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NOMINAL INDEX

NOTICE & NOTIFICATIONS

U.T. CHANDIGARH

HARYANA

NEWS OF YOUR INTEREST

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SUBJECT INDEX

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 5802 OF 2005

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SHABINA ABRAHAM & ORS.
Vs
COLLECTOR OF CENTRAL EXCISE & CUSTOMS

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

29th July, 2015

HF ▶ Appellant

There being no machinery provisions in the Act, excise duty is not recoverable from the legal heirs of the deceased manufacturer.

EXCISE DUTY – CENTRAL EXCISE AND SALT ACT - ASSESSMENT – DEATH OF ASSESSEE – WHETHER ASSESSMENT PROCEEDINGS TO CONTINUE AGAINST THE LEGAL HEIRS OF THE DECEASED MANUFACTURER – HELD NO – ABSENCE OF MACHINERY PROVISIONS IN THE ACT – NO SUMS ARE PAYABLE U/S 11 AS NO MACHINERY PROVISIONS INCORPORATED IN THE ACT – PROCEEDINGS TO ASSESS AND COLLECT TAX ABATE WITH THE DEATH OF THE ASSESSEE - LEGAL HEIRS WHO ARE NOT PERSONS CHARGEABLE TO DUTY UNDER THE ACT CANNOT BE BROUGHT WITHIN THE AMBIT OF ACT BY STRETCHING ITS PROVISIONS- PRINCIPLES OF MORALITY WITH RESPECT TO UNLAWFUL ENRICHMENT NOT RELEVANT - *S.11 AND 11 A OF CENTRAL EXCISE AND SALT ACT, 1944*

ASSESEE – MEANING OF – CENTRAL EXCISE AND SALT ACT - 'ASSESSEE' IN SECTION 4(3)(*a*) OF CENTRAL EXCISE AND SALT ACT, MEANS A PERSON WHO IS LIABLE TO PAY DUTY OF EXCISE UNDER THIS ACT – LIVING PERSON ONLY LIABLE TO PAY IT - NOTICE SERVED IS ONLY ON THE PERSON CHARGEABLE WITH EXCISE DUTY – LEGAL HEIRS OF DECEASED NOT WITHIN THE AMBIT OF THE TERM ASSESSEE – *S. 4(4)(a) OF THE CENTRAL EXCISE AND SALT ACT.*

Facts

Mr. GV was the sole proprietor of a business of manufacturing of tread rubber. It was alleged that for the period 1983 to 1985, he had made clandestine removal of goods with an attempt to evade excise duty. Duty together with penalty was sought to be imposed. Pursuant to his death in 1989, a show cause notice was served on his wife and daughters to make submissions regarding the demand of duty which was challenged by them as being without jurisdiction. Since the authorities did not pass an order on the maintainability of the notice, the legal heirs filed a writ before the high court. The High Court quashed the proceedings due to absence of provisions to continue assessment proceedings against the legal heirs. However, the Division Bench reversed the order of the single judge. An appeal is filed before the Supreme Court.

Held

1) *Following the case of Ellis C. Reid it is held that 'assessee' in section 4(3)(a) of Central Excise and Salt Act, means a person who is liable to pay duty of excise under this Act. The present tense used suggests that the liability to pay it is only on the living person. The 'means and includes' definition is exhaustive in nature and there is no scope to read anything further into the said definition. The notice served is only on the person chargeable with excise duty.*

2) *The counsel for the revenue argued that as per section 11, attachment and sale of excisable goods can belong to a dead person and can continue despite death of such person. The Supreme Court rejected this contention and held that S. 11 is limited to recovery of sums due to the government and modes of recovery. It does not deal with the machinery provision for assessment the hands of the estate of a dead person. The insertion of proviso also shows that nothing can be read in the Act by implication. The sums have to be first payable, only then the provisions get attracted. The duty and sums do not become payable without the machinery provisions.*

3) *Following the case of Jullunder Vegetables Syndicate, it is held that in the absence of machinery provision to assess and collect tax from a deceased person, all proceedings against such deceased person abate.*

4) *Distinguishing the case of Muralilal Mahabir Prasad, it is held that In the present case an individual proprietor has died naturally and it is nobody's case that h has maneuvered his own death to evade excise duty. The Revenue has asked to stretch the machinery provisions in the Central Excise and Salt Act on the basis of conjectures and surmises which is not possible.*

5) *The counsel for the revenue has also relied upon the definition of 'person' under the General Clauses Act, 1897. But 'person' does not include legal representatives of persons who are dead.*

6) *The argument that S.6 of the Central Excise Act which prescribes a procedure of registration also does not throw any light on the question regarding dead person's assessment continuing after death in respect of excise duty.*

7) *The contention that the general principle of law states that an action begun in court of law does not cease with his death is also not applicable in this case.*

8) *Approving the case of Dhiren Gandhi, it is held that legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. To apply the moral principle of unlawful enrichment flies in the face of first principles when it comes to taxing statutes.(case relied upon Parington v. A.G.)*

9) *Judgements passed in Cape Brandy Syndicate and Modi Sugar Mills are approved wherein it has been held that nothing can be implied. Only language of the Act used is to be looked at. Therefore, appeal is allowed and judgement passed by Division bench of High court is set aside.*

Cases approved:

- *Additional Tahsildar, Raipur v. Gendalal, (1968) 21 STC 263.*
- *Cape Brandy Syndicate v. IRC, (1921) 1 KB 64 at 71*
- *Commissioner of Central Excise, Bangalore –III v. Dhiren Gandhi, 2012 (281) E.L.T. 64 (Karnataka)*

Cases referred:

- *C.A. Abraham v. The Income-Tax Officer, Kottayam & Another, AIR 1961 SC 609 at 612 para 6: (1961) 2 SCR 765 at page 771*
- *Bengal Immunity Co. Ltd. v. State of Bihar (1955) 6 STC 446*
- *Commissioner of Income Tax v. Amarchand N. Shroff, [1963] 48 I.T.R. 59*
- *Commissioner of Income-tax, Madras v. S.V. Angidi Chettiar (1962) 44 ITR 739 (SC)*
- *Commissioner of Income Tax v. Darabsha Nasarwanji Mehta, 1935 A.I.R. Bombay 167*
- *Commissioner of Income Tax, Bombay v. James Anderson, [1964] 51 I.T.R. 345*
- *Commissioner of Sales Tax, Delhi & Others v. Shri Krishna Engineering Co. & Others, (2005) 2 SCC 695, page 702, 703 paras 19 to 23*
- *Girja Nandini Devi & Ors. v. Bijendra Narain Choudhury, [1967] 1 S.C.R. 93 at paragraph 15*
- *Shri Rameshwar Manjhi v. Management of Sangramgarh Colliery & Ors., (1994) 1 SCC 292*
- *State of Tamil Nadu v. M.K. Kandaswami & Others, Air 1975 SC 1871 (para 26): (1975) 4 SCC 745 (para 26)*
- *Wallace Brothers & Co. Ltd. v Commissioner of Income-tax (1948) 16 ITR 240 (PC)*
- *Yeshwantrao v. The Commissioner of Wealth Tax, Bangalore, AIR 1967 SC 135*
- *Whitney v. Commissioners of Inland Revenue (1925) 10 TC 88 (HL)*

Case distinguished:

- *Murarilal Mahabir Prasad and others v. Shri B.R. Vaid and others, (1975) 2 SCC 736*

Cases Relied upon:

- *Commissioner of Income Tax, Bombay v. Ellis C. Reid, A.I.R. 1931 Bombay 333*
- *Commissioner of Sales Tax Commissioner, Uttar Pradesh v. Modi Sugar Mills, 1961 (2) SCR 189 at 198*
- *Khushi Ram Behari Lal & Co. v. Assessing Authority, Sangrur, (1967) 19 STC 381*
- *Partington v. A.G., (1869) LR 4 HL 100 at 122*
- *State of Punjab v. Jullunder Vegetables Syndicate, [1966] 2 S.C.R. 457*

Present:

For Appellant(s): Mr. Rajshekhar Rao,Adv.
Mr. Atul Shankar Vinod,Adv.
Mr. Varun Mishra,Adv.
Mr. M. P. Vinod,Adv.

For Respondent(s) Mr. A.K.Panda,Sr.Adv.
Mr. Rajiv Nanda,Adv.
Mr. B. Krishna Prasad,Adv.
Mr. Surendra Kumar Gupta,Adv.
Ms. Disha Singh,Adv.

******

R.F. NARIMAN, J.

1. *"Nothing is certain except death and taxes."* Thus spake Benjamin Franklin in his letter of November 13, 1789 to Jean Baptiste Leroy. To tax the dead is a contradiction in terms. Tax laws are made by the living to tax the living. What survives the dead person is what is left behind in the form of such person's property. This appeal raises questions as to whether the dead person's property, in the form of his or her estate, can be taxed without the necessary machinery provisions in a tax statute. The precise question that arises in the present case is whether an assessment proceeding under the Central Excises and Salt Act, 1944, can continue against the legal representatives/estate of a sole proprietor/manufacturer after he is dead. The facts of the case are as follows.

2. One Shri George Varghese was the sole proprietor of Kerala Tyre and Rubber Company Limited. By October 1985, this proprietary concern had stopped manufacture and

production of tread rubber. By a show cause notice dated 12.6.1987, for the period January 1983 to December 1985, it was alleged that the assessee had manufactured and cleared tread rubber from the factory premises by suppressing the fact of such production and removal with an intent to evade payment of excise duty. The provisions of Section 11A, as they then stood, of the Central Excises and Salt Act were invoked and duty amounting to Rs.74,35,242/- was sought to be recovered from the assessee together with imposition of penalty for clandestine removal.

3. On 14.3.1989, the said Shri George Varghese died. As a result of his death, a second show cause notice was issued on 18.10.1989 to his wife and four daughters asking them to make submissions with regard to the demand of duty made in the show cause notice dated 12.6.1987. By their reply dated 25.10.1989, the said legal heirs of the deceased stated that none of them had any personal association with the deceased in his proprietary business and were not in a position to locate any business records. They submitted that the proceedings initiated against the deceased abated on his death in the absence of any provision in the Central Excises and Salt Act to continue assessment proceedings against a dead person in the hands of the legal representatives. The said show cause notice was, therefore, challenged as being without jurisdiction.

4. As the Central Excise Authorities posted the matter for hearing and refused to pass an order on the maintainability of the show cause notice alone, the legal heirs approached the High Court under Article 226 of the Constitution by filing a Writ Petition in January, 1990. The learned single Judge of the High Court quashed the proceedings against the legal heirs stating that the Central Excises and Salt Act did not contain any provisions for continuing assessment proceedings against a dead person. Against this, revenue went in appeal. The Division Bench of the High Court of Kerala reversed the single Judge's judgment.

5. Shri Rajshekhar Rao, learned counsel appearing for the legal heirs made submissions before us with great clarity and persuasiveness. He submitted that a reading of Sections 2(f), (3), Section 4(3)(a), Section 11 and 11A as they stood at the relevant time would show that unlike the provisions of the Income Tax Act, there is no machinery provision in the Central Excises and Salt Act for continuing assessment proceedings against a dead individual. He stressed the fact that an assessee under the said Act means "the person" who is liable to pay the duty of excise under this Act and further stressed the fact that in cases of short levy, such duty can only be recovered from a person who is chargeable with the duty that has been short levied. He further invited our attention to the Central Excise Rules and Rules 2(3) and 7 in particular to buttress his submission that there is no machinery provision contained either in the Act or in the Rules to proceed against a dead person's legal heirs. He cited certain judgments before us which we will advert to later on in this judgment.

6. Shri A.K. Panda, learned senior advocate appearing on behalf of the revenue contended that a close reading of Section 11 of the Central Excises and Salt Act will indicate that sums are recoverable from an assessee by an attachment and sale of excisable goods belonging to such assessee and further that if the amount so recoverable falls short, it can be recovered from the person himself as an arrear of land revenue. Inasmuch as a dead man's property can be attached and sold and proceeded against, it is clear that the necessary machinery is contained in the Central Excises and Salt Act. His further submission is that Section 11A of the said Act is a machinery provision and, therefore, the rule to be applied is that that construction should be preferred which makes a machinery Section workable. He also referred us to the definition of "person" in Section 3(42) of the General Clauses Act to buttress his submission that a legal representative would be included within a "person" as so defined. He referred us to Section 6 of the said Act dealing with registration and argued that registration of a person makes him a legal entity liable to be assessed as such. His other submission is that

the general principle, namely, that a cause of action abates when a person who institutes a proceeding dies is not applicable in the present case and cited various judgments before us in support of the said principle. He also submitted that the position under the Income Tax Act would be entirely different as income tax is a tax leviable on a person whereas a duty of excise is leviable on manufacture of goods. He also cited a number of decisions which will be dealt with in the course of this judgment.

7. We have heard learned counsel for the parties. Before entering into a discussion on the merits of the case, it is necessary to set out the statutory provisions contained in the Central Excises and Salt Act at the relevant time, which are given below:-

> ***2****(f) "manufacture" includes any process incidental or ancillary to the completion of a manufactured product; and*
>
> *i) In relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff,*
>
> *(ia) in relation to manufactured tobacco, includes the labeling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer.*
>
> *ii) In relation to salt, includes collection, removal, preparation, steeping, evaporation, boiling, or any one or more of these processes, the separation or purification of salt obtained in the manufacture of saltpeter, the separation of salt from earth or other substance so as to produce elementary salt, and the excavation or removal of natural saline deposits or efflorescence;*
>
> *iii) In relation to patent or proprietary medicines, as defined in Item No. 14-E of the first Schedule and in relation to cosmetics and toilet preparations as defined in Item No.14- F of that Schedule, includes the conversion of powder into tablets or capsules, the labeling or relabeling of containers intended for consumers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumers;*
>
> *iv) In relation to goods comprised to Item No.18-A of the First Schedule, includes sizing, beaming, warping, wrapping, winding or reeling, or any one or more of these processes, or the conversion of any form of the said goods into another form of such goods;*
>
> *And the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."*
>
> ***3.*** *Duties specified in the First Schedule to be levied.*
>
> *(1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates set forth in the First Schedule.*

4. *Valuation of excisable goods for purposes of charging of duty of excise. –*

(1)Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section be deemed to be –

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale:"

(4) For the purposes of this section, -

(a) "assessee" means the person who is liable to pay the duty of excise under this Act and includes his agent;"

11. Recovery of sums due to Government. - In respect of duty and any other sums of any kind payable to the Central Government under any of the provisions of this Act or of the rules made thereunder, the officer empowered by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963, to levy such duty or require the payment of such sums may deduct the amount so payable from any money owing to the person from whom such sums may be recoverable or due which may be in his hands or under his disposal or control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the Collector of the district in which such person resides or conducts his business and the said Collector, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

11A. Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded.-

1) When any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short- paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words "six months", the words "five years" were substituted."

