SGA
LAW OFFICES

Issue 19
October 2015

"A fine is a tax for doing something wrong. A tax is a fine for doing something right".

----Malcolm St. Pier

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NOTIFICATION

ARTICLE

NEWS OF YOUR INTEREST

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SUPREME COURT OF INDIA

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CIVIL APPEAL NO. 6838 OF 2015

LLOYD ELECTRIC AND ENGINEERING LTD
Vs
STATE OF HIMACHAL PRADESH AND ORS.

ANIL R. DAVE, KURIAN JOSEPH AND ADARSH KUMAR GOEL, JJ.

3rd September, 2015

HF ▶ Appellant

The concession granted under the government's policy cannot be taken away by Sales Tax department.

CENTRAL SALES TAX –PROMISSORY ESTOPPEL – EXEMPTED UNITS -RATE NOTIFICATION – CONTRADICTION IN POLICY AND IMPLEMENTATION – POLICY FRAMED BY GOVERNMENT FOR GRANTING CONCESSION IN RATE OF CST @1% FOR PERIOD UPTO 31/3/2009 – PERIOD EXTENDED UPTO 31.3.2013 – PURSUANT TO THIS, NOTIFICATION ISSUED GRANTING CONCESSION FROM 1/4/2009 TO 31/3/2013 BY DEPARTMENT OF INDUSTRIES – SUBSEQUENTLY NOTIFICATION DATED 18/6/2009 ISSUED BY EXCISE AND TAXATION DEPARTMENT GRANTING CONCESSION IN RATE OF CST @1% WITH IMMEDIATE EFFECT FOR THE PERIOD ENDING 31.3.2013 – CONSEQUENTLY BENEFIT OF CONCESSION DEPRIVED FROM APPELLANT FOR THE INTERVENING PERIOD BETWEEN 1/4/2009 TO 18/6/2009 – APPEAL BEFORE SUPREME COURT CONTENDING THAT THE APPELLANT IS ELIGIBLE TO CONCESSION DURING THE INTERVENING PERIOD ALSO– HELD NOTIFICATION ISSUED BY EXCISE AND TAXATION DEPARTMENT IS ONLY AN EXTENSION OF CONCESSION ALREADY BEING ENJOYED UPTO THE YEAR 2009 - GOVERNMENT CANNOT TAKE AWAY WITH LEFT HAND WHAT IT HAS GRANTED WITH RIGHT HAND – THE STATE GOVERNMENT IS BOUND BY THE POLICY DECISION TAKEN BY THE COUNCIL OF MINISTERS AND DULY NOTIFIED BY THE DEPARTMENT CONCERNED-THE IMPLEMENTING DEPARTMENT CANNOT ISSUE A NOTIFICATION CONTRARY TO THE POLICY DECISION TAKEN BY GOVERNMENT – THE JUDGEMENT PASSED BY HIGH COURT IS SET ASIDE AS IT ANALYZED THE NOTIFICATION DATED 18/6/2009 IN TERMS OF INTRODUCTION OF THE CST CONCESSION @1% WITH EFFECT FROM THE DATE OF ISSUANCE OF NOTIFICATION- APPEAL ACCEPTED – *S. 8(5)(b) OF CST ACT*

Facts:

As per the Industrial Policy of the state of Himachal Pradesh, the appellant had been enjoying the concessional rate of CST @1% upto 31/3/2009.This period was extended by the cabinet upto 31/3/2013 or till phasing out of CST. The department of Industries thus issued a notification extending the concessions from 1/4/2009 to 31/3/2013. The dispute arose when the Excise and Taxation department issued a Statutory Notification dated 18.6.2009 u/s 8(5)(b) of

the CST Act, 1956 granting concessional rate of the CST @1% wherein the expression '...with immediate effect for the period ending 31.3.2013'' was used thereby depriving the benefit of concession given to appellant for the intervening period between 1/4/2009 to 18/6/2009. The High court upheld the view of the Excise and Taxation department. An appeal is filed before Supreme Court.

Held:

The state Government cannot speak in two voice. What is given by right hand cannot be taken away by left hand. The government has only one policy. The departments are to implement the government's policy and not their own policy. Merely because an expression 'with immediate effect' has been used in the notification issued by the excise and taxation department, it cannot be held that the state government can levy the tax against its own policy. The state government is bound by the policy decision taken by the council of ministers and duly notified by the department concerned i.e. department of industries. What has been issued by the Excise and Taxation department is an extension of the concession policy whereby the concession is already being enjoyed till 31.3.2009.Once the council of ministers takes a policy decision, the implementing department cannot issue a notification contrary to the policy decision taken by government. The High Court has erred in analyzing the notification dated 18/6/2009 as if it introduced the CST concession @1% with effect from the date of issuance of notification. Thus it is not the issuance of new notification but an extension of the benefits under the extended policy. The appeal is accepted.

Case Approved:

- *State of Bihar and others Vs. Suprabhat Steel Limited and others (1999) 1 SCC 31*
- *State of Jharkhand and others Vs. Tata Communication Limited and another (2006) 4 SCC 57*

Present: Mr. M. P. Devanath, Advocate for Petitioner
Mr. Varinder Kumar Sharma, Advocate for Respondent.

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KURIAN, J.:

Leave granted.

2. Whether the appellant is liable to pay Central Sales Tax (hereinafter referred to as "CST") @ 2 per cent on the inter-State sales for the period 01.04.2009 to 17.06.2009 or @ 1 per cent in view of the Industrial Policy of the State, is the dispute arising for consideration in this case. It is not in dispute that as per the Industrial Policy of the State of Himachal Pradesh, the appellant had been enjoying the concessional rate in CST @ 1 per cent upto 31.03.2009. It is also not in dispute that the Cabinet had taken a policy decision to extend the period of concession upto 31.03.2013 or till the CST is phased out. Still further, it is not in dispute that the Department of Industries had, accordingly, issued a notification extending the concessions from 01.04.2009 to 31.03.2013 or till the time the CST is phased out. The dispute arose on account of the Notification dated 18.06.2009 issued by the Excise and Taxation Department granting the concessional rate of the CST @ 1 per cent wherein the expression "… with immediate effect for the period ending 31.03.2013" was used.

3. The High Court, as per the impugned judgment, took the view that the expression "… with immediate effect" has to be given a plain meaning, and therefore, the appellant is not entitled to the concession which it had been enjoying upto 31.03.2009 till the Notification dated 18.06.2009 is issued by the Excise and Taxation Department.

4. Heard Shri M.P. Devanath, learned Counsel appearing for the appellant and Shri Suryanarayana Singh, learned Additional Advocate General appearing for the respondent-State.

5. In order to appreciate the contentions advanced by the parties, it is necessary for us to refer to the background of the dispute. Industrial Policy-2004 was notified by the State of Himachal Pradesh, providing for, inter alia, at Clause 10.3 concessional rate in Central Sales Tax:

> *"10.3 Central Sales Tax at a concessional rate of 1% shall be leviable on the goods manufactured by new and existing industrial units (as defined under these Rules) unless provided otherwise elsewhere under these Rules, upto 31-03-2009. This incentive will not be provided to industrial unit engaged in the production of breweries, distilleries, non-fruit based wineries and bottling plants (both for country liquor and Indian made foreign Liquor)."*

6. It is not in dispute that the appellant was found eligible for the said concession since it satisfied the parameters prescribed in the notification till 31.03.2009. It is seen from the Cabinet Note on extension of the incentive of concessional rate of CST @ 1 per cent beyond 31.03.2009 to industrial enterprises of the State of Himachal Pradesh prepared on 19.05.2009, the issue whether the concession should be extended beyond 31.03.2009 for some more time, was specifically addressed. To quote the relevant discussion:

> *"3. ... The State Government has been vigorously pursuing at various levels with Government of India the case for the extension of the Special Package for our State announced in January 2013 till at least March 2013 as it expires in March 2010. In the absence of any decision or any positive indications so far, it is imperative that the State Government also at its own level considers taking such initiatives by way of which Industrial Enterprises being set up in our State could be provided some basic attraction in the form of tax incentives and a facilitating environment. Availability of such incentives in the neighbouring State such as Uttarakhand where the incentive of 1% CST is available to the industrial units till March, 2014 renders our State uncompetitive and Unattractive to industrial investors. During the year 2007-08 the Industrial Enterprises of the Ste had contributed a sum of Rs.113.47 Crores to State exchequer through 1% CST. In case the incentive of 1% CST is not restored till the time the CST is phased out by Central Government it will affect the viability of units adversely and majority of big Enterprises may resort to branch transfer/consignment sales outside the State to avoid 2% CST to maintain their competitiveness. It is therefore proposed that the incentive of concessional rate of Central Sales Tax @ 1% be allowed to be continued beyond 31st March, 2009 till March 2013 or till the time CST is phased out.*
>
> *4. With this proposal there would be no adverse financial implication and State will continue to earn the same rate of revenue through CST sale as Industrial Enterprises will prefer to pay 1% CST instead of resorting to branch transfer of goods.*
>
> *5. The Department of Excise & Taxation and Finance Department have concurred with proposal.*

6. Permission of the Hon'ble Chief Minister has been obtained through the Chief Secretary to place the matter before the Council of Ministers.

POINTS FOR CONSIDERATION

Whether to extend the incentive of concessional rate of CST @ 1% for all the Industrial Enterprises beyond 31st March 2009 till 31st March 2013 or till the time the CST is phased out by the Central Government?"

7. The Council of Ministers, in the Meeting held on 20.05.2009, approved the above proposal and, accordingly, the State Government through Principal Secretary (Industries) issued the following Notification on 29.05.2009:

"Government of Himachal Pradesh, Department of Industries (A)

No. Ind.A(F) 6-3/2008 Dated Shimla – 02, 29th May, 2009

NOTIFICATION

In partial modification of this department notification No. Ind.A(F)6-7/2004 dated 30th December, 2004 notifying Industry Policy 2004 regarding grant of Incentives, Concessions and Facilities to Industrial Units Himachal Pradesh – 2004, the Governor, Himachal Pradesh is pleased to extend the incentive of validity of concessional rate of CST @ 1% upto 31.03.2013 in Rules 10.3 of Industry Policy, 2004 or till the time CST is phased out, whichever is earlier.

By Order

Sd/-

Pr. Secretary (Inds.) to the

Govt. of Himachal Pradesh."

(Emphasis supplied)

8. Thereafter, the Excise and Taxation Department of the State Government issued statutory Notification under Section 8(5)(b) of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act"). The relevant portion of the Notification reads as follows:

"2. Now, therefore, in exercise of the powers conferred by clause (b) of sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956), the Governor of Himachal Pradesh is pleased to direct that in respect of the sale in the courses of inter-State trade or commerce of the goods (other than those manufactured by the breweries, distilleries, nonfruit/vegetable based wineries and bottling plants (both of country liquor and Indian made foreign liquor) manufactured by the dealers running any existing industrial unit or new industrial unit (other than those new industrial units which are located in the tax free industrial zone) in the State of Himachal Pradesh, and are registered as dealer with Excise and Taxation Department, Himachal Pradesh, the tax levied under sub-section (1) of section 8 of the said Act shall be calculated and payable at the rate of 1% of the taxable turnover of such goods with immediate effect for the period ending 31.03.2013."

(Emphasis supplied)

9. The whole thrust of the contention advanced by the State is that since the notification under the Act providing for tax concession was issued only on 18.06.2009 wherein it was specifically mentioned that the notification would have immediate effect and would operate for the period ending on 31.03.2013, the appellant is not entitled to the CST concession @ 1% for the intervening period between 01.04.2009 to 18.06.2009. The appellant, however, submits that in view of the policy decision taken by the State Government extending the tax concession beyond 31.03.2009 to 31.03.2013, the Excise and Taxation Department of the State Government cannot take a different view and deny the tax concession for the period between 01.04.2009 to 18.06.2009-the date of the notification issued under Section 8(5)(b) of the Act. Heavy reliance is also placed on the decision of this Court in **State of Bihar and others v. Suprabhat Steel Limited and Others (1999) 1 SCC 31**.

10. We do not think it necessary to go into the various contentions raised by the parties in view of the undisputed factual position we have referred to above. The State Government cannot speak in two voice. Once the Cabinet takes a policy decision to extend its 2004 Industrial Policy in the matter of CST concession to the eligible units beyond 31.03.2009, upto 31.03.2013, and the Notification dated 29.05.2009, accordingly, having been issued by the Department concerned, viz., Department of Industries, thereafter, the Excise and Taxation Department cannot take a different stand. What is given by the right hand cannot be taken by the left hand. The Government shall speak only in one voice. It has only one policy. The departments are to implement the Government policy and not their own policy. Once the Council of Ministers has taken a decision to extend the 2004 Industrial Policy and extend tax concession beyond 31.03.2009, merely because the Excise and Taxation Department took some time to issue the notification, it cannot be held that the eligible units are not entitled to the concession till the Department issued the notification. It has to be noted that the Finance Department of the State Government had concurred with the proposal of the Department of Industries to extend the tax concession beyond 31.03.2009 till 31.03.2013 and the Council of Ministers had accordingly taken a decision also. No doubt, the statutory notification issued by the Excise and Taxation Department under Section 8(5)(b) of the Act on 18.06.2009 has stated that the eligible units will be entitled to the concession with immediate effect. Merely because such an expression has been used, it cannot be held that the State Government can levy the tax against its own policy. The State Government is bound by the policy decision taken by the Council of Ministers and duly notified by the Department concerned, viz., Department of Industries.

11. That apart, it appears, the Excise and Taxation Department itself has not actually intended the notification to take effect from 18.06.2009. The definition given to the new and the existing industrial units in the Notification dated 18.06.2009 would indicate so. To quote:

> *"**Explanation I:-** For the purposes of this notification,-*
>
> *(i) 'new industrial unit' means an industrial unit located in Himachal Pradesh which commenced/commences production on or after 31.012.2004, but will not include any industrial unit which is formed as a result of reestablishment, mere change of ownership, change in the constitution, re-structuring or revival of an existing industrial unit;*
>
> *(ii) 'existing industrial unit' means an industrial unit which commenced production before 31.12.2004;"*

12. Even otherwise, it is not altogether a new concession that has been notified by the Excise and Taxation Department in the impugned Notification dated 18.06.2009. As we have noted above, it is an extension of the 2004 Industrial Policy and the resultant tax concession to the eligible units which was available upto 31.03.2009. Therefore, for all purposes, what is notified by the Excise and Taxation Department on 18.06.2009 is an extension of the said concession beyond 31.03.2009 and that is why the notification has used the expression "… for the period ending 31.03.2013" without otherwise indicating the concession already being enjoyed by the eligible units till 31.03.2009.

13. The High Court, with great respect, has gone wrong in not appreciating the background of the case and the decision of the Council of Ministers to extend its own Industrial Policy announced in 2004 and the tax concession beyond 31.03.2009. Once the Council of Ministers takes a policy decision, the implementing Department cannot issue a notification contrary to the policy decision taken by the Government. The High Court also erred in analyzing and understanding the Notification dated 18.06.2009 as if it introduced the CST concession @ 1 per cent with effect from the date of issuance of notification. As we have already clarified, it is not the introduction of a new policy but an extension of the benefits under the extended policy. It is in this context, the decision of this Court in **Suprabhat Steel Limited (supra) and State of Jharkhand and others v. Tata Communications Limited and another (2006) 4 SCC 57** become relevant.

14. Accordingly, the appeal is allowed, the impugned judgment is set aside. It is declared that the appellant shall be entitled to the concessional rate of CST @ 1 per cent with effect from 01.04.2009 till 31.03.2013 until it is duly varied by the State Government.

15. There shall be no order as to costs.

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SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

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CRM-M No.19799 OF 2015

MANOJ KUMAR KANSAL
Vs
STATE OF HARYANA

FATEH DEEP SINGH, J.

10th September, 2015

HF ▶ State

Anticipatory Bail sought in the case of forgery of receipt regarding payment of VAT is declined.

FORGERY – ANTICIPATORY BAIL –INDIAN PENAL CODE- RECEIPT FORGED REGARDING PAYMENT OF VAT – F.I.R LODGED – ANTICIPATORY BAIL SOUGHT – REJECTION OF ON THE GROUND OF CUSTODIAL INTERROGATION BEING REQUIRED TO REACH THE DEPTH OF THE MATTER – PRAYER DECLINED – PETITION DISMISSED – *S. 420/467/468/471 OF IPC*

The petitioner dealing in electrical goods had forged the receipt regarding payment of VAT alongwith the forged rubber stamp of the authority to show it as genuine. F.I. R was lodged against the petitioner. An anticipatory bail sought by him is rejected on the basis that a custodial interrogation is required to reach the depth of the matter and entire record of the transaction has to be recovered to unearth the nexus and gamut of the crime. The petition is dismissed.

