufacture, process or pack taxable goods in the State, thereby postulating that "input tax" is tax "paid" or "payable" at the rate in force at the time of purchase of taxable goods. Section 2(p) of the Act defines "input tax credit" to mean the credit of any tax available to a taxable person thereby clarifying that value added tax paid at the time of purchase of taxable goods meant for resale or "for manufacture" etc. to be credited to the account of the taxable person shall be the "input tax credit" available to such a person. Section 2(s) defines the term "output tax". Section 2(zc) defines the word "return" and Section 2(zd) defines the words "return period". Section 2(zm) defines "tax period" to mean the period for which a person is required to pay tax under the Act or the Rules.

18. Section 13 of the Act titled as "input tax credit" sets out the parameters for availing input tax credit. The first proviso (relevant for the present controversy), as it existed i.e. on the date of introduction of Rule 21(8) before it was amended w.e.f. 01.04.2014, provided that input tax credit shall not be "available" unless the goods are "for sale" within the State etc., thus, postulating that input tax credit already earned would be available if the goods are for sale etc. Section 13(5) of the Act notifies a negative list which admittedly however does not apply to the case in hand.

19. A conjoint appraisal of these provisions reveals that value added tax paid at the rate in force on the date of purchase of goods from a taxable person, becomes input tax credit on the date of purchase, if the purchased goods are for resale etc., in the manner prescribed, thereby providing that input tax credit earned by a taxable person on the date of purchase of taxable goods, at the rate of taxation in force, during a particular tax period would be his input tax credit provided the goods are for resale/sale etc. in the State of Punjab or for interstate trade or commerce or in the course of export or for use in the manufacture, processing or packing of taxable goods for sale within the State or inter State transaction and in the course of export etc. The respondents do not deny that members of the petitioners association purchased goods for resale/sale and manufacture etc., in the State of Punjab and had already earned input tax credit, regarding the goods lying in stock, on 21.01.2014. The dispute is confined to Rule 21(8) of the Rules.

20. The State of Punjab w.e.f. 21.01.2014 reduced the rate of taxation, on these goods (iron and steel) from 4% to 2% and simultaneously amended Rule 21 of the Rules to incorporate Rule 21 (8), which reads as follows:

> *"5. In the said rules, in rule 21, after subrule (6), the following subrule shall be added, namely:*
>
> *(7) xxx xxx xxx*
>
> *(8) Where some goods as input or output are lying in the stock of a taxable person and where rate of tax on such goods is reduced from a particular date, then from that date, input tax credit shall be admissible to the taxable person on the sale of goods lying in stock or on using the goods as input for manufacturing taxable goods, at the reduced rate."*

21. A perusal of Rule 21(8) of the Rules reveals that with respect to goods lying in stock the input tax credit already earned shall be admissible at the reduced rate i.e. the rate of taxation prevalent on the date of their sale. As referred to above, the rate of taxation was reduced from 4% to 2% from 21.01.2014. The input tax credit already earned would, therefore, be availed with respect to goods lying in stock, at 2%. The petitioner members, as is apparent from the facts, had paid tax @ 4% while purchasing the goods and had earned input tax credit @ 4%. The goods having been purchased for resale within the State of Punjab, the right to avail input tax credit @ 4% per annum stood crystalised, as a determinate right subject to availing this right during the return period or by carrying it forward. The State, however, by enacting Rule 21(8) of the Rules, has reduced the admissible amount of input tax credit already earned from 4% to 2%. We cannot possibly dispute the legislative competence of the State in the exercise of its power of delegated legislation to enact such a rule but the question, as we have also noticed, is not the legislative competence of the State but is whether on 21.01.2014 there was any provision in the statute that empowered the State of Punjab to notify Rule 21(8) of the Rules to provide that goods that have already earned input tax credit would avail input tax credit at the reduced rate of taxation applicable on the date of sale thereby reducing input tax credit already earned on goods lying in stock by reference to the reduced rate of tax prevalent on the date of their sale etc.

22. A perusal of the Act reveals that on 21.01.2014 there was no provision in the Statute that empowered the State to enact a rule to provide that input tax credit already earned on goods lying in stock shall now be availed and calculated by reference to the reduced rate of taxation prevalent on the date of their sale. The amendment conferring such a power by amending the first proviso to Section 13 of the Act, admittedly, came into force on 01.04.2014 by deleting the words "are for sale" etc. and replacing them with the words "unless such goods are sold" etc., thereby for the first time linking the availing of input tax credit to the rate prevalent on the date of the "sale of goods" etc. to the rate of taxation in force on the date of sale. The amended proviso to Section 13 of the Act, reads as follows:

> *"Provided that the input tax shall not be available as input tax credit unless such goods "are sold" within the State or in the course of interState trade or commerce or in the course of export or are used in the manufacture, processing or packing of taxable goods for sale within the State or in the course of interState trade or commerce or in the course of export."*

23. The amendment in the first proviso to Section 13 of the Act introducing the words "are sold" etc. came into effect on 01.04.2014. The State of Punjab was, therefore, empowered in the exercise of its power of delegated legislation to notify a rule linking the availing of input tax credit already earned, to their sale, on 01.04.2014. Rule 21(8) of the Rules which resonates the first proviso to Section 13 of the Act by linking the availing of input tax credit to goods sold and thereby to the reduced rate of taxation, came into effect on 21.01.2014 on which date

there was no statutory provision enabling the State, in the exercise of its power of delegated legislation, to notify a rule that input tax credit would be "availed" on the sale of goods lying in stock or their manufacture etc. by reference to the reduced rate of taxation, prevalent at the time of "sale/manufacture" etc. of goods that had already earned a determinate amount of input tax credit.

24. The State may be well within its power to alter the terms & conditions of availing input tax credit by a piece of subordinate legislation but as subordinate legislation may only be notified if it is relatable to statutory power enabling the State to notify such a rule, but the absence of such a provision in the statute, empowering the State to notify such a rule, between 21.01.2014 and 01.04.2014, in our considered opinion, did not empower the State, in the exercise of its power of delegated legislation to notify Rule 21(8) of the Rules on 21.01.2014.

25. We, therefore, have no hesitation in holding that on the date of introduction of sub Rule (8) of Rule 21 of the Rules, the State did not possess any power, emanating from the Act, to confine the availing of input tax credit to the reduced rate of tax on stock in trade i.e. transactions that had concluded with the dealer already earning input tax credit. A further perusal of the amendment in the first proviso to Section 13 of the Act reveals that it is not retrospective but applies to transactions after 21.01.2014. The amendment in the rule, which came into effect prior to the amendment the Act could, therefore, not be enforced, by the respondents before 01.04.2014 to take away a vested right already determined without statutory sanction.