Rule 2(3) and Rule 7 of the Central Excises Rules, 1944, read as under:

"2. Definitions.*—In these rules, unless there is anything repugnant in the subject or context—*

(3) "assessee" means any person who is liable for payment of duty assessed and also includes any producer or manufacturer of excisable goods or a registered person of a private warehouse in which excisable goods are stored;

> ***7. Recovery of duty.***- *Every person who produces, cures or manufactures any excisable goods, or who stores such goods in a warehouse, shall pay the duty or duties leviable on such goods, at such time and place and to such persons as may be designated, in, or under authority of these rules, whether the payment of such duty or duties is secured by bond or otherwise.*
>
> *Provided that nothing contained in this rule shall apply to molasses produced in a khandsari sugar factory. Provided further that in respect of goods falling under Chapter 62 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), manufactured on job-work, the provisions of these rules shall apply subject to the provisions of rule 7AA."*

8. On a reading of the aforesaid provisions, it is clear that Shri Rajshekhar Rao, learned counsel appearing on behalf of the appellants is correct – there is in fact no separate machinery provided by the Central Excises and Salt Act to proceed against a dead person when it comes to assessing him to tax under the Act.

9. The position under the Income Tax Act, 1922 was also the same until Section 24B was introduced by the Income Tax (Second Amendment) Act of 1933. Prior to the introduction of the aforesaid Section, the Bombay High Court had occasion to deal with a similar question in **Commissioner of Income Tax, Bombay v. Ellis C. Reid, A.I.R. 1931 Bombay 333**. A Division Bench of the Bombay High Court noticed the definition of "assessee" contained in Section 2(2) of the 1922 Act which definition stated that "'assessee' means a person by whom income tax is payable". The Division Bench went on to say that the words "or by whose estate" are conspicuous by their absence in the said definition. The Division Bench then went on to say that there appears to be nothing in the charging Section to suggest that a man who has once become liable to tax can avoid payment of tax by dying before such tax has been assessed or paid. However, the Act has to contain appropriate provisions for continuing an assessment and collecting tax from the estate of a deceased person which was found to be absent in the 1922 Act before it was amended by insertion of Section 24B. Having noticed various provisions of the said Act, the Division Bench went on to say:-

> *"These are, I think, the only material provisions, of the Act. It is to be noticed that there is throughout the Act no reference to the decease of a person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have been present to the mind of the legislature that whatever privileges the payment of Income-tax may confer, the privilege of immortality is not amongst them. Every person liable to pay tax must necessarily die and in practically every case, before the last installment has been collected, and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from, the estate of a deceased person. In order that the Government may succeed and the assessment made in this case may be held legal I think, one must do a certain amount of violence to the language of Section 23(4); I think one must either do a certain amount of violence - I should say a considerable amount of violence - to the language of Section 27, or else hold that the privilege conferred on a living person assessed under Section 23(4) of getting the assessment set aside is not to be enjoyed by the estate of a deceased person - a distinction for which I can see no logical reason. One must also construe Section 29 so as to give to the word "assessee" one meaning in one place and another meaning in another place.*
>
> *In my judgment, in construing a taxing Act the Court is not justified in straining the language in order to hold a subject liable to tax. If the legislature*

intends to assess the estate of a deceased person to tax charged on the deceased in his lifetime, the legislature must provide proper machinery and not leave it to the Court to endeavor to extract the appropriate machinery out of the very unsuitable language of the statute. We are not concerned with the case which may arise of the death of a person after assessment but before payment." (at page 335)

10. Given the aforesaid decision of the Bombay High Court, the legislature was quick to amend the Income Tax Act, 1922 by inserting Section 24B which reads as follows:-

Section 24B : Tax of deceased person payable by representative-

(1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.

(2) Where a person dies before the publication of the notice referred to in sub-section (1) of section 22 or before he is served with a notice under sub-section (2) of section 22or section 34, as the case may be, his executor, administrator or other legal representative shall, on the serving of the notice under sub-section (2) of section 22 or under section 34, as the case may be, comply therewith, and the Income-tax Officer may proceed to assess the total income of the deceased person as if such executor, administrator or other legal representative were the assessee.

(3) Where a person dies, without having furnished a return which he has been required to furnish under the provisions of section 22, or having furnished a return which the Income-tax Officer has reason to believe to be incorrect or incomplete, the Income-tax Officer may make an assessment of the total income of such person and determine the tax payable by him on the basis of such assessment, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person had he survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents or other evidence which he might under the provisions of sections 22 and 23 have required from the deceased person."

11. This judgment of the Bombay High Court has been affirmed in two judgments of this Court. In Commissioner of Income Tax, Bombay City I v. Amarchand N. Shroff, [1963] 48 I.T.R. 59, this Court referred with approval to Ellis C. Reid and held:-

"The correct position is that apart from section 24B no assessment can be made in respect of the income of a person after his death. See Ellis C. Reid v. Commissioner of Income- tax. In that case, and that was a case before section 24B was enacted, a person was served with a notice under section 22(2) of the Income-tax Act but no return was made within the period specified and he died. It was held that no assessment could be made under section 23(4) of the Act after his death. At p.106 it was observed:-

"It is to be noticed that there is throughout the Act no reference to the decease of a person on whom the tax has been originally charged, and it is very difficult to suppose the omission to have been unintentional. It must have been present in the mind of the legislature that whatever privileges the payment of income-tax may confer, the privilege of immortality is not amongst them. Every person

liable to pay tax must necessarily die and, in practically every case, before the last instalment has been collected, and the legislature has not chosen to make any provisions expressly dealing with assessment of, or recovering payment from the estate of a deceased person".

The individual assessee has ordinarily to be a living person and there can be no assessment on a dead person and the assessment is a charge in respect of the income of the previous year and not a charge in respect of the income of the year of assessment as measured by the income of the previous year. Wallace Brothers & Co. Ltd. v Commissioner of Income-tax. By section 24B the legal representatives have, by fiction of law, become assessees as provided in that section but that fiction cannot be extended beyond the object for which it was enacted. As was observed by this Court inBengal Immunity Co. Ltd. v. State of Bihar legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field. In the present case the fiction is limited to the cases provided in the three sub sections of section 24B and cannot be extended further than the liability for the income received in the previous year." (at page 66)

12. Similarly, in **Commissioner of Income Tax, Bombay v. James Anderson, [1964] 51 I.T.R. 345**, this Court referred with approval to the judgment in **Ellis C. Reid's case** and further held that even after Section 24B was enacted tax cannot be assessed on receipts on the footing that it is the personal income of the legal representative. This Court held:-

"It was then urged that apart from section 24B, the legal representatives of a deceased person also represent his estate in the matter of taxation of income and it is competent to the taxing authorities to assess them on income received on behalf of the estate. Counsel did not rely upon any specific provision of the Act in support of the contention, and merely asserted that the Act seeks to tax all assessable incomes, and income received by a legal representative of the estate of a deceased person should not be permitted to escape tax to the detriment of public revenue. But if the Legislature has failed to set up the procedure to assess such income, the Courts cannot supply it. The expression "assessee" in section 2(2) as substituted by the Indian Income Tax (Amendment) Act, (25 of 1953), with effect from April 1, 1952, means a person by whom income-tax or any other sum of money is payable under the Act, and includes every person in respect of whom any proceeding and this Act has been taken for the assessment of his income or of the loss sustained by him or of the amount of refund due to him. By section 3 where income-tax is chargeable for any year at any rate or rates prescribed by the Act of the Central Legislature, tax at that rate shall be charged for that year in accordance with and subject to the provisions of the Act in respect of the total income of the previous year of every individual, Hindu undivided family, company and local authority, and of every firm and other association of persons or the partners of the firm or the members of the association individually. The charge to income- tax has therefore to be in accordance with and subject to the provisions of the Act, and the Legislature has not provided that the income received by a legal representative which would, but for the death of the deceased, have been received by such deceased person, is to be regarded for the purpose of assessment as the personal income of the legal representative. To assess tax on such receipts on the footing that it is the personal income of the legal representative is to charge tax not in accordance with the provisions of the Act." (at page 352)

13. In **Commissioner of Income Tax, Bombay v. Darabsha Nasarwanji Mehta, A.I.R. 1935 Bombay 167**, the Bombay High Court held that Section 24B of the 1922 Act was not retrospective and stated that as Avabai N. Mehta died before the said Act came into force and before she had made any return, her estate was not liable to be assessed to tax particular regard being had to the opening words of Section 24B which state "where a person dies" which are words in the present tense.

14. Pursuant to the 12th Law Commission Report, a new Income Tax Act was passed in 1961 which contained elaborate provisions for assessment of deceased persons after they die. The anomalies left by Section 24B of the 1922 Act, as pointed out in the two Supreme Court judgments referred to above, were sought to be rectified in the new provisions contained in the 1961 Act. Sections 159 and 168 of the Act are apposite in this regard and read as follows:-

> *"159. (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased.*
>
> *(2) For the purpose of making an assessment (including an assessment, reassessment or recomputation under section 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the provisions of sub-section (1),—*
>
> > *(a) any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;*
> >
> > *(b) any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and*
> >
> > *(c) all the provisions of this Act shall apply accordingly.*
>
> *(3) The legal representative of the deceased shall, for the purposes of this Act, be deemed to be an assessee.*
>
> *(4) Every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.*
>
> *(5) The provisions of sub-section (2) of section 161, section 162, and section 167, shall, so far as may be and to the extent to which they are not inconsistent with the provisions of this section, apply in relation to a legal representative.*
>
> *(6) The liability of a legal representative under this section shall, subject to the provisions of sub-section (4) and sub- section (5), be limited to the extent to which the estate is capable of meeting the liability."*
>
> *"168. (1) Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor,—*
>
> > *a) if there is only one executor, then, as if the executor were an individual; or*
> >
> > *b) if there are more executors than one, then, as if the executors were an association of persons;*

and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

2) The assessment of an executor under this section shall be made separately from any assessment that may be made on him in respect of his own income.

3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.

4) In computing the total income of any previous year under this section, any income of the estate of that previous year distributed to, or applied to the benefit of, any specific legatee of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee." |

15. It will be noticed that under Section 159(2), for the purpose of making any assessment, any proceeding taken against the deceased before his death is by deeming fiction deemed to have been taken against his legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased. Further, the legal representative under sub-section (3) of 159 is again by deeming fiction deemed to be an assessee himself. However, the liability of such representative is limited only to the extent to which the estate left by the deceased is capable of meeting the tax liability subject to the contingencies mentioned in sub-sections (4) and (5) of Section 159.

16. Similarly, under Section 168, where the assessee has left a Will, the income of the estate of the deceased person becomes chargeable in the hands of the executor of such will. This is made clear by Section 168.

17. It will be seen that the definition of "assessee" contained in Section 4(3)(a) of the Central Excises and Salt Act is similar to the definition of assessee contained in the Income Tax Act, 1922. Under that Act, as we have already seen, an assessee means "a person by whom income tax is payable." Under the Central Excises and Salt Act, an assessee means "the person who is liable to pay the duty of excise under this Act". The present tense being used, it is clear that the person referred to can only be a living person as was held in Ellis C. Reid (supra). Further, the only extension of the definition of "assessee" under the Central Excises and Salt Act is that it would also include an assessee's agent, which has nothing to do with the facts of the present case. It is well settled that a "means and includes" definition is exhaustive in nature and that there is no scope to read anything further into the said definition.

18. As has been correctly pointed out by learned counsel for the appellants, the notice that is served under Section 11A is only on the person chargeable with excise duty, which takes us back to "assessee" as defined.

19. Learned counsel for the revenue relied upon Section 11 of the Act, which, according to him, indicates that an attachment and sale of excisable goods can belong to a dead person and such attachment and sale can continue notwithstanding the death of such person. Apart from the fact that there is nothing about dead persons in Section 11, Section 11 is limited only to recovery of sums that are due to the Government. The very opening words in Section 11 show that duty and other sums must first be payable to the Central Government under the Act or the rules. If such sums are not "payable" then the provisions of the Section do not get attracted at all. We have seen that the Act contains no machinery provisions for proceeding against a dead person's legal heirs, such as are contained in the Income Tax Act. Obviously, therefore, duty and other sums do not become "payable" without such machinery provisions.

Further, Section 11 deals with modes of recovery of tax payable and does not deal with the subject matter at hand – namely machinery provisions for assessment in the hands of the estate of a dead person and, therefore, does not have much bearing on the matter in issue in the present case. The argument, therefore, as to the insertion of the proviso to Section 11 by an Amendment Act of 2004 so as to provide that if a person from whom some recoveries are due transfers his business to another person, then the excisable goods in the possession of the transferee can also be attached and sold again leads us nowhere. In fact learned counsel for the appellants also relied on this proviso to argue that the Legislature's need to add the proviso shows that nothing can be read into the Central Excises andSalt Act by implication. As has been stated above, Section 11 deals with an entirely different situation and the addition of the proviso therein is not of much significance as far as the question we have to answer is concerned.

20. Learned counsel for the revenue, however, contended that the principles applied in the case of the Income Tax Act should not be applied to the Central Excises and Salt Act as the latter Act is a tax on manufacture of goods and not on persons. We are afraid this argument cannot be countenanced in view of this Court's judgment in **State of Punjab v. M/s Jullunder Vegetables Syndicate, [1966] 2 S.C.R. 457**. In that judgment, the question before this Court was whether a dissolved firm could be assessed to sales tax under the East Punjab General Sales Tax Act, 1948, with respect to its pre-dissolution turn over. After analyzing the East Punjab General Sales Tax Act, this Court held:-

> *"The scheme of the Act is a simple one. A firm is a dealer; the said dealer is assessable to tax on its turnover, if its turnover exceeds the prescribed limit. It cannot do business while being liable to pay tax under the Act without getting itself registered and possessing a registration certificate. It is assessed to tax under Section 11 of the Act in the manner prescribed thereunder. If it discontinues its business, it shall within the specified time inform the prescribed authority accordingly. A dealer and its partners are jointly and severally responsible to pay the tax assessed on the dealer. But there is no provision expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution. The question is whether such a power can be gathered by necessary implication from the other provisions of the Act."* (at page 461)
>
> The Court went on to say:
>
> *"Though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, income-tax as well as sales-tax, it is a legal entity. If that be so, on dissolution, the firm ceases to be a legal entity. Thereafter, on principle, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm which ceased to have a legal existence. As in the present case, admittedly, the firm was dissolved before the order of assessment was made, the said order was bad."* (at page 462)

The Court went on to consider various High Court decisions and ultimately concluded as follows:-

> *"Strong reliance was placed upon two judgments of this Court. This Court in C.A. Abraham v. Income-tax Officer, Kottayam, speaking through Shah, J., held that S.44 of the Income-tax Act set up a machinery for assessing the tax liability of firms which have discontinued their business. This was followed by this Court again inCommissioner of Income-tax, Madras v. S.V. Angidi Chettiar. These two decisions are of no help to the Revenue in the present case. Indeed, in a*

> *sense they are against it.The Income-tax Act contains an express provision for assessing a dissolved firm. Indeed, but for that provision no assessment could be made under that Act on dissolved firms.*
>
> *For the foregoing reasons we hold that the High Court was right in holding that the assessment order on the dissolved firm could not be supported under the provisions of the Act. The High Court has given a correct answer to the question propounded for its decision."* (at page 464)

21. This judgment is a complete answer to the contention of learned counsel for the revenue inasmuch as on a parity of reasoning, sales tax is not a personal tax but a tax on the sale of goods. Nevertheless, this Court held that in the absence of any machinery provisions to assess and collect sales tax from a deceased person – in that case it was a dissolved partnership firm – all proceedings against such deceased person/dissolved firm abate. The aforesaid judgment has been followed by this Court in **Khushi Ram Behari Lal & Co. v. Assessing Authority, Sangrur, (1967) 19 STC 381** and in **Additional Tahsildar, Raipur v. Gendalal, (1968) 21 STC 263**.

