SGA
LAW OFFICES

Issue 21
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"In levying taxes and in shearing sheep it is well to stop when you get down to the skin."
---- Austin O'Malley

NOMINAL INDEX

PUBLIC NOTICE (PUNJAB)

NEWS ON YOUR INTEREST

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News From the Courtroom

KERALA HC QUASHES RS 47 CRORE PENALTY ON FLIPKART

KOCHI: The Kerala High Court on Tuesday quashed state government's orders imposing huge penalties on online retailers Flipkart and Myntra for non-payment of value added tax (VAT) for goods sold online and delivered in the state. Both the companies had contended that they only offer an online marketplace and that taxes are paid by the respective sellers in their home states.

Justice AK Jayasankaran Nambiar considered petitions filed by Flipkart Internet Pvt Ltd and Vector Ecommerce Pvt Ltd, which operates the portal Myntra.com. Both the companies are based in Bengaluru.

The court said government should bear in mind the fundamental constitutional precept under Article 265 that no tax shall be levied or collected except by authority of law. Commercial taxes department of the state government had asked Flipkart to pay Rs47 crore as penalty whereas Myntra was ordered to pay Rs2.23 crore. The penalties were imposed by considering the total turnover of the companies in Kerala as the total sales turnover.

Questioning the government's action against them at the high court, the e-tailers had alleged that the orders asking them to pay penalties were issued without jurisdiction and authority of law.

Quashing the orders imposing penalties, the high court pointed out that there is no indication in the orders why the transactions are considered as local sales and not inter-state sales, as argued by the company. The orders only say that goods were delivered to customers in Kerala following transactions but do not go further and find that it was the companies that effected the sales, the judgment said.

The specific contention of the companies, that the transactions were inter-state sales, was not considered by the commercial taxes department while passing the orders, the court said.

Government's argument that the situs (location) of the virtual shop can be traced to Kerala is legally flawed as it is well settled, through various Supreme Court decisions, that the situs of a sale is wholly irrelevant when considering whether a sale is inter-state or not, the judgment said.

Returns filed by the Kerala division of Flipkart under KVAT Act stating that they have no taxable turnover as entire sales turnover pertains to inter-state sales has not been rejected, the court pointed out.

Courtesy: The Times of India
20th October, 2015

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SUPREME COURT OF INDIA

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CIVIL APPEAL NOS. 622-623 OF 2015

COMMERCIAL MOTORS LTD.
Vs
COMMISSIONER OF TRADE TAX U.P.

DIPAK MISRA AND PRAFULLA C. PANT, JJ.

11th September, 2015

HF ▶ Assessee

Reassessment proceedings initiated after the expiry of limitation period based upon the amendment in law are invalid where intention of legislature is not to revive the concluded proceedings.

LIMITATION – RE-ASSESSMENT – AMENDMENT OF LIMITATION PERIOD IN THE YEAR 2001 – ASSESSMENT FOR THE YEAR 1990-9 FRAMED ON 25.03.1995 – RE-ASSESSMENT NOTICE ISSUED ON 13.02.2002 – WRIT PETITION FILED BEFORE HIGH COURT ON THE GROUND OF LIMITATION, NOTICE BEING BEYOND 6 YEARS FROM THE END OF THE YEAR IN QUESTION – WRIT PETITION REJECTED HOLDING THE NOTICE TO BE WITHIN LIMITATION AS PER THE AMENDMENT MADE WHICH PROVIDED FOR RE-ASSESSMENT UPTO 31.03.2002 – ON APPEAL BEFORE SUPREME COURT – THE INTENTION OF THE LEGISLATURE IS TO CURTAIL THE LIMITATION PERIOD FROM 8 YEARS TO 6 YEARS AND ALSO FOR SAVING THE CASES WHERE THE EXISTING PERIOD OF 8 YEARS WOULD HAVE COME TO AN END AS PER NEW AMENDMENT – THE PERIOD UPTO 31.03.2002 ONLY APPLICABLE WHERE THE AMENDED PERIOD OF LIMITATION HAD EXPIRED BUT UNAMENDED PERIOD OF 8 YEARS HAD NOT EXPIRED – NOT APPLICABLE TO CASES WHERE THE PERIOD OF SIX YEARS OR EIGHT YEARS HAD ALREADY EXPIRED – APPEAL ALLOWED – PROCEEDINGS SET ASIDE BEING BARRED BY LIMITATION – *S. 21 OF U.P. TRADE TAX ACT, 1948*

Facts

Assessment of the dealer for assessment year 1990-91 had been framed by the Assessing Officer vide Assessment order dated 25.03.1995. As per provisions of Section 21(2) of U.P. Trade Tax Act, re-assessment notice could have been issued within a period of 6 years from the end of said year or March 31, 2002 whichever is later as per amendment made w.e.f. 30.04.2001. A notice for re-assessment was issued to the assessee on 13.03.2002 which was challenged before High Court on the ground of limitation and being a case of change of opinion. The High Court had repelled the challenge observing that language of first proviso of section 21(2) being very clear wherein it had been provided that re-assessment could be framed within the period of six years from the end of such year or March 31, 2002, whichever is later. The notice was issued before 31.3.2002 and hence within limitation. On challenge before the Supreme Court

Held

The amendment incorporated on 30.04.2001 wherein the period of limitation was curtailed from 8 years to 6 years with a further saving of the period upto 31.3.2002 has to be interpreted with reference to the intendment of the Legislature. The period provided in the proviso upto 31.03.2002 was only to the effect that the cases where the reassessment could be made within 8 years should not become time barred and the authorities are given sufficient time upto 31.3.2002 to frame the re-assessments where the period of 6 years had already expired. It did not mean to extend the period of limitation for the cases where the period of 6 years or 8 years had expired. These cases could not be re-assessed upto 31.3.2002. The amendment of 2001 is not fully retrospective but it is partly retrospective. Accepting the appeals, the judgment and order passed by the High Court are set aside and initiation of re-assessment is also set aside being barred by limitation.

Cases referred:

- *Addl. Commissioner (Legal) and Anr. v. Jyoti Traders and Anr.* (1999) 2 SCC 77
- *Binani Industries Ltd. v. Assistant Commissioner of Commercial Taxes* JT 2007 (5) SC 311
- *Ahmedabad Manufacturing & Calico Printing Co. Ltd. v. S.G. Mehta, ITO* AIR 1963 SC 1436
- *Prag Ice and Oil Mills and others v. Additional Commissioner of Trade Tax and Anr*. (2008) VSIT B92
- *State of U.P. v. Anil Kumar Ramesh Chandra Glass Works (2005) 11 SCC 451*
- *State of Orissa v. Sangram Keshari Misra (2010) 13 SCC 311*, and *Ministry of Defence v. Prabhash Chandra Mirdha (2012) 11 SCC 565*
- *CTO v. Biswanath Jhunjhunwalla (1996) 5 SCC 626*.
- *ITO v. S.K. Habibullah (1962) 44 ITR 809 = AIR 1962 SC 918* ,
- *S.S. Gadgil, ITO v. Lal and Co. (1964) 53 ITR 231 = AIR 1965 SC 171*
- *ITO v. Induprasad Devshanker Bhatt (1969) 72 ITR 595 = AIR 1969 SC 778*
- *National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India (2003) 5 SCC 23*
- *Thirumalai Chemicals Ltd. v. Union of India (2011) 6 SCC 739*

Present: Petitioner Adv. Mr. Pawanshree Agrawal

Respondent Adv. Mr. Ravi Prakash Mehrotra

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DIPAK MISRA, J.

1. The appellant is a registered dealer under the U.P. Trade Tax Act, 1948 (for brevity, 'the Act') and authorised to deal with scooters manufactured by M/s. Bajaj Auto Limited, and during the assessment year 1990-91, had sold the two wheelers to the government employees through U.P. Government Employees Welfare Corporation as well as canteen of the Stores Department amounting to Rs.5,23,93,337.57. During the course of assessment, the appellant had submitted certificates which were required to be issued for claiming exemption in terms of the exemption notification no. 7037 dated 31.1.1985. The assessee had produced 270 sale certificates and on the basis of the same he was granted exemption on the sale of scooters for the aforesaid amount by the Assessing Officer vide assessment order dated 25.3.1995. As claimed by the revenue, at a later stage it discovered that the total sale amount of the scooters in question was in fact Rs.4,26,94,276.59 instead of Rs.5,23,93,337.57 and hence the assessee was liable to pay tax on the sale of scooters to the extent of Rs.97,02,050.65 on which it had earlier been granted sales tax waiver in view of the circular dated 16.4.1994.

2. Treating the original assessment as defective, a show cause notice dated 13.3.2002 was issued to the appellant fixing the date of 18.3.2002 requiring the assessee to show cause to offer explanation why a proceeding under Section 21(2) of the Act should not be initiated against it and the tax component should not be realised.

3. The assessee filed its reply on 18.3.2002 taking two grounds, namely, (i) that the proceedings under Section 21(2) of the Act could not be initiated against it as the same was

barred by limitation being initiated after lapse of six years from the date of end of assessment year i.e. 31.3.1997 in the light of the proviso to sub-section 2 of Section 21 of the Act and (ii) the books of accounts were examined during the original assessment proceeding by the Assessing Officer as is manifest from the assessment order of the year 1990-91 and, therefore, the material having already been considered by the Assessing Officer while making the original assessment, steps could not be issued for reopening of the assessment.

4. The competent authority considering the reply submitted by the appellant required the assessee to appear with the documents to clarify the position. At that juncture, the appellant preferred Writ Petition No. 1513 of 2002 and the High Court entertained the writ petition, issued notice and as an interim measure, directed that the assessment proceeding may continue but no final order should be passed.

5. The contentions raised in the reply were advanced in the writ petition and they were resisted by the Department by filing counter affidavit contending, inter alia, that the amendment incorporated in Section 21(2) of the Act has retrospective effect and the steps taken for reopening the assessment was within time and there was no justification for invocation of the writ jurisdiction. The High Court, after noting the rival submissions of the parties formulated the following two questions for determination:

> *"1. Whether in the facts and circumstances mentioned above could a complete assessment under the Act could be reopened after prescribed period when that period has been enlarged by amending the law?*
>
> *2. Whether any case for reopening the assessment relying upon the Section 21(1) is made out and whether it is a case of change of opinion?"*

6. As far as the first issue is concerned, the High Court referred to the decision in ***Addl. Commissioner (Legal) and Anr. v. Jyoti Traders and Anr.*** (1999) 2 SCC 77 in extenso, referred to the pronouncement in ***Binani Industries Ltd. v. Assistant Commissioner of Commercial Taxes*** JT 2007 (5) SC 311 and the decision referred therein i.e. ***Ahmedabad Manufacturing & Calico Printing Co. Ltd. v. S.G. Mehta, ITO*** AIR 1963 SC 1436, and opined thus:

> *"Under Sub-section (1) of Section 21 of the Act before its amendment, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer according to law. Sub-section (2) provided that except as otherwise provided in this section no order for any assessment year shall be made after the expiry of 2 years from the end of such year or till 31.3.1988 whichever is later. However, after the amendment, a proviso was added to Sub-section (2) under which Commissioner of Sales Tax authorises the assessing authority to make assessment or reassessment after the expiration of aforesaid period but not after 8 years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion. The proviso came into force w.e.f. February 19, 1991. This proviso was further amended and "six years from the end of such year or March 31, 2002 whichever is later" were substituted in place of words "eight years from such year". In view of IInd proviso the assessment or reassessment for the year 1987-88 may be made till 31.3.1993 and as per IVth proviso the assessment or reassessment for the year 1989-90 may be made till 31.3.1995. We do not think that sub-section (2) and the proviso added to it leave anyone in doubt that as on the date when the amended proviso came into force, the Commissioner of Sales Tax could authorise making of assessment or reassessment after the expiration of six years from such year, i.e. upto 31.3.1999 or March 31, 2002 whichever is later. It is immaterial if a period for*

assessment or reassessment under sub-section (2) of Section 21 before the addition of the said proviso had expired. Read as it is, these provisions would mean that the assessment for the year 1987-88 could be reopened up to March 31, 1993. Authorisation by the Commissioner of Sales Tax and completion of assessment or reassessment under sub-section (1) of Section 21 have to be completed within 6 years of the particular assessment year or till 31.3.2002 whichever is latter. Notice to the assessee follows the authorisation by the Commissioner of Sales Tax. It is not disputed that a fiscal statute can have retrospective operation. If we accept the interpretation given by the respondents, the proviso added to Sub-section (2) of Section 21 of the Act providing limitation up to 31.3.2002 becomes redundant. Proviso now added to Sub-section (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen the assessment if period, as prescribed earlier, had expired before the proviso came into operation.

7. After so stating the High Court proceeded to understand the intention of the legislature in enacting the provision and in that context noted that the date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation; that after the amendment after substitution of the proviso to Section 21(2) of the Act, it is six years of the particular assessment year or till 31.3.2002 whichever is later; and that bare reading of the proviso makes it clear that the notice issued by the department to the assessee was within time. The Division Bench declared another Division Bench decision rendered in ***M/s. Prag Ice and Oil Mills and others v. Additional Commissioner of Trade Tax and Anr*. VSIT 2008, B92** as per incuriam on the ground that it had not taken note of amended provision and the decision of this Court in ***Jyoti Traders*** (supra).

8. After answering the issue of limitation, the High Court proceeded to deal with the other question and in that context came to hold that initial opinion while passing the original assessment order was to grant exemption on sale of scooters had not been changed while issuing the notice but the revenue had found that exemption had been wrongly allowed to the extent of Rs. 97,02,050.65 which ought to have been taxed and accordingly did not find any substance on the second ground. Being of this view, the High Court dismissed the writ petition. Hence, the present appeal by special leave.

9. We have heard Mr. Pawanshree Agrawal, learned counsel for the appellant and Mr. Ravi Prakash Mehrotra, learned counsel for the respondents

10. To appreciate the controversy it is appropriate to reproduce Section 21(2), as amended, in entirety.

Section 21 -Assessment of tax on the turnover not assessed during the year

(2) Except as otherwise provided in this section, no order of assessment or re-assessment under any provision of this Act for any assessment year shall be made after the expiration of two years from the end of such year or March 31, 1998, whichever is later:

Provided that if the Commissioner, on his own or on the basis of reasons recorded by the assessing authority, is satisfied that it is just and expedient so to do, authorises the Assessing Authority in that behalf, such assessment or re-assessment may be made after the expiration of the period aforesaid, but not after the expiration of [six years from the end of such year or March 31, 2002, whichever is later] notwithstanding that such assessment or re-assessment may involve a change of opinion:

Provided further that the assessment or re-assessment for the assessment year

1987-88 may be made by March 31, 1993:

Provided also that if the eligibility certificate granted under Section 4-A has been amended or cancelled by the Commissioner under subsection (3) of Section 4-A, the order of assessment or re-assessment may be made within one year from the date of receipt by the assessing authority of the copy of the order amending or cancelling the aforesaid certificate or by March 31, 1995, which-ever is later:

Provided also that the assessment or re-assessment for the assessment year 1989-90 may be made by March 31, 1995.