26. We, therefore, allow the writ petitions and hold that in the absence of any provision in the statute enabling the State of Punjab to notify Rule 21(8) of the Rules w.e.f. 21.01.2014, the said provision would come into effect from 01.04.2014. However, since the notification by which Rule 21(8) of the Rules was added to the Rules, was obviously issued in view of the fact that the respondents were simultaneously, or soon thereafter, reducing the rate of taxation on various goods and as such, the notification was intended to ensure that the public exchequer does not suffer a loss by granting input tax credit at higher rates than the tax actually deposited (after lowering the rate of taxation), we grant liberty that if the public exchequer is adversely affected on account of the fact that we have held the notification of Rule 21(8) of the Rules to be an act of excessive delegation, the respondents may roll back the lowered rates of taxation, as per law, for the period between 21.01.2014 to 31.03.2014 to the level at which it was existing prior to the notification lowering such rate.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 142 OF 2014

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MAHINDRA & MAHINDRA LTD.
Vs.
STATE OF HARYANA

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA J

19th May, 2015

HF ▶ Assessee

APPEAL - TRIBUNAL – PRELIMINARY ISSUE UNADJUDUCATED – REVISIONAL JURISDICTION – ASSESSMENT FINALIZED FOR THE YEAR 2004-05 IN 2008– ANOTHER MATTER OF THE APPELLANT BEING DEALT BY TRIBUNAL DECIDED IN 2009 HOLDING APPELLANT'S CLAIM FOR CONCESSION AS ILLEGAL – SUBSEQUENTLY, BASED ON THIS ORDER REVISIONAL JURISDICTION SOUGHT TO BE INVOKED FOR YEAR 2004-05 – APPEAL AGAINST ORDER OF REVISIONAL AUTHORITY DISMISSED BY TRIBUNAL – ON APPEAL BEFORE HIGH COURT, HELD THAT THE FIRST ISSUE TO BE DECIDED WAS WHETHER THE TWO CASES WERE SIMILAR OR NOT SO AS TO INVOKE REVISIONAL JURISDICTION IN VIEW OF SEC 34 OF THE ACT – MATTER REMANDED TO TRIBUNAL FOR FRESH DECISION – LIBERTY TO FURTHER REMAND IT TO REVISIONAL AUTHORITY – APPEAL DISPOSED OF – *SEC 34 OF HVAT ACT, 2003*.

The assessment for the year 2004-05 was finalized in 2008. Another matter of the appellant was being dealt by the tribunal in STA No.407 of 2009-10 whereby it was decided that the appellant's claim for concessional rate of duty was illegal with respect to goods sold to Nigams as Nigams are not government departments. On the basis of this decision, Revisional Jurisdiction was sought to be invoked for the year 2004-05 by passing an order dated 27/11/2012. The tribunal dismissed the appeal against the order of the revisional authority. Allowing the appeal, the high court remanded the matter to the Tribunal to first decide the basic issue as to whether the two cases were same so as to invoke revisional jurisdiction in view of the second proviso to section 34 (1) of the Act. This issue is to be decided for passing fresh orders. The tribunal can either decide the matter itself or further remand it to revisional authority.

Present: Mr. Avneesh Jhingan, Advocate, for the appellant.
Mr. Mamta Singla Talwar, AAG, Haryana, for the respondent.

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S.J.Vazifdar, Acting Chief Justice

1. This is an appeal against the order of the Haryana Value Added Tax Appellate Tribunal, Haryana (for short, the 'Tribunal') dated 31.10.2013 (Annexure A-6), dismissing the appeal filed against the order of the revisional authority, dismissing the preliminary issue

raised before the Deputy Excise & Taxation Commissioner-cum-Revisional Authority, Karnal, that the revisional jurisdiction was invoked beyond the period of limitation, as prescribed under Section 34 of the Haryana Value Added Tax Act, 2003 (for short, the 'Act').

2. Several questions of law have been raised contending that they are substantial questions of law relating to the ambit of Section 34. It is not necessary to set out these questions as we find that the main issue that arises for consideration has not been dealt with by the Tribunal, at all. We are, therefore, inclined to remand the matter to the Tribunal, for a fresh decision, especially on the issue, which we will shortly indicate.

3. Section 34 of the Act reads as under:

"34. (1) The Commissioner may, on his own motion, call for the record of any case pending before, or disposed of by, any taxing authority for the purposes of satisfying himself as to the legality or to the propriety of any proceeding or of any order made therein which is prejudicial to the interests of the State and may, after giving the persons concerned a reasonable opportunity of being heard, pass such order in relation thereto as he may think fit:

Provided that no order passed by a taxing authority shall be revised on an issue which on appeal or in any other proceeding from such order is pending before, or has been settled by, an appellate authority or the High Court or the Supreme Court, as the case may be:

Provided further that no order shall be revised after the expiry of a period of three years from the date of the supply of the copy of such order to the assessee except where the order is revised as a result of retrospective change in law or on the basis of a decision of the Tribunal in a similar case or on the basis of law declared by the High Court or the Supreme Court.

(2) The State Government may, by notification in the Official Gazette, confer on any officer not below the rank of Deputy Excise and Taxation Commissioner, the power of the Commissioner under subsection (1) to be exercised subject to such exceptions, conditions and restrictions as may be specified in the notification and where an officer on whom such powers have been conferred passes an order under this section, such order shall be deemed to have been passed by the Commissioner under sub-section (1)."

4. We are concerned essentially with the second proviso to Section 34. The revisional jurisdiction was exercised on the following basis:

The Assessing Authority finalized the assessment for the relevant assessment year, namely, 2004-05, on 05.02.2008. Another matter was being dealt with by the Tribunal, namely, STA No.407 of 2009-10, in the appellant's case. It was held that the appellant's claim for concession with respect of the goods sold to the Haryana Vidyut Parsaran Nigam Ltd.(HVPNL) and Uttar Haryana Bijli Vitran Nigam Ltd.(UHBVNL), was illegal. That case was decided by an order of the Tribunal dated 11.12.2009. The Tribunal held that the Nigams are not Government departments and therefore, the appellant was not entitled to concessional rate of duty. It is based on this decision that the revisional jurisdiction was sought to be invoked in the present case, by issuing an order dated 27.11.2012.

5. The main question is as to whether the present case which involves the sale of the same goods to the Police Department, the Forest Department and other Departments and to the State Transport Corporation, is similar to the case dealt with by the order of the Tribunal dated 11.12.2009 (released on 21.12.2009). Had the present case involved the sale of goods to the said Nigams, it may have been a different matter, altogether. It was necessary for the Tribunal, however, to first decide the issue as to whether this case is similar to the other case

for it is only in the event of that finding being in the affirmative that the revisional jurisdiction could have been invoked under the second proviso to Section 34. This issue, admittedly, has not been raised much less dealt with in the impugned order. We would have considered deciding this issue ourselves but for the fact that it was suggested that there may be certain other aspects regarding the constitution of these bodies that may also require consideration.

6. We would, therefore, leave it, in the first instance, for the authorities under the Act, to decide the issue.

7. The appeal is disposed of by the following order:

The impugned order dated 31.10.2013 (Annexure A-6) is set aside. The matter is remanded to the Tribunal for fresh decision, in accordance with law, including on the above issue. It would be open to the Tribunal to decide the said issue or to further remand the matter to the revisional authority.

