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March 2015

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NEWS OF YOUR INTEREST

PUNJAB CABINET DECISIONS ON VAT 47

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 5 OF 2010

STATE OF PUNJAB AND ANOTHER
Vs.
T.R. INDUSTRIES

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ.

30th October, 2013

HF ▶ Respondent-dealer

PENALTY – ATTEMPT TO EVADE TAX – GOODS IN TRANSIT INTERCEPTED – G.R. SHOWING DESTINATION AS MANDI GOBINDGARH FROM MOGA – INVOICE SHOWING DESTINATION AS DELHI – GOODS DETAINED AND PENALTY IMPOSED SUSPECTING TAX EVASION – EVIDENCE PRODUCED BY DEALER SHOWING EARLIER SALES TOO ROUTED THROUGH MANDI GOBINDGARH TO SAVE FREIGHT CHARGES TAKEN INTO CONSIDERATION – DOCUMENTS FOUND COMPLETE IN ALL RESPECTS BY TRIBUNAL - ICC RECORDS SHOWING EARLIER TRANSACTIONS BEING DULY REPORTED AT BARRIER WHILE LEAVING THE STATE – PENALTY DELETED - APPEAL BY REVENUE TO HIGH COURT – ON BASIS OF FINDINGS RECORDED BY TRIBUNAL, HIGH COURT HELD NO PERVERSITY FOUND AGAINST DEALER – NO GROUND FOR INTERFERENCE – APPEAL DISMISSED.

The dealer had sent a consignment of goods from Moga to Delhi. The GR was produced before the Designated Officer. As the GR showed destination as Moga, whereas invoice showed destination as Delhi, goods were detained and penalty was imposed u/s 51(7)(b). On appeal before Tribunal, it was argued that the goods were routed through Mandi Gobindgarh to save freight charges. Documents showing previous sales made in the same way were produced. Copies of ICC declarations were also produced to show that the goods were duly reported at the barrier while leaving the State. Documents in question were found complete in all respects. Therefore, penalty was deleted. On appeal before High Court by Revenue, the court observed that no perversity could be found against the dealer as per the findings recorded by the Tribunal. Finding no ground for interference, the court has dismissed the appeal.

Present: Mr. N.K. Verma, Senior DAG, Punjab, for the appellants.
Mr. K.L. Goyal, Senior Advocate with
Mr. Sandeep Goyal, Advocate for the respondent

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AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the State under Section 68(2) of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 22.5.2009 (Annexure A3) passed by the Value Added Tax Tribunal, Punjab, Chandigarh (hereinafter referred to as "the Tribunal"). The appeal was admitted vide order dated 17.5.2010 for consideration of questions No. II and III which are as under:

> *"II. Whether the Tribunal has rightly interpreted the provisions of Section 51(7)(b) of the VAT Act, 2005 which provides for imposition of penalty when an attempt to evade the tax is proved and the AETC has imposed penalty by holding that it was the case of reuse of the invoice?*
>
> *III. Whether the penalty was rightly imposed under Section 51(7)(b) of the Act on the consigner who has reused the invoice?"*

2. The facts necessary for adjudication of the present appeal as narrated therein are that the assessee sent a consignment of Steel Pipes and Tubes from Moga to Mandi Gobindgarh through truck No. PB10P9945 with invoice No. 238 dated 09.01.2007 for sale to M/s National Steel Tubes, Naraina, Delhi along with GR No. 3003 dated 09.01.2007 of M/s Swarn Goods Carrier, Moga. The vehicle loaded with the goods was checked by the Designated Officer, Fatehgarh Sahib on 11.1.2007 at 6.00 AM at Mandi Gobindgarh. After verification, it was found that the tax was being evaded. Accordingly, the documents and the goods were detained under Section 51(6)(a) of the Act and notice was issued to the owner of the goods. On 25.1.2007, the Detaining Officer sent the case to the Assistant Excise and Taxation Commissioner, Fatehgarh Sahib for taking action under Section 51(7)(b) of the Act who vide order dated 25.1.2007 (Annexure A1) imposed a penalty of ` 1,08,052/holding that an attempt to evade the tax was made. Feeling aggrieved, the assessee filed an appeal under Section 62 of the Act before the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana Division, Ludhiana. The said appeal was dismissed vide order dated 30.4.2008 (Annexure A2). Against the order dated 30.4.2008 (Annexure A2), the assessee approached the Tribunal by way of an appeal. The Tribunal vide order dated 22.5.2009 (Annexure A3) allowed the appeal holding that neither the documents were ingenuine nor an attempt was made to evade tax. Hence, the present VAT appeal.