[underlining is ours]

11. Regard being had to the anatomy of the aforesaid amended provision, the singular question that arises for consideration is whether the show cause notice issued under Section 21(2) of the Act seeking to reassess the assessee in respect of the assessment year 1990-91 of which the assessment was completed on 25.3.95 is valid and acceptable in law. The stand of the assessee-appellant is that the reopening of assessment under could only be till 31.3.1997, that is, a period of six years from the end of assessment year 1991 and hence, the notice having been issued on 13.3.2002 is wholly unsustainable in law. The stand of the revenue is that as per the language employed under Section 21(2), assessment or reassessment could be done either within six years from the end of the assessment year in question or till 31.3.2002 whichever is later, therefore, the notice is valid and within the prescribed period of limitation. The learned counsel for the appellant would submit that by virtue of the amendment, the assessment or reassessment cannot be made after expiry of six years and it would not mean that the assessment can be made by March 31, 2002 irrespective of the assessment year, for that would be contrary to the requisite intent of the legislature. Learned counsel for the revenue, per contra, would contend that the limitation has been extended up to period of six years from the assessment year 1991 or 31.3.2002 whichever is later, and hence, the pronouncement in ***Jyoti Traders*** (supra) would squarely apply inasmuch as the notice for reassessment has been sent within the stipulated period i.e. 31.3.2002 as certain errors have been discovered in the original assessment which was found to be defective. That apart, a contention has been put forth that a notice to show cause has rightly not been interfered with by the High Court in exercise of the writ jurisdiction in view of the judgments rendered in ***State of U.P. v. Anil Kumar Ramesh Chandra Glass Works (2005) 11 SCC 451***, ***State of Orissa v. Sangram Keshari Misra (2010) 13 SCC 311***, and ***Ministry of Defence v. Prabhash Chandra Mirdha (2012) 11 SCC 565***.

12. First, we shall refer to the decision in ***Jyoti Laboratories*** (supra). In the said case, the assessment in respect of the assessment year 1985-86 under the Act was completed on 27.11.1989 and in respect of Jyoti Traders, the assessment for the said year was completed on 28.2.1990. The period for assessment or reassessment which was four years under Section 21 of the Act for the assessment year 1985-86 expired on 31.3.1990 in respect of the assessee-Jyoti Traders. The court took note of the fact that the amending Act had received assent of the Governor of the Uttar Pradesh on 19.8.1991 and different dates were prescribed for coming into force of various provisions of the amending Act. Section 21 of the Act that underwent an amendment and the court was concerned with the relevant provision which came into force w.e.f. 19.2.1991. On the basis of the amendment, the Sales Tax Officer, after taking sanction from the Commissioner of Sales Tax, issued notices to the assessee for reassessment. The orders granting sanction and the issuance of notices for reassessment were challenged before the High Court and the writ court quashed the same. This court took note of the proviso to sub-section 2 of Section 21 as inserted by the amending Act 1981 which came into force w.e.f. 19.2.1991. The High Court had expressed the view that when the period for assessment or reassessment for the year 1985-86 under Section 21 of the Act before insertion of the proviso

to sub-section 2 thereof had expired on 31.3.1990, the amendment had no effect. The stand of the revenue before this court was that the interpretation placed on sub-section 2 of Section 21 by the High Court, if accepted, would make the provision prospective in nature which will make the proviso redundant. It was also contended that proviso in fact operated after expiry of the four years period prescribed under the sub-section and the notice had to follow after the order was obtained from the Commissioner and not prior to that. Reliance was placed on the authority in ***CTO v. Biswanath Jhunjhunwalla (1996) 5 SCC 626***.

13. The decision in ***Biswanath Jhunjhunwalla*** (supra) dealt with Bengal Finance (Sales Tax) (Third Amendment) Act, 1974 which substituted Section 26(1) of the principal Act which empowered the State Government to make rules with prospective or retrospective effect for carrying out the purposes of the Act. In exercise of the said power, Rule 80(5) of the Bengal Sales Tax Rules, 1941 was amended. The amended Rule provided that the Commissioner or any other authority to whom power has been delegated shall not, of his own motion, revise any assessment made or order passed under the Act or the rule thereunder if the assessment had been made or the order had been passed more than six years previously. The show cause notices being issued, the High Court was moved for quashment of the same and it ruled that by the amendment of the rule, assessment which had been completed could be revised within six years of the date of such completion, but when the right to revise the assessment under the unamended provision of the rule stood barred on the date of the amendment, such assessment could not be reopened or revised. It was also opined by the High Court that the amended notification neither expressly nor by necessary implication confer any power of revision of assessment which stood barred on the date on which it was issued. This Court after referring to the decisions in ***ITO v. S.K. Habibullah (1962) 44 ITR 809 = AIR 1962 SC 918 , S.S. Gadgil, ITO v. Lal and Co. (1964) 53 ITR 231 = AIR 1965 SC 171*** and ***ITO v. Induprasad Devshanker Bhatt (1969) 72 ITR 595 = AIR 1969 SC 778***, opined thus:

> *"12. What, therefore, we have to seek is the clear meaning of the said Notification. If there be no doubt about meaning, the amendment brought about by the said Notification must be given full effect. If the language expressly so states or clearly implies, retrospectivity must be given with effect from 1-11-1971, so as to encompass all as-sessments made within the period of six years theretofore, whether they have become final by reason of the expiry of the period of four years or not.*
>
> *13. By reason of the said Notification, with effect from 1-11-1971, Rule 80(5)(ii) has to be read as barring the Commissioner (or other authority to whom power in this behalf has been delegated by the Commissioner) from revising of his own motion any assessment made or order passed under the Act or the rules if the assessment has been made or the order has been passed more than six years previous to 1-11-1971. Put conversely, with effect from 1-11-1971, Rule 80(5)(ii) permits the Commissioner (or other authority) to revise of his own motion any assessment made or order passed under the Act or the rules provided the assessment has not been made or the order passed more than six years previously. This being the plain meaning, the said Notification must be given full effect. Full effect can be given only if the said Notification is read as being applicable not only to assessments which were incomplete but also to assessments which had reached finality by reason of the earlier prescribed period of four years having elapsed. Where language as unambiguous as this is employed, it must be assumed that the legislature intended the amended provision to apply even to assessments that had so be-come final; if the intention was otherwise, the legislature would have so stated."*

14. Thereafter this Court referred to number of other decisions and eventually interpreting the amendment in Section 21 opined that:

> *"The two decisions in the cases of Ahmedabad Manufacturing & Calico Printing Co. Ltd and Biswanath Jhunjhunwalla are more closer to the issue involved in the present case before us. They laid down that it is the language of the provision that matters and when the meaning is clear, it has to be given full effect. In both these cases, this Court held that the proviso which amended the existing provision gave it retrospectivity. When the provision of law is explicit, it has to op-erate fully and there could not be any limits to its operation. This Court in Biswanath Jhunjhun-walla case said that if the language expressly so states or clearly implies, retrospectivity must be given to the provision. Under Section 34 of the In-come Tax Act, 1922, it is the service of the notice which is the sine qua non, an indispensable requisite, for the initiation of assessment or re-assessment proceedings where income had escaped assessment. That is not so in the present case. Under sub-section (1) of Section 21 of the Act before its amendment, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer according to law. Sub-section (2) provided that except as otherwise provided in this section, no order for any assessment year shall be made after the expiry of 4 years from the end of such year. However, after the amendment, a proviso was added to sub-section (2) under which the Commissioner of Sales Tax authorises the assessing authority to make assessment or reassessment before the expiration of 8 years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion. The proviso came into force w.e.f. 19-2-1991. We do not think that sub-section (2) and the proviso added to it leave anyone in doubt that as on the date when the proviso came into force, the Commissioner of Sales Tax could authorise making of assessment or reassessment before the expiration of 8 years from the end of that particular assessment year. It is immaterial if a period for assessment or re-assessment under sub-section (2) of Section 21 before the addition of the said proviso had expired. Here, it is the completion of assessment or reassessment under Section 21 which is to be done before the expiration of 8 years of that particular assessment year. Read as it is, these pro-visions would mean that the assessment for the year 1985-86 could be reopened up to 31-3-1994. Authorisation by the Commissioner of Sales Tax and completion of assessment or reassessment under sub-section (1) of Section 21 have to be completed within 8 years of the particular assessment year."*

And again:

> *"If we accept the interpretation given by the respondents, the proviso added to sub-section (2) of Section 21 of the Act becomes redundant. Commencement of the Act can be different than the operation of the Act though sometimes, both may be the same. The proviso now added to sub-section (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen the assessment if the period, as pre-scribed earlier, had expired before the proviso came into operation. One has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the legislature in enacting such provision. The date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation. Earlier the assessment/ reassessment could have been completed within four years of that particular assessment year and now by the*

> *amendment adding the proviso to Section 21(2) of the Act it is eight years. The only safeguard being that it is after the satisfaction of the Commissioner of Sales Tax. The proviso is operative from 19-2-1991 and a bare reading of the proviso shows that the operation of this proviso relates and encompasses back to the previous eight assessment years."*

15. It is noticeable the interpretation was placed by this Court on the amendment appended to sub-section (2) of Section 21 by the amending provision that came into force w.e.f. 19.2.1991, the Court relied on the authority in ***Biswanath Jhunjhunwalla*** (supra), as thought by the Court, was a proximate ruling. In the earlier case Rule 80(5) (ii) was interpreted to have conferred express power and clearly by implication that retrospectivity must be given to the notification so that it can have full effect. The Court opined that plain meaning was to be placed on the amendment, especially on the words "the assessment has been made or the order has been passed more than six years previously", and full effect could only be given if the said notification was read as if applicable not only to assessments which were incomplete but also to assessments which had reached finality by reason of the earlier prescribed period of four years having elapsed. The Court further opined where language was unambiguous as Rule 80(5)(ii), it must be assumed that the legislature intended the amended provision to apply even to assessments that had become final, for if the intention was otherwise, the legislature would have so stated.

16. In the case at hand the proviso that has been amended on 30.4.2001 and the previous provision that contained the words "eight years from the end of such year" have been substituted by "six years from the end of such year or March 31, 2002 whichever is later". It is apt to note here that the assessment year in question is 1990-91 or year ending 31.3.1991. Original assessment order is dated 25.2.1995 and the notice for reassessment is dated 13.3.2002. For the purpose of limitation under Section 21(1) and the first proviso, the period of limitation is to be counted from the end of the relevant assessment year i.e. 31.3.1991. Thus, the notice dated 13.3.2002 was beyond six years or even eight years of the end of assessment year i.e. 1990-91. The question is whether the notice is saved by the expression "six years from the end of such year or March 31, 2002. In the backdrop of the ratio laid down in ***Jyoti Traders*** (supra), there can be no iota of doubt that period of six years would have the full effect in respect of fresh assessment or reassessment, where notice is issued or after the date the proviso came into force. It has to be borne in mind that law of limitation when affects substantial rights of a party, such subsequent amendment should not be read as retrospectively unless the amendment so stipulates or requires so by necessary implication. It has been held in ***Biswanath Jhunjhunwalla*** (supra) when the intendment of the legislature is clear and the language is unambiguous or it impliedly follows, then full effect should be given and the provision be treated as retrospective. In this regard, reference to a Constitution Bench decision in ***Ahmedabad Manufacturing & Calico Printing Co. Ltd.*** (supra) would be apt. The majority view, as is discernible, is to the following effect:

> *"The legislature may affect substantial rights by enacting laws which are expressly retrospective or by using language which has that necessary result. And this language may give an enactment more retrospectivity than what the commencement clause gives to any of its provisions. When this happens the provisions thus made retrospective, expressly or by necessary intendment, operate from a date earlier than the date of commencement and affect rights which, but for such operation, would have continued undisturbed."*

17. In this context, a passage from ***National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India (2003) 5 SCC 23*** is worth reproducing:

> *"that there is no fixed formula for the expression of legislative intent to give*

> *retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the ex-pression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent."*

18. In ***Thirumalai Chemicals Ltd. v. Union of India (2011) 6 SCC 739***, it has been held thus:

> *"Limitation provisions therefore can be procedural in the context of one set of facts but substantive in the context of different set of facts be-cause rights can accrue to both the parties. In such a situation, test is to see whether the statute, if applied retrospectively to a particular type of case, would impair existing rights and obligations. An accrued right to plead a time bar, which is acquired after the lapse of the statutory period, is nevertheless a right, even though it arises under an Act which is procedural and a right which is not to be taken away pleading retrospective operation unless a contrary intention is discernible from the statute. Therefore, unless the language clearly manifests in express terms or by necessary implication, a contrary intention a statute divesting vested rights is to be construed as prospective."*

19. Keeping in view the aforesaid enunciation of law, it is to be seen whether the amendment and introduction of the words "six years from the end of such year or March 31, 2002 whichever is later" either expressly or by necessary implication can be regarded as retrospective. The cardinal principle which is accepted is that law in force in the assessment year is to be applied unless there is an amendment which comes into force having retrospective operation. In the instant case, the Legislature has brought the amendment by reducing the period from eight years to six years. The language employed in the proviso has to be carefully scrutinised and appreciated. In ***Jyoti Traders*** (supra), the Court was dealing with the amendment where the words that were brought in "eight years from the end of such year" and the Court interpreted the legislative intent and opined that to give full effect to the intention, it has to date back to the previous assessment of eight years. In the present amendment, the words that have been substituted are "six years from the end of such year or March 31, 2002 whichever is later". We have already stated the period of six years has to be given full effect. There can be no trace of doubt in the same. The words "or March 31, 2002 whichever is later" are of immense significance. It is extremely important to understand the intent of the legislature, for specifying this date when the limitation period was reduced from eight years to six years. It is the submission of the learned counsel for the revenue that the amended proviso does not place any embargo on the Commissioner of Sales Tax to reopen an assessment even if the limitation has expired before the proviso came into operation under the pre or post amendment period of eight or six years and the High Court is justified in holding that the assessment or reassessment could be done either within six years from the end of the assessment year in question or till 31.3.2002 whichever is later. On a first blush, the interpretation placed by the High Court, which has been assiduously supported by the learned

counsel for the State may look attractive, but on a closer scrutiny, the fallacy in the interpretation becomes clear. As far as six years is concerned, as stated earlier, there can be no difficulty. The State legislature has intentionally reduced the period from eight years to six years. Such reduction of period is definitely beneficial for the assessee. It is worth noting the period was reduced to six years, however, in the language used, the outer limit has been fixed either six years or March 31, 2002 and, therefore, the latter part of the proviso also specifying the date 31st March, 2002 has to be appositely interpreted. The amendment, as we perceive, is not only beneficial to the assessee but also intends to protect the interest of the revenue. Prior to this amendment, the period of limitation was eight years. There could be cases which were pending by virtue of issue of notice as the earlier limitation period was eight years under the pre-amended proviso. The intention of the latter part of the proviso is to save such pending assessments and that is why a specific date, that is, March 31, 2002 has been incorporated. While reducing the period from eight years to six years, time has been specified to complete the assessment or reassessment by 31.3.2002. The making of assessment is an extremely material facet. Had the said date, that is, 31.3.2002, is not treated as a saving factor, the pending reassessment cases covered by eight years period would have come under the sunset and reduced limitation period would have adversely affected the interest of the revenue. Therefore, the protective provision. If such construction is not placed, it would be rather inequitable, in a way incongruous, as on the one hand the period of limitation is reduced and by fixing a determinative date, a peculiar situation is created. The legislative intent was not to enhance and increase the limitation period, regardless and notwithstanding the financial or assessment year. If the stand of the revenue is to be accepted, then the effect of 2001 amendment would empower and authorise reopening of cases without reference to the financial year, provided the assessment order was made on or before 31.3.2002. Such an interpretation would be contrary to the legislative intendment for the reason, the same amendment has reduced the limitation period from eight years to six years. The logical corollary is that the legislative intent was not to do away and erase the limitation period, but the date "March 31, 2002" was incorporated only to protect the cases which could be earlier governed by a limitation period of eight years. Thus, 2001 amendment is not fully retrospective, but it is partly retrospective. It reduces the limitation period from eight years to six years and simultaneously protects and safeguards the interest of the revenue in respect of cases within eight years and six years provided the reassessments are completed by 31st March, 2002. Hence, we are of the considered opinion that the decision in ***Jyoti Traders*** (supra) is distinguishable, regard being had to the nature of the amendment that has been brought in and consequently, the interpretation placed by the High Court on the amended provision is incorrect.

20. In view of the foregoing analysis, the appeals are allowed and the judgment and order passed by the High Court are set aside. Resultantly, the initiation of the re-assessment proceeding is set aside being barred by limitation. There shall be no order as to costs.