PUNJAB & HARYANA HIGH COURT

CWP NO. 9908 OF 2015

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BRISK INFRASTRUCTURE & DEVELOPERS (P) LTD.
Vs.
STATE OF HARYANA AND OTHERS

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA J

18th May, 2015

HF ▶ Petitioner/Assessee

CONSTITUTION OF INDIA – WORKS CONTRACT – VIRES OF EXPLANATION(I) TO SEC 2(1) (ZG) OF THE HVAT ACT AND RULE 25(2) OF HVAT RULES – COVERED BY THE CASE OF CHD DEVELOPERS LTD – PETITION DISPOSED OF IN SAME TERMS.

Following the case of CHD developers Karnal, this writ petition is disposed of in same terms. It is held that the tax is to be computed on a value not exceeding the value of transfer of property in goods on and after the date of entering in to an agreement for sale. The value of immovable property and any other thing done prior to entering into agreement is to be excluded. The assessment orders are therefore liable to be set aside and where only notices have been issued , the assessment shall be framed in accordance with the aforesaid law.

Present: Mr. Sandeep Goyal, Advocate,
Mr. K.K. Gupta, Advocate, and Mr. Rishab Singla, Advocate, for the petitioner.
Ms. Mamta Singla Talwar, Assistant Advocate General, Haryana.

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S.J. VAZIFDAR, A.C.J.

1. It is admitted that this writ petition is covered by the order and judgement of a Division Bench of this Court in a group of writ petitions with lead case i.e. CWP-5730-2014 titled as *CHD Developers Limited, Karnal* Vs *The State of Haryana and others* decided on 22.04.2015.

2. The petitioners therein had prayed for a writ of mandamus declaring Explanation (i) to Section 2(1) (zg) of the Haryana Value Added Tax Act, 2003 and Rule 25 (2) of the Haryana Value Added Tax Rules, 2003 and other related provisions in so far as they include the value of land for charging VAT on developers to be ultra vires to the Constitution of India. The Division Bench, inter alia, held as under:-

> *"44. In case the provisions of law are seeking to charge sales tax on any amount other than the value of goods transferred in course of execution of works contract, the provisions would be ultra vires the Constitution of India. The tax is to be computed on a value not exceeding the value of transfer of property in goods on and after the date of*

entering into agreement for sale with the buyers. However, the 'deductive method' requires all the deductions to be made therefrom to be specifically provided for to ensure that tax is charged only on the value of transfer of property in goods on and after the date of entering into agreement for sale with the buyers. Where 'deductive method' has been prescribed under the rules for ascertaining the taxable turnover, ordinarily it should include a residuary clause in consonance with the mandate of law so as to cover all situations which can be envisaged.

45. In view of the above, essentially, the value of immovable property and any other thing done prior to the date of entering of the agreement of sale is to be excluded from the agreement value. The value of goods in a works contract in the case of a developer etc. on the basis of which VAT is levied would be the value of the goods at the time of incorporation in the works even where property in goods passes later. Further, VAT is to be directed on the value of the goods at the time of incorporation and it should not purport to tax the transfer of immovable property. Consequently, Rule 25(2) of the Rules is held to be valid by reading it down to the extent indicated hereinbefore and subject to the State Government remaining bound by its affidavit dated 24.4.2014 The State Government shall bring necessary changes in the Rules in consonance with the above observations."

3. In these circumstances, the Division Bench disposed of the writ petitions as follows:-

"53. To conclude, in some of the writ petitions challenge has been laid by the petitioners to the assessment order passed by the Assessing Authority relying upon circular issued by the Excise and Taxation Commissioner whereas in others, the order of the revisional authority on the same premises has been assailed. Still further, in certain cases, the petitioners have approached this Court at the stage of issuance of notices for framing of assessments itself. In our opinion, in all these matters, the assessment orders and revisional orders passed by the concerned authorities are liable to be set aside with liberty to the appropriate authority to pass fresh orders in the light of the legal principles enunciated hereinbefore. We order accordingly. In so far as cases where only notices have been issued, the competent authority shall be entitled to proceed further and pass order in accordance with law keeping in view the aforesaid interpretation noticed above. The writ petitions are, thus, partly allowed in the above terms."

4. In these circumstances, the present writ petition is also disposed of in the same terms.

5. There shall be no order as to costs.

PUNJAB VAT TRIBUNAL

APPEAL NO. 507 OF 2014

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REZONDI RETAIL (INDIA)
Vs.
STATE OF PUNJAB

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

9TH April, 2015

HF ▶ Revenue

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – REMAND – GOODS IN TRANSIT INTERCEPTED – DETENTION ON GROUNDS OF LACK OF E-ICC FORM TO PROVE ALLEGED EXPORT – PENALTY IMPOSED BY AETC UNDER SECTION 51 OF THE ACT – APPEAL BEFORE DETC – IRREGULARITIES POINTED OUT IN AETC'S ORDER AND REQUIREMENT OF CONSIDERATION REGARDING ALLEGED EXPORT OBSERVED – APPEAL BEFORE TRIBUNAL AGAINST ORDER OF REMAND ON THE BASIS THAT THE IMPUGNED ORDER INDICATED ACCEPTANCE BY DETC REGARDING EXPORT – ARGUMENT NOT ACCEPTED BY TRIBUNAL DUE TO RELEVANT SENTENCE WRITTEN IN THE IMPUGNED ORDER BEING UNCLEAR – ORDER UPHELD – AETC TO PASS A SPEAKING ORDER AND CONSIDER WHETHER CASE SHOULD FALL WITHIN PURVIEW OF SECTION 51 – CASUAL APPROACH ON PART OF AETC OBSERVED ETC DIRECTED TO PROBE INTO THE MATTER - APPEAL DISMISSED – SECTION 51(7)(C) OF PVAT ACT.

The hosiery goods in transit were intercepted by the Mobile Wing. The goods were detained as they were not accompanied by proper documents as required under Section 51(2) and (4) of the Act. No e-ICC form was accompanied to prove that the goods were meant for export or inter state sale. Penalty under Section 51(7)(c) was imposed by AETC. An appeal was filed before 1st Appellate Authority which remanded the order back to AETC to pass a speaking order. It has been mentioned in the order of the 1st Appellate Authority in a vague language that 'the fact that comes to consideration that the goods have been exported'. An appeal before Tribunal was filed against the remand order on the basis that the sentence mentioned in the impugned order indicated acceptance on part of DETC regarding goods being meant for export. Dismissing the appeal, it has been held that the language of DETC was not clear but it reflects that the question of export was meant for consideration. The remand order is upheld and AETC is directed to hear the matter on merits and pass a speaking order after considering whether the case falls within the ambit of Section 51. The Tribunal has observed that the DETC found many mistakes in the order passed by AETC Mobile Wing showing her casual approach by passing and signing the order. This is not expected from a quasi judicial

authority. Copy of the judgment is sent to the Excise & Taxation Commissioner to probe and proceed accordingly.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith Mr. Rohit Gupta, Advocate counsel for the appellant.
Mrs. Sudeepti Sharma, Deputy Advocate General for the State.