Present: Mr. APS Deol, Senior Advocate with
Mr. H.S. Mavi, Advocate for the petitioner.
Mr. Munish Sharma, Asstt. Advocate General, Haryana.
Mr. Harmandeep S. Sullar, Advocate for the complainant.

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FATEH DEEP SINGH, J.

1. Allegations against the petitioner Manoj Kumar Kansal in this petition filed under Section 438 Cr.P.C. seeking anticipatory bail in case FIR No.150 dated 25.09.2013 registered at Police Station Saha, District Ambala under Sections 420/467/468/471 IPC are that during the period September 2013 the petitioner, who is running a firm under the name and style of 'M/s Shree Sai International' dealing in electrical goods, had prepared a forged receipt of form No.38 regarding payment of Value Added Tax (VAT) and also used a forged and fabricated rubber stamp/seal of the competent authority to show it as genuine and thus, in all usurped taxation amount of Rs.16,230.

2. Contentions of Mr. APS Deol, Senior Advocate assisted by Mr. H.S. Mavi, Advocate representing the petitioner that the petitioner has subsequently paid the VAT amount and it is only a nominal amount of Rs.8,096; have been vehemently opposed on behalf of the State by Mr. Munish Sharma, Asstt. Advocate General, Haryana who has sought custodial interrogation of the petitioner on the grounds that entire record of the transaction has to be recovered to unearth the nexus and gamut of the crime.

3. Keeping in view the seriousness of the allegations, this Court is of the opinion that custodial interrogation of the petitioner is very much necessary in this matter to reach the depth of the entire offence, which necessitates declining of the prayer made in this petition and in view thereof the instant petition stands dismissed.

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PUNJAB & HARYANA HIGH COURT

CRM-M NO. 39270 OF 2013

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MUNISH KUMAR AND ANOTHER
Vs
STATE OF PUNJAB

MS. SABINA, J.

08th September, 2015

HF ▶ Petitioner

As penalty for evasion of tax is already paid and goods vehicle released, criminal proceedings qua the same offence would be abuse of process of law.

CHECK POST/ ROAD SIDE CHECKING – EVASION OF TAX - F.I.R. – QUASHING OF – GOODS IN TRANSIT APPREHENDED –ABSENCE OF BILL OR PAYMENT OF TAX – F.I.R. LODGED U/S 420 OF IPC -PENALTY IMPOSED U/S 56(c) OF PVAT ACT – AMOUNT DEPOSITED BY PETITIONER AND GOODS VEHICLE RELEASED THEREAFTER – QUASHING OF CRIMINAL PROCEEDINGS QUA THE SAME OFFENCE PRAYED FOR – PETITION ALLOWED TO PREVENT ABUSE OF PROCESS OF LAW IN THE GIVEN CIRCUMSTANCES – *S 420 I.P.C; S. 56(c) OF PVAT ACT*

Facts:
The goods in transit were apprehended. It was found that the truck was loaded with 'Seera' without any payment of tax or bill. Penalty u/s 56 was imposed under the PVAT Act and criminal proceedings were initiated against the petitioner. However, the petitioner deposited the amount of penalty and the goods were released thereafter. A petition is filed before the Hon'ble High Court praying for quashing of F.I. R. as the petitioner could not be prosecuted qua the same offence.

Held:
Since the penalty stands paid and goods vehicle also stands released, the continuation of criminal proceedings would be abuse of process of law. Therefore, the FIR and all consequential proceedings are quashed. The petition is allowed.

Present: Mr. Anurag Arora, Advocate, for the petitioner.
Mr. J.S. Sekhon, AAG, Punjab.

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SABINA, J.

1. Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of FIR No.309, dated 16.12.2009, under Section 420 of the

Indian Penal Code, 1860 ('IPC' for short), registered at Police Station Sadar Rajpura, District Patiala and all consequential proceedings arising therefrom.

2. Learned counsel has submitted that the petitioner has already deposited the penalty as imposed under Section 56(c) of Punjab Value Added Tax, 2005 (for short 'of the Act'). Thereafter, the vehicle of the petitioner was released alongwith goods. Hence, petitioners could not be criminally prosecuted qua the same offence.

3. Learned State counsel, on the other hand, has opposed the petition and has admitted the factum of payment of penalty by the petitioners as imposed under the said Act.

4. Prosecution story, in brief, is that on 16.12.2009 vehicle bearing No.PB-10-EC-1520 owned by petitioner No.1 was apprehended. It was found that the truck was loaded with 'Seera' (Mollases) without any bill or payment of tax.

5. Annexure P-2 is the order dated 21.12.2009, whereby penalty imposed under Section 56 (c) of the Act was deposited by the petitioner No.1 and the vehicle in question was released to petitioner No.1. Thus, in the present case, when the vehicle belonging to petitioner No.1 was stopped for checking, it was found that the driver could not produce any bill or receipt qua payment of tax. Proceedings under the Act were initiated and penalty imposed has already been deposited by the petitioner No.1

6. In these circumstances since in the proceeding under the Act, penalty has already been deposited by petitioner No.1, owner of the vehicle in question, continuation of criminal proceedings against the petitioners would be nothing but to abuse of process of law.

7. Accordingly, this petition is allowed. FIR No.309, dated 16.12.2009, under Section 420, IPC, registered at Police Station Sadar Rajpura, District Patiala and all the consequential proceedings, arising therefrom, are quashed.

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PUNJAB & HARYANA HIGH COURT

CWP 18455 OF 2015

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PRERNA STRIPS
Vs
STATE OF PUNJAB & ORS.

A.K. MITTAL AND RAMENDRA JAIN, JJ.

2nd September, 2015

HF ▶ Directions given

State is directed to decide the application filed by petitioner with respect to the renewal of exemption of advance entry tax.

ADVANCE TAX – EXEMPTION – APPLICATION FILED FOR RENEWAL – NO RESPONSE RECEIVED FROM RESPONDENT - WRIT FILED – RESPONDENT DIRECTED TO PASS A SPEAKING ORDER AFTER DECIDING THE APPLICATION SO FILED BY PETITIONER WITHIN THE TIME SPECIFIED – *S.6(7) OF PVAT ACT*

Facts:

The petitioner is engaged in the business of manufacturing of C.R. Strips for which H.R. coil is purchased which is exigible to advance tax u/s 6(7) of the PVAT Act, 2005. Notification dated 4.10.2013 was issued under section 6(7) of the Act notifying 30 goods for imposition of tax. The petitioner applied for exemption from payment of tax which was duly granted. Thereafter, it applied for renewal of exemption of advance entry tax vide application dated 20.11.2014 but no response has been received from the respondent. A writ is filed in this regard.

Held:

The respondent is directed to decide the application filed by the petitioner and pass a speaking order after giving an opportunity of hearing to the petitioner.

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

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AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing respondent No.3 to review the grant of exemption from payment of advance tax filed by the petitioner vide application dated 20.11.2014 (Annexure P-5).

2. The petitioner is a small scale industry and is engaged in the business of manufacturing of C.R. Strips for which H.R. Coil is purchased which is exigible to advance tax under Section 6(7) of the Punjab Value Added Tax Act, 2005 (in short "the Act"). The said goods manufactured are also stock transferred to other branches of the petitioner on which no tax was payable and as a result thereof, Input Tax Credit is getting accumulated to the petitioner. State of Punjab in the year 1999 introduced Punjab Tax on Entry of Goods into Local Areas Ordinance, 1999 which was later on converted into The Punjab Tax on Entry of Goods into Local Areas Act, 2000 (Punjab Act No. 9 of 2000) enforced w.e.f. 6.4.2000. To implement the policy of the State, the entry tax was abolished by way of omission of items in the Schedule vide notification dated 1.4.2005 and the earlier notifications for the levy of tax were rescinded w.e.f. 1.4.2005 vide notification dated 1.4.2005. The Punjab Government vide notification dated 15.11.2007 re-introduced the levy of entry tax on certain items which had earlier been stopped in view of corporation of the Act. Various persons challenged the levy of entry tax and vires thereof by filing different writ petitions. This Court vide order dated 28.3.2011 passed in CWP No. 15378 of 2008 stayed the recovery of entry tax subject to certain compliances including the furnishing of undertaking and an affidavit to the effect that in case the writ petition is subsequently dismissed by this Court, then the said person would be liable to pay the entry tax along with interest. The benefit of the interim order was extended to other persons also including the petitioner by the State Government by issuing circulars dated 29.4.2011 and 17.5.2011. Subsequent to the interim order passed by this Court, the respondents have issued an Ordinance vide notification dated 2.11.2011 with retrospective effect from 21.11.2007 vide which the Entry Tax Act has been amended and definition of goods has been changed along with charging Section 3A. The tax has been levied on the entry of goods into local areas as referable to Entry 52 of List II of Seventh Schedule. A consolidated notification for the levy of entry tax was also issued on 18.9.2012. The State Government made amendments in the Act and inserted sub-sections (7) and (8) to Sections 6 and 13(1A) vide Punjab Ordinance dated 12.8.2011 w.e.f. 12.8.2011. A notification dated 4.10.2013 (Annexure P-2) was issued under Section 3A of the Entry Tax Act granting exemption to all taxable persons from the payment of entry tax on whom the tax was being charged vide notification dated 18.9.2011/2012. Simultaneously, notification dated 4.10.2013 (Annexure P-3) was issued under Section 6(7) of the Act notifying 30 goods for imposition of Tax. In pursuance thereto, the petitioner applied for exemption from the payment of tax which was granted vide certificate dated 20.6.2014 (Annexure P-4) for the period from 20.6.2014 to 19.12.2014. Thereafter, the petitioner applied for renewal of exemption on advance entry tax vide application dated 20.11.2014 (Annexure P-5) before respondent No.3, 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 has moved an application dated 20.11.2014 (Annexure P-5) before respondent No.3, 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 respondent No.3 to decide the application dated 20.11.2014 (Annexure P-5), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two weeks from the date of receipt of certified copy of the order.

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PUNJAB & HARYANA HIGH COURT

CWP 18630 OF 2015

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SHAKTI MITTAL CONTRACTOR
Vs
STATE OF PUNJAB & OTHER

A.K. MITTAL AND RAMENDRA JAIN, JJ.

4th September, 2015

HF ▶ Directions issued to respondent

The respondent is directed to consider the reply filed by the petitioner with regard to the claim of refund and interest and pass a speaking order.

REFUND – SALES TAX- WORKS CONTRACT- WORKS CONTRACT TAKEN UP BY PETITIONER – DEDUCTION OF SALES TAX WHILE MAKING PAYMENT TO PETITIONER U/S 10-C OF PGST ACT – REFUND AND INTEREST ALLOWED BY HIGH COURT POST STRIKING DOWN OF S. 10-C AS UNCONSTITUTIONAL – DEMAND NOTICE SENT TO RESPONDENT – NOTICE SENT BY RESPONDENT FOR APPEARING BEFORE AUTHORITIES TO WHICH A REPLY WAS FILED BY PETITIONER – NO RESPONSE GIVEN BY RESPONDENT THERETO – WRIT FILED – RESPONDENT DIRECTED TO DECIDE THE MATTER CONSIDERING THE REPLY FILED BY PETITIONER AND PASS A SPEAKING ORDER – *S.10- C OF PGST ACT, 1948*

Facts:

The petitioner is a contractor and had undertaken work for offices of the Water Supply and Sanitation Division. The said offices had deducted sales tax u/s 10-C of the PGST Act while making payments to it. The vires of S.10-C were challenged and struck down as being unconstitutional. Based on this judgement, the petitioner claimed refund which was allowed by the Hon'ble High court alongwith interest. Pursuant to this, the petitioner moved a demand notice cum representation before the respondent. The respondent sent a notice to the petitioner for appearing to which the petitioner sent a reply. No response has been received regarding that reply. A writ is, therefore, filed for claim of refund and interest.

Held:

Disposing of the writ petition, the Respondent is directed to decide the matter considering the reply filed by the petitioner and pass a speaking order after affording an opportunity of hearing to him within a period of three months.

Present: Mr. Munish Bansal, Advocate for the petitioner.

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AJAY KUMAR MITTAL, J.

1. In this 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 the respondents to refund the amount deducted as sales tax under Section 10-C of the Punjab General Sales Tax Act, 1948 (in short "the Act") along with interest @ 1.5% per month.

2. The petitioner is a contractor and had undertaken certain construction work/works contract at the instance of offices of the Water Supply and Sanitation, Division No.1, Muktsar and Water Supply and Sanitation Division, Malout during the period from 1998-99 to 2002-03 and 2001-02 to 2003-04, respectively. The said offices while making payments to the petitioner had deducted sales tax under Section 10-C of the Act @ 2% amounting to `1,69,693/-and Rs.23,494/-respectively vide certificates (Annexure P-1 Colly) and deposited the same with respondent No.3. The vires of Section 10-C of the Act were challenged by various writ petitions and this Court vide order dated 13.8.2008 passed in CWP No. 19579 of 2002 declared Section 10-C of the Act as ultra vires and had struck it down as to be unconstitutional. While allowing the said writ petition, this Court had not granted any interest on the amount of tax deducted against which one of the writ petitioners filed LPA No. 740 of 2009 and this Court vide order dated 26.8.2009 allowed the appeal and awarded interest @ 1.5% per month till the date of payment. In a similar case, this Court vide order dated 25.9.2013 passed in CWP No. 9912 of 1998 granted liberty to the petitioner therein to approach the respondents for the refund of sales tax deducted under Section 10-C of the Act. The petitioner moved a demand notice-cum-representation dated 30.1.2015 (Annexure P-2) before respondent No.3 for the refund. In the meantime, respondent No.3 sent a notice dated 25.6.2015 (Annexure P-3) to the petitioner for appearance on 8.7.2015 along with documents. In response to the notice dated 25.6.2015 (Annexure P-3), the petitioner filed reply dated 5.7.2015 (Annexure P-4) before respondent No.3, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that the petitioner has filed reply dated 5.7.2015 (Annexure P-4) to the notice dated 25.6.2015 (Annexure P-3) issued by respondent No.3, 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 respondent No.3 to decide the matter taking into consideration the reply dated 5.7.2015 (Annexure P-4) filed by the petitioner, in accordance with law by passing a speaking order and after affording an opportunity of hearing to him within a period of three months from the date of receipt of certified copy of the order.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 256 OF 2014

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PIONEER ELECTRONICS
Vs
UNION TERRITORY OF CHANDIGARH

A.K. MITTAL AND RAMENDRA JAIN, JJ.

11th August, 2015

HF ▶ Revenue

Penalty is upheld for producing ingenuine C forms.

PENALTY – INGENUINE C- FORMS- FRAMING OF ASSESSMENT – A COUPLE OF C FORMS PRODUCED FOUND BOGUS – DIFFERENTIAL RATE OF TAX PAID BY APPELLANT – PENALTY AND INTEREST IMPOSED BY DEPARTMENT – DISMISSAL OF APPEALS BY LOWER AUTHORITIES – APPEAL FILED BEFORE HIGH COURT PLEADING THAT IN ABSENCE OF ADDITIONAL MATERIAL/ENQUIRY IMPOSITION OF PENALTY IS NOT JUSTIFIED – HELD FAILURE TO PRODUCE ACCOUNT BOOKS BEFORE ASSESSING AUTHORITY TAKEN INTO ACCOUNT – NO EVIDENCE SHOWN TO CONTROVERT FINDINGS OF LOWER AUTHORITIES– NO SATISFACTORY EXPLANATION TENDERED FOR PRODUCING C FORMS – APPEAL DISMISSED – *S.56 OF PVAT ACT*

Facts:

Returns were filed for the assessment year by the appellant. The petitioner produced C -forms in support of his claim with respect to interstate sale out of which two C -forms were disallowed as being bogus. The appellant deposited the differential rate of tax. The assessing authority imposed penalty and interest also. After the dismissal of appeals, an appeal is filed before the Hon'ble High Court pleading against the imposition of penalty and interest on the basis that there was no further material found or enquiry held by the department. Mere rejection of C forms should not form the basis of imposition of penalty.

Held:

No account books were produced before the assessing authority to prove the genuineness of the claim made by the assessee. The Tribunal recorded that penalty has been imposed as per the rules. The findings of the authorities below have not been controverted by the appellant. And no explanation has been given for ingenuine C forms. There being no merit in the appeal, the same is dismissed.