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 2733 OF 2007

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COMMISSIONER OF CENTRAL EXCISE, MUMBAI-IV
Vs
FITRITE PACKERS

A.K. SIKRI AND ROHINTON FALI NARIMAN, JJ.

07th October, 2015

HF ▶ Revenue

Printing of GI Paper as per specifications of customers printing logo and name constitutes "manufacturing" as a distinct commodity emerges.

EXCISE DUTY – MANUFACTURE – GI PAPER – WHETHER PRINTING PROCESS ON GI PAPER CONSIDERED 'MANUFACTURING' - DUTY PAID GI PAPER USED FOR WRAPPING PURCHASED FOR PRINTING – PRINTING PROCESS CARRIED OUT BY APPELLANT AS PER SPECIFICATIONS OF CUSTOMERS/ COMPANIES LIKE PRINTING OF LOGO AND NAME- EXCISE DUTY DEMANDED BY AUTHORITY TERMING SUCH PRINTING PROCESS AS 'MANUFACTURE' U/S 2(f) OF THE CENTRAL EXCISE ACT, 1944 – APPEAL ACCEPTED BY TRIBUNAL HOLDING PRINTING PROCESS AS BEING INCIDENTAL NOT CHANGING PRIMARY USE OF THE PRODUCT – APPEAL BY REVENUE BEFORE SUPREME COURT – HELD: –TEST OF 'NO COMMERCIAL USER WITHOUT FURTHER PROCESS' APPLIED - END USE AFTER PRINTING CONFINED TO ONLY THAT PARTICULAR AND SPECIFIC PRODUCT OF THE SAID CUSTOMER AND NOT GENERAL CUSTOMER - PRINTING NOT MERELY A VALUE ADDITION BUT TRANSFORMATION FROM GENERAL WRAPPING TO SPECIAL WRAPPING PAPER, THEREBY CHANGING THE END USE IN PRESENT CASE – TRANSFORMATION OF ARTICLE AND SUBSEQUENT BRINGING OF DISTINCTIVE USE OF THE ARTICLE BROUGHT ABOUT BRINGING THE PROCESS UNDER THE DEFINITION OF 'MANUFACTURE'- APPEAL ACCEPTED - *S. 2(f) OF CENTRAL EXCISE ACT, 1944*

Facts

The respondent /assessee purchased GI Paper which is duty paid and carried out for printing as per the specifications of the customers (printing logo and name of product in printed and colorful form). The issue raised by adjudicating authority was that the aforesaid process was a manufacturing process and thus the respondent was liable to pay excise duty thereon. However, the Tribunal held that printing is only incidental and primary use of GI paper rolls is for wrapping which is not changed by process of printing. An appeal is filed by Revenue before Supreme Court.

Held

Reference to the judgment passed in the case of Servo Med Industries is made. It is pointed out that to bring a process within the definition of 'manufacturing', it is essential that there must be a transformation by which something new and different comes into being.

*Two tests have been defined. First is '**retaining of essential character test**' .If the commodity retains its primary character even after process and is sold with its earlier character, there would be no manufacture. Second is '**test of no commercial user without further process'** which says if there is no commercial user without further process then the said process would amount to manufacture. Another test is '**the test of integrated process without which manufacture would be impossible or commercially inexpedient**'.*

Though Tribunal has held that the printing process did not make any difference in the end use of the GI paper, it is noted by the supreme court that the blank paper could be used as a wrapper for any kind of product but after printing the logo and name , the end use was now confined to only that particular and specific product of the said customer. The printing was not merely a value addition but transformation from general wrapping to special wrapping paper, thereby changing the end use. Thus, the aforesaid process has changed the paper with distinct character and use of its own which it did not bear earlier. The test of 'no commercial user without further process' is applied thereof. As there is first transformation and then bringing of distinctive use of the article, the tests are satisfied in the present case bringing the process under the definition of 'manufacture'. Allowing the appeal, order of the assessing authority is restored.

Cases referred:

- *Union of India v. J.G. Glass Industries Ltd1998 (97) ELT 5 (SC)*
- *Servo-Med Industries Pvt. Ltd. v. Commissioner of Central Excise, Mumbai 2015 (319) ELT 578 (SC)*
- *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers 1980 (6) E.L.T. 343 (SC)*

Present: Petitioner Adv. Mr. B. Krishna Prasad

Respondent Adv. M/s. S. Narain & Co.

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A.K. SIKRI, J.

1. The dispute between the parties arose on two issues, viz.:

(i) Whether the goods in question, i.e., printed GI paper are classifiable under Chapter heading 4811.90, as claimed by the Revenue or they were to be classified under Chapter heading 4901.90 as the product of printing industry, as per the stand taken by the respondent/assessee?

(ii) Whether printing on duty paid GI paper would amount to manufacture?

2. The Tribunal vide impugned judgment dated March 27, 2006 has decided the first issue in favour of the Revenue classifying the goods under Chapter heading 4811.90 thereby holding that the goods fall within the description of 'printing in rolls or sheets'. The assessee has not challenged the aforesaid classification as accorded by the Tribunal and, therefore, the issue of classification has attained finality.

3. Insofar as other question is concerned, the Tribunal has decided that the process of printing of GI paper does not amount to manufacture. Aggrieved by such a conclusion on the second issue, the Revenue is in appeal before us. Therefore, this is the only issue that needs to be determined in the instant appeal which has arisen under the following circumstances:

The respondent/assessee herein purchased GI paper from the market which is already duty paid base paper. On this paper, the process of printing is carried

out by the assessee according to the design and specifications of the customers depending on their requirements. This printing is done in jumbo rolls of GIP twist wrappers. Bulk orders are received from Parle, which needs the said paper as a wrapping/packing paper for packing of their goods. On the paper, logo and name of the product is printed in colorful form. After carrying out the printing as per the requirement of the customers, the same is delivered to the customers in jumbo rolls without slitting. The issue is as to whether this printing process amounts to manufacture or not?

4. Various show cause notices were issued and orders were passed by the adjudicating authority thereupon holding that the aforesaid process would be treated as manufacture and, thus, the respondent/assessee was liable to pay excise duty thereon.

5. The Tribunal while upsetting the aforesaid decision of the Commissioner has arrived at a conclusion that printing is only incidental and primary use of GI printing paper roll is for wrapping which is not changed by the process of printing. While coming to this conclusion, the Tribunal has primarily relied upon the judgment of this Court in ***Union of India v. J.G. Glass Industries Ltd1998 (97) ELT 5 (SC)***

6. Questioning the veracity of the aforesaid conclusion of the Tribunal, Mr. K. Radhakrishnan, learned senior counsel appearing for the Revenue argued that, no doubt, paper in-question was meant for wrapping/packing of the goods of the customer but that was not the determinative factor and a vital feature/aspect which was missed by the Tribunal was that after printing the said GI paper rolls, it was used for specific purpose which was not possible with the plain paper. In support, some decisions of this Court were cited.

7. Learned counsel for respondent, on the other hand, argued that the approach of the Tribunal was perfectly justified which was in consonance with the principle laid down by this Court in ***J.G. Glass Industries*** (supra). According to him, the Tribunal had rightly held that the primary purpose for which GI paper is used is the wrapping/packaging and even after GI paper was printed, the essential functioning of this paper remained the same, namely, wrapping and had not changed by the process of printing. He, thus, submitted that no interference in the decision of the Tribunal was called for.

8. We have considered the aforesaid submissions of the learned counsel for the parties. In order to discern the principles that are to be applied for ascertaining as to whether a particular process amounts to manufacture within the meaning of Section 2(f) of the Central Excise Act, 1944 (hereinafter referred to as the 'Act'), it is not necessary to refer to various case laws on the subject. Our purpose would be served by referring to a recent decision, which was rendered by this very Bench, in the case of ***Servo-Med Industries Pvt. Ltd. v. Commissioner of Central Excise, Mumbai 2015 (319) ELT 578 (SC)*** Our reason for saying so is that in this decision many earlier judgments are taken note of, considered and principles laid down therein are culled out. The judgment in the case of ***J.G. Glass Industries*** (supra) was also taken note of and discussed. There is an elaborate discussion on the following aspects, covering the entire spectrum:

(i) Distinction between manufacture and marketability: It is pointed out that whereas excisable goods signifies that the goods are capable of being sold in the market, the manufacture is distinct from saleability. Manufacture takes place on the application of one or more processes and each process may lead to a change in the goods but every change does not amount to manufacture. To bring the process within the definition of 'manufacture' under Section 2(f) of the Act, it is essential that there must be a transformation by which something new and different comes into

being, i.e., there must now emerge an article which has a distinctive name, character or use.

(ii) The judgment also explains the circumstances when transformation does not take place:

> *Examples are given when character and use remains the same or when foreign matter is removed from an article or additions are made to the article to preserve it or increase its shelf life or when no change occurs in the name, character or use of the product.*

(iii) It was noted that when essential character of the product does not undergo change there would be no manufacture. The Court explained 'retaining of essential character test' to mean that the product in its primary and essential character remains the same even after the process in-question and the product is sold in the market with its earlier character. Following passage from ***Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers 1980 (6) E.L.T. 343 (SC)***, was quoted which drew a line between cases in which essential character had changed and those in which no such change had taken place.

> *"19. Interestingly, a line was drawn between cases in which the essential character had changed and those in which no such change had taken place in the following terms:*
>
> > *"5. A large number of cases has been placed before us by the parties, and in each of them the same principle has been applied: Does the processing of the original commodity bring into existence a commercially different and distinct article? Some of the cases where it was held by this Court that a different commercial article had come into existence include Anwarkhan Mehboob Co. v. The State of Bombay and Ors. (where raw tobacco was manufactured into bidi patti), A. Hajee Abdul Shukoor and Co. v. The State of Madras (raw hides and skins constituted a different commodity from dressed hides and skins with different physical properties), The State of Madras v. Swasthik Tobacco Factory (raw tobacco manufactured into chewing tobacco) and Ganesh Trading Co. Karnal v. State of Haryana and Anr., (paddy dehusked into rice). On the other side, cases where this Court has held that although the original commodity has under gone a degree of processing it has not lost its original identity include Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool (where hydrogenated groundnut oil was regarded as groundnut oil) and Commissioner of Sales Tax, U.P., Lucknow v. Harbiles Rai and Sons (where bristles plucked from pigs, boiled, washed with soap and other chemicals and sorted out in bundles according to their size and colour were regarded as remaining the same commercial commodity, pigs bristles)."*

This Court also explained the principle that where there was no commercial user without further process then the said process would amount to manufacture labelling it as **'test of no commercial user without further process**'.

(iv) Another circumstance was taken note of and discussed which involves integrated process, culling out **'the test of integrated process without which manufacture would be impossible or commercially inexpedient'**. It was, thus, explained that where the manufacture involves series of processes, i.e., various stages through which the raw-material is subjected to change by different operations, each step towards such production would be a process in relation to the manufacture.

9. On the basis of aforesaid discussion and formulation of certain tests to ascertain whether a particular process would amount to manufacture or not, the Court culled out four categories of cases in its conclusion in para 27 of the judgment. We reproduce these categories hereunder:

"27. The case law discussed above falls into four neat categories.

(1) Where the goods remain exactly the same even after a particular process, there is obviously no manufacture involved. Processes which remove foreign matter from goods complete in themselves and/or processes which clean goods that are complete in themselves fall within this category.

(2) Where the goods remain essentially the same after the particular process, again there can be no manufacture. This is for the reason that the original article continues as such despite the said process and the changes brought about by the said process.

(3) Where the goods are transformed into something different and/or new after a particular process, but the said goods are not marketable. Examples within this group are the Brakes India case and cases where the transformation of goods having a shelf life which is of extremely small duration. In these cases also no manufacture of goods takes place.

(4) Where the goods are transformed into goods which are different and/or new after a particular process, such goods being marketable as such. It is in this category that manufacture of goods can be said to take place."

10. On the facts of the present case, it is to be determined as to whether the case would fall under category (2) or category (4). We have already taken note of printing process. A cursory look into the same may suggest, as held by the Tribunal, that GI paper is meant for wrapping and the use thereof did not undergo any change even after printing as the end use was still the same, namely, wrapping/packaging. However, a little deeper scrutiny into the facts would bring out a significant distinguishing feature; a slender one but which makes all the difference to the outcome of the present case. No doubt, the paper in-question was meant for wrapping and this end use remained the same even after printing. However, whereas blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product of Parle thereupon, the end use was now confined to only that particular and specific product of the said particular company/customer. The printing, therefore, is not merely a value addition but has now been transformed from general wrapping paper to special wrapping paper. In that sense, end use has positively been changed as a result of printing process undertaken by the assessee. We are, therefore, of the opinion that the process of aforesaid particular kind of printing has resulted into a product, i.e., paper with distinct character and use of its own which it did not bear earlier. Thus, the 'test of no commercial user without further process' would be applied as explained in paragraph 20 of ***Servo-Med***

Industries (supra). The aforesaid paragraph is extracted hereunder.

> *"20. In Brakes India Ltd. v. Superintendent of Central Excise (1997) 10 SCC 717, the commodity in question was brake lining blanks. It was held on facts that such blanks could not be used as brake linings by themselves without the processes of drilling, trimming and chamfering. It was in this situation that the test laid down was that if by adopting a particular process a transformation takes place which makes the product have a character and use of its own which it did not bear earlier, then such process would amount to manufacture irrespective of whether there was a single process or several processes."*

11. The ratio thereof is explained in paragraph 24 in the following words:

> *"24. It is important to understand the correct ratio of the judgment in the J.G. Glass case. This judgment does not hold that merely by application of the second test without more manufacture comes into being. The Court was at pains to point out that a twofold test had emerged for deciding whether the process is that of manufacture. The first test is extremely important – that by a process, a different commercial commodity must come into existence as a result of the identity of the original commodity ceasing to exist. The second test, namely that the commodity which was already in existence will serve no purpose but for a certain process must be understood in its true perspective. It is only when a different and/or finished product comes into existence as a result of a process which makes the said product commercially usable that the second test laid down in the judgment leads to manufacture....."*

12. This Court emphasised that there has first to be a transformation in the original article and this transformation should bring out a distinctive or different use in the article, in order to cover the process under the definition of 'manufacture'. These tests are satisfied in the present case.

13. As a result, present appeal is allowed setting aside the order of the Tribunal and restoring the Order-in-Original passed by the Adjudicating Authority.

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PUNJAB & HARYANA HIGH COURT

CRL. MISC. NO. M-29465 OF 2013

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ANIL KUMAR GUPTA
Vs
STATE OF PUNJAB

JUSTICE ANITA CHAUDHARY

13th October, 2015

HF ▶ State

F.I.R cannot be quashed involving allegations of forgery of documents to cheat government

FORGERY - F.I.R. – QUASHING OF – POWER OF COURT – ATTEMPT MADE FOR GETTING THE DOCUMENTS REGISTERED AT ICC WITHOUT GOODS AND VEHICLE - FIR REGISTERED FOR FORGERY OF DOCUMENTS TO CHEAT GOVERNMENT – PETITIONER SEEKING QUASHING OF FIR CONTENDING ABSENCE OF ANY ALLEGATION POINTING TOWARDS ANY ADVANTAGE TO BE DERIVED BY PETITIONER – HELD: POWER U/S 482 OF CR.P.C TO BE USED SPARINGLY AND AS AN EXCEPTION – EXISTENCE OF ALLEGATIONS IN FIR AND ENOUGH MATERIAL TO PROVE AT TRIAL – FOLLOWING PRINCIPLES LAID DOWN BY SUPREME COURT , CASE HELD NOT TO BE A FIT ONE FOR EXERCISING POWER TO QUASH FIR –WRIT DISMISSED – *S. 482 CR.P.C, S.51 OF PVAT ACT.*

Facts

F.I.R. was lodged against the petitioner for having forged documents to cheat government. It was alleged that the petitioner, a driver if a transport company, tried to get the forms registered at ICC without there being any vehicle or goods. The petitioner has submitted that the challan submitted by police is without any association with the firms who issued the bill and that there are no allegation in F.I.R. that the petitioner was to derive any benefit out of the whole matter. Thus, it is prayed that the F.I.R. be quashed.