22. Learned counsel for the revenue, however, strongly relied upon **M/s. Murarilal Mahabir Prasad and others v. Shri B.R. Vad and others, (1975) 2 SCC 736**, a case arising under the Bombay Sales Tax Act, 1953. Since this judgment has been relied upon as the sheet anchor of the revenue's case, it is important to deal with it in some detail.

23. The question that arose in the aforesaid case was whether a dissolved firm could be re-assessed to sales tax in respect of its pre- dissolution turnover. By a two to one (2:1), decision, this Court held that the Bombay Act contained the necessary provisions to re- assess such a dissolved firm in respect of its pre-dissolution turnover. The majority judgment referred to the definition of "dealer" in the Bombay Act of 1953 and referred to this Court's judgment in **State of Punjab v. M/s Jullunder Vegetables Syndicate** (supra). We find that the majority judgment of this Court relied heavily on the fact that dishonest persons may dissolve a firm in order to escape liability to assessment of taxes legitimately due from them but which have escaped assessment. In paragraph 19, the majority held:

> *"It is plausible that a distinction ought to be made between the death of an individual and the dissolution of a firm. Human beings, as assessees, are not generally known to court death to evade taxes. Death, normally, is not volitional and it is understandable that on the death of an individual, his liability to be assessed to tax should come to an end unless the statute provides to the contrary. With firms it is different, because a firm which incurs during its existence a liability to pay sales- tax may, with a little ingenuity, evade its liability by the voluntary act of dissolution. The dissolution of a firm could therefore be viewed differently from the death of an individual and the partners could be denied the advantage of their own wrong. But we do not want to strike this new path because the Jullundur case (supra) and the two cases which follow it have likened the dissolution of a firm to the death of an individual. Let us therefore proceed to examine the other provisions of the 1953 Act."*

It then went on to quote Section 15(1) of the Bombay Sales Tax Act, 1953 and then arrived at this conclusion:

> *"22. Section 15(1) contains an important clause that action thereunder can be taken by the Collector after giving a notice to the assessee under Section 14(3) of the Act within the prescribed period. Once such a notice is given, the Collector gets the jurisdiction to assess or re-assess the amount of tax due from the dealer and all the provisions of the Act "shall apply accordingly as if the*

notice were a notice served under" Section 14(3). Section 14(3) speaks of the power of the Collector to assess the amount of tax due from the dealer after giving notice to him, if the Collector is not satisfied that the returns furnished are correct and complete. The jurisdiction to assess or reassess which is conferred by section 15(1) is thus equated with the original jurisdiction to assess the dealer under section 14. By this method, the continuity of the legal personality of the assessee is maintained in order to enable the assessment of turnover which has escaped assessment. It is no answer to a notice under section 15 that the partners having dissolved the firm, the assessment cannot be reopened. It puts a premium on one's credulity to accept that having created a special jurisdiction to assess or reassess an escaped turnover, the Legislature permitted that salutary jurisdiction to be defeated by the device of dissolution. The argument of the appellants really comes to this: suppress the turnover, evade the sales-tax, dissolve the firm and earn your freedom from taxation."

The Court then went on to add:

"24. Section 15A confers on the Collector analogous powers to asses or re-assess a dealer for taxes due prior to November 21, 1956 when the States were reorganised, if either no assessment was made for the prior period or if any turnover had escaped assessment. This provision, like the one contained in Section 15, is of general application and makes no exception in favour of dissolved firm. Therefore, if a firm was not assessed prior to the re-organisation of States or if any part of its turnover had escaped assessment, it is competent to the Collector to assess or re-assess the firm notwithstanding its subsequent dissolution. This is the necessary implication of Section 15A. It must follow as a corollary that the power to rectify a mistake apparent from the record can be exercised by the Collector under Section 35 of the Act of 1953 even after the dissolution of an assessed firm, though on conditions specified in the section. The section contains a compelling implication that evident errors can be corrected no matter whether the firm is in existence or is dissolved. Dissolution is not a panacea for liability to pay sales-tax."

It also added in paragraph 32:

"It is indisputable that the first appellant firm was liable to be charged to sales tax on its business turnover. The charging provisions are contained in Chapter III of the Act of 1953 and Chapter II of the Act of 1959. In this appeal, we have to construe the machinery provisions of those Acts. In accordance with the view taken in the cases cited above, the machinery sections ought to be construed so as to effectuate the charging sections. The construction which we have placed on the machinery provisions of the 1953 Act will give meaning and content to the charging sections, in the sense that our construction will effectuate the provision contained in the charging sections. <u>The resourcefulness and ingenuity which go into well-timed dissolution of firms ought not to be allowed to be used as convenient instruments of tax evasion.</u> As observed by Lord Dunedin in Whitney v. Commissioners of Inland Revenue:

> *"A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission of clear direction makes that end unattainable."*

Far from there being any crucial omission or a clear direction in the present case which would make the end unattainable, the various provisions to which

we have drawn attention leave it in no doubt that a dissolved firm can be assessed on its pre- dissolution turnover."

24. It is clear that on a conjoint reading of these paragraphs this Court found that the machinery provisions contained in the Bombay Sales Tax Act, 1953, were sufficient to reassess a dissolved firm in respect of income that had escaped assessment before its dissolution. A distinction was drawn between an individual who dies and a firm that is dissolved as a device to evade tax. The Court laid great stress on the provision contained in Section 15(1) of the said Act by which the jurisdiction to assess or reassess under Section 15(1) is equated with the original jurisdiction to assess the dealer under Section 14. By this method, the Court found the continuity of the legal personality of the assessee is maintained in order to enable the assessment of turnover which has escaped assessment. The crucial difference, therefore, between Section 15(1) of the Bombay Sales Tax Act, 1953 and Section 11A of the Central Excises and Salt Act is that Section 11A does not contain any such provision as is contained in Section 15(1) which equates the jurisdiction to assess or reassess with the original jurisdiction to assess the dealer in the very first place. Further, this Court also construed Section 19 of the Bombay Sales Tax Act, 1959 which would throw light on the earlier Bombay Sales Tax Act, 1953, as containing the necessary machinery provisions to assess dissolved firms in respect of escaped turnover pre-dissolution. Hence, this Court added:

"35. It is relevant, though we did not refer to this aspect while dealing with the provisions of the 1953 Act, that section 19(3) of the 1959 Act contains a clear indication that the legislature intended that a dissolved firm could be assessed under the 1953 Act also. Section 19(3) speaks of the liability of partners for the tax due from a dissolved firm and provides that they shall be jointly and severally liable to pay the tax due from the firm under the Act of 1959 or "under any earlier law", whether such tax has been assessed before or after dissolution. Section 2(12) of the 1959 Act defines "earlier law" to mean, inter alia, the Bombay Sales Tax Act, 1953. Thus, one of the postulates of section 19(3) at any rate is that a dissolved firm could be assessed under the 1953 Act. Such a postulate accords with the principle that if the legislature provided for a charge of sales-tax, it could not have intended to render that charge ineffective by permitting the partners to dissolve the firm, an easy enough thing to do. Nothing, in fact, would be easier to evade a tax liability than to declare that the firm, admittedly liable to pay tax, has been dissolved. Section 19(3) of the 1959 Act not only makes clear what was necessarily implied in the 1953 Act, but it throws additional light on the true construction of the earlier law. But we thought it advisable to keepsection 19(3) of the 1959 Act apart while construing the 1953 Act because it is the courts, not the legislature, who have to construe the laws of the land authoritatively. As said in Craies on Statute Law:

> *Except as a parliamentary exposition, subsequent Acts are not to be relied on as an aid to the construction of prior unambiguous Acts. (6th Ed., p. 146).*

The limited use which may be made of the language of section 19(3) of the 1959 Act, though such a course is unnecessary, is for saying that it serves to throw some light on the Act of 1953, in case the argument is that the Act of 1953 is ambiguous.

36. Section 19(3) being quite clear and explicit, it is unnecessary to dwell on the other provisions of the Act of 1959 in order to show that a dissolved firm can be assessed under it. We may only point out that the Act of 1959 contains provisions similar to those in sections 15, 15A and 35 of the Act of 1953 on

which we have dwelt at some length. Those provisions can be found in sections 35, 35A and 62 of the Act."

25. A reading of the ratio of the majority decision contained in **Murarilal's case** (supra) would lead to the conclusion that the necessary machinery provisions were already contained in the Bombay Sales Tax Act, 1953 which were good enough to bring into the tax net persons who wished to evade taxes by the expedient of dissolving a partnership firm. The fact situation in the present case is entirely different. In the present case an individual proprietor has died through natural causes and it is nobody's case that he has maneuvered his own death in order to evade excise duty. Interestingly, in the written submissions filed by revenue, revenue has argued as follows:-

"It is pertinent to mention that in the present case, Shri George Varghese (predecessor in interest of the appellants herein) was doing business in the name of manufacturing unit namely M/s. Kerala Tyre & Rubber Company and after the death of Shri George Varghese, his legal representatives (appellants herein) might have been in possession of the plant, machinery, stock etc. and continuing the same business, but might be in some other name in order to avoid the excise duty chargeable to the previous manufacturing unit."

26. 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, theIncome 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).

27. The argument that Section 11A of the Central Excises and Salt Act is a machinery provision which must be construed to make it workable can be met by stating that there is no charge to excise duty under the main charging provision of a dead person, which has been referred to while discussing Section 11A read with the definition of "assessee" earlier in this judgment.

28. Learned counsel for the revenue also relied upon the definition of a "person" under theGeneral Clauses Act, 1897. Section 3(42) of the said Act defines "person as under:

"(42) "Person" shall include any company or association or body of individuals whether incorporated or not."

It will be noticed that this definition does not take us any further as it does not include legal representatives of persons who are since deceased. Equally, Section 6 of the Central Excises Act, which prescribes a procedure for registration of certain persons who are engaged in the process of production or manufacture of any specified goods mentioned in the schedule to the said Act does not throw any light on the question at hand as it says nothing about how a dead person's assessment is to continue after his death in respect of excise duty that may have escaped assessment. Also, the judgments cited on behalf of revenue, namely, **Yeshwantrao v. The Commissioner of Wealth Tax, Bangalore, AIR 1967 SC 135 at pages 140**, 141 para 18: (1966) Suppl. SCR 419 at 429 A-B, **C.A. Abraham v. The Income-Tax Officer, Kottayam & Another,** AIR 1961 SC 609 at 612 para 6: (1961) 2 SCR 765 at page 771, **The State of Tamil Nadu v. M.K. Kandaswami & Others**, Air 1975 SC 1871 (para 26): (1975) 4 SCC 745 (para 26), **Commissioner of Sales Tax, Delhi & Others v. Shri Krishna Engineering**

Co. & Others, (2005) 2 SCC 695, page 702, 703 paras 19 to 23, all enunciate principles dealing with tax evasion in the context of construing provisions which are designed to prevent tax evasion. The question at hand is very different – it only deals with whether the Central Excises and Salt Act contains the necessary provisions to continue assessment proceedings against a dead man in respect of excise duty payable by him after his death, which is a question which has no relation to the construction of provisions designed to prevent tax evasion.

29. Learned counsel for the revenue also cited **Girja Nandini Devi & Ors. v. Bijendra Narain Choudhury**, [1967] 1 S.C.R. 93 at paragraph 15, and **Shri Rameshwar Manjhi (deceased) Through his son Shri Lakhiram Manjhi v. Management of Sangramgarh Colliery & Ors.**, (1994) 1 SCC 292 at paragraph 12, in support of the general principle that an action begun in a court of law by a person does not cease with his death. The context of both decisions was very different. The first decision was in the context of proceedings in relation to partition of a joint family whereas the second was under the Industrial Disputes Act. Neither judgment has any direct bearing on the controversy before us.

30. It remains to consider a judgment cited by learned counsel for the appellants, namely, **Commissioner of Central Excise, Bangalore –III v. Dhiren Gandhi, 2012 (281) E.L.T. 64** (Karnataka). This judgment is correct in its conclusion that while interpreting the provisions of the Central Excises and Salt Act, legal heirs who are not the persons chargeable to duty under the Act cannot be brought within the ambit of the Act by stretching its provisions. To the extent that this judgment holds what is set out hereinbelow, it is correct:-

> *"We do not find any provision in the Act which foists any such liability in the case of intestate succession. In other words, there is no provision which empowers the authorities to recover due from a deceased assessee by proceeding against his legal heirs. The way section 11 and 11A are worded, it is amply clear, the legislature has consciously kept away the legal heirs from answering to liabilities under the Act."* (at page 69)

31. 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".*

32. In **Cape Brandy Syndicate v. IRC**, (1921) 1 KB 64 at 71, Rowlatt J. laid down:

> *"In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as*

to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."

33. This Court has, in a plethora of judgments, referred to the aforesaid principles. Suffice it to quote from one of such judgments of this Court in Commissioner of Sales Tax Commissioner, Uttar Pradesh v. Modi Sugar Mills, 1961 (2) SCR 189 at 198:-

"In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."

34. We are, therefore, of the view that this appeal must be allowed and the judgment of the High Court of Kerala is, accordingly set aside and that of the learned Single Judge restored.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 17790 OF 2015

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DURABLE CERAMICS PVT. LTD
Vs
STATE OF PUNJAB & ANR.

A.K. MITTAL AND RAMENDRA JAIN, JJ.

26th August, 2015

HF ▶ Petitioner

Assessing authority is directed to pay the refund on account of excess Input Tax Credit within the period specified.

