SGA LAW OFFICES

Issue 17
August 2015

NOMINAL INDEX

CIRCULAR & NOTIFICATIONS

U.T. CHANDIGARH

PUNJAB

HARYANA

NEWS OF YOUR INTEREST

Edited by

Aanchal Goyal, Advocate
Partner SGA Law Offices
#224, Sector 35-A, Chandigarh – 160022
Teleface: +91-172-5016400, 2614017, 2608532, 4608532

Issue 17
August 2015

SUBJECT INDEX

Issue 17
August 2015

SUPREME COURT OF INDIA

CIVIL APPEAL NO. 6770 OF 2004

Go to Index Page

COMMISSIONER, CENTRAL EXCISE & CUSTOMS
Vs
LARSEN & TOUBRO LTD.

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

20th August, 2015

HF ▶ Assessee

In absence of Rules, Charging of tax and Machinery for levy of Service Tax under Finance Act 1994, composite indivisible works contracts are not exigible to service tax before 1/7/07

WORKS CONTRACT - SERVICE TAX – SCOPE OF S. 65 OF FINANCE ACT OF 1994 – WHETHER SERVICE TAX IS LEVIABLE ON COMPOSITE INDIVISIBLE WORKS CONTRACTS PRIOR TO FINANCE ACT OF 2007 – HELD NO–– ACT OF 1994 ONLY LEVIES TAX ON SERVICES SIMPLICITER AND NOT ON COMPOSITE INDIVISIBLE WORKS CONTRACTS –REMOVING THE NON – SERVICE ELEMENTS FROM THE COMPOSITE CONTRACTS BY DEDUCTING FROM GROSS VALUE OF THE WORKS CONTRACT THE VALUE OF PROPERTY IN GOODS TRANSFERRED IN THE EXECUTION OF A WORKS CONTRACT NOT PROVIDED IN THE ACT OF 1994 – PURSUANT TO AMENDMENT RULE 2(A) OF SERVICE TAX (DETERMINATION OF VALUE) RULES, 2006 ENVISAGES SEGREGATING 'GOODS' COMPONENT AND 'SERVICE' COMPONENT FROM THE WORKS CONTRACTS FOR THE FIRST TIME - NO CHARGING OF TAX AND MACHINERY PROVIDED FOR LEVY OF TAX IN THE EARLIER ACT – ABSENCE OF ANY RULES FOR LEVY THEREOF – NOTIFICATION MEANT FOR EXEMPTION OF SERVICE TAX PRIOR TO AMENDED ACT HELD TO BE BASELESS IN VIEW OF SERVICE TAX ITSELF BEING NON EXISTENT PREVIOUSLY – APPEAL ACCEPTED- *ARTICLE 366 (29A) OF CONSTITUTION, S. 64, 65,66 & 67 & 65(105) (zzzza) OF FINANCE ACT, 1994; RULE 2(A) OF SERVICE TAX (DETERMINATION OF VLAUE) RULES, 2006; S. 9(2) CST ACT, 1956*

Facts:

In this case the question arose as to whether Service Tax can be levied on indivisible works contracts prior to the introduction of Finance Act, 2007 which expressly makes such works contracts liable to service tax.

It was contended by the Revenue that after 46th Amendment, after taking out the 'goods' element from such contracts, what remains is "labour and service" element which has been subjected to tax by various entries in the Finance Act, 1994. It is contended that the Act of 1994 contains both the charge of tax as well as the machinery by which labour and service element in these indivisible contracts is taxable as the statute need not do what the

constitutional amendment has already done i.e. splitting the works contracts into one of goods and the other of labour and services.

However, the assessee argued that indivisible contract has to be split into its constituent parts by necessary legislation which would then contain a charge to service tax together with the necessary machinery to enforce such charge which was missing in the said Act. Only cases of pure services were contended to be taxable under the Act of 1994 having no goods element involved.

Held:

In view of judgement passed in case of Second Ganon Dunkerley (1993) 1 SCC 364, it is seen that the splitting of an indivisible contract has to be done by taking into account the eight heads of deduction as given in the constitution. The Act of 1994 is silent on the charging of service tax on that portion of works contracts which contain service element derived from the gross amount charged for works contract minus the value of property in goods. Therefore, it is clear that any charge to tax under five heads in Section 65(105) would only be of service contracts simpliciter and not composite indivisible works contracts. There is no attempt to remove the non – service elements from the composite contracts by deducting from gross value of the works contract the value of property in goods transferred in the execution of a works contract in the Act of 1994.

Relying on the judgements of Larsen and Toubro & Kone Elevator India, it is held that there is no charge to tax of works contracts in the Finance Act, 1994.Various judgements have been discussed which indicate that the statute should clearly state the subject of tax, the rate and the person on whom it is to be levied. Reliance in this regard has been placed in the cases of Mathuram's case;Govind Saran Ganga Saran case and B.C. Srinivasa Setty case.

Infact, post amendment, for the first time section 67 prescribes that where the provision of service is for consideration which is not ascertainable, to be the amount as may be determined in the prescribed manner. Pursuant to this amendment Rule 2(A) has been framed which segregates the "service" component of a works contract from the 'goods' component. It is this scheme which complies with constitutional requirement in bifurcating composite indivisible works contract and sees that no element of property in goods transferred enters while computing service tax.

Moreover, pursuant to the speech made by the Finance Minister in moving the Bill to tax composite works contracts, not only statute was amended and rules framed but a Works Contract Rules, 2007 were notified regarding payment of Service Tax by service providers ranging from 2% to 4% of the gross value of the works contract. Also many services of national interest were excluded while introducing the concept of service tax on indivisible works contracts which were never the subject matter of Finance Act 1994.

The judgement of Mahim Patram Private Ltd. has been wrongly interpreted in concluding that when no rules are framed for computation of tax, tax would still be leviable.

The Supreme court has taken into account the Larsen and Toubro case whereby it has been rightly held that machinery provisions cannot be provided by circulars and therefore, the statute being unworkable, assessments framed thereunder would have no effect.

To sum up: the Act of 1994 does not bifurcate, ascertain and then tax the service elements as it ignores the second Gannon Dunkerley decision of this court. Further, section 67 of the Act of 1994 only speaks of 'gross amount charged' for service provided and not of the works contracts as a whole from which deductions have to be made to arrive at service element. Thus the Act of 1994 does not contain machinery and charge required for levy of service tax on indivisible works contracts. The fact that several exemption notifications have been granted qua service tax levied by the Finance Act, 1994 does not make any difference as the service tax

itself being non existent would render such notifications baseless. The appeals of the assessee are accepted and of the revenue are dismissed.

Cases referred:

- *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., 1959 SCR 379*
- *Builders' Assn. of India v. Union of India, (1989) 2 SCC 645*
- *Mcdowell and Company Ltd. v. Commercial Tax Officer, 1985 (2) SCC 230*
- *M/s Larsen & Toubro Ltd. v. CST,Delhi, 2015-TIOL-527- CESTAT-DEL-LB*
- *Bharat Sanchar Nigam Limited v. Union of India, (2006) 3 SCC 1*
- *Larsen and Toubro Ltd. v. State of Tamil Nadu and Ors., [1993] 88 STC 289*
- *Larsen & Turbo v. State of Orissa, (2008) 012 VST 0031*

Cases followed:

- *Gannon Dunkerley 1993(1) SCC 364*

Cases relied upon:

- *Kone Elevator India (P) Ltd. v. State of T.N., (2014) 7 SCC 1*
- *Larsen & Toubro Ltd. v. State of Karnataka, (2014) 1 SCC 708*
- *Mathuram Agrawal v. State of M.P., (1999) 8 SCC 667*
- *Govind Saran Ganga Saran v. CST, 1985 Supp SCC 205*
- *CIT v. B.C. Srinivasa Setty, (1981) 2 SCC 460*
- *Heinz India (P) Ltd. v. State of U.P., (2012) 5 SCC 443*
- *Shabina Abraham & Ors. v. Collector of Central Excise & Customs, judgment dated 29th July, 2015, in Civil Appeal No.5802 of 2005*
- *State of Jharkhand v. Voltas Ltd., East Singhbhum, (2007) 9 SCC 266*

Case explained:

- *Mahim Patram Private Ltd. v. Union of India, 2007 (3) SCC 668*

Case reversed:

- *G.D. Builders v. UOI and Anr., 2013 [32] S.T.R. 673 (Del.)*

Present: Mr. B. Krishna Prasad, Adv.

Mrs. Anil Katiyar, Adv.

Mr. N. Venkataraman, Sr. Adv.
Mr. P. K. Sahu, Adv.
Mr. Radha Shyam Jena, Adv.
Mr. J. Samal, Adv.
Mr. Prasant Shukla, Adv.

Mr. V. Lakshmikumaran, Adv.
Mr. M.P. Devanath, Adv.
Mr. Vivek Sharma, Adv.
Ms. L. Charanaya, Adv.
Mr. R. Ramchandran, Adv.
Mr. Aditya Bhattacharya, Adv.
Mr. Hemant Bajaj, Adv.
Mr. Anandh K., Adv.
Mr. Karan Sachdeva, Adv.

Mr. Kedar Nath Tripathy, Adv.

Mr. J.K. Mittal, Adv.
Mr. Rajveer Singh, Adv.
Mr. Praveen Swarup, Adv

Mr. N. Venkataraman, Sr. Adv.
Mr. Sanand Ramakrishnan, Adv.
Mr. Jay Salva, Adv.

Mr. V. Lakshmikumaran, Adv.
Mr. Jay Salva, Adv.
Mr. Prasad Paranjape, Adv.
Mr. Mahir Mehta, Adv.
Ms. Renuka Shahu, Adv.
Ms. L. Charanya, Adv.
Mr. Ravi Mishra, Adv.

Mr. Anand Sukumar, Adv.
Mr. S. Sukumaran, Adv.
Mr. Bhupesh Kumar Pathak, Adv.
Ms. Meera Mathur, Adv.

Ms. Praveena Gautam, Adv.
Mr. L.K. Asthana, Adv.
Ms. Reena Asthana, Adv.
Mr. Deepak tyagi, Adv.

******

R.F. NARIMAN, J.

1. This group of appeals is by both assessees and the revenue and concerns itself with whether service tax can be levied on indivisible works contracts prior to the introduction, on 1st June, 2007, of the Finance Act, 2007 which expressly makes such works contracts liable to service tax.

2. It all began with **State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.**, 1959 SCR 379. A Constitution Bench of this Court held that in a building contract which was one and entirely indivisible, there was no sale of goods and it was not within the competence of the State Provincial Legislature to impose a tax on the supply of materials used in such a contract, treating it as a sale. The above statement was founded on the premise that a works contract is a composite contract which is inseparable and indivisible, and which consists of several elements which include not only a transfer of property in goods but labour and service elements as well. Entry 48 of List II to the 7th Schedule to the Government of India Act, 1935 was what was under consideration before this Court in **Gannon Dunkerley**'s case. It was observed that the expression "sale of goods" in that entry has become "*nomen juris*" and that therefore it has the same meaning as the said expression had in the Sale of Goods Act, 1930. In other words, the essential ingredients of a sale of goods, namely, that there has to be an agreement to sell movables for a price, and property must pass therein pursuant to such agreement, are both preconditions to the taxation power of the States under the said entry. This Court, after considering a large number of judgments, ultimately came to the following conclusion:-

> *"To sum up, the expression "sale of goods" in Entry 48 is a* ***nomen juris****, its essential ingredients being an agreement to sell movables for a price and property passing therein pursuant to that agreement. In a building contract which is, as in the present case, one, entire and indivisible — and that is its norm, there is no sale of goods, and it is not within the competence of the Provincial Legislature under Entry 48 to impose a tax on the supply of the materials used in such a contract treating it as a sale." (at page 425)[1]*

3. The Law Commission of India in its 61st Report elaborately examined the law laid down in **Gannon Dunkerley**'s case and suggested that the relevant entry contained in the 7th Schedule to List II to the Constitution of India - Entry 54 - could either be amended; or a fresh entry in the State List could be added; or Article 366 which is a definition clause could be amended so as to widen the definition of "sale", and include therein indivisible composite works contracts. Having regard to the said recommendation of the Law Commission, the Constitution (46th Amendment) Act was passed in 1983 by which Parliament accepted the 3rd alternative of the Law Commission, and amended Article 366 by adding sub-clause (29A). We are concerned with sub-clause (b) of Article 366 (29A) which reads as follows:-

> *366 (29A) "tax on the sale or purchase of goods" includes-*
>
> *(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;*
>
> *and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;*

4. The Constitutional amendment so passed was the subject matter of a challenge in **Builders' Assn. of India v. Union of India, (1989) 2 SCC 645**. This challenge was ultimately repelled and this Court stated:-

> *"... After the 46th Amendment, it has become possible for the States to levy sales tax on the value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of the goods and materials supplied in a building contract which had been entered into in two distinct and separate parts as stated above." (at para 36)*

5. This is the historical setting within which the present controversy arises.

6. Service tax was introduced by the Finance Act, 1994 and various services were set out in Section 65 thereof as being amenable to tax. The legislative competence of such tax is to be found in Article 248 read with Entry 97 of List I of the 7th Schedule to the Constitution of India. All the present cases are cases which arise before the 2007 amendment was made, which introduced the concept of "works contract" as being a separate subject matter of taxation. Various amendments were made in the sections of the Finance Act by which "works contracts" which were indivisible and composite were split so that only the labour and service element of such contracts would be taxed under the heading "Service Tax".

7. Learned counsel for the revenue has essentially raised four arguments before us in which he assails the judgments of various Tribunals and High Courts which have decided against the revenue on this point. According to him, the 46th Amendment has itself divided works contracts by Article 366 (29A)(b). After taking out the "goods" element from such contracts, what remains is the "labour and service" element which, according to him, has been subjected to tax by various entries in the Finance Act, 1994. Further, relying upon Section 23 of the Contract Act and **Mcdowell and Company Ltd. v. Commercial Tax Officer**, 1985 (2) SCC 230, he went on to argue that post 1994 all indivisible works contracts were made with a view to evade or avoid tax and that therefore being contrary to public policy, the principles in **Mcdowell**'s judgment should apply to make such so-called indivisible contracts taxable under the Finance Act, 1994. According to him, the Finance Act, 1994 itself contains both the charge of tax as well as the machinery by which only the labour and service element in these indivisible contracts is taxable, it being his contention that the statute need not do what the constitutional amendment has already done – namely, split the indivisible works contract into a separate contract of transfer of property in goods involved in the execution of the works contract on the one hand, which is taxable by the States, and the labour and services element on the other, which is taxable, according to him, by the Central Government. Further, he argued that the fact that the 2007 Amendment Act has, in fact, defined works contract for the first time and sought to split it, and tax only the element of labour and service would make no difference because, according to him, whatever elements of works contracts were taxable under the Finance Act, 1994 would continue to be taxable and would be untouched by the said amendment.

8. On the other hand, learned counsel for the assessees assailed the judgments of the Tribunals and the High Courts against them, in particular the judgment in **G.D. Builders v. UOI and Anr**., 2013 [32] S.T.R. 673 (Del.), of the Delhi High Court. In answer to revenue's contention, learned counsel argued that a works contract is a separate species known to the world of commerce and law as such. That being so, an indivisible works contract would have to be split into its constituent parts by necessary legislation which would then contain, post splitting, a charge to service tax together with the necessary machinery to enforce such charge. According to learned counsel, not only was there no such charge pre-2007 but there were no machinery provisions as well to bring indivisible works contracts under the service tax net. According to learned counsel, what was taxable under the Finance Act, 1994 was only cases of

pure service in which there was no goods element involved. Further, according to them, for various reasons, the sheet anchor of revenue's case, the Delhi High Court judgment in **G.D. Builders** (supra), was wholly incorrect, and the minority judgment of the judicial members of a Full Bench of the Delhi Tribunal in **M/s Larsen & Toubro Ltd. v. CST,Delhi**, 2015-TIOL-527- CESTAT-DEL-LB, comprehensively discussed all the authorities that were relevant to this issue and arrived at the correct conclusion.

9. We have heard learned counsel for the parties. Before examining the contentions made on the both sides, it will be necessary to set out the Finance Act, 1994 insofar as it pertains to the levy of service tax.

10. ***Section 64. Extent, commencement and application.***

(1) This Chapter extends to the whole of India except the State of Jammu and Kashmir.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(3) It shall apply to taxable services provided on or after the commencement of this Chapter.

Section 65. Definitions. In this Chapter, unless the context otherwise requires, --

(105) "taxable service" means any service provided-

(g) to a client, by a consulting engineer in relation to advice, consultancy or technical assistance in any manner in one or more disciplines of engineering [but not in the discipline of computer hardware engineering or computer software engineering;

(zzd) to a customer, by a commissioning and installation agency in relation to erection, commissioning or installation;

(zzh) to any person, by a technical testing and analysis agency, in relation to technical testing and analysis;

(zzq) to any person, by a commercial concern, in relation to construction service;

(zzzh) to any person, by any other person, in relation to construction of a complex;

Explanation : For the purposes of this sub-clause, construction of a complex which is intended for sale, wholly or partly, by a builder or any person authorized by the builder before, during or after construction (except in cases for which no sum is received from or on behalf of the prospective buyer by the builder or a person authorized by the builder before the grant of completion certificate by the authority competent to issue such certificate under any law for the time being in force) shall be deemed to be service provided by the builder to the buyer;"

Section 66. Charge of service tax

There shall be levied a tax (hereinafter referred to as the service tax) at the rate of ten per cent. Of the value of the taxable services referred to in sub-clauses (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb), (zc), (zd), (ze), (zf), (zg), (zh), (zi), (zj), (zk), (zl), (zm), (zn), (zo), (zq), (zr), (zs), (zt), (zu), (zv), (zw), (zx), (zy), (zz), (zza), (zzb), (zzc), (zzd), (zze), (zzf), (zzg), (zzh), (zzi), (zzj), (zzk), (zzl), (zzm), (zzn),

(zzo), (zzp), (zzq), (zzr), (zzs), (zzt), (zzu), (zzv), (zzw), (zzx), and (zzy) of clause (105) of section 65 and collected in such manner as may be prescribed.

Section 67. Valuation of taxable services for charging service tax.-

For the purposes of this Chapter, the value of any taxable service shall be the gross amount charged by the service provider for such service rendered by him.

Explanation.1- For the removal of doubts, it is hereby declared that the value of a taxable service, as the case may be, includes,-

a) the aggregate of commission or brokerage charged by a broker on the sale or purchase of securities including the commission or brokerage paid by the stock-broker to any sub-broker;

b) the adjustments made by the telegraph authority from any deposits made by the subscriber at the time of application for telephone connection or pager or facsimile or telegraph or telex or for leased circuit;

c) the amount of premium charged by the insurer from the policy holder;

d) the commission received by the air travel agent from the airline;

e) the commission received by an actuary, or intermediary or insurance intermediary or insurance agent from the insurer;

f) the reimbursement received by the authorized service station from manufacturer for carrying out any service of any automobile manufactured by such manufacturer; and

g) the commission or any amount received by the rail travel agent from the Railways or the customer, but does not include, -

(i) initial deposit made by the subscriber at the time of application for telephone connection or pager or facsimile (FAX) or telegraph or telex or for leased circuit:

(ii) the cost of unexposed photography film, unrecorded magnetic tape or such other storage devices, if any, sold to the client during the course of providing the service;

(iii) the cost of parts or accessories, or consumables such as lubricants and coolants, if any, sold to the customer during the course of service or repair of motor cars, light motor vehicle or two wheeled motor vehicles;

(iv) the airfare collected by air travel agent in respect 0f service provided by him;

(v) the rail fare collected by rail travel agent in respect of service provided by him;

(vi) the cost of parts or other material, if any, sold to the customer during the course of providing maintenance or repair service;

(vii) the cost of parts or other material, if any, sold to the customer during the course of providing erection, commissioning or installation service; and

(viii) interest on loans.

Explanation 2. - Where the gross amount charged by a service provider is inclusive of service tax payable, the value of taxable service shall be

such amount as with the addition of tax payable, is equal to the gross amount charged."

11. By the Finance Act, 2007, for the first time, Section 65 (105)(zzzza) set out to tax the following:-

"(zzzza) to any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation : For the purposes of this sub-clause, "works contract" means a contract wherein,-

i) Transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

ii) Such contract is for the purposes of carrying out,-

a) Erection, commissioning or installation of plant, machinery, equipment or structures, whether pre-fabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

b) Construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

c) Construction of a new residential complex or a part thereof; or

d) Completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

e) Turnkey projects including engineering, procurement and construction or commissioning (EPC) projects;"

12. Section 67 of the Finance Act 1994 was amended to read as follows:-

"Valuation of taxable services for charging Service tax –

(1) Subject to the provisions of this Chapter, service tax chargeable on any taxable service with reference to its value shall,—

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner."

13. Pursuant to the aforesaid, the Service Tax (Determination of Value) Rules, 2006 were made, Rule 2A of which reads as under:-

"2A. Subject to the provisions of section 67, the value of service portion in the execution of a works contract, referred to in clause (h) of section 66E of the Act, shall be determined in the following manner, namely:-

i) Value of service portion in the execution of a works contract shall be equivalent to the gross amount charged for the works contract less the value of property in goods transferred in the execution of the said works contract.

Explanation.-For the purposes of this clause,-

(a) gross amount charged for the works contract shall not include value added tax or sales tax, as the case may be, paid or payable, if any, on transfer of property in goods involved in the execution of the said works contract;

(b) value of works contract service shall include,-

(i) labour charges for execution of the works;

(ii) amount paid to a sub-contractor for labour and services;

(iii) charges for planning, designing and architect's fees;

(iv) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(v) cost of consumables such as water, electricity, fuel used in the execution of the works contract;

(vi) cost of establishment of the contractor relatable to supply of labour and services;

(vii) other similar expenses relatable to supply of labour and services; and

(viii) profit earned by the service provider relatable to supply of labour and services;

(c) where value added tax or sales tax has been paid or payable on the actual value of property in goods transferred in the execution of the works contract, then, such value adopted for the purposes of payment of value added tax or sales tax, shall be taken as the value of property in goods transferred in the execution of the said works contract for determination of the value of service portion in the execution of works contract under this clause.

(ii) Where the value has not been determined under clause (i), the person liable to pay tax on the service portion involved in the execution of the works contract shall determine the service tax payable in the following manner, namely:-

A) in case of works contracts entered into for execution of original works, service tax shall be payable on forty per cent of the total amount charged for the works contract;

(B) in case of works contract entered into for maintenance or repair or reconditioning or restoration or servicing of any goods, service tax shall be payable on seventy per cent of the total amount charged for the works contract;

(C) in case of other works contracts, not covered under sub- clauses (A) and (B) including maintenance, repair, completion and finishing services such as glazing, plastering, floor and wall tiling, installation of electrical fittings of an immovable' property, service tax shall be

payable on sixty per cent of the total amount charged for the works contract.

Explanation I.-For the purposes of this rule,-

(a) "original works" means-

(l) all new constructions;

(ii) all types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

(d) "total amount" means the sum total of the gross amount charged for the works contract and the fair market value of all goods and services supplied in or in relation to the execution of the works contract, whether or not supplied under the same contract or any other contract, after deducting-

(i) the amount charged for such goods or services, if any; and

(ii) the value added tax or sales tax, if any, levied thereon:

Provided that the fair market value of goods and services so supplied may be determined in accordance with the generally accepted accounting principles.