Cases referred:

- *State of Haryana vs. Inalsa Limited and another, (2011) 42 VST 192 (P&H)*
- *Pahar Chand & Sons vs. The State of Punjab, (1972) 30 STC 211 (P&H)*
- *Anantharam Veerasinghaiah & Co. vs. Commissioner of Income Tax,A.P.(1980) 123 STC 457 (SC)*

- *CIT, Ahmedabad vs. Reliance Petroproducts Pvt. Limited, (2010) 35 PHT 575 (SC)*
- *The State of Madras vs. S.G.Jayaraj Nadar & Sons, (1971) 28 STC 700 (SC).*

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

Mr. Sanjiv Ghai, Advocate for the respondent.

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AJAY KUMAR MITTAL,J.

1. The assessee-appellant has preferred this appeal under Section 68 of the Punjab Value Added Tax Act, 2005 (as extended to Chandigarh) (in short, "the PVAT Act") against the order dated 1.10.2014, Annexure A.5 of the Value Added Tax Tribunal, Union Territory, Chandigarh (in short, "the Tribunal") in STA No.17 of 2012 dismissing its appeal, claiming following substantial questions of law:-

"i) Whether in the facts and circumstances of the case, the imposition of penalty is sustainable in law?

ii) Whether in the facts and circumstances of the case, the orders Annexures A.3 and A.5 are non speaking orders?

iii) Whether in the facts and circumstances of the case, the penalty could be imposed on the appellant even when the purchasing dealers were registered dealers in State of Punjab and the only defect pointed out was that the declaration forms were not issued by the department to them?

iv) Whether in the facts and circumstances of the case, the penalty could be imposed without there being any additional material than the one which was there for framing assessment?

v) Whether in the facts and circumstances of the case, the penalty could be imposed in absence of any collusion between the seller and purchaser having been proved?

vi) Whether in the facts and circumstances of the case, the interest could be charged for the period prior to date of creation of the demand while rejecting the 'C' forms?

vii) Whether in the facts and circumstances of the case, orders Annexures A.2, A.3 and A.5 are sustainable in law?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a registered dealer under the PVAT Act and the Central Sales Tax Act, 1956 (in short, the "CST Act") It is carrying on the business of trading in electrical and electronics goods at Chandigarh. It filed the statutory returns as also the annual return for the assessment year 2005-06. It claimed certain sales made to registered dealer in the course of interstate sale. In support of its claim, declaration in Form 'C' as given by the purchaser was also produced. The Assessing authority finalized the assessment for the assessment year 2005-06. The assessing authority disallowed two 'C' Forms for sales made to M/s New Saini Electronic, Kurali and M/s Dhawan Video Mohali. The said forms were rejected on the ground that the Excise and Taxation Department of Punjab had not issued these forms to the above said concerns. According to the appellant, during the assessment proceedings, a blank paper was got signed by the assessing authority from its partner on which later on his admission was recorded with regard to in-genuineness of the declaration forms. The appellant in order to avoid litigation deposited the deferential rate of tax. The assessing authority initiated interest and penalty proceedings. The appellant pleaded that for

imposition of penalty some material more than what was there in the assessment proceedings should be there. The assessing authority charged interest and penalty vide order dated 2.12.2009, Annexure A.2. Aggrieved by the order, the assessee filed appeal before the first appellate authority which was dismissed vide order dated 19.5.2014, Annexure A.3. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 1.10.2014, Annexure A.5, the Tribunal dismissed the appeal. Hence the instant appeal by the assessee appellant.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant submitted that the findings of non genuine 'C' forms can only be made for addition of taxable turnover but are not sufficient to levy penalty in the absence of any additional material or further enquiry. Reliance was placed on judgments in ***State of Haryana vs. Inalsa Limited and another***, (2011) 42 VST 192 (P&H), ***Pahar Chand & Sons vs. The State of Punjab,*** (1972) 30 STC 211 (P&H), ***Anantharam Veerasinghaiah & Co. vs. Commissioner of Income Tax,***A.P.(1980) 123 STC 457 (SC), ***CIT, Ahmedabad vs. Reliance Petroproducts Pvt. Limited,*** (2010) 35 PHT 575 (SC) and ***The State of Madras vs. S.G.Jayaraj Nadar & Sons,*** (1971) 28 STC 700 (SC).

5. On the other hand, learned counsel for the respondent supported the impugned order passed by the Tribunal.

6. A perusal of the interest and penalty order dated 23.6.2011, Annexure A.2 shows that the seller had paid incorrect rate of tax at the rate of 1% instead of 12.5% by producing bogus and ingenuine 'C' forms. No books of account were produced before the assessing authority to prove the genuineness and bonafide of the claim. The relevant portion of the order dated 23.6.2011, Annexure A.2 reads thus:-

> *"There is a privity between the seller and the buyer when a sale is made against C form. The seller deposits tax at concessional rate of tax in respective quarter of the year concerned in which sale is made. In this case, based on the verification report received by the department and subsequently the detailed notice being issued to the taxable person regarding bogus C forms. The person failed to produce any document in reference to the genuineness or replacing the bogus C forms by genuine C forms during the proceeding of the assessment. Further the partner of the firm gave a written admission statement at the time of assessment as placed on the file that incorrect documents were produced with a view to evade tax. From the facts of the case, it is apparent that the seller had colluded with the buyer firm and paid incorrect rate of tax at the rate of 1% instead of 12.5% by producing bogus and ingenuine C forms the written admission statement given by the partner of the firm and placed on the file clearly implicate the seller person. Further, the taxable person also failed to produce books of accounts nor produced any documents before the assessing authority to prove the genuineness and bonafide of his claim as the burden of proof squarely lay on him. It was the duty of the seller firm to produce genuine C forms when a due opportunity was afforded to him through a detailed letter confronting the person of the facts by the then assessing authority."*

7. The Deputy Excise and Taxation Commissioner (Appeals), UT, Chandigarh upheld the penalty and interest order. However, before the Tribunal, the appellant only agitated against the penalty. The Tribunal vide order dated 1.10.2014, Annexure A.5 held that since 'C' Forms were not genuine, the penalty was imposed in accordance with the rules by the assessing authority and dismissed the appeal. Learned counsel for the appellant has not referred to any cogent and convincing evidence or material on record to controvert the findings recorded by the authorities below. No explanation much less satisfactory explanation was given by the

learned counsel for the appellant for submitting non-genuine 'C' Forms. The proposition of law propounded in the judgments cited by the learned counsel for the appellant is well recognized, but they being based on individual fact situation involved therein do not come to the rescue of the appellant keeping in view the facts and circumstances of the present case. Consequently, the appellant cannot derive any advantage from the said decisions. As a result, finding no merit in the appeal, the same is hereby dismissed.

8. The original record be returned to the learned counsel for the respondent under proper receipt.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 14586 OF 2015

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DLF HOME DEVELOPERS LTD.
Vs
STATE OF HARYANA AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

14th September, 2015

HF ▶ None

Revisional Authority is required to decide preliminary objection regarding jurisdiction first before proceeding further.

REVISION – NOTICE – ASSESSMENT ORDER DEEMED TO BE PASSED FOR THE YEAR 2007-08 ON 30.8.2008 –NOTICE ISSUED FOR REVISION ON 23.6.2015 – NO REPLY FILED AGAINST NOTICE - WRIT FILED AGAINST THE ISSUE OF SHOW CAUSE NOTICE CONTENDING IT TO HAVE BEEN ISSUED BEYOND THE LIMITATION PERIOD I.E. AFTER FIVE YEARS – CONSEQUENT DISCONTINUATION OF REVISIONAL PROCEEDINGS PRAYED FOR -PETITIONER DIRECTED TO FOLLOW PROPER COURSE BY FILING REPLY TO THE NOTICE TAKING PLEAS AS TAKEN IN WRIT PETITION WITHIN TWO WEEKS IN THE EVENT OF WHICH REVISIONAL AUTHORITY SHALL DECIDE THE SAME BEFORE PROCEEDING FURTHER – PETITIONER OPEN TO TAKE COURSE TO REMEDIES IF AGGRIEVED BY THE ORDER OF THE AUTHORITY -WRIT DISPOSED OF – *S.34 OF HVAT ACT,*

Facts:

Assessment was deemed to have been framed on 30.11.2008 for the assessment year 2007-08. A notice was issued for revising the assessment order on 23.6.2015. The assessee has filed a writ contending that the revisional order ought to be passed within a limitation period of five years i.e. it ought to have been done latest by 30.11.2013. In the present case, the notice has been issued after the expiry of seven years. Therefore, it is prayed that proceedings pursuant thereto ought to be discontinued.

Held:

It is held that at this stage there is no justifiable reason to interfere with the notice under challenge. The petitioner should follow the proper course by filing all objections /reply as raised in the writ petitions. If the reply is filed within two weeks from the date of receipt of order, the authority shall decide the same and pass a speaking order before proceeding further. However, in case of any grievance against the Revisional Authority, the petitioner may take proper recourse to the remedies as may be available to it. The writ is disposed of.

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. Sandeep Goyal, Advocate
Mr. Puneet Aggarwal, Advocate,
Mr. Saurabh Kapoor, Advocate,
Mr. Rishabh Kapoor, Advocate,
Mr. Abhishek Maheshwari, Advocate and
Ms. Shivani Kapoor, Advocate for the petitioner(s).
Mr. Amrinder Singh, Advocate for the petitioner(s),
(in CWP Nos. 15654, 15655 and 15656 of 2015).
Ms. Mamta Singla Talwar, DAG, Haryana.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of 23 petitions bearing CWP Nos. 14586, 14842, 15494, 15654, 15655, 15656, 15798, 16955, 16961, 17752, 17753, 17754, 17755, 17758, 17766, 17879, 17880, 17881, 17885, 17899, 18002, 18119 and 19417 of 2015 as according to learned counsel for the parties, the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 14586 of 2015.

2. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the notice dated 23.6.2015 (Annexure P-2). Further, a writ of prohibition has been sought directing respondent No.3 not to proceed with the revisional proceedings initiated vide notice, Annexure P-2 under Section 34 of the Haryana Value Added Tax Act, 2003 (in short "the Act").

3. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner had filed its return of income on 30.11.2008 for the assessment year 2007-08. The said return was processed under Section 15(1) of the Act which was assessed at nil turnover vide assessment order dated 15.6.2009 (Annexure P-1). In view of Rule 27 of the Haryana Value Added Tax Rules, 2003, the filing of return and acknowledgment thereof is deemed as assessment order and, therefore, the assessment order dated 15.6.2009 would be deemed to have been passed on the date of filing of the return i.e. on 30.11.2008. Since the deemed assessment has been made on 30.11.2008, the revisional order was required to be passed latest by 30.11.2013. A notice dated 23.6.2015 (Annexure P-2) was issued to the petitioner for revision of the assessment order dated 15.6.2009 (Annexure P-1). According to the petitioner, the show cause notice, Annexure P-2, for revision of the assessment year 2007-08 was issued after the expiry of more than seven years. The revisional authority has no power to make any revision in terms of notification dated 31.3.2003 (Annexure P-3) issued under Section 34(2) of the Act. Hence, the present writ petitions.

4. We have heard learned counsel for the parties.

5. The writ-petitioners have challenged the notice, Annexure P 2, issued by the Deputy Excise and Taxation Commissioner-cumrevisional authority, Gurgaon (East), Gurgaon on the ground that the same was beyond limitation. It was urged that the notice having been issued without jurisdiction being beyond limitation, the proceedings pursuant thereto could not continue.

6. From the perusal of the writ petition(s), we find that the petitioner(s) on receipt of the notice, Annexure P-2, (Annexures P-3 and P-4 in some of the cases) had filed the writ petitions in this Court challenging the same to be without jurisdiction. In some of the cases, the petitioner(s) had neither filed any objection/reply to the said notice nor raised the pleas as have been raised in the instant writ petitions before the competent authority.

7. At this stage, we do not find any justifiable reason to interfere with the notice under challenge. However, we clarify that the proper course of action for the noticee is to file detailed and comprehensive objection/reply and to raise all the pleas as have been raised in the writ petitions. In case any objection/reply is filed by the petitioner(s) within a period of two weeks from the date of receipt of the certified copy of the order, the revisional authority shall decide the same within a period of six weeks from the date of receipt of the objection/reply in accordance with law after affording an opportunity of hearing to the petitioner(s) and by passing a speaking order before proceeding further in the matter.

8. The writ petitions stand disposed of accordingly.

9. It is, however, made clear that in case the petitioner(s) has any grievance after the order is passed by revisional authority, it shall be open to the petitioner(s) to take recourse to the remedies as may be available to the petitioner(s) in accordance with law.

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PUNJAB & HARYANA HIGH COURT

CWP No. 18834 OF 2015

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PANKAJ MOTORS
Vs
STATE OF PUNJAB AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

7th September, 2015

HF ▶ *Direction given*

Department is directed to pass a speaking order considering the reply filed by the petitioner with regard to the notice issued to it for revision of assessment order.

NOTICE – LACK OF ACTION ON PART OF DEPARTMENT – ASSESSMENT ORDER SOUGHT TO BE REVISED – NOTICE ISSUED TO PETITIONER – REPLY FILED BY PETITIONER IN THIS REGARD – NO DECISION TAKEN BY DEPARTMENT PURSUANT TO REPLY FILED – WRIT FILED – RESPONDENT DIRECTED TO CONSIDER THE REPLY FILED AND PASS A SPEAKING ORDER WITHIN THE TIME SPECIFIED – *S. 65 OF PVAT ACT*

Facts:

A notice dated 14.10.2015 was issued for revising the assessment order dated 11.2.2009. A written reply dated 28.8.2015 was filed in this regard. But no response has been given by the respondent. Therefore, a writ is filed.

Held:

The respondent is directed to decide the matter in accordance with law taking into consideration the written reply filed by the petitioner and pass a speaking order within a period of one month from the date of receipt of the order being passed.

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

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AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the notice dated 14.10.2014 (Annexure P-2) along with all subsequent proceedings being barred by limitation as the assessment order dated 11.2.2009 (Annexure P-1) which is sought to be revised is beyond the period of five years. Further, a writ of prohibition has been sought directing respondent No.2 not to proceed with the revisional proceedings initiated vide notice dated 14.10.2014 (Annexure P-2).

2. The primary grievance of the petitioner is that written reply dated 28.8.2015 (Annexure P-8) has been filed before respondent No.3 against the notice dated 14.10.2014 (Annexure P-2) for revising the order dated 11.2.2009 (Annexure P-1) passed by respondent No.2 for the assessment year 2007-08, but no decision has so far been taken thereon by the concerned respondent.

3. Learned counsel for the petitioner submitted that in response to the notice dated 14.10.2014 (Annexure P-2), the petitioner has filed written reply dated 28.8.2015 (Annexure P-8) before respondent No.3, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, the present writ petition is disposed of by directing respondent No.3 to decide the matter in accordance with law after affording an opportunity of hearing to the petitioner and by passing a speaking order taking into consideration the written reply dated 28.8.2015 (Annexure P-8) filed by the petitioner within a period of one month from the date of receipt of a certified copy of this order. Needless to say that it shall be open to the petitioner to take recourse to remedies available to it in accordance with law in the eventuality an adverse order is passed.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 18262 OF 2015

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ORCHID INFRASTRUCTURE DEVELOPERS PVT. LTD.
Vs
STATE OF HARYANA AND ORS.

A.K. MITTAL AND RAMENDRA JAIN, JJ.

7th September, 2015

HF ▶ Directions given

The petitioner is directed to abide by the notice served for computing taxable turnover by assessing authority and the latter shall pass a speaking order after considering the same.

WORKS CONTRACTOR/ DEVELOPER – TAXABLE TURNOVER – CALCULATION AS PER NEW RULE 25 OF THE ACT – PETITIONER ENGAGED IN DEVELOPING FLATS/ APARTMENTS – INTRODUCTION OF NEW RULES FOR COMPUTING TURNOVER TO CHARGE TAX ON DEVELOPERS – NOTICE SERVED ON PETITIONER FOR ASSESSMENT IN ACCORDANCE WITH NEW RULE – VIRES OF THE RULE CHALLENGED ALONGWITH PRAYER TO QUASH THE NOTICE IN QUESTION – PETITIONER DIRECTED BY HIGH COURT TO PRODUCE THE RECORD AND FILE DETAILED REPRESENTATION – ASSESSING AUTHORITY TO PASS A SPEAKING ORDER AFTER CONSIDERING THE MATTER – QUESTION OF VIRES LEFT UNADJUDICATED TO BE DECIDED LATER IF CHALLENGED BY PETITIONER AFTER DECISION OF AUTHORITIES – WRIT DISPOSED OF – *S.2(1)(zg) OF HVAT ACT & RULE 25(2) OF HVAT RULES*

Facts:
The petitioner is engaged in development and sale of flats/apartments/units. A new set of rules for computation of turnover for charging tax on developers has been introduced by the State vide Notification dated23.7.2015. A notice was served on the petitioner wherein the petitioner was to be assessed as per the new Rule 25 of the Rules which has been so introduced. The petitioner has challenged its constitutionality on many grounds. A writ has been filed in this regard for quashing of notices and for declaring the said Rule as ultravires.