REFUND- INPUT TAX CREDIT – EXCESS INPUT TAX CREDIT CALCULATED ON ASSESSMENT – APPLICATION FOR REFUND FILED – NO DECISION TAKEN – LEGAL NOTICE SENT – NO RESPONSE RECEIVED – WRIT FILED- OFFICER DIRECTED TO TAKE A DECISION ON THE APPLICATION FOLLOWED BY LEGAL NOTICE AND PAY THE AMOUNT IF PETITIONER FOUND ENTITLED TO IT – *S. 39 OF PVAT ACT*

The appellant was assessed for the year 2013-14 whereby excess ITC amounting to Rs1,33,83,948/-was calculated. The dealer applied for refund of the said amount but to no effect. Thereafter, a legal notice for refund was sent by the dealer but no response was received by him. Therefore, a writ was filed in this regard.

The Hon'ble High Court has directed the Excise and Taxation Officer-cum – Assessing Authority to take a decision on the application so filed by the dealer followed by the legal notice by passing a speaking order and after affording an opportunity of being heard to the petitioner within a period of one month from the date of receipt of the certified copy of the order. If the petitioner is entitled to refund, it may be paid within next one month. The writ is disposed of.

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

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AJAY KUMAR MITTAL, J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing respondent No.2 to refund the amount of tax paid in excess by the petitioner and as assessed by the assessing authority vide order dated 16.1.2015 (Annexure P-1).

2. The petitioner is engaged in the business of manufacturing and export of ceramic insulators and is also undertaking works contract being carried out at Focal Point, Kotkapura. It

is registered with the Sales Tax Department vide TIN 0375244291. For the assessment year 2013-14, the petitioner filed all its quarterly returns in time along with the annual return in Form VAT-20. The assessment was framed by the Excise and Taxation Officer-cum-Designated Officer, Kotkapura vide order dated 16.1.2015 (Annexure P-1) for the year 2013-14 wherein excess ITC/ refund amounting to Rs. 1,33,83,948/- has been calculated. In pursuance thereto, the petitioner applied for refund of the said amount by way of application dated 9.2.2015 (Annexure P-2) in Form VAT-29, but to no effect. Thereafter, the petitioner sent a legal notice dated 24.7.2015 to respondent No.2 for refund, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner moved an application dated 9.2.2015 (Annexure P-2) followed by legal notice dated 24.7.2015 (Annexure P-3) to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing the Excise and Taxation Officer-cum-Assessing Authority to take a decision on the application dated 9.2.2015 (Annexure P-2) followed by the legal notice dated 24.7.2015 (Annexure P-3), 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. It is further directed that in case it is found that the petitioner is entitled to the amount of refund, the same be paid to it within next one month in accordance with law.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 18101 OF 2015

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B.R. STEEL INDUSTRIES & ANR.
Vs
STATE OF PUNJAB & ORS.

A.K. MITTAL AND RAMENDRA JAIN, JJ.

31st August, 2015

HF ▶ Petitioner

Respondent is directed to consider the letters sent claiming interest on refund and pass a speaking order thereto.

INTEREST – REFUND – DELAYED PAYMENT OF VAT -EXCESS VAT REFUNDED OUT OF WHICH SOME AMOUNT WITHHELD – APPEAL FILED – RESPONDENT ORDERED TO CONSIDER THE CASE ON MERITS – CONSEQUENTLY BALANCE AMOUNT ORDERED TO BE REFUNDED– LETTERS SENT CLAIMING INTEREST ON DELAYED PAYMENT OF VAT REFUND – LACK OF RESPONSE ON PART OF DEPARTMENT – WRIT FILED – RESPONDENT ORDERED TO DECIDE AND PASS A SPEAKING ORDER WITH RESPECT TO THE LETTERS SENT – PETITIONER TO BE GRANTED REFUND, IF ENTITLED, WITHIN ONE MONTH – WRIT DISPOSED OF - *S.39 OF PVAT ACT.*

Facts

The petitioner had submitted Form 15 to the respondents for excess VAT for all the four quarters in the year 2006-07. Out of the excess VAT, some amount was refunded in 2009 while some of it was withheld by the respondents. On appeal, the authority directed the respondent no.2 to pass a speaking order on merits after considering all the facts. Pursuant to that respondent ordered for refund vide order dated 13.1.2014. The petitioners sent various letters to respondents for payment of interest on delayed payment of VAT refund but no response was received. A writ is filed in this regard.

Held

That the respondent no.2 is directed to take a decision on the letters sent by the petitioner and pass a speaking order after affording an opportunity of hearing to the petitioners within a period of two months from the date of receipt of certified copy of the order. If the petitioners are entitled to refund, the same be released within next one month. The writ is disposed of.

Present: Mr. S.D. Bansal, Advocate for the petitioners

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AJAY KUMAR MITTAL, J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioners have prayed for issuance of a writ in the nature of mandamus directing the respondents to pay interest @ 18% per annum on the delayed payment of Value Added Tax (VAT) refund for the accounting year 2006-07, amounting to Rs.18,86,978/-as per order dated 13.1.2014 (Annexure P-3) passed by respondent No.2 and the directions issued by respondent No.4 vide order dated 21.6.2013 (Annexure P-2) which was partly refunded in three installments i.e. on 16.2.2009 (Rs.4,56,872/-), 3.8.2009 (Rs.1,81,277/-) and 26.3.2014 (Rs.12,26,220/-) to them and the balance VAT amount of Rs. 22,659/-.

2 Petitioner No.1 is engaged in the business of manufacturing of the C.R. Strips and Iron Stamping and is registered with the Excise & Taxation Department, Punjab since 1999, having TIN No. 03711037902. The petitioners submitted Form VAT 15 to respondent No.2 on 28.7.2006 for excess VAT amounting to Rs.97,870/-for the first quarter ending 30th June, 2006, Form VAT 15 for the second quarter on 30.10.2006 for refund of Rs.3,35,046/-as excess VAT, Form VAT 15 on 30.1.2007 for the third quarter for refund of Rs.9,27,960/-as excess VAT and Form VAT 15 for the fourth quarter on 30.4.2007 for refund of excess VAT amounting to Rs.18,86,978/-for the accounting year 2006-07. Out of the said amount, the respondents refunded an amount of Rs.4,56,872/-on 16.2.2009. Respondent No.2 vide order dated 7.7.2009 (Annexure P-1) issued VAT refund voucher amounting to Rs.1,81,227/-and withheld the balance amount of the excess VAT refund. The petitioners filed an appeal against the order, Annexure P-1, passed by respondent No.2 and respondent No.4 vide order dated 21.6.2013 (Annexure P-2) remanded the matter to respondent No.2 for passing the self speaking and final order on merits after considering all the facts within two months. In pursuance thereto, respondent No.2 vide order dated 13.1.2014 (Annexure P-3) ordered for refund of Rs.12,26,220/-. Thereafter, the petitioners sent various letters including letters dated 1.9.2014, 6.1.2015 and 28.4.2015 (Annexure P-4 Colly) to respondents No.2 and 3 for payment of interest on delayed payment of VAT refund, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that for the relief claimed in the writ petition, the petitioners sent various letters including letters dated 1.9.2014, 6.1.2015 and 28.4.2015 (Annexure P-4 Colly) to respondents No.2 and 3, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioners, 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 take a decision on the letters dated 1.9.2014, 6.1.2015 and 28.4.2015 (Annexure P-4 Colly), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioners within a period of two months from the date of receipt of certified copy of the order. It is further directed that in case it is found that the petitioners are entitled to the amount of refund, the same be released to them within next one month in accordance with law.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 13029 OF 2015

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HAMILTON HEIGHTS P LTD.
Vs
STATE OF HARYANA AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

25th August, 2015

HF ▶ Petitioner

DEVELOPER – ASSESSMENT – ASSESSEE DEVELOPER OF FLATS/APARTMENTS - ASSESSED TO TAX CONSIDERING HIM AS LUMP SUM DEALER – WRIT FILED CONTENDING THAT DEVELOPER OTHER THAN CONTRACTOR NOT TO BE IMPOSED TAX ON THERE BEING NO MECHANISM FOR COMPUTATION OF TAX – LEVY OF TAX PLEADED TO BE UNCONSTITUTIONAL – POINT OF LIMITATION ALSO TAKEN UP – HELD IN VIEW OF AN EARLIER JUDGEMENT THE SAME ISSUE IS ALREADY ADJUDICATED – MATTER REMANDED IN PURSUANCE TO THAT -PETITIONER AT LIBERTY TO AGITATE POINT OF LIMITATION BEFORE THE ASSESSING AUTHORITY WHO SHALL PASS A SPEAKING ORDER – WRIT DISPOSED OF – *S. 2 (1) (zg) OF HVAT ACT, R. 25(2) OF HVAT RULES*

Facts

The petitioner is a developer engaged in the development and sale of apartments, flats, units. Pursuant to the notification dated 12.8.2014, which was issued defining 'developer' other than the contractor, the petitioner could not be held to be lump sum dealer. However, he was assessed as a lump sum dealer vide assessment order dated 30.3.2015 for the year 2010-11 u/s 15 of the Act. A writ is filed in this regard contending that since the developer is engaged in the sale of immovable property where stamp duty was paid and also there being no mechanism provided in the Act for computing tax, imposition of tax was unconstitutional. Also, point of limitation barring the assessment proceedings and the notice issued was taken up.

Held

That in view of judgement passed in the case of CHD Developers Ltd. V State of Haryana wherein these issued have already been decided, the writ is disposed of in same terms while leaving it open to the petitioner to agitate the point of limitation before the assessing authority who shall adjudicate the same and pass a speaking order.

Case Relied upon:

CHD Developers Limited, Karnal v. The State of Haryana and others) 81 VST 344

Present: Mr. Rajiv Agnihotri, Advocate for the petitioner.

Ms. Mamta Singla Talwar, DAG, Haryana with
Mr. Saurabh Mago, AAG, Haryana.

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AJAY KUMAR MITTAL, J.

1. By way of instant petition filed under Articles 226/227 of Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the assessment order dated 30.3.2015 (Annexure P-1 Colly) passed by respondent No.3 seeking to make assessment of Value Added Tax (VAT) and for treating the petitioner as lump sum dealer who is not a contracter but a developer; for quashing the circular issued vide memo Nos. 952/ST-1 dated 7.5.2013, 1166/ST-1 dated 4.6.2013 and 259/ST-1 dated 10.2.2014 (Annexure P-2 Colly) issued by respondent No.2 being in violation of the provisions of the Haryana Value Added Tax Act, 2003 (in short "the Act"). Further, a writ of mandamus has been sought declaring Section 3 and Explanation (i) to Section 2(1)(zg) of the Act and Rule 25(2) of the Haryana Value Added Tax Rules, 2003 (hereinafter referred to as "the Rules") in particular and other related provisions in so far as they include the value of land for charging VAT on builders/developers to be *ultra vires* the Constitution of India in so far as it violates Article 246 of the Constitution of India read with Schedule VII, List II, Entry 54; for issuance of a writ in the nature of certiorari for declaring the statutory notice in Form N-2 as barred by limitation; for issuance of a writ of mandamus directing the respondents not to charge and to refund the stamp duty already paid in so far as it relates to the value of materials sought to be charged to VAT; to direct respondent No.3 not to recover the additional demand created vide assessment order.

2. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner is a developer engaged in the business of development and sale of apartments/flats/units and got itself registered with the Department of Sales Tax w.e.f. 20.8.2008. A circular dated 7.5.2013 was issued by respondent No.2 stating therein that the developers entering into agreements for sale of constructed apartments or flats prior to or during construction were chargeable to VAT. Consequently, a circular dated 4.6.2013 was issued regarding making of assessments on builders and developers. Subsequently, vide circular dated 10.2.2014, the circular dated 7.5.2013 was varied and value of the land was sought to be included for imposition of VAT. The said circulars are appended as Annexure P-2 Colly. Notification dated 12.8.2014 (Annexure P-3) was issued defining 'developer' other than contractor and in view thereof, the petitioner could not be held to be a lump sum dealer. However, the petitioner was assessed as lump sum dealer vide assessment order dated 30.3.2015 Annexure P-1) for the year 2010-11 under Section 15 (3) of the Act. The developer being engaged in the sale of immovable property where stamp duty was paid and also there being no mechanism provided under the Act for computation of tax, the imposition of tax insisted by the authorities was unconstitutional and beyond the provisions of the Act and Rules. Hence, the present writ petition.

3. We have heard learned counsel for the parties and perused the record.

4. Learned counsel for the parties are agreed that the issues raised in the present petition have been adjudicated by this Court in **CWP No. 5730 of 2014 (CHD Developers Limited, Karnal v. The State of Haryana and others)** decided on 22.4.2015. It was urged by the learned counsel for the petitioner that additionally the proceedings initiated were barred by limitation and even the statutory notice in Form N-2 issued, considering the petitioner as lump sum dealer, is also barred by limitation.

5. Accordingly, while disposing of the present writ petition in terms of **CWP No. 5730 of 2014 (CHD Developers Limited, Karnal v. The State of Haryana and others)** decided on 22.4.2015, it shall be open to the petitioner to agitate the question of limitation before the

assessing authority who shall adjudicate the same also after hearing the petitioner or its representative and by passing a speaking order in accordance with law.

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PUNJAB & HARYANA HIGH COURT

VATAP No. 71 OF 2014

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STATE OF PUNJAB AND OTHERS
Vs
CHIRAG INDUSTRIES

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

7th August, 2015

HF ▶ Appellant

Notice on website is not considered proper service of notice for extending period of framing of assessment by commissioner.

LIMITATION – ASSESSMENT – NOTICE -VALIDITY OF PUBLIC NOTICE –ASSESSMENT YEAR 2006-07 – FRAMING OF ASSESSMENT IN 2011 I.E. BEYOND LIMITATION PERIOD -EXTENSION ORDER BY COMMISSIONER FOR FRAMING ASSESSMENT U/S 29(4) CONTENDED TO HAVE BEEN PASSED IN 2010 THROUGH WEBSITE AND PUBLIC NOTICE – TRIBUNAL HELD SUCH ASSESSMENT ORDER AS TIME BARRED AS NOTICE NEVER COMMUNICATED TO ASSESSEE – APPEAL FILED BY DEPARTMENT – RELYING ON AN EARLIER JUDGEMENT PASSED BY DIVISION BENCH OF HIGH COURT, APPEAL DISMISSED – ABSENCE OF INDIVIDUAL NOTICES RENDERS THE ASSESSMENT ORDER VOID – *S.29(4) OF PVAT ACT AND RULE 86 OF PVAT RULES*

Facts

Assessment for the year 2006-07 was framed in 2011 thereby raising a demand. The said assessment was done under the extension order u/s 29(4) granted by Commissioner which was uploaded on the website on 15.11.2010 and a public notice was issued on 22.10.2010. After dismissal of first appeal, an appeal was filed before the Tribunal. It was held by Tribunal that the notice of extension was never passed or communicated to the assessee. The assessment ought to have been framed by 2010. It being framed in 2011 was time barred. Aggrieved by the order, an appeal is filed before the High Court.