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

1. The Assistant Excise and Taxation officer vide order dated 13.3.2014 had imposed a penalty of Rs. 8,97,372/- under Section 51(7) (c) of the Punjab Value Added Tax Act,2005, but on appeal the Deputy Excise and Taxation(Commissioner (A), Ludhiana Division, Ludhiana vide order dated 27.10.2014 remitted the case back to the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana to reconsider, all the facts and circumstances as submitted by the Counsel for the parties and pass a fresh order.

2. The briefs facts of the case are that during the course of checking on 4.2.2014, Shri Navjeet Singh, Excise and Taxation Officer, Mobile Wing, Ludhiana intercepted a vehicle No. PB-12J-1578 carrying hosiery goods. On examination of the documents by the Detaining Officer, it was found that the goods were not accompanying proper documents as required U/s 51 (2) & (4) of the Punjab Value Added Act, 2005 read with Rule 64 (b) of the Punjab Value Added Tax Rules. On a query by the Designated Officer, the driver replied that no "e-icc form" which could disclose that the goods are being taken for export or inter State 'sale was accompanying the goods. As such the goods were detained and the case was referred to the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana who imposed a penalty of Rs.8,97,372/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005.

3. On Appeal, the Deputy Excise and Taxation Commissioner finding no fault with the order dated 13.3.2014 observed as under:-

> *"I have heard both the sides and gone through the facts of the case and also read over the order of the AETC (MW), Ludhiana. The documents submitted by the counsel have been examined at length and placed on the tile. From the examination of the documents submitted by the counsel, the fact comes to consideration that the goods have been exported. I have also examined the file of the department at length from which it has been noticed that order has been passed in a hurry mind which shows that even order sheet written by the AETC have not been signed on some dates and judgment was reserved on 10.3.2014 which has been released on 12.3.2014 whereas shown in order, it has been announced on 13.3.2014 which is different date and in file, original order has been written with the own hands of the A Assistant Excise and Taxation Commissioner (Mobile Wing) in which she has imposed a penalty of Rs.10,95,435/- where as the penalty order which has been served to the appellant is for Rs.8,97,372/- only which clearly shows that the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana has not applied fully her mind before passing/ signing the order. Although she tried to cover up the mistake by passing the rectified order dated 16.10.2014 which itself is not a self speaking order and she has rectified only one mistake whereas there are so many mistakes in her previous order, so she should pass the self-speaking order. In view of the facts explained above and in the light of the judgment cited by the A counsel and clarification given by the worthy ETC Punjab, the case is remanded back to the AETC (MW), Ludhiana to pass the fresh order in the case on merits keeping in view all the facts and the documents submitted by the counsel and*

citation given by the counsel within two months after giving the reasonable opportunity of being heard."

Against this order, the appellant has again knocked the door of this court by way of second appeal.

4. I have heard the counsel for the parties and perused the record of the case. The counsel for the appellant has submitted that the Deputy Excise and Taxation Commissioner (A) has accepted that the goods were being exported, but this contention does not weigh with me. On scrutiny of the order, I do not find any such observation having been made by the Deputy Excise and Taxation Commission in this regard. The impugned order just indicates that the Deputy Excise and Taxation Commissioner has recorded that it was a matter of consideration if the goods are meant for export. As a matter of fact, the language of the relevant sentence is not clear, but it conveys the only meaning that matter requires consideration. Actually, in the absence of 'e-Trip/e-ICC' it was difficult to make out whether the goods were for export. The appellant has also admitted that "e-ICC" form was not generated. In any case, it is still to be decided by the Deputy Excise and Taxation Commissioner, whether the goods are meant for export. The remaining part of the order has not been challenged by the counsel for the appellant.

5. In these circumstances, I am of the view that the order passed by the Deputy Excise and Taxation Commissioner is correct. The Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana while passing the order would examine as to "whether the case falls within the purview of Section 51 (6) (b) of the Act as to attract the penalty U/s 51 (7) (c) of the Act?" The Assistant Excise and Taxation Commissioner would also examine all the arguments raised by the appellant as well as the State before passing the speaking order.

6. Before parting with the order, it may be observed that the Deputy Excise and Taxation Commissioner has found the following mistakes in the order dated 13 3.2014 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana:-

(1) The order sheet written by the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana has not been signed on some dates. A

(2) The judgment was reserved on 10.3.2014 and was released on 12.3.2014 whereas the record shows that the judgment –was announced on 13.3.2014

(3) There are different dates and on the original order are different dates.

(4) In the original order written by the Assistant Excise and Taxation Commissioner, Mobile Wing, Ludhiana in which she imposed a penalty of Rs.10,95,435/- whereas the penalty order is to the tune of Rs.8,97,372/- which was served upon the appellant.

(5) The order of rectification dated 16.10.2014 is also not a self speaking order and she has rectified only one mistake whereas the order is replete with many mistakes, so she did not pass a speaking order regarding the aforesaid irregularities.

(6) All this shows that the officer was very casual in her approach while passing and signing the order. This much can't be expected from a quasi judicial authority.

The copy of the judgment is sent to the Excise and Taxation Commissioner, Punjab for a probe and to proceed accordingly.

Pronounced in the open court.

NOTIFICATION

ORDINANCE REGARDING ENTRY TAX ON SPECIFIED GOODS

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PART II

GOVERNMENT OF PUNJAB

DEPARTMENT OF LEGAL AND LEGISLATIVE AFFAIRS, PUNJAB

NOTIFICATION

The 6th May, 2015

No. 1-Leg./2015.-The following Ordinance of the Governor of Punjab promulgated under clause (1) of article 213 of the Constitution of India on the 5th Day of May, 2015, is hereby published for general information:-

THE PUNJAB DEVELOPMENT OF TRADE, COMMERCE AND INDUSTRIES ORDINANCE, 2015
(Punjab Ordinance No. 1 of 2015)
AN
ORDINANCE

to provide for the non discriminatory and compensatory levy of tax on the entry of specified goods into the local area for development of trade, commerce and industries and the matters connected therewith or incidental thereto.

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

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

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

Short title and commencement.

1. (1)This Ordinance may be called the Punjab Development of Trade, Commerce and Industries Ordinance, 2015.

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

Definitions

2. (1) In this Ordinance, unless the context otherwise requires,-Definitions.