Held:
The petitioner is directed to produce the relevant record and to file a detailed and comprehensive representation whereupon the assessing authority shall take a decision and pass a speaking order. However, the question of vires is not being adjudicated and it will be open to the petitioner to challenge it after the decision is given by the concerned authority.

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. Puneet Aggarwal, Advocate,
Mr. Saurabh Kapoor, Advocate,
Mr. Rishabh Kapoor, Advocate,

Mr. Abhishek Maheshwari, Advocate and

Mrs. Shivani Kapoor, Advocate for the petitioner(s).

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of 8 petitions bearing CWP Nos. 18255, 18258, 18261, 18262, 18279, 18281, 18282 and 18358 of 2015 as according to learned counsel for the petitioner, the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 18262 of 2015.

2. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus declaring Rule 25(2) and 25(7) of the Haryana Value Added Tax Rules, 2003 (hereinafter referred to as "the Rules") (Annexure P-1) in particular and other related provisions in so far as they charge tax on expenses and elements of total sale price of flat/unit which have no relationship with value of goods transferred in execution of works contract on 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 and Article 366 (29A) of the Constitution of India; for declaring Rule 25(2) and 25(7) of the Rules (Annexure P-1) in particular and other related provisions as *ultra vires* since value derived for charging sales tax under new Rule 25 does not make any reference to and is more than the value of materials transferred by the developers to the buyers as appearing in the books of account of the developer; for declaring Rule 25(2) and 25(7) of the Rules (Annexure P-1) in particular and other related provisions as *ultra vires* since the State has not remained bound by its affidavit dated 24.4.2014 on the basis of which this Court in CWP No. 5730 of 2014 had upheld the provisions of Rule 25 of the Rules; for declaring Rule 25(7) of the Rules (Annexure P-1) as *ultra vires* the provisions of Section 3 read with Sections 6, 2(1)(u) and 2 (1)(zg) of the Rules; for declaring Rule 25(2), (4), (6) and (7) of the Rules (Annexure P-1) as *ultra vires* and inoperative for being indeterminable; for declaring Rule 25(4) of the Rules (Annexure P-1) in particular and other related provisions of the Haryana Value Added Tax Act, 2003 (in short "the Act") since they seek to charge tax on a transaction not supported by money consideration which cannot be considered to be sale for the purpose of charge sales tax as *ultra vires* the State's power under Article 246 of the Constitution of India read with Entry 54 of List II of the Seventh Schedule; for declaring Rule 25(4) of the Rules (Annexure P-1) because they seek to charge tax on the basis of presumptive valuation more than the actual consideration charged for transfer of property in goods as *ultra vires* the State's power under Article 246 of the Constitution of India read with Entry 54 of List II of the Seventh Schedule. Further, a writ of certiorari has been sought quashing the notices dated 6.8.2015 (Annexure P-2) issued by respondent No. 3.

3. 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. Consequent to the directions issued 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, the Government of Haryana has introduced new set of rules for computation of turnover for charging tax on developers vide notification dated 23.7.2015 (Annexure P-1) effective from 17.5.2010. A notice dated 6.8.2015 (Annexure P-2) was issued to the petitioner wherein the assessment of the petitioner for the years 2012-13 and 2013-14 was sought to be made in accordance with new Rule 25 of the Rules. The said rules are ultra vires the State's power under Entry 54 List II and are in clear violation of the principles enunciated by this Court in CHD Developer's case (supra). The new Rule 25 of the Rules is ultra vires the Constitution of India and in clear violation of the law laid down by this court in CHD

Developer's case (supra) and the authorities under the Act are bound by the said Rule. Hence, the present writ petitions.

4. We have heard learned counsel for the petitioner(s) and perused the record.

5. Learned counsel for the petitioners has laid challenge to the notice dated 6.8.2015 (Annexure P-2) requiring the petitioner(s) to furnish the books of account and certain other information for the said period.

6. After hearing learned counsel for the petitioners, the present writ petitions are disposed of by directing the petitioners to produce the relevant record and to file a detailed and comprehensive representation(s) whereupon the assessing authority shall take a decision in accordance with law by passing a speaking order and after affording an opportunity of hearing to each petitioner or its authorized representative. It is, however, clarified that the question of vires is not being adjudicated upon at this stage and it shall be open to the petitioners to approach this Court again laying challenge to the vires in accordance with law, after the decision by the concerned authority, if need so arises.

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PUNJAB & HARYANA HIGH COURT

STA 23 OF 2014

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MUNICIPAL CORPORATION, LUDHIANA
Vs
COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX

A.K. MITTAL AND RAMENDRA JAIN, JJ.

27th August, 2015

HF ▶ *Appellant- Assessee*

Considering the fact of 40% of amount of liability already being deposited, remaining portion of predeposit required for entertainment of appeal is waived off.

SERVICE TAX -PREDEPOSIT – APPEAL – ENTERTAINMENT OF – DEMAND RAISED FOR SERVICE TAX ON ACCOUNT OF SPACE SOLD FOR ADVERTISEMENTS BY ASSESSEE – APPEAL BEFORE TRIBUNAL – STAY GRANTED SUBJECT TO PAYMENT OF THE DEMAND AND INTEREST – APPEAL DISMISSED LATER FOR NON COMPLIANCE OF STAY ORDER – APPEAL BEFORE HIGH COURT – WAIVER OF REMAINING PART OF PREDEPOSIT PRAYED FOR AS 40% OF SERVICE TAX LIABILITY STOOD DEPOSITED – CONSIDERING FACTS AND CIRCUMSTANCES OF THE CASE ALONGWITH THE FACTUM OF DEPOSIT OF 40% OF SERVICE TAX; REMAINING AMOUNT NOT TO BE INSISTED UPON FOR PREDEPOSIT – TRIBUNAL TO ADJUDICATE THE MATTER ON MERITS – APPEAL DISPOSED OF – *S.35G OF CENTRAL EXCISE ACT, 1944*

Facts:

The appellant, a body corporate formed under the Municipal Corporation Act, 1976; charged license fee and advertisement tax under the 1976 Act. The respondent sought receipts from the appellant for the space sold by them for advertisement and charged service tax on it. The appellant filed an appeal before Tribunal along with the stay application. The stay was granted subject to the payment of the demand and interest thereron vide order dated 30.10.2013. The Tribunal dismissed the appeal of the appellant vide order dated 7.1.2014 for non compliance of the stay order. An appeal is thus filed before the High court contending that the appellant had already deposited an amount of 40 % of the service tax in terms of order dated 18.2.2015 passed by this court and therefore, the requirement of predeposit for hearing of appeal was unfair.

Held:

That in the facts and circumstances of the case the ends of the justice would be met if the appeal is heard on merits without insisting for predeposit of the remaining amount. The order

passed by Tribunal dismissing the appeal for non compliance of stay order is set aside and the Tribunal is directed to adjudicate the matter on merits. The appeal is disposed of.

Present: Mr. Jagmohan Bansal, Advocate for the appellant.

Mr. D.D. Sharma, Advocate for the respondent.

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AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 (in short, "the Act") against the order dated 30.10.2013 (Annexure A-1) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal").

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a body corporate constituted under the Punjab Municipal Corporation Act, 1976 (for brevity "the 1976 Act"). The appellant charged licence fee and advertisement tax under the 1976 Act. On 1.5.2006, the service of sale of space for time for advertisement was brought within the ambit of service tax. The respondent sought information from the appellant regarding their receipts from space sold/allotted for advertisement. The appellant supplied details of receipts and on that basis, the respondent formed an opinion that the appellant was liable to pay service tax. Accordingly, the respondent issued a show cause notice dated 17.8.2010 to the appellant for recovery of Rs. 1,71,46,656/- (Rs. 1,66,83,629/- as Service Tax plus Rs. 3,33,673/- education cess plus Rs. 1,29,354/- as SHE Cess) along with interest as service tax. The appellant filed reply dated 18.11.2010 to the said show cause notice. The adjudicating authority vide order dated 21.3.2012 (Annexure A-3) confirmed the said demand of Rs. 1,71,46,656/-. Feeling aggrieved, the appellant filed an appeal (Annexure A-4) along with stay application before the Tribunal who vide order dated 30.10.2013 (Annexure A-1) granted stay subject to payment of the demand plus the corresponding interest thereon. The Tribunal vide order dated 7.1.2014 (Annexure A-2) dismissed the appeal of the assessee for non-compliance of the stay order dated 30.10.2013 (Annexure A-1). Hence, the present appeal.

3. Learned counsel for the appellant submitted that the requirement of Rs. 1,71,46,656/- as pre-deposit as a condition precedent for hearing of appeal was unfair and excessive. He, however, submitted that the appellant has deposited a sum of Rs. 68,58,662/-, i.e. 40% of the service tax in terms of order dated 18.2.2015 passed by this Court.

4. Learned counsel for the revenue opposed the prayer made by the learned counsel for the appellant and submitted that the amount as directed by the Tribunal was reasonable and justified.

5. The primary dispute that arises for consideration in this appeal relates to the quantum of pre-deposit to be made by the appellant as a condition precedent for the hearing of the appeal by the Tribunal. After hearing learned counsel for the parties and keeping in view the totality of the facts and circumstances of the case coupled with the fact that the appellant has already deposited a sum of Rs. 68,58,662/-, i.e. 40% of the liability, we are of the opinion that the ends of justice would be met if the appeal is heard on merits without insisting for pre-deposit of the remaining amount.

6. It was pointed out that vide order dated 7.1.2014 passed by the Tribunal, the appeal was dismissed for non-compliance of stay order dated 30.10.2013 (Annexure A-1).

Accordingly, order dated 7.1.2014 is set aside. The Tribunal shall now proceed to adjudicate the appeal on merits in accordance with law.

7. The appeal stands disposed of.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 401 OF 2014

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BOMBAY INTERIOR DECORATERS
Vs
STATE OF PUNJAB

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

13th August, 2015

HF ▶ Revenue

Penalty is upheld on the basis of admission at first stage regarding purposefully not furnishing declaration in Form XXXVI at the ICC with a view to avoid tax.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – DECLARATION FORM XXXVI – GOODS IN TRANSIT CHECKED- ABSENCE OF FORM XXXVI – DRIVER STATED TO HAVE TAKEN ESCAPE ROUTE ON APPELLANT'S DIRECTIONS TO AVOID DECLARATION AT ICC – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL – PLEA THAT ESCAPE ROUTE TAKEN TO AVOID TOLL TAX NOT ACCEPTED – WITHDRAWL OF DRIVER'S STATEMENT CONSIDERED TO BE AN AFTERTHOUGHT - NO PROMPT PRODUCTION OF BOOKS OF ACCOUNTS INDICATED MANIPULATION OF ENTRIES – NON FURNISHING OF DECLARATION AT ICC VIEWED TO BE AN ATTEMPT TO EVADE TAX – PENALTY UPHELD – APPEAL DISMISSED *– S. 51(7)(c) OF PVAT ACT*

Facts:

The goods in transit were checked and the driver produced the documents. It was found that the driver had not generated VAT- XXXVI at any ICC or while entering into the state of Punjab. The driver admitted to have taken the escape route and not make declaration of any transaction as per the appellant's directions. A show cause notice was issued to prove the genuineness of the transaction. The statement of the driver was withdrawn and no books of accounts were produced. Penalty u/s 51(7)(c) was imposed. On dismissal of first appeal, an appeal is filed before Tribunal.

Held:

The contention that the driver took the escape route to avoid toll tax is contradicted by the statement made by the driver himself before the detaining officer. The withdrawl of his statement made before the officer is an afterthought. In any case the toll tax could have been recovered by driver from the appellant by showing receipt of the same. The plea taken that the driver was beyond appellant's control is of no consequence. His statement cannot be said to be made under pressure as it was at the first instance when it was made.

Non furnishing of Declaration in VAT XXXVI at nearest ICC or entry into Punjab shows the intention to evade tax. Had the transaction been entered in to the books, the appellant would

have produced them forthwith. But the long gap in producing the same raises suspicion regarding manipulation of the entries later on.

The judgements produced by the appellant to contend that mere non furnishing of declaration is not sufficient to impose penalty are not applicable to this case. 51(4) is a mandatory provision and can be relaxed only in a fit case where the circumstances permit.

The plea that the transaction was by way of C forms cannot remove the defect of non declaration at the ICC. The appeal is dismissed and penalty is upheld.

Cases referred:

- *State of Punjab and another versus M/s Hindustan Steel Industries (2009) 34 PHT 302 (P&H)*
- *M/s Ganpati Foods versus the State of Punjab and another (2013) 46 PHT 457 (P&H)*
- *M/s Multi Color Steel (India) Pvt. Ltd., Plot No. 4, Sector 6 I-M-T Manesar Gurgaon, Haryana versus State of Punjab (2012) 44 PHT 199 (PVT)*
- *M/s Manglam Steels, Mandi Gobindgarh, TinNo. 00352053631 versus State of Punjab (2012) 44 PHT 201 (PVT)*
- *M/s Benipal Steel Industries, G.T. Road, Mandi Gobidngarh versus State of Punjab (2013) 46 PHT 331 (PVT)*
- *M/s Modulas Spring Pvt. Ltd., Parwanoo (HP) versus State of Punjab 2013) 46 PHT 528 (PVT)*
- *M/s Balaji Furniture House, Abohar versus State of Punjab (2014) 47 PHT 432 (PVT)*

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. This appeal is directed against the order dated 20.8.2014 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala (herein referred as the First Appellate Authority) dismissing the appeal of the appellant against the order dated 26.3.2013 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala(herein referred as (Designated Officer) imposing a penalty of Rs. 2,,01,176/- u/s 51(7)(c) of the Punjab Value Added Tax Act, 2005.

2. On 10.3.2013, the driver while driving the vehicle No. RJ-01-GA8868 loaded with PVC Section etc. was checked at Saria Head Bhakhra Road, near Ghanaur by the Officers of the Mobile Wing, Patiala, whereupon, he presented the following documents before the Checking Officer:-

i) Invoice No. 3641 dated 09.03.2013 issued by M/s Dhabriya Agglomerates Pvt. Ltd., Industrial Area, Jaipur in favour of M/s Bombay Interior Decorators, Rajpura Road, Patiala for Rs. 3,08,409.

ii) Invoice No. 382 dated 09.03.2013 issued by M/s Dhabriya Agglomerates Pvt. Ltd., Industrial Area, Jaipur in favour of M/s Bombay Interior Decorators, Rajpura Road, Patiala for Rs. 93,946/-.

iii) GR No. 712, dated 9.3.2013 issued by M/s Vats Bhiwani Tempo Carriers, Jaipur for the transportation of goods from Jaipur to Patiala.

3. On scrutiny of the documents, the Checking Officer detected that the driver had not generated VAT-XXXVI at any ICC including at the ICC while entering into State of Punjab. The driver also admitted that as per directions of the owners of the goods (i.e. Appellant) he had adopted the escape route and avoided making declaration of the transaction at the ICC. The Detaining Officer recorded statement of the driver and detained the goods for verification under Section 51(6)(b) of the Punjab Value Added Tax Act. He also issued the a notice to the appellant for 11.3.2013 for appearing alongwith complete books of account for verification.

However, no one appeared on 11.3.2013 or 12.3.2013. On 13.3.2013 Shri Harbhajan Singh S/o Shri Sant Singh appeared on behalf of the consignee and owned the goods. He failed to produce the books of account. The Detaining Officer, then forwarded the proceedings to the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala (herein referred as the Designated Officer).

4. The Designated Officer also issued a show cause notice to the appellant for 21.3.2013 to appear alongwith complete set of books of accounts as well as all other documents in support of his defence to prove the genuineness of the transaction. In response to the notice Mr. Rakesh Cajla, Advocate appeared on 16.3.2013 instead of 21.3.2013 on behalf of the owners of the goods. He also got the goods released. He also produced the affidavit of the driver in a bid to withdraw the earlier statement and stated that he had adopted this escape route at his own in order to avoid the toll tax and not under the directions of the consignee. The counsel further stated that the transaction was covered by the genuine documents and there was no mensrea on the part of appellant to keep the goods out of the account books.

5. He, in order to produce the account books, sought some more time. On 21.3.2013, he argued the case and cited some judgments in order to establish that the transaction was covered by genuine documents and mere non generation of the declaration would not attract any penalty.