Held

Reliance is placed on the judgement passed in the case of M/s Olam Agro India Ltd whereby it was held that the Rule 86 does not envisage service of general notice or by publication on the website of department. Absence of Individual notice renders the assessment order void. The appeal is therefore, dismissed as the extension orders have been put on the website and not communicated.

Case followed:

Civil Writ Petition No. 15695 of 2014 Sony India Pvt. Ltd. v. M/s Olam Agro India Ltd.
VAT Appeal No. 84 of 2013 State of Punjab v. M/s Olam Agro India Ltd.

Case referred:

A.B. Sugars Limited v. The State of Punjab and others 2010(29) VST 538 (P&H)

Present: Mr. Jagmohan Bansal, Addl. Advocate General, Punjab for the appellants.

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

CM No.12286-CII of 2014
Heard. In view of the averments made in the application, delay of 205 days in filing the appeal is condoned. Application stands disposed of.

CM No. 12287-CII of 2014
Heard. Exemption from filing certified copies of Annexures A-1 to A-4 is granted. Application stands disposed of.

Vat Appeal No. 71 of 2014

1. The present appeal has been filed under section 68 of the Punjab Value Added Tax Act, 2005 (hereafter referred to as 'the Act') against the order dated 16.05.2013 passed by the Value Added Tax Tribunal, Punjab.

2. The assessment order in question is 2006-07 and the assessment was framed on 22.07.2011 whereby additional demand of Rs. 15,24,148/- was created by the Designated Officer. The said assessment was in view of the extension granted by the Excise & Taxation Commissioner under Section 29(4) of the Act, which extension order was uploaded on the website on 15.11.2010 and a public notice had also been issued in the press on 22.10.2010. The appeal was dismissed by the First Appellate Authority on 16.11.2010 (Annexure A-2) and the demand was confirmed. The Tribunal has noticed that the extension had never been confronted to the assessee and neither any order had been passed which was communicated to the assessee. Accordingly, keeping in view the judgment of this Court in *A.B.Sugars Limited v. The State of Punjab and others 2010(29) VST 538 (P&H)*, it was noticed that the last date for filing the return was 20.11.2007 and the assessment was to be finalized within three years from the said date and the assessment order had to be passed by 20.11.2010. Accordingly, it was held that the assessment order passed on 22.07.2011 was time barred.

3. In similar circumstances where extension orders had been put on the website and not communicated, while placing reliance upon VAT Appeal No. 84 of 2013 *State of Punjab v. M/s Olam Agro India Ltd.* notices under section 29(4) of the Act, were set-aside in Civil Writ Petition No. 15695 of 2014 *Sony India Pvt. Ltd. v. M/s Olam Agro India Ltd.* on 27.04.2015. The relevant portion whereof reads as under:-

> *"The present cases are covered in favour of the petitioner by a judgment dated 20.08.2013 passed by a Division Bench of this Court in a group of matters, the first of which is VATAP No. 84 of 2013, State of Punjab vs. M/s. Olam Agro India Ltd. The Division Bench held that Rule 86 of the Rules does not envisage service of a general notice or by publication on the website of the department. The Division Bench held that the service of an individual notice is a sine qua non for invoking powers and the absence of such individual notice renders the assessment orders illegal and void.*
>
> *Admittedly, in the present cases, individual notices were not given. Even in the present cases, general notices were put up on the website. In view of the judgment of the Division Bench, this is insufficient."*

4. Resultantly, the present appeal is dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 22437 OF 2013

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SINGLA BUILDERS AND PROMOTERS LTD
Vs
STATE OF PUNJAB & ORS.

A.K. MITTAL AND RAMENDRA JAIN, JJ.

7th September, 2015

HF ▶ Petitioner

Appellate Authorities shall not dismiss the appeals on the basis of non deposit of additional demand in the case where vires of S 62(5) are under challenge.

INTERIM ORDER – PREDEPOSIT – APPEAL – ENTERTAINMENT OF – DIRECTION IS GIVEN BY THE HON'BLE HIGH COURT TO THE APPELLATE AUTHORITY NOT TO DISMISS THE APPEAL FOR FAILURE OF PREDEPOSIT TILL THE PENDENCY OF THE MATTER – *S.62(5) OF THE ACT.*

An interim order is passed issuing direction to the Appellate Authority not to dismiss the appeals on the grounds of non compliance of condition of predeposit required for entertainment of appeal.

Editorial Note

The aforesaid judgment is concluded on 09.09.2015 and the judgment was reserved. The High Court has continued the interim order.

Present: Mr. K.L. Goyal, Senior Advocate with
Mr. Sandeep Goyal, Advocate
Mr. J.S. Bedi, Advocate
Mr. G.R. Sethi, Advocate
Mr. Avnish Jhingan, Advocate
Mr. Varun Chadha, Advocate
Dr. Naveen Rattan, Advocate
Mr. Divya Suri, Advocate with
Mr. Sachin Bhardwaj, Advocate and
Mr. Madhur Sharma, Advocate
for the petitioners

Ms. Radhika Suri, Addl. AG, Punjab

Mr. IPS Doabia, Advocate, for
respondents No. 2 & 3 in CWP No. 8361 of 2015

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AJAY KUMAR MITTAL, J.

1. Written statement filed on behalf of respondents No.2 and 3 in CWP No. 8361 of 2015, is taken on record. Office to tag the same at appropriate place.

2. Learned State counsel has concluded her arguments.

3. For arguments in rebuttal, to come up on 9.9.2015.

4. In the meantime, the appellate authorities shall not dismiss the appeals on the ground of non deposit of additional demand.

5. Photocopy of this order be placed on the connected case files.

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PUNJAB VAT TRIBUNAL

APPEAL NO.235 OF 2014

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G.N. GENERAL MILLS
Vs
STATE OF PUNJAB

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

27th July, 2015

HF ▶ Revenue

Amended provision of section 62(5) to apply in this case as it came into force before the cause of action (filing of return) arose.

PREDEPOSIT – APPEAL -ENTERTAINMENT OF- ASSESSMENT YEAR 2009-10 – RETURN FILED ON 22.11.2011 – DISMISSAL OF FIRST APPEAL FOR NON COMPLIANCE OF S. 62(5) – APPEAL BEFORE TRIBUNAL – WAIVER OF CONDITION OF PREDEPOSIT REQUESTED ON THE BASIS THAT THE AMENDMENT OF SECTION 62(5) OF THE ACT REQUIRING DEPOSIT OF 25% OF ADDITIONAL DEMAND CAME MUCH LATER THAN THE FILING OF RETURN FOR THE YEAR IN QUESTION – ASSESSMENT ORDER CONTENDED TO BE VOID – HELD AMENDMENT OF S 62(5) CAME MUCH BEFORE THE CAUSE OF ACTION AROSE IN THE PRESENT CASE – AMENDED PROVISIONS TO APPLY IN THE PRESENT CASE -NOTHING ON RECORD TO SHOW ASSESSMENT ORDER AS VOID – APPEAL DISMISSED – OPPORTUNITY GIVEN TO APPELLANT TO FULFILL THE CONDITION OF PREDEPOSIT – *S. 62(5) OF PVAT ACT*

The appellant filed its returns for the year 2009-10 on 22.11.2011 and the assessment thereafter was framed on 1.12.2011 by the Designated officer. The appellant filed an appeal before the first appellate authority which was dismissed on the grounds of non compliance of sec 62(5) of the Act. An appeal is filed before Tribunal contending that the assessment order is void and that the condition of predeposit would not apply in the present case as the cause of action arose when the returns were filed for the year 2010-11 which is much before the amendment of sec 62(5) coming into force.

It is held that there is nothing to show that the assessment order is void. Also, the annual return being filed on 22.11.2011 i.e. after the date of amendment, the amended provisions would apply to the facts of the present case also. The appeal is dismissed and an opportunity is granted to the appellant to fulfill the condition of predeposit for entertainment of appeal before the DETC.

Present: Mr. J.S.Bedi Advocate alongwith Mr. Rohit Gupta,
Advocate Counsel for the appellant.

None for the State

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

1. The appeal of the appellant, against the order dated 1.12.2011 passed by the Designated Officer, S.B.S. Nagar, Nawanshahar was dismissed by the Deputy Excise and Taxation Commissioner (A), Jalandhar Division, Jalandhar, solely on the ground of non compliance of the provisions of 62(5) of the Act.

2. The assessment for the year 2009-10 is in question. On issuance of notice, the appellant filed the reply. Ultimately, the assessment was framed on 1.12.2011 by the Designated officer, District S.B.S. Nagar, Nawanshahar. The appeal filed by the appellant was not entertained for non compliance of Section 62(5) of the Act, 2005.

3. Heard. Section 62(5) of the PVAT Act 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)."*

4. This amendment came into force on 17.8.2011 by the way of ordinance to take the shape of notification lateron. As per the notification, the appeal was to be entertained only on the deposit of 25% of the additional demand.

5. The contention of the counsel is that the order passed by the Appellate Authority is non speaking and void abinitio and the cause of action arose on the date when the return for the year 2010-11 was filed, therefore, the amendment is not applicable to the facts of the present case. As such, the appellant can't be compelled to comply the amended provisions.

6. The contention is without any merit. The annual return was filed on 22.11.2011 i.e. after the amendment and there is nothing to show if the assessment is void abinitio, therefore, the amended provisions would apply to the facts of the present case as also to all the pending assessments.

7. Resultantly, this appeal is dismissed and an opportunity is granted to the appellant to deposit the 25% of the additional demand within one month from the date of receipt of the copy by the 1st Appellate Authority or the appellant which may be earlier. In that situation, the Deputy Excise and Taxation Commissioner may entertain the appeal.

8. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 94 OF 2015

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KAMDHENU STEELS
Vs
STATE OF PUNJAB

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

13th August, 2015

HF ▶ Assessee

Matter is remitted back to first appellate authority to enquire if ITC available is on account of purchases from ingenuine dealers and whether adjustable against requirement of predeposit .

PREDEPOSIT – APPEAL – ENTERTAINMENT OF – ADJUSTMENT OF INPUT TAX CREDIT – DEMAND RAISED BY ASSESSING OFFICER - DISMISSAL OF FIRST APPEAL FOR FAILURE TO DEPOSIT 25% OF ADDITIONAL DEMAND – APPEAL BEFORE TRIBUNAL REQUESTING ADJUSTMENT OF THE REVERSED ITC TOWARDS PAYMENT OF PREDEPOSIT – ITC ALLEGED TO HAVE BEEN CLAIMED ON ACCOUNT OF PURCHASES FROM INGENUINE DEALERS AS PER DEPARMENT– HELD,ORDER PASSED BY FIRST APPELLATE AUTHORITY SILENT REGARDING VERIFICATION OF ITC AND ITS ADJUSTMENT TOWARDS PAYMENT OF ADDITIONAL DEMAND – MATTER REMITTED BACK TO DETC TO SPECIFICALLY PASS ORDER AS TO WHETHER REVERSAL OF ITC CLAIMED IS ON ACCOUNT OF PURCHASES FROM INGENUINE DEALERS AND WHETHER IT COULD BE ADJUSTED TOWARDS PAYMENT OF 25% OF THE DEMAND RAISED – APPEAL ACCEPTED – *S.13 AND S. 62(5) OF PVAT ACT*

Facts

An additional demand was raised by the Designated officer under the PVAT Act against which an appeal was filed. The appeal was accepted and the matter was remitted back. The Assessing Authority created the same demand again. On appeal before DETC, the appeal was dismissed for non compliance of section 62(5) of the Act. Aggrieved by the order, an appeal is filed before Tribunal contending that the appellant had reversed the ITC and the said reversal could be adjusted towards payment for predeposit u/s 62 (5) of the Act. The department on the other hand has contended that on earlier appeal before DETC no predeposit was required. But on the latter one, the condition of section 62(5) had to be complied with. Also, the claim of ITC claimed is alleged to be on account of purchases made from ingenuine dealers.

Held

That the order of the Ld. DETC is silent regarding whether the ITC claimed is available to the appellant and whether it could be adjusted against the demand of predeposit. Therefore, the matter is remitted back to the DETC to pass a specific order mentioning if ITC is on account of

purchases from ingenuine dealers and if it could be adjusted against the 25% of the additional demand. The appeal is accepted and impugned order is set aside.

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

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

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

1. This appeal is directed against the order dated 15.4.2014 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissing the appeal of the appellant solely on the ground of non compliance of Section 62(5) of the Punjab Value Added Tax Act, 2005.

2. The Excise and Taxation officer-cum-Designated Officer, Mandi Gobindgarh created additional demand of Rs. 18,36,316/- under the Punjab Value Added Tax Act, 2005 on 28.12.2012. The appellant filed the appeal against the said order which was allowed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana on 21.6.2013 and remitted the case back to the Excise and Taxation Officer-cum-Designated Officer, Mandi Gobidngarh. However, Excise and Taxation Officer/Assessing authority created the same demand. Aggrieved by the said order dated 29.11.2013, the appellant preferred the appeal before the Deputy Excise and Taxation Commissioner(A), Ludhiana Division, Ludhiana which was dismissed for non compliance of Section 62(5) of the Act.

3. The prime contention raised by the appellant is that at the time of filing the appeal before the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana, the appellant had surrendered the reversal of ITC for Rs. 4,56,580/- to meet with the requirement of Section 62(5) of the Act. The appellant has not got adjusted the said reversal against any of the heads therefore the reversal to the tune of Rs 4,56,580/- may be considered towards compliance of Section 62(5) of the Act as the said reversal could be adjusted towards payment of 25% of the additional demand.

4. To the contrary, the counsel for the respondent has urged that the order passed by the Excise and Taxation Officer dated 28.12.2012 was set-aside by the Deputy Excise and Taxation Commissioner(A), Ludhiana Division, Ludhiana on 21.6.2013. Therefore, the case was decided afresh on 15.4.2014. At the time of the filing appeal earlier before the Deputy Excise and Taxation Commissioner no money was deposited to comply with the requirement of the Section 62(5) of the Act. The amount of Rs. 4,56,580/- which was against the reversal of ITC can not be considered to be a deposit and fulfilment of the condition as envisaged under Section 62(5) of the Act. As the seller firm was not genuine no proof regarding the validity of the transaction has been produced. The Appellant had already taken the benefit of the ITC previously and double benefit can not be awarded to him.