(a) "Appellate Authority" means an Appellate Authority appointed under section 3 of the Punjab Value Added Tax Act, 2005;

(b) "Board" means the Punjab Development of Trade, Commerce and Industries Board;

(c) "Business" includes,

(i) any trade, commerce or manufacture or any venture or concern whether or not such trade, commerce, manufacture, venture or concern is carried on with a motive to make profit and whether or not any profit accrues therefrom;

(ii) any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, venture or concern; and

(iii) e-commerce transactions including direct buying and selling through electronic marketplaces and online shopping websites;

(d) "dealer" includes occasional dealer or any person, who in the course of business, whether on his own account or on account of his principal or any other person, brings or causes to be brought into a local area, goods specified in the Schedule or takes delivery or is entitled to take delivery of goods specified in the Schedule on its entry into the local area;

(e) "entry of goods", with all its grammatical or cognate expressions, means, entry of goods into the State of Punjab from any place outside the State and through any mode of transport;

(f) "information collection centre" means the information collection centre or check post including temporary check post or both, as the case may be, established under section 51 of the Punjab Value Added Tax Act, 2005;

(g) "local area" means an area within the territorial boundaries of the State of Punjab;

(h) "occasional dealer" means a person who, in the course of occasional transactions of the business, whether on his own or on account of his principal or any other person, brings or causes to be brought into a local area, goods specified in the Schedule or takes delivery or is entitled to take delivery of goods specified in the Schedule on its entry into the local area;

(i) "person" includes any company or association or body of individuals whether incorporated or not, and also Hindu Undivided Family, a firm, a society, a trust, a club, an individual, a local authority, State Government, the Central Government or any Union Territory or any other judicial body and also includes any person, who acts as a carrier of goods or the logistics partner, who on his own account or on account of seller or on account of any other person brings or causes to be brought or causes the entry of goods into the local area, to be delivered to any person for consumption, use or sale;

(j) "prescribed" means prescribed by rules made under this Ordinance;

(k) "Schedule" means a Schedule appended to this Ordinance;

(l) "Scheduled goods" means any goods mentioned in the Schedule;

(m) "State" means the State of Punjab;

(n) "State Government" means the Government of the State of Punjab;

(o) "tax" means tax leviable under this Ordinance;

(p) “Tribunal” means the Tribunal constituted under section 4 of the Punjab Value Added Tax Act, 2005; and

(q) "value of goods" means the value of any goods as ascertained from purchase invoice or bill and includes value of packing material, packing and forwarding charges, insurance charges, amounts representing excise duty, countervailing duty, custom duty and other such duties, amount of any fee or tax charged, transport charges, freight charges and any other charges relating to purchase and transportation of such goods into the local area in which goods are being brought or received for consumption, use or sale therein:

Provided that where the goods ordered through e-commerce websites have been brought into the State by the seller or the logistic partner or carrier of goods, the value of goods shall be the value on original purchase invoice including value of packing material, packing and forwarding charges, amount of any fee or tax charged, transport charges, freight charges and any other charges relating to purchase and transportation of such goods into the local area.

Authorities for carrying out the purposes of this Ordinance,

3. The Commissioner, the Tribunal, the Chairman of the Tribunal, the Members of the Tribunal, the Appellate Authority, the Additional Commissioner, the Joint Commissioner, the Deputy Commissioner, the Assistant Commissioners and the Officers appointed under the Punjab Value Added Tax Act, 2005 shall be the authorities for carrying out for the purposes of this Ordinance.

Levy of tax.

4. (1) For the purpose of development of trade, commerce and industry in the State, there shall be levied and collected a tax on entry of goods specified in the Schedule into a local area for consumption, use or sale therein, from any place outside that local area, at such rate as specified by the State Government by notification from time to time. Different rates may be specified in respect of different goods or different classes of goods not exceeding twenty per cent:

Provided that the State Government may by notification amend the Schedule:

Provided further that the State Government may by notification exempt any class of persons or any transactions from payment of tax subject to such conditions, as may be notified:

Provided further that the goods being brought into the local area for further transfer outside the local area through consignment sale or branch transfer shall not be subject to this tax.

(2) The tax levied under sub-section (1), shall be payable by any person, who brings or causes to be brought into the local area, such goods, whether on his account or on the account of his principal or takes delivery or is entitled to take delivery of such goods on its entry into a local area:

Provided that tax levied under sub-section (1), shall be payable by the seller or the logistics partner or the carrier of goods, who brings or causes to be brought or causes the entry of goods into any local area, for delivery of such goods to any person for consumption, use or sale therein, on entry of such goods into the local area.

Registration.

5. Every person registered under the Punjab Value Added Tax Act, 2005 shall be deemed to be registered under this Ordinance. The logistic partner or the carrier of goods, who brings or causes to be brought or causes the entry of goods into any local area for any person, not registered under the Punjab Value Added Tax Act, 2005, for the value more than rupees five lacs, shall be liable for registration under this Ordinance, in the manner as may be prescribed.

Returns.

6. (1) The returns filed by a person registered under the Punjab Value Added Tax Act, 2005 shall be treated as returns filed under this Ordinance.

(2) Any person who is liable to be registered under this Ordinance, but is not registered under the Punjab Value Added Tax Act, 2005 shall file returns under this Ordinance, as may be prescribed.

(3) A person who is registered under the Punjab Value Added Tax Act, 2005 shall declare the tax due under this Ordinance with his VAT returns and pay the same along with his returns.

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

Administration and collection of Tax.

7. Subject to the provisions of this Ordinance and the Rules made thereunder, the authorities appointed under this Ordinance, shall be empowered on behalf of the Board to assess, revise, rectify, collect and enforce the payment of tax including interest and penalty, if any, payable by the person under the Ordinance, as if such tax, interest or penalty, if any, payable by the person, is a tax, interest or penalty payable under the Punjab Value Added Tax Act, 2005. For this purpose, the aforesaid authorities may exercise all or any of the powers, exercisable by them under the Punjab Value Added Tax Act, 2005 and the Rules framed thereunder and the provisions of the Punjab Value Added Tax Act, 2005 relating to returns, assessment, provisional assessment, revision, rectification, review, payment of tax in advance, registration of transfer of any business, imposition of tax liability, carrying on business on the transfer of successor to such business, transfer of any liability of any firm or Hindu Undivided Family to pay tax in the event of dissolution of such firm or partition of family, information collection centre, recovery of tax from third parties, detention of goods, appeals, review references, refunds, rebates, charging or payment of interest, compounding of offences and treatment of documents furnished as confidential, seeking information from any person shall apply accordingly.

Manner of payment of tax.

8 (1) In case entry into the local area is made through road, by a registered person, the tax shall be paid by such person along with returns.

(2) In case entry into the local area is made through road, by a unregistered person, he shall have the option to pay tax under this Ordinance either at the information collection center at the time of entry of goods into the local area or at the Office of the Assistant Excise and Taxation Commissioner of the concerned district in the manner, as may be prescribed.

(3) In case entry into the local area is made through Railway Stations, tax under this Ordinance shall be paid by the person at the information collection center located at Railway

Stations or at the Office of the Assistant Excise and Taxation Commissioner of the concerned district in the manner, as may be prescribed.

(4) For any other kind of entry of goods into the local area by any other mode of transport, the tax shall be paid in the Office of the Assistant Excise and Taxation Commissioner of the concerned district in the manner, as may be prescribed.

Constitution of the Board.

9. The Board shall consist of the following, namely:-

(i)	the Chief Minister of Punjab;	: Chairman
(ii)	the Minister of Industries and Commerce, Punjab;	:Vice-Chairman
(iii)	the Minister of Excise and Taxation, Punjab;	: Member
(iv)	the Minister of Finance, Punjab;	: Member
(v)	the Minister of Local Government, Punjab;	: Member
(vi)	the Chief Secretary, Punjab;	: Member
(vii)	the Principal Secretary Industries and Commerce, Punjab;	: Member
(viii)	the Principal Secretary Finance, Punjab; and	: Member
(ix)	the Director Industries and Commerce, Punjab. Secretary: Member	

Functions of the Board.