6. After careful consideration of all the facts and circumstances of the case, the Designated Officer while observing that the appellant had failed to prove that the transaction was covered by proper an genuine documents in as such as he failed to produce the original books of account for examination, therefore, in the absence of such documents, the goods can't be said be covered by proper and genuine documents. Consequently, he was imposed a penalty to the tune of Rs. 2,01,176/- under Section 51(7)(c) of the Punjab Value Added Tax Act.

7. Feeling aggrieved, the appellant preferred an appeal. However, the Appellate Authority vide his order dated 20.8.2014, observed that there was a clear cut intention to evade the tax. The driver had adopted the escape route with the intention to avoid the tax and in order to suppress the turn over as such, the transaction can't be said to be covered by genuine and proper documents. Had the documents been proper and genuine, the driver would not have opted for the escape route merely to avoid the payment of petty amount of toll tax which he would have recovered from the owners on production of the receipt. Consequently, he dismissed the appeal.

8. Arguments heard. Record perused.

9. The plea setup by the counsel for the appellant is that the driver had adopted the escape route only in order to avoid the toll tax but this plea is contradicted and nullified by the statement made by the driver before the Detaining officer, where he admitted that he had adopted the escape route in order to avoid the generation of declaration at the nearest ICC and at ICC, Shambu. He also admitted that he had not furnished information while entering into State of Punjab. The statement dated 13.3.2013 made by Shri Harbhajan Singh before the Shri Pritpal Singh, the Excise and Taxation officer has not been challenged on the ground that it was the result of any pressure or coercion. Shri Harbhajan Singh also failed to produce any books of account of the consignee firm to prove the genuineness of the documents which were meant for trade.

10. The non furnishing of declaration of the goods VAT XXXVI at the nearest ICC or at the entry point in the state of Punjab goes a long way to establish that he did so with intention to keep the goods out of the account books. Secondly had the appellant made the entry of the transaction in the account books, than he would have forthwith produced the account books in order to establish the genuineness of the transaction, but the long gap

between the event and the production of the account books before the Assistant Excise and Taxation Commissioner raises suspicion regarding manipulation of those entries later on. The admissions made by the representative of the appellant at the first stage can be used against him. The appellant produced an affidavit of the driver at a later stage (i.e. on 16.3.2013) within intention to with draw the admissions made by him before the Designated officer but such document (.e. affidavit) appears to be an afterthought. In any way, Shri Mohan Singh in the affidavit has admitted that he had adopted the escape route in order to avoid toll tax. The said contention is not acceptable as the driver was not giving to be benefited by adopting the escape route, as he could recover the said amount from the owners by showing the toll tax receipt. By adopting the escape route, he had nothing to gain except the wrath of the owner for driving him into harassment and loss. As such, the arguments of the counsel for the appellant that the driver was not within his control and had adopted escape route at his own, are of no consequence. Such affidavit is also not sufficient to wash out the earlier admissions made before the Detaining Officer.

11. The driver was to lose nothing by making the statement against himself as such the said statement having been made in the natural course of events at the very first stage could be said to be without any pressure or coercion. As such same has to be accepted. The counsel has cited following judgments in order to contend that mere non furnishing of declaration is not sufficient to impose penalty:-

State of Punjab and another versus M/s Hindustan Steel Industries (2009) 34 PHT 302 (P&H)

M/s Ganpati Foods versus the State of Punjab and another (2013) 46 PHT 457 (P&H)

M/s Multi Color Steel (India) Pvt. Ltd., Plot No. 4, Sector 6 I-M-T Manesar Gurgaon, Haryana versus State of Punjab (2012) 44 PHT 199 (PVT)

M/s Manglam Steels, Mandi Gobindgarh, TinNo. 00352053631 versus State of Punjab (2012) 44 PHT 201 (PVT)

M/s Benipal Steel Industries, G.T. Road, Mandi Gobidngarh versus State of Punjab (2013) 46 PHT 331 (PVT)

M/s Modulas Spring Pvt. Ltd., Parwanoo (HP) versus State of Punjab 2013) 46 PHT 528 (PVT)

M/s Balaji Furniture House, Abohar versus State of Punjab (2014) 47 PHT 432 (PVT)

12. Having perused the judgments the same are on their own facts and circumstances, as such the same are not applicable to the facts the present case. In the aforesaid cases, either no tax was involved or the element of mens-rea was missing therefore, in that situation the courts had made those observation. But the present case is clear cut case where the appellant attempted to evade tax.

13. The other argument raised by the counsel for the appellant is that the transaction was by way of 'C' Forms but this fact by itself is not sufficient to remove the defect of the non declaration at the ICC. The act has introduced Section 51(4) as a mandatory provision directing the owner of the goods or his representative to generate a declaration by way form VAT XXXVI or otherwise by way E-trip at the ICC, if the goods are transported from outside the state, so that, there may not be any suppression of the turn over by keeping the goods out of the books. Here, in this case the contention of the appellant to keep the goods out of the account books is clearly made out from the documents as referred to above. The non production of the account books at a later a stage also contributes to the intention of the appellant to evade the tax. Non generation of the declaration has been subjected to penalty u/s 51(7)(c) of the Act. As such the requirement of Section 51 sub section (2) & (4) regarding non declaration of the

information cannot be said to a sheer formality. By relaxing the provisions of Section 51(4), it would amount to deleting mandatory provisions of law from the statue book and it would open the bounties for the assesses to suppress the turn over. Therefore, the requirement for furnishing information could be relaxed only in a fit and appropriate case where the circumstances permit. Thus, in the present case, both the authorities below have taken right view of the matter while denying such benefit and imposing the penalty over the appellant.

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

15. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

REVISION NO. 3, 4 & 5 OF 2015

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OM PARKASH SURINDER MOHAN
Vs
STATE OF PUNJAB

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

27th August, 2015

HF ▶ Appellant

Amendment of section 62(5) not applicable to existing section 65(3) of the PVAT Act for calculating amount of predeposit for entertainment of Revision petition.

PREDEPOSIT – REVISION – ENTERTAINMENT OF – SCOPE OF S. 65(3) – ASSESSMENT ORDER PASSED – ADDITIONAL DEMAND RAISED ON REVISION BY COMMISSIONER - REVISION PETITION FILED BEFORE TRIBUNAL – PREDEPOSIT AMOUNT TO BE CALCULATED ON TOTAL TAX, INTEREST AND PENALTY FOR ENTERTAINING REVISION PETITION ACCORDING TO S. 65(3) OF THE ACT AS PER PETITIONER'S CONTENTION – REVENUE CONTENDED THAT PREDEPOSIT TO BE CALCULATED ON ADDITIONAL DEMAND IN VIEW OF AMENDED S. 62(5) OF THE ACT – HELD BY TRIBUNAL THAT AMENDMENT OF S. 62(5) NOT TO APPLY TO S. 65(3) OF THE ACT – WORDS 'OUTSTANDING', 'IMPOSED' OR 'TAX DUE' NOT FOUND IN S. 65(3) - LEGISLATURE DID NOT DEEM IT PROPER TO AMEND S. 65(3) – THEREFORE, PREDEPOSIT TO BE CALCULATED ON TOTAL TAX, INTEREST AND PENALTY – *S. 62(5) AND S. 65(3) OF PVAT ACT*

Facts:

Assessment for the year 2008-09 was framed. The Revisional Authority created a demand by revising the order. A Revision petition is filed before Tribunal contending that as per provisions of S.65(3) of the Act, the applicant is supposed to deposit 25% of the total tax, interest and penalty for the entertainment of appeal. While calculating the same, the applicant has already paid more tax than he was supposed to deposit. On the other hand, the Revenue has argued that the applicant has not deposited the required amount as the amended provision of S. 62(5) of the Act applies to the cases of Revision also thereby requiring predeposit of amount of tax, interest and penalty on the additional demand. It is argued that S. 65(3) should also be considered amended after amendment of S. 62(5) of the Act.

Held:

The words 'outstanding' or 'imposed' or 'tax due' are not found in the provision of S. 65(3) of the Act. Though S. 62 was amended yet the Legislature did not deem it proper to amend S. 65(3) of the Act. Otherwise, it was not difficult to amend S. 65(3) of the Act at the time of amending S. 62(5). As per the unamended provision of S. 65(3), the earlier situation remained subtle and petitioners willing to file revision had to deposit 25% of tax, interest and penalty.

Approving the cases of Ahluwalia Contracts, Cepham Milk Specialities and Novelty Associates, it is held that requirement of S 65(3) is fulfilled by depositing 25% of the tax , interest and penalty and the tax has to be calculated as per the judgement passed in the case of Cepham Milk Specialities v/s State of Punjab.

Cases relied upon:

- *Ahluwalia Contracts (I), M/s Cepham Milk Specialities Ltd. (2010) 37 PHT 53(P&H)*
- *State of Punjab and another vs. K.C. Motors (2012) 41 PHT 384*
- *State of Punjab and another vs. Novelty Associates Pvt. Ltd. (2013) 44 PHT 438 (P&H)*
- *Cepham Milk Specialities Ltd. vs. State of Punjab Appeal No. 200 of 2010 (PVT)*

Case Distinguished:

- *Bhagwanpura Sugar Mills vs. State of Punjab (2013) 46 PHT 192 (P&H)*

Present: Mr. K.L. Goyal, Sr. Advocate alongwith Mr. Navdeep Monga, 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 five connected applications under Section 65(3) of the Punjab Value Added Tax Act, 2005 for entertaining the revision on deposit of 25% of the total tax, penalty and interest. All these five applications have been filed in five revision petitions No. 3 & 4 of 2015 and 3, 4 and 5 of 2014 titled as M/s Om Parkash Surinder Mohan versus State of Punjab (2) and M/s DASM CONSTRUCTION CO. PVT. LTD. Versus STATE OF PUNJAB respectively.

The facts (Petition-wise) are given as under:-

Revision No. 3 of 2015

2. The assessment relates to the year 2008-09, this revision petition is against the order dated 17.7.2014 passed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, S.A.S. Nagar Mohali, whereby the authority while exercising the powers of the revisional authority created a demand of Rs. 1,02,91,369/-. The applicant has submitted that as per provisions of Section 65(3) of the Act, the applicant was to deposit 25% of the total tax, interest and penalty. It has been submitted that the present revision deserves to be entertained in the light of the judgments of the Hon'ble High Court in case of M/s K.C. Motors versus State of Punjab and Ahluwalia Contracts versus State of Punjab as well as the judgments of the Tribunal delivered in case of Cepham Milk Specialities Ltd. versus State of Punjab and Larsen & Toubro Ltd. versus State of Punjab. It has been submitted that while calculating the tax in the light of the aforesaid judgments, the applicant has already paid tax more than but he was to deposit.

Revision No. 4 of 2015

3. The assessment relates to the year 2009-10, this revision petition is against the order dated 17.7.2014 passed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, S.A.S. Nagar Mohali, whereby the authority while exercising the powers of the revisional authority created a demand of Rs. 2,48,01,867/-. The applicant has submitted that as per provisions of Section 65(3) of the Act, the applicant was to deposit 25% of the total tax, interest and penalty. It has been further submitted that the present revision deserves to be entertained in the light of the judgments as referred to above. It has also been submitted that

while calculating the tax in the light of the aforesaid judgments, the applicant has already deposited tax more than what he was to deposit for the purpose of filing the revision.

Revision No. 3 of 2014

4. The assessment relates to the year 2009-10. This revision petition is against the order dated 24.4.2014 passed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, S.A.S. Nagar Mohali, whereby the authority while exercising the powers of the revisional authority created a demand of Rs. 38,80,412/-. The applicant has submitted that in the light of aforesaid judgment he has calculated and has already paid more than 25% of the total tax, penalty and interest as determined by the revisional authority.

Revision No. 4 of 2014

5. The assessment relates to the year 2010-11. The revision petition is against the order dated 7.4.2014 passed by the Assistant Excise and Taxation Commissioner-cum-Designated officer, S.A.S. Nagar Mohali, whereby the authority while exercising the powers of the revisional authority created a demand of Rs. 20.31,331/-. The applicant has submitted that in the light of aforesaid judgments he has calculated and deposited more than 25% of the total tax, penalty and interest as determined by the revisional authority.

Revision No. 5 of 2014

6. The assessment relates to the year 2011-12. The revision petition is against the order dated 7.4.2014 passed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, S.A.S. Nagar Mohali, whereby the authority while exercising the powers of the revisional authority created a demand of Rs. 1,33,717/-. The applicant has submitted that in the light of aforesaid judgment he has calculated and has already deposited 25% of the total tax, penalty and interest as determined by the revisional authority.

7. In the end, he has submitted that the revision petitions be entertained and decided on merits.

8. To the contrary, Mrs. Sudeepti Sharma, DAG representing State of Punjab has submitted that the petitioners have not made compliance of Section 65(3) of the Act as they have not paid the 25% of the total tax, interest and penalty due against them. Therefore, the petitioners can not be entertained.

9. I have heard the arguments advanced by the counsel for the parties and have gone through the records of the case. Before I enter into further discussion, it has to be pointed out that the legal proposition as involved in all five petitions is, "whether the amended provisions of Section 62(5) would apply in case of Revisions also."

10. There is no denying a fact that as per Section 65(3) of the Act, the revision petition could not be entertained unless the petition is accompanied by satisfactory proof of the prior minimum payment of 25% of the amount of tax penalty and interest, if any.

Section 65(3) is reproduced as under:-

3) *"No application for revsion under sub-section (2), shall be entertained unless such application is accompanied by satisfactory proof of the prior minimum payment of 25% of the amount of tax, penalty and interest, if any."*

Similar provision was incorporated in the Punjab Value Added Tax Act, 2005 for filing the appeals which reads as under:-

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 tax, penalty and interest, if any.*

11. On reading of both the provisions it transpires that the precondition for entertaining appeal or revision by the First Appellate Authority was the satisfactory proof of deposit of 25% of the amount of total tax, penalty and interest. These provisions do not refer to the words, "the balance", "outstanding" or "imposed" or "Tax due". Therefore, as per the precedents the persons aggrieved by the order and wishing to file the appeal/revision have been depositing 25% of the total amount of tax, penalty and interest. However, in order to make this condition more strict for filing the appeals, the amendment in Section 62(5) of the Act was made on 17.8.2011 whereby the condition as envisaged under Section 62(5) was amended so as to require the aggrieved party, who wished file the appeal, to deposit 25% "additional demand" of tax, penalty and interest.

12. Though Section 62(5) of the Act was amended yet the legislature in its wisdom did not deem it proper to amend Section 65(3) of the Act, therefore, as per the unamended provisions of Section 65(3), the earlier situation remained subtle and the petitioners wishing to file the revision had to deposit 25% of the total amount of tax, penalty and interest.

14. The scope of unamended provision i.e. 62(5) which is similar to Section 65(3) of the act came for interpretation before the Division Bench of the Hon'ble High Court. Their lordships while interpreting unamended Section 62(5) of the Act, observed in case of M/s Ahluwalia Contracts (I) Ltd. versus The State of Punjab that the contention that 25% should be worked out of the balance amount of tax due cannot be accepted. The relevant observations are reproduced as under:-

> *"In view of undisputed position that the petitioner has paid more than 25% of the amount, the view taken by the appellate authority that 25% should be worked out on the balance amount of tax due, cannot be accepted."*

15. Similarly, Punjab Value Added Tax Tribunal in the judgment of M/s Cepham Milk Sepcialties Ltd. Barwala Road, Derabassi, District Mohali versus State of Punjab decided on 6.9.2010 decided on lines of case M/s AhluwaliaContracts (I) Ltd. (Supra) while observing as under:-

> "*As for as deposit of 25% of the amount of tax, penalty and interest for enabling the appellate authority to entertain the appeal is concerned, there is no dispute. However, the dispute is whether has to be of the amount of tax, penalty and interest as assessed by the order of the designated officer against which the appeal is being filed or it is on the additional demand created vide that order, after adjustment of the tax already deposited. The words additional demand of tax penalty and interest are not there in Section 62(5) of the Punjab VAT Act. When these words are not there they can not be added of its own by this Tribunal while interpreting the provision. The Hon'ble High Court in the case of M/s Ahluwalia Contracts (I) Ltd. versus the State of Punjab and others has already held after taking into account the assessment figures of that case that the view taken by the appellate authority that 25% should be worked out on the balance amount on tax due can not be accepted."*

16. The State Government went in appeal against the said order which was also dismissed.

17. It was also observed by the Division Bench of Hon'ble Court in the case of The State of Punjab and another versus Novelty Associates Pvt. Ltd. decided on 19.5.2011 that the Tribunal had observed that the deposit already made by the assessee being more then 25% of the total demand raised, the appeal was liable to be considered on merits as bar under Section 62(5) of the Act did not apply. The state counsel had taken the plea that the no deposit made

after the demand was raised, therefore, the appeal could not be heard on merits. The Hon'ble High Court after deliberating over the issue observed as under:-

> *"There is no merit in the submission. There is no requirement under Section 62(5) to deposit 25% after the demand was raised. The deposit already made can certainly be taken into account as held by the Tribunal following order of this court in M/s Ahluwalia Contracts (I) Ltd. Versus The State of Punjab, CWP No. 18650 of 2009 decided on 29.7.2010."*

18. Consequently, the Division Bench in case of Novelty Associates also approved the view taken in case of M/s Ahluwalia Contracts (I) Ltd. versus the State of Punjab. Similar view was taken in case of State of Punjab and another versus M/s K.C., Motors (2012) 41 PHT 384 (P&H), the question in this case was also as under:-

> *"Whether the total amount of tax, penalty and interest include the additional demand created. The Division bench while placing reliance on the basic judgment of M/s K.C. Motors (Supra) observed as under:-*
>
> > *"In view of the above, the Tribunal was right in holding that the amount of 25% to be deposited was to be calculated on the total amount of tax, interest and penalty which was imposed. Accordingly, no question of law much less a substantial question of law arises in these appeals. There is no merit in these appeals and the same are hereby dismissed."*

19. The Tribunal followed the judgment delivered in case of M/s Larsen and Toubro Ltd., versus State of Punjab decided on 1.09.2012 approving the judgment delivered in case of K.C. Motors and Ahluwalia Contracts (I) (Supra).