Explanation 2.-For the removal of doubts, it is clarified that the provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004."[2]

14. Crucial to the understanding and determination of the issue at hand is the second **Gannon Dunkerley** judgment which is reported in (1993) 1 SCC 364. By the aforesaid judgment, the modalities of taxing composite indivisible works contracts was gone into. This Court said:-

"On behalf of the contractors, it has been urged that under a law imposing a tax on the transfer of property in goods involved in the execution of a works contract under Entry 54 of the State List read with Article 366(29-A)(b), the tax is imposed on the goods which are involved in the execution of a works contract and the measure for levying such a tax can only be the value of the goods so involved and the value of the works contract cannot be made the measure for levying the tax. The submission is further that the value of such goods would be the cost of acquisition of the goods by the contractor and, therefore, the measure for levy of tax can only be the cost at which the goods involved in the execution of a works contract were obtained by the contractor. On behalf of the States, it has been submitted that since the property in goods which are involved in the execution of a works contract passes only when the goods are incorporated in the works, the measure for the levy of the tax would be the value of the goods at the time of their incorporation in the works as well as the cost of incorporation of the goods in the works. We are in agreement with the submission that measure for the levy of the tax contemplated by Article 366(29-A)(b) is the value of the goods involved in the execution of a works contract. In Builders' Association case [(1989) 2 SCC 645 : 1989 SCC (Tax) 317 : (1989) 2 SCR 320] it has been pointed out that in Article 366(29-A)(b), "[t]he emphasis is on the transfer of property in goods (whether as goods or in some other

form)". (SCC p. 669, para 32: SCR p. 347). This indicates that though the tax is imposed on the transfer of property in goods involved in the execution of a works contract, the measure for levy of such imposition is the value of the goods involved in the execution of a works contract. We are, however, unable to agree with the contention urged on behalf of the contractors that the value of such goods for levying the tax can be assessed only on the basis of the cost of acquisition of the goods by the contractor. Since the taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works, the value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in the works and not the cost of acquisition of the goods by the contractor. We are also unable to accept the contention urged on behalf of the States that in addition to the value of the goods involved in the execution of the works contract the cost of incorporation of the goods in the works can be included in the measure for levy of tax. Incorporation of the goods in the works forms part of the contract relating to work and labour which is distinct from the contract for transfer of property in goods and, therefore, the cost of incorporation of the goods in the works cannot be made a part of the measure for levy of tax contemplated by Article 366(29-A)(b).

Keeping in view the legal fiction introduced by the Forty- sixth Amendment whereby the works contract which was entire and indivisible has been altered into a contract which is divisible into one for sale of goods and other for supply of labour and services, the value of the goods involved in the execution of a works contract on which tax is leviable must exclude the charges which appertain to the contract for supply of labour and services. This would mean that labour charges for execution of works, [item No. (i)], amounts paid to a sub-contractor for labour and services [item No. (ii)], charges for planning, designing and architect's fees [item No. (iii)], charges for obtaining on hire or otherwise machinery and tools used in the execution of a works contract [item No. (iv)], and the cost of consumables such as water, electricity, fuel, etc. which are consumed in the process of execution of a works contract [item No. (v)] and other similar expenses for labour and services will have to be excluded as charges for supply of labour and services. The charges mentioned in item No. (vi) cannot, however, be excluded. The position of a contractor in relation to a transfer of property in goods in the execution of a works contract is not different from that of a dealer in goods who is liable to pay sales tax on the sale price charged by him from the customer for the goods sold. The said price includes the cost of bringing the goods to the place of sale. Similarly, for the purpose of ascertaining the value of goods which are involved in the execution of a works contract for the purpose of imposition of tax, the cost of transportation of the goods to the place of works has to be taken as part of the value of the said goods. The charges mentioned in item No. (vii) relate to the various expenses which form part of the cost of establishment of the contractor. Ordinarily the cost of establishment is included in the sale price charged by a dealer from the customer for the goods sold. Since a composite works contract involves supply of materials as well as supply of labour and services, the cost of establishment of the contractor would have to be apportioned between the part of the contract involving supply of materials and the part involving supply of labour and services. The cost of establishment of the contractor which is relatable to supply of labour and services cannot be included in the value of the

goods involved in the execution of a contract and the cost of establishment which is relatable to supply of material involved in the execution of the works contract only can be included in the value of the goods. Similar apportionment will have to be made in respect of item No. (viii) relating to profits. The profits which are relatable to the supply of materials can be included in the value of the goods and the profits which are relatable to supply of labour and services will have to be excluded. This means that in respect of charges mentioned in item Nos. (vii) and (viii), the cost of establishment of the contractor as well as the profit earned by him to the extent the same are relatable to supply of labour and services will have to be excluded. The amount so deductible would have to be determined in the light of the facts of a particular case on the basis of the material produced by the contractor. The value of the goods involved in the execution of a works contract will, therefore, have to be determined by taking into account the value of the entire works contract and deducting therefrom the charges towards labour and services which would cover—

(a) Labour charges for execution of the works;

(b) amount paid to a sub-contractor for labour and services;

(c) charges for planning, designing and architect's fees;

(d) charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;

(e) cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and

(f) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;

(g) other similar expenses relatable to supply of labour and services;

(h) profit earned by the contractor to the extent it is relatable to supply of labour and services. The amounts deductible under these heads will have to be determined in the light of the facts of a particular case on the basis of the material produced by the contractor.

Normally, the contractor will be in a position to furnish the necessary material to establish the expenses that were incurred under the aforesaid heads of deduction for labour and services. But there may be cases where the contractor has not maintained proper accounts or the accounts maintained by him are not found to be worthy of credence by the assessing authority. In that event, a question would arise as to how the deduction towards the aforesaid heads may be made. On behalf of the States, it has been urged that it would be permissible for the State to prescribe a formula on the basis of a fixed percentage of the value of the contract as expenses towards labour and services and the same may be deducted from the value of the works contract and that the said formula need not be uniform for all works contracts and may depend on the nature of the works contract. We find merit in this submission. In cases where the contractor does not maintain proper accounts or the accounts maintained by him are not found worthy of credence it would, in our view, be permissible for the State legislation to prescribe a formula for determining the charges for labour and services by fixing a particular percentage of the value of the works contract and to allow deduction of the amount thus determined from the value

of the works contract for the purpose of determining the value of the goods involved in the execution of the works contract. It must, however, be ensured that the amount deductible under the formula that is prescribed for deduction towards charges for labour and services does not differ appreciably from the expenses for labour and services that would be incurred in normal circumstances in respect of that particular type of works contract. Since the expenses for labour and services would depend on the nature of the works contract and would not be the same for all types of works contracts, it would be permissible, indeed necessary, to prescribe varying scales for deduction on account of cost of labour and services for various types of works contracts."(at paras 45, 47 and 49)

15. A reading of this judgment, on which counsel for the assessees heavily relied, would go to show that the separation of the value of goods contained in the execution of a works contract will have to be determined by working from the value of the entire works contract and deducting therefrom charges towards labour and services. Such deductions are stated by the Constitution Bench to be eight in number. What is important in particular is the deductions which are to be made under sub-paras (f), (g) and (h). Under each of these paras, a bifurcation has to be made by the charging Section itself so that the cost of establishment of the contractor is bifurcated into what is relatable to supply of labour and services. Similarly, all other expenses have also to be bifurcated insofar as they are relatable to supply of labour and services, and the same goes for the profit that is earned by the contractor. These deductions are ordinarily to be made from the contractor's accounts. However, if it is found that contractors have not maintained proper accounts, or their accounts are found to be not worthy of credence, it is left to the legislature to prescribe a formula on the basis of a fixed percentage of the value of the entire works contract as relatable to the labour and service element of it. This judgment, therefore, clearly and unmistakably holds that unless the splitting of an indivisible works contract is done taking into account the eight heads of deduction, the charge to tax that would be made would otherwise contain, apart from other things, the entire cost of establishment, other expenses, and profit earned by the contractor and would transgress into forbidden territory namely into such portion of such cost, expenses and profit as would be attributable in the works contract to the transfer of property in goods in such contract. This being the case, we feel that the learned counsel for the assessees are on firm ground when they state that the service tax charging section itself must lay down with specificity that the levy of service tax can only be on works contracts, and the measure of tax can only be on that portion of works contracts which contain a service element which is to be derived from the gross amount charged for the works contract less the value of property in goods transferred in the execution of the works contract. This not having been done by the Finance Act, 1994, it is clear that any charge to tax under the five heads in Section 65(105) noticed above would only be of service contracts simpliciter and not composite indivisible works contracts.

16. At this stage, it is important to note the scheme of taxation under our Constitution. In the lists contained in the 7th Schedule to the Constitution, taxation entries are to be found only in lists I and II. This is for the reason that in our Constitutional scheme, taxation powers of the Centre and the States are mutually exclusive. There is no concurrent power of taxation. This being the case, the moment the levy contained in a taxing statute transgresses into a prohibited exclusive field, it is liable to be struck down. In the present case, the dichotomy is between sales tax leviable by the States and service tax leviable by the Centre. When it comes to composite indivisible works contracts, such contracts can be taxed by Parliament as well as State legislatures. Parliament can only tax the service element contained in these contracts, and the States can only tax the transfer of property in goods element contained in these contracts.

Thus, it becomes very important to segregate the two elements completely for if some element of transfer of property in goods remains when a service tax is levied, the said levy would be found to be constitutionally infirm. This position is well reflected in **Bharat Sanchar Nigam Limited v. Union of India**, (2006) 3 SCC 1, as follows:-

> *"No one denies the legislative competence of the States to levy sales tax on sales provided that the necessary concomitants of a sale are present in the transaction and the sale is distinctly discernible in the transaction. This does not however allow the State to entrench upon the Union List and tax services by including the cost of such service in the value of the goods. Even in those composite contracts which are by legal fiction deemed to be divisible under Article 366(29-A), the value of the goods involved in the execution of the whole transaction cannot be assessed to sales tax. As was said in Larsen & Toubro v. Union of India[(1993) 1 SCC 364] : (SCC p. 395, para 47) :-*
>
> > *"The cost of establishment of the contractor which is relatable to supply of labour and services cannot be included in the value of the goods involved in the execution of a contract and the cost of establishment which is relatable to supply of material involved in the execution of the works contract only can be included in the value of the goods."*
>
> *For the same reason the Centre cannot include the value of the SIM cards, if they are found ultimately to be goods, in the cost of the service. As was held by us in Gujarat Ambuja Cements Ltd. v. Union of India [(2005) 4 SCC 214] , SCC at p. 228, para 23:-*
>
> > *"This mutual exclusivity which has been reflected in Article 246(1) means that taxing entries must be construed so as to maintain exclusivity. Although generally speaking, a liberal interpretation must be given to taxing entries, this would not bring within its purview a tax on subject- matter which a fair reading of the entry does not cover. If in substance, the statute is not referable to a field given to the State, the court will not by any principle of interpretation allow a statute not covered by it to intrude upon this field." (at paras 88 and 89)*

17. We find that the assessees are correct in their submission that a works contract is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and law as such, and has to be taxed separately as such. In **Gannon Dunkerley**, 1959 SCR 379, this Court recognized works contracts as a separate species of contract as follows:–

> *"To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the learned Judges of the Court below to be. The several forms which such kinds of contracts can assume are set out in Hudson on Building Contracts, at p. 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the agreement to sell, from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment." (at page 427)*

18. Similarly, in **Kone Elevator India (P) Ltd. v. State of T.N.**, (2014) 7 SCC 1, this Court held:-

> *"Coming to the stand and stance of the State of Haryana, as put forth by Mr Mishra, the same suffers from two basic fallacies, first, the supply and installation of lift treating it as a contract for sale on the basis of the overwhelming component test, because there is a stipulation in the contract that the customer is obliged to undertake the work of civil construction and the bulk of the material used in construction belongs to the manufacturer, is not correct, as the subsequent discussion would show; and second, the Notification dated 17-5-2010 issued by the Government of Haryana, Excise and Taxation Department, whereby certain rules of the Haryana Value Added Tax Rules, 2003 have been amended and a table has been annexed providing for "Percentages for Works Contract and Job Works" under the heading "Labour, service and other like charges as percentage of total value of the contract" specifying 15% for fabrication and installation of elevators (lifts) and escalators, is self- contradictory, for once it is treated as a composite contract invoking labour and service, as a natural corollary, it would be works contract and not a contract for sale. To elaborate, the submission that the element of labour and service can be deducted from the total contract value without treating the composite contract as a works contract is absolutely fallacious. In fact, it is an innovative subterfuge. We are inclined to think so as it would be frustrating the constitutional provision and, accordingly, we unhesitatingly repel the same." (at para 60)*

19. In Larsen & Toubro Ltd. v. State of Karnataka, (2014) 1 SCC 708, this Court stated:-

> *"In our opinion, the term "works contract" in Article 366(29- A)(b) is amply wide and cannot be confined to a particular understanding of the term or to a particular form. The term encompasses a wide range and many varieties of contract. Parliament had such wide meaning of "works contract" in its view at the time of the Forty-sixth Amendment. The object of insertion of clause (29-A) in Article 366 was to enlarge the scope of the expression "tax on sale or purchase of goods" and overcome Gannon Dunkerley (1) [State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd., AIR 1958 SC 560 : 1959 SCR 379] . Seen thus, even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract. The additional obligations in the contract would not alter the nature of contract so long as the contract provides for a contract for works and satisfies the primary description of works contract. Once the characteristics or elements of works contract are satisfied in a contract then irrespective of additional obligations, such contract would be covered by the term "works contract". Nothing in Article 366(29-A)(b) limits the term "works contract" to contract for labour and service only. The learned Advocate General for Maharashtra was right in his submission that the term "works contract" cannot be confined to a contract to provide labour and services but is a contract for undertaking or bringing into existence some "works". We are also in agreement with the submission of Mr K.N. Bhat that the term "works contract" in Article 366(29-A)(b) takes within its fold all genre of works contract and is not restricted to one specie of contract*

to provide for labour and services alone. Parliament had all genre of works contract in view when clause (29-A) was inserted in Article 366." (at para 72)

20. We also find that the assessees' argument that there is no charge to tax of works contracts in the Finance Act, 1994 is correct in view of what has been stated above.

21. This Court in **Mathuram Agrawal v. State of M.P.,** (1999) 8 SCC 667, held:-

"Another question that arises for consideration in this connection is whether sub-section (1) of Section 127-A and the proviso to sub-section (2)(b) should be construed together and the annual letting values of all the buildings owned by a person to be taken together for determining the amount to be paid as tax in respect of each building. In our considered view this position cannot be accepted. The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter.

This construction, in our considered view, amounts to supplementing the charging section by including something which the provision does not state. The construction placed on the said provision does not flow from the plain language of the provision. The proviso requires the exempted property to be subjected to tax and for the purpose of valuing that property alone the value of the other properties is to be taken into consideration. But, if in doing so, the said property becomes taxable, the Act does not provide at what rate it would be taxable. One cannot determine the rateable value of the small property by aggregating and adding the value of other properties, and arrive at a figure which is more than possibly the value of the property itself. Moreover, what rate of tax is to be applied to such a property is also not indicated." (at paras 12 and 16)

22. Equally, this Court in **Govind Saran Ganga Saran v. CST**, 1985 Supp SCC 205, held:- "The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability. If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity." (at para 6)

23. To similar effect is this Court's judgment in **CIT v. B.C. Srinivasa Setty**, (1981) 2 SCC 460, held:-

> *"Section 45 charges the profits or gains arising from the transfer of a capital asset to income tax. The asset must be one which falls within the contemplation of the section. It must bear that quality which brings Section 45 into play. To determine whether the goodwill of a new business is such an asset, it is permissible, as we shall presently show, to refer to certain other sections of the head, "Capital gains". Section 45 is a charging section. For the purpose of imposing the charge. Parliament has enacted detailed provisions in order to compute the profits or gains under that head. No existing principle or provision at variance with them can be applied for determining the chargeable profits and gains. All transactions encompassed by Section 45 must fall under the governance of its computation provisions. A transaction to which those provisions cannot be applied must be regarded as never intended by Section 45 to be the subject of the charge. This inference flows from the general arrangement of the provisions in the Income Tax Act, where under each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the computation provisions in each case bears a relationship to the nature of the charge. Thus the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt there is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by the construction of a particular computation provision. But the question here is whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to the fundamental integrality of the statutory scheme provided for each head." (at para 10)*

24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.

25. In fact, by way of contrast, Section 67 post amendment (by the Finance Act, 2006) for the first time prescribes, in cases like the present, where the provision of service is for a consideration which is not ascertainable, to be the amount as may be determined in the prescribed manner.

26. We have already seen that Rule 2(A) framed pursuant to this power has followed the second **Gannon Dunkerley** case in segregating the 'service' component of a works contract from the 'goods' component. It begins by working downwards from the gross amount charged for the entire works contract and minusing from it the value of the property in goods transferred in the execution of such works contract. This is done by adopting the value that is adopted for the purpose of payment of VAT. The rule goes on to say that the service component of the works contract is to include the eight elements laid down in the second **Gannon Dunkerley** case including apportionment of the cost of establishment, other expenses and profit earned by the service provider as is relatable only to supply of labour and services. And, where value is not determined having regard to the aforesaid parameters, (namely, in those cases where the books of account of the contractor are not looked into for any reason) by determining in different works contracts how much shall be the percentage of the total amount charged for the works contract, attributable to the service element in such contracts. It is this scheme and this scheme alone which complies with constitutional requirements in that it bifurcates a composite indivisible works contract and takes care to see that no element attributable to the property in goods transferred pursuant to such contract, enters into computation of service tax.

27. In fact, the speech made by the Hon'ble Finance Minister in moving the Bill to tax Composite Indivisible Works Contracts specifically stated:-

> *"State Governments levy a tax on the transfer of property in goods involved in the execution of a works contract. The value of services in a works contract should attract service tax. Hence, I propose to levy service tax on services involved in the execution of a works contract. However, I also propose an optional composition scheme under which service tax will be levied at only 2 per cent of the total value of the works contract."*

28. Pursuant to the aforesaid speech, not only was the statute amended and rules framed, but a Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 was also notified in which service providers could opt to pay service tax at percentages ranging from 2 to 4 of the gross value of the works contract.

29. It is interesting to note that while introducing the concept of service tax on indivisible works contracts various exclusions are also made such as works contracts in respect of roads, airports, airways transport, bridges, tunnels, and dams. These infrastructure projects have been excluded and continue to be excluded presumably because they are conceived in the national interest. If learned counsel for the revenue were right, each of these excluded works contracts could be taxed under the five sub-heads of Section 65(105) contained in the Finance Act, 1994. For example, a works contract involving the construction of a bridge or dam or tunnel would presumably fall within Section 65(105)(zzd) as a contract which relates to erection, commissioning or installation. It is clear that such contracts were never intended to be the subject matter of service tax. Yet, if learned counsel for the revenue is right, such contracts, not being exempt under the Finance Act, 1994, would fall within its tentacles, which was never the intention of Parliament.

30. It now remains to consider the judgment of the Delhi High Court in **G.D. Builders**.

31. In the aforesaid judgment, it was held that the levy of service tax in Section 65(105)(g), (zzd), (zzh), (zzq) and (zzzh) is good enough to tax indivisible composite works contracts. Various judgments were referred to which have no direct bearing on the point at issue. In paragraph 23 of this judgment, the second **Gannon Dunkerley** judgment is referred to in passing without noticing any of the key paragraphs set out hereinabove in our judgment. Also, we find that the judgment in **G.D. Builders** (supra) went on to quote from the judgment

in **Mahim Patram Private Ltd. v. Union of India**, 2007 (3) SCC 668, to arrive at the proposition that even when rules are not framed for computation of tax, tax would be leviable.

32. We are afraid that the Delhi High Court completely misread the judgment in **Mahim Patram's** case. This judgment concerned itself with works contracts being taxed under the Central Sales Tax Act. What was argued in that case was that in the absence of any rule under the provisions of the Central Act, the determination of sale price would be left to the whims and fancies of the assessing authority. This argument was repelled by this Court after setting out Sections 2(g) and 2(ja), which define "sale" and "works contract". The Court then went on to discuss Sections 9(2) and 13(3) of the Central Sales Tax Act. Section 9(2) of the Central Sales Tax Act provides:-

> *"Section 9. Levy and collection of tax and penalties.—*
>
> *(2) Subject to the other provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of any tax under the general sales tax law of the appropriate State shall, on behalf of the Government of India, assess, reassess, collect and enforce payment of tax, including any interest or penalty, payable by a dealer under this Act as if the tax or interest or penalty payable by such a dealer under this Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly:*
>
> *Provided that if in any State or part thereof there is no general sales tax law in force, the Central Government may, by rules made in this behalf make necessary provision for all or any of the matters specified in this sub-section."*

33. Section 13(3) of the Central Sales Tax Act says:-

> *"The State Government may make rules, not inconsistent with the provisions of this Act and the rules made under sub-section (1), to carry out the purposes of this Act."*

34. In the aforesaid judgment it was found that Section 9(2) of the Central Sales Tax Act conferred powers on officers of the various States to utilize the machinery provisions of the States' sales tax statutes for purposes of levy and assessment of central sales tax under the Central Act. It was also noticed that the State Government itself had been given power to make rules to carry out the purposes of the Central Act so long as the said rules were not inconsistent with the provisions of the Central Act. It was found that, in fact, the State of Uttar Pradesh had framed such rules in exercise of powers under Section 13(3) of the Central Act as a result of which the necessary machinery for the assessment of central sales tax was found to be there. The Delhi High Court judgment unfortunately misread the aforesaid judgment of this Court to arrive at the conclusion that it was an authority for the proposition that a tax is leviable even if no rules are framed for assessment of such tax, which is wholly incorrect. The extracted passage from **Mahim Patram's** case only referred to rules not being framed under the Central

Act and not to rules not being framed at all. The conclusion therefore in paragraph 36(2) of the Delhi High Court judgment is wholly incorrect. Para 36(2) reads as follows:-

> *"(2) Service tax can be levied on the service component of any contract involving service with sale of goods etc. Computation of service component is a matter of detail and not a matter relating to validity of imposition of service tax. It is procedural and a matter of calculation. Merely because no rules are framed for computation, it does not follow that no tax is leviable." [at para 36]*

35. The aforesaid finding is in fact contrary to a long line of decisions which have held that where there is no machinery for assessment, the law being vague, it would be open to the assessing authority to arbitrarily assess to tax the subject. Various judgments of this Court have been referred to in the following passages from **Heinz India (P) Ltd. v. State of U.P**., (2012) 5 SCC 443. This Court said:-

> *"This Court has in a long line of decisions rendered from time to time, emphasised the importance of machinery provisions for assessment of taxes and fees recoverable under a taxing statute. In one of the earlier decisions on the subject a Constitution Bench of this Court in K.T. Moopil Nair v. State of Kerala [AIR 1961 SC 552] examined the constitutional validity of the Travancore-Cochin Land Tax Act (15 of 1955). While recognising what is now well-settled principle of law that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, this Court found that the enactment in question was violative of Article 14 of the Constitution for inequality was writ large on the Act and inherent in the very provisions under the taxing section thereof. Having said so, this Court also noticed that the Act was silent as to the machinery and the procedure to be followed in making the assessment. It was left to the executive to evolve the requisite machinery and procedure thereby making the whole thing, from beginning to end, purely administrative in character completely ignoring the legal position that the assessment of a tax on person or property is a quasi-judicial exercise."*
>
> *Speaking for the majority Sinha, C.J. said: (K.T. Moopil case [AIR 1961 SC 552] , AIR p. 559, para 9)*
>
> *"9. ... Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher civil court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of Section 3 of the Madras Revenue Recovery Act, 1864, the landholders may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the Executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character." (emphasis supplied)*
>
> *In Rai Ramkrishna v. State of Bihar [AIR 1963 SC 1667] this Court was examining the constitutional validity of the Bihar Taxation on Passengers and*

Goods (Carried by Public Service Motor Vehicles) Act, 1961. Reiterating the view taken in K.T. Moopil Nair [AIR 1961 SC 552] this Court held that a statute is not beyond the pale of limitations prescribed by Articles 14 and 19 of the Constitution and that the test of reasonableness prescribed by Article 304(b) is justiciable. However, in cases where the statute was completely discriminatory or provides no procedural machinery for assessment and levy of tax or where it was confiscatory, the Court would be justified in striking it down as unconstitutional. In such cases the character of the material provisions of the impugned statute may be such as may justify the Court taking the view that in substance the taxing statute is a cloak adopted by the legislature for achieving its confiscatory purpose.