10. The functions of the Board shall be such, as may be prescribed.

Utilization of the proceeds of the tax.

11. (1) The proceeds of the tax levied under this Ordinance shall be utilized proceeds of the exclusively for the development or facilitating trade, commerce and industry tax. in the State and for other welfare measures for the general public in the local area, which shall include the following:

(a) developing industrial estates, focal points and industrial clusters being developed by the State Government, providing financial aids, grants, incentives and subsidies to financial, industrial and commercial units;
(b) creating infrastructure for supply of electricity and water to specified trades, marketing and other commercial complexes;
(c) creating, development and maintenance of other infrastructure for the furtherance of specified trades;
(d) providing financial aids, grants and subsidies for creating, developing and maintaining pollution free environment in the local area;
(e) providing finance, aids, grants and subsidies to the local bodies and government agencies for the purposes specified in clauses (a), (b), (c) and (d);
(f) providing amenities to the public in the local area;
(g) implementing the social welfare schemes for public in the local area; and
(h) any other purpose connected with the development of trade, commerce and industry or for facilities relating thereto which the State Government may specify by notification.

(2) The proceeds of the levy under this Ordinance shall be transferred to the Consolidated Fund of the State and shall be utilized exclusively for the development of trade, commerce and industries of specified trade in the State.

12. The State Government, after giving fifteen days notice of its intention Power to amend so to do, may, by like notification add to or omit goods and alter the rate of tax the Schedule. specified in the Schedule and thereupon, the Schedule shall be deemed to have been amended accordingly:

Provided that if, the State Government is satisfied that circumstances exist, which render it necessary to take immediate action, it may, for reasons to be recorded in writing, dispense with the condition of previous notice.

13 (1) The State Government may, by notification in the Official Gazette, Power of the make rules for carrying out the purposes of this Ordinance. State Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing powers, the State Government may make such rules, as may provide for any other matter which has to be or may be prescribed.

(3) Every rule made under this Ordinance shall be laid, as soon as may be, after it is made, before the House of the State Legislature, while it is in session, for a total period of fourteen days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the successive sessions as aforesaid, the House agrees in making any modification in the rules, or the House agrees, that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be. However, any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

Bar of jurisdiction.

14. No civil court shall have jurisdiction to entertain or decide any action relating to matters arising under this Ordinance.

PROF. KAPTAN SINGH SOLANKI,

GOVERNOR OF PUNJAB.

H.P.S. MAHAL,

Secretary to Government of Punjab,

Department of Legal and Legislative Affairs.

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NOTIFICATION

NOTIFICATION REGARDING LEVY OF ADDITIONAL FEE ON PETROL

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PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF FINANCE

(FINANCE EXPENDITURE IV BRANCH)

NOTIFICATION

The 21st May, 2015

No. S.O. 19/P.A. 8/2002/S.25/2015.- In exercise of the powers conferred by sub-section (1) of section 25 of the Punjab infrastructure (Development and Regulation) Act, 2002 (Punjab Act No. 8 of 2002), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in the Government of Punjab, Department of Finance, Notification No. 7/1/11/2011-5FEIV/6349, dated the 11th July, 2002, namely:-

AMENDMENT

In the said notification, for the words, figure and signs "That every dealer shall be liable to pay a fee at the rate of rupee one per litre on petrol and at the rate of rupee one for every hundred rupees on all agricultural produces as defined in the Punjab Agricultural Produce Markets Act, 1961 except;'', the words, figure and signs "That every dealer shall be liable to pay a fee at the rate of rupees two per litre on the sale of petrol, at the rate of rupee one per litre on the sale of diesel and at the rate of rupee one for every hundred rupees on all agricultural produces as defined in the Punjab Agricultural Produce Markets Act, 1961 except;'' shall be substituted.

VINI MAHAJAN,
Principal Secretary to Government of Punjab
Department of Finance.

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STATE MAY GIVE VAT EXEMPTION TO HOSIERY, SPORTS INDUSTRY

The Akali-BJP government in the state, while presenting the budget for the current fiscal in March, had admitted that the growth in its tax revenues had reached a plateau. It had also admitted that the revenue deficit of the state was likely to increase from Rs 6,240 crore in 2014-15 to Rs 6,393 crore this year. Despite these admissions, what appear to be political reasons in the run-up to the 2017 Assembly elections, the government is now proposing to dilute the value added tax (VAT) – the main source of revenue for the cash-strapped Punjab Government.

Earlier this week, a meeting of the Advisory Committee on Trade and Industrial Affairs was held with officials of the Excise and Taxation Department, wherein a committee was formed to make the three main industries of Punjab – bicycle, hosiery and sports – VAT-free.

Officials in the Excise and Taxation Department admit that the VAT collections would take a hit of over Rs 200 crore, when this tax is removed for the three industry sectors. A committee comprising industrialists Satish Dhanda and Madan Lal Bagga and Additional Commissioner, Excise and Taxation, Amrik Singh will take a decision on the matter.

Officials in the excise department admit that while there is logic in removing VAT on cycle industry as 90 per cent of bicycles manufactured in the state are sold outside the state and manufacturers get refunds on VAT, the state would be hit if VAT on hosiery and sports goods is withdrawn. Though the department is yet to work out the details, it is estimated that hosiery and sports industries contribute Rs 100 crore each to the state's total VAT kitty.

"Since hosiery goods manufactured in Punjab (mainly Ludhiana) are consumed within the state as well as sold outside, besides a number of garments classified as hosiery, especially branded wear, flow into the state for sale here, the VAT earned on these is huge. Similar is the case with sports goods. A number of these manufactured in Jalandhar are consumed within the state and a number of branded sports goods are brought in Punjab for their sale here, the VAT collected on these goods, too, is estimated at Rs 100 crore," says an official.

This year, the state is expecting a negligible increase of Rs 90 crore in its VAT collection — from Rs 17,760 crore last fiscal to Rs 17,850 crore this year. If the VAT is further diluted and major industries are exempted from paying VAT, it would directly hit the state's "frail" economy.

Also, this is not the first time in recent months that the state government has decided to "rationalise" VAT and appease the traders' community, even as it suffers itself. In March too, the government had decided to rationalise VAT for some goods.

The electronic reporting on sale of goods (eTRIP) for major items of consumption in Punjab was done away with and VAT on Aviation Turbine Fuel (ATF) was reduced. These decisions had meant that the state government would lose about Rs 100 crore in revenue.

Courtesy: The Tribune
17th May, 2015

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RS 1 PER LITRE CESS ON DIESEL LIKELY

The diesel price in the state is set to go up by over Re 1 per litre with the state government now proposing to impose a new cess on it.

The cess collected will be used for improving rural and social infrastructure in the state.

Highly placed sources in the government have confirmed to The Tribune that the new cess of 2 per cent is being imposed on diesel, which will lead to almost Re 1.10 per litre increase in the price of diesel, once it is imposed.

The move to impose this cess on diesel is likely to come up for discussion in the meeting of the Punjab Cabinet scheduled for tomorrow. A cess of Rs 1 per litre on petrol already exists in Punjab.