20. The counsel for the respondent has urged that since the Section 62(5) of the Act was amended vide Punjab Value Added Tax (third amendment) Act 2011 where in the words total amount of tax were substituted by the words total amount of additional demand, therefore with the amendment dated 17.8.2011 under Section 62(5) of the Act. Section 65(3) of the Act may also be considered as amended . As Section 65(3) already meant to deposit 25% out of the additional demand and the amendment in Section 62(5) of the Act is certificatory in nature. She has laso referred to the judgment delivered in case of Bhagwanpura Sugar Mills versus State of Punjab (2013) 46 PHT 192 (P&H) wherein, it was observed as under:-

> **"***We do not find any merit in the arguments raised by the appellant. After the order was passed by the court on 29.7.2007 (2010) 37 PHT 53 (P&H), the act has been amended so as to clarify 25% of the amount of tax, penalty and interest which is required to be deposited is of the amount of additional demand i.e. the difference between the tax already deposited and the additional demand by the assessing authority. The ambiguity in the statue has been clarified by virtue of the amendment. Therefore, we do not find any error in the order passed by the Tribunal."*

21. She has referred me to form No. 2 and one other Form appended to the act which refer to the additional demand. Having examined the contentions raised by Mrs Sudpeeti Sharma, DAG, I do not countenance to the same as at the time of making the amendment of Section 62(5) of the Act, the legislature was aware of the similar provision existing by way of Section 65(3) in the Act, but it did not deem it necessary to amend Section 65(3) obviously for the reason that the said provision related to revisions and the legislature may have different ideas about the said section as such it did not deem it essential not to take stricter view in cases of revisions, otherwise if the legislature had introduced amendment in Section 62(5) of the Act then at that time, it was not difficult for it to amend Section 65(3) of the Act also.

22. Resultantly, this Tribunal approves the view taken in cases of Ahluwalia Contracts (I), M/s Cepham Milk Specialities Ltd. Barwala Road, Derabassi, District Mohali and M/s Novelty Associates Pvt. Ltd. (Supra) and holds that the requirement of deposit u/s 65(3) of the Act would be fulfilled if the petitioner deposits 25% of the total penalty, tax and interest and the tax has to be calculated as per the judgment delivered in case of M/s Cepham Milk Specialities Ltd. Barwala Road, Derabassi, District Mohali versus State of Punjab decided by the Tribunal on 6.9.2010. Now come-up for calculating the deposit on 31.8.2015.

23. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 370 OF 2014

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RAMESH AND COMPANY
Vs
STATE OF PUNJAB

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

13th August, 2015

HF ▶ Revenue

Penalty is upheld as appellant himself admitted taking of escape route purposely to avoid tax.

PENALTY – CHECK POST /ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – ESCAPE ROUTE – GOODS (SUGAR) IN TRANSIT INTERCEPTED ON ESCAPE ROUTE – ADMISSION BY DRIVER REGARDING ADOPTING ESCAPE ROUTE ON OWNER'S DIRECTION – GOODS DETAINED – ADMISSION BY APPELLANT THAT ESCAPE ROUTE TAKEN BY DRIVER IN ORDER TO KEEP TRANSACTION OUT OF BOOKS – PENALTY IMPOSED U/S 51(7)(C) OF THE ACT – APPEAL FILED BEFORE TRIBUNAL – HELD 'SUGAR' BECAME TAXABLE ON JULY 24, 2012 WHICH IS BEFORE THE DATE OF DISPATCH OF GOODS IN QUESTION – CONTENTION REGARDING APPELLANT'S IGNORANCE OF SUGAR BEING TAXABLE NOT ACCEPTED - MISTAKE OF LAW IS NO EXCUSE – ADMISSION BY APPELLANT REGARDING TAKING OF ESCAPE ROUTE INTENTIONALLY CONFIRMS ITS AWARENESS ABOUT SUGAR BEING EXIGIBLE TO TAX AND CANNOT TO BE SKIPPED OVER - APPEAL DISMISSED – *S. 51(7)(c) OF PVAT ACT.*

Facts:

The goods (sugar) in transit were intercepted on the escape route by the officer. The driver produced the documents showing that these were being taken for delivery at three destinations. The driver admitted that they were being taken on the escape route on the direction of the owner. The goods were detained. During examination the authorized agent admitted that the driver did not disclose any transaction at any ICC while entering Punjab with a view to keep the transaction out of books of accounts and purposely took the escape route to avoid checking. Penalty u/s 51(7)(c) was imposed. On dismissal of first appeal, an appeal is filed before Tribunal.

Held:

The purchase invoices show that the goods were dispatched on 31.7.2012 and had become taxable vide Notification dated 24.7.2012. Therefore, the appellant was bound to pay tax but failed to do so. Therefore, the contention that the appellant wasn't aware regarding the goods being exigible to tax is without merit. Mistake of law is no excuse. The following of escape route itself shows he had knowledge about it and had intentionally tried to avoid tax. The

appellant has himself admitted regarding adopting of escape route to avoid tax and cannot be allowed to skip over his admission. The appeal is therefore dismissed.

Present: Mr. Naresh Kumar Chawla, Advocate 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 13.8.2014 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala dismissing the appeal against the order dated 8.8.2012 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala imposing a penalty of Rs. 5,87,417/- against the appellant (the consignor of the goods) U/s 51(7) (c) of the Punjab Value Added Tax Act, 2005.

2. On 2.8.2012, the vehicle bearing No. HR-38J4086 was intercepted at an escape route i.e. Cheeka Rattan heri Dhanetha Road by the Excise and Taxation Officer, Mobile Wing, Patiala. The driver of the vehicle produced the following documents:-

i) Invoice No. 010101820 dated 31.07.2012 issued by M/s Triveni Engineering & Industries Ltd. Sugar Unit, Deoband, Saharanpur (UP) it favour of M/s Wadhawa trading Co. Main Bazaar, Zeera for Rs. 3,56,010/- with Agent Name as M/s Ramesh & Company, 93-B, Vakeel Road, SP Complex, Mazaffarpur.

ii) Invoice No. 010101821 dated 31.7.2012 issued by M/s Triveni Engineering & Industries Ltd. Sugar Unit, Deoband, Saharanpur (UP) it favour of M/s Hadit Singh Amrit Singh Trading Co. Fatehgarh for Rs. 1,78,005/- with Agent Name as M/s Ramesh & Company, 93-B, Vakeel Road, SP Complex, Muzaffarpur.

iii) Invoice No. 010101822 dated 31.07.2012 issued by M/s Triveni Engineering & Industries Ltd. Sugar Unit, Deoband, Saharanpur (UP) it favour of M/s Mangat Ram & Sons, Main Bazaar Dharamkot for Rs. 5,34,015/- with Agent Name as M/s Ramesh & Company, 93-B, Vakeel Road, SP Complex, Muzaffarpur.

iv) GR No. 261 dated 31.7.2012 of Vayapar Mandal truck Union Commission Agent nagal, Main Road, nagal, Saharanpur.

v) GR No. 262 dated 31.7.2012 of Vayapar Mandal Truck Union Commission Agent Nagal, Main Road, nagal, Saharanpur.

vi) GR No. 260 dated 31.7.2012 of Vayapar Mandal Truck Union Commission Agent Nagal, Main Road, Nagal, Saharanpur.

3. On scrutiny of the documents, the Detaining Officer detected that the driver was taking the goods (sugar). He had brought these goods from Saharanpur (U.P.) and was taking the same for deliveyr at three different stations i.e. Dharmkot, Jeera and Fatehgarh Panjtur. The driver admitted that he had adopted escape route as per directions of the owner of the goods and had not made by declaration of the transaction at any ICC. Accordingly, his statement was recorded and the goods were detained u/s 51(6)(b) of the Punjab VAT Act, 2005. A notice was issued to the owner of the goods on 3.8.2012 as well as for 5.8.2012 but none appeared on behalf of the appellant on these dates. The Detaining Officer thus forwarded the proceedings to the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala who also issued notices to the consignees for 13.8.2012. They were directed to produce complete set of books of account or any other evidence in support of their defence to prove the genuineness of documents covering the transaction. In response to the notice Shri Raj Kumar, Authorized Representative of M/s Ramesh & Company, Muzaffar Nagar appeared on 8.8.2012. However,

the case was taken up on 8.8.2012 on the request of Shri ramesh Kumar, Proprietor of the said company. He admitted during the examination that the driver while entering into the State of Punjab did not disclose any transaction at any ICC with a view to keep the transaction out of books of account and thus purposely adopted escape route to avoid checking in the state of Punjab. Ultimately, the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala imposed a penalty to the tune of Rs. 5,34,015/- u/s 51(7)(c) of the Punjab VAT Act and tax @ 5% on the goods worth Rs. 10,68,030/- which comes to Rs. 53,402/- was also charged. The total amount of tax and penalty came to Rs. 5,87,417/-. The appeal filed by the appellant was dismissed by the Deputy Excise and Taxation Commissioner on 13.8.2014.

4. Arguments heard. Record perused.

5. Admittedly, 300 bags of Sugar were sent by M/s Triveni Engineering & Industries Ltd., Sugar Unit, Deoband, District Saharanpur (U.P.) in favour of three companies namely M/s Wadhwa Trading Co., Zira (Punjab), M/s Hardit Singh Amrit Singh Trading Co., Fatehgarh Panjtur (Punjab) and Mangat Ram & Sons, Dharamkot (Punjab). The name of M/s Ramesh & Company, S.P. Complex Vakil Road, New Mandi, Muzaffarnagar was recorded as an agent who represented before the department through Raj Kumar and got goods released. He had admitted before the Assistant Excise and Taxation Commissioner that the total cost of sugar was Rs. 10,68,030/-. The driver while entering into the State of Punjab had not reported at any ICC and instead adopted an escape route of Cheeka Rattan heri-Dhanetha Road. Since the delivery was FOR destination, therefore, the consignee firms having not made any payment did not come forwarded to own the goods. The driver also admitted the aforesaid facts. It is also no denying a fact that sugar had become taxable since 24.7.2008 and the appellant had also not paid any tax over the goods.

6. I have gone through the purchase invoices which indicate that the goods were dispatched on 31.7.2012, at that time, these had become taxable and due tax had not been paid except only education cess and the excise duty. The notification No. SO.41/P.A.8/2005/S.8/2012 dated 24th July, 2012 indicates that the item at serial No. 168 entry number "169 was included in Schedule 'B', therefore, the appellant was bound to pay the tax, but he failed to perform the duty. The argument raised by the appellant, that he was not made known that the sugar had become taxable, is without any merit. The mistake of law is no excuse rather since the appellant has been following the escape route therefore it would be presumed that he had the knowledge and intentionally adopted the escape route in order to avoid tax. Even otherwise, the appellant being a proprietor of the firm had since admitted before the Assistant Excise and Taxation Commissioner regarding the adopting of the escape route for the purpose of evading/avoiding payment of tax payable to the State of Punjab. Therefore, he cannot now be allowed to skip over his admission. The mischief to adopt this escape route without furnishing any information at the ICC may be with the intention to keep the goods out of account books and evade the tax. Some entries of the account books produced before me might have been prepared late on in order to make a false defence. Thus, it is not a case where non information at the ICC was insignificant, but in the given circumstances of the case to furnish information at the ICC was not a sheer formality, but a very serious check over evasion of tax.

7. Nothing has been argued if the Assistant Excise and taxation Commissioner, Mobile Wing could not impose penalty. After examining Section 3 and notification made thereunder and also Sections 53 and 56 of the Act, I am of the view that the Assistant Excise and Taxation Commissioner, Mobile Wing was fully competent to impose the penalty and interest.

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

9. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 355 OF 2013

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SURYA PHARMACEUTICALS LTD.
Vs
STATE OF PUNJAB

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

27th August, 2015

HF ▶ Assessee

Department is directed to adjust the excess Input Tax credit available towards payment of predeposit for hearing of appeal.

PREDEPOSIT – APPEAL- ENTERTAINMENT OF – ADJUSTMENT OF INPUT TAX CREDIT – DISMISSAL OF FIRST APPEAL FOR FAILURE TO COMPLY WITH THE CONDITION OF PAYMENT OF 25% OF ADDITIONAL DEMAND - APPEAL BEFORE TRIBUNAL PRAYING ADJUSTMENT OF EXCESS ITC TOWARDS PAYMENT OF PREDEPOSIT – DEPARTMENT DIRECTED TO ADJUST THE UNUSED ITC LYING WITH IT AS SHOWN IN LAST RETURNS – DETC TO HEAR APPEAL ON RECEIPT OF PROOF OF THE SAME – APPEAL ACCEPTED – *S. 62(5) OF THE ACT*

Facts:
The appellant was assessed for the year 2008-09 whereby a demand was raised. The DETC directed the appellant to deposit the remaining amount of Rs 25,34,041/- u/s 62(5) of the Act for entertaining of appeal. An appeal is filed before Tribunal contending that the department had carried forward the ITC to the tune of Rs 10, 13, 03, 467/- which could be adjusted towards the payment for predeposit.

Held:
Accepting the appeal, that the department would adjust the excess ITC lying with it as shown in last return towards payment of predeposit. The DETC would entertain the appeal on receiving the proof of it.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith Mr. Rohit Gupta, 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 is an appeal against the order dated 31.5.2013 passed by the Deputy Excise and Taxation Commissioner disposing off the appeal with the directions to the appellant to comply with the provision of section 62(5) of the PVAT Act, 2005 by depositing the remaining amount of Rs. 25,34,041/- by 20.6.2013, failing which, the appeal was to be dismissed.

2. The case relates to the assessment year 2008-09 under the Central Sales tax Act, vide which the demand of Rs. 1,62,98,410/- was created after adjusting an ITC of Rs. 19,09,838 and tax paid amount 1,44,124 (the total demand was 1,83,52,372) CST Act. The DETC vide his order dated 31.5.2013 directed the appellant to deposit the remaining amount of Rs. 25,34,041/- under Section 62(5) of the Act. At the same time, the counsel has pointed out that as per the assessment year 2008-09, the department had carried forwarded the ITC to the tune of Rs. 10,13,03,467/-, therefore, the aforesaid condition of deposit of 25% of additional demand could be satisfied out of the said amount of ITC.

3. It has been further pointed out that even as per the last return for the year 2012-13, ITC carried forward is shown as Rs. 16,74,16,436/-.

5. The counsel has submitted that he would not utilize the amount of excess ITC to the extent which is adjusted towards the compliance of section 62(5) of the Act.

6. In these circumstances, it would be expedient in the interest of justice to adjust Rs. 25,34,041/-, out of the excess ITC lying with the department as shown in the last return, towards 25% of the additional demand for entertaining the appeal. If this amount is adjusted, then there would be no handicap for the First Appellate Authority to hear and decide the appeal on merits.

7. Resultantly, this appeal is accepted and the impugned order is set aside. The DETC is directed to satisfy himself about the deposit of 25% of the additional demand. The designated officer would make a notional transfer of the amount of Rs. 25,34,041/- out of the excess ITC available to the appellant and if it is lying un-utilized in the account of the (Taxable person) appellant. On receiving of the said proof, the DETC would entertain the appeal and decide the same on merits. However, as has been pointed out before me that the matter has gone to BIFER. In that event, the DETC would examine the situation and pass the appropriate orders regarding the hearing of the appeal. Appellant is directed to appear before DETC on 14.10.2015.

8. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 53, 54, 185, 186, 374 OF 2015

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KARTAR TRACTORS
Vs
STATE OF PUNJAB

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

18th August, 2015

HF ▶ Revenue

Section 62(5)of PVAT Act is a mandatory provision and requires compliance in the interest of revenue.

PREDEPOSIT – APPEAL – ENTERTAINMENT OF – DEMAND RAISED ON ASSESSMENT – DISMISSAL OF FIRST APPEAL ON GROUNDS OF NON COMPLIANCE OF S 62(5) OF THE ACT – APPEAL FILED BEFORE TRIBUNAL PRAYING FOR WAIVER OF PREDEPOSIT AS THE ASSESSMENT ORDER WAS SUPPOSEDLY ILLEGAL AS WELL AS WRIT FILED CHALLENGING VIRES OF S. 62(5) – ORDER OF STAY RESTRAINING COURTS FROM DISMISSING APPEALS ON GROUNDS OF PREDEPOSIT VACATED BY HIGH COURT – CONSEQUENTLY, APPEAL PENDING BEFORE TRIBUNAL DISMISSED FOR FAILURE TO COMPLY WITH S. 62(5) OF THE ACT – APPEAL DISMISSED- *S. 62(5) OF PVAT ACT*

Facts:

Assessment for the year 2010-11 was framed on 30.6.2014 whereby penalty and interest were imposed. The DETC dismissed the first appeal on the basis of non compliance of S. 62(5) of the Act. The appellant filed an appeal before Tribunal contending that since the orders are illegal, no useful purpose would be served by compelling the appellants to deposit 25% of the additional demand. Also, the vires of the said section were challenged before the Hon'ble High Court. The High court had granted a stay initially in favour of the appellant but this stay order was vacated vide order dated 23.7.2015.

Held:

After the vacation of stay, there is no embargo on hearing of the appeals on merits. The provision of section 62(5) is not a sheer formality but a mandate has been issued to the appellate authority for not entertaining the appeal for non compliance of this provision in the interest of the revenue. If some percentage of the revenue is not deposited the whole of the development work of the state is stalled. Therefore, appeal is dismissed.

Editorial Note:

This is for the information of our readers that subsequently the Hon'ble High court has once again granted a stay vide interim order dated 7/9/2015 in the case of **Singla Builders and Promoters Ltd.** (CWP No. 22437 of 2013)

whereby the appellate authorities are directed not to dismiss the appeals on mere non compliance of requirement of predeposit u/s 62(5) of the Act. This order has been published in our Issue 18 already sent to you.

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 five connected second appeals No. 53, 54, 185 & 186 of 2015 and 374 of 2014. Since all these cases involved the common question law, therefore all are decided together. All these appeals were dismissed for compliance of Section 62(5) of the Punjab Value Added Tax Act, 2005.

2. The case wise facts of all these five appeals are enumerated as under:-

Appeal No. 53 of 2015

Assessment Year	Name of authority	Demand created	Date of order
2010-11	The Excise & Taxation Officer Hoshiarpur	Rs. 5,48,201/-	30.6.2014

3. The case relates to the assessment year 2010-11. On filing of the annual statement in Form-20, the same was scrutinized. The assessing authority during the proceeding noticed that the appellant had claimed ITC on rebates and discount of Rs. 11,92,930/- under the scheme additional discount and Rs. 16,92,500/- under the Operation Humbla as per the purchase ledger account of the year which was duly signed by the Shri Harjinder Singh, Proprietor of the firm and placed on file. Secondly the dealer did not produce the complete audited balance sheet during the year till the date of finalization of the case. He has produced only profit and loss account which was not audited by the Chartered Accountant. The dealer did not produce any documentary proof in his support to exampling his position. Now the ETO Hoshiarpur was left with no other option but to decide the case on the basis of the record available as no record was produced despite sufficient opportunities given to the dealer. A show cause notice regarding imposition of interest under Section 32, penalty under Section 56 was also duly served upon the appellant on 20.6.2014 alongwith discrepancies noticed during the assessment proceedings. After confronting all the aspects of case to Shri Harjinder Singh Proprietor, the assessment has been framed on 30.06.2014. The Deputy Excise & Taxation Commissioner (Head quarter) Camp, Jalandhar dismissed the appeal on 30.10.2014 for non compliance of Section 62(5) of the Punjab Value Added Tax Act, 2005.

Appeal No. 54 of 2015

Assessment Year	Officer Incharge	Demand created	Date of Order
1.4.2012 to 21.12.2012	The Excise & Taxation Officer-cum-Designated Officer, Ludhiana	Rs. 12,34,357/-	17.5.2013

4. The premises of appellant were inspected on 21.12.2012 and the following discrepancies were found:-

1) The taxable person had shown, in his trading account, consignment sales of paddy to the tune of Rs. 63,59,591/-. He was asked to produce the relevant and necessary documentary evidence to substantiate his claim. The ICC data available showed that no such paddy consignment has passed through any of the ICC barriers during the given period.

2) As far as the trading of rice is concerned, the trading account submitted to him showed interstate purchase of rice of only Rs. 11,21,002/- but the ICC data shows that he had imported rice worth Rs. 62,26,224/- during the given period.

5. The appellant was directed to explain the discrepancies, but he failed to provide any plausible explanation. Consequently, The Excise and Taxation Officer-cum-Designated Officer, Ludhiana, vide order dated 17.2013, created an additional demand as referred to above. The appeal against the said order was dismissed by the Deputy Excise and Taxation Commissioner (Appeals) Ludhiana Division, Ludhiana on 18.8.2913 for non compliance of Section 62(5) of the Act.

Appeal No. 185 of 2015

Assessment Year	Officer Incharge	Demand created	Date of Order
2009-10	The Designated Officer-cum-Assessing Authority, Jalandhar-II,	Rs. 12,34,357/-	17.5.2013

6. The appellant had filed the annual statement under rule 40 of the Punjab Value Added Tax Act, 2005. On verification, the assessment was framed while creating the additional demand of Rs. 46,892/- on 22.4.2013 by the Assessing Authority, Jalandhar-II. The appeal against the said order was dismissed by the Deputy Excise & Taxation Commissioner (A), Jalandhar Division, Jalandhar on 26.12.2014 for non compliance of Section 62(5) of the Act.

Appeal No. 186 of 2015

Assessment Year	Officer Incharge	Demand created	Date of Order
2011-12	The Excise & Taxation Officer-cum-Designated Officer, Kapurthala	Rs. 1,10,66,365/- under PVAT Act and Rs. 9,01,907/- under CST Act, 1956	22.8.2013

7. On scrutiny of the return for the year 2009-10 furnished by the appellant. The account books were examined at length, the demand was created as a taxable person had shown the purchases from M/s Shiv Bhole Kirpa Traders, Ludhiana to the tune of Rs. 12,34,100/- during the year 2009-10 involving the ITC of Rs. 39,364/- which has not actually been deposited, therefore, the same was recoverable from the appellant. The appeal filed by the appellant was dismissed by the Deputy Excise & Taxation Commissioner (A), Jalandhar Division, Jalandhar on 21.8.2014 for non compliance of Section 62(5) of the Act.

Appeal No. 374 of 2014

Assessment Year	Officer Incharge	Demand created	Date of Order
2011-12	The Excise & Taxation Officer-cum-Designated Officer, Kapurthala	Rs. 1,10,66,365/- under PVAT Act and Rs. 9,01,907/- under CST Act, 1956	22.8.2013

8. The case relates to the assessment year 2011-12. The annual statement was filed on time. On scrutiny of the assessment, the appellant was just to gain time and to avoid delay in payment of tax. The appellant has made bogus taxable purchases worth Rs. 5,05,88,955/- from M/s H.R. Rice Mills Pvt. Ltd. and M/s Sandeep Trading Company, Kharar and further the appellant was liable to reverse ITC as per Section 19(4) on taxable purchases worth Rs. 2,41,99,849/-. Consequently, the demand was created. The appeal filed by the appellant was

dismissed by the Deputy Excise & Taxation Commissioner (HQ) Camp Jalandhar on 27.6.2014 for non compliance of Section 62(5) of the Act.

9. In these appeals, the appellant had challenged virus of section 62(5) regarding compliance of the said section by way of deposit of 25% of the additional demand before the Hon'ble High Court, but the Hon'ble High Court vide order date 23.7.2015 vacated the order of stay. The relevant extract of the order date 23.7.2015 is reproduced as under:-

> *"The petitions shall be placed on board for final hearing on 17.8.2015. Previous interim orders shall cease to operate.*
>
> *In the meantime, no coercive steps for recovery of the amount shall be taken.*
>
> *A copy of this order be placed in the connected files.*
>
> **(S.J. VAZIFDAR)**
> **ACTING CHIEF JUSTICE**
>
> **(G.S. SANDHAWALIA)**
> **JUDGE"**

10. Now after the vacation of the stay, there is no embargo on hearing of the appeals on merits.

11. The main contention raised by the appellant in the appeal is that since the orders are illegal, therefore no useful purpose would be served by compelling the appellants to deposit 25% of the additional demand of tax, penalty and interest. It is also urged that the appellant is unable to deposit such a huge amount.

12. To the contrary, the State Counsel has raised the arguments tooth and nail while contending that the appellant has a huge turn over, therefore, he can't be said to be a poor man and the appeal has been filed just to put off the tax liability. The demand has been created after comparing the data as recorded in the returns with the data as taken up from the computer cardex and other record.

13. After hearing both the parties on the issue of non compliance of Section 62(5) of the Act, it transpires that the provisions as envisaged under section 62(5) of the Act are not a sheer formality but a mandate has been issued to the appellate authority for not entertaining the appeal for non compliance of this provisions, obviously in the interest of the revenue. In the revenue related. Statues, such similar clauses have been introduced in order to avoid the vaxious and superfluous litigation and to avoid delay in disposal of the appeals. If some percentage of the revenue is not deposited than whole of the development work of the state is likely to be stalled resultantly common man would suffer. It is also pertinent to mention here that if the appeal succeeds, then the amount so deposited could be refunded / adjusted in the yearly assessment. The money loss is no irreparable loss and the merits of the appeal could be seen at the final stage, as such, the appellate authority was justified in refusing to entertain the appeal for non compliance of these mandatory provisions of law.

14. Resultantly, appeals are dismissed. However, the appellants are directed to deposit 25% of the additional demand within two months from the date of receipt of certified copies of the order. Copy of the order be placed in each file.

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PUNJAB VAT TRIBUNAL

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MISC (Rect) APPLICATION NO. 24 OF 2015
IN
APPEAL NO. 50 OF 2014

SUPERFINE RICE INDUSTRIES
Vs
STATE OF PUNJAB

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

8th September, 2015

HF ▶ Appellant

Rectification allowed as challans produced showing predeposit being made before date of dismissal of appeal which were otherwise not notified to the Tribunal.

RECTIFICATION – PREDEPOSIT – APPEAL – ENTERTAINMENT OF – DISMISSAL OF APPEAL BY TRIBUNAL FOR FAILURE OF PREDEPOSIT – RECTIFICATION FILED CONTENDING THAT 25% OF ADDITIONAL DEMAND STOOD DEPOSITED BEFORE DISMISSAL OF APPEAL THOUGH TRIBUNAL COULD NOT BE NOTIFIED REGARDING THAT – CHALLANS PRODUCED SHOWING DATE AND AMOUNT OF DEPOSIT – ORDER RECTIFIED BY TRIBUNAL TO THE EXTENT THAT APPEAL WOULD BE HEARD ON MERITS IF DETC IS SATISFIED REGARDING THE PRIOR DEPOSIT BEFORE DATE OF DISMISSAL OF APPEAL – APPLICATION DISPOSED OF – *S.62(5),S.66 OF PVAT ACT*

Facts:

The applicant has filed a rectification application before Tribunal contending that the appeal dismissed by it was on the basis of failure of predeposit whereas the appellant had deposited the said amount before the appeal was dismissed. It could, however, not be brought to the notice of Tribunal. It is pleaded that by rectification the appeal be heard on merits and the challans were produced to show the amount and date of deposit.

Held:

The Tribunal has held that the order is rectified to the extent that if the DETC finds that the amount of predeposit has been deposited prior to the decision of the appeal, then he may hear the appeal on merits. The application is thus disposed of.

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. The applicant has submitted that the appellant had already deposited the amount before the appeal was decided on 12.2.2015. Therefore, the appellant could not bring it to the notice of the Tribunal about the deposits. Consequently, the appeal was dismissed.

2. Now, the appellant, by way of rectification wants his appeal to be heard on merits on the ground that he had deposited 25% of the additional demand before the disposal of the appeal by the Tribunal.

3. The appellant has produced before me copy of the Challan indicating the deposit as under:-

Rs. 3,10,000/-	17.10.2014
Rs. 2,00,000/-	09.11.2013

4. The state has no objection if the Deputy Excise and Taxation Commissioner examines the deposit and thereafter hears and decides the appeal on merits.

5. Under these circumstances, this order is rectified to the extent that if the Deputy Excise and Taxation Commissioner finds that the amount of Rs. 5,10,000/- has been deposited prior to the decision of the appeal by way of 25% of the additional demand, then the Deputy Excise and Taxation Commissioner on his satisfaction would here and decide the appeal on merits. The application is disposed off accordingly.

6. Pronounce din the open court.

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NOTIFICATION (Haryana)

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NOTIFICATION REGARDING LUMPSUM SCHEME FOR DEVELOPERS

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 24th September, 2015

No.23/H.A.6/2003/S.60/2015.- Whereas the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

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

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

(2) They shall come into force with effect from April 1st, 2014.

2 In the Haryana Value Added Tax Rules, 2003 (hereinafter called the said rules), for rule 49-A, the following rule shall be substituted, namely :-

"**49-A LUMPSUM SCHEME IN RESPECT OF DEVELOPERS**

(Section 9).- (1) A developer liable to pay tax under the Act, and duly registered, may pay, as an option, in lieu of tax payable by him under the Act, by way of composition of lump sum tax calculated at the compounded lump sum rate of one percent of entire aggregate amount specified in the agreement or value specified for the purpose of stamp duty, whichever is higher, in respect of the said agreement. The developer opting for this scheme here-in-after shall be referred to as the composition developer.

(2) The composition developer opting for composition under this scheme shall,-

(i) purchase goods for use in the execution of the works contract from a registered dealer of the State but shall not be entitled to claim any input tax credit thereon. If the input tax in respect of any goods purchased in the State has been availed of by a developer and such goods are held in stock at the time of option of composition scheme, the input tax in respect of such goods shall be reversed. In case any goods used in the execution of works contract are procured or purchased from dealers other than the registered dealers from within the State or from outside the State on which no tax has been paid to the State, the composition developer shall be liable to pay an amount equal to the amount of tax that would have been payable, had the goods been purchased within the State from a registered dealer.

(ii) be entitled to purchase or receive goods, from any place outside the State including imports from out of India, against prescribed declaration forms, to be used in the execution of the contract at any time during the period for which the composition remains in force under this Scheme, but he shall pay tax at the rate of 4% on purchase price thereof and on goods purchased and or received from any place outside the State and held in stock at the time of option of the composition scheme, and such tax shall not be adjustable towards his composition tax liability;

(iii) not be entitled to use declaration Form VAT D-1 for purchasing goods at concessional rate of tax from within the State;

(iv) be treated as non-vat dealer and shall not be eligible to claim input tax credit under section 8 of the Act;

(v) not collect any amount by way of tax under the Act;

(vi) not issue "Tax Invoices";

(vii) retain the originals of all tax invoices and all the retail invoices for all his purchases;

(viii) not be entitled to any refund

(3) The tax period for the composition developer shall be monthly and the payment of lump sum in lieu of tax shall be paid by the composition developer within fifteen days of the close of the month:

Provided that if a composition developer fails to make the payment of tax including tax on purchases in time under this scheme, then he shall be liable to pay interest as per the provisions of sub-section (6) of Section 14 of the Act.

(4) Where the composition developer awards any portion of his contract to another contractor or sub-contractor, such composition developer shall not be eligible for any deduction on account of any tax paid by the contractor or the sub contractor under the Act.

(5) A developer may opt for payment of tax in lump sum with effect from the 1st April, 2014 in accordance with the provisions of this Scheme, by submitting an application in Form VAT-CD1 to the appropriate assessing authority, within sixty days of the issue of the notification. However, a developer getting registration certificate after the issue of the notification, may opt for the scheme within thirty days of the issue of registration certificate under the Act. A registered developer can also exercise such option from the beginning of a financial year by submitting the application to the appropriate assessing authority within thirty days of the commencement of the financial year concerned.