5. Having gone through the order dated 29.11.2013 it transpires that the ITC to the tune of Rs. 6,08,786/- was dis-allowed on the ground that the same was not verified. Now the appellant wants the reversal of the amount of Rs. 4,56,580/- qua the ITC claim in the assessment year 2014-15.

6. In the light of the specific contention raised by the respondent that ITC has been claimed on account of the purchase from the ingenuine dealers. The matter requires to be verified. The appellant ahs specifically raised the plea before the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana regarding the adjustment of the reversal of ITC against the 25% of the additional demand. Before the amount is adjusted, the Deputy

Excise and Taxation Commissioner would hold enquiry and report as to whether this amount of ITC was available to the appellants and whether this reversal could be adjusted against the 25% of the additional demand which is a condition precedent for entertaining the appeal?" The impugned order is silent quo these queries. Resultantly, this appeal is allowed, impugned order is set-aside. The case is remitted back to the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana to pass a specific order (after making enquiry) to the effect that "whether this amount of Rs. 4,56,580- reversed earlier was on account of purchase from the ingenuine dealers and whether this reversal could be adjusted against the 25% of the additional demand." the appellant is directed to appear before the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana on 27.8.2015.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 421 OF 2014

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PUNJAB IRON STORE
Vs
STATE OF PUNJAB

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

13th August, 2015

HF ▶ Appellant – dealer

Penalty is to be levied only on the excess quantity of goods in transit and not on the entire value of goods.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – EXCESS GOODS – GOODS(TMT BARS AND PIPES) IN TRANSIT – DOCUMENTS PRODUCED – DISCREPANCY FOUND IN WEIGHMENT SLIP – GOODS FOUND IN EXCESS THAN MENTIONED IN DOCUMENTS – GOODS DETAINED – ADMISSION BY APPELLANT REGARDING EXCESS WEIGHT BEING CARRIED – PENALTY IMPOSED U/S 51(7) OF THE ACT ON THE ENTIRE VALUE OF GOODS AS CARRIED IN TRUCK AND THOSE FOUND IN EXCESS – APPEAL BEFORE TRIBUNAL- ADMISSION REGARDING EXCESS WEIGHT BEING CARRIED NOT PROVED INCORRECT – VAT STOOD PAID ON QUANTITY MENTIONED IN DOCUMENTS – PENALTY TO BE PAID ON THE DIFFERENCE AND NOT THE ENTIRE VALUE OF GOODS – APPEAL ACCEPTED – *S. 51(7) OF PVAT ACT*

The goods (Pipe and TMT bars) were carried from Mandi Gobindgarh to Bhunderi when they were intercepted and the documents were produced by the driver. The discrepancy regarding the weighment slip was pointed out as the goods were found in excess than mentioned in the weighment slip produced before the officer. The statement of the consignee firm admitting that the goods were in excess was recorded and penalty was imposed u/s 517)(b) of the Act on the total value of the goods. On appeal before Tribunal it is held that the admission by the appellant regarding the excess goods is not proved to be incorrect. Tax had to be paid on the excess weight. The contention that the penalty had been imposed on the entire value and not on the difference found in weight is accepted by the Tribunal. Penalty ought to be paid on the difference found in quantity. Accepting the appeal, the matter is remitted back for reconsideration and passing order in the light of observations.

Present: Mr. Rakesh Cajla, Advocate counsel for the appellant.

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

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

1. The Assistant Excise and Taxation Commissioner, Mobile Wing-cum-Deputy Director (Investigation), Patiala (herein referred as the Designated Officer vide order dated 8.5.2008 imposed a penalty of Rs.1,51,236/- under Section 51(7)(b) of the Punjab Value Added Tax Act, 2005.

2. Feeling aggrieved, the appellant preferred the appeal which was also dismissed by the Appellate Authority on 20.1.2014, hence this second appeal.

3. On 28.4.2008, the driver of the vehicle No. HR37A-6247 while carrying Pipe and T.M. T. Bars from Mandi Gobidngarh to Bhunerheri was intercepted whereupon, the driver produced the following documents:-

1. VAT Invoice No. 304 & 305 dated 28.4.2008 issued by M/s Ridhi Sidhi Steel Bhandar, Guru Ki Nagri, Mandi Gobidngarh, in favour of above dealer, for Rs. 3,51,870/- & 57,325/-, respectively.
2. G.R. No. 769 & 770 dated 28.4.08 issued M/s Shri Guru Nanak Devji road carrier, G.T. Road, Mandi Gobindgarh.

4. The Detaining Officer detained the goods for verification. Thereafter, he referred the case to the Designated Officer who issued a notice in response to which Shri Raj Kumar, Partner of the consignee firm, appeared before him. When confronted with the documents and the weighment slip a serious discrepancy was detected.

5. As per weighment slip No. 3799, dated 28.4.2008, duly issued by M/s Satyan Weighing System, weight of goods came to 20.600 M.T. After deducting 7.000 M.T. (tare weight of vehicle) actual weight loaded in the truck came to 13.400 M.T. The two invoices issued at two different TIN numbers in favour of M/s Punjab Iron Store, revealed the weight as 11.235 M.T. Thus after deducting the weight as mentioned in the weight invoices, the net excess weight came to be 2.365. The Designated Officer after calculating the price of the goods at the market rate (i.e. Rs. 40/- per Kg) issued a notice to this effect, the appellant had not shown the excess goods in the VAT invoices worth Rs. 94,600/-. The Detaining Officer had also recorded the statement of Shri Raj Kumar, Prop. of the consignee firm where he had admitted that the goods weighing 2.365 M.T. were in excess. The Designated Officer after completing the enquiry imposed a penalty to the tune of Rs. 1,51,236/- u/s 51(7) (b) of the Punjab Value Added Tax Act, 2005 on the total price of the goods weighing 11.235 M.T. i.e. Rs. 5,04,120/-. The appeal filed by the appellant was also dismissed.

6. Arguments heard. Record perused.

7. The appellant appears to have two firms which are working under the name and style of Punjab iron Store, Devigarh, Distict Patiala and Punjab Iron Store, Main Bazar, Bhunerheri as he was representing both the firms in the present case. He had purchased 95.10 Qtl of T.M.T. Bars for Rs. 3,66,486/- and 15.25 Qtl of Iron pipe for Rs. 60,076/- from M/s Ridhi Sidhu Steel Bhandar, Mandi Gobindgarh. He had loaded the pipe as well as TMT bars in the same truck and when he was on his way to Devigarh he was apprehended. He had admitted in his statement that on weightment of the truck, the goods were found to be in excess by 2.365 M.T. for which he had no answer. The admissions are very good evidence unless proved to be incorrect. He also could not counter these admissions by proving that weightment slip as issued by M/s Satyan Weighing System was not correct. He had also not paid any tax for excess goods weighing 2.365 M.T. worth Rs. 94,600/-. Since, it was a case of excess weight therefore the appellant was bound to pay tax on the said excess weight. The appellant has no material argument to rebut the same.

8. The last contention raised by the counsel for the appellant is that the Department could recover penalty only on the price of goods worth Rs. 94,600/- which were found excess in the truck for which tax was not paid and not on the quantity for which he had already paid the tax. It is an intrastate transfer. The documents reveal that the VAT has already been paid over the goods weighing 11.235 M.T.

9. I have also checked the price of the goods as determined by the respondents. It appears to have been rightly assessed. Therefore, the appellant was liable to pay the penalty only on the goods worth Rs. 94,600/- and not over the whole quantity of the goods for which he had already paid the tax. The Designated Officer has erred in assessing the penalty on the entire quantity of goods. Therefore, the case requires a relook qua the calculations.

10. Resultantly, I accept the appeal, set-aside the impugned order to the extent of the penalty which should have only been over the excess goods and remit the case back to the Designated Officer for reconsideration and passing the order in the light of the aforesaid observations. The parties are directed to appear before the Designated Officer on 4.9.2015.

11. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 368 OF 2014

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SINGAL UDYOG
Vs
STATE OF PUNJAB

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

20th August, 2015

HF ▶ Revenue

Input tax credit, inadmissible on account of fraudulent transactions, could not be adjusted towards payment for predeposit.

PREDEPOSIT – APPEAL – INPUT TAX CREDIT – INADMISSIBILITY OF – APPEAL DISMISSED BY DETC FOR NON COMPLIANCE OF CONDITION OF PREDEPOSIT – APPEAL BEFORE TRIBUNAL CONTENDING THAT APPELLANT READY TO PRODUCE INVOICES IN SUPPORT OF HIS CLAIM FOR ITC WHICH COULD BE ADJUSTED TOWARDS PAYMENT FOR PREDEPOSIT - ETO DIRECTED TO EXAMINE THE DOCUMENTS – REPORT GIVEN AGAINST THE ADMISSIBILITY OF ITC ON ACCOUNT OF FRAUDULENT TRANSACTIONS ON PART OF APPELLANT – APPEAL DISMISSED – *S. 13 AND S. 62(5) OF PVAT ACT*

Facts

The appellant had filed an appeal before the DETC which was dismissed on the grounds of non compliance of S. 62(5) of the Act. An appeal is filed before Tribunal contending that the dealer appellant was ready to produce the VAT invoices required to verify ITC available to him which could be adjusted towards payment of predeposit. The Tribunal, consequently, directed the ETO to examine the VAT invoices and the admissibility of the ITC available to the appellant. Pursuant to the order, the ETO reported that the transactions entered into by the appellant were fraudulent, collusive and in connivance of the selling dealers. Therefore, no such ITC could be made towards calculation of 25% of the additional demand.

Held

Based on the report of the ETO that the Input Tax credit was not available to the appellant, it is held that the DETC could not entertain the appeal without satisfactory proof of predeposit of 25% of the additional demand as required u/s 62(5) of the Act. Dismissing the appeal, appellant is granted one month time to comply with the provision of 62 (5) failing which the order of DETC would remain intact.

Present: None for the appellant.
Mr. N.D.S. Mann, Additional Advocate General for the state.

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

1. This appeal is directed against the order dated 20.8.2014 passed by the Deputy Excise and Taxation Commissioner(A) Ludhiana Division Ludhiana, dismissing the appeal for non-compliance of section 62(5) of the PVAT Act, 2005. The main contention as raised by the appellant earlier was that he had claimed ITC, which was rejected on the ground that he had not produced the VAT invoices. The appellant had contended that he was ready to produce the VAT invoices for verification. In this back ground of the case, this Tribunal had sought verification of the ITC's. The extract of the order dated 9.2.2015 in this regard reproduced as under:

> *"Mr. Kulbir Singh, Advocate counsel for the appellant has stated that the ITC available to the appellant was rejected on the ground that he has not produced the VAT invoices and the appellant has brought the VAT invoices today. If the VAT invoices are perused and considered, then ITC would be available to the appellant which could be adjusted against 25% of the additional demand. The ETO, Ludhiana is directed to examine the VAT invoices and submit his report regarding admissibility of the ITC available to the appellant for the year 2011-12. The appellant would appear before the ETO on 16.2.2015 and the latter would submit his report within two months. Adjourned to 30.3.2015."*

2. Pursuant to the order, Excise and Taxation Officer, Ludhiana-1 made a detailed report. The operative part of the report (Annexure AX) is reproduced as under:

> *Moreover plea of the dealer that RC's of selling dealers from whom this dealer has made purchases worth crores and claimed huge ITC against the same, has been cancelled i.e., later on i.e., after the date of purchases. He has quoted the judgment of the Hon'ble High Court in the case of M/s Gheru Lal Bal Chand vs. State of Haryana and another cited as (2011) 40 PHT 145 (P&H) is in favour of the dealer but the Hon'ble High Court while delivering the present judgement held that "No liability can be fastened on the purchasing registered dealer on account of non payment of tax by the selling registered dealer in the treasury unless fraudulent, or collusion or connivance with the registered selling dealer or its predecessor is established". The Hon'ble court has decided the case in favour of the dealer with conditions mentioned above. The said conditions of fraudulent, collusion or connivance are established in the present case. The entire system was run by the dealers for such a long time. Involving turnover of crores of rupees, with connivance and collusion causing loss to the state exchequer by way of availing in admissible ITC.''*

3. From the perusal of the report, it transpires that the transactions as entered into by the appellant were fraudulent or collusive and in connivance of the selling dealers. Therefore, the said transactions were not accepted to make available the ITC. In view of the matter, no such adjustment of the ITC could be made towards the calculation of 25% of the additional demand. The appeal could not be entertained by the DETC without satisfactory proof of deposit of 25% of the additional demand as required under section 62(5) of the act read with rule 71(3) of the Rules.

4. Resultantly, I do not find any merit in the appeal, the same is dismissed. However, appellant is granted one month more time from the receipt of the copy of the order to comply with section 62(5) of the act. On doing so, the appeal shall be entertained, otherwise the order passed by the DETC would remain intact.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 197 OF 2013

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SAHIB STEEL INDUSTRIES
Vs
STATE OF PUNJAB

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

13th August, 2015

HF ▶ Revenue

Penalty upheld as ingenuine invoice shown reflecting transaction between two sister concerns which otherwise found to be purchased from third party without invoice.

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – INGENUINE INVOICE – GOODS IN TRANSIT – INVOICE PRODUCED ON INTERCEPTION SUSPECTED – STATEMENT OF DRIVER SUBMITTING GOODS BEING LOADED FROM ANOTHER FIRM A – ENQUIRY HELD – ADMISSION BY PARTNER OF FIRM B REGARDING GOODS BEING LOADED FROM ITS PREMISES WITHOUT INVOICE – GOODS DETAINED – INVOICE SHOWING PURCHASE FROM FIRM C PRODUCED DURING PROCEEDINGS BY APPELLANT – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL – INVOICE SHOWN DURING INTERCEPTION REFLECTED GOODS SENT FROM ONE SISTER CONCERN TO ANOTHER IN SAME LOCALITY AND SAME ADDRESS – INVOICE PRODUCED BY APPELLANT LATER APPEARS TO BE MANIPULATED – STATEMENT OF DRIVER HELD TO BE UNTRUE IN THE ABSENCE OF ANY INVOICE SHOWING THE ALLEGED PURCHASE – STATEMENT OF PARTNER OF FIRM C FOUND CORRECT – EVASION OF TAX ATTEMPTED - PENALTY UPHELD– APPEAL DISMISSED – *S. 51(7) OF PVAT ACT*

Facts

The appellant's goods (M.S.Bar) were in transit when they were intercepted. Three invoices were shown. One of them was suspected to be ingenuine it being issued by Sahib Steel Industries (appellant) in favour of Sahib Steel International. On inquiry, the driver disclosed that the goods were loaded from another firm A. The premises of firm A were found in possession of firm B whose partner disclosed that he had sold the goods from his premises without any invoice to the appellant. The goods were detained. During proceedings the appellant submitted that the goods were loaded from firm C and a Bill had been issued for those goods, a copy of which was produced. However, penalty u/s 51 was imposed. On dismissal of first appeal, an appeal was filed before Tribunal.