The cess collected will not go to the consolidated fund of the state government but will be a dedicated fund, to be used for improving rural infrastructure and ensuring that the social security benefits announced by the government do not suffer because of cash crunch.

This is not the first time that a dedicated fund is being created in the state. A dedicated fund for upgrading urban infrastructure, Punjab Municipal Fund, already exists.

At present, the price of diesel in Punjab is Rs 52.56 to Rs 52.13 per litre (it varies in different cities because of local taxes). This retail price that a customer pays includes 11.25 per cent VAT and a 10 per cent surcharge on VAT, taking the total tax imposed on VAT to 12.385 per cent.

A consumer pays Rs 5.75 roughly as taxes on each litre of diesel. The sale of diesel in Punjab on average is 2.7 crore litres per month. The imposition of cess on diesel will mean that the state government will collect Rs 32.4 crore per annum for the new dedicated fund.

With the imposition of this cess, the total tax on diesel in Punjab is likely to go up from 12.385 per cent now to over 14 per cent.

This might benefit the cash-strapped state government in creating a dedicated fund for creation of social infrastructure and funding various social security schemes of the state government that often get hit because of poor fund flow.

But the petroleum dealers in Punjab, especially the dealers having their retail outlets in the towns bordering Haryana and Chandigarh, will be hit badly.

Among other issues to be discussed in the Punjab Cabinet tomorrow is recruitment of 125 sportspersons who have won medals in international games and allotment of plots to institutions in New Chandigarh.

Courtesy: The Tribune
19th May, 2015

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ENTRY TAX ON SUGAR TO PROTECT DOMESTIC INDUSTRY

In order to protect the domestic sugar industry of Punjab, the state cabinet that met here today, has decided to impose an 11 per cent entry tax on sugar.

This would mean that the 15 lakh tonnes of sugar that enters Punjab from other states would not determine the retail price of sugar. Since the SAP or state advised price on sugar in other states like Uttar Pradesh is much less than Rs 295 per quintal SAP of Punjab, the cheaper sugar from other states floods Punjab markets and locally manufactured sugar (at Rs 320 per quintal) has no takers.

The annual demand forsugar in Punjab is 60 lakh quintals of which 45 quintals are produced within the state.

The decision on imposing entry tax has been taken after the seven private sugar mills in the state approached the state government saying that they are suffering huge losses this year. It's not just the seven private sugar mills, but also nine cooperative sugar mills that have suffered losses this year. The losses of Punjab sugar mills because of fall in price of sugar is estimated at almost Rs 332 crore.

Courtesy: The Tribune
20th May, 2015

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PUNJAB LEVIES RS.1 PER LITER CESS ON DIESEL, PETROL

Punjab cabinet which met here today under the Chairmanship of Deputy Chief Minister Sukhbir Singh Badal imposed ome percent cess on diesel and petrol which would ehhance the rates of diesel and petrol in Punjab. Only two days back center government had hiked the petrol and diesel rates by about Rs.3 per liter

Punjab Chief Minister today remained absent from the cabinet meeting. Sukhbir Badal chaired the meeting in his absence. The cabinet accepted propsoal to hike land registration fee by one percent and reduce the fee on General Power of Attorney from 2 percent to 0.5 percent. More details are awaited.

Courtesy: The Tribune
20th May, 2015

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ENTRY TAX FALLOUT: SUGAR PRICES UP BY RS 2 PER KG

The price of sugar in the state has gone up by Rs 200 per quintal, or Rs 2 per kg, following the decision of the Cabinet to impose 11 per cent tax on sugar coming into Punjab from other states. The price of sugar (price at factories) in various parts of the state increased from Rs 2,710-Rs 2,740 per quintal till yesterday, to Rs 2,910-Rs 2,940 per quintal.

The retail price of sugar, too, saw a jump immediately, even though the government is yet to issue a notification or bring an ordinance for the imposition of this tax. In the retail market, the prices of sugar too saw a jump of Rs 2 per kg, with prices going up to Rs 30-Rs 34 per kg, in various cities across the state. Industry sources point out that the prices have been increased by unscrupulous sugar traders, who had hoarded sugar and after yesterday's announcement started selling sugar at a hiked price.

The state's move to impose entry tax was based more on the concern for the nine cooperative and the seven private sugar mills operating in the state. These sugar mills are running in huge losses and have unpaid dues amounting to almost Rs 700 crore, after Punjab increased its State Advised Price (SAP) on cane to Rs 295 per quintal for the recently concluded cane crushing season. With just 9.5 per cent sugar recovery from cane, the sugar mill owners in the state were claiming that the cost of production of sugar was around Rs 3,500 per quintal. Against this, the price of sugar in the open market was just Rs 2,800 per quintal.

The problem for the state arose because Uttar Pradesh — a main sugar producing state — gave a subsidy of Rs 40 per quintal on sugarcane to all sugar mills, on the SAP of Rs 280 per quintal. As a result, the cost of production of sugar in UP is around Rs 2,800 per quintal, as they were paying farmers just Rs 240 per quintal for sugarcane. Since Punjab, with its annual requirement of 60 lakh tonnes of sugar, gets almost 15 lakh tonnes of sugar from Uttar Pradesh, the cheaper sugar from UP started flooding Punjab's market. It is basically to protect the domestic sugar industry that the government has decided to impose tax on sugar coming here from other states.

The sugar industry in the state is happy that the government has intervened to protect the interests of the sugar industry. "Our raw material cost is very high and retail prices have dipped. With the new tax being imposed, at least 90 per cent of dues to cane growers can be paid," said Inderbir Singh Rana, of Rana Sugars.

In December last year, the state government had waived the 3.3 per cent purchase tax imposed on the seven private sugar mills of the state. The nine cooperative sugar mills in the state are already exempt from paying any purchase tax. The government had then reasoned that since other states had waived this tax on cane, they were following suit. The private sugar mills, operated among others by powerful politicians from across the political spectrum, had threatened not to go ahead with the crushing, if they were not bailed out and taxes imposed on them reduced.

Courtesy: The Tribune
21st May, 2015

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MOHALI FUEL DEALERS CRY HOARSE

The Punjab Cabinet's decision to impose an additional cess of Re 1 on fuel came delivered another blow to the state's petrol dealers, especially for those who run their business in the periphery of the UT and along Haryana border.

The dealers in the bordering area were already up in arms against the unfavourable difference in the prices of fuel in Punjab and Chandigarh/Haryana.

"Our petrol stations are already on the verge of being shutting down. Now, the imposition of an additional cess of Re 1 on fuel prices is the last nail in the coffin," said Ashwinder Mongia, president of the Mohali District Petroleum Dealers Association.

"After imposition of the additional cess, there will be a difference of nearly Rs 7.35 per litre in the prices of petrol and Rs 1.70 per litre in the rates of diesel in Chandigarh and Mohali. It would affect the business of the fuel pumps in the UT's periphery," said Mongia.

About 600 petrol pumps in the bordering districts of Mohali, Fatehgarh Sahib, Patiala, Ropar Hoshiarpur, Pathankot and on all National/State Highways would be the worst hit and the sales in these areas shall come down by 50 to 80 per cent, claimed petrol dealers here.