(6) A composition developer who has opted for lump sum payment of tax under the lump sum scheme notified on the 12th August, 2014, shall be deemed to have opted for lump sum payment of tax under this scheme. In case the tax deposited under the scheme notified on the 12th August, 2014 is more than the tax liability calculated under this Scheme, the excess tax shall be adjusted against the future tax liability but no adjustment on account of such excess tax shall be allowed if the composition developer opts out of the Scheme.

(7) A composition developer shall furnish a quarterly return in Form VAT R-13 to the appropriate assessing authority and also submit proof of payment of tax alongwith the return.

(8) The Excise and Taxation Commissioner shall be competent to issue guidelines, specifying the procedure and the forms etc. for the purpose of availing, compliance and monitoring of this Scheme.

(9) For the removal of doubts, it is hereby made clear that nothing contained here-in-above shall be construed as conferring any benefit, concession or immunity on the composition developer other than the benefit, concession or immunity granted under the scheme.

3. In the said rules, after the existing "Form VAT C-5", the following Form shall be inserted, namely:-

"FORM VAT-CD1
(See rule 49A (5))
Application for opting Lump Sum Composition Scheme in respect of Developers under rule 49A of the Haryana Value Added Tax Rules, 2003.

To

The Assessing Authority,
Ward/Circle No.
Date:_____

Serial Number	**Original / Duplicate copy of application.**	
1	Name of the Dealer	
	PAN	
	Mobile/Telephone No.	
	E-mail id	
	SCO/Booth/Shop/Building/Flat/Floor No.	
	Building Name /	

	Mohalla/Colony/Market/Place/Street/Lane	
	Sector/Area	
	City/Town/Village	
	Post Office	
	District	
	Pin Code	
	State	
2	**TIN**	
	Date of Liability of TIN	
	Date of validity of TIN	

3.					
A.	Details of goods purchased from within the State of Haryana on which Input Tax Credit is claimed and lying in the opening stock. See Rule 49A(2)(i)				
Serial Number	Goods liable to VAT at different rates i.e. @ (%)	Purchase Value of goods on which VAT has been paid	Input tax claimed (in Rs.)	Additional tax claimed, if any.	Total Input Tax Claimed
1	**2**	**3**	**4**	**5**	**6**
1	@5% (declared goods)				
2	@ 5% (other than declared goods)				
3	@ 12.5% (non scheduled goods)				
4	@				
5					
	Total				

B. Goods purchased / received from outside the State of Haryana and lying in the opening stock. See Rule 49A(2)(ii)

Serial Number	Goods liable to VAT at different rates i.e. @ (%)	Purchase/Receipt Turnover	VAT Payable @ 4% (in Rs.)	Additional Tax Payable	Total
1	**2**	**3**	**4**	**5**	**6**
1	@ 5% (declared goods)				
2	@ 5% (other than declared goods)				
3	@ 12.5% (non scheduled goods)				
4	@				
5					
	Total				

4	Details of Tax deposited as per Column 6 of Sr. No. 3 (B)							
Serial Number	Name of treasury where tax deposited or Bank on which DD/Pay order drawn or office from where RAO issued TDS	Treasury receipt (TR)/DD/PR/RAO				For office Use	
		Type of Instrument	No.	Date	Amount	DCR No.	Date
(i)							
(ii)							
(iii)							

Verification:

I,_____ (give full name) son/daughter of _____ (give name of the father), resident of _____ (give complete residential address), hereby declare in the capacity of _____ (proprietor/partner/managing director/duly authorized signatory) of M/s _____ (give full name of the business entity/dealer), having its business address at _____ (give complete address of the dealer). I do hereby submit application to opt for the Lump Sum Composition Scheme in respect of developers under Rule 49A of the HVAT Rule, 2013.

Signature

Place:

Date:

(Name of the dealer/authorised signatory)
Also affix Seal and stamp of the dealer

ACKNOWLEDGEMENT

The undersigned acknowledge having received the original of this application for opting lump sum composition scheme from M/s._____ having TIN: _____ on the date mentioned below:

(1) Date of receipt of return: _____

(2) Signature with stamp of name and designation of receiving officer: _____ "

4. In the said rules, after the existing "Form VAT R-12", the following Form shall be inserted, namely:-

"Form VAT-R13 **[See Rule 49A(7)]**		
Form of Return to be furnished by a composition developer		
Serial Number	**Original/Duplicate copy of return for the quarter ended on:** **D D M M Y Y Y Y**	
1	Name of the Dealer	
	PAN	
	Mobile/Telephone No.	
	E-mail id	
	SCO/Booth/Shop/Building/Flat/Floor No.	
	Building Name / Mohalla/Colony/Market/Place/Street/Lane	
	Sector/Area	
	City/Town/Village	
	Post Office	
	District	
	Pin Code	
	State	
2	**TIN**	
	Date of Liability of TIN	
	Date of Validity of TIN	

3	Computation of Lump sum Tax			
Serial Number	(a) Description	(b) Amount	(c) Rate of Lumpsum Tax [as per Rule 49A(1)]	(d) Amount of Lumpsum Tax
(i)	Gross amount received/receivable including values of land for sale and transfer of flats, dwelling units etc. during the return period.			
4	Tax on the goods purchased/received from dealers other than the registered dealers from within the State or outside the State on which no tax has been paid to the State. (see Rule 49A(2)(i):			
Serial Number	(a) Description	(b) Amount	(c) Rate of tax [as per Rule	(d) Tax Amount

			49A(2)(i)]	
(i)	Taxable goods purchased from dealers other than the registered dealers from within State without payment of tax during the return period. **		(i)	
			(ii)	
			(iii)	
	Total			
(ii)	Taxable goods purchased/received from dealers other than the registered dealers from outside the State during the return period.****		(i)	
			(ii)	
			(iii)	
	Total			
(iii)	G. Total			

5	Tax on the goods purchased/received in course of interstate Trade and Commerce. See Rule 49A(2)(ii).			
Serial Number	(a) Description	(b) Amount	(c) Rate of Tax on the goods under HVAT Act	(d) Tax Amount (As per Rule 49A(2)(i)
(i)	Taxable goods purchased/received from out of State during the return period.****		(i)	
			(ii)	
			(iii)	
	Total			
(ii)	Taxable goods purchased/received in the course of import into the territory of India during the return period.****		(i)	
			(ii)	
			(iii)	
	Total			
(iii)	Taxable goods received in the course of import into State.******		(i)	
			(ii)	
			(iii)	
	Total			
(iv)	G. Total			

6	Aggregate of Tax	
Serial Number	(a) Description	(b) Amount
(i)	Lumpsum tax as per column (d) of serial no. 3 (i)	
(ii)	Tax as per column (d) of serial no. 4 (iii)	
(iii)	Tax as per column (d) of serial no. 5 (iv)	
(iv)	Total tax liability	
(v)	Add surcharge on above (on applicable amount)	
(vi)	Total Tax Payable	

7	Tax Payable Amount	
Serial Number	(a) Description	(b) Amount
(i)	Tax payable as per column (b) of serial no.6 (vi)	
(ii)	Less Tax paid as per serial no. [8(viii)]	
(iii)	Excess carried forward if any.	

8	Details of tax deposited						
Serial Number	Name of treasury where tax deposited or Bank on which DD/Pay order drawn or office from where RAO issued TDS	Treasury receipt (TR)/DD/PP/RAO				For office use	
		Type of Instrument	No.	Date	Amount	DCR No.	Date
(i)							
(ii)							
(iii)							
(iv)							
(v)							
(vi)							
(vii)	Excess paid brought forward from last return						
(viii)	Total of rows [(i) to (vii)]						

9	Account of forms printed under the Government authority/required to be authenticated by the assessing authority.				
Serial Number	Type of Form	Opening stock at the beginning of the return period	Forms received or authenticated during the period	Number of forms used during the return period	Aggregate of amount of transactions for which forms used
(1)	C				
(2)	F				
(3)					

- Submit list of payments received/receivable from prospective buyers

Serial Number	**Name of the Buyer**	**Details of Agreement**	**Total Amount Payable**	**Amount received/receivable during the Return Period**	**Amount received/receivable upto date**

** Submit list in format given here as per Sr. No. 4(i)
*** Submit list in format given here as per Sr. No. 4(ii)

List of purchases/receipts of taxable goods from dealers other than the registered dealers from within the State or outside the State **/***						
Serial Number	Name of the seller	Invoice/Voucher No.	Date	Name of the commodity	Rate of tax as applicable in the State	Value of goods

**** Submit list as in Form LP 3
***** Submit list as in Form LP 4
****** Submit list as in Form LP 5

I,_____(give full name) son/daughter of _____ (give name of the father), resident of _____ (give complete residential address), hereby declare in the capacity of _____ (proprietor/partner/ managing director/duly authorized signatory) of M/s _____ (give full name of the business entity/dealer), having its business address at _____ (give complete address of the dealer) that I am authorized to furnish this return and all its contents including tables, lists, declarations, certificates and other documents appended to it are true, and complete and nothing has been concealed therein.

Signature

Place:
Date:

(Name of the dealer/authorised signatory)
Also affix Seal and stamp of the dealer

FOR OFFICE USE ONLY

(1) Date of entry in VAT-register/Computer:

(2) Signature of the official making the date entry:
(Affix stamp of name & designation)

(3) Signature of the assessing authority with date: (Affix stamp of name & designation)

ACKNOWLEDGEMENT

The undersigned acknowledge having received the original of this return from M/s._____ having TIN: _____ on the date mentioned below:

(1) Date of receipt of return: _____

(2) Signature with stamp of name and designation of receipt clerk _____ .".

Roshan Lal
Additional Chief Secretary to Government Haryana,
Excise and Taxation Department.

ARTICLE

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By Advocate Amit Bajaj

BACK TO BACK SUB-CONTRACTING- NO VAT LEVIABLE ON PROFIT ELEMENT OF MAIN CONTRACTOR

In the construction and real estate industry it is common practice for the Contractors to sub contract the whole of the contract for execution on back to back basis. While sub-contracting on back to back basis the main contractor retains its profit element from the total consideration received from the contractee. In such case the question which arises whether such profit element is subject to any tax under VAT.

The question was well answered by Kerala High Court in Surya Constructions vs CTO and State of Kerala, wherein the writ petition was filed before the Kerala HC to resolve the issue of taxability of profit element of main contractor, where the entire work was sub-contracted for execution.

HC after hearing both sides and considering the facts of the case, referred to SC rulling in State of Andhra Pradesh vs Larsen and Tourbo Limited [(2008) 17 VST 1 (SC) in which SC observed:

> *".....even if there is no privity of contract between the contractee and the sub-contractor, that would not do away the principle of transfer of property by the sub-contractor by employing the same on the property belonging to the contractee. This reasoning is based on the principle of accretion of property in goods. It is subject to the contract to the contrary.....in such a case the work executed by a sub-contractor, results in a single transaction and not multiple transactions. This reasoning is also borne out by section 4(7) which refers to value of goods at the time of incorporation in the works executed. In our view, if the argument of the Department is to be accepted it would result in plurality of deemed sales which would be contrary to article 366(29A)(b) of the Constitution as held by the impugned judgment of the High Court. Moreover, it may result in double taxation which may make the said 2005 Act vulnerable to challenge as violative of articles 14, 19(1)(g) and 265 of the Constitution of India as held by the High Court in its impugned judgment."*

HC observed that the sub-contractor discharged the tax liability in respect of entire work that was sub-contracted and the amounts retained by assessee, from out of payments made by the contractee, represented only the profit element that accrued to it in the capacity as a main contractor.

HC further stated that it was clear no tax was payable by assessee on the portion of work sub-contracted by it and the tax payment demanded by Revenue pertained only to that part retained as profit by assessee. It was further held that assessee was not liable to pay any tax under Kerala VAT Act, as there was no sale of material in the execution of works contract that emanated from assessee to contractee/awarder. In the absence of any taxable even under Kerala VAT Act, Revenue could not have demanded tax on the amounts retained by assessee as profit and therefore the demand was illegal and unsustainable.

Thus two things can be concluded from the above judgement one is in back to back sub-contacting there is no sale of material in execution of works contract from main contractor to contractee and other is, main contractor is not liable to pay any VAT on the profit element retained by him as the same is not value addition on the deemed sales of material incorporated in the execution of works contract.

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SUKHBIR DIRECTS EXCISE DEPARTMENT TO INSTALL CCTV CAMERA AT ALL ESCAPE ROUTES TO CURB TAX EVASION

Chandigarh, September 24: Deputy Chief Minister Punjab Mr. Sukhbir Singh Badal today directed Excise department to install CCTV cameras on all the escape routes within the state and Information Collection Centers (ICC) situated at the interstate borders to check tax evasion. He also asked the department to create a special cell to monitor these cameras.

Presiding over a meeting of Assistant Excise and Taxation Commissioners here today, Mr. Badal conveyed that Punjab Government was considering amending act to take stringent action against vehicles used to carry goods evading tax. He said that this amendment would ensure that the truck or vehicle trying to evade tax would be confisticated and goods seized and there would be no provision for second chance.

Disclosing his plans for creating a foolproof check on evasion of excise duty, Deputy Chief Minister said that Punjab Government would soon create special Excise police equipped with vehicles and other modern gadgets to nab the tax evaders. He said that Punjab government would also recruit in house Law Officers to ensure quick and effective legal action in tax evasion cases.

Directing to speed up the refund process, Mr. Badal said that in the areas having lesser number of industrial establishments, the refund process should be completed in 10 days while for others the process must be over within 60 days. He said that Punjab government was going to hire a company for the third party audit of the accounts of all the excise and taxation offices across the state. He said that the name of the company would be finalized by the next month end and it would be operational from the month of November.

Divulging more, the Deputy Chief Minister also announced the creation of a toll free number for the people to lodge complaints in case they face any harassment related to Excise department. He further added that he would also keep check on the working of the department through a monitoring mechanism.

The Deputy Chief Minister also announced the rewarding of officers giving good account of themselves every month in the form of monetary reward. He also said that officers excelling in their discharge of duties would also be considered for out of turn promotions besides instituting the 'Best Officers' award for the excise department.

Batting for the need to provide proper infrastructure in all the offices of the department, the Deputy Chief Minister said necessities like proper sitting place and other basic amenities would be provided soon.

On this occasion, Principal Secretary to the Deputy Chief Minister, Mr. P.S. Aujla, Excise and Taxation Commissioner, Mr. Anurag Verma, Special Principal Secretary to Deputy CM Mr. Ajay Kumar Mahajan and other officers of the department were also present.

Courtesy by: The Hindustan Times
25 September, 2015

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PUNJAB, HARYANA FOR UNIFORM TAX STRUCTURE

CHANDIGARH: Punjab and Haryana have come together on one platform to emphasise uniformity in the tax structure among the states of north India, a Punjab voernment spokesman said here on Thursday.

Punjab deputy chief minister Sukhbir Singh Badal called on Haryana chief minister Manohar Lal at the latter's residence here on Thursday. Both leaders held discussions on topics of mutual interest and agreed to take interstate cooperation to a higher level in various sectors, the spokesman said.

Khattar stated that having a uniform tax structure would not only be helpful in promoting trade and commerce between the northern states but also halt the unscrupulous practice of tax evasion.

Haryana finance minister Captain Abhimanyu and senior officials concerned from both states were also present at the meeting.

Courtesy by: The Hindustan Times

25 September, 2015

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PUNJAB VAT COLLECTION TAKES A DIP, FALLS SHORT OF ESTIMATE

PATIALA: Value-added tax (VAT) collection in Punjab in the current fiscal year is likely to remain dismal as Punjab finance minister Parminder Singh Dhindsa estimates tax realisation amounting to only 70 to 80 percent of the set target. The dip has been attributed to low consumer consumption in the state.

In Patiala on Saturday, Dhindsa said the VAT collection in Punjab would remain below expectations this fiscal year due to lower agricultural produce that has affected consumption pattern in the state and is further impacting the state revenue. He said, "More than 700 crore of shortfall in VAT collection has already been reported in the first six months as VAT collection has not grown more than 2 percent against the estimated 10 percent growth."

However, Dhindsa claimed the state's fiscal health is sound and there is nothing to worry about.

"We will soon release 2,500 crore for urban development plan to ensure development in cities that have been left out of the Prime Minister's smart city scheme," Dhindsa added. Talking about the state government's stand on the goods and service tax (GST), he said it would increase ease of business.

Courtesy by: The Hindustan Times

20th September, 2015