Held

The power of court u/s 482 Cr.P.C. can be exercised as an exception and not a rule. This section is not an instrument to short circuit the prosecution. This power is to be used to prevent abuse of process of any court or secure ends of justice and very sparingly in rarest of rare cases.

It has been found that there are allegations which constitute an offence and adequate material has been collected by the prosecution. In the light of principle and allegations against the petitioner, it is viewed as not to be a fit case for exercising powers u/s 482 Cr.P.C.

Cases referred:

- *R.P. Kapur. vs. State of Punjab (AIR 1960 SC 866)*
- *State of Haryana and others Vs. Ch. Bhajan Lal and others (AIR 1992 SC 604)*

Present: Mr. Ramandeep, Advocate for the petitioner.

Mr. Deep Singh, AAG, Punjab.

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ANITA CHAUDHRY, J.

1. This is a petition filed under Section 482 Cr.P.C. seeking quashing of FIR No.99 dated 04.09.2012, registered under Sections 420, 465, 468, 471, 120-B IPC at Police Station Banur, District Patiala.

2. The Excise and Taxation Officer gave a complaint to the police on the basis of which above said FIR was registered. The allegations were that Kapil Gupta was driver on a vehicle owned by Yadav Transport Company, Delhi. Kapil Gupta tried to register the forms at ICC, Banur without a vehicle or the goods on 04.09.2012 at 12:15 A.M. After getting the stamps on the bills and bilties, the driver asked for Harpreet Singh, the Tax Documents Clearance Executive, posted on the barrier. When he was told that he was transferred to Shambhu Barrier, he produced some bills issued by M/s. Overseas Grain Merchants and Commission Agents for a sum of Rs.18,46,800/-. When the Excise and Taxation Inspector asked him to show the vehicles mentioned in the bills, it was found that the driver only had the bills and the bilties and neither the vehicles nor the goods were produced. On enquiry, Kapil Gupta informed that his brother-in-law Anil Gupta had told him telephonically that two persons would come in a car and hand over bills and the bills & bilties had been handed over to him by two persons at Banur Barrier. The allegations were that forged documents had been prepared with an intention to cheat the government and intention was to get fake entries at the ICC. The involvement of Kapil Gupta and Anil Gupta, owners of Yadav Transport Company, Delhi and some more persons were suspected.

3. Investigation are completed and challan had been presented against Anil Gupta and Kapil Gupta.

4. The main submission on behalf of the petitioner is that the challan has been presented by the police without associating M/s. A.B. Traders and M/s. S.N. Overseas, Delhi and the petitioner had been unnecessarily involved and named as an accused and the proceedings should be quashed. It was urged that there were no allegations in the FIR that the petitioner was to get any benefit.

5. The submission on behalf of the State is that the matter was investigated and the involvement of two persons was found and in the entire episode and challan against them has been presented under Section 420, 465, 468, 471 IPC.

6. The issue to be examined here is whether powers under Section 482 Cr.P.C. should be exercised in this case. It is settled that the inherent power which the Court possess under Section 482 Cr.P.C. can be exercised as an exception and not the rule. It envisages three circumstances under which the inherent jurisdiction can be exercised, which are:-

(i) *to give effect to an order under the Code,*

(ii) *to prevent abuse of process of court*

(iii) *to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction.*

7. In **R.P. Kapur. vs. State of Punjab (AIR 1960 SC 866)**, the Court summarized some categories of cases where inherent power can and should be exercised to quash proceedings.

> *(i) Where it manifestly appears that there is a legal bar against the institution or continuance, e.g. want of sanction;*
>
> *(ii) Where the allegation in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;*
>
> *(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.*

8. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained. That is the function of the trial Judge. The Section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any Court or otherwise to secure the ends of justice were set out in some detail by this Court in ***State of Haryana and others Vs. Ch. Bhajan Lal and others*** (AIR 1992 SC 604). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases. The illustrative categories indicated by this Court are as follows:-

> *1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
>
> *2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. Do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
>
> *3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
>
> *4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.*
>
> *5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
>
> *6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

9. In the light of the principles laid down by the Hon'ble Apex Court, if the facts of the present case are examined, it is found that there are allegations which constitutes an offence. Adequate material has been collected by the prosecution which they would prove at the trial. Considering the allegations and in view of the principles enunciated above, I am of the view that it is not a fit case where the powers under Section 482 Cr.P.C. should be exercised.

10. The petition is dismissed.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 356 OF 2014

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VIJAY AUTO ELECTRICAL PARTS
Vs
STATE OF PUNJAB

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

3rd September, 2015

HF ▶ Revenue

Question of illegality of search being never raised on first appeal is not to be considered on appeal before Tribunal.

INSPECTION – PENALTY – NOTICE – INSPECTION OF PREMISES- EXPARTE ASSESSMENT ORDER PASSED – APPEAL BEFORE FIRST APPELLATE AUTHORITY ACCEPTED AND MATTER REMITTED FOR FRESH ASSESSMENT – APPEAL BEFORE TRIBUNAL AGAINST REMAND ORDER - OBJECTION REGARDING ILLEGALITY OF SEARCH RAISED– NO NOTICE ISSUED BEFORE LEVYING PENALTY AS ALLEGED – HELD: QUESTION OF ILLEGALITY OF SEARCH NEVER RAISED BEFORE FIRST APPELLATE AUTHORITY , HENCE NOT TO BE CONSIDERED AT THIS STAGE- PENALTY NOTICES DULY ISSUED BY DEPARTMENT - FAILURE TO COMPLY WITH INSTRUCTION ON PART OF APPELLANT TAKEN ACCOUNT OF – MERE NON MENTIONING OF THE RELEVANT SECTION OF PENALTY IMMATERIAL – APPEAL DISMISSED – *S. 56 AND 60 OF PVAT ACT*

Facts

Inspection was conducted in the premises of appellant. It was asked to produce account books. Repeated notices were sent. On appearance, it failed to produce any books. Ex parte assessment was framed raising a demand thereby. The first appellate authority accepted the appeal and remitted the matter back for fresh assessment. Aggrieved by the remand orde, an appeal is filed before Tribunal contending that no notice before levying penalty was issued and that the search was illegal as it did not comply with the proper procedure.

Held

The question regarding illegality of search was never being raised and cannot earlier is not to be considered at this stage. Notices have been duly issued but the appellant failed to comply with the instructions. Mere absence of mentioning of S.56 in the penalty notice does not make any difference. The appeal is dismissed and the remand order is held to be correct.

Present: Mr. B.B. Lohia, 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 delay of four days in filing the appeal is condoned. The Excise and Taxation Officer-cum-Designated Officer, Jagraon vide his order dated 28.2.2013 created an additional demand of Rs.5,36,491/-. Aggrieved by the said order, the appellant filed the appeal which was accepted by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana, on 18.6.2014 and the case was remitted back to the Designated Officer for passing a fresh order on merits.

2. The dealer is dealing in resale of inverters and batteries of branded company. He has been filing the returns regularly. The godown of the appellant was inspected on 26.3.2010. The appellant was asked to furnish the account books, but he failed to do so. The case was adjourned from time to, time i.e. on 5.4.2010, 16.4.2010, 28.4.2010 and 17.6.2010 but none appeared on behalf of the respondent in response to the notices. Thereafter the case continued to remain pending and repeated notices were again issued and ultimately on 19.3.2012, Shri Vijay Kumar Malhotra, Prop, of the firm appeared, but failed to produce the account books. Thereafter none appeared on many hearings. Ultimately on 3.12.2012, Shri Vijay Kumar Malhotra again appeared. He was directed to provide the rates of stock accounted at the time of inspection, but he did not submit the trading account. Ultimately, after examination of the case ex-parte, the Excise and Taxation Officer-cum-Designated Officer, Jagraon framed the assessment to the tune of Rs.5,36,491/-. On the appeal the Deputy Excise and Taxation Commissioner while accepting the same remitted the case back to the Excise and Taxation Officer-cum-Designated Officer, Jagraon to pass a fresh speaking order after verifying all the facts within two months and after providing reasonable opportunity of being heard, hence this second appeal.

3. The counsel for the appellant has raised the following contentions:-

1. The inspection/search was made without any authority of law, and it did not follow the process as provided under Section 46 of the Punjab Value Added Tax Act, 2005.
2. The sale made between 26.3.2010 (i.e. day of inspection) to 31.3.2010 has not been taken into account about which the tax has already been paid after deducting the input tax.
3. The penalty under Section 56 of the PVAT Act has been levied without complying with the legal provisions of section 61 of the Punjab Value Added Tax Act, 2005 and also without taking cognizance of the necessary input.

4. To the contrary, the State counsel has urged that the due procedure was followed at the time of inspection, the appellant did not appear before the Designated Officer to present his case, notice under Section 61 was also given before imposing the penalty as such the appeal is liable to be dismissed.

5. Having considered the rival contentions.

6. It may be observed that the order passed by the Excise and Taxation Officer-cum-Designated Officer, Jagraon was ex-parte, therefore, the officer could not consider the contentions without making any reference to him. However, the contention with regard to illegality of search was not raised before the First Appellate Authority. Therefore, the procedural illegality in effecting the search does not in anyway vitiate the recovery.

7. No objection with regard to legality of search has been raised before the First Appellate Authority, therefore now no such objection can be raised at this stage. As regards the sale made between 26.3.2010 (i.e. day of inspection) to 31.3.2010, the Excise and Taxation Officer could go into the issuers regards the other issue regarding non issuance of the notice

under Section 56 and 60 before imposing penalty upon the appellant, it may be observed that the department had issued repeated penalty notices, but the appellant did not appear in response to all the notices. However, he appeared before Excise and Taxation Officer-cum-Designated Officer, Jagraon twice or thrice and did not comply with the instructions issued to him. Through the notices issued to him indicate about the imposition of the penalty. Yet Section 56 is not specifically mentioned in the notices. However, it does not make any difference and it would amount to notice before imposition of penalty. In any case, the Excise and Taxation Officer-cum-Designated Officer could be directed to pass a specific order with regard to issuance of notice under section 56 regarding penalty. The Deputy Excise and Taxation Commissioner had already taken note of this fact.

8. Resultantly, while holding that order of remand is absolutely correct, therefore, finding no merit in the appeal, the same is hereby dismissed.

9. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 499 OF 2013

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VIKAS JEWELLERS
Vs
STATE OF PUNJAB

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

27th August, 2015

HF ▶ Revenue

Gold ornaments being carried by public transport without documents meant for delivery attracts penalty u/s 51.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOLD ORNAMENTS CARRIED BY EMPLOYEES IN A BUS FROM DELHI TO PUNJAB – GOODS CHECKED BY POLICE AND EXCISE AND TAXATION OFFICERS INFORMED PURSUANT THERETO – EMPLOYEES STATED AT FIRST INSTANCE THAT GOODS MEANT FOR DELIVERY IN PATIALA TO A JEWELLER – GOODS DETAINED – PENALTY IMPOSED FOR INGENUINE DOCUMENTS – APPEAL BEFORE TRIBUNAL – ADMISSION AT FIRST INSTANCE REGARDING GOODS MEANT FOR DELIVERY AND NON DISCLOSURE AT ICC– NO AFFIDAVIT GIVEN BY PURCHASING JEWELLER THAT GOODS NOT MEANT FOR DELIVERY TO HIM – BILL PRODUCED NOT INDICATIVE OF GOODS BEING TAKEN FOR DISPLAY AS ALLEGED – ACCOUNT BOOKS FOUND MANIPULATED – ABSENCE OF FURNISHING OF INFORMATION AT VIRTUAL ICC – ALL THESE FACTS INDICATIVE OF INITIAL STATEMENT MADE BY EMPLOYEES REGARDING DELIVERY OF GOODS BEING TRUE- APPEAL DISMISSED – *S. 51(7)(c) OF PVAT ACT,*

Facts

On checking by police, two employees were found carrying gold ornaments in a bus. The ETO Mobile Wing suspected that the employees had no genuine documents to cover the transaction and they had not furnished any declaration at the ICC before entering Punjab from Delhi. They stated that the ornaments were being taken for delivering the same to M/s Puran Chand jeweller and produced the transfer invoice in this regard. The goods were detained. The owner of goods appeared and stated that the goods were not meant for sale but were meant for demonstration at the shops of jewellers for securing orders. Penalty u/s 51(6)(b) of the Act was imposed concluding goods not being covered by proper documents. On appeal before Tribunal:

Held

The employees admitted at the very first instance that the goods were to be delivered to the jeweller and that they had not informed at the ICC. No such statement was made that the goods

were not for sale. The bill produced by them did not indicate that the goods were meant for display. No affidavit is given by the purchasing jeweller that the goods were not meant for delivery to him. The account books appear to be manipulated. The transfer invoice is manipulated.

Assuming it to be a delivery challan, it is not in accordance with Rule 57 of the relevant rules. The words 'delivery challan' are absent. It does not bear serial number of Vat 36 and no description, price mode of transportation has been mentioned on it.

According to Rule 64 –C the appellant was to furnish information at virtual ICC. But it did not do so while dispatching the goods from Mathura to State of U.P. Consequently, statement of employees being without any pressure, coercion or influence would have to be accepted. The detection made by police officer which helped the tax officer to detect the crime does not amount to interference in the proceedings initiated by the detaining officer. This appeal is dismissed being without any merit.

Cases referred:

- *M/s Kabir Diamonds Pvt. Ltd. versus State of Punjab in appeal (VAT) No, 497 of 2009*
- *M/s S.I. Rooplal and Others V/s L.G. of New Delhi (2000) SCC 644*

Present: Mr. Parveen Sharma**,** Advocate counsel for the appellant.
Mr. N.D.S. Mann, Addl. Advocate General for the State

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

1. This appeal is directed against the order dated 17.6.2013 dismissing the appeal of the appellant against the order dated 17.1.2013 passed by the Assistant Excise and Taxation Commissioner, Mobile wing, Patiala imposing a penalty of Rs. 12,55,601/- under Section 51 (7) (c) of the Punjab Value Added Tax Act, 2005.

2. On 10.1.2013, Shri Sandeep Gupta and Shri Kanhya Sharma employees of M/s Vikas Jewellers Mandi Ram Das, Mathura (U.P.) were traveling by bus. They had boarded the bus from Delhi to Patiala. When the bus arrived at shamboo near village Bapraur, the bus was checked by the SHO, where upon, it was detected that both the aforesaid employees were traveling with Gold Ornaments weighing 1171.27 Gm packed in three packets. The SHO then informed Shri Ominder Singh, ETO Mobile Wing who while suspecting that Shri Kanhya Sharma and Sandeep Gupta were not having proper and genuine documents to cover the transaction, and they had not furnished any declaration at the ICC, Shamboo (Import). Consequently he detained both the employees alongwith goods for verification. On enquiry, the aforesaid two employees disclosed before the ETO that the Gold Ornaments were taken to Patiala for delivering the same to M/s Puran Chand Jeweller, Qila Chowk, Patiala, they also produced transfer invoice in this regard. Since these employees were carrying the goods in violation of the mandatory provisions of law, therefore, the goods were detained and a notice was issued for 11.1.2013. On 11.1.2013, the Excise and Taxation Officer got weighed the golden ornaments in the presence of the employees of the appellant from M/s Jagdish Jeweller (a Government approved valuer) who certified that the Ornaments weighing 1171.25 gm were of the value of Rs.25,11,20.1/-.