In Jagannath Baksh Singh v. State of U.P. [AIR 1962 SC 1563] this Court was examining the constitutional validity of the U.P. Large Land Holdings Tax Act (31 of 1957). Dealing with the argument that the Act did not make a specific provision about the machinery for assessment or recovery of tax, this Court held: (AIR pp. 1570-71, para 17)

"17. ... if a taxing statute makes no specific provision about the machinery to recover tax and the procedure to make the assessment of the tax and leaves it entirely to the executive to devise such machinery as it thinks fit and to prescribe such procedure as appears to it to be fair, an occasion may arise for the courts to consider whether the failure to provide for a machinery and to prescribe a procedure does not tend to make the imposition of the tax an unreasonable restriction within the meaning of Article 19(5). An imposition of tax which in the absence of a prescribed machinery and the prescribed procedure would partake of the character of a purely administrative affair can, in a proper sense, be challenged as contravening Article 19(1)(f)." (emphasis supplied)

In State of A.P. v. Nalla Raja Reddy [AIR 1967 SC 1458] this Court was examining the constitutional validity of the Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act, 1962 (22 of 1962) as amended by the Amendment Act (23 of 1962). Noticing the absence of machinery provisions in the impugned enactments this Court observed: (AIR p. 1468, para 22)

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

The appeals filed by the State against the judgment of the High Court striking down the enactment were on the above basis dismissed.

Reference may also be made to Vishnu Dayal Mahendra Pal v. State of U.P. [(1974) 2 SCC 306] and D.G. Gose and Co. (Agents) (P) Ltd. v. State of Kerala [(1980) 2 SCC 410] where this Court held that sufficient guidance was available from the Preamble and other provisions of the Act. The members of the committee owe a duty to be conversant with the same and discharge their functions in accordance with the provisions of the Act and the Rules and that in cases where the machinery for determining annual value has been provided in the Act and the rules of the local authority, there is no reason or necessity of providing the same or similar provisions in the other Act or Rules.

There is no gainsaying that a total absence of machinery provisions for assessment/recovery of the tax levied under an enactment, which has the effect of making the entire process of assessment and recovery of tax and adjudication of disputes relating thereto administrative in character, is open to challenge before a writ court in appropriate proceedings. Whether or not the enactment levying the tax makes a machinery provision either by itself or in terms of the Rules that may be framed under it is, however, a matter that would have to be examined in each case." (at paras 15-21)

36. In a recent judgment by one of us, namely, **Shabina Abraham & Ors. v. Collector of Central Excise & Customs**, judgment dated 29th July, 2015, in Civil Appeal No.5802 of 2005, this Court held:-

"It is clear on a reading of the aforesaid paragraph that what revenue is asking us to do is to stretch the machinery provisions of the Central Excises and Salt Act, 1944 on the basis of surmises and conjectures. This we are afraid is not possible. Before leaving the judgment in Murarilal's case (supra), we wish to add that so far as partnership firms are concerned, the Income Tax Act contains a specific provision in Section 189(1) which introduces a fiction qua dissolved firms. It states that where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Income Tax Act would apply to assessment of such dissolved firm. Interestingly enough, this provision is referred to only in the minority judgment in M/s. Murarilal's case (supra).

The impugned judgment in the present case has referred to Ellis C. Reid's case but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short levy which has been noticed during the lifetime of the deceased and then goes on to state that equally therefore legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court. It flies in the face of first principle when it comes to taxing statutes. It is therefore necessary to reiterate the law as it stands. In Partington v. A.G., (1869) LR 4 HL 100 at 122, Lord Cairns stated:

"If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject

within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute". (at paras 26 and 31)

37. We find that the Patna, Madras and Orissa High Courts have, in fact, either struck down machinery provisions or held machinery provisions to bring indivisible works contracts into the service tax net, as inadequate. The Patna High Court judgment was expressly approved by this Court in **State of Jharkhand v. Voltas Ltd., East Singhbhum**, (2007) 9 SCC 266. This Court held:-

"Section 21 of the Bihar Finance Act, 1981, as amended states:

"21. Taxable turnover.—(1) For the purpose of this part the taxable turnover of the dealer shall be that part of his gross turnover which remains after deducting therefrom—

(a)(i) in the case of the works contract the amount of labour and any other charges in the manner and to the extent prescribed;"

Rule 13-A of the Bihar Sales Tax Rules which was also amended by a notification dated 1-2-2000 reads as follows:

"13-A. Deduction in case of works contract on account of labour charges.—If the dealer fails to produce any account or the accounts produced are unreliable deduction under sub-clause (i) of clause (a) of sub-section (1) of Section 21 on account of labour charges in case of works contract from gross turnover shall be equal to the following percentages..."

The aforesaid provisions have been adopted by the State of Jharkhand vide notification dated 15-12-2000 and thus are applicable in the State of Jharkhand.

Interpretation of the amended Section 21(1) and the newly substituted Rule 13-A fell for consideration of a Division Bench of the Patna High Court in Larsen & Toubro Ltd. v. State of Bihar [(2004) 134 STC 354] . The Patna High Court in the said decision observed as under:

"Rule 13-A unfortunately does not talk of 'any other charges'. Rule 13-A unfortunately does not take into consideration that under the Rules the deduction in relation to any other charges in the manner and to the extent were also to be prescribed. Rule 13-A cannot be said to be an absolute follow- up legislation to sub-clause (i) of clause (a) of Section 21(1). When the law provides that something is to be prescribed in the Rules then that thing must be prescribed in the Rules to make the provisions workable and constitutionally valid. InGannon Dunkerley & Co. [(1993) 1 SCC 364 : (1993) 88 STC 204] the Supreme Court observed that as sub-section (3) of Section 5 and sub-rule (2) of Rule 29 of the Rajasthan Sales Tax Act and the Rules were not providing for particular deductions, the same were invalid. In the present matter the constitutional provision of law says that particular deductions would be provided but unfortunately nothing is provided in relation to the other charges either in Section 21 itself or in the Rules framed in exercise of the powers conferred by Section 58 of the Bihar Finance Act.

***

In our considered opinion sub-clause (i) of clause (a) of Section 21(1) read with Rule 13-A of the Rules did not make sub- clause (1) fully workable because the manner and extent of deduction relating to any other charges has not been provided/prescribed by the State." (at paras 9-12)

38. Similarly, the Madras High Court in **Larsen and Toubro Ltd. v. State of Tamil Nadu and Ors.**, [1993] 88 STC 289, struck down Rules 6A and 6B of the Tamil Nadu General Sales Tax Rules as follows:-

"…The eight principles are the criteria and the norms which every State legislation has to conform as per the decision of the apex Court which has been already adverted to by us supra. In addition thereto, we have also referred to at considerable length the particular reasons assigned by the apex Court while striking down section of the Rajasthan Sales Tax Act and rule 29(2) of the Rules made thereunder. The impugned rules 6-A and 6- B of the Rules, in our view, do not pass the above vital and essential test and the basic requirements laid down by the ratio of the decision of the apex Court in Gannon Dunkerley's case supra; . The impugned rules are squarely opposed to the ratio of the said decision and particularly the ratio laid down in conclusion Nos. 1, 2, 3, 6 and 7 of the decision in Gannon Dunkerley's case [1993] 88 STC 204 supra; and also reiterated by the apex Court in the second Builders Association of India case [1993] 88 STC 248 (SC); [1992] 2 MTCR 542. In the light of the above, we see no merit in the stand taken for the respondents relying upon the decisions reported in [1957] 8 STC 561 (SC) (A. V. Fernandez v. State of Kerala) and [1969] 23 STC 447 (Mad.) (Kumarasamy Pathar v. State of Madras) that the omission to exclude certain items relating to non-taxable turnovers is of no consequence and does not affect or undermine the validity of the impugned proceedings. Consequently, applying the ratio of the above decisions, we hereby strike down rules 6-A and 6-B as illegal and unconstitutional, besides being violative of sections 3 to 6, 14 and 15 of the Central Sales Tax Act and consequently unenforceable.

The provisions of section 3-B merely levied the tax on the transfer of property in goods involved in the execution of the works contract. The assessment, determination of liability and recovery had to be under the provisions of the Act read with the relevant rules. In exercise of rule-making power conferred under section 53(1) and (2)(bb), rules 6-A and 6-B came to be made and published. The rules miserably failed to provide the procedure and principles for effectively determining the taxable turnover, after excluding the items of turnover relating to such works contract which could not be subjected to levy of tax by the State in exercise of its power of legislation under entry 64 of the State List. Rule 6 by its own operation had no application in the matter of determination of liability under section 3- B since it has been made applicable only in respect of determining the taxable turnover of a dealer under section 3, 3- A, 4 or 5. Consequently, with our decision above striking down rules 6-A and 6-B of the Rules, there is no proper machinery provisions to determine the taxable turnover for purposes of section 3-B. The provisions of section 3-B, therefore, in the absence of the necessary rules for enforcing the same and determining the taxable turnover for the purposes of section 3- B is rendered dormant, ineffective and unenforceable. Such would be the position till

sufficient provisions are made either in the Act itself or in the rules by virtue of the rule-making power to ignite, activate and give life and force to section 3-B of the Act." (at paras 32, 33)

39. And the Orissa High Court in **Larsen & Turbo v. State of Orissa**, (2008) 012 VST 0031, held that machinery provisions cannot be provided by circulars and held that therefore the statute in question, being unworkable, assessments thereunder would be of no effect.

40. Finally, in para 31, the Delhi High Court holds:-

"The contention of the petitioners that the impugned notifications override the statutory provisions contained in Section 65(105), which defines the term "taxable service", Section 66, which it is claimed is a charging section, and Section 67, the valuation provisions of the Finance Act, 1994, has to be rejected. We have, as already stated above, rejected the argument of the petitioners on bifurcation/vivisect and held that as per the provisions of Section 65(105)(zzq) and (zzzh), service tax is payable and chargeable on the service element of the contract for construction of industrial and commercial complexes and contract for construction of complexes as specified and in case of a composite contract, the service element should be bifurcated and ascertained and then taxed. The contention that the petitioners are paying sales tax or VAT on material in relation to execution of the contract under composite contracts for construction of industrial/commercial complexes and construction contracts as specified under Section 65(105)(zzq) and (zzzh) therefore fails. The contention that there was/is no valid levy or the charging section is not applicable to composite contracts under clauses (zzq) and (zzzh) of Section 65(105) stands rejected. But the petitioners have rightly submitted that only the service component can be brought to tax as per provisions of Section 67 which stipulates that value of taxable service is the "gross amount charged" by the service provider for such services provided or to be provided by him and not the value of the goods provided by customers of service provider and the service tax cannot be charged on the value of the goods used in the contract."

41. We are afraid that there are several errors in this paragraph. The High Court first correctly holds that in the case of composite works contracts, the service elements should be bifurcated, ascertained and then taxed. The finding that this has, in fact, been done by the Finance Act, 1994 Act is wholly incorrect as it ignores the second Gannon Dunkerley decision of this Court. Further, the finding that Section 67 of the Finance Act, which speaks of "gross amount charged", only speaks of the "gross amount charged" for service provided and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. We find therefore that this judgment is wholly incorrect in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contracts.

42. It remains to consider the argument of Shri Radhakrishnan that post 1994 all indivisible works contracts would be contrary to public policy, being hit by Section 23 of the Indian Contract Act, and hit by Mcdowell's case.

43. We need only state that in view of our finding that the said Finance Act lays down no charge or machinery to levy and assess service tax on indivisible composite works contracts, such argument must fail. This is also for the simple reason that there is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services.

44. We have been informed by counsel for the revenue that several exemption notifications have been granted qua service tax "levied" by the 1994 Finance Act. We may only state that whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise. With these observations, these appeals are disposed of.

45. We, therefore, allow all the appeals of the assessees before us and dismiss all the appeals of the revenue.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 214 of 2014

Go to Index Page

B.K. STEELS
Vs
STATE OF PUNJAB AND ANR.

A.K. MITTAL AND RAMENDRA JAIN, JJ.

10th August, 2015

HF ▶ Appellant

Service of copy of order has to be done at the address mentioned in the memorandum of appeal.

APPEAL – CONDONATION OF DELAY – IMPROPER SERVICE OF ORDER – DISMISSAL OF APPEAL BY FIRST APPELLATE AUTHORITY VIDE ORDER DATED 2009 – DELIVERY OF ORDER CONTENDED TO HAVE BEEN DONE AT BRANCH OFFICE INSTEAD OF ADDRESS MENTIONED IN MEMORANDUM OF APPEAL – NON RECEIPT OF ORDER AT EITHER PLACE –- DELAYED FILING OF APPEAL BEFORE TRIBUNAL – CONTENTIONS REJECTED - CONDONATION OF 907 DAYS NOT GRANTED PRESUMING SERVICE U/S 27 OF INDIAN EVIDENCE ACT AND ILLUSTRATION (f) OF SEC 114 OF INDIAN EVIDENCE ACT- APPEAL BEFORE HIGH COURT – COPY OF ORDER OUGHT TO BE SENT AT ADDRESS MENTIONED IN MEMORANDUM OF APPEAL *MANDATORILY* – WRONG PRESUMPTION OF SERVICE BY TRIBUNAL – DELAY IN FILING CONDONED - APPEAL ACCEPTED -TRIBUNAL DIRECTED TO DECIDE THE APPEAL ON MERITS- *SECTION 62, 64 OF PVAT ACT; RULE 71 OF PVAT RULES*

The appellant had filed an appeal before the Ld. DETC who dismissed the appeal vide order dated 22.5.09. An appeal was filed before Tribunal alongwith an application for condonation of delay of 907 days. It was contended that the impugned order was never received by appellant. The authorities contended that they had dispatched the order at the branch office address instead of the one mentioned in memorandum of appeal which was not received at the branch office either. Two written letters were sent enquiring the status of its appeal but no response was given to it. The appellant came to know about the dismissal of appeal in 2012 only when he personally stepped into the office of the authorities. Rejecting the plea raised, the Tribunal dismissed the appeal and did not condone the delay presuming the service upon the appellant u/s s 27 of Indian Evidence Act and illustration(f) of sec 114 of Indian Evidence Act. On appeal before High court, it is held that the service of order should mandatorily be done at the address mentioned in memorandum of appeal as per Rule 71(1)(a) of the Rules. The Tribunal wrongly presumed the service upon the appellant. No satisfactory explanation was tendered for not sending the copy at the address given in memorandum of appeal. No party should be condemned unheard and a case should be decided on merits unless delay is due to gross negligence of a party. Therefore, the appeal is accepted and Tribunal is directed to hear the appeal on merits.

Case Referred:

The Commissioner of Income Tax, Punjab, Haryana, Jammu and Kashmir, Himachal Pradesh and Chandigarh, Patiala V/s Lalita Kapur' (P&H)(DB), 1970 CurLJ 523

Present: Mr. Sandeep Goyal, Advocate for the appellant.

Mr.Jagmohan Bansal, Addl. A.G. Punjab

******

RAMENDRA JAIN, J.

1. The appellant has approached this Court *inter alia* for setting aside the impugned order dated 29.04.2013 passed by the learned Value Added Tax, Tribunal, Punjab ('the Tribunal' for short) dismissing its application seeking condonation of 907 days' delay in filing the appeal as well as the appeal, being barred by limitation.

2. Brief facts, are that on 04.03.2006 a vehicle transporting M.S. Bars from U.P. to Punjab was intercepted by the Excise and Taxation Officer, Rajpura. The documents in the custody of driver were found not proper. Hence, the goods were detained under Section 51(6)(a) of the Punjab Value Added Tax Act, 2005 ('Act' for short). After affording an opportunity to the owner of the goods, the detaining officer being not satisfied referred the case to the Enquiry Officer, who after conducting the inquiry imposed a penalty of ₹ 1,51,687/under Section 51(7)(b) of the Act upon the appellant, being owner of the goods.

3. Feeling aggrieved, the appellant preferred an appeal before the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala, who after hearing the appellant as well as the department's representative remanded the case back to the Enquiry Officer vide order dated 15.05.2006. The appellant preferred an appeal before the learned Tribunal against the said order of remand, but remained unsuccessful. Thereafter, in remand the Enquiry Officer i.e. Assistant Excise and Taxation Officer, Patiala, again imposed a penalty of ₹ 1,51,687/under Section 51(7)(b) of the Act vide order dated 29.04.2008. Again, the appellant preferred an appeal which was dismissed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala vide order dated 22.05.2009. Since, the appellant was still unsatisfied with the aforesaid order dated 22.05.2009, therefore, he preferred an appeal along with an application under Section 64 of the Act seeking condonation of 907 days' delay in filing the appeal, which were dismissed vide order dated 29.04.2013.

4. It is contended that it was obligatory upon the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala to dispatch the copy of the order dated 22.05.2009 passed by him to the dealer of the appellant on the address given in the memorandum of appeal, but it was never sent there, rather was sent to its branch office at Rajpura. Since the said order was never communicated to the appellant, therefore, it wrote two letters on 16.03.2011 and then on 15.11.2011 to the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala to know about the status of its appeal. When the above letters went unresponded, the appellant made personal inquiry and came to know on 04.04.2012 that its appeal has already been decided on 22.05.2009 and the order was sent to the address of its branch office at Rajpura. However, the same was never received. Hence, the delay of 907 days in filing the appeal was not intentional or deliberate, rather was on account of above facts and circumstances.

5. It is further contended that the learned Tribunal taking presumption of service upon the appellant under Section 27 of the General Clauses Act, 1897 and the illustration (f) to Section 114 of the Indian Evidence Act, rejecting the above contention of the appellant, wrongly dismissed its application seeking condonation of 907 days delay in filing the appeal as well as the appeal vide impugned order dated 29.04.2013.

6. This Court has to decide the following question of law:

> *i) Whether on the facts and circumstances of the case, the learned Tribunal was justified in dismissing the appeal of the appellant on the ground of delay even though there was a serious dispute with regard to the communication of the order?*

7. It is not in dispute that the appellant in its memorandum of appeal before the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala has shown its address as "M/s B.K. Steels, G.T. Road, Rajpura, Head Office, Mandi No.1, Abohar C/o Sh. S.L. Bansal, Advocate, 5Circular Road, Abohar 152116 (Punjab)". Hence, it was mandatory upon the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala under Rule 71(1)(a) of Punjab Value Added Tax Rules, 2005 to send the copy of his order dated 22.05.2009 to the above address of the appellant at Abohar. However, he instead of sending the above order at the aforesaid address of the appellant at Abohar had sent the same to the Branch Office of the appellant at Rajpura, which as per appellant was never received. More so, when no response was received by the appellant against its letters dated 02.11.2010 and 16.03.2011, its counsel personally went to the office of DETC on 04.04.2012 to know the status of its appeal and then only came to know about the order dated 22.05.2009 passed by him, dismissing the appeal.

8. In view of the above factual position, the learned Tribunal has wrongly drawn presumption of service upon the appellant under Section 27 of the General Clause Act, 1897 and the illustration (f) to Section 114 of the Indian Evidence Act, more particularly when it was incumbent upon the Deputy Excise and Taxation Commissioner (A), Patiala to send the copy of order dated 22.05.2009 to the appellant at its address given in the memorandum of appeal.

9. In ***'The Commissioner of Income Tax, Punjab, Haryana, Jammu and Kashmir, Himachal Pradesh and Chandigarh, Patiala V/s Lalita Kapur' (P&H)(DB), 1970 CurLJ 523,*** a Division Bench of this Court has held that presumption under Section 27 of the General Clauses Act, 1897 stands rebutted in case the service is effected on an assessee under Section 63 (1) of the Income Tax Act, 1922 through its agent never appointed by it, as it shall not be a valid service.

10. In the instant case, the appellant never requested the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala to send the copy of the order upon the address of its branch office at Rajpura.

11. Learned counsel for the respondents could not give any satisfactory explanation for not sending the copy of the order dated 22.05.2009 to the appellant, upon its address given in the memorandum of appeal.

12. More so, by this time, it is well settled that a party should not be condemned unheard and the case should not be rejected on technical grounds, rather should be decided on merit unless delay is attributable to gross negligence of a party. Since learned counsel for the respondents has miserably failed to prove proper service of the order dated 22.05.2009 upon the appellant at its proper address, therefore, we are of the considered view that the impugned judgment dated 29.04.2013 passed by the learned Tribunal is liable to be set aside and consequently, the same is hereby set aside.

13. The application of the appellant filed before the learned Tribunal seeking condonation of 907 days' delay in filing the appeal is hereby allowed and the aforesaid delay in filing the appeal is condoned. Consequently, appeal of the appellant is also restored.

14. The learned Tribunal is directed to decide the appeal of the appellant on merit in accordance with law.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 10 OF 2013

Go to Index Page

HPL SOCOMEC P. LTD.
Vs
STATE OF HARYANA AND ORS.

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

14th August, 2015

HF ▶ Petitoner

Order of Appellate Authority having attained finality is binding on lower level authority and cannot be modified.

APPELLATE AUTHORITY – BINDING NATURE OF ORDERS – EXEMPTION – APPLICATION FOR EXEMPTION FILED – DEPARTMENT INTIMATED ABOUT SENDING OF MACHINERY FROM HARYANA TO CHENNAI AT APPELLANT'S PREMISES- INSPECTION CONDUCTED AT CHENNAI HENCEFORTH - REJECTION OF CLAIM ON ACCOUNT OF MACHINERY BEING OLD – APPEAL BEFORE SECRETARY – MACHINERY HELD TO BE NEW – ORDER ATTAINED FINALITY- MATTER REOPENED BY HLSC RAISING A NEW CONTENTION THAT THE MACHINERY IN QUESTION OUGHT TO BE INSTALLED IN HARYANA FOR CLAIMING EXEMPTION- DISMISSAL OF APPEAL BY TRIBUNAL HOLDING THAT IT WAS OPEN TO HLSC TO RAISE A NEW ISSUE NOT CONSIDERED BY SECRETARY- WRIT FILED – NEW CONTENTION RAISED BY HLSC IMPLIEDLY IN ITS KNOWLEDGE EARLIER AND NOT DISPUTED – HLSC NOT PERMITTED TO MODIFY THE ORDER OF APPELLATE AUTHORITY HAVING ATTAINED FINALITY – SCHEME OF HIERARCHY AND BINDING NATURE OF ORDERS OF AUTHORITIES TO BE TAKEN INTO ACCOUNT – RESPONDENTS TO COMPLY WITH ORDERS OF SECRETARY – WRIT ALLOWED. *RULE 28 A OF HGST RULES,1975; SECTION 13B OF HGST ACT, 1973*

Facts:

The petitioner had been manufacturing changeover switches, switch boards and parts. It applied for exemption certificate. The HLSC(Higher Level Screening Committee) wanted to inspect the machinery. But since the machinery was sent to Chennai at the premises of the appellant where it was sent for job work of the appellant, the officer conducted inspection at Chennai. The eligibility certificate was denied by the HLSC on the basis that the investment of Rs 54.08 lacs was made in old machinery i.e. dies and tools purchased from Noida which formed more than 25% of the total capital investment .

However, on appeal before the Financial Commissioner & Secretary Industries, Department of Industries, the appeal was allowed holding that the tools and dies were new at the time of purchase and that the HLSC had wrongly concluded otherwise. This order had attained finality in view of Rule 28 A(5)(g).

The HLSC was directed to issue the certificate. But instead it reopened the matter and declined issuing the certificate on a new finding that the machinery in question had to be installed in Haryana as per the Rules which was not done. On appeal before Tribunal, it was held that since the issue was not considered by Secretary, it was open for HLSC to reopen the case suo motu.

Held:

On writ before the High Court, it is held that the issue regarding setting up of unit in Haryana was never ever contended by the department earlier. Infact, the site visits were made and they were fully aware that the machinery had been shifted to Chennai to the premises rented by the appellant for his job work.

The High Court has held that the HLSC had no jurisdiction to deal with the matter as it had merged into the order of the Secretary and it ought to have issued the certificate. The scheme of Rule 28 A(5) establishes the hierarchy of the authorities and the binding nature of their orders. The appeal against the original order of HLSC lies to the Secretary and the decision so given would be final. The HLSC had no power to modify, review or set aside the order of the Secretary. The lower authority is not entitled to reopen a matter which has attained finality before the appellate authority. Therefore, the respondents are directed to comply with the order of the Secretary. The orders passed by the Tribunal and HLSC are set aside.