3. Learned State counsel submitted that there was an attempt to evade tax on the part of the respondent assessee and, therefore, the penalty imposed under Section 51(7)(b) of the Act amounting to Rs. 1,08,052/vide order dated 25.1.2007 by Assistant Excise and Taxation Commissioner, Fatehgarh Sahib and upheld by the Deputy Excise and Taxation Commissioner (Appeal) vide order dated 30.4.2008 was justified. The Tribunal while reversing the said orders had decided the appeal against the material on record. Learned State counsel contended that the assessee had sent consignment of steel pipes and tubes from Moga to Mandi Gobindgarh through Truck No. PB10P9945 with Invoice No. 238 dated 9.1.2007 showing sale to M/s National Steel Tubes, Naraina, Delhi along with GR No. 3003 dated 9.1.2007 of M/s Swarn Goods Carrier, Moga in which the names of the consignor and the consignee were as in the invoice but destination instead of Delhi was shown from Moga to Mandi Gobindgarh. It was argued that the invoice clearly specified destination from Moga to Mandi Gobindgarh whereas the goods were said to be sent for a dealer at Delhi. According to the learned counsel, the goods having been intercepted at Mandi Gobindgarh, the said defence was taken by the assessee whereas the goods were meant for sale in Mandi Gobindgarh and thereby an effort was there to evade payment of VAT which was payable in the State of Punjab.

4. On the other hand, learned counsel for the respondent assessee submitted that the Tribunal on appreciation of material had recorded a finding and this Court in appeal under Section 68 of the Act would not disturb the finding of fact unless it was shown to be erroneous or perverse. It was argued that the goods were booked from Moga for Delhi via Mandi Gobindgarh as the freight by adopting the aforesaid process was less about Rs.7,000/. It was to remain competitive in the market that this system was adopted. It was contended that on earlier occasion as well in 2006 similar *modus operandi* adopted was accepted.

5. After hearing learned counsel for the parties and perusing the record, we do not find any merit in the appeal. The Tribunal after appreciating the material had come to the following conclusion:

> *"On behalf of the appellant, copies of documents of earlier sales of the parties in Jaipur on 22.06.2006 were shown. In that case also the GR was of Mandi Gobindgarh and then there was another GR from Mandi Gobindgarh to Jaipur and it was mentioned there even. There the goods had been loaded after uploading from another truck, the freight charges was Rs.2500/from Moga to Mandi Gobindgarh, Rs.8000/from Mandi Gobindgarh to Jaipur. There was another bill also dated 02.09.2006 for sale to a party of Jaipur where again there was GR from Moga to Mandi Gobindgarh. Copies of ICC declarations had also been filed to show that the goods earlier set on 02.09.2006 had actually been declared at the ICC while leaving the State of Punjab in the other truck, in which these transactions were being shown as intrastate sale and even C forms were obtained. It was contended on behalf of the appellant that if the goods were to be sold under hand in Mandi Gobindgarh, then these could be sold on 09.01.2007 itself and there was no need to wait another truck for unloading from the earlier truck and then loading in the other truck, from Mandi Gobindgarh to Delhi. The fact remain that bill number, value of goods and name of consignor and consignee with TIN number had been mentioned in the GR. Similarly the GR number and date of the GR was mentioned in the invoice which the driver had produced immediately on interception. Word 'Home Delivery' written in the GR does not assume much importance as the GR was only from Moga to Mandi Gobindgarh and consignee was to Delhi. The goods were 11 ton 970 kgs., and even if the dealer saves Rs.2000/or 3000/in freight while sending the goods, the difference may be Rs.200/and Rs.300/per ton and may be significant for quoting rates etc. for sale of goods.*
>
> *In the facts and circumstances of the case, it cannot be said that either the documents were not genuine or there was an attempt to evade tax, on the part of the appellant."*

6. From the above, it emerges that the bill number, value of goods, names of consignee and consignor were mentioned on the GR. The destination of goods was from Moga to Delhi via Mandi Gobindgarh in order to reduce the freight charges to remain competitive in the market. In such circumstances, the Tribunal recorded that there was no attempt to evade tax and the documents could not be said to be ingenuine. The aforesaid finding of fact in which no perversity could be pointed out, no ground for interference by this Court is called for. Accordingly, the substantial questions of law are answered against the appellants State and in favour of the assessee. Finding no merit in the appeal, the same is hereby dismissed.

PUNJAB & HARYANA HIGH COURT

VATAP No. 16 of 2012

LG ELECTRONICS INDIA PVT. LIMITED
Vs.
STATE OF PUNJAB AND ANOTHER

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ.