3. The case was then forwarded to the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala who also issued a notice to the appellant (owner of the goods) for 18.1.2013, in response to which Shri Parmod Kumar Jain, proprietor of the firm alongwith Shri Parveen Kumar Sharma, Advocate appeared on 17.1.2013 and on their request, the case was taken up on 17.1.2013. When confronted with the facts, they submitted written reply and

contested the allegations and submitted that the goods were not meant for sale but for demonstration at the shops of Jewellers for securing orders. The said gold has been shown in his account books. Ultimately, after examining the case, the Assistant Excise and Taxation Commissioner Mobile Wing, Patiala reached the conclusion that the goods were not covered by the proper and genuine documents resulting in violation of Section 51 (6) (b) of the Act. Consequently, he imposed a penalty amounting to Rs. 12,55,601/- under Section 51 (7) (c) of the Act.

4. Feeling aggrieved with order the appellant preferred the appeal which was dismissed by the Deputy Excise and Taxation Commissioner, hence this second appeal.

5. The counsel for the appellant, in order to assail the findings returned by the authorities below, argued that the gold ornaments were duly recorded in the account books and other documents and the said ornaments were sent for the purpose of demonstration at the shops of the gold ornaments dealers for securing the orders. The appellant produced the account books before the Designated Officer. However, this contention was brushed aside by the Assistant Excise and Taxation Commissioner, Mobile Wing Patiala. In order to buttress this contention that the goods were not for sale, has placed reliance over the judgment M/s Kabir Diamonds Pvt. Ltd. versus State of Punjab in appeal (VAT) No, 497 of 2009 wherein it was observed that the gold and diamond Jewellers keep the ornaments secret as costly items cannot be disclosed to any body to avoid physical risk to the goods as well as the person concerned. Therefore, such goods could not be reported at the ICC. He has also cited judgment M/s Bharat Steels versus State of Punjab wherein it was observed that even if the documents have been subsequently produced, even then no presumption will be raised that these documents were manipulated and an after thought. The counsel has placed reliance on the judgment delivered in case of M/s S.I. Rooplal and Others V/s L.G. of New Delhi (2000) SCC 644 wherein it was observed that the Tribunal could not ignore or over rule the judgment delivered by Coordinate Bench or the same Tribunal. In the end, the counsel has requested for acceptance of the appeal.

6. To the contrary, Mr. N.D.S. Mann, AAG, Punjab has contended that the invoice produced at the time of detection of the goods is not a delivery challan but it was a transfer invoice. Had it been a delivery challan, it would have been in accordance with rule 57 of the Punjab Value Added Tax Rules, secondly, this transfer invoice was against the sale of goods. Both the employees had admitted in their statement that they were to deliver gold ornaments to M/s Puran Chand Jeweller, Qila Chowk, Patiala and they never made any such statement that they were taking the goods for demonstration. They did not report information at the nearest ICC regarding taking of the goods from outside the state. Even if they wanted to keep the goods secret, they could send information by e-trip, but that was not done. The mansrea is fully established on the part of the appellant that they, after concealing the goods in their bags were moving from Mathura, (U.P.) to Delhi and thereafter to Patiala without any valid bill or information as such there was clearcut intention to evade tax.

7. Arguments heard. Record Perused.

8. The appellants have accepted the ownership of the golden ornaments. They have admitted that Shri Sandeep Gupta and Shri Kanhya Sharma were their employees and they had come from Mathura to Delhi and from Delhi to Patiala. The goods i.e. gold ornaments were detected by the SHO on routine checking who consequently on suspicion, informed the Excise and Taxation Officer, Mobile Wing, Patiala who took cognizance of the matter. Shri Sandeep Gupta and Shri Kanhya Sharma both, in their common statement, admitted that they had brought the goods from Vikas Jewellers Mathura (U.P.) under bill No. 1 dated 10.1.2013 and they had to deliver the same to M/s Puran Chand Jeweller, Qila Chowk, Patiala and they were going to deliver the same at his shop. This common statement has been made by these two employees at the very initial stage before the Excise and Taxation officer, Mobile Wing,

Patiala. They produced the bill at the time when the goods were detected from them. They also admitted that they did not inform the goods at any ICC. They admitted that the value of the goods was Rs.26,96,000/- They did not make any such statement that the goods were not for sale. There is nothing over the bill to indicate that the goods were meant for display. The appellants in their application dated 17.1.2013 did not disclose, if their employees were under any pressure coercion or influence at the time of making the statements before the Detaining Officer. The application dated 17.1.2013 is not accompanied by any affidavit of Shri Puran Chand Jeweller, Qila Chowk, Patiala or his authorized representative to the effect that the goods carried by the employees were not to be delivered to him. The two employees had nothing to gain by making such statement. The account books appear to be manipulated. The stock register as produced before the Assistant Excise and Taxation Commissioner is shown as the record for the month of Jan, 2012, whereas the transaction took place on 10.1.2013. The relevant transaction as shown in the stock register does not indicate the details of the ornaments. The only entry dated 10.1.2013 mentions the purpose for which these two employees were sent and no other entry discloses as to where and for what purpose the ornaments were sent. Similarly, as per cash book produced on the record, the employees are shown to have been paid Rs. 15,000/- and except the details mentioned under the entry dated 10.1.2013, there is no such entry containing details in the account book.

9. Now coming to the challan/transfer invoice produced before the Detaining Officer, the same also appears to be manipulated. According to the transfer invoice, the person carrying the goods is shown as Shri Sandeep Gupta, but goods were recovered when Shri Sandeep Gupta and Shri Kanhya Sharma were taking the goods.

10. Assuming that it was a delivery challan then it is not in accordance with the Rule 57 of the Punjab Value Added tax Act or the relevant Rules of U.P. Value Added Tax Act. According to the Rules, the delivery challan must bear the words "Delivery Challan" at the top and these should be prominently printed on the document. It should also bear the Sr. Number of Form VAT-36 in case of interstate transaction, date of transfer of goods, name, address and registration number of the consignee description of the goods, weight, quantity, price per unit and total estimated value of the goods, mode of transportation of goods and details thereof, and signatures of the consignor. In the present case, the documents purported have been projected as delivery challan is deficient by the following facts:--

(i) *The words "Delivery Challan" are not prominently printed on the invoice;*

(ii) *it does not bear the serial number of VAT-36.*

(iii) *Though, it was a case of interstate transaction, it does not contain the description of the goods estimated price per unit and mode of transportation of goods.*

11. Therefore, the document covering the goods cannot be said to be genuine and proper on the basis of which gold ornaments worth Rs.25,11,201/- were being taken away by the carriers.

12. Now coming to the furnishing of the information under Form VAT-36, Rule 64-C has been introduced in the Rules which is reproduced as under :-

RULE 64-C *PROCEDURE FOR FURNISHING INFORMATION INR-ESPECT OF GOODS IMPORTED INTO THE STATE EITHER BY AIR RAILWAYS OR BY DRY PORTS THROUGH VIRTUAL INFORMATION COLLECTION CENTRE(Section 3-A and 51):-*

(1) *Notwithstanding anything contained in rule 64, the owner or the person incharge of any goods, being imported into*

the State either by air or railways or dry ports, as the case may be, shall submit information regarding the same through Virtual Information Collection Centre in Form VAT-12, before taking the delivery of such goods or before transaction of such imported goods by road, whichever is earlier.

(2) Such owner or person in-charge, after tendering of the aforesaid information through electronic mode, shall generate electronic receipt bearing unique number allotted to him, as a proof for submission of the said information. The aforesaid receipt, shall be a necessary document alongwith the goods receipt, trip sheet or log book, bill or cash memo, sale invoice, vehicle's record, in which such goods are being transported or delivery challan etc., as the case may be, as a proof for such transaction.

(3) The owner or person in-charge, submitting information through electronic mode, shall keep his password secret and shall change the same periodically, preferably after every two months; and any information submitted by him through the said mode from his i.d. shall be treated as an information submitted by him.

According to this rule, the appellant was supposed to furnish information in Form VAT-12 through virtual-ICC on the official website of the department, thereafter he shall generate electronic receipt on unique number allotted to him as a proof for submission of the said information. The maximum transition time for delivery of goods from the place of departure of such goods to the nearest ICC falling enroute towards destination while entry into the State would be such as may be specified by the Commissioner from time to time. No such procedure was followed by the appellant while dispatching the goods from Mathura (U.P.) to the State of Punjab under the alleged delivery challan. The consequence would be that the statement made by both the employees i.e. Shri Sandeep Gupta and Shri Kanhya Sharma being without any pressure, coercion or influence would have to be accepted.

13. As regards the intervention of the police at the time of detection, it is often seen that the daily patrolling and checking of the pedestrians and vehicles at the borders of the State by the police officials is their routine exercise, during the course of which gold was detected. Except that the SHO informed about the detection to the concerned tax officer about the suspected evasion of tax, he did not proceed further. Even the officers exercising the powers under this Act could seek assistance from the police officer at the time of detection of such incriminating articles. Section 86 of the Act provides that the officials of the department could seek police assistance, if they so required. The assistance made by the Police Officer which helped the tax officers to detect the crime does not amount to any interference in the proceedings initiated by the detaining officer. Having examined the facts of the judgment delivered in case of M/s Kabir Diamonds Pvt. Ltd. supra, the facts of that case are distinguishable and can't be applied to the facts of the present case. In the present case, the employees did not disclose at the first blush about the purpose of taking the goods rather they stated that they were taking the goods for deliver/ to Shri Puran Chand Jeweller, Lator on, after consultations, they came up with this story after manipulating the records accordingly, in order to fit in the facts of the case in hand to the judgment delivered in case of M/s Kabir Diamonds.

14. The appellant is a regular dealer in the business of sale of jewellery in the State of Punjab. The items were of such nature that may have been sent as per order placed by Shri Puran Chand jeweller. Shri Puran Chand Jeweller also did not file any affidavit to the effect that he had not placed any such order and purchased such goods, as such the story that the goods were being carried away for demonstration at the shops at Patiala, being an after thought, cannot be believed.

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

16. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 298 OF 2014

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KATARIA RICE MILLS
Vs
STATE OF PUNJAB

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

17 August, 2015

HF ▶ Appellant – dealer

Assessing authority to decide the question of reversal of Input tax credit on account of Purchase Tax when it was disallowed at first instance.

ASSESSMENT – EXEMPTION – EXEMPTED UNIT – EXPORT – EXPORT UNIT ENJOYING EXEMPTION- RICE EXPORTED OUT OF PADDY PURCHASED- ANNUAL STATEMENT FILED - LEVY OF PURCHASE TAX ON PADDY BY ASSESSING AUTHORITY – DISALLOWANCE OF ITC ON ONE HAND AND REVERSAL OF ITC ON OTHER HAND – APPEAL DISMISSED BY FIRST APPELLATE AUTHORITY WITHOUT PASSING SPEAKING ORDER – APPEAL BEFORE TRIBUNAL – MATTER REMITTED BACK TO ASSESSING AUTHORITY TO DECIDE THE QUESTIONS RAISED AND PASS A SPEAKING ORDER – *S.13, S.19 OF PVAT ACT*

Facts

The appellant is a rice sheller enjoying exemption as export oriented unit. The annual statement with respect to purchases of paddy and export of rice were shown. However, the designated officer created a demand disallowing ITC and reversing it simultaneously. Also, purchase tax was levied on paddy out of which rice was exported. After dismissal of first appeal, an appeal is filed before Tribunal contending that the issues raised were not considered properly by the First Appellate Authority.

Held

As both the parties agree that the matter need reconsideration by assessing authority, the appeal is accepted and assessing authority is directed to pass a speaking order while deciding the issue of ITC as well as purchase tax levied on paddy meant for export of rice against 'H' Forms.

Present: Mr. Avneesh Jhigan, 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 appeal is directed against the order dated 17.7.2014 passed by the Deputy Excise and Taxation Commissioner (A), Faridkot Division, Faridkot dismissing the appeal of the appellant against the order dated 30.12.2013| passed by the Senior Auditor-cum-Assistant Excise and Taxation Commissioner, Faridkot creating an additional demand to the tune of Rs. 2,03,942/- under the Central Sales Tax Act 1956 and Rs.5,70,731/- under Section PIDF Act and also to the tune of Rs. 16,58,015/- under the Punjab Value Added Tax Act, 2005.

2. The matter relates to the assessment year 2011-12, the appellant is a dealer engaged in the business of rice sheller. He was enjoying exemption as export oriented unit upto 19.12.2011. The appellant filed annual statement for the year 2011-12 wherein he had shown purchases of paddy and exported the rice, procured out of paddy and the broken rice etc. which were sold in course of, interstate sale. The tax free sale of rice husk was also made. However, the Designated Officer created the demand as referred to above. The Deputy Excise and Taxation Commissioner (A), Faridkot Division, Faridkot dismissed this appeal, hence this second appeal.

3. The appellant has contended that the Appellate Authority has not dealt with all the; issues as raised by the appellant in the grounds of appeal and no reasons have been recorded for rejecting the pleas raised by him. The Designated Officer while calculating the paddy purchased for compliance of export orders. The exports have been allowed by the Designated Officer itself. Once the paddy is proved to be meant for compliance of exports order, there was no occasion with the Designated Officer for creating purchase tax liability on the appellant. The Designated Officer has erred in giving credit of ITC to the appellant. As per provisions of statue and the rules framed thereunder. It is also argued that the purchase tax was to be allowed as ITC and it is only under certain circumstances, the ITC can not be allowed. It was also contended that on one side, no ITC has been given and on the other hand, ITC has been reversed. The Deputy Excise and Taxation Commissioner has also confirmed such reversal without any reason. When once the ITC was not granted then there was no occasion for the reversal of ITC. The department has also not complied with the conditions under which the ITC could be granted. The ITC is to be reversed from the figure of the ITC claimed and allowed. In the present case, ITC of other goods then paddy of Rs.3,60,988/- has been granted by the Designated Officer and there is reversal of ITC to the tune of Rs.20,19,783/-.

4. It is further argued that the ITC has been wrongly reversed on the closing stock. The purchase of paddy was made for export of rice. The entire rice could not be exported within the assessment year and the rest was exported in the following year even before start of the purchase. In such situation, the reversal of ITC over the closing stock is illegal. The appellant purchased paddy for manufacturing rice, therefore no tax was to be reversed for the production of the tax free products upto 22.12.2011. The reversal of ITC on account of interstate sale of rice as produced from milling is to be allowed u/s 15 (1) (c) of the Central Sales Tax Act, 1956. This section 15 is in respect of the restrictions and conditions with regard to tax on sale or purchase of declared goods within the state. To achieve this object, section 15 and 84 were introduced in the Punjab Value Added Tax Act, 2005 which indicate that the tax on sale and purchase of goods shall not be imposed under the Punjab Value Added Tax Act, 2005, where such sales or purchase takes place in the course of interstate trade or commerce. Thus, any reversal of tax under Section 19 (5) is to be compensated by adjusting this reversal of the CST Act.

5. To the contrary, the state counsel has urged that the orders passed by both the authorities are quite legal and valid and reversal has been rightly made.

6. After going through both the orders passed by the authorities below, it transpires that the orders passed by the processing Officers are contradictory and has been passed without

application of mind. When no ITC can be allowed then reversal could not be made. In any case both the parties agree that the case needs reconsideration by the assessing authority and he could be directed to pass a speaking order.

7. Resultantly, I accept the appeal and set-aside the impugned order and the Assessing Authority is directed to pass the speaking order while deciding the following two issues:-

1. *Whether reversal of ITC could be made, when no ITC has been allowed.*
2. *Whether purchase tax could be levied on the paddy when the export of rice was allowed against "H" Forms.*

The appellant would appear before the assessing officer on 10.10.2015.

8. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 259 OF 2013

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AGGARWAL METAL WORKS PVT. LTD
Vs
STATE OF PUNJAB

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

17th September, 2015

HF ▶ Revenue

Penalty u/s 51 of PVAT Act is upheld as the transaction was not accompanied with proper documents showing name of Punjab purchaser.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT – DOCUMENTS PRESENTED AT ICC – GOODS ALLEGED TO HAVE BEEN SOLD TO FIRM C BY FIRM B ON THE ORDER OF FIRM A - PENALTY IMPOSED U/S 51 FOR INGENUINE DOCUMENTS – APPEAL BEFORE TRIBUNAL – NO ENDORSEMENT OBSERVED ON BILL- ABSENCE OF NAME OF PURCHASER AND TIN NUMBER OF SELLING DEALER – INGENUINE DOCUMENTS – PENALTY RIGHTLY LEVIED – APPEAL DISMISSED – S.51(7)(b) OF PVAT ACT.

Facts
In this case, firm B placed an order on firm A, Rewari, to supply goods to firm C in Ludhiana. The bill presented at the ICC showed sale of firm B and the name of Ludhiana purchaser was not shown anywhere on GR. No endorsement for sale in transit and no TIN Number were mentioned of the selling dealer. Penalty is imposed u/s 51 of PVAT Act, 2005. An appeal is filed before Tribunal.

Held
The transaction was not accompanied with proper and genuine documents. Therefore, penalty is rightly imposed. The appeal is dismissed.

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

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

1. This case relates to the penalty u/s 51(7) (b) of the PVAT Act, 2005. The appeal is not accompanied by the certified copy of the order passed by the Excise and Taxation Officer-cum-Designated Officer, ICC, Banur. In any case, I sit to decide the case with the help of the

official record as well as Mr. N.D.S. Mann, AAG Punjab. In this case, M/s Aggarwal Metal Works Pvt. Ltd., Rewari on the order of M/s Minda Value Security System Pvt. Ltd. supplied the goods to M/s New Swam Auto Ltd., Ludhiana. The bill which was presented at the time of detention showed the sale of M/s Minda Value Security System Pvt. Ltd. The goods are being sent to Ludhiana without any name of Ludhiana purchaser shown anywhere on the GR. There is also no endorsement for sale in transit and no TIN Number was mentioned on the sale dealer. So, it would be safely concluded that the transaction was not accompanied by proper and genuine documents. The authorities below appear to have taken right view of the matter while imposing the penalty. No grounds to interfere.

2. Dismissed.

3. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NOs. 165, 166, 167, 168, 169, 170 OF 2014

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JALANDHAR ENGINEERING CO.
Vs
STATE OF PUNJAB

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

3rd September, 2015

HF ▶ Revenue

There is no need for a detailed speaking order by Commissioner granting permission for reassessment in view of S. 29(7) of the Act.

REASSESSMENT – COMMISSIONER -NON SPEAKING ORDER – PERMISSION BY COMMISSIONER – LETTER MENTIONING GROUNDS OF REASSESSMENT SENT TO COMMISSIONER BY OFFICER - ORDER PASSED BY COMMISSIONER GRANTING PERMISSION FOR REASSESSMENT – CHALLENGE TO ORDER SO PASSED ON GROUNDS OF BEING NON SPEAKING – HELD:ORDER PASSED REFLECTS AS GROUNDS BEING APPROVED AFTER CONSIDERATION THEREBY GRANTING PERMISSION FOR AMENDMENT – REQUIREMENT OF DETAILED ORDER NOT THERE IN VIEW OF S.29(7) OF THE ACT – READING OF LETTER SENT BY OFFICER ALONGWITH THE ORDER OF COMMISSIONER LEAVES NO DOUBT THAT THE ORDER IS PASSED AFTER WELL CONSIDERATION OF GROUNDS AND PERMISSION IS DULY GRANTED – ORDER CANNOT BE TREATED AS NON SPEAKING – APPEAL IS DISMISSED- *S. 29(7) OF PVAT ACT*

Facts

The assessment was filed in time. However, a notice for reassessment u/s 29(7) was issued. Before issuing notice, permission was sought from the commissioner for making amendment which was granted vide order dated 29/1/2014. It is against this order that an appeal is filed contending that the order granting permission is non speaking.

Held

It is observed that the commissioner considered all the grounds approving the same vide letter dated 29/1/2014 and granted the permission to make the amendment. The section does not require a well reasoned order or detailed order.

Regarding speaking nature of the order, if the order is read with the letter issued by the designated officer then there remains no doubt that the grounds have been considered by commissioner before granting permission. Thus, the order cannot be treated as non speaking. The appeal is dismissed.

Cases referred:

- *A.B Sugar Ltd. Vs State of Punjab, (2010) 15 STM 90 (P & H)*
- *Navin Metals & Anothers Vs Commissioner of Sales Tax, UP (1995) 97 STC 432 (All)*

- *Manaktala Chemicals (P) Ltd., Vs State of UP (2007) 5 VST 284 (AH)*
- *JT (India) Exports and anothers Vs UOI (2003) 132 STC 22 (Del)*

Present: None for the appellant.
Mr. N.D.S. Mann, Addl. Advocate General for the State.

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

1. This order of mine shall dispose of eight connected second appeals No.165, 166, 167,168,169, 170, 171 and 241 of 2014 against the order, dated 29.1.2014 passed by the Excise and Taxation Commissioner, Punjab Patiala granting permission to make the re-assessment framed for the years 2009-10, 2010-11 or 2011-12 (as involved in these cases). Since all these appeals involve the common question law, therefore these are decided together.

2. The facts in brief, as picked up from the appeal No. 165 of 2014 M/s- Jullundhur Engineering Company Village Nurpur versus State of Punjab, are that earlier the original assessment in all the aforesaid cases was filed on time. However, thereafter as per Rule 49 of the Punjab Value Added Tax Act, 2005, notices for re-assessment were issued. On the ground which are detailed as under:-

1. That your local sale amounting Rs.23,98,40,011/- needs verification from your books of account.
2. That you have made interstate sale amounting to Rs.5,77,360/- but you have not submitted the required statutory forms "C".
3. That you have made purchases amounting to Rs.23,83,85,869/- which need verification from your books of account.
4. There is difference in sale and purchases as per VAT-20 and trading account furnished alongwith balance sheet.

3. However, before issuing notice permission was sought from the Excise and Taxation Commissioner for making amendment which was granted by the commissioner vide memo No. VAT-3-2013/DP0103403082123, dated 29.1.2014, the appellant has filed the appeal against the said order.

4. The counsel for the appellant did not appear in the cases despite it was called several times, therefore, I have no option but to decide the same exparte.

5. Before I proceed to examine the order granting permission I need to reproduce Section 29 (7) of the Act 2005, the order to find out, "whether the order of re-assessment is within the parameters of the Act?" Section 29(7) of the Act reads as under:-

SECTION 29 (7) *"The designated officer may, with the prior permission of the Commissioner, within a period of three years from the date of the assessment order, amend an assessment, made under sub-section (2), if he discovers under-assessment of tax, payable by a person for the reason that:-*

(a) *such a person has committed fraud or willful neglect; or*

(b) *such a person has misrepresented facts; or*

(c) *a part of the turnover has escaped assessment.*

> *PROVIDED THAT no order amending such assessment, shall be made without affording an opportunity of being heard to the affected person."*

6. The appellant, in the grounds of appeal, has raised to objections viz: the order is not speaking and the appellant was not summoned to appear before passing of the order.

7. As regards the first argument, it may be observed that the letter sent to the commissioner, contained all the grounds for making amendment of the assessment. The commissioner vide order dated 29.1.2014 considered and the grounds approved the same, vide letter order dated 29.1.2014 and while approving the same, granted the permission to make the amendment. The Section does not require the passing of detailed or reasoned order. It is subjective satisfaction of the commissioner for passing such order. The appellant has placed reliance on the judgments delivered in case of

(i) *A.B Sugar Ltd. Vs State of Punjab, (2010) 15 STM 90 (P & H)*
(ii) *Navin Metals & Anothers Vs Commissioner of Sales Tax, UP (1995) 97 STC 432 (All)*
(iii) *Manaktala Chemicals (P) Ltd., Vs State of UP (2007) 5 VST 284 (AH)*
(iv) *JT (India) Exports and anothers Vs UOI (2003) 132 STC 22 (Del)*

8. The issues contained in the judgment were considered by the Division Bench of the Hon'ble High Court whereby the amendments made in Section 29 were approved Section 29 (10-A) reads as under:-

> *"Notwithstanding anything to the contrary contained in any judgment decree or order of any court Tribunal or other authority and the order passed by the Commissioner under sub-section (4) prior to commencement of Punjab Value Added tax Act (Second Amendment Act, 2013) shell not be invalid on the ground of prior service of notice or the communication of such order to the concerned person."*

9. In the instant case, there is no dispute that notice was issued to the appellant as apparently, the appellant had challenged the notice before the Hon'ble High Court, later on he had withdrawn the petition. The communication of order admittedly was made to him. As regards, the speaking nature of the order, if the order is read with the letter issued by the Designated Officer then no doubt remains that the Commissioner had well considered the grounds and granting the permission. Therefore, the order granting permission could not be treated as non speaking.

10. Resultantly, finding no merit in the appeal, the same is hereby dismissed. Copy of the order be placed in all the seven connected appeals.

11. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 80 OF 2015

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VANSER METALICS
Vs
STATE OF PUNJAB

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

4th September, 2015

HF ▶ Dealer

Penalty set aside as Non generation of e-ICC was due to technical fault of website and was duly reported to the authority.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – NON GENERATION OF E-ICC – GOODS IN TRANSIT APPREHENDED – DOCUMENTS PRODUCED SHOWING STOCK TRANSFER INVOICE AND GR – NO E-ICC PRODUCED – GOODS DETAINED – EXPLANATION TENDERED THAT E-ICC NOT GENERATED BECAUSE OF TECHNICAL FAULT IN OFFICIAL WEBSITE REGARDING WHICH WRITTEN INFORMATION DULY GIVEN TO AUTHORITIES – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL- NON GENERATION OF E-ICC DUE TO TECHNICAL FAULT OF WEBSITE INDICATES BONAFIDES AS AUTHORITIES STOOD INFORMED BY APPELLANT – GOODS NOT MEANT FOR SALE AND WERE BEING TRANSPORTED WITHIN THE STATE – NO MENSREA TO EVADE TAX RECORDED BY PENALIZING OFFICER– EXCISE DUTY ALREADY PAID - PENALTY DELETED – APPEAL ACCEPTED – *S. 51(7)(c) OF PVAT ACT*

Facts

The driver was carrying goods from Dera Bassi to Chandigarh when the vehicle was apprehended. The driver produced the documents namely the Stock transfer invoice issued by appellant firm, Dera Bassi in favour of Appellant firm in Chandigarh and GR. Since no e-ICC was produced the goods were detained. It was explained that as the official ICC could not be generated and it was duly informed in writing to the authorities. However, penalty u/s 51 was imposed. An appeal is filed before Tribunal.

Held

Admittedly the vehicle was detained within the State of Punjab and before it reached the ICC. Also, documents were duly carried and goods were being transported from within the State of Punjab. Regarding the non generation of e-ICC it is explained that there was a problem in website which shows the bonafides and no intention to evade the tax. The officer has not recorded an attempt to evade tax on part of the dealer. The exciseduty stood paid. The goods were not covered by any transaction for sale and were not being taken out of the state. Therefore, the penalty is deleted and appeal is accepted.

Present: Mr. Avneesh Jhingan, 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 27.10.2014 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala (herein referred as First Appellate Authority) dismissing the appeal of the appellant against the order dated 28.2.2014 passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Punjab, Chandigarh imposing penalty of Rs.3,69,656/- U/s 51(7)(c) of the Punjab Value Added Tax Act, 2005.

2. M/s Vanser Metalics, Village Behra, Gulabgharh Road, Dera Bassi is a taxable person registered with VAT Authorities of District Mohali. The appellant is engaged in the manufacturing of steel pipes etc. and has been filing regular returns. The goods in question are excisable goods. The appellant has its branch offices in the UT., Chandigarh and Delhi. On 20.2.2014, the driver alongwith vehicle No.HR-37-A-8190 when carrying the goods, reached on Gulabgarh Road, Dera Bassi, was apprehended, whereupon, the driver of the vehicle presented the following documents:-

(i) *Stock transfer invoice issued by M/s Vanser Metallics Village Behra Gulabgarh Road, Dera Bassi in favour of M/s Vanser Metallics, 313, Industrial Area-II, Chandigarh for Rs.7,00,770.00.*

(ii) *The vehicle in which goods were transported being a private carrier, own generated GR No. 108 dated 20.2.2014.*

(iii) *No.e-ICC was generated as required under Rule 64-B of the Punjab VAT Rules, 2005 even though the goods were being exported from out of Punjab.*

3. The goods were detained for further verification. The statement of driver was recorded and the notice was issued to the owners on 21.2.2014, however, none appeared on the said date, therefore the case was adjourned to 22.2.2014, pursuant to which Shri Anshul, the representative of the owners appeared on behalf of the owner and explained that it was accompanied by stock transfer invoice, and GR. However, he stated that the e-ICC could not be generated on account of some problem in the website. Since no account books were produced. The case was sent to the Designated Officer who also issued notice to the owner of the goods on 28.2.2014 to show cause as to why penalty under Section 51 (7) (c) and 51 (12) of the Act be not imposed for nor generation of e-ICC. The representative of the owner appeared before the designated officer and also made the same explanation before him, however, no account books were produced, therefore the appellant was imposed penalty to the tune of Rs. 3,69,656/-.

4. Feeling aggrieved, the appellant filed the appeal which was also dismissed and thus, it is the second appeal.

5. It is an admitted fact that the vehicle was detained well within the State of Punjab and before it reached the e-ICC. It has not been denied that the driver was carrying the stock transfer invoice as well as GR with him and he was transporting the goods from within the State of Punjab and was apprehended in the State of Punjab, therefore, in the light of the documents which he was carrying, the detention was bad in the eyes of law. As regards, non generation of the e-ICC, it has been duly explained that the e-ICC as required could not be generated due to some problem in the official website which was duly informed in writing by

the appellant forthwith i.e. on 20.2.2014 itself which shows the bonafides and no intention to evade the tax. Even otherwise, the Designated Officer has nowhere recorded the findings that the appellant had the intention to evade the tax, therefore, in the absence of such findings, no penalty could be imposed. The goods were against Form 'F', the excise @12% has already been paid and the appellant was to recover the modvad, therefore, intention to evade the tax can't be inferred. The appellant had written to the Excise and Taxation Officer, ICC, Zirakpur on the very date of interception of the goods regarding the technical problem in the official website on account of which e-ICC could not be generated. Even otherwise, the appellant was still to cross the ICC and he was not taking the goods out of the State of Punjab and the goods were not covered by any transaction of sale. The orders passed by the authorities below have been perused, the same has been passed in a mechanical manner without considering the aforesaid circumstances which go in favour of the appellant, therefore, both the orders deserve to be set-aside.

6. Resultantly, this appeal is accepted, impugned order is set-aside and the penalty order is quashed.

7. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 386 OF 2013

Go to Index Page

ITC LIMITED
Vs
STATE OF PUNJAB

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

17th September, 2015

HF ▶ Revenue

Delay in filing of appeal due to copy of order having being lost by counsel's employee is not a plausible explanation for condoning the delay.

APPEAL – CONDONATION OF DELAY – LIMITATION – COPY OF PENALTY ORDER RECEIVED WITHIN TWO WEEKS FROM DATE OF ORDER - FIRST APPEAL DISMISSED DUE TO DELAY OF 370 DAYS IN FILING – APPEAL BEFORE TRIBUNAL – EXPLANATION GIVEN THAT COPY OF ORDER LOST BY COUNSEL'S EMPLOYEE – FINALLY APPEAL FILED AFTER COPY WAS RECOVERED DURING RENOVATION – EXPLANATION APPEARS TO BE AN AFTERTHOUGHT – COPY OF ORDER COULD HAVE BEEN RECOVERED FROM ASSESSING AUTHORITY IN CASE OF LOSS OF PREVIOUS ONE – NO AFFIDAVIT OF EMPLOYEE OF ADVOCATE GIVEN BY APPELLANT – APPEAL DISMISSED – *S.64 OF PVAT ACT*

Facts

Penalty was imposed vide order dated 14/7/2007. The copy of the order was received on 27/7/2007. An appeal was filed before the DETC which was dismissed on due to delay in filing. An appeal has been filed against the order of the First Appellate Authority contending that the delay occurred as the copy was handed over to the counsel which was in turn misplaced by one of his employees. The appellant came to know about this on 14/7/2008 when a photocopy was recovered during reshuffling and renovation. Hence there was a delay of 370 days.