Present: Mr. Rajiv Agnihotri, Advocate for the appellant

Ms. Mamta Singla Talawar, AAG, Haryana

******

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

1. This is an appeal under Section 36 of the Haryana Value Added Tax Act, 2003 against the order of the Haryana Tax Tribunal dated 05.09.2011 dismissing the appellant's appeal against the order of the Higher Level Screening Committee (HLSC) dated 10.08.2005 by which the HLSC held the appellant's industrial unit to be eligible for sales tax exemption only on the fixed capital investment of Rs.3,26,210/- and for the issuance of an eligibility certificate entitling the appellant to avail exemption to that extent alone, as against the appellant's claim for sales tax exemption of Rs.54.08 lacs. The appellant has also challenged the order of the Tribunal dated 22.06.2012 rejecting its application for review of the order dated 05.09.2011.

2. In paragraph-27 of the appeal, several questions of law have been raised. We, however, admit the appeal on the following substantial questions of law as framed by us:-

i) *Whether the Higher Level Screening Committee is entitled to reopen a case on its own where its earlier decision had been overruled by the appellate authority-Secretary in exercise of powers under Rule 28A(5)(g) of the Haryana General Sales Tax Rules, 1975?*

ii) *Whether the Higher Level Screening Committee is entitled to ignore the order of the appellate authority i.e. Secretary passed under Rule 28A(5)(h) and to refuse to comply with the order on the basis that it was doing so on a ground that had not been considered by the appellate authority?*

We have answered the questions in the negative, in favour of the appellant/assessee.

3. The appellant is engaged in the manufacture of onload changeover switches, switch boards and parts and accessories in relation thereto. The appellant's unit commenced commercial production on 24.06.1993. On 26.06.1993, the appellant applied for an eligibility certificate. The application was pending till the year 1998.

4. On 28.11.1996, the Deputy Excise and Taxation Commissioner reported to the HLSC that the appellant was not eligible for exemption as out of the total fixed capital investment of Rs.58.75 lacs claimed in the application, Rs.54.08 lacs was in respect of purchase of old moulds and dies. On a finding that the investment in old moulds and dies was more than 25% of the fixed capital investment, it was held that the company did not qualify to be a new industrial unit in view of rule 28A of the Haryana General Sales Tax Rules, 1975. Accordingly, it was observed that the appellant was not qualified for the grant of an eligibility certificate. By an order dated 29.01.1998, the HLSC held that the appellant was not entitled to be issued the eligibility certificate and rejected the appellant's application which was made in Form S.T.70. What is recorded in the order is important and as follows.

The appellant's claim was enquired into by the field authorities and was also scrutinized by the Deputy Excise and Taxation Commissioner and G.M., DIC, Gurgaon. A joint inspection report was put up before the HLSC. The HLSC ordered another joint inspection of the appellant's unit. The appellant was directed to call back the entire machinery which had been sent to Chennai. The appellant, however, informed the district authorities that the machinery could not be called back from Chennai and requested for the inspection of the machinery at Chennai. An officer of the department visited Chennai and made necessary enquiries regarding the machinery which was available with a concern by the name of M/s Devi Polymers Limited at Chennai. The appellant's application for an adjournment thereafter before the HLSC was rejected with the observation that the appellant was deliberately trying to delay the matter after having availed the maximum exemption. It was held that the investment of Rs.54.08 lacs had been made in old machinery i.e. dies and tools. They have been shown as having been purchased from Havell's Circuit Breakers Private Limited, Noida. It was held that the machinery had earlier been used by M/s Havell's Circuit Breakers Private Limited, Noida and had been purchased from them. The order contains reasons in respect of the finding that the machinery in respect of which the exemption was claimed was old. It is not necessary to refer to these reasons for ultimately it has been held that the machinery was new and that finding has attained finality. It has not been challenged before us by the respondents/ department.

5. The appellant's first appeal before the Commissioner Industries was dismissed on 26.07.1999. The appellant filed Civil Writ Petition No.11173 of 1999 in this Court challenging this order. This Court by an order dated 26.5.2000 directed the HLSC to hold a fresh enquiry into the question as to whether the moulds and dies were old or new and directed the company to be associated with the enquiry.

6. The HLSC, by an order dated 17.05.2002, once again concluded that the same were old.

7. This brings us to the most crucial aspect of the matter. The appellant filed an appeal before the Financial Commissioner & Secretary Industries, Department of Industries. The appeal was allowed by an order dated 09.05.2003. It is important to note that the Secretary by the said order observed that it was not disputed that the appellant purchased a part of the machinery in question from HPL India Limited in the year 1993 of the value of Rs.54.08 lacs and commenced commercial production on 26.06.1993 and that the appellant at some point of time shifted this machinery to M/s Devi Polymers Limited at Chennai who was doing job work for the appellant. It was further noted that the final product was assembled in the premises rented by the appellant. These observations are important in view of the contention now raised

that the machinery had never been installed in Haryana. It is significant that the order notes that a visit was made to the appellant's premises by the DETC, Gurgaon on 22.06.1995 where he was told that the machinery had been sent to Chennai. At that time, it was not even contended that the machinery had not earlier been installed in Gurgaon as is now sought to be contended. The order has commented adversely upon the fact that though the notices were issued in October, 1993, the first visit was made by the DETC to the appellant's premises only in June, 1995. It was conclusively held that the tools and dies were new at the time of purchase and that the HLSC had wrongly concluded otherwise. This finding has attained finality. The Secretary passed the following order which is vital for the purposes of this appeal:-

> *"I, therefore, quash the impugned order, accept the appeal & direct the HLSC to issue eligibility certificate to the appellant."*

This order too has attained finality.

By the impugned order, the HLSC has sought to reopen the entire matter and to reject the application to a substantial extent now on the ground that the machinery had never been installed in Haryana. It is necessary to examine the consideration of the impugned order by referring to the relevant provisions of the Act and the rules.

We have come to the conclusion that under the scheme under Rule 28A the order of the Secretary had attained finality and that it was not open to the HLSC to ignore the order and to hear the matter afresh on the ground that the HLSC had failed to consider a particular aspect of the matter.

8. Rules 28A(2)(c), (f)(i), (g)(iii), 5(a) to (h) of the Haryana General Sales Tax Rules, 1975, read as under:-

> *"Rule-28A*
>
> *CLASS OF INDUSTRIES, PERIOD AND OTHER CONDITIONS FOR EXEMPTION/DEFERMENT FROM PAYMENT OF TAX.*
>
> *(2) For the purpose of this Chapter, unless the context otherwise requires.*
>
> *(a) & (b) …… ……. ……. ……*
>
> *(c) "New industrial Unit" means a unit which is or has been set up in the State of Haryana and comes or has come into commercial production for the first time during the operative period and has not been or is not formed as a result of purchase or transfer of old machinery except when purchased in the course of import into the territory of India or when the cost of old machinery does not exceed 25% of the total cost of machinery re-establishment, amalgamation, change of lease, change of ownership, change in constitution, transfer of business, reconstruction or revival of the existing unit;*
>
> *(d), (e) …… ……. ……. ……*
>
> *(f) 'eligible industrial unit' means:-*
>
> *(i) a new Industrial Unit of expansion or diversification of the existing unit, which-*
>
> *(I) to (V) & (ii) …… ……. ……. ……*
>
> *(g) "fixed capital investment" means investment in-*
>
> *(i)& (ii) …… ……. ……. ……*
>
> *(iii) new plant and machinery Including generating set), tools and equipment.*

…… …… …… ……

5(a) Every eligible Industrial Unit which is desirous of availing benefit under this rule shall make an application in form S.T.70 in triplicate alongwith attested copies of the documents mentioned therein to the General Manager District Industries Centre within 90 days of the date of its going into commercial production or the date of coming into force of this rule whichever is later. No application shall be entertained if not preferred within time. An application with incomplete or incorrect particulars including the documents required to be attached therewith shall be deemed as having not been made if the applicant fails to complete it on an opportunity afforded to him in this behalf.

b) Applications from small scale units will be considered by the Lower Level Screening Committee and those from Medium/Large scale units by the Higher Level Screening Committee.

(c) The General Manager, District Industries Centre shall immediately forward one copy of the application and documents on receipt to the Deputy Excise and Taxation Commissioner incharge of the District who will send his comments within a period of 21 days. In case of medium/Large scale industry, a copy of the comments will also be sent by him to the Commissioner.

(d) The General Manager, District Industries Centre will, within 30 days of receipt of the application from the small scale industry, place the proposal before the Lower Level Screening Committee with his report and recommendations alongwith comments, if any of the Deputy Excise and Taxation Commissioner concerned for its decision.

(e) The General Manager, District Industries Centre will within 30 days of receipt of the application from the medium/large scale industry, forward his report and recommendations alongwith the comments if any, of the deputy Excise and Taxation Commissioner to the Additional Director of Industries who will place his proposal before the Higher Level Screening Committee within a further period of 15 days for its decision.

(f) An appeal from the original decision of the lower Level Screening Committee shall lie to the Higher Level Screening Committee, if preferred within 30 days of communication of the decision. The decision of the Higher Level Screening Committee in such appeal shall be final.

(g) An appeal from the original decision of the Higher Level Screening committee shall lie to the Secretary Industries, if preferred within 30 days of communication of the decision. The decision of the Secretary Industries shall be final."

(h) The eligibility certificate will be issued by the General Manager District Industries Centre in cases approved by the Lower Level Screening Committee and by the Director of industries or any officer nominated by him not below the rank of Additional Director in cases approved by the Higher Level Screening Committee normally within a period of 45 days from the date of receipt of the application in the office of the General Manager, District Industries Centre. The certificate shall be valid from the date of commercial production or from the date of issue of entitlement/exemption certificate as the case may be for a period as laid down under sub-rule(4) unless cancelled or withdrawn. A copy of

the eligibility certificate shall also be sent to the Deputy Excise and Taxation Commissioner concerned."

9. The appellant's application would be considered against the provisions of rule 28A(2)(c),(f),(i), (g)(iii). In order to be considered an eligible industrial unit, the enterprise must be a new industrial unit or an extension or diversification of existing unit which fulfills the conditions in clauses (I) to (V) of rule 28A(2)(f)(i). In order to be considered a new industrial unit within the meaning of Section 28A(2)(c), the unit must be one which has been set up in the State of Haryana and has not been or is not formed as a result of purchase or transfer of old machinery except when purchased in the course of import into the territory of India or when the cost of old machinery does not exceed 25% of the total cost of machinery, etc. Thus, as far as the second part is concerned, it was conclusively held by the Secretary that the machinery was new and not old. That finding has attained finality.

The issue as to whether the unit has been set up in the State of Haryana or not was not considered, as the appellant's application for the eligibility certificate was not rejected on that ground. It was never contended by the department that the unit had not been set up in the State of Haryana. This is despite the fact that site visits were made and during those visits, the authorities were fully aware of the fact that the machinery had been shifted to Chennai to the premises of M/s Devi Polymers Limited who were doing job work for the appellant at the premises rented by the appellant. As noted earlier, the order of the Secretary expressly records that it was not disputed that the appellant had purchased a part of the machinery in the year 1993 of the value of Rs.54.08 lacs and had come into commercial production on 24.06.1993 and that the appellant had shifted this machinery to Chennai. Implied therein is a finding that the machinery had been set up in Haryana. There is an implied if not an express admission to that effect in the order. In any event, it was not contended in the earlier proceedings that the machinery had not been set up in Haryana.

10. To reiterate, therefore, the Secretary had by the order dated 09.05.2003 directed the HLSC to issue the eligibility certificate to the appellant. The scheme of rule 28A(5) establishes the hierarchy of the authorities and the binding nature of their orders. The appellant is a medium/large scale industry. It made the application for the eligibility certificate in Form S.T.70 as required by sub-rule 5(a) and (c), to the General Manager, District Industries Centre. The appellant being a medium/large scale unit, its application was to be considered by the HLSC. Under clause (c), the General Manager, District Industries Centre was to immediately forward a copy of the application to the Deputy Excise & Taxation Commissioner who was to send his comments. Under clause (e), the General Manager, District Industries Centre was to forward his report and recommendations along with the comments, if any, of the DETC to the Additional Director of Industries. The Additional Director of Industries was to place his proposal before the HLSC. What is important for the present purposes is to note that an appeal against the decision of the Lower Level Screening Committee (LLSC) lies to the HLSC and the decision of the HLSC in such appeal shall be final and an appeal from the original decision of the HLSC lies to the Secretary Industries and the decision of the Secretary Industries shall be final. The appellant had challenged the decision of the HLSC dated 29.01.1998 refusing to grant the eligibility certificate before the Secretary and the Secretary had, by the order dated 09.05.2003, expressly directed the HLSC to issue the eligibility certificate to the appellant. This order attained finality in view of rule 28A(5)(g). The HLSC thereafter had nothing to do with the matter. It had passed its order dated 29.01.1998 upon which it became *functus officio*. Its order was amenable to an appeal under rule 28A(5)(g) whereunder the decision of the Secretary became final which had not been challenged by the respondents.

11. In fact, upon the decision of the Secretary Industries, the HLSC had no jurisdiction to deal with the matter for any purpose and in any respect. The order of the HLSC dated

29.01.1998 had merged into the order of the Secretary dated 09.05.2003. Under clause (h), the Director of Industries or any officer nominated by him not below the rank of Additional Director ought to have issued the eligibility certificate, as the eligibility certificate ordered to be granted by the order of the Secretary dated 09.05.2003 must be deemed to have been an eligibility certificate issued by the HLSC.

12. Pursuant to the order of the Secretary, the matter was put up before the HLSC. The HLSC examined the matter treating the moulds and tools as new. Indeed, It was bound to do so in view of the order of the Secretary and the findings therein. The HLSC ought to have, in compliance with the order of the Secretary in appeal, granted the eligibility certificate. Instead, in its meeting held on 30.06.2004, it recorded its *prima facie* finding that the machinery had not been erected at Gurgaon and it was being used in Chennai and that an investment of only Rs.3.26 lacs could be considered for tax benefits. The HLSC, on the one hand, recorded that nobody had appeared for the appellant at the final meeting and, on the other hand, recorded that "it was an undisputed fact" that the machinery worth Rs.54.08 lacs was not erected at the appellant's industrial unit at Gurgaon but was sent to M/s Devi Polymers Limited at Chennai.

13. In fact, as recorded in the order of the Secretary, the undisputed fact was to the contrary. As we indicated earlier, the undisputed fact was, albeit impliedly, that the machinery had been set up in Haryana and was shifted to Chennai. In view of the fact that the Secretary's order had attained finality, this dispute is entirely irrelevant if the HLSC did not have any jurisdiction to go into this new point on its own. The HLSC, however, held that the only point decided by the Secretary was that the dies and moulds were new and that the Secretary had not taken any decision as to whether the same had been set up at the appellant's unit in Haryana. Having come to the finding entirely without jurisdiction, that the machinery had not been set up in Haryana, the HLSC held the appellant to be entitled for tax exemption only to the extent of Rs.3,26,210/- as against the appellant's claim of Rs.54.08 lacs.

14. Under the scheme of Rule 28A, there is a clear hierarchy. The orders of the LLSC are appealable to the HLSC and the orders of the HLSC are appealable to the Secretary. In the first case, the order of the HLSC in appeal shall be final and in the second case the order in appeal of the Secretary shall be final. The orders appealed against merge into the orders of the appellate authorities. It is not open then for the HLSC to reopen the order of the Secretary which had attained finality on another ground. This would be permissible only if the order of the Secretary in appeal had been reviewed, modified or set aside, assuming, of course, that the order could have been reviewed, modified or set aside. The HLSC, in any event, had no power or jurisdiction to review, modify or set aside the order of the Secretary. A view to the contrary would lead to an absurdity. Such a view would entitle the HLSC to refuse to comply with the order of the appellate authority i.e. the Secretary *ad infinitum*. There would be no end to the proceedings for in that event irrespective of the number of times that the order of the HLSC is overruled and set aside in appeal by the Secretary, it would be open to the HLSC to reconsider the matter on another ground neither urged before nor considered by the Secretary, i.e., the appellate authority. This would in effect permit the HLSC to sit in appeal over the orders of the appellate authority.

15. The appellant challenged the order of the HLSC before the Haryana Tax Tribunal, which passed the impugned order. The Tribunal held that the order in appeal of the Secretary had not mentioned the amount for which the eligibility certificate was to be issued and that the order was passed only on the issue of the machinery being old or new. Had we come to the conclusion that it was open to the HLSC to revisit the matter on another ground, we would have remanded the matter to the Tribunal for there is no satisfactory consideration even on facts as to whether the machinery had been installed in Haryana or not. However, as we are of the view that the HLSC had no jurisdiction to reopen the issue on another ground, we do not

consider it necessary to do so. It would be an exercise in futility in view of our finding that the HLSC had no jurisdiction to reopen the issue. The Tribunal wrongly held that merely because an issue had not been considered in the appeal, it was open to the HLSC to suo motu reopen the case.

16. Once an order of the Secretary in appeal against the order of the HLSC attains finality, the HLSC cannot reopen the same case including on a ground which had not either been urged before the Secretary or pressed by the department. It is true, as contended by Ms. Talwar, the learned Deputy Advocate General, Haryana, that the appellate order passed by the Secretary recorded that the only question which was to be decided was whether the tools and dies were new when the appellant purchased the same. That however would make no difference. It would not entitle the lower authority, in this case the HLSC, to reopen a matter which has attained finality before the appellate authority.

17. The questions are, therefore, answered in favour of the appellant and against the respondents. The impugned order of the Tribunal and of the HLSC are set aside. The respondents are ordered and directed to comply with the order of the Secretary dated 09.05.2003.

PUNJAB & HARYANA HIGH COURT

CWP NO. 15403 OF 2015

Go to Index Page

ZIMIDARA TRADING COMPANY
Vs
STATE OF PUNJAB AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

13th August, 2015

HF ▶ Petitioner

Facts leading to cancellation of Registration Certificate being disputed, department directed to pass fresh speaking order in respect of the same.

REGISTRATION CERTIFICATE - RESTORATION OF – ONLINE RETURNS NOT ACCEPTED BY RESPONDENTS' SYSTEM – SUBSEQUENT CANCELLATION OF REGISTRATION CERTIFICATE – RESTORATION PRAYED FOR BEFORE HIGH COURT PLEADING CANCELLATION APPEARS TO BE DONE DUE TO UNACCEPTED RETURNS – ARGUMENT DISPUTED BY DEPARTMENT ON FACTS - DEPARTMENT READY TO PASS FRESH ORDERS AFTER GIVING OPPORTUNITY OF HEARING – WRIT DISPOSED OF – RESPONDENTS DIRECTED TO PASS A SPEAKING ORDER REGARDING DISCONTINUATION/ CONTINUATION OF REGISTRATION CERTIFICATE ALONGWITH OPPORTUNITY OF HEARING TO PETITIONER - *S. 21 & 24 OF PVAT ACT*

The petitioner had filed its online returns for the last quarter which were not accepted by the computer of department's system. The Registration Certificate has been cancelled in such circumstances as appears to the petitioner. A writ is filed for the restoration of the R.C.

The respondents have undertaken to pass a fresh order either allowing the benefit of R.C. or discontinuing it for which opportunity of hearing would be given to the petitioner.

Thus disposing of the writ, the respondents are directed to pass a speaking order regarding continuation/ discontinuation of Registration Certificate within a period of one week from the date of receipt of the order after allowing opportunity of hearing.

Present: Mr. Avneesh Jhingan, Advocate for the petitioner.

Mr. Piyush Kant Jain, Addl. AG, Punjab.

******

AJAY KUMAR MITTAL, J.

1. Grievance in this writ petition filed under Article 226 of the Constitution of India is to direct the respondents to restore the Registration Certificate (R.C.) of the petitioner firm.

2. The petitioner filed the online returns for the 4th quarter report of 2013-2014, which were not accepted by the systems of the respondents. In these circumstances, the petitioner has prayed that it appears that the Registration Certificate has been cancelled which be directed to be restored.

3. Learned State counsel has produced the record, wherein, an order cancelling the Registration Certificate was passed on 22nd August, 2013. This fact is seriously disputed by the learned counsel for the petitioner by relying upon Annexure P-2 to submit that the online returns filed in January, 2014 for 3rd quarter of 2013-14 had been accepted inspite of the same.

4. Faced with this situation, learned State counsel submitted that the respondents shall pass a fresh order in accordance with law either to allow the benefit of the Registration Certificate or to discontinue the Registration Certificate for which opportunity of hearing shall be afforded to the petitioner.

5. Accordingly, while disposing of the present writ petition, we direct that respondent No.2 shall pass a speaking order regarding continuation/discontinuing the Registration Certificate of the petitioner. Needless to say, this shall be done after affording an opportunity of hearing to the petitioner and by passing a speaking order in accordance with law. This shall be done within a period of one week from the date of receipt of certified copy of this order.

6. The original record be returned to the learned State counsel after receipt.

PUNJAB & HARYANA HIGH COURT

CWP 7696 OF 2015

Go to Index Page

SUPER THREADING (INDIA) PVT. LTD. AND ANOTHER
Vs
UNION OF INDIA AND OTHERS

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

24th April, 2015

HF ▶ Petitioner- assessee

Appeal not to be treated as non maintainable for failure of predeposit in view of recent amendment of section 35-F of Central Excise Act

INTERIM ORDER - PREDEPOSIT – CENTRAL EXCISE – APPEAL - ENTERTAINMENT OF – AMENDMENT OF SECTION 35-F OF THE ACT – DEMAND RAISED - APPEAL NOT ENTERTAINED ON GROUNDS OF FAILURE TO DEPOSIT 7.5% OF THE AMOUNT REQUIRED – WRIT FILED SEEKING STAY ON DEMAND RAISED – IN VIEW OF AMENDMENT OF SEC 35-F OF THE ACT HAVING COME INTO EFFECT FROM 6/8/2014 APPEAL NOT TO BE TREATED AS NON MAINTAINABLE – ORDERS SO BEING PASSED NOT TO BE CONSIDERED AS A STAY ON THE DEMAND – PETITIONER AT LIBERTY TO APPLY FOR INTERIM RELIEFS STAYING THE DEMAND ON THE BASIS OF EARLIER PROVISION – TRIBUNAL OPEN TO CONSIDER QUESTION REGARDING CONDITIONAL STAY OF DEMAND OR OTHERWISE – *S. 35-F OF CENTRAL EXCISE ACT, 1944*

The appeal filed by the petitioner before Tribunal was not entertained for non compliance of the condition of predeposit of 7.5% of the duty/ penalty as the case may be. A writ has been filed seeking stay of predeposit. The Hon'ble High Court has held that in view of the amended section 35-F of Central Excise Act, 1944 which came into effect on 6/8/2014, the respondents shall not treat the appeal as being non maintainable on account of failure to deposit. The orders being passed by the High court are however not to be considered as a stay of the demand. The petitioners will be entitled in the interim period to make an application for interim reliefs staying the demand on the basis of the basis of the provisions as they stood prior amendment. The Tribunal would be at liberty to consider whether to grant a stay conditional or otherwise.

Case relied upon:
M/s Muthoot Finance Ltd Vs Union of India and another 2015- TIOL -632 – HC Kerala

Editorial Note:
This is for the information of our readers that during the pendency of writ petition when an interim relief had been granted, an application filed for stay of pre deposit before the CESTAT has been decided on 11th August, 2015. In such a situation the writ petition has been rendered infructuous. The Hon'ble High Court has passed the final order on 13th August, 2015 vide CWP No. 7696 of 2015 granting liberty to the petitioners to challenge the order of CESTAT declining stay of pre deposit.

Present: Mr. Sudhir Malhotra, Advocate, for the petitioners.

******

S.J. VAZIFDAR ACTING CHIEF JUSTICE

1. Issue notice of motion to the respondents returnable on 29.06.2015.

2. The petitioners seek a stay of the pre-deposit. They state that instructions have been issued that the appeals are not to be entertained in the event of the amount of 7.5% of the duty and/or penalty, as the case may be, not being deposited. In view of the orders passed by a learned Single Judge of the Kerala High Court in the case titled M/s Muthoot Finance Ltd. Vs Union of India and another, 2015-TIOL-632-HC Kerala-ST, the respondents shall not treat the appeal as being not maintainable on account of the failure to deposit the amounts as per the amended Section 35-F of the Central Excise Act, 1944 which came into effect on 06.08.2014.