Held

The invoice shown by the driver on interception was issued by consignor in favour of his own sister concern located in the same locality bearing same address. The statement made by the partner of firm B cannot be disbelieved as he has nothing to gain out of it. The statement of

driver is ingenuine as no invoice was produced to show goods being loaded from firm A as submitted by him. The statement of the appellant regarding goods being bought from firm C is untrue as the invoice appears to be manipulated later. It was never produced on the day of interception or thereafter. Thus, goods were purchased from firm B without issue of invoice to evade tax. The earlier invoice is false showing the transaction between the consignor and consignee who are actually sister concerns. This was meant to evade tax. The appeal is dismissed and penalty upheld.

Present: Mr. Ravi Nandan Arora, Advocate counsel for the Appellant.

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

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

1. The Excise and Taxation Officer, Mobile Wing, Ludhiana on 1.3.2007 detained the driver alongwith vehicle No. PB23E-7996 loaded with M.S. Bar (R.D.) on G.T. Road, Khanna. On demand, the driver of the vehicle produced the following documents:-

1. Invoice No. 2783 dated 1.3.2007 issued by M/s P.V. Industries G.T. Road, Alour in favour of Sahib Steel Industries, Motia Khan, Mandi Gobidngarh for a sum of Rs. 30,744/-.
2. Invoice No. 0096 dated 1.3.2007 issued by M/s Anand Steel Industries Alour in favour of Sahib Steel International, Motia Khan, Mandi Gobidngarh for a sum of Rs. 83,794/-.
3. Invoice No. 488 dated 1.3.2007 issued by M/s Sahib Steel Industries Motia Khan. Mandi Gobidgargh in favour of Sahib Steel International, Motia Khan, Mandi Gobidngarh for a sum of Rs. 3,49,954/-.

   No dispute has been raised regarding the invoices at Sr. No. 1 & 2 however, dispute is regarding invoices at Serial No. 3 above regarding 15,365-MT of M.S. Brar.

2. On inquiry, the driver disclosed that out of these goods 10MT of the goods were loaded by him from M/s A.B. Steel Mills and the remaining goods were loaded from other four different places. However, he could not produce the bill issued by M/s A.B. Steel. Thereafter, the Excise and Taxation officer took the driver to the place of A.B. Steel Mills but the said premises, were in possession of the firm M/s Satpal Mankoo Steel Industries, khanna. The driver had also told that the goods were weighed at Jagdambe Kanda and weighing slip was taken a way by the employee of the Mill. The Excise and Taxation Officer recorded the statement of Shri Gurnek Singh, Partner of M/s Satpal Mankoo Steel Industries who had disclosed that the TMT Bar of 4MM was loaded from the premises of his factory and he had sold the same to the appellant but did not issue any invoice to him.

3. Raising suspicion about the evasion of tax, the Excise and Taxation Officer issued a notice to the owner of the goods for 2.3.2007.

4. On 2.3.2007, none appeared whereupon, the Detaining Officer forwarded the case to the Designated Officer-cum-Assistant Exercise and Taxation Commissioner, Mobile Wing, Ludhiana.

5. Upon notice, the representative of the firm appeared and got the goods released on surety bond. They also submitted that the goods have been actually loaded from M/s R.K. Steel Rolling Mills, G.T. Goad, Khanna and the said firm had issued Bill No. 046 dated 1.3.2007 for a sum of Rs. 3,46,758/- for 15.365 MT of goods. The Statement of the driver was recorded

under pressure. That apart he also produced the copy of VAT Invoice issued by M/s R.K. Steel Rolling Mills, G.T. Road, Khanna.

6. After examing the evidence on the record, the Assistant Excise and Taxation Commissioner, Mobile Wing, Luhdiana observed as under:-

1. Since the appellant had not produced the invoice of M/s R.K. Rolling Mills prior to 9.3.2007 i.e. before the Detaining Officer therefore, the invoice appears to be manipulated later on.
2. The long gap in producing the evidence and detention of goods raise suspicion with regard to preparation of in genuine record.

7. It was also observed that the enquiry rightly revealed that the goods were actually loaded from M/s Satpal Mankoo Steel Industries and the partner of the said firm had not issued any sale bill and the bills were manipulated after the goods were detained therefore, there was attempt to evade tax.

8. Consequently, the Designated Officer vide order dated 14.3.2007 imposed a penalty of Rs. 1,04,986/- U/s 51(7) (b) of the Punjab Value Added Tax Act, 2005. The appellant preferred the appeal against the said order which was dismissed, hence this second appeal.

9. Arguments heard. Record perused.

10. Apparently, the driver had loaded the goods for three firms i.e. M/s Anand Steel Industries Alour, M/s P.V. Industries, GT Road, Alour and Sahib Steel Industries, Motia Khan, Mandi Gobindgarh. The department did not dispute about two invoices but raised suspicion over the third which was purportedly issued by Sahib Steel Industries, Motia Khan, Mandi Gobindgarhin favour of his own sister concern i.e. Sahib Steel International, Motia Khan, Mandi Gobidngahr. The invoice is No. 488, dated 1.3.2007. The Invoice was in favour of his own sister concern located in the same locality as both the firms bear the same address. The statement made by Shri Gurnek Singh of M/s Satpal Mankoo Steel Industries is free from any fear, pressure or blemish. He had nothing to gain out of the said statement rather it could be used against him. Therefore, there is no reason to disbelieve his this statement. The driver had no legs to stand. According to him, the goods were loaded from the premises of A.B. Steel Mills, but no such invoice was produced to authenticate the transaction. The case of the appellant before the Designated Officer is that the goods were purchased by him from M/s R.K. Steel Rolling Mills, G.T. Road, Khanna but the same appears to be manipulated later on as the appellant did not produce any such invoice on 1.3.2007 or thereafter till the case remained pending with the Detaining Officer upto 9.3.2007.

11. In these circumstances, it appears that the goods were actually purchased from M/s Satpal Manku Steel Industries without any invoice, obviously in order to evade the tax. When the truck was apprehended then the owner of the goods manipulated the document regarding the purchase of goods from M/s R.K. Steel Rolling Mills. It may further be observed that the premises of M/s Sahib Steel Industries, Motia Khan, Mandi Gobidngarh i.e. appellant and the consignee firm M/s Sahib Steel International, Motia Khan, Mandi Gobidngarh are at one and the same place. A false invoice has been shown regarding the transaction by sister concern when actually the goods were purchase from M/s Satpal Mankoo Steel Industries without payment of tax and without invoice. Thus, it is a clear cut case of attempt to evade the tax falling within the purview of Section 51(7)(b) of the Punjab Value Added Tax Act, 2005.

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

13. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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MISC. (RECT.) NO. 6 OF 2014

IN APPEAL NO. 269 OF 2010

S.R.M.B. UDYOG
Vs
STATE OF PUNJAB

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

14th August, 2015

HF ▶ Revenue

Absence of Accounting of transaction during seizure of goods and levy of penalty being factually correct, no error found in the facts recorded by Tribunal.

RECTIFICATION OF MISTAKES – TRIBUNAL - PENALTY – CHECK POST – ATTEMPT TO EVADE TAX- TRIBUNAL UPHELD THE LEVY OF PENALTY U/S 51 – RECTIFICATION APPLICATION FILED – CONTENTION RAISED THAT THE ORDER WRONGLY MENTIONED ABSENCE OF ACCOUNTING FOR TRANSACTION- ARGUMENT REGARDING TRANSACTION BEING DULY ACCOUNTED FOR DURING ASSESSMENT WHICH WAS MUCH BEFORE PASSING OF ORDER OF TRIBUNAL REJECTED – HELD, ACCOUNTING OF TRANSACTION IS SHOWN MONTHS LATER DURING ASSESSMENT THAN THE DATE OF SEIZURE AND LEVY OF PENALTY – OBSERVATION OF TRIBUNAL, THEREFORE, NOT TO BE NEGATED – PENALTY WAS UPHELD ON THE BASIS OF OTHER DISCREPANCIES TOO- RECTIFICATION IS BARRED BY LIMITATION BEING FILED AFTER MORE THAN THREE YEARS – APPEAL DISMISSED – *S.66 & 51 OF PUNJAB VAT ACT*

Facts

A rectification application was filed by the appellant before Tribunal against the order passed by it. It was contended that the some facts were wrongly mentioned while examining order of penalty u/s 51 of the Act by the Hon'ble Chairman in as much as it was mentioned that the transaction was not mentioned in the books of accounts. It was argued that order was passed on 29.8.2011 whereas the assessing authority had framed the assessment on 22.6.2011 wherein the appellant had accounted for the transaction. Therefore, the observation regarding account books was incorrect.

Held

1) *That the rectification application has been filed beyond the limitation period.Hence, not maintainable.*

2) *That the seizure was made on 2.1.2007 and the transaction was shown in account books later when the assessment was framed (22.6.2011).Thus, it does not negate the observations made by Tribunal that the transaction was not accounted for in the books.*

3) *Penalty was imposed not only on the ground of non mentioning of transaction in books but also due to appellant not carrying proper and genuine documents at the time of reaching ICC.*

4) *Therefore, the observations made do not require any rectification after more than three years. The appeal is dismissed.*

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

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

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

1. This order of mine shall dispose off a rectification application of the order dated 29.8.2011 passed by the VAT Tribunal, Punjab.

2. The second appeal was decided by VAT Tribunal Punjab on 28.8.2011. The time period for filing the rectification is only three years, whereas, this application for rectification was not filed by the applicant within time, therefore, the application is not within limitation. While examining the order sought to be rectified, the Tribunal has passed a detailed order of penalty u/s 51 of the PVAT Act. While dismissing the appeal against the order passed by the DETC on 30.7.2009, the Tribunal discussed all the issues. The contention raised by the counsel is that some wrong facts were mentioned in the order passed by the Chairman VAT Tribunal Punjab, in as much as it was wrongly mentioned that the transaction was not mentioned in the account books. In order to buttress the arguments, he counsel has brought to my notice the relevant observations made by the Tribunal which are reproduced as under:-

> *"To cap it all, the absence of entry of this transaction in the ledger account of the appellant in itself its sufficient to presume that the invoice as well as the goods receipt was not in existence on 26.12.2006. In such circumstances, it can be hardly said that this transaction would have been accounted for in the accounts book."*

3. Mr. Bedi has also urged that the impugned order was passed on 29.8.2011, whereas, the assessing authority had framed the assessment on 22.6.2011, wherein, he had accounted for the transaction, therefore, the aforesaid observations made by the Chairman VAT Tribunal Punjab are not correct. Consequently, the rectification application could be accepted.

4. I do not find any merit in the contention. The seizure was made on 2.1.2007. The designated officer imposed penalty on 17.1.2007, therefore, the transaction if shown later on in the account books when the assessment was framed (22.6.2011), that does not negate the observations made by the Tribunal that the transaction was not accounted for in the account books. Even otherwise, the said judgment is not only on the ground that he wanted to keep the goods out of the account books. It is a case of seizure. The penalty was imposed on the ground that the appellant was not carrying the proper and genuine documents at the time he reached the ICC.

5. In these circumstances, the observations made by the Tribunal, do not require any rectification now after more than three years. The application appears to have been filed just to escape the recovery of penalty. Resultantly, I do not find any merit in this application, therefore, the same is dismissed.

6. Pronounced in the open court.

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CLARIFICATION (PUNJAB)

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BEFORE SH. ANURAG VERMA, IAS,
Excise & Taxation Commissioner Punjab

GODREJ & BOYCE MFG CO LTD.

17th December, 2014

Universal Drain Hose Pipes are taxable @ 6.05 % as it is included in the Entry 49 of Schedule B of the PVAT Act.

ENTRIES IN SCHEDULE – UNIVERSAL DRAIN HOSE PIPES- CLARIFICATION U/S 85 – PIPES IN QUESTION ARE FLEXIBLE IN NATURE- CONTENDED TO BE DIFFERENT FROM STEEL PIPES- HOSEPIPES HELD SEPARATELY CONTAINED UNDER ENTRY 49 OF SCHEDULE B OF THE ACT – HENCE, THE ITEM IS TAXABLE @ 6.05% INCLUDING SURCHARGE- *S.85 OF PVAT ACT*

The applicant is a manufacturer of home appliances and parts thereof. A clarification u/s 85 is sought regarding rate of tax on 'Universal Drain Hose –Pipe'. It is contended that these are flexible in nature and are different from the steel pipes and cannot be covered under Steel Pipes.

It is clarified that the term hosepipes is contained separately in the schedule and therefore, falls under Entry 49 of Schedule B of PVAT Act, 2005 and is hence taxable @ 6.05% (including surcharge).

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ORDER

1. M/s Godrej & Boyce Mfg Co Ltd has made an application before the undersigned U/s 85 of the PVAT Act, 2005 seeking determination of a question.
2. The applicant is registered under the Punjab VAT Act, 2005 holding TIN 03972106408 and is in the business of manufacturing of home appliances and parts thereof.
3. The requisite fee has been deposited by the applicant in the government treasury. He has also certified that no proceedings relating to the issue involved in this question are pending at the level of the Designated Officer or at the appellate level.
4. The applicant has sought determination of the following question: **"What is the rate of tax on Universal Drain Hose-pipe?"**
5. Sh. Hemant Kumar Singh manager of the firm appeared before the undersigned and submitted that Hose pipes are a different commodity than the steel pipes as hose pipes

are flexible in nature whereas steel pipes are not, hence cannot be covered under the expression Steel Pipes.

6. The issue raised by him has been examined taking into account the dictionary meaning of the word Hose. The term Hose-Pipe as per the oxford dictionary is defined as;

   "A hose is a flexible hollow tube designed to carry water or fluids from one location to another."

7. Moreover the term Hosepipes is contained separately at Entry No 49 appended to Schedule B of the Punjab VAT Act, 2005. The said Entry reads as;

   "Hose pipes and fittings thereof"

8. In view of the above it is determined that "Hosepipes" fall under Entry No 49 of Schedule B of the Punjab VAT Act, 2005 and is therefore taxable at 6.05% (Including Surcharge).

The question is therefore determined accordingly.