3th December, 2013

HF ▶ Appellant-Dealer

PENALTY – ATTEMPT TO EVADE TAX – CHECK POST – CLERICAL MISTAKE IN DOCUMENTS – GOODS (TV SETS) MEANT FOR BRANCH TRANSFER FROM NOIDA TO LUDHIANA IN TRANSIT – DOCUMENTS VOLUNTARILY PRODUCED AT ICC – ONE OUT OF TWO INVOICES BEARING DESTINATION CODE INDICATING DESTINATION AS LUCKNOW INSTEAD OF LUDHIANA – GOODS DETAINED – PENALTY IMPOSED U/S 51 – ERROR CONTENDED TO HAVE OCCURRED DUE TO CLERICAL COMPUTER MISTAKE – CLERICAL MISTAKE DUE TO LUD BEING TYPED AS LUC – ALLOWING THE APPEAL, INADVERTENT MISTAKE HELD TO HAVE OCCURRED ON PART OF APPELLANT – VOLUNTARY FURNISHING OF COMPLETE DOCUMENTS ALONGWITH PACKING LIST AT THE ICC TAKEN INTO ACCOUNT - NO TAX LIABILITY AT THE STAGE OF ENTRY GOODS INTO PUNJAB – TRIBUNAL TAKING TWO DIFFERENT VIEWS IN SIMILAR CIRCUMSTANCES WITHOUT ANY JUSTIFICATION – PENALTY DELETED.

The appellant had sent goods for branch transfer from its head office at Greater Noida to Ludhiana. The consignment consisted of 184 TV Sets. The documents were voluntarily produced at the ICC consisting of two invoices and a consolidated GR. Out of the two invoices, one meant for 23 TV Sets had the destination Code as Lucknow. The goods were detained and penalty u/s 51 was imposed on the ground that there was no invoice for 23 colour TV Sets. The appeals before the Ld. DETC and the Tribunal were dismissed. The explanation tendered by the appellant was that it was a clerical mistake. Instead of LUD (Code for Ludhiana), LUC was typed due to computer mistake. The Hon'ble High court found the explanation bonafide as complete set of documents, GR and packing list had been voluntarily produced at the ICC. Moreover, at the stage of entry into the State of Punjab, no tax liability had arisen as the goods were coming to the branch in Ludhiana from Noida. The Tribunal had taken different view from the one taken in an earlier decision in similar circumstances without giving any justification. Therefore, the penalty was deleted.

Present: Mr. Sandeep Goyal, Advocate for the appellant.
Mr. N.K.Verma, Sr.DAG, Punjab

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AJAY KUMAR MITTAL,J.

1. This appeal has been preferred by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated 28.11.2011, Annexure A.7, passed by the Value Added Tax Tribunal, Punjab, Chandigarh (in short, "the Tribunal") in Appeal No.59 of 2011. It was admitted on 5.9.2012 to consider following substantial questions of law:

> *"i) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the penalty under Section 51(7) (b) merely on account of clerical mistake in the documents which were produced voluntarily at ICC, without establishing any attempt to evade the tax?*
>
> *(ii) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in not following its own judgment on the similar issue despite the fact that it was delivered by the same Member?"*

2. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The assessee is a private limited company manufacturing Electronic goods, colour TV, air conditioners and refrigerators in India and has country wide network with branches including the one at Ludhiana. It also sends the goods on stock transfer basis to various branches from its head office at Noida. It sent 184 sets of colour TV to its Ludhiana branch on stock transfer basis. The driver of the vehicle produced the documents at ICC Shambu (Import). The officer on duty detained the goods on the ground that no invoice for 23 number of TV sets meant for Ludhaina was accompanying the goods. In response to the detention notice, the representative of the assessee appeared before the officer and submitted that the goods were meant for Ludhiana but the address of consignee firm was wrongly mentioned as the Code in the computer was selected as "LUC" instead of "LUD" but there was no intention to evade tax. The Assistant Excise and Taxation Commissioner (AETC) after considering the matter vide order dated 2.12.2009, Annexure A.4 imposed penalty of ` 1,04,390/under Section 51(7) (c) and ` 26098/under Section 51(12) of the Act on the ground that there was attempt to evade the payment of tax as no invoice for 23 sets of TV was being carried by the driver of the vehicle. Aggrieved by the order, the assessee filed an appeal before the Deputy Excise and Taxation Commissioner (DETC). Vide order dated 2.11.2010, Annexure A.5, the appeal was dismissed. Still not satisfied, the assessee filed appeal before the Tribunal. Vide order dated 28.11.2011, Annexure A.7, the appeal also met the same fate. Hence the present appeal by the assessee.

3. Learned counsel for the appellant submitted that two invoices No. 10137174 and 10137172 dated 13.11.2009 (Pages 11/A and 12/A of the paper book) had been sent by the appellant alongwith the goods. Through the