3. We, however, make it clear that this order of ours ought not to be considered as a stay of the demand. The petitioners will in the interim period be entitled to make an application for interim reliefs staying the demand on the basis of the provisions as they stood prior to 06.08.2014. It would be open to the Tribunal to consider whether to grant a stay conditional or otherwise.

PUNJAB & HARYANA HIGH COURT

CWP NO. 13034 OF 2015

Go to Index Page

MACHINO POLYMERS LIMITED
Vs
STATE OF HARYANA AND ANOTHER

A.K. MITTAL AND RAMENDRA JAIN, JJ.

18th August, 2015

HF ▶ None

Pursuant to the reply filed against the show cause notice, the department is directed to decide the case of petitioner by passing a speaking order.

NOTICE – LACK OF ACTION ON PART OF DEPARTMENT – REPLY FILED AGAINST THE SHOW CAUSE NOTICE ISSUED – NO ACTION TAKEN BY DEPARTMENT THEREON – WRIT FILED FOR QUASHING OF NOTICE – DEPARTMENT DIRECTED TO DECIDE THE CASE BY PASSING A SPEAKING ORDER AFTER HEARING THE APPELLANT WITHIN THE PERIOD SPECIFIED – *S. 47 OF HGST ACT*

Facts:

The petitioner was a manufacturer of polypropylene at Gurgaon. The returns were filed treating the goods as general goods taxable @ 10%. Pursuant to orders passed in the case of ***Excise and Taxation Commissioner Vs. SK and Company Pvt. Ltd.,*** *the department concluded that the goods in question were plastic goods. Hence, Revisional authority revised the assessment order by imposing additional liability. A show cause notice was issued by respondent to the petitioner for penal action and a reply was filed in this regard by the petitioner. A writ is filed stating that no action has been taken despite filing of reply and hence the notice be quashed.*

Held:

The writ is disposed of by directing the respondent to decide the case by passing a speaking order after hearing the appellant within a period of one month.

Present: Mr. Amar Pratap Singh, Advocate and
Mr. Amrinder Singh, Advocate for the petitioner.

Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

******

AJAY KUMAR MITTAL, J.

This is an application under Section 151 of the Code of Civil Procedure for placing on record Annexures P-3 to P-5.

Annexures P-3 to P-5 filed along with the application are taken on record subject to all just exceptions. CM stands disposed of accordingly.

CWP NO. 13034 OF 2015

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the show cause notice dated 28.5.2015 (Annexure P-1) issued by respondent No.2.

2. The petitioner is a dealer registered under the Haryana General Sales Tax Act, 1973 (in short "the Act") as also under the Central Sales Tax Act, 1956 and is filing prescribed quarterly returns and discharging tax obligations. It is engaged in the business of manufacture of polypropylene at Gurgaon. The petitioner was granted eligibility certificate on 17.9.1999 and exemption was granted for the period from 28.11.1996 to 27.11.2003 for a maximum quantum of ₹1528.31 lacs. The petitioner filed returns for the assessment year 1997-98 by treating their product as general goods taxable @ 10%. It also filed returns for the assessment year 2001-02 on the similar lines. The department was treating the goods manufactured by the petitioner as general goods liable to tax @ 10% and not plastic goods. This Court vide order dated 17.3.2009 in the case of Excise and Taxation Commissioner v. SK and Company Private Ltd. held that the goods in question were taxable as plastic goods. In pursuance thereto, the revisional proceedings under Section 40 of the Act were initiated against the petitioner for the assessment year 2001-02. The revisional authority vide order dated 13.8.2012 (Annexure P-2) revised the assessment order dated 11.4.2005 for the assessment year 2001-02 by imposing additional liability of ₹ 51,88,606/-. A show cause notice dated 28.5.2015 (Annexure P-1) was issued by respondent No.2 to the petitioner for penal action under Section 47 of the Act. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that to the show cause notice dated 28.5.2015 (Annexure P-1) issued by respondent No.2, the petitioner has filed reply, but no action has so far been taken thereon.

4. After hearing learned counsel for the parties, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to decide the case of the petitioner, in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order.

PUNJAB & HARYANA HIGH COURT

CWP NO. 17251 OF 2015

Go to Index Page

UPASNA ENTERPRISES
Vs
STATE OF PUNJAB AND ANOTHER

A.K. MITTAL AND RAMENDRA JAIN, JJ.

21st August, 2015

HF ▶ Petitioner –dealer

Locking of TIN before providing opportunity of hearing to the dealer set aside in view of violation of natural justice.

NATURAL JUSTICE – TIN NUMBER – LOCKING OF – PETITIONER'S TIN NUMBER LOCKED BY DEPARTMENT – WRIT FILED- CONTENTION REGARDING LACK OF OPPORTUNITY OF HEARING PRIOR TO LOCKING NOT DISPUTED BY DEPARTMENT – LOCKING OF TIN SET ASIDE IN VIEW OF VIOLATION OF NATURAL JUSTICE – FRESH SPEAKING ORDER TO BE PASSED BY RESPONDENT AFTER HEARING THE PETITIONER – *RULE 51 A OF PVAT RULES*

The petitioner's TIN number had been locked by the department. A writ has been filed praying for its opening. It is not disputed by the respondents that before locking the TIN number the petitioner was not granted an opportunity of hearing. The court has held that rules of natural justice ought to be observed before taking any adverse action against the party. Setting aside the locking of TIN, the respondents are directed to pass a fresh speaking order after affording an opportunity of hearing to the petitioner.

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

Mr. Jagmohan Bansal, Addl. AG, Punjab

******

AJAY KUMAR MITTAL, J.

1. The petitioner has approached this Court under Articles 226 and 227 of the Constitution of India for issuance of a writ of mandamus directing the respondents to open the TIN (Tax Identification Number) of the petitioner, which was locked vide notice dated 11.8.2015(Annexure P-1).

2. It has been claimed that the petitioner had produced the necessary account books and there is no occasion for the respondents to have locked the TIN.

3. Notice of motion was issued. Reply has been filed today in Court and the same is taken on record.

4. On a query being put to learned counsel for the respondents as to whether any opportunity of hearing was provided to the petitioner before locking the TIN on 11.8.2015, he does not dispute the fact that no hearing CWP No. 17251 of 2015 -2- was afforded to the petitioner prior thereto.

5. The principles of natural justice warrant that an opportunity of hearing is provided to the party before taking any adverse action against it including locking of the TIN.

6. In such circumstances, while setting aside the locking of TIN vide Annexure P-1, we direct the petitioner to appear before respondent No. 2 on 24.8.2015 along with the relevant record. Respondent No. 2 is directed to pass a fresh speaking order in accordance with law by 26.8.2015, after affording an opportunity of hearing to the petitioner.

7. Petition stands disposed of.

PUNJAB VAT TRIBUNAL

APPEAL NO. 540 OF 2013

Go to Index Page

CACHET PHARMACEUTICAL PVT. LTD.
Vs
STATE OF PUNJAB

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

14th July, 2015

HF ▶ Appellant

Appellant has to lead evidence that a company having two different TIN numbers (in the same state) could enjoy the rights of stock transfer amongst its branches.

SALE – BRANCH TRANSFER – TAXABLE PERSON – REGISTERED DEALER – NATURE OF TRANSACTION BETWEEN BRANCH OFFICES WITH TWO DIFFERENT TIN NUMBERS IN SAME STATE – TWO BRANCHES OWNED BY APPELLANT FIRM IN CITY A AND B RESPECTIVELY IN PUNJAB – BRANCHES REGISTERED UNDER DIFFERENT TIN NUMBERS– GOODS SENT ON BRANCH TRANSFER BASIS FROM A TO B – TAX DEPOSITED BY B – ALLEGED BY DEPARTMENT THAT THE TRANSACTION AMOUNTED TO SALE BY A AS TWO DIFFERENT TIN NUMBERS RENDERS THE BRANCHES AS SEPARATE ENTITIES LIABLE TO PAY TAX – BEING A TAXABLE PERSON A OUGHT TO HAVE COLLECTED TAX FROM ANOTHER TAXABLE PERSON B AND THE LATTER TO BE RESPONSIBLE FOR PAYING TAX ON VALUE ADDITION- APPEAL BEFORE TRIBUNAL – HELD NO EVIDENCE TO SHOW WHETHER DUAL TIN NUMBERS ISSUED BY CONSENT OF GOVERNMENT – LACK OF PROOF REGARDING THE BRANCHES WORKING UNDER SAME CONSTITUTION – NO ACCOUNT PRODUCED SHOWING ITC NOT CLAIMED TWICE BY APPELLANT – APPELLANT GRANTED AN OPPORTUNITY TO ESTABLISH WHETHER COMPANY REGISTERED UNDER TWO TIN NUMBERS ELIGIBLE TO ENJOY STOCK TRANSFER RIGHTS – MATTER REMITTED FOR FRESH HEARING – APPEAL ACCEPTED – *S. 21, S. 2(zn) OF PVAT ACT*

Facts:

The appellant had its branch offices at Jalandhar and Zirakpur in the state of Punjab registered under two different TIN numbers. Both the branches are owned by the appellant firm and working under same title and have same constitution. The goods were sent from Zirakpur branch to the Jalandhar branch on stock transfer basis. The department contended that the branch at Jalandhar was a separate entity as it had a different TIN number and hence the taxable person at Zirakpur had to charge VAT from other taxable person at Jalandhar. Though the branch at Jalandhar had deposited the tax, yet it was required to deposit it on value addition only by claiming ITC for the amount of tax to be charged by the taxable person at Zirakpur who had separate TIN number and separate identity. Consequently the transfer of

goods from in this case amounted to sale and not branch transfer and the tax ought to have been deposited by the Zirakpur company. An appeal was filed before Tribunal.

Held:

That there is no evidence regarding the issue of dual TIN numbers to the company, as per rules or as per the consent of the government. Also, it is not proved whether both offices worked under the same constitution. The appellant has to produce account books to show it has not claimed ITC twice. As the appellant is ready to furnish evidence to establish nature of transaction and lead with evidence as to whether the company has the right to enjoy stock transfer rights while possessing two different TIN numbers, the appeal is accepted and case is remitted back to the AETC to decide after providing opportunity of hearing to the appellant to lead evidence in his favour.

Present: Mr. Aveneesh Jhingan, Advocate counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State.

******

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

1. This appeal is directed against the order dated 23.7.2013 passed by the Deputy Excise and taxation Commissioner (A), Patiala Division, Patiala dismissing the appeal against the order dated 10.10.2012 passed by the Assistant Excise and Taxation Commissioner-cum-Senior Auditor, S.A.S. Nagar, Moahli, creating an additional demand of Rs. 9,13,541/- while framing the assessment for the year 2008-09.

2. The appellant is a unit having its head office in Mumbai and Branches at various places including that in Punjab at Jalandhar and Zirakpur. The firm is dealing in Pharmaceutical Products. It would be significant to mention that the firm has two Tin numbers in the State of Punjab, one at Zirakpur and other at Jalandhar. According to the Counsel for the appellant while applying for sales tax registration number at Zirakpur, the fact regarding the allotment of the earlier Tin number at Jalandhar was brought to the notice of the Registering Authority and it was disclosed that the firm had Tin No. 03131048600 at Jalandhar. However, both the branches are owned by the appellant firm and working under the same title and having common constitution. The goods worth Rs. 14,38,855/- taxable @ 12.5% percent were sent to its branch at Jalandhar. Similarly, the goods worth Rs. 40,34,602/- were sent for sale on consignment basis to M/s Krishna Agencies, Jalandhar which were taxable @ 4%. The total value of the goods returned from branch and commission agent taxable @4% and 12 ½ % have been shown worth Rs. 4,71,488/- and Rs. 38,408/- respectively. Thus after deducting stock return, the net value of stock transfer as well as goods went for sale on consignment basis comes to Rs. 24,76,367.73/-. The Assistant Excise and Taxation Commissioner-cum-Senior Auditor, Mohali accepted the contention of the appellant regarding the consignment to M/s Krishna Agencies on consignment basis. On the basis of the judgment passed by the Hon'ble Delhi High Court, however, it rejected the appeal of the appellant regarding the branch transfer from Zirakpur to Jalandhar. On the ground that since the branch at Jalandhar had a separate TIN Number and as such the branch at Jalandhar has to be treated as separate entity, therefore, taxable person at Zirakpur had to charge VAT from other taxable person at Jalandhar, who were duly registered and is a taxable person as defined u/s 2 (zn) of Act of 2005. It was further observed that though the tax was deposited by the branch at Jalandhar, yet it was required to be deposited on value addition only by claiming ITC for the amount of tax to be charged by a taxable person at Zirakpur who had independent Tin number and had separate identify as a taxable person in accordance with Section 21(5) of the Punjab Value Added Tax Act, 2005. Thus, it cannot be treated as branch transfer but a sale to a different taxable person.

3. Consequently, the authority declined the claim of stock transfer to branch at Jalandhar. The appeal filed by the appellant was dismissed.

4. In nutshell argument of the counsel for the appellant is that there is not much difference between the transfer by consignment and branch transfer. In the former case, the goods are transferred to the agent who sells the same on behalf of the company and deposits the tax. But the agent certainly has an independent entity having a different Tin Number, whereas in case of branch transfer the company transfers the goods/products to its different branches established at different places with the prior information to the Sales Tax Department and the said branch after selling the goods deposits the tax.

5. In the present case, there is not much dispute that the tax was deposited by the Jalandhar Branch of the appellant company. But the department disputes that since the branch at Jalandhar had an independent Tin number, therefore, it has independent entity. Consequently, the transfer of the goods from the office of the company at Zirakpur who had registered Tin number to the company at Jalandhar amounts to sale and not branch transfer, therefore, the appellant's company office at Jalandhar would have deposited value addition tax and the tax should have been deposited by the company at Zirakpur, therefore, there was evasion of tax by misuse of the two different Tin Numbers.

6. Arguments heard. Record perused.

7. The case involves two types of transfers, one by way of branch transfer to the company having same constitution at Zirakpur to the company at Jalandhar. Second case is of transfer by consignment. The goods were sent to the consignee agent at Delhi for sale. The consignee agent sold the goods of the appellant in the terms of the written agreement which provided that he will sell the goods on behalf of the appellant and would deposit tax. The VAT Officer, however, have rejected the branch transfer, but accepted the consignment transfer. While relying upon the judgments as delivered by the Hon'ble Supreme Court of India as well as the judgment delivered by the Allahabad High Court in the case of Hindustan Metal Works vs. Commissioner of Sales Tax reported as 27 STC 555, the Madras High Court judgment delivered in case of Mahendra Kumar Ishwarlals & Co. Vs State of Madras (1968) 21 STC 72 and the Delhi High Court judgment delivered in the case of Havell's India Ltd. vs. Commissioner of Vlaue Added Tax and Another (2010) 37 PHT 551 (Del) and observed that the goods sent by a taxable person to its consignment agent in pursuance of a contract for sale to M/s Krishana Agency, Jalandhar does not amount to sale. As such the sale was deducted out of its GTO and regarding to the stock transfer by the Jalandhar does not amount to sale. As such the sale was deducted out of its GTO and regarding to the stock transfer by the company at Zirakpur to the company at Jalandhar, the Assistant Excise and Taxation Commissioner has disallowed the ITC only on the ground that since both companies had different Tin numbers, therefore, the taxable person at Zirakpur are required to charge used that the Branch Officer at Jalandhar has not availed any input tax against the product. Both the offices i.e. at Zirakpur and Jalandhar are working under the same constitution. It was also urged that had Zirapur branch charged tax on the said transactions, then the said branch was liable to pay tax. The Jalandhar Branch would avail input tax credit as they have sold the goods. Had Zirapur branch deposited the tax and Jalandhar branch had deposited the VAT then additional revenue had accrued to the State exchequer.

8. As a matter of fact, sufficient evidence is missing in the case. There is no evidence on the record that whether the Tin number was issued twice to the company as per rules as well as the consent of the Government, there is also nothing to show that both offices were working under the same constitution. The appellant has not placed on record, the account books in order to show that ITC has not been claimed twice. The nature of transaction could be established by producing the invoice/delivery challan, the G.R. and other documents. To meet with this

requirement, the counsel for the appellant has offered to lead evidence if an opportunity is granted to him for this purpose.

9. In these circumstances ends of justice would meet if opportunity, as required by the appellant, is granted to lead sufficient evidence in order to establish that even if there are two Tin numbers of a company and the company having distinct Tin numbers could enjoy the right to stock transfer. The appellant has further sought time to produce time to establish, by documents, as to whether transaction in question is a stock transfer or a sale itself. The opportunity if granted would impart substantial justice to the appellant otherwise, the damage suffered by him would be huge. The necessary documents sought to be produced can't be manipulated, however, respondents would be at liberty to rebut those documents.

10. Resultantly, this appeal is accepted, impugned order is set-aside and the case is remitted back to the Assistant Excise and Taxation Commissioner, Patiala to decide the case afresh after providing opportunity to the appellant to lead evidence in his favour.

11. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 225 OF 2012

Go to Index Page

IDASA INDIA LTD.
Vs
STATE OF PUNJAB

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

16th July, 2015

HF ▶ Assessee

Assessment in remand has to be made by the same officer whose order has been challenged in appeal.

JURISDICTION – ASSESSMENT - TERRITORIAL JURISDICTION OF DESIGNATED OFFICER TO FRAME ASSESSMENT – ADDITIONAL DEMAND RAISED BY DESIGNATED OFFICER OF DISTRICT A – WRIT FILED – ORDER SET ASIDE FOR FRESH ASSESSMENT BY AUTHORITY OUTSIDE DISTRICT 'A' – CASE TRANSFERRED TO DISTRICT B AS A RESULT THEREOF– DEMAND RAISED ONCE AGAIN BY OFFICER OF DISTRICT 'B'– APPEAL FILED – MATTER REMITTED BACK – CONSEQUENTLY ASSESSMENT FRAMED BY DESIGNATED OFFICER OF DISTRICT 'A' RAISING ADDITIONAL DEMAND - APPEAL BEFORE TRIBUNAL QUESTIONING JURISDICTION OF OFFICER OF DISTRICT 'A' WHEN ALREADY CASE SENT OUTSIDE THE SAID DISTRICT FOR DECISION – NO NOTIFICATION SHOWN BY RESPONDENT CONFERRING POWER UPON THE OFFICER OF DISTRICT 'A' TO TAKE COGNIZANCE OF THE CASE AND FRAME ASSESSMENT – MATTER REMITTED TO OFFICER OF DISTRICT 'B' FOR FRESH ASSESSMENT AS AGREED BY BOTH PARTIES - APPEAL ACCEPTED- *S. 29 OF PVAT ACT*

Facts:

For the year 2005-06 assessment was framed by the Excise and Taxation officer – cum-Designated officer, Sangrur creating an additional demand. A writ was filed which led to setting aside of demand.The court directed that the assessment be framed by a different Assessing Authority of a District outside District Sangrur. The same was transferred to Mansa officer. On demand again being raised, an appeal was filed which was accepted and the case was remitted back. Consequently, the Designated Officer, Sangrur framed the assessment raising an additional demand. On dismissal of appeal against this order, an appeal is filed before the Tribunal. The appellant has contended that when the case was never entrusted to ETO Sangrur; rather the case was sent outside Sangrur for decision, the Officer at Sangrur had no jurisdiction to frame the assessment. It could either be decided by same officer entrusted by Commissioner or one having territorial jurisdiction.

Held:

No notification has been shown which confers power on the ETO, Sangrur to take cognizance of the case and to exercise the jurisdiction to frame the assessment over the case. Therefore, as agreed between the parties, the orders are set aside and sent back to the ETO, Mansa for fresh assessment after hearing the appellant. The appeal is accepted.

Present: Mr. S.P. Garg, Advocate Counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

******

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

1. This appeal is directed against the order dated 12.9.2012 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala dismissing the appeal against the order dated 2.4.2012 passed by the Excise and Taxation officer-cum-Designated Officer, Sangrur creating an additional demand of Rs. 2,30,75,184/- while framing the assessment for the years 2005-06.

2. The provisional assessment was framed by the Designated Officer vide order dated 27.8.2006 which was challenged by way of writ petition before the Punjab and Haryana High Court, whereupon, the Hon'ble High Court set-aside the demand and it further directed that the assessment be framed by a different Assessing Authority of a District outside district Sangrur. Accordingly, the same was transferred to the Designated Officer, Mansa. Whereupon, the Designated Officer, Mansa, vide order dated 25.8.2009, created an additional demand of Rs. 1,61,07,305/-. Being dis-satisfied the appellant field an appeal which was accepted on 29.4.2011 and the case was again remitted back. Consequently, the Designated Officer, Sangrur framed the assessment in question on 2.4.2012 creating an additional demand of Rs. 2,30,75,184/-. The appeal filed by the appellant against the said order dated 12.9.2012 was also dismissed.

3. The argument raised by the counsel for the appellant in the case is that when the case was never entrusted to Excise and Taxation Officer, Sangrur. Rather, on the directions o the Hon'ble High Court, had sent the case outside Sangrur District for decision, then authority at Sangrur had no jurisdiction to frame the assessment. The case could be decided either by the officer to whom, it was entrusted by the Excise and Taxation Commissioner or by the officer having territorial jurisdiction over the area. The Counsel for the respondents have given the following reply to the aforesaid query in its written submissions which reads as under:-

> "*During the assessment proceedings for the assessment year 2006-07 it came to the notice of designated officer that the case relating assessment order for the year 2005-06 has been remanded by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala, back to the designated officer. Therefore, a copy of the remand order of the Deputy Excise and Taxation Commissioner (A) was obtained by personal efforts. On going through the remand order, it was noticed that the Hon'ble Deputy Excise and Taxation Commissioner (A) had directed to the designated officer to frame the assessment within two months whereas, Six months had already lapsed and nobody had taken up the case for framing the reassessment. Therefore, in the interest of Govt. revenue, Designated Officer having posted in the Sangrur District and having jurisdiction over the whole of the District initiated the reassessment proceedings immediately and issued a notice dated 11.11.2011 for 28.11.2011. The dealer was directed to appear before the Designated Officer along with complete account books, purchase and sale bill books. However, Sh. Avtar Bansal, GM of the company appeared before the Designated officer and*

the case was adjourned to 22.12.2011 on the plea that his counsel was away to VAT Tribunal Chandigarh. Sh. Avtar Bansal, GM of the company along with Sh. K.C. Syngal Counsel of the dealer appeared before the Designated Officer on various occasions. During the assessment proceedings, the dealer was confronted with the fact that as the dealer had sold skimmed milk weighing 1,20,54,085 Kg having 0.5% fat to M/s Nestle, Moga and Smalkha (Haryana), therefore, the dealer was liable to pay purchase tax on the amount of fresh milk purchased for manufacturing desi ghee, skimmed milk powder (which are taxable under the Act ibid) and the amount of skimmed milk of the said quantity. However, Appellant denied having extracted fat out of the said milk, rather he claimed to have purchased skimmed milk as such from the dairies and milk vendors from within the state of Punjab, concentrated the same and sold as such to M/s Nestle, Moga and Smalkha (Haryana) which is tax free under the Punjab VAT Act 2005. The appellant was directed to supply complete addresses of all the milk vendors and milk dairies from which he has purchased the skimmed milk. It is due to the fact that either of the two i.e. the appellant itself or the milk vendors/dairies, has to pay purchase tax on the whole amount of fresh milk, purchased from within the State of Punjab for manufacturing taxable goods such a design ghee and skimmed milk powder. However, despite of several opportunities afforded to the dealer, the appellant failed to supply the requisite information except only the names of the milk vendors/dairies without any address. Rather, the appellant bluntly denied having the addresses of any of the said milk supplying vendors, although the payment has been made through cheques and might be purchasing milk from them, these days."