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SGA
LAW OFFICES

NOTIFICATION (U.T. CHANDIGARH)

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NOTIFICATION REGARDING EXTENTION OF PUNJAB VAT (THIRD AMENDMENTACT), 2011 TO U.T. CHANDIGARH

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 28th July, 2015

G.S.R. 594(E).—In exercise of the powers conferred by section 87 of the Punjab Reorganization Act, 1966 (31 of 1966), the Central Government hereby extends to the Union territory of Chandigarh, the Punjab Value Added Tax (Third Amendment) Act, 2011 (Punjab Act No.26 of 2011), as in force in the State of Punjab on the date of publication of this notification, subject to the following modifications, namely:—

MODIFICATIONS

1. In sub-section (1) of section 1, after the words, brackets and figures "the Punjab Value Added Tax (Third Amendment) Act, 2011, the words "as extended to the Union territory of Chandigarh" shall be inserted.
2. Section 2 shall be omitted.
3. Section 4 shall be omitted.
4. Section 6 shall be omitted.

ANNEXURE
THE PUNJAB VALUE ADDED TAX (THIRD AMENDMENT) ACT, 2011
(Punjab Act No.26 of 2011)

1. ***Short title and commencement.***— (1) This Act may be called the Punjab Value Added Tax (Third Amendment) Act, 2011.

   (2) It shall come into force at once.

2. **Amendment of section 6 of Punjab Act 8 of 2005.**—In the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the principal Act), in section 6, after sub-section (6), the following sub-sections shall be added, namely:-

   "(7) Notwithstanding anything contained in sub-section (1) to sub-section(6), the State Government shall charge the tax in advance on the import of goods to be notified in such manner, as may be prescribed, and at such rates, as may be

notified, but not exceeding the rates applicable on such goods under the Act: Provided that such goods are meant for sale or use in manufacturing or processing of any goods for sale;

Provided further that such tax collected in advance, shall be counted towards final liability of the taxable person at the end of each tax period.

(8) The tax collected under the Punjab Tax on Entry of Goods into Local Areas Act, 2000 (Punjab Act No.9 of 2000), shall be deemed to have been collected under the provisions of sub-section (7)."

3. Amendment of section 8 of Punjab Act 8 of 2005.—In the principal Act, in section 8, in sub-section (1), in the proviso, the words "four per cent or" shall be omitted.

4. Amendment of section 13 of Punjab Act 8 of 2005.—In the principal Act, in section 13, after sub-section (1), the following sub-section shall be inserted, namely:-

"(1-A) The tax collected in advance under sub-section (7) of section 6, shall be treated as input tax credit."

5. Amendment of section 62 of Punjab Act 8 of 2005.—In the principal Act, in section 62, for sub-section (5), the following sub-section shall be substituted, namely:-

"(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 there under or under the Central Sales Tax Act, 1956 (Act No.74 of 1956)".

6. Repeal and saving.—(1) The Punjab Value Added Tax (Third Amendment) Ordinance, 2011 (Punjab Ordinance No.9 of 2011) and the Punjab Value Added Tax (Fourth Amendment) Ordinance, 2011 (Punjab Ordinance No.10 of 2011), are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal act, as amended by the Ordinances referred to in sub-section (1), shall be deemed to have been done or taken under the principal Act, as amended by this Act.

[F. No. U-11020/5/2014-UTL]
RAKESH SINGH, Jt. Secy.

NOTIFICATION (U.T. CHANDIGARH)

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NOTIFICATION REGARDING EXTENTION OF PUNJAB VAT (FOURTH AMENDMENTACT), 2011 TO U.T. CHANDIGARH

NOTIFICATION

New Delhi, the 28th July, 2015

G.S.R. 595(E).—In exercise of the powers conferred by section 87 of the Punjab Reorganization Act, 1966 (31 of 1966), the Central Government hereby extends to the Union territory of Chandigarh, the Punjab Value Added Tax (Fourth Amendment) Act, 2011, (Punjab Act No.27 of 2011), as in force in the State of Punjab on the date of publication of this notification, subject to the following modifications, namely:-

MODIFICATIONS

1. In sub-section (1) of Section1, after the words, brackets and figures "the Punjab Value Added Tax (Fourth Amendment) Act, 2011", the words "as extended to the Union territory of Chandigarh" shall be inserted.
2. Section 3 shall be omitted.

ANNEXURE

THE PUNJAB VALUE ADDED TAX (Fourth AMENDMENT) ACT, 2011

(Punjab Act No.27 of 2011)

1 **Short title and commencement.—(**1) This Act may be called the Punjab Value Added Tax Fourth Amendment) Act, 2011.

(2) It shall come into force at once.

2. **Amendment of section 17 of Punjab Act 8 of 2005.**—In the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the principal Act), the existing provision of section 17 shall be numbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:-

"(2) Where any taxable goods are sold to a unit within the Special Economic Zone or to a developer or where any inter-unit transaction of goods within the Special Economic Zone is made, such sales shall be zero-rated. On such sale, no output tax is payable by any person:

Provided that a taxable person making zero-rated sale shall be eligible for input tax credit in relation to such sale:

Provided further that the sale made to aforesaid unit or to a developer or an inter-unit transaction shall be zero-rated subject to production of certificate in such form as may be prescribed.

(3) Where any unit referred to in sub-section (2) makes sales directly to a customer, the provisions of zero-rated sales specified in sub-section (2) shall not be applicable.

Explanation.- (i) The expressions "unit" and "Special Economic Zone" shall have the same meaning as has been assigned to these expressions in the Punjab Special Economic Zone Act, 2009 (Punjab Act No. 17 of 2009);

(ii) "developer" means a person or a body of persons, including a company, a firm or a Government undertaking, which establishes, constructs, installs, operates, maintains or manages a part or whole of the infrastructure and other amenities in the Special Economic Zone."

3. **Amendment of section 27 of Punjab Act 8 of 2005.**—In the principal Act, in section 27, for the words "four per cent", wherever occurring the words "five per cent" shall be substituted.

[F. No. U-11020/5/2014-UTL]

RAKESH SINGH, Jt. Secy.

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NOTIFICATION (U.T. CHANDIGARH)

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NOTIFICATION REGARDING PUNJAB VAT(AMENDMENT) ACT, 2013

NOTIFICATION

New Delhi, the 28th July, 2015

G.S.R. 596(E).—In exercise of the powers conferred by section 87 of the Punjab Reorganization Act, 1966 (31 of 1966), the Central Government hereby extends to the Union territory of Chandigarh, the Punjab Value Added Tax (Amendment) Act, 2013, (Punjab Act No.28 of 2013), as in force in the State of Punjab on the date of publication of this notification, subject to the following modifications, namely:-

MODIFICATIONS

1. In sub-section (1) of section 1, after the words, figures and brackets "the Punjab Value Added Tax (Amendment) Act, 2013", the words "as extended to the Union territory of Chandigarh" shall be inserted.
2. In the new section 3-A as inserted by section 3, for the words "State Government", the word "Administrator" shall be substituted.

ANNEXURE
THE PUNJAB VALUE ADDED TAX (AMENDMENT) ACT, 2013
(Punjab Act No. 28 of 2013)

1. **Short title and commencement.**—(1) This Act may be called the Punjab Value Added Tax (Amendment) Act, 2013.

   (2) It shall come into force at once.

2. **Amendment of section 2 of Punjab Act 8 of 2005.**—In the Punjab Value Added Tax Act, 2005 (hereinafter referred to as the principal Act), in section 2, after clause (j), the following clause shall be inserted, namely:-

   "(jj) "electronic governance" means for use of electronic medium for.-

   (i) filing of any form, return, application, declaration or any other document;

   (ii) creation retention or preservation of records;

(iii) issue or grant of any form including statutory forms, orders and certificates; and

(iv) receipt of tax, interest, penalty or any other payment or refund of the same through Government treasury or authorized banks."

3. **Insertion of new section 3-A in Punjab Act 8 of 2005.**—In the principal Act, after section 3, the following section shall be inserted, namely:-

"3-A. Implementation of electronic governance.— Notwithstanding anything contained in this Act or the rules made thereunder the commissioner may by an order with the approval of the State Government implement electronic governance for carrying out the various provisions of the Act and the rules made there under."

4. Amendment of section 8 of Punjab Act 8 of 2005.—In the principal Act, in section 8, in sub-section (I), for the words "thirty two paise", the words "fifty five paise" shall be substituted.

5. Amendment of section 27 of Punjab Act 8 of 2005.—In the principal Act, in section 27, for the words

"five per cent" wherever occurring, the words "six per cent" shall be substituted.

6. Amendment of section 51 of Punjab Act 8 of 2005.—In the principal Act, in section 51.-

(a) in sub-section (1), after the words, "place or places", the words "or in such manner" shall be inserted;

(b) in sub-section (2).-

(i) after the words "The owner or person Incharge of", the words "the goods or" shall be inserted.

(ii) after the words "as are being carried in the goods vehicle", the words "or by any other means" shall be inserted, and

(iii) in the first proviso, after the words "outside the State in the course of", the words "intrastate or", shall be inserted.

(c) in sub-section (3), after the words "the driver or any other person Incharge of the goods", the words "and goods" shall be inserted;

(d) in sub-section (4), excepting the provision.-

(i) after the words "The owner or person Incharge of", the words "the goods and" shall be inserted; and

(ii) after the words "the declaration duly verified by him to the owner or person Incharge of", the words "the goods and" shall be inserted;

(e) in sub-section (5), after the words "the driver or the owner of", the words "the goods and" shall be inserted.

[F. No. U-11020/5/2014-UTL]
RAKESH SINGH, Jt. Secy.

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NOTIFICATION (HARYANA)

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NOTIFICATION REGARDING AMENDMENT IN SCHEDULE E

HARYANA GOVERNMENT

EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 7th September, 2015

No.22/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 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 amendment in Schedule E appended to the said Act, with effect from the date of publication of this notification in the Official Gazette, by dispensing with the condition of previous notice, namely:-

Amendment

In the Haryana Value Added Tax Act, 2003 (Act 6 of 2003), for existing Schedule E, the following Schedule shall be substituted, namely:-

"Schedule E
[See sub-section (1) of section 8]

Serial number	Description of goods	Circumstances and restrictions	Extent of admissibility of input tax
1	2	3	4
1	Petroleum products and natural gas	(i) when used as fuel; (ii) when exported out of State.	Nil
2	Capital goods	(i) when intended to be used mainly in the manufacture of exempted goods or in the telecommunications network or mining or the generation and distribution of electric energy or other form of power; or (ii) when forming part of gross block on the date of cancellation of the	Nil

		registration certificate.	
3(a)	All goods except those mentioned at serial numbers 1 and 2	(i) when used in the telecommunications network, in mining, or in the generation and distribution of electricity or other form of power; (ii) when exported out of state or disposed of otherwise than by sale; (iii) when used in the manufacture or packing of exempted goods except when such goods are sold in the course of export of goods out of the territory of India; (iv) when used in the manufacture or packing of taxable goods which are exported out of State or disposed of otherwise than by sale; (v) when left in stock, whether in the form purchased or in manufactured or processed form, on the date of cancellation of the registration certificate; (vi) when sold by Canteen Store Department.	Nil
3(b)	All goods including those mentioned at serial number 1 and 2.	(i) when the goods are sold as such in the course of inter-state trade or commerce; or (ii) when the goods are used in the manufacture of goods and the manufactured goods are sold in the course of inter-state trade or commerce (iii) when sold at a sale price lower than the purchase price.	Input Tax to the extent of the amount of tax actually paid on the purchase of such goods in the State under the Act or tax payable on sale of such goods under the Central Sales Tax Act, 1956, whichever is lower. To the extent of output tax liability, if any, on the sale of such goods.
4	Liquor as defined in the Punjab Excise Act, 1914 (1 of 1914)	when sold in the State by Bar licensees (Licenses L-4/L-5/L-12C/L-12G/L-10E).	Nil

Note 1 - In this Schedule the expression " the date of cancellation of the registration certificate" means the date of effect of the cancellation of the registration certificate.".

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

PUBLIC NOTICE (HARYANA)

ORDER REGARDING EXTENTION OF PERIOD TO FILE ONLINE RETURN

Consequent upon implementation of electronic governance under section 54-A(1) of the HVAT Act, 2003 vide order dated 05.08.2015, I am satisfied that circumstances exist for extension of period prescribed for furnishing of online quarterly returns. Therefore, in exercise of powers conferred upon me under section 54-A(3) of the Haryana Value Added Tax (Second Amendment) Ordinance, 2015 and in pursuance of approval of the Government conveyed vide memo No. 5213-ET-4-2015/15507, dated 02/03.09.2015 I, Shyamal Misra, IAS, Excise & Taxation Commissioner, Haryana, do hereby extend the period for filing online quarterly returns for the quarter ending 30.06.2015, upto 15.09.2015.

Panchkula, dated
03.09.2015

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

PUBLIC NOTICE (HARYANA)

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PERMISSION FOR FRAMING OF ASSESSMENT U/S 15(2) OF HVAT ACT

FROM

Excise & Taxation Commissioner,
Haryana, Chandigarh

To

Dy. Excise & Taxation Commissioner (ST),
Ambala.

Memo No. 2064 / ST-6,
Panchkula, dated the /0-9-2015

Subject: **Permission for framing of assessment u/s 15(2) of HVAT Act, 2003 read with Rule 27 of HVAT Rules in the case of M/s D.S. Marketing for the assessment year 2013-14 and 2014-15.**

Reference: Your office letter No. 4722, dated 26.08.2015.

Memo

On the captioned subject under reference, worthy Excise & Taxation Commissioner, Haryana has accorded permission to take up the case of M/s D.S. Marketing in scrutiny assessment under Rule 27(4) of Haryana Value Added Tax Act Rules, 2003. The case is selected for scrutiny assessment u/r 27(1)(ix) of the HVAT Rules. The case has been uploaded on the official website.

Addl. Excise & Taxation Commissioner (T),
for Excise & Taxation Commissioner, Haryana

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NEWS OF YOUR INTEREST

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MARUTI VOICES CONCERN OVER DELAY IN GST ROLLOUT

Country's largest car-maker Maruti Suzuki India Ltd (MSIL) today expressed disappointment at the delay in the rollout of the much-awaited GST in the country and said the political establishment must keep the national interest in mind.

Even as the home grown car maker, in which Japan's Suzuki Motor Corp (SMC) has a majority stake, said with regulatory norms in place, it would soon take the vote on allowing the parent company to own and invest in the Gujarat plant, there were concerns raised over the delay in GST rollout with the suggestion of a must "re-look at measures".

Addressing the company's shareholders' AGM here, MSIL chairman RC Bhargava said, "I am sure people at large, who are concerned about the economy, will be disappointed that due to purely political reasons, with no clear economic considerations being apparent, the GST has not been approved".

"I think that is very disappointing and as industry we believe that the entire political establishment must relook at measures, which are clearly in national interest," Bhargava said.

The GST Constitution Amendment Bill could not be passed in the last session of Parliament due to the uproar in both the Houses.

Bhargava said with the regulatory norms in place, the company will soon take shareholders' vote for a new manufacturing plant in Gujarat.

Courtesy by: The Tribune
5th September, 2015