Held

No affidavit of the employee of the advocate has been produced by appellant. Once the copy of order has been given to the advocate the appeal should have been filed in time. Another copy could have been taken from assessing authority in case the previous one got lost. After the notice of recovery was issued, then the necessity to file an appeal arose to the appellant. The counsel has also not filed an affidavit explaining his fault. No plausible reason for explaining such a long delay is given. The appeal is dismissed.

Present: Mr. Chetan Jain, 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 27.5.2013 passed by the Joint Director (Investigation)-cum-Deputy Excise and Taxation Commissioner, Ferozepur and Faridkot Divisions, Headquarters at Bathinda (herein referred as the First Appellate Authority) dismissing the appeal of the appellant against the order dated 14.7.2007 passed by the Assistant Excise and Taxation Commissioner, Information Collection Centre, Shambu (import) on the ground of limitation.

2. In this case, a penalty of Rs.1,11,885/- was imposed against the appellant vide order dated 14.7.2007 which was conveyed to the appellant and copy of the order was received by Sh. Manjit Singh Clerk of the appellant on 27.7.2007. However, the appeal against the said order was filed on 1.9.2008 i.e. after delay of 370 days. The appellant has prayed for condonation of delay on the ground that though the copy of the order was received on 27.7.2007, yet it was handed over by the appellant to his counsel Shri Kulbir Jain, Advocate who handed over the same in his office from where it was misplaced by one of his employees. The employee never apprised about the loss of the copy of the order. The appellant came to know about the order on 14 July, 2008, when at the time of reshuffling and renovation process, a photo copy was discovered. Therefore, he has submitted that the delay being unintentional should be condoned.

3.The Deputy Excise and Taxation Commissioner did not accept the plea regarding the misplacing of the copy and dismissed the appeal being time barred.

4. Arguments heard. Record perused.

5. The application filed by the appellant is not accompanied by the affidavit of the appellant. The affidavit of Sh. Manjit Singh, Clerk who had received the copy and affidavit of the employee to whom the copy of the order was handed over by Kulbir Jain, Advocate has not been placed on record.

6. When once the copy of the order was handed over in the office of Shri Kulbir Jain, Advocate, then it became his duty to file the appeal within the time prescribed. Had the copy not been recovered, then another copy could be obtained from the office of assessing authorities by moving an application a fresh in this regard. It is not disclosed as to why Kulbir Jain remained silent for more than an year and kept sitting over the certified copy of the order without proceeding further to file the appeal. As a matter of fact that the plea raised by the appellant appears to be concocted and an afterthought. Since small amount was involved in the case, therefore, the appellant remained silent and did not file the appeal for a long time for the reasons best known to him. However after the notice of recovery was issued then necessity arose to him to file the appeal. There is nothing mentioned in the application that appeal could not be filed for the fault on the part of his counsel. Neither counsel has filed an affidavit explaining all the facts as well as his fault which may have led for not filing the appeal. Such appeals which arise out of leisure or the pleasure of the parties do not invite indulgence of the court for taking a lenient view in their favour for condonation of delay.

7. Irrespective of the fact that law has been laid down that minor delays can be dealt with leniency whereas the long delays must be examined in stricter manner. The appellant has failed to furnish any plausible explanation for condoning such a long delay of 370 days.

8. In these circumstances, since the delay has not been properly explained, therefore the 1st appellant authority was justified in refusing to condone the delay.

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

10. Pronounced in the open Court.

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PUBLIC NOTICE (Punjab)

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PUBLIC NOTICE REGARDING EXTENTION OF DATE OF FILING OF RETURN FOR Q-2 OF 2015-16

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION
PUBLIC NOTICE

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

This is to inform all the concerned that the last date of e-filing of VAT-15 for the 2nd Quarter of 2015-16 has been extended till 5th November, 2015.

Dated: 29th October, 2015

Excise & Taxation Commissioner,

Punjab

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ROBERT VADRA GETS HARYANA GOVT'S NOTICE FOR FLOUTING VAT NORMS

There seems to be no end to the worries of Congress chief Sonia Gandhi's son-in-law Robert Vadra as Haryana's BJP government, after appointing Justice Dhingra Commission, has now found a new loop hole in the controversial land deals. Also read: Govt withdraws Vadra's name from no-frisking list at airports Gurgaon wing of State's Excise and Taxation Department on Monday issued notices to Skylight Hospitality and others. Vadra has been asked to disclose the transactions related to:

1. The cost of the land sold to DLF
2. Value of the licence No KC 1868 sold to DLF
3. VAT deposited after selling land/licences

The notice issued to Skylight Hospitality said that the company was given a licence by The Town and Country Planning department to develop a commercial colony in Gurgaon. Later it was found that the company sold the licence at Rs 58 crore to DLF besides selling the land.

Source: http://indiatoday.intoday.in/story/robert-vadra-gets-haryana-govts-notice-for-flouting-vat-norms/1/503038.html

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PUNJAB CABINET AUTHORISES SUKHBIR BADAL TO DECIDE VAT RATES ON AUTOMOBILES

CHANDIGARH: The Punjab Cabinet meeting chaired by the Punjab Chief Minister Parkash Singh Badal here at Punjab Bhawan, this evening, authorized the Deputy Chief Minister, who was also the Excise and Taxation Minister, to take a decision regarding rationalizing the rates of VAT on automobiles in a manner that the existing diversion in trade/ sale of vehicles was rectified.

A spokesperson of the Chief Minister's office said that with a view to creating robust telecommunication infrastructure with adequate bandwidth to promote Information Technology, e-Governance, e-commerce and other services besides reducing call drops and also to improve quality of internet services, the Cabinet also gave nod to issue guidelines for grant of permission to install Telecom Towers/ Mats/ Poles and Right of Way Clearance for laying optical fibres cables etc. to registered telecom operators at Government buildings and lands, as per the approved policy of Government of India (GoI).

The Cabinet also decided to amend Rule 5 (1) and 5 (2) in the Punjab VAT (Incentives) Rules, 2013 and The Punjab VAT (Incentive for Expansion Projects) Rules 2015 and delete rule 2 (r) thereby conferring the power to determine the Fixed Capital Investment to Competent Authority cum CEO Invest Punjab. Earlier, this power was vested with the Inter Departmental Committee.

The Cabinet also gave ex-post facto approval to the notification dated June 30, 2015 issued by the Revenue department extending the period for another two months thereby enabling the property owners who could not get their property registered within the stipulated period. Likewise, the Cabinet also gave ex-post facto approval to a subsequent notification in which it was provided that if the conveyance deed of any such property could not be got registered within the stipulated periods due to any court case, in that case the said period shall recur from the date of decision or order of such court.

In order to streamline the administrative work in larger public interest, the Cabinet also gave approval for up-dation of the Punjab Civil Services Rules by accepting the amendments made thereof in accordance with the instructions issued from time to time.

The Cabinet also gave nod for reviving three posts of Drivers in the Fisheries department to ensure its smooth functioning.

Courtesy: Punjab News Express
20th October, 2015

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GST COMMITTEE REPORT ON RETURNS

The Government of India intends to introduce the Goods and Services Tax (GST) in the country at the earliest. GST seeks to subsume many indirect taxes at the Central and State level. The proposed dual GST envisages taxation of the same taxable event, i.e., supply of goods and services, simultaneously by both the Centre and the States.

The Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014, has been introduced in the Parliament for facilitating the introduction of GST in the country. Simultaneously, committees comprising of officers from the Central Government, as well as the State Governments, have been constituted for the drafting of Model CGST, SGST and IGST laws, and GST business processes of registration, refunds, returns and payments.

The draft Model CGST, SGST and IGST laws, shall be put up for inviting comments of stakeholders in due course. Presently, the draft business processes on GST returns, GST registration, GST refunds and GST payments are being published.

The **Report of the Committee on GST Returns** is available here. Comments and views are invited on these business processes by **6th November, 2015**. Users are requested to keep in mind the guidelines for posting their comments:

1. Please use the following hashtags for commenting on the report:
   a. #GSTReturns: for general comments.
   b. #GSTReturnsForms: for comments on proposed Returns Forms
2. Please restrict your comments to 500 characters. In case your comments exceed this limit, please upload your comments as a pdf document.

Source: https://mygov.in/sites/default/files/mygov_1445315831190667.pdf

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GINNERS THREATEN TO STOP COTTON PURCHASE FROM TODAY

Cotton ginners across the state will stop purchasing farmers' cotton and shut their business from tomorrow in case the Haryana government failed to accept their demand for reduction of VAT on cotton by then.

The Haryana Cotton Ginners Association (HCGA) has served ultimatum to the state government to either reduce VAT on cotton from 4.2 per cent to 2 per cent or ginners will stop purchasing cotton from farmers from Saturday.

"Haryana charges 5 per cent VAT (4.2 per cent against Form D -1) on cotton from the ginners when they purchase the crop from farmers. But when we sell our product in Punjab or other states (there are very few spinning mills in Haryana), we get back only 2 per cent as CST. Till last year, the Excise and Taxation Department refunded the excess VAT paid by us. However, this has been stopped by making an amendment to the Haryana VAT Act from this year, leaving us high and dry," alleged Sushil Mittal, state president of the HCGA.

"Punjab ginners are able to recover 100 per cent of the VAT paid by them since the state has a large number of textile mills. However, Haryana where there are hardly two or three mills, 90 per cent of our cotton bales go to other states against 2 per cent central sales tax (CST), causing us a loss of 2.2 per cent," said Gurpreet Singh Nagpal, general secretary of the Sirsa District Cotton Ginners Association.

Mittal said that on September 28, a deputation of the HCGA met Chief Minister Manohar Lal Khattar and Agriculture Minister OP Dhankar .

"While, the government immediately accepted our demand for reduction of market fees to bring it at par with that in the neighbouring states, we were assured that VAT would also be reduced soon," he said. However, the government was yet to reduce VAT.

Courtesy: The Tribune

24rd October, 2015

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ETO, INSPECTOR HELD IN BARNALA BRIBERY CASE

BARNALA: The vigilance bureau (VB) arrested an excise and taxation officer (ETO) and a tax inspector on Friday here on the charges of accepting Rs.40,000 as bribe.'

The trap was laid on the complaint of Raghbir Singh of Raiser village, whose iron store ETO Shakuntla Devi had inspected recently and taken away the accounts books from. Bureau inspector Manjit Singh said tax inspector Gurmeet Kumar and she had demanded Rs. 50,000 initially from the complainant as bribe to save him from paying a hefty penalty but settled for Rs.40,000.

Shakuntla Devi and Gurmeet Kumar were caught from their office in the district administrative complex and a case under Sections 7 (accepting of graft by a public servant) and 13 (criminal misconduct by a public servant) of the Prevention of Corruption act registered against them.

Courtesy: The Hindustan Times

24th October, 2015

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NO REVISED RETURNS PERMITTED UNDER GST

MUMBAI: The proposed Goods and Service Tax (GST) mechanism will not permit any revision of GST returns, which may create some challenges for taxpayers. Currently, both service tax and value added tax (VAT) laws permit revision of the tax returns that have been filed. In other words, taxpayers can file a fresh return to correct any mistakes that have been made in a previous return submitted by them.

The report covering the topic "GST returns", recently released by the joint committee on business processes for the proposed GST legislation, calls for filing of returns by all registered taxpayers even if there has been no business activity during the period covered by the return. Such taxpayers will have to file a 'nil' return. GST returns will be allowed to be uploaded in the system, even in case of short payment of tax, for the limited purpose of having the information about self-assessed tax liability on record. However, from the taxpayer's perspective, such returns will be regarded as 'invalid' returns.

Bipin Sapra, indirect tax partner at EY, says, "As a return cannot be revised, it means that the taxpayers would need to have an extremely robust mechanism to record correctly the details of invoices, revenue, input invoices and other data in the original return itself. Taxpayers will have to strengthen their compliance and reporting processes and controls."

While the report does away with revised returns, it proposes that all under-reported invoices (sales) and input tax credit revisions will have to be corrected using credit or debit adjustments in the GST return for the subsequent period. Interest, if any, which is payable by the taxpayer, will be auto computed by the system.

Malini Mallikarjun, indirect tax partner at BMR Associates, adds, "The report mentions that adjustment of lower tax payments are to be corrected in the subsequent periods. Effectively, the need for return revision in this scenario is negated. Further, excess tax payment in a given period was said to be adjustable against taxes payable in a subsequent period, as per the earlier GST reports. So this provision on return revision may not be as impactful as it sounds. However, some of the details around how the adjustments get reflected in subsequent period and the efficacy of the technological platform for the same still needs to be ascertained."

The return filing formalities are proposed to be increased, both in terms of periodicity and number of forms. "For example, a service taxpayer, covered by the Central service tax legislation, is currently required to file only a half yearly return.For service taxpayers, the burden will increase manifold -in terms of periodicity of returns, number of return formats, multiplicity of compliances for separate registrations and levels of details that are required to be filled in," explains Sapra. "As per the proposal, different forms will have to be filed on a monthly basis -forms have to be filed for details of outward supplies, inward supplies and a monthly consolidated form. In addition, an annual return will also need to be filed," he adds.

Mallikarjun says, "While the current regime requires only bi-annual return for service tax, and mostly quarterly or yearly returns for VAT, the GST report seems to require companies to file three returns every month in every state that they operate in. Over and above this, there are returns for distributing credit across locations and also annual returns. Clearly, this is onerous and needs a rethink."

Courtesy: The Times of India

22nd October, 2015

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'SIN TAX' FOR ALCOHOL, TOBACCO INDUSTRIES IN GST REGIME

NEW DELHI, OCT 25: Alcohol and tobacco industries will have to pay more taxes towards an additional 'sin tax' under the proposed GST structure that seeks to bring in a uniform indirect tax regime across the country.

"We have kept a provision of having an additional tax for the sinful industries such as alcohol and tobacco," a senior Finance Ministry official said.

However, the official did not specify the rate at which this tax would be levied under the proposed GST regime.

'Sin tax' is a globally prevalent practice under which products like alcohol and tobacco attract higher rates of tax.

Typically, 'sin tax' is an excise tax that is levied on products and services considered to be bad for health or society such as alcohol, tobacco and gambling. These additional taxes are also seen as efforts to discourage people from use of such products or services.

Besides, such taxes are often the most common measures by the governments to shore up their tax revenues as people generally refrain from opposition to such levies as they are indirect in nature and affect only their end users.

The Finance Ministry is currently seeking inputs from the industry and other stakeholders at national, state and local levels on the Goods and Services Tax (GST) law.

"Everybody is getting a chance to interact with us so that they get a clarity on the concept and the business processes, which we are in the process of finalising," the official added.

"If we find there are some gaps or areas of concerns, we will certainly look into those areas. Nothing has been frozen so far and all these proposals are drafts as of now.

"We are waiting for the comments and suggestions and we will be going through all suggestions from the industry. After making necessary changes based on those suggestions, a final report would be placed before the GST council before the final GST law is framed," the official added.

GST is being seen as one of the biggest tax reforms in the country. While the Constitution Amendment Bill to roll out the law has been passed in Lok Sabha, it is awaiting clearance from the Rajya Sabha where the ruling NDA lacks a majority.

The government is meanwhile undertaking the preparatory work necessary for GST implementation, which will subsume various taxes like excise, service tax, sales tax, octroi, etc, and will ensure a single indirect tax regime.