4. From the written submissions, it transpires that the Designated Officer claimed that he had territorial jurisdiction over whole of the Sangrur District and thus was competent to frame the failed to point out any such notification which may confer powers upon the Excise and Taxation Officer, Sangrur to take cognizance of the case and to exercise the jurisdiction to frame assessments over the cases pending in the District Sangrur. The adjudication of the assessment in this manner, without having power over that area, would create a chaos and resultantly, the system would end in failure both ways, either the favourites would be put in advantageous position or the persons having no cordial relations would be put to loss. As such the order passed by the Excise and Taxation Officer, Sangrur in the case, which was not within the territorial jurisdiction of the Excise and Taxation Officer, Malerkotla was quite illegal. Mrs Sudeepti Sharma, Deputy Advocate General has failed to point out as to how the Excise and Taxation Officer, Sangrur had territorial jurisdiction to try the case of the appellant. However, she has pointed out that a case relating to the assessment year 2005-06 was dealt with by the High Court and on the basis of the order passed by the High Court, the Excise and Taxation Commissioner had directed to the Excise and Taxation Officer, Mansa to try the case. Therefore, the case could be sent or tried by the Excise and Taxation Officer, Mansa or Malerkotla. In this case, it has also been pointed out that even inspite of the directions of the Excise and Taxation Commissioner for trial of the case by the Excise and Taxation Commissioner, Mansa. The excise and Taxation Officer, Sangurur has also framed the assessment for the year 2006-07 which is also completely in violation of the orders passed by the Excise and Taxation Commissioner, Patiala.

5. After hearing both the parties, in order to give a peaceful end of the controversy and in order to remove the fear of the appellant that he would thereby be seriously prejudiced, if the orders passed by the Designated Officer are allowed to stay, both the parties agree that the orders of the authorities be set-aside and the case be sent back to the Excise and Taxation

Officer, Mansa for framing the assessment afresh after hearing the appellant and considering the documents as may be produced by him.

6. In the wake of the aforesaid discussion, I accept the appeal, set-aside the impugned orders and send the case to the Excise and Taxation Officer, Mansa for framing the assessment afresh after providing an opportunity to the appellant of being heard and leading evidence. The appellant is directed to appear before the Excise and Taxation Officer, Mansa on 4.8.2015.

7. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 47 OF 2015

Go to Index Page

KANNAN INTERNATIONAL
Vs
STATE OF PUNJAB

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

30th July, 2015

HF ▶ Revenue

Compliance of condition of predeposit for entertainment of appeal cannot be done away with as assessment order is neither void nor passed without jurisdiction.

APPEAL - PREDEPOSIT – ENTERTAINMENT OF – ADDITIONAL DEMAND RAISED ON ACCOUNT OF WRONGLY CLAIMED INPUT TAX CREDIT – DISMISSAL OF FIRST APPEAL DUE TO FAILURE OF PREDEPOSIT - APPEAL FILED BEFORE TRIBUNAL FOR WAIVER OF CONDITION OF PREDEPOSIT ON THE BASIS THAT THE ASSESSMENT ORDER IS ILLEGAL AND WITHOUT JURISDICTION- ORDER NOT FOUND VOID – MERITS OF THE CASE TO BE SEEN DURING ARGUMENTS – APPELLANT OUGHT TO COMPLY WITH THE PROVISION OF S. 62 LEST THE REVENUE MAY SUFFER HUGE LOSS – APPELLANT GIVEN TIME TO DEPOSIT THE AMOUNT – APPEAL DISMISSED – *S. 62(5) OF PVAT ACT*

Facts:
It was detected that the dealer claimed Input Tax Credit without any purchase invoices. A demand was raised amount to Rs 19,75,557/- on account of non production of the invoices. An appeal was filed before the DETC which was rejected due to failure to deposit 25% of the additional demand raised. An appeal was filed before Tribunal contending that the demand was illegal and hence, the appellant was not bound to comply with the provision of S. 62 of the Act.

Held:
That the order is neither void nor without jurisdiction. The merits of the case would be seen during arguments. The amount deposited is subject to refund in case the appellant succeeds.

Due to non fulfillment of the condition u/s 62(5) the revenue may suffer huge loss. The public money if stays at the hands of the appellant, the development would be stalled and state is likely to suffer more loss. The appellant has a huge turnover and is not unable to deposit the amount. However, more time is granted to the appellant to deposit the amount. The appeal is dismissed.

Present: Mr. J.S. Bedi, Advocate counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate general for the State.

******

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

1. The case for the assessment year 2012-13 was scrutinized after issuing notice u/s 29(2) of the Punjab Value Added Tax Act, 2005 by the Excise and Taxation Officer. On scrutiny, it was detected that the dealer has been claiming ITC without purchase invoices; he failed to produce the purchase invoices showing the tax @ 8.5%. Therefore, the Designated officer vide order dated 27.12.2013 created additional demand of Rs. 19.75,557/-. The appellant preferred the appeal before the Deputy Excise and Taxation Commissioner, Jalandhar Division, Jalandhar which was dismissed on 2.9.2014 for non compliance of Section 62(5) of the Punjab Value Added Tax Act. Hence, this second appeal.

2. Argument heard. Record perused.

3. The case of the appellant mainly is that demand created is illegal, therefore he is not bound to deposit 25% of the additional demand in compliance with the provisions of Section 62(5) of the Act.

4. To the contrary, the Counsel for the respondents has stated that no appeal could be entertained without deposit of 25% of the total amount of additional demand, penalty and interest.

5. Before pursing to decide the case, I need to reproduce Section 62(5) of the Act which reads as under:-

> ***Section 62(5):-*** *No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of additional demand, penalty and interest, if any.*
>
> *EXPLANATION:- For the purposes of this sub-Section "additional demand" means any tax imposed as a result of any order passed under any of the provisions of this Act or the rules made thereunder or under the Central Sales Tax Act, 1956 (Act No. 74 of 1956)."*

6. This provision was amended w.e.f. 17.8.2011 by way of Notification in the Government Gazette. The present assessment is for the year 2012-13. Therefore, the amended provisions of Section 62(5) of the Act would apply in the facts of the present case.

7. Having perused the order passed by the Designated Officer, the same is neither void nor without jurisdiction, so as to call for any relaxation/s 62(5) of the Act. The merits of the case would be examined after the appeal is heard on merits. If the appeal is decided in favour of the appellant then the amount so deposited would be refunded/adjusted. The taxing statues introduced such provisions in order to create a check over the institution of false and frivolous cases with an intention to put off the responsibility and to gain time with intention not to deposit the tax. The money loss is no irreparable loss. However, for non fulfilment of the condition under section 62(5) of the Act the revenue may suffer huge loss. The public money if stays at the hands of the appellant, the development would be stalled as such the state is likely to suffer more loss. Thus, the appellant was justified in not entraining the appeal without compliance of the said provisions. The appellant is a taxable person and has huge turn over of Rs. 46,18,91,994/- therefore, he can't be said to be a poor person unable to deposit 25% of the additional demand. However, it would be expedient in the interest of justice if the appellant is still granted more time to deposit 25% of the additional demand.

8. Resultantly, this appeal is dismissed, however, the appellant is provided two months more time to deposit 25% of the additional demand of tax, penalty and interest. In case, he complies with the provisions of Section 62(5) of the Act, the appeal shall be entertained, otherwise, the order passed by the Deputy Excise and Taxation Commissioner shall remain intact.

PUNJAB VAT TRIBUNAL

APPEAL NO. 172 OF 2014

Go to Index Page

JAI BHOLE BRICKS INDUSTRIES
Vs
STATE OF PUNJAB

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

3rd August, 2015

HF ▶ Assessee

Fresh assessment to be framed due to violation of rules of natural justice before passing assessment order and non speaking order being passed on appeal against it.

ASSESSMENT – NATURAL JUSTICE – NOTICE – ASSESSMENT YEAR 2009-10 – DEMAND RAISED ON ACCOUNT OF DISPARITY BETWEEN LARGELY PURCHASED RAW MATERIAL AS COMPARED TO LOW EXTENT OF PRODUCTION AND SALE – GROSS TURNOVER AND TAX ASSESSED UPHELD ON APPEAL – INTEREST QUASHED – APPEAL BEFORE TRIBUNAL – ASSESSMENT ORDER PASSED IN ABSENCE OF ASSESSEE – NO PROPER SERVICE OF NOTICE PRIOR THERETO – ASSESSEE NOT CONFRONTED WITH THE DOCUMENTS WHICH WERE MADE BASIS OF ASSESSMENT – ASSESSMENT ORDER LACKING DETAILS OF SUCH DOCUMENTS – ORDER PASSED BY FIRST APPELLATE AUTHORITY NOT REASONED – APPEAL ACCEPTED – MATTER REMITTED TO DESIGNATED OFFICER TO DECIDE AFRESH- *S. 29 OF PVAT ACT.*

The appellant was engaged in manufacturing and sale of bricks. A demand was raised by the designated officer on account of purchases of raw material shown to a large extent whereas production and sale was on lower side. On filing of appeal, the interest levied was quashed but the assessment of GTO and tax was upheld. On further appeal before Tribunal, it is held that though the assessment order mentioned that notices were issued to the appellant before framing of assessment yet no date of notices and to whom it was issued is mentioned. Also, the case was decided in the absence of the appellant which cannot be said to be a proper notice. The documents relied upon for framing of assessment were never confronted to the appellant. No detail is revealed by the order regarding documents relied upon by the designated officer. The order passed by the appellate authority lacks reasons. Accepting the appeal, the case is remitted back to the Designated officer to decide afresh.

Case referred:
M/s Steel Authority of India Ltd 32 PHT 122

Present: Mr. J.S. Bedi, Advocate counsel for the appellant

Mrs. Sudeepti Sharma, Deputy Advocate General for the State.

******

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

1. This appeal is directed against the order dated 28.2.2014 passed by the Deputy Excise and Taxation Commissioner (A), Jalandhar Division, Jalandhar (herein referred as Ist appellate authority) whereby, he while rejecting the appal, observed that the Designated Officer rightly determined the GTO for the assessment year 2009-10 and tax assessed accordingly and no interest is leviable. Therefore, the interest levied was quashed.

2. The facts of the case are that the appellants are registered as taxable persons under the Punjab Value Added Tax Act and running brick klin and engaged in the sale of bricks. The Designated Officer while finalizing the assessment noticed that the taxable person has shown purchases of raw material to a large extent and shown the product and sale of bricks on lower side. The Designated Officer after examining the case and applying the industrial norms of BKO Industry, created additional demand to the tune of Rs. 2,37,097/-.

3. In order to assail the finding of both the authorities, the appellant preferred the appeal which was also dismissed on 28.2.2014.

4. While assailing the impugned orders, the appellant has urged that the notice issued by the Designated Officer was not in accordance with the provisions of the Act and the Rules. He has passed bald and cryptic order and has tried to settle things in a philosophical manner. The order has been passed without referring to any provision of law. The orders are non speaking and passed without application of mind. No norm has been cited on the basis of which the production of particular quantity of bricks could be made on the consumption of one ton of coal. The Designated Officer has fixed the turn over by making over vogue observations, without quoting any specific rules, and only on the basis of coal consumed without appreciating the following circumstances:

1. Quality of the coal;
2. Weather conditions prevalent in the area where B.K.O. is located.
3. Quality of the soil.
4. Expenses over the employees and other labour working over the BKO.
5. Percentage of production of brocks against one ton of coal.

5. The Designated Officer has wrongly followed the norms fixed by Civil Supplies Department and has also not taken care of the basis on which assessment was made quo the other taxable persons in the similar trade. It was further urged that vide notification framed u/s 3 of the Act, the Excise and Taxation Officer was not conferred with the powers to levy interest u/s 32 of the Punjab Value Added Tax Act, 2005.

6. To the contrary, the Counsel for the respondents has supported the judgment by urging that the same is well founded and will respond. The appellant did not appear before the Designated Officer despite service.

7. Having considered the rival contentions, the case relates to the assessment year 2009-10. The Annual statement was filed on time. The order framing the assessment was passed on 11.10.2013. Though, it is mentioned in the order that notices were issued to the appellant before framing the assessment yet no date of notices, when issued, has been mentioned. Record reveals the issuance of two notices, but it is not clear as to when and upon whom these notices were served. From 30.9.2013, the case was adjourned to 11.10.2013. On that day, it was not mentioned, in the said order, that the appellant was served for 30.9.2013, but on 11.10.13 itself, the case was decided in the absence of the appellant which can not be said to be a proper service. Though the order reveals that some accepted formula and industrial norms of BKO industry were made the basis of the assessment yet the appellant was not

confronted with those documents. The order does not reveal the details of the documents relied upon by the Designated Officer. The order appears to be non speaking. The counsel has relied upon the judgment M/s Steel Authority of India Ltd. reported in 31 PHT page/122, wherein it was observed as under:-

> *"Reason is the heart beat of the every conclusion. It introduces clarity in any order and without the same it becomes life less. Giving the reason is one of the fundamentals of the good administration."*

The settled cannons of law also make it crystal clear that the adverse party must be confronted with the material used against him, which is made the basis of the order passed against him. The order passed by the appellate authority lack reasons. The order is bad in as much as the appellant was not properly served by the Designated Officer before passing the order dated 11.10.2013. The 1st appellate authority has also not assigned any reasons for his decision. Only four lines order was passed which is not sufficient and hardly meets with the requirement of law requiring passing of a reasoned order.

8. Resultantly, this appeal is accepted, impugned orders are set-aside and the case is remitted back to the Designated Officer to decide the same afresh. The appellant is directed to appear before the Designated Officer on 18.8.2015.

9. Pronounce din the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 75 & 76 OF 2014

Go to Index Page

AARTI INTERNATIONAL LTD.
Vs
STATE OF PUNJAB

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

3rd August, 2015

HF ▶ Assesee – dealer

ITC cannot be denied on purchase of cotton merely because entire sales are routed from an exempted unit of cotton yarn (not cotton) and the latter has shown entire sales as exempted sales.

INPUT TAX CREDIT – EXEMPTED UNIT – COTTON PURCHASED FROM FIRM B AFTER PAYMENT OF TAX – ITC ALREADY REFUNDED ORDERED TO BE RECOVERED IN VIEW OF NOTIFICATION ON THE BASIS THAT FIRM B HAD IN TURN PURCHASED IT FROM AN EXEMPTED UNIT A – UNIT A SHOWED ITS ENTIRE SALES AS EXEMPTED SALES – APPEAL BEFORE TRIBUNAL -HELD THAT EXEMPTED UNIT NOT EXEMPTED FOR COTTON BUT COTTON YARN – THEREFORE, FIRM B CANNOT BE SAID TO HAVE PURCHASED COTTON FROM EXEMPTED UNIT - APPELLANT PURCHASED COTTON FROM FIRM B AS PER RECORD AFTER PAYING TAX – REFUND OF ITC AROSE ON ACCOUNT OF ACTUAL INPUT TAX CREDIT AND NOT NOTIONAL TAX CREDIT – RECOVERY COULD BE MADE FROM THE EXEMPTED UNIT – REFUND RIGHTLY GIVEN TO APPELLANT – APPEAL ACCEPTED – *S. 13, 92(3)(a) OF PVAT ACT AND CONDITIONS DATED 6/4/05 FOR DEFERMENT & EXEMPTION.*

The appellant was a manufacturer of cotton yarn and related goods. It had purchased cotton from firm B after payment of tax which in turn had purchased it from firm A, an exempted unit. The ITC had been claimed by the appellant on the basis of payment of tax to its selling dealer B. The amount so granted was ordered for recovery on the ground that the entire purchase was routed from an exempted unit and that the exempted unit has shown his entire sales as exempted sales, therefore, the appellant was not eligible for ITC. An appeal was filed before the First Appellate authority who dismissed it. However, the Tribunal accepted the appeal and remitted the matter to the AETC for passing a fresh speaking order. The Tribunal had held in the first instance that firm A, an exempted unit, was exempted for manufacturing of cotton yarn and not cotton. The appellant had purchased cotton routed from the exempted unit and through firm B. So it cannot be said that firm B had purchased cotton from an exempted unit. Firm A, not being an exempted unit for cotton, the refund if any, is not to arise on account of notional input tax rather actual tax credit. Moreover, the appellant cannot be asked to produce the returns of the exempted unit.

The relief was again declined to the appellant in remand proceedings. The First Appellate Authority remanded the matter on appeal in view of directions and findings of the Tribunal. An appeal is filed before Tribunal against the remand order.

The Tribunal has held that it is established on record that the appellant had purchased cotton after paying purchase tax to firm B and was entitled to refund of ITC as it had been routed from the unit not exempted for other goods. The recovery if at all should be made from firm A. Therefore, in the light of the findings given earlier, the AETC was supposed to implement the same rather taking another view on the issue. The ld. DETC ought to have directed the AETC to implement the order of Tribunal rather than remitting the same. The appeal is accepted and refund granted on account of purchase from firm B is correct.

Present: K.L. Goyal, Sr. Advocate alongwith Mr. Rohit Gupta, Advocate counsel for the appellant.

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

******

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

1. This order of mine shall dispose of two connected appeal Nos. 75 and 76 of 2014 against the order dated 16.12.2013 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissing the appeals against the order dated 30.8.2013 passed by the Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Ludhiana Division, Ludhiana in Appeal No. 75 of 2014 creating an additional demand of Rs. 12,89,988/- while framing the assessment for the year 2006-07 and in Appeal No. 76 of 2014, creating additional demand of Rs. 21,28,349/- under the Punjab Value Added Tax Act, 2005 while framing the assessment for the year 2007-08.

2. The case has a chequered history, the appellant is a dealer duly registered under the provisions of the Punjab Value Added Tax Act, 2005 as well as under the provisions of the Central Sales Tax Act, 1956. He is engaged in the manufacturing of cotton yarn and related goods and for this purpose, he has established two units. The appellant purchased raw cotton from M/s Roshan Lal Girdhari Lal Killanwali, as well as Jai Ram Budh Ram taxable persons under the valid tax invoices in the different years. The appellant had paid due tax and claimed the ITC in his return filed in Form VAT-20 for the years 2006-07 and 2007-2008 respectively. The appellant claimed Input Tax Credit, obtained and enchashed Rs. 28,37,799/- in the year 2007-08 on the ground of its paying tax to the selling dealer which is leviable on the sale made by the selling dealer. The appellant was never made aware of the origin of goods by the said selling dealer as per the normal trade practice. Subsequently, on scrutiny of the assessment proceedings, the Assessing Authority observed that the entire purchase was being routed from M/s Roshan Cotspin (exempted Unit) and hence, the appellant was not entitled to the ITC. A notice was issued to the appellant regarding reassessment. Ultimately, the claim of the appellant was rejected in view of the Notification dated 6.4.2005 as amended w.e.f. 26.7.2006. Pursuant to the order of withdrawal of the refund, recovery was ordered. The appellant filed the appeal against the order of the Assessing Authority whereupon, the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissed the appeal and observed that the appellant firm was not entitled to the Input Tax Credit.

3. Feeling aggrieved, the appellant preferred the appeal before the VAT Tribunal, Punjab on 18.11.2011, who vide its order accepted the appeal, set-aside the orders passed by the authorities below and remitted the case back to the Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Ludhiana for passing a speaking order afresh. However, the

Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Ludhiana without making compliance of the order of VAT Tribunal, Punjab again declined relief to the appellant.

4. Feeling aggrieved, the appellant again preferred the appeal. Wherein, the First Appellate Authority vide its order dated 16.12.2013, accepted the fact that Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Ludhiana had not passed the correct order, keeping in view of the findings of the VAT Tribunal and remitted the case back to the Designated Officer to pass afresh order in view of the directions and findings returned by the Tribunal order dated 8.10.2012. However, being aggrieved against the order of remand, appellant has preferred this second appeal.

5. Arguments heard. Record perused.

6. The present case has been snow balling in the hands of the authorities who are playing a blind game which has seriously affected the appellant who is under going the risk of withdrawal of the order of the refund. The exemption certificate reveals that M/s Roshan Cotspin was eligible for availing exemption from sale or purchase tax on cotton yarn. Cotton is liable to purchase tax and yarn is liable to sales tax. The appellant had purchased the cotton which is liable to purchase tax. The unit (Roshan Cotspin) was not exempted for cotton yarn and not 'cotton' Regarding the payment of tax by the First seller, the VAT Tribunal observed as under:-

> "*The submission regarding charging of VAT by the first seller does not prove anything as an exempted unit can also charge vat on its invoices as the exemption granted is exemption from payment of tax and moreover, the Punjab D&E rules do not debar charging of tax by the exempted unit. Moreover, in the hindsight, even if the exempted unit has charged VAT from the seller of the appellant, then the same turnover must have been reflected in its return as taxable sales by the exempted unit whereas, the appellant has submitted the entitlement certificate of the exempted unit, but again does not produce returns of exempted unit, which anyhow were verified by the designated officer, while framing assessment from the data available on department's computer, which clearly reflected that first seller i.e. exempted unit has shown its entire sale as exempted sale only."*

7. However regarding the entitlement of the refund, the VAT Tribunal vide his order dated 8 Oct., 2012 observed as under:-

> *"I have well considered the rival contentions. It is an admitted fact that M/s Jai Ram Budh Ram, Abohar had purchased cotton from M/s Roshan Cotspin. The case of the department is that M/s Roshan Cotspin has shown his entire sales as exempted sales and no sales have been shown as net sales subject to VAT i.e. Column (I) (j) show of returns and that if M/s Roshan Cotspin has conducted any trading activity, then such sales necessarily would have been shown in the said column of returns. The AETC has relied upon the notification dated 6.4.2005 as amended w.e.f. 28.7.2006. As per Entitlement Certificate No. 43/1998-99 purportedly issued by the AETC, Muktsar, M/s Roshan Cotspin Ltd, Killiawnwali is entitled to the deferment of exemption from payment of tax for the manufacture of 'cotton yarn' and not cotton. In view of this fact, it cannot be said that the cotton has been purchased by M/s Jai ram Budh Ram, Abohar from an exempted unit. As per condition 2(5)(8) laid down in the notification dated 6.4.2005 amend e.f. 28.7.2006 being relied upon by the Department "(8) A taxable person purchasing goods from an exempted unit and all subsequent taxable persons to whom these goods are sold, shall not be entitled to any refund arising <u>on account of the notional input tax credit in the hands of the first taxable person."</u> Herein this case, M/s Roshan Cotspin being not an exempted unit for 'cotton', the refund, if any, is not to arise on account of notional input tax credit rather actual input tax credit. It has been argued on behalf of the State that the appellant has submitted the Entitlement Certificate of the exempted unit, but again, it has not produced the returns of the*

exempted unit. Strangely enough, the appellant is being asked to produce the returns of the other Firm i.e. M/s Shan Cotspin Ltd., Killianwali, which too would have filed the returns with the Department.

In view of the above discussion, this matter requires reconsideration by the AETC-cum-Senior Auditor, Ludhiana-II. Consequently, the impugned orders are set-aside and this case is remanded back to the AETC-cum-Senior Auditor, Ludhiana-II for passing a fresh speaking order in accordance with law within two months from the date of receipt of the certified copy of this order after examining the matter in the light of the fact that M/s Roshan Cotspin Ltd. Killianwali is an exempted unit for the manufacture of cotton yarn only and not cotton. Accordingly, this appeal is disposed off.

8. In his order dated 8th Oct, 2012, the VAT Tribunal, Punjab specifically observed that M/s Roshan Cotspin Ltd., Killanwali, from whom the appellant had purchased the cotton, is an exempted unit for the manufacture of 'cotton yarn' only and not 'cotton'. It is also established on the record that M/s Roshan Cotspin Ltd. had sold the cotton to M/s Jai Ram Budh Ram, Abohar who in turn sold the same to the appellants after taking the purchase tax. Since, M/s Roshan Cotspin Ltd., Killianwali was exempted from tax for manufacturing the cotton yarn, therefore the other goods which it had sold were subject to payment of tax and the appellant having paid the tax to M/s Jai Ram Budh Ram, Abohar were entitled to claim the ITC on the said purchase. The findings of the Tribunal to the effect that M/s Roshan Cotspin Ltd., Killianwali was an exempted unit for manufacture of cotton yarn only and not cotton having become final between the parties are biding upon them. Therefore, in the light of the aforesaid findings, the Assistant Excise and Taxation Commissioner was bound to implement and give effect to the same instead taking another view on the issue against the observations made by the VAT Tribunal, Punjab. The Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Ludhiana what to talk implementing the order passed by the VAT Tribunal Punjab, did not mention a word about passing the order by the VAT Tribunal.