"Earlier, we were surviving on the sale of diesel. But the scenario changed when the Chandigarh Administration lowered the VAT in November last," added Mongia.

"But now with a difference of Rs 1.70 in the rates at Mohali and Chandigarh, the entire sale of the fuel would shift to Chandigarh," lamented Mongia, adding that the decision would spell doom for petroleum traders across the state.

He added that along with farmers, transporters and general public, the Punjab Government would be on the losing side too as the decision would cost it about Rs 500 crore of VAT collections.

According to the claims of petroleum dealers in Punjab, the decision will affect families of about 10,000 workers at petrol pumps in Punjab, who would be out of job with shutting down of fuel stations.

'Additional cess the last nail in coffin'

Our petrol stations are already on the verge of being shutting down. Now, the imposition of an additional cess of Rs 1 on fuel prices is the last nail in the coffin. After imposition of the additional cess, there will be a difference of nearly Rs 7.35 per litre in the prices of petrol and Rs 1.70 per litre in the rates of diesel in Chandigarh and Mohali. It would affect the business of the fuel pumps in the UT's periphery. — Ashwinder Mongia, president, mohali district petroleum dealers association

Courtesy: The Tribune
21st May, 2015

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NORTHERN STATES, UTs DECIDE TO HAVE UNIFORM TAX REGIME

Delhi and its neighbouring states Punjab, Haryana and Himachal Pradesh and UT Chandigarh today agreed to have a uniform tax structure.

The move, which means Value Added Tax (VAT) on all goods sold in these states will be same, will help curb tax evasion and smuggling of goods from a state imposing lower tax to the one imposing higher. For the purpose, a Zonal Economic Intelligence wing, headed by top excise and taxation commissioners in each state, will be formed.

A committee comprising officers from the Finance and Excise departments from all participating states has been formed to work on the uniform tax structure. The members will meet within next 10 days to discuss ways to plug loopholes in excise policies and reign in tax evasion.

At the high-level meeting held in Delhi, it has also been decided to seek tax cooperation from Jammu and Kashmir, Uttar Pradesh, Uttarakhand and Rajasthan.

Sources told The Tribune that the states were unanimous in having a uniform tax structure on petrol and diesel —major contributors to VAT — followed by imposing a similar "sin tax" on sale of tobacco products. "Sin tax" is a kind of sumptuary tax specifically levied on certain socially proscribed goods and services such as alcohol, tobacco, candies, soft drinks, fast food, coffee and gambling.

Difference in VAT, surcharge on VAT and cess imposed on fuel leads to variation in fuel price in different states. The state-imposed taxes on fuel are highest in Punjab, followed by Delhi, which leads to diversion of fuel sale to neighbouring states. "We can impose around 20 per cent VAT on fuel, but don't do so for fear of diversion of sale to neighbouring states," said a senior officer from Punjab.

Even in tobacco products, both Punjab and Rajasthan had to suffer and roll back "sin tax" (to curb its sale) in 2013-14 after other states refused to raise it. While sale of cigarettes and other tobacco-based items in these states dropped sharply, their smuggling from neighbouring states caused them heavy loss of revenue. Thereafter, they increased "sin tax" on tobacco to 50 per cent, which Punjab later rolled back to 22.5 per cent.

Sources say at a later stage, the uniform tax structure would also include imposing similar taxes on registration of vehicles to ensure the sale doesn't shift to other states.

Among those present at the meeting were Delhi Chief Minister Arvind Kejriwal, Delhi Deputy Chief Minister Manish Sisodia, Punjab Deputy Chief Minister Sukhbir Singh Badal, Punjab Finance Minister Parminder Singh Dhindsa, Haryana Finance Minister Capt Abhimanyu and Himachal Pradesh Finance Minister Parkash Chaudhary.

Courtesy: The Tribune
21st May, 2015

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THE RATE ON PETROL HIGHEST IN PUNJAB

Petrol in Punjab has become the costliest in the country after the recent increase of Re 1 in infrastructure development (ID) fee in the state. Till now, the tax component on petrol was highest in Karnataka at 31% (26% sales tax and 5% entry tax) and Punjab was at the second spot with 30.5% value added tax (VAT), which has now gone up to 32.1%. End consumers have to shell out Rs 75.85 per litre for petrol in Punjab and the price is Rs 72.94 per litre in Karnataka.

"Punjab now has the highest component of tax in the entire country. There is only minor variation in terms of the price of the fuel as it depends on transportation cost due to distance from the nearest refinery. There is small difference of a few paisa within the state as well. But such high component of tax will deprive Punjab of 30% in terms of sales in the coming months," claimed Sandeep Sehgal, who owns a petrol pump in Jagraon.

"Chandigarh has made the smart move to reduce VAT, which will result in loss of business in cities close to the UT. Punjab should look at the taxation policy in terms of rate of VAT in its neighbouring states," added another petrol pump owner from Mohali. On May 20, Punjab government has decided to hike infrastructure development fee as part of its plan to develop rural and urban infrastructure. The fee has been enhanced from the existing Re 1 to Rs 2 per litre on petrol, besides imposition of Re 1 per litre on sale of diesel within the state.

Petrol dealers in the state have been crying hoarse that smuggling from neighbouring states was much more in case of petrol than other commodities but despite repeated requests to the state government to take note of loss of revenue to Haryana, surcharge on the fuel has not been decreased.

Petrol prices	**Tax component**
Punjab: Rs 75.85 per litre	***Punjab:*** 32.1%
Karnataka: Rs 72.94 per litre	***Karnataka:*** 31%

Courtesy: The Times of India
29th May, 2015

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GOVT YET TO NOTIFY ENTRY TAX, TRADERS BEGIN HOARDING SUGAR

Nine days after the state Cabinet announced its decision to impose 11 per cent entry tax on sugar under the Punjab Development of Trade, Commerce and Industry Act, the government is yet to promulgate an ordinance.

The delay has left enough room for private traders and sugar mills to "hoard" sugar before the tax is imposed and sugar prices go up. The delay in issuing the ordinance and its notification, has also led to some unscrupulous officials of the Excise and Taxation department, collecting the tax from sugar traders.

Though top officials in Excise and Taxation Department here have asked their field staff to ensure that the tax is not collected before its notification, traders in Faridkot and Moga have alleged that for each truck coming into Punjab from Shambhu barrier or from the Ambala-Tepla road, they were forced to pay anything between Rs 4000 and Rs 10,000.

The officials admitted that at some places like Budhlada, their officials had started collecting tax, but they were issuing a receipt for the same. "But once this was brought to our notice, we got the tax refunded to the traders and also apologised for the same. We have no knowledge of illegal money being collected from any entry point in Punjab, and have asked our officials to remain vigilant against any such incident before a formal notification is issued," said a senior officer.

Gurtej Singh, Director (Investigation), Excise and Taxation, has been asked to probe the allegations of illegal tax collection.

Traders say most sugar mills are holding on to their stocks till the time a notification is issued so that they can get better prices. Some traders have started bringing in huge consignments of cheaper sugar from UP for selling after the prices soar.

Courtesy: The Tribune
29th May, 2015