Courtesy: The Hindu Business Line

26th October, 2015

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EXCISE AND TAXATION DEPARTMENT TO HONOUR HIGHEST TAXPAYERS

CHANDIGARH: The UT excise and taxation department with an aim to encourage more and more people to come forward for paying the value-added tax (VAT) returns has decided to honour the highest taxpayers in the city.

The department has come out with a proposal to honour the traders or members of the business community who are the highest taxpayers as per die VAT Act prevalent in die city.

The Last date for depositing the tax is October 30. After the last date, department will compile the data and review the tax files. The sources in the department said the officials will check how many traders or manufacturers filed VAT returns. The department will also see how many paid tax after making value addition. After reviewing the figures, the excise department will come out with the names of highest taxpayers. The initiative is being taken on the directions of UT deputy commissioner SBDeepak Kumar The sources in die administration said after tabulating the data die highest taxpayer will be honoured by the year end.

Meanwhile, the excise department is also going to act tough against the VAT defaulters. The department has constituted different teams to check the defaulters. The additional excise and taxation commissioner. Ravinder Kaushik. said. “A report of all the returns being filled is being prepared. The department will send notices to defaulters and will also impose fine.”

City-based advocate Ajay Jagga said. "Anything, which can help in generating more revenue is a welcome step. With this initiative, there is a likelihood of traders coming forward to get honoured and filing their accurate VAT returns in time.”

Courtesy: The Hindustan Times

26th October, 2015

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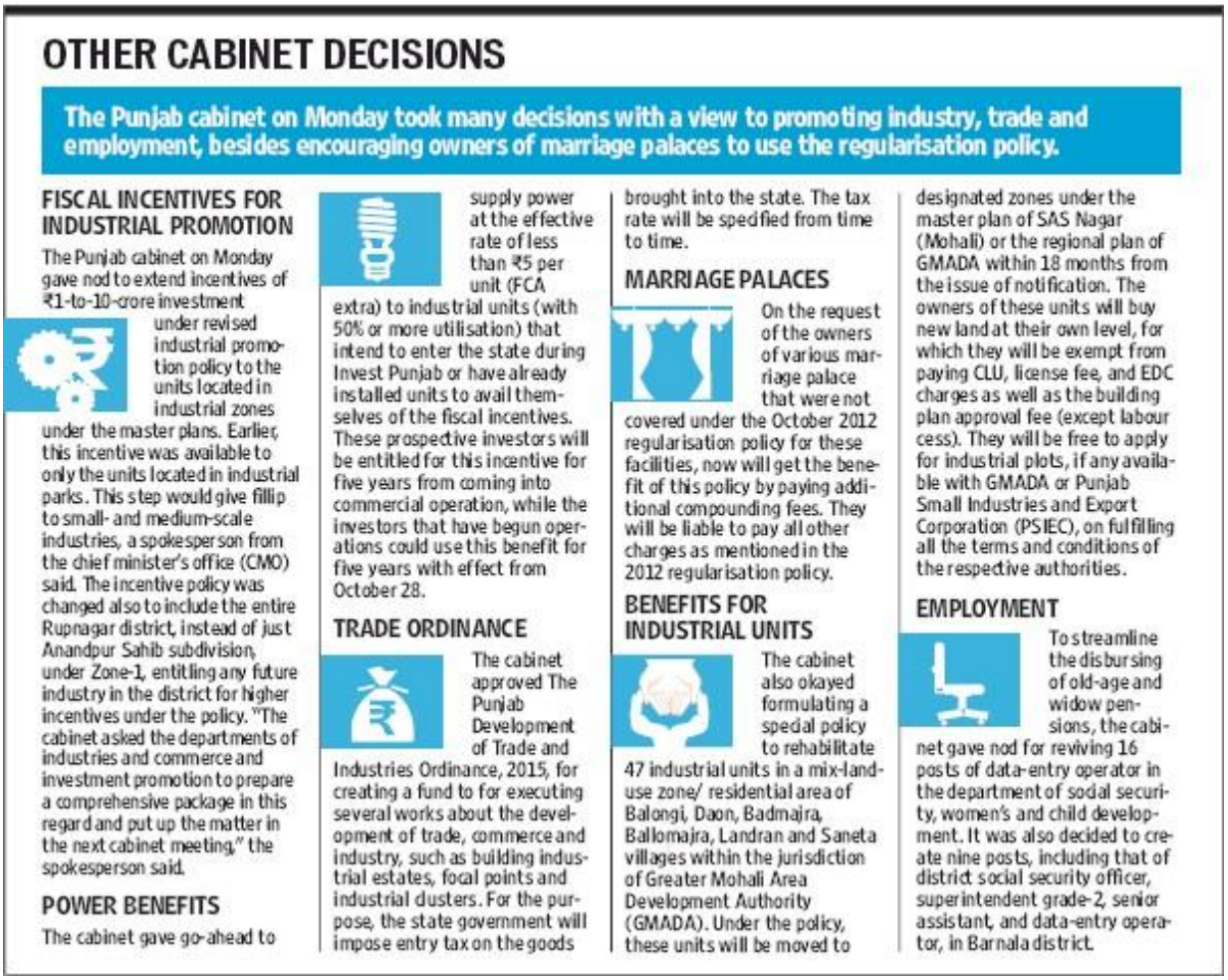
TWO-YEAR SERVICE EXTENSION FOR PUNJAB GOVT STAFFERS TO CONTINUE

Employees to get post-retirement benefits — gratuity, pension and PF — after finishing extension period

CHANDIGARH: The Punjab cabinet on Monday decided to continue its three-year-old policy of giving two-year extension to the employees after they superannuate at the age of 58 years, putting at rest the widespread speculations that the Parkash Singh Badal government was likely to withdraw the decision.



OTHER CABINET DECISIONS

The Punjab cabinet on Monday took many decisions with a view to promoting industry, trade and employment, besides encouraging owners of marriage palaces to use the regularisation policy.

FISCAL INCENTIVES FOR INDUSTRIAL PROMOTION

The Punjab cabinet on Monday gave nod to extend incentives of ₹1-to-10-crore investment under revised industrial promotion policy to the units located in industrial zones under the master plans. Earlier, this incentive was available to only the units located in industrial parks. This step would give fillip to small- and medium-scale industries, a spokesperson from the chief minister's office (CMO) said. The incentive policy was changed also to include the entire Rupnagar district, instead of just Anandpur Sahib subdivision, under Zone-1, entitling any future industry in the district for higher incentives under the policy. "The cabinet asked the departments of industries and commerce and investment promotion to prepare a comprehensive package in this regard and put up the matter in the next cabinet meeting," the spokesperson said.

POWER BENEFITS

The cabinet gave go-ahead to supply power at the effective rate of less than ₹5 per unit (FCA extra) to industrial units (with 50% or more utilisation) that intend to enter the state during Invest Punjab or have already installed units to avail themselves of the fiscal incentives. These prospective investors will be entitled for this incentive for five years from coming into commercial operation, while the investors that have begun operations could use this benefit for five years with effect from October 28.

TRADE ORDINANCE

The cabinet approved The Punjab Development of Trade and Industries Ordinance, 2015, for creating a fund to for executing several works about the development of trade, commerce and industry, such as building industrial estates, focal points and industrial clusters. For the purpose, the state government will impose entry tax on the goods brought into the state. The tax rate will be specified from time to time.

MARRIAGE PALACES

On the request of the owners of various marriage palace that were not covered under the October 2012 regularisation policy for these facilities, now will get the benefit of this policy by paying additional compounding fees. They will be liable to pay all other charges as mentioned in the 2012 regularisation policy.

BENEFITS FOR INDUSTRIAL UNITS

The cabinet also okayed formulating a special policy to rehabilitate 47 industrial units in a mix-land-use zone/ residential area of Balongi, Daon, Badmajra, Ballomajra, Landran and Saneta villages within the jurisdiction of Greater Mohali Area Development Authority (GMADA). Under the policy, these units will be moved to designated zones under the master plan of SAS Nagar (Mohali) or the regional plan of GMADA within 18 months from the issue of notification. The owners of these units will buy new land at their own level, for which they will be exempt from paying CLU, license fee, and EDC charges as well as the building plan approval fee (except labour cess). They will be free to apply for industrial plots, if any available with GMADA or Punjab Small Industries and Export Corporation (PSIEC), on fulfilling all the terms and conditions of the respective authorities.

EMPLOYMENT

To streamline the disbursing of old-age and widow pensions, the cabinet gave nod for reviving 16 posts of data-entry operator in the department of social security, women's and child development. It was also decided to create nine posts, including that of district social security officer, superintendent grade-2, senior assistant, and data-entry operator, in Barnala district.

However, a new feature of the policy is that the employees will get post-retirement benefits --gratuity, pension and provident fund — only after the completion of their extension period.

Also, government employees seeking extension will only get the last salary drawn on attaining superannuation plus the Dearness Allowance (DA), sources told Hindustan Times.

"The cabinet has decided that government employee seeking extension would not be eligible for any promotion and annual increment during the extension period," said a government spokesperson in a press statement.

The employees opting for the voluntary extension in service will also not be entitled for benefits, if any, under the new pay scale. Nor they will come under the ambit of the next pay commission recommendations. Also, such employees will be barred from seeking benefit of assured career progression scheme (ACP or 4-9-14)

"The government has tweaked the policy slightly and will save Rs.1,250 crore per annum," a key government functionary said.

By this move, the cashstrapped SAD-BJP government has again attempted to defer the payment of retiral benefits. Due to the continuous precarious fiscal health, the state government has been trying to defer the liabilities and save some money, which otherwise, had to be released to the retiring employees in the form of gratuity and provident fund.

At the core of Punjab government's decision to give service extension to employees is the worrying issue of salary, wages and pension bill that is proving to be a huge burden. As per official figures, over Rs.21,000 crore is the annual salary, wages and pension bill. This eats up bulk of the state's revenue receipts as near Rs. 20,000 crore comes from the VAT which is the biggest source of revenue for the government. It was in September 2012 that the government decided to offer an option of re-employment for the period of one year to all its retiring employees. Later, it was extended to two years.

There were reports doing the rounds that government could reverse the decision in view of the impending pay commission in January 2016.

Courtesy: The Hindustan Times (Chandigarh)

27th October, 2015

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HELD FOR ASSAULTING ETO, BADAL RESIDENT FLEES

Excise officials question role of police in his escape, threaten to launch agitation

PATIALA: The role of the state police has come under the scanner for allegedly helping a Badal village resident accused of excise evasion and kidnapping and assaulting an official.

The accused had allegedly threatened and assaulted an Excise and Taxation Officer (ETO) and kidnapped him at gunpoint from Killianwali excise barrier in Muktsar.

Rishi Kumar, the ETO, in his complaint, alleged he was on duty near Killianwali on Saturday when he stopped a vehicle carrying smuggled goods. "Suddenly a car stopped nearby and the occupants — Ranjit Singh, Kuljit Singh and Joginder Singh — started thrashing me. They took me to Haryana in my vehicle. All throughout the way, I was slapped and threatened. Ranjit Singh boasted of his political connections," Rishi Kumar said.

"The accused took me to Dabwali police station in Haryana and threatened to lodge a case against me. I was saved following the intervention of my senior officers," reads the FIR.

The FIR under Sections 332 (voluntarily causing hurt to public servant on duty), 342 (punishment for wrongful confinement), 353 (assault), 186 (obstructing public servant in discharge of his duty), 367 (kidnapping to subject the person to grievous hurt) and various sections of The Arms Act was registered against the three accused.

Ranjit was arrested, but reportedly fled from the police custody. "Since Ranjit, who hails from the Badal village, enjoys immense political clout. He was rounded up only to be let off," Rishi Kumar alleged.

"Ranjit was arrested, but he managed to flee following which three policemen have been suspended," said Kuldip Singh Chahal, Senior Superintendent of Police, Muktsar.

He refuted allegations that the police were going soft on the accused due to his political background.

"A delegation of taxation officers recently met me on the matter. We will soon arrest the accused," the SP said.

Senior taxation officials said they would launch a protest if the Muktsar police failed to arrest the three accused.

Courtesy: The Tribune

27th October, 2015

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ZERO TAX TO FETCH RS 8,000 CR IN FOOD PROCESSING SECTOR

55 investors from across the country and abroad sign pact with state govt

MOHALI : The "zero tax" announcement on new food processing units by Deputy Chief Minister Sukhbir Badal managed to bring in Rs 8,000 crore investment for the state on the first day of the summit here.

The state government announced that a total of 55 investors from across the country and abroad had signed memorandums of understanding (MoUs) with them for investments to the tune of Rs 8,000 crore. The MoUs were signed in the presence of Union Food Processing Minister Harsimrat Kaur Badal.

The minister said the investment would help boost the economy in the state, which already contributed more than 40 per cent of the central procurement of wheat, 26 per cent of the central procurement of rice, 75 per cent of the total production of kinnows and oranges and 7.5 per cent of the total milk production in the country.

Harsimrat said the new investments in the sector would also help in creating a large number of jobs.

"The zero tax move for new food processing units is definitely a big step, which will attract more investments in the near future," said an industrialist.

Earlier, the first day of the summit witnessed eight technical sessions. The technical session on manufacturing focused on reducing the cost of manufacturing, pooling research and development costs, besides exploiting the emerging e-commerce platform for global marketing.

The delegates did a brainstorming on building a robust value chain for new-age manufacturing – Industrial clusters with services for high-end design, prototyping, 3D printing.

In technical session on health and medical care, the delegates stressed the need to exploit the potential with the opening of the India-Pakistan border on the Attari side.

Delegates from both within the country and abroad said with the health infrastructure in Pakistan and Afagnistan crumbling, Punjab through the Attari route could promote medical tourism in the country.

In the technical session on aerospace and defence, delegates focused on the theme "New growth drivers for manufacturing'.

The session on tourism unveiled a unique model of "Farm tourism" that is providing unique opportunity to city residents and non-resident Indians to enjoy the rural environment, living in a rural home enjoying the lush green environments of farms, besides tasting wood-oven baked delicious Punjabi dishes.

Courtesy: The Tribune

29th October, 2015

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PUNJAB EXEMPTS INPUTS OF FOOD PROCESSING SECTOR FROM TAXES

MOHALI: The Punjab government on Wednesday announced exempting inputs of food processing sector from taxes to make the state a sectoral hub as it signed 376 pacts worth Rs 1.12 lakh crore during the second edition of the Progressive Punjab Investors Summit here.

"We have today decided not to impose any tax like purchase tax, value added tax and CST on inputs of food processing sector," Punjab Deputy Chief Minister Sukhbir Singh Badal said while addressing investors summit here today.

The announcement was applauded by ITC Chairman Y C Deveshwar who announced doubling investments in the state.

"My wife is Food Processing Minister. Why should Punjab sell only wheat. Why cannot we sell bread, biscuit. I want to make Punjab as food processing hub of India," Badal noted.

Later, Punjab Chief Minister Parkash Singh Badal said the agro-based industry would get a new lease of life with today's announcement of doing away with VAT, CST and other taxes on agro processing industry.

In a lighter vein, he asked his son Sukhbir, "whether it (exemption from taxes) is done out of threat of his wife (Harsimrat Kaur Badal who is union food processing industry minister)."

This is the second major decision taken by the SAD-BJP led state government after offering power to new investors at Rs 4.99 per unit for five years to boost new investments in the state.

"We are offering power at Rs 4.99 per unit to you for 5 years with no escalation," the Deputy CM said during his presentation, adding that his government wanted to turn the state best investment destination in the country.

Out of 376 MoUs singed with Punjab government, ITC announced doubling its investment to Rs 1,400 crore while Hero Reality and DLF committed to pump in Rs 700 crore, and Rs 9,200 crore, respectively in the state.

Courtesy: Daily News Analys

28th October, 2015