9. Since M/s Roshan Cotspin Ltd was not exempted from payment of tax on the sale of cotton, therefore, M/s Jai Ram Budh Ram must have purchased the cotton from M/s Roshan Cotspin on payment of tax, therefore, the recovery of the tax could be made from M/s Roshan Cotspin selling dealer. So the appellants could not be refused the ITC as claimed by them. Having gone through, the order passed by the Deputy excise and Taxation Commissioner, while remitting the case back, has not made any justification of remitting the same when the order passed by the tribunal was as clear as water. Therefore, he should have directed the Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Ludhiana to implement or give effect to the order passed by the VAT Tribunal, Punjab, then to direct him to reconsider.

10. Resultantly, I accept the appeal, set-aside the impugned orders and the refund granted to the appellant on account of purchase of cotton from M/s Jai Ram Budh Ram is correct. Consequently, the order of penalty and interest imposed upon him are quashed. However, the department would be at liberty to issue process to claim recovery relating to said tax from the selling (defaulter) dealer.

11. in the Appeal No. 76 relating to the assessment year 2007-08, the appellants had purchased the cotton from M/s Roshan Lal Girdhari Lal (Selling Dealer), therefore, the process for claiming recovery against the said selling dealer or the first selling dealer whoseoever may be the defaulter. (The respondents may claim protection u/s 72 of the Act, on the point of limitation, as the question of liability has been determined by me vide this judgment).

12. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 146 OF 2014

Go to Index Page

WELSPUN PROJECTS LTD.
Vs
STATE OF PUNJAB

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

27th April, 2015

HF ▶ Dealer- appellant

Absence of enquiry report indicating non existence of firm at the address given in the invoice cannot be the basis to conclude ingenuineness of documents.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – OPPORTUNITY OF BEING HEARD – GOODS IN TRANSIT REACHED ICC– INVOICE IN FAVOUR OF JALANDHAR FIRM – GOODS SUSPECTEDLY MEANT FOR UNLOADING IN BHATHINDA – PENALTY IMPOSED U/S 51(7) ON BASIS OF CONSIGNEE FIRM NOT FUNCTIONING AT GIVEN ADDRESS AND NO ACCOUNT BOOKS PRODUCED BY APPELLANT – APPEAL BEFORE TRIBUNAL – NO SERVICE OF NOTICE UPON APPELLANT BY DETAINING OFFICER – NOTICE ISSUED BY DESIGNATED OFFICER ON EMPLOYEE OF FIRM - NO PROOF OF RECEIPT OF SUCH NOTICE – ABSENCE OF ENQUIRY REPORT INDICATING NON EXISTENCE OF BUSINESS PREMISES AT GIVEN ADDRESS – APPEAL ACCEPTED ON BASIS OF IMPROPER SERVICE OF NOTICE AND LACK OF REASONABLE OPPORTUNITY OF HEARING – MATTER REMITTED BACK TO FOR HEARING OF APPELLANT BEFORE PASSING A SPEAKING ORDER- *S. 51(7) OF PVAT ACT*

Facts

The goods were carried from outside state to Talwandi Sabo, District Bhatinda. On reaching the ICC, the documents were produced. It was suspected that the goods were to be unloaded at Bhatinda whereas the firm was registered in Jalandhar. Penalty u/s 51(7) of PVAT Act was imposed on the basis that the consignee firm was not functioning at the given address and that the appellant did not produce any account books to prove the genuineness of the transaction. Aggrieved by the orders passed by the authorities below, an appeal is filed before Tribunal.

Held:

On perusal of the order passed by the detaining officer, it is held that no notice was served upon the appellant. The case was transferred to the Designated officer who is stated to have issued notice on the employee of the firm, though there is no evidence regarding receipt of that notice. No enquiry report has been submitted regarding functioning of the firm. In absence of the enquiry report, it cannot be concluded that appellant was not functioning and has no TIN number. Therefore, neither proper notice nor opportunity of being heard is given to appellant before imposing penalty. Accepting the appeal, the Designated officer is directed to pass a speaking order after hearing the appellant.

Present: Mr. Amit Bajaj, Advocate counsel for the appellant.

Mr. N.D.S. Mann, Addl. Advocate General for the State.

******

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

1. The Excise and Taxation officer-cum-Designated officer ICC Dhabi Gujjran, District Patiala vide order dated 25-11-2010 imposed a penalty of Rs. 1,12,172/- u/s 51(7)(b) of the PVAT Act, 2005. The appeal filed by the appellant was dismissed on 28-11-2013.

2. On 9-11-2010, a driver along with vehicle bearing registered number HR-56-9402 while carrying parts of the structural steel from Hinjewadi Pune to Vilalge Phulokheri Talwandi Sabo, reached ICC Dhabi Guijran, the driver produced the following documents before the Excise and Taxation Inspector:-

3. Invoice No. 2966 dated 31-10-2010 of M/s Tata Blue Scope Steel Ltd. Hinjewadi Taluki Mulshi Pune issued in favour of M/s M.S.K. Products (India) Jalandhar Ltd for Rs. 3,73,905/-.

4. Consignment Note No. 3244 dated 31-10-2010 of M/s Apogee Logistics (India) (PVT) Ltd. Pune

3. On scrutiny of the documents, the checking officer came to know that the goods were to be unloaded at Talwandi Sabo District Bahtinda whereas the firm was registered at Jalandhar. Suspecting that the goods were not accompanying the genuine documents imposed a penalty of Rs. 1,12,172/- on the following grounds:-

1. The consignment was in favour of M/s M.S.K. projects (India) Limited but on inquiry it was found that the said firm was not functioning at the given address.

2. The appellant had not provided any account books and other documentary proof to prove the genuineness of the covering documents.

4. Counsel for the appellant has argued that the appellant had not concealed anything. He is a dealer and imports the goods from outside the state of Punjab and pays the advance tax. The driver had not left the ICC without depositing the entry tax. The vehicle was detained on 9-11-2010 and he had deposited his tax on his return on 10-11-2011. He had not left the ICC before, paying the tax. He has further argued that it is not a case of search and seizure. An examination of returns /VAT 20 of the appellant reveals that all the entries regarding consignment are clearly shown. There is no way in which attempt to keep the transaction out of account books could be made. The appellant had no intention to evade tax. He has further argued that the order passed by the authorities are non speaking and unreasoned.

5. To the contrary the state counsel has countered the arguments while saying that penalty order is quite valid.

6. Having perused the order passed by the Detaining Officer, it appears that the same is ex-parte having been passed only after issuing one day notice that too on the driver of the vehicle. No notice was served upon the appellant. The case was transferred to the Designated Officer on 12-11-2011. Notice as issued by the designated officer for 16-11-2011 and thereafter for 25-11-2011. Notice is stated to have been received by Bhiku Bhai an employee of the firm. But there is no evidence if the appellant/or his employee actually received the notice.

7. Though it is stated in the order that on enquiry, it was found that the appellant had no business premises at the given address. No enquiry report regarding the functioning the firm has been produced before me. In the absence of such enquiry report, it can not be said that

appellant was not functioning and has no TIN number. Thus it appears that the Designated Officer did not properly serve notice and provided reasonable opportunity to the appellant before imposing an order of penalty. The order of penalty appears to have been passed without application of mind.

8. Resultantly this appeal is accepted impugned orders are set aside and the case is remitted back to the Designated Officer with a direction that he would pass a speaking order after hearing the appellant. The appellant is directed to appear before the Designated Officer on 7-7-2015. The officer would decide the case within 3 months from the date of receipt of the order.

PUNJAB VAT TRIBUNAL

APPEAL NO. 27 OF 2015

Go to Index Page

GOEL RICE & GEN MILLS
Vs
STATE OF PUNJAB

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

30th June, 2015

HF ▶ Assessee

Assessment framed for the year 2005-06 after a period of three years from the date of filing of returns is time barred in view of S. 29(4-A) of the Act.

LIMITATION – ASSESSMENT – ASSESSMENT YEAR 2005-06 – ASSESSMENT ORDER PASSED IN YEAR 2011- APPEAL BEFORE TRIBUNAL – ASSESSMENT FOR THE YEAR 2005-06 OUGHT TO HAVE BEEN FRAMED WITHIN A PERIOD OF THREE YEARS FROM THE DATE OF FILING OF RETURNS AS PER S.29(4-A) OF THE ACT – S. 29(4-A) IS A NON OBSTANTE CLAUSE AND OVERRIDES OTHER SECTIONS – THEREFORE, ASSESSMENT FRAMED BEYOND THE LIMITATION PERIOD I.E. 2009 IS HELD TO BE TIME BARRED – APPEAL ACCEPTED – *S. 29(4-A) OF THE PVAT ACT*

Facts:
In the present case, a demand was raised for the assessment year 2005-06. The assessment order was passed in the year 2011. It was contended by the appellant that the order was barred by limitation being passed beyond the prescribed period of three years as per section 29(4-A) of the Act.

Held:
That section 29(4-A) was exclusively framed for the year 2005-06 and that it has not been omitted even after the amendment of subsection (4)of section 29 which came into effect from 15/11/2013. Thus the year 2005-06 which is in question is to be governed by section 29(4-A) as it is free from the impact of Amendment. As per section 29(4-A) of the Act, the assessment can be framed only within a period of three years from the date of filing of annual returns. It is a non obstante clause and overrides other provisions. Therefore, the assessment was to be framed by 2009 in this case and not beyond. The appeal is accepted resultantly.

Cases relied upon:
State of Punjab and another vs. M/s Des Raj Him Sen (2012) 43 PHT page/1
State of Punjab and Other vs. Bhagwanpura Sugar Mills, VSTI (2014), B-842
Commissioner of Income Tax Vs. Escorts Farm Pvt. Ltd (1989) 180 ITR page/280

Present: Mr. Vivek Goyal, Chartered Accountant Counsel for the appellant.
Mr. Sudeepti Sharma, Deputy Advocate general for the State.

******

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

1. This appeal is directed against the order dated 5.8.2014 passed by the Deputy Excise and Taxation Commissioner (A), Faridkot Divsion, Headquarter, Bathinda dismissing the appeal against the order dated 29.7.2011 passed by the Designated Officer-cum-Assistant Excise and Taxation Commissioner, Faridkot creating an additional demand of Rs. 4,88,373/- under PIDF Act.

2. The assessment in this case was framed by the Designated Officer-cum-Assistant Excise and Taxation Commissioner, Faridkot Division, Headquarter Bathinda for the year 2005-06 on 29.07.2011. The Counsel has urged that the ld. Designated Officer has created superfluous demand of Rs. 4,88,373/-. No purchase tax is leviable on paddy consumed in export of rice as per Section 15(a) of the Central Sales Tax Act, 1956. Paddy and rice are the same thing for the purposes of Section and 5 of the Central Sales Tax Act. It was also argued that PIDF is leviable at the first stage and in circumstances as mentioned in the Punjab Value Added Tax Act. Since no purchase tax is leviable on the paddy consumed in the export of rice, therefore, PIDF is not leviable in respect of the paddy consumed in export of rice. The counsel has also submitted that the order of the assessment having been passed on 29.7.2011 is barred by limitation in view of Section 29(4-A) of the Act of 2005. The issue was also raised before the Deputy Excise and Taxation Commissioner (A), Faridkot Division, Headquarter, Bathinda, but he ignored the arguments without mentioning the same in the judgment.

3. In the present case, no demand was raised under the Punjab Value Added Tax Act as well as Central Sales Tax Act. The amount raised in the assessment year 2005-06 relates to PIDF Act. The provisions of Punjab Value Added Tax Act, 2005 apply at the time of assessment/reassessment etc.

4. The plain argument as advanced by the counsel for the appellant is that the assessment for the year 2005-06 could be framed by 20.11.2009 but it having been framed after five years i.e. 29.7.2011 is clearly time barred. As such the said assessment can be dubbed as void.

5. To the contrary State has failed to advance any valid argument to controvert this issue.

6. Heard, the main issue which required adjudication is whether the assessment for the year 2005-06 as framed on 29.7.2011 is time barred as per Section 29(4-A) of the Act. The assessments in the normal course of events as per unamended provisions of the Act of 2005, are required to be framed within three years from the date, the last return is filed. Section 29(4) of the Act as it existed prior to the amendment (which was effective from 15th Nov., 2013) reads as under:-

Section 29(4) *"An assessment under sub section (2) or sub-section (3) may be made within three years after the date when the annual statement was filed, whichever is later:*

PROVIDED THAT where circumstances so warrant, the Commissioner may, by an order in writing, allow assessment of a taxable person or a registered person after three years, but not later

> *than six years from the date, when annual statement was filed or due to be filed by such person, whichever is later."*

By the amendment of the aforesaid Section w.e.f. 15.11.2013, the new Section (4) has been substituted by the old Section, which reads as under

> *An assessment under sub section (2) or sub-section (3), may be made within a period of six years after the date when the annual statement was filed or due to be filed, whichever is later.*

However in the light of sub section (4-A) added to the Section 29 of the Act, the assessments for the year 2005-006 were excluded from the impact of the amendment as the sub-section (4-A) has not been omitted even after the amendment of sub section (4) of Section 29 of the Act was brought on the statue book. Section 29 (4-A) prescribes the period limitation within which the assessment for the year of 2005-06, may be framed. Section 29 (4-A) reads as under:-

> *(4-A) Notwithstanding anything contained in sub-section (4), the assessment under sub section (2) or sub section (3), in respect of which annual statement for the assessment year 2005-06 has already been filed, can be made within a period of three years commencing from the 20th day of November, 2006.*

7. On the plain reading of the Section 29(4) and (4-A) of the Act, it transpires that the unamended provisions of the Act are applicable to the present assessment, therefore as per Section 29 (4-A) of the Act, the assessment for the year 2005-06 could be framed within three years w.e.f. the date when the annual statement was filed. In the ordinary course u/s 29(4) of the Act the Commissioner by passing a specific order could extend this period of limitation upto six years. The outer limit to extend the period for framing the assessment under the orders of the Commissioner was six years. The power to extend this period upto six years has been given by statue in cases where there is negligence, willful, neglect on the part of the officer or to condone the circumstances viz. The officer remained so loaded with the work that it was not practically possible for him to decide the return within the time fixed by the officer; by vacation of office or transfer, arrest or suspension of the officer or other unforeseen circumstances. He may also extend such period if the mischief was created by the party who contributed to delay the assessment. The counsel for the appellant has argued that the Commissioner was competent to pass the order of extension after adjudication of the matter by separate individual order, but the counsel has failed to show any provision of law where some formal adjudication was required before passing such order however, the state has imposed a duty upon the Commissioner to record the circumstances which warrant for extension. As such, it would be suffice to observe that the meaning of words "where circumstances so warrant" is subjective satisfaction of the Commissioner while passing such order. Since the State is vested with the powers to extend the time for framing the assessment, the minimum and maximum limit to make such extension was fixed and it was not required for the Commissioner to make a formal adjudication but only requirement appears to be that the Commissioner would issue a notice, call for the objections and then after hearing the parties would record his subjective satisfaction regarding the circumstances which enable him to extend or deny the request for extending time. Without going further deep into this controversy, it would be suffice to say that in the present case, no order of extension was required to be passed by the Commissioner as the present case involves the assessment for the year 2005-06, the period of limitation for framing of which is governed by Section 29(4-A) of the Act. The said section begins with the non obstente clause which excludes other provisions and provides for only 3 years period within which the assessment could be framed.

8. While adding this provision, the legislature was clear in its intentions not to frame the assessments by way issuing notice u/s 29(2) of the Act, after the expiry of three years commencing from 20.11.2006. In the instant case also, the annual statement for the assessment year 2005-06 was filed on 20.11.2006. Therefore, the assessment should have been framed upto 20.11.2009 and not beyond that.

9. I find support to my this view from the judgment delivered in the case of State of Punjab and another versus M/s Des Raj Bhim Sen (2012) 43 PHT page/1, wherein, their lordships while affirming the findings returned by the Tribunal observed that the assessment for the year 2005-06 could not be framed beyond 20.11.2009. Subsequently, in the case of State of Punjab and Other versus Bhagwanpura Sugar Mills, VSTI (2014), B-842, the Hon'ble High Court while relying upon the judgment delivered in case of Des Raj Bhim Sen (Supra) affirmed the view that the assessment for the year 2005-06 without seeking permission to frame the assessment beyond 20.11.2009 from the competent authority, could not be framed after 20.11.2009.

10. In case of Commissioner of Income Tax Versus Escorts Farm Pvt. Ltd (1989) 180 ITR page/280 observed that if the assessment is time barred then any decision taken on merits would be of no consequence and would have to be ignored. No judgment to the contrary has been brought to the notice of the Tribunal to take different view then what was formed by me in the present case.

11. Having examined the order passed by the First Appellate Authority, it may be mentioned that the order, being non speaking is bad in eye of law. As such the same is bound to be set-aside and the order passed by the designated officer being time barred has to be ignored.

12. Resultantly, this appeal is accepted and impugned orders are set-aside. However, the department would be at liberty to take any other step for amendment for the assessment by adopting any other procedure as provided under law.

13. Pronounced in the open court.

NOTIFICATION (U.T. Chandigarh)

AMENDMENT IN RULE 7 OF CENTRAL SALES TAX (PUNJAB) RULES, 1957

CHANDIGARH ADMINISTRATION
EXCISE & TAXATION DEPARTMENT

Date: 28.08.2015

NOTIFICATION

No. 2576 - In exercise of the powers conferred by sub-section (3) and (4)(b) of Section 13 of the Central Sales Tax Act, 1956 (Act No. 74 of 1956), the Administrator, Union Territory, Chandigarh is pleased to make the following rules, further to amend the Central Sales Tax (Punjab) Rules, 1957, namely:-

1. **(i) Short title and commencement** - (1) These rules may be called the Central Sales Tax (Punjab (First Amendment) Rules, 2015 as applicable to Union Territory, Chandigarh.

(ii) They shall come into force with immediate effect.

2. In the Central Sales Tax (Punjab) Rules, 1957, in Rule 7, the following shall be substituted namely:-

"7. MANNER OF OBTAINING, THE USE AND SUBMISSION OF DECLARATION FORMS 'C' AND 'F' AND CERTIFICATES IN FORMS 'E-1', 'E-2', 'H' AND 'I', PRESCRIBED UNDER THE CENTRAL SALES TAX (REGISTRATION AND TURNOVER) RULES, 1957, AND KEEPING ACCOUNT THEREOF:

(1) The e-forms shall be provided online in conjunction with the prevailing system for the generation of the statutory declaration forms. A dealer registered under the Punjab Value Added Tax Act, 2005 as extended to U.T., Chandigarh & Central Sales Tax Act, 1956 and assigned with a Tin shall log on to the portal of the Department etdut.gov.in by using his userid and password. He/She shall click on the e-Forms link on the portal and proceed to submit the requisition for issuing of e-forms by entering the details of consignment of goods to be covered in the e-Forms (Form-C, Form-E1, Form-EII, Form-F, Form-H, Form-I) following the instructions and procedures contained in the said website. After entering the details, the dealer will send request for approval. The dealer cannot make any change in the details of the e-forms while the request for approval is pending.

(2) The approval of the E-forms shall be intimated by sending a message on the registered mail and mobile number. After approval, the dealer can download the e-form, print and use the same after signing at the proper place.

(3) The counterfoil of declaration in Form "C, H, F, E-1, E-2 and I" shall be maintained by the registered dealer for a period of six years after the closing of the year to which the said Form pertains.

(4) The dealer to whom the declarations in Form "C, H, F, E-1, E-2 and I" have been issued, shall be responsible for their proper custody and use.

(5) If a dealer closes down his business or his registration certificate under this Act is cancelled for any reasons, he shall forthwith file the final/last return to obtain the balance declaration forms.

(6) The dealer shall maintain an account of declaration, in the following format:-

Serial Number	Serial Number of the declaration	Particulars of the goods purchased.	Value of the goods	Invoice number and date	Number and date of Railway receipt/Goods receipt along with name of the Transport company	Name, Address and Registration Certificate of the selling dealer

Such register shall be maintained separately for all types of statutory forms.

(7) If these e stator Forms are lost in transit or destroyed due to any reason or damaged, the concerned dealer shall send a public notice in the National Press and file First Information Report in the nearest Police Station regarding loss, destruction or damage of these Forms and such intimation along with copy of First Information Report and a cutting of newspaper shall be sent to the Excise and Taxation officer of area concerned.

(8) The Excise and Taxation Commissioner may by Notification in the Official Gazette declare the particular declarations prescribed under the Central Sales Tax (Registration and Turnover) Rules, 1957, as obsolete and invalid with effect from such date as may be specified in the Notification.

(9) When a Notification declaring particular declaration as obsolete and invalid is published under sub-rule (9), registered dealer shall surrender the counterfoils available with him to the Excise and Taxation Officer of area concerned and in exchange may obtain such new Form, as may be substituted for the Forms declared obsolete and invalid:

(10) The Form issued in lieu of lost Form declared obsolete and invalid shall carry the words at the top right hand corner of all the foils of such Forms in red ink "DUPLICATE IN LIEU OF FORM Serial Number ....."

(11) The register in respect of Form E-1 or E2 shall be maintained in the following format:-

Serial Number	Serial Number of the declaration	Name and address of the purchasing dealer to whom issued	Number and date of declaration in Form C issued by the purchasing dealer with the name of State	Description goods in respect of which issued	Value of the goods	Invoice number and date	Railway receipt Number/Goods Receipt Number and date	Name, of Transport Company
1	2	3	4	5	6	7	8	9

Sarvjit Singh, I.A.S.

Secretary, Excise and Taxation

Union Territory, Chandigarh

SGA
LAW OFFICES

CIRCULAR (Punjab)

CANCELLATION OF NON-FUNCTIONAL DEALERS AND VALIDATING PAN OF ALL FUNCTIONAL DEALERS

NO. ETTSA 6587 **dated 06/08/15**

To

All Deputy Excise & Taxation Commissioners,

Incharges of the divisions of Punjab

Subject: Cancellation of non-functional dealers and validating PAN of all functional dealers.

Memo:

As you know we are about to migrate from VAT to GST Regime. For timely and smooth migration, it is necessary to validate PAN of every functional registered dealer in the State. The PAN validation process of the functional dealers, e-filing the returns, is under process at our level. To complete the process, it is necessary to weed out non-functional dealers.

As cited in the subject, you were directed to cancel non-functional dealers. For help, you were provided with 3 lists send through e-mail, List 1 of return defaulters for last three quarters and List 2 of dealers filing Nil returns for last three years and List 3 of dealers filing manual returns. So your task is to make sure the dealers from List 1 & 2 may be cancelled on priority, after verification and adopting proper procedure. Daily progress report in this regard, is required to be send through mail daily by 4:00 PM in following format:

S.No.	Name of the district	Total no. of non-functional dealers (list 1 + 2)	No. of dealers verified as functional	No. of dealers cancelled today on date_____	Total no. of dealers cancelled till date	Pending No. of non-functional dealers

Dealers filing manual returns or not liable to file returns e.g. commission agents, lump-sum tax payers etc. i.e. dealers verified as functional, should be taken care off by the concerned AETC/ETO. The PAN data of such dealers, by collecting manually, be made available to my e-mail ID by Aug 14th 2015 in following Format:

Sr.No.	Name of the District	Name of the Firm	Tin	PAN of firm	Name of Prop./Partner/Director etc.

Mr. Parminder Pal Singh, ETI is appointed Nodal Officer for the purpose. You are supposed to submit daily progress report on e-mail: etiettsa@gmail.com. Daily before 4:00 PM.

Please take the matter seriously and take actions on top priority.

Sd/-
Additional Excise & Taxation Commissioner-1,
Punjab-cum-Chief Executive Officer, ETTSA.

ENDT. No.: ETISA 6589 Dated 06/08/15

SGA
LAW OFFICES

NOTIFICATION (Haryana)

AMENDMENT IN LUMP SUM VAT RATE IN RESPECT OF BKOS AND PLYBOARD

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 19th August, 2015

No. 20/ST-1/H.A.6/2003/S.60/2015. - Whereas, the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 60 read with the proviso to said sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following rules further to amend the Haryana Value Added Tax Rules, 2003 by dispensing with the condition of previous notice, namely:-

1. (1) These rules may be called the Haryana Value Added Tax (Second Amendment) Rules, 2015.

(2) These rules shall come into force with immediate effect from the date of publication of this notification in the Official Gazette.

2. In the Haryana Value Added Tax Rules, 2003 (hereinafter called the said rules), in rule 47, in sub-rule (1), for existing table, the following table shall be substituted, namely:-

"Table Serial Number	**Capacity of Kiln**	**Category**	**Lump sum amount payable in lieu of tax**
1.	Brick kiln of capacity of more than 33 number of Ghori	+ A	Rs.4,01,856/-plus Rs. 13,995/- per additional Ghori above 33 Ghori
2.	Brick kiln of capacity of 28 to 33 number of Ghori	A	Rs. 4,01,856/-
3.	Brick kiln of capacity of 22 to 27 number of Ghori	B	Rs. 3,13,950/-
4.	Brick kiln of capacity of below 22 number of Ghori	C	Rs. 2,50,900/-
5.	Brick kiln not fired during the year ending 30th September in which stock in and outside the kiln as on 1st October of last year, did not exceed five lakh bricks of all categories.	D	Rs. 62,700/-

Note :- If a kiln is designed to be fired at two places, the rate of lump sum payable by the owner of such kiln shall be double of the aforesaid rates.".

3. In the said rules, in rule 51, for sub-rule (1), the following sub-rule shall be substituted, namely:-

"(1) Subject to the other provisions of this rule, a ply-board manufacturer may, by exercising option in the manner given in sub-rule (6), at any time offer to make payment of lump sum in lieu of tax payable by him under the Act on sale of ply-board manufactured by him and waste products arising therefrom, at the rate(s) mentioned below

Table

Serial Number	Press size	Rate of lump sum per press per annum
1	8' x 4' x 10	Rs. 11,70,000/-
2.	8' x 4' x 7	Rs. 8,19,000/-
3	6' x 4' x 10	Rs. 8,78,000/-
4	6' x 4' x 7	Rs. 6,15,000/-
5	4' x 4' x 10	Rs. 4,17,000/-
6	4' x 4' x 7	Rs. 2,93,000/-

Where an 8'x4'x10 press is designed to make 10 number ply-boards each measuring 8 feet by 4 feet i.e. 320 square feet ply-board in single operation and presses other sizes are designed to make ply-board in the same proportion:

Provided that annual rate of lump sum in respect of press of any other size not tabulated above shall, if the press is designed to make ply-boards of size not exceeding 4'x4' i.e. 16 square feet per piece be computed @ Rs.2611.61 per square feet else @Rs.3656.25 per square feet, rounded off to nearest thousand in each case:

Provided further that lump sum for any additional press of the same or lower size shall be computed at one-half of the full rate tabulated above.".

ROSHAN LAL,
Additional Chief Secretary to Government, Haryana,
Excise and Taxation Department.

SGA
LAW OFFICES

NOTIFICATION (Haryana)

AMENDMENT IN DIESEL NOTIFICATION NO.18/ST-1/H.A.6/2003/S.59/2015, DATED 15-07-2015

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

Notification

The 28th August, 2015

No.21/ST-1/H.A. 6/2003/S.59/2015. - Whereas, the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 59 read with proviso to said sub-section of the Haryana Value Added Tax Act, 2003(6 of 2003), the Governor of Haryana hereby makes the following amendment in the Haryana Government, Excise and Taxation Department, notification No.18/ST- 1/H.A.6/2003/ S.59/2015, dated the 15th July, 2015, namely:-

AMENDMENT

In the Haryana Government, Excise and Taxation Department, notification No.18/ST-1/H.A.6/2003/ S.59/2015, dated the 15th July, 2015 in the second para, for the words "with immediate effect", the words and figures "with effect from the midnight of 15th and 16th July, 2015" shall be substituted.

ROSHAN LAL,
Additional Chief Secretary to Government, Haryana,
Excise and Taxation Department.

SGA
LAW OFFICES

NEWS OF YOUR INTEREST (Article)

GST: SOME LESS EXPLORED ISSUES

A common rate for all states undermines fiscal federalism

THE introduction of GST (goods and services tax) in the country is billed as the biggest tax reform in India and a game-changer. It has been stalled in the Rajya Sabha by the main opposition party which had proposed it a decade ago. The ruling NDA has rejected the objections and may call a special session of Parliament to get the Bill passed. Unfortunately, many critical issues regarding the basic design of GST have not been discussed and remain unresolved. The public needs clarity about them.

GST has three important elements. First, combining taxes like excise, sales and services. It is said that 17 taxes will be replaced by one, leading to ease of business. Second, the indirect taxes will be calculated on value addition and not the value of the good or service. This would remove the cascading effect of tax on tax and profit on tax. Finally, not only would the cascading effect of each of the taxes (excise, sales, services and so on) be removed, but even that across these taxes would go. This would lead to a possible fall in prices, all else remaining the same. It is argued that this would lead to ease of doing business which could boost the growth of the economy.

Undoubtedly, there would be simplification in the tax regime faced by businesses but not as much as is being made out. There will be three taxes — CGST collected by the Centre, SGST collected by the states and an IGST on inter-state movements collected by the Centre. Further, under pressure from the states, alcohol, tobacco and petro goods are likely to be left out of the purview of GST. So are electricity and real estate being left out of the GST net and will have separate taxes resulting in some cascading effect.

Further, since value addition is only a fraction of the value of a product, if the tax rate remains the same as earlier, the tax collection would fall. Thus, if the government is to collect the same amount of tax as in the earlier tax regime, it would have to raise the tax rate under VAT. This is called the revenue neutral rate (RNR) and could be pretty high. Further, tax will have to be collected at each stage of production and distribution. So, even if the tax rate is a common one, collection of the tax will still be complex.

Services did not have to pay sales tax but will now have to pay the SGST to the states so their prices will rise. For instance, telephone calls, insurance, transportation, restaurants, etc. will become dearer. A common tax rate will imply that all basic and essential goods prices will rise, and even if some final goods prices fall, the rate of inflation will go up.

If the rate of inflation rises, demand in the economy would fall and the rate of growth will decline contrary to the argument by proponents of GST. To avoid this, the government will have to give up the RNR and fix lower rates of tax. But then the collection of tax will fall compared to the present and the states suffer. The deficit of the Centre and the states will then rise. This is the worry of the states. If the Centre tries to compensate them for the fall in

revenue, as it is promising to do, the Centre's deficit will rise even more which will create further problems.

These macroeconomic issues have not been debated or resolved in the rush to implement GST. Another ignored aspect is the interest of the small-scale and unorganised sectors. The small-scale sector produces and sells locally, so it would hardly benefit from a unified market, etc. It is being exempted from the payment of GST and, therefore, would not be able to claim credit for any purchase from the organised sector and would be at a disadvantage. If it sells to the organised sector, it would not be able to provide the benefit of setoff and, therefore, it would have to cut prices or its sales would decline. A decline in the small and unorganised sector would reduce employment generation since it is the employment intensive sector.

Take the example of potato chips or envelope-making where the large scale has displaced the cottage sector. Or, look at any 'haat' selling cheaper versions of products sold in the malls or regular shops. They are visited by the poor, the lower and the middle class who go there to buy products supplied cheap by the small and cottage sectors. Such products will also get displaced.

VAT is a difficult tax to implement since it requires keeping account of both the inputs (so as to claim setoff) and revenue from sales. The small-scale and cottage sectors do not keep detailed accounts and cannot calculate how much VAT to pay. That is the reason VAT requires computerisation which the small and cottage sector are not able to afford.

Due to such difficulties, VAT could not be introduced in the 1970s. The Indirect Tax Reform Committee in 1978 suggested MANVAT on manufacturing alone. This could not be implemented because of the existence of a very large unorganised sector in manufacturing. The long-term fiscal policy in 1986 suggested MODVAT that had to be introduced gradually, till CENVAT replaced it a decade later. Difficulties are being swept under the carpet. It is these difficulties that would also undermine the claims that compliance would improve under VAT and that the black economy would decline. GST, by introducing a common rate for all states, undermines fiscal federalism. Different states have different requirements. Needs of Maharashtra are different from those of Assam. The manufacturing states are worried about loss of revenue due to change of tax from source to destination and to accommodate them, the IGST has been proposed. Even though the states have arrived at a consensus and given up their powers, undermining federalism will have long-term effects which will not be visible immediately. The local bodies, the third tier of the federal structure, are entirely left out of the reckoning.

The real problems with the introduction of GST in India have not been addressed. The unorganised sector in India employs 93 per cent of the workforce. The small and tiny units producing and selling locally would lose from a unified market which will benefit large-scale producers. This will aggravate under-employment, distress in the farm sector and adversely impact the poorer states. No wonder, GST is being strongly backed by large businesses — foreign and Indian. Just because VAT exists in more than a hundred nations is no reason that it would uniformly benefit all in India.

Finally, there are contradictions in the argument being made for GST. The tax-GDP ratio will rise if tax collection rises, but then prices will rise, demand would fall and the economy would slow down. Contrariwise, if the RNR is given up, the tax-GDP ratio will fall and states' resource position will deteriorate. The macroeconomic analysis shows that either way the government's argument is contradictory.

— The writer is a retired professor of economics, JNU

Courtesy by: The Tribune

24th August, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

CONG TO TAKE CALL AFTER STUDYING FINAL GST DRAFT

Not amused by the government's move to call the special session of Parliament for the passage of the Goods and Services Tax (GST) Bill and the other pending legislations, the Congress today said that it would not play along unless there was a "concrete GST proposal on the table addressing the concerns it had raised".

Terming the special session move as "diversionary" and "deliberate" ahead of the Bihar Assembly elections, Congress leaders said they would take a call on the special session proposal only after examining the final draft of the GST Bill on which they had "genuine and pro-people" concerns.

After meeting Parliamentary Affairs Minister M Venkaiah Naidu today, Congress leader in the Lok Sabha Mallikarjun Kharge said, "We will comment on the special session after we see the amended GST Bill."

Kharge's comments came parallel to Naidu's offer to discuss "all amendments on the floor of the House". But the Congress is not interested in going into the special session unsure of what the government would concede on the GST Bill.

The party has proposed three non-negotiable amendments to the current draft – it wants the GST rate capped at 18 per cent, the one per cent additional levy to go and dispute redressal mechanism independent of the GST Council to be provided.

The Congress believes the special session talk is the government's way of finding an escape route from the current mess around the economy.

Congress communication cell head Randeep Surjewala said, "The government is in political and economic panic. It is looking for an escape route to divert attention of the people from the rate at which the economy is nose-diving. We are not against the GST Bill. We are its authors. But we want our pro-people amendments to be first accepted. The government has to come forward with a concrete proposal before it can talk of convening a special session."

The Congress batted for an all-party meeting on the GST before the session is called.

Courtesy by: The Tribune

26th August, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

GOVT TRYING FOR GST CONSENSUS

The government today said it was trying to build consensus with Opposition parties for convening an "extended monsoon session" to clear important Bills, especially the one stressed-out markets and economy are waiting for—the Goods and Services Tax (GST) Bill for a new national taxation regime.

Parliamentary Affairs Minister Vankaiah Naidu, who today met Leader of Opposition in the Lok Sabha Mallikarjuna Kharge on the issue, however, did not specify when the session would be reconvened. He also parried questions on whether regional satraps, like the AIADMK, amendment Bill that must be passed by both the Lok Sabha and the Rajya Sabha (where the NDA lacks numbers).

Addressing a media briefing called largely to berate the Congress for its role in the washed-out monsoon session, he specifically said "since the Parliament is not prorogued, the second part of the session can be called". Naidu also said the NDA was willing to speak to "everyone, including Congress president Sonia Gandhi and vice-president Rahul Gandhi" to strike a consensus on the Bill—an important part of the economic reforms agenda of the Modi government.

The senior BJP minister said the government called at least five all-party meetings in order to allow Parliament run.

As many as 28 out of 29 political parties said the Houses should run, he said, making an "appeal" to all political parties "to ponder over what happened in the monsoon session and cooperate with the government". The GST Bill was very important for the country, especially in the current circumstances, he said.

With markets under deep stress, sources say the government is under significant pressure from the industry to roll out the new taxation regime. After meeting Kharge, Naidu also met Home Minister Rajnath Singh.

Sources said the "extended session", as Naidu preferred to refer it, could be expected "soon", perhaps within the next four-five days. The government is sensing a window in the second week of September to push through the key legislations—the GST, the Real Estate Bill and the Negotiable Instruments Bill.

Courtesy by: The Tribune

26th August, 2015

NEWS OF YOUR INTEREST

GOVT'S MOVE ON GST UNILATERAL: CONG

As the Narendra Modi-led NDA government contemplates convening a special session of Parliament to pass the Goods and Services Tax Bill, the opposition Congress today said the Bill couldn't pass the House test without its support.

Senior Congress leader Jairam Ramesh slammed the government's approach as unilateral and non-conciliatory, adding that the ruling dispensation appeared to be waiting for Congress' numbers in Rajya Sabha to fall to pass its major Bills.

"The government has so far displayed no signs of conciliation or change of approach. Even on the GST Bill, they could have easily agreed to some amendments we have proposed if not all. That would have given us reasons to believe they wanted to take the Opposition along. But the Government is moving ahead in a confrontational mode. It seems they are awaiting 2016 when Congress members in Rajya Sabha will fall below 40 as against 68 today, and when they will be better placed in terms of numbers," Ramesh, former Union Rural Development Minister and Rajya Sabha MP said today while responding to the deadlocked GST issue.

The Congress has made five non-negotiable demands on this Bill and said before convening a special session the government must come up with a proposal to meet these demands. The demands include capping of the GST rate at 18 per cent in line with the trends in East Asia; removing the one per cent additional levy proposal; providing a dispute redressal mechanism outside of the GST council; and including tobacco and alcohol in the GST ambit.

Describing the one per cent additional levy as a "bribe to Gujarat", Ramesh today said the government could in no way pass the GST Bill without the Congress' support. "The GST Bill cannot be passed without our support. Many other parties, mainly the AIADMK, are also opposed to it. Since the government can't call a joint session to pass a constitutional amendment Bill that the GST is, it is contemplating calling a special session. But even there, it needs the Congress on board," he said.

Asked what gave him the reason to believe that the government was buying time until 2016 to pass Bills, Ramesh said the approach of the Parliamentary Affairs Minister was not one of conciliation. "If they think they can do whatever they want in Rajya Sabha 2016 onwards when Congress MPs in the Hose decline, they are mistaken. Because they will be challenged by regional players who will then be driven by electoral considerations in West Bengal, UP and other places," Ramesh said.

Ramesh recalled how BJP leader Yashwant Sinha as head of the parliamentary standing committee on GST during the UPA regime took two and a half years to submit the report. "It was as though Mr Sinha was determined to deny then Prime Minister Manmohan Singh the credit of introducing the GST," Ramesh said.

Courtesy by: The Tribune
29th August, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

GST DELAY TO HIT PUNJAB HARD: CAPT

Congress stalwart creates a stir by taking aim at the party's top leadership

By "subtly" expressing his displeasure over the delay in the roll out of the Goods and Services Tax (GST), Congress Deputy Leader in the Lok Sabha Capt Amarinder Singh has actually expressed his displeasure with the party leadership.

With the Congress being blamed by the NDA for the complete washout of the monsoon session of Parliament and for stalling the passage of the GST Bill, Amarinder's statement is set to have far wider political connotations and ramifications, especially in Punjab.

In a statement issued here today, Amarinder " …expressed his displeasure over the delay in the introduction and passage of the Goods and Services Tax (GST) Bill… Whatever the reasons and circumstances have been during the monsoon session, the GST should have been allowed to be introduced in Parliament to facilitate the way for its eventual passage".

The former Chief Minister said Punjab would suffer the most due to the delay in the passage of the GST Bill as the state was passing through a critical economic phase where it did not have enough money to pay even staff salaries and service its debts.

"The introduction of the GST Bill, which is originally a brainchild of the Congress, could have proved mutually beneficial for the industry and the state. On the one hand it would have streamlined and uniformed the tax regime and on the other it would have generated additional revenue and resources for the state," he said. Punjab would now have to wait for an uncertain period of time before GST became a reality, he said.

This is the third time in a row that the former Chief Minister of Punjab has created a stir in political circles by taking an aim at the party's top leadership.

Upset at the issue of Punjab Congress' leadership not being resolved and his frequent shows of strength failing to impress the party high command into changing the state's leadership, Amarinder has been issuing statements that hit the party high command directly.

He did not attend monsoon session of Parliament. He was conspicuous by his frequent absence in the previous session of Parliament, too. On being questioned why he failed to attend the monsoon session, he recently told a television channel that holding rallies and mobilising Congress workers in Punjab was more important than sitting in dharnas outside Parliament.

Amarinder, who has managed to win over most of the Congress MLAs and has been holding rallies and well-attended mass contact programmes, had earlier spoken against the elevation of Rahul Gandhi as the party president. His relationship with Rahul Gandhi, vis a vis his bête noir and Punjab Congress chief Partap Singh Bajwa's relation with the Gandhi scion, are not very cordial and his statement against Rahul's elevation had not been taken too kindly by the powers that be in the Congress.

These three factors together have once again led to speculation in political circles on whether Amarinder would explore the possibility of going it on his own before the next Assembly elections in Punjab.

Sources close to the former Chief Minister say though Amarinder has proved beyond doubt that he is the tallest leader in the Punjab Congress and perhaps the only one who can take on the Badals, the party high command is unwilling to yield in his favour. Though people close to Amarinder refuse to comment on whether he will go on his own in future, they do say that it is "an idea the time for which has not come".

Courtesy by: The Tribune

14th August, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

HARSIMRAT LAUDS AMARINDER FOR SPEAKING OUT IN FAVOUR OF GST

Chandigarh: Union Food Processing Industries Minister Harsimrat Kaur Badal on Sunday congratulated Congress Deputy Leader in the Lok Sabha Captain Amarinder Singh for taking a stand in favour of the Goods and Services Tax (GST) bill but said he could have done a better service to the nation if he had supported the bill in the Parliament and also explained its pro-growth merits to Congress Vice President Rahul Gandhi.

In a statement here, the young two-time SAD MP from Bathinda, said, "Much as I welcome your belated support to the GST bill it puzzles me why you did not attend Parliament and speak in favour of the bill. There is also speculation that you have spoken in favour of GST to spite the Congress high command which is denying you leadership of the state unit".

The Union Minister said to clear the air, Captain Amarinder could write an open letter to the Gandhi family explaining how introduction of GST would spur growth and boost the economy. "Probably the Gandhis who have yet to come to terms with their 2014 rout will understand the sage advice of a senior colleague. You will also be doing singular service to Punjab and the country by this act," Harsimrat asserted.

Describing GST as something which will transform India into one uniform market for seamless transfer of goods and services, the Union Minister asked Punjab Congress president Partap Singh Bajwa to also clear his stand on the issue.

"Bajwa must clarify whether he wants to safeguard the interests of Punjab by supporting introduction of GST or only wants to save his chair by clinging to shameless sycophancy of the Gandhi family. It is surprising that Bajwa has chosen to remain silent on an issue of national concern," she stated.

Harsimrat said Punjab was suffering in the context of the present tax system as a number of states and Union territories empowered by special incentives from the Union Government were levying fewer taxes. She said introduction of GST would provide a level playing field to all States to compete with each other.

Stating that GST system would be a win-win situation for all, the Union Minister said by amalgamating a large number of central and state taxes into a single tax, GST would mitigate cascading or double taxation in a major way and pave the way for a common national market.

She said even from the consumer point of view, the biggest advantage would be in terms of a reduction in the overall tax burden on goods, which was currently estimated at 25 to 30 per cent. She said introduction of GST would also make Indian products competitive in the domestic and international markets.

Pertinently, with his own party disrupting parliament during the entire monsoon session and not letting both the houses function for most of the time, Captain Amarinder Singh had on

Friday sounded a near discordant note, expressing displeasure over the delay in the introduction and passage of the Goods and Services Tax (GST) bill.

The move by Captain Amarinder Singh could cause discomfort to the Congress, which continued with its protests in the Lok Sabha and the Rajya Sabha during the just concluded monsoon session, seeking the resignation of Union External Affairs Minister Sushma Swaraj over the Lalit Modi controversy.

"Whatever the reasons and the circumstances have been during the monsoon session, the GST should have been allowed to be introduced in parliament to facilitate the way for its eventual passage," the Captain had said in a statement, here, adding that it was important for the overall economic growth of the country.

Courtesy by: GSTINDIA.COM

17th August, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

JAITLEY REJECTS TERMS SET BY CONG FOR GST PASSAGE

Top BJP ministers and leaders today fanned out to states and attacked the Congress for the washout of the monsoon session of Parliament where the GST Bill was stalled even as Finance Minister Arun Jaitley dismissed as an "afterthought" the conditions set by Congress for supporting the measure.

"All these three pre-conditions are an afterthought," he told a press conference when he was asked about the conditions set by the Congress yesterday for breaking the logjam over the Constitution amendment that will bring in a uniform Goods and Services Tax (GST) in the country.

Former Finance Minister P Chidambaram had yesterday said if the government addressed three of its fundamental concerns—maximum GST rate should not cross 18 per cent, no additional 1 per cent tax and setting up of a grievance redress mechanism—then the Congress could consider supporting its passage. Following up on the NDA decision yesterday, the BJP bigwigs targeted Congress president Sonia Gandhi and vice-president Rahul Gandhi — PTI

'Less possibilities' of meeting April deadline

Ahmedabad: Union Power Minister Piyush Goyal has said there were "less possibilities" of the GST Bill being passed by April 2016 deadline, but the government would work out alternative ways to ensure people got its benefits. However, he refrained from spelling out alternative ways.

Courtesy by: The Tribune

14th August, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

15 IAS, 1 PCS OFFICERS TRANSFERRED

The state government has issued transfer orders of 15 IAS and one PCS officer. The role of Deputy Chief Minister Sukhbir Badal in the transfers is clearly visible with most departments under him witnessing a change at the helm of affairs.

DP Reddy has been divested of the charge of Financial Commissioner, Taxation, although he retains the charge of Principal Secretary, Finance. Anurag Aggarwal gets the charge of Financial Commissioner, Taxation, while A Venu Prasad replaces him as Managing Director, Punjab Infrastructure Development Board. He also gets the charge of Secretary, Power, a charge held by Aniruddh Tiwari.

Aggarwal's other charge of Principal Secretary, Transport, goes to R Venkatratnam. Excise and Taxation Commissioner Anurag Verma also gets additional charge of Public Relations Department.

MS Jaggi goes from the Transport Department as Deputy Commissioner of Faridkot.

Courtesy by: The Tribune

30th August, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

FACES RUNNING THE SHOW FROM BEHIND THE SCENES

Prominent student party leaders, who had been managing their party's show from behind the curtain for the past several years, are again back on the campus after the Panjab University Campus Student Council (PUCSC) elections reached the feverish stage.

Interestingly, these familiar faces of the student parties are enrolling themselves with small departments to make their participation legal during the elections, but they have not attended a single class so far.

Surprisingly, the leaders, which run the show during the elections, have interesting academic profile.

Figure this out: Vikram (Vicky) Middukhera, who claims to be a student of French, has no record of his admission to the department. He has not attended a single class till date. NSUI leader Manoj Lubana today submitted his admission fee in the three-year law department and filed application for migration from PU Regional Centre, Department of Law, Muktsar, to three-year Law Department in Chandigarh.

Senior NSUI leader Birender Singh Dhillon, who also plays a prominent role in the campus elections, is not enrolled with any department. These days, he is coming to the campus for managing party activities of the NSUI.

Sailing in the same boat is ABVP senior leader Dinesh Chauhan. He is campaigning and taking part in all campus activities, but is not a student of the campus.

The only leader about whom the department confirmed admission is PUSU's Satwinder Singh. He is enrolled with MA (Sociology).

Right from managing day-to-day activities, taking permissions and managing campaigns, these "brains" are working overtime these days.

Courtesy by: The Tribune

21st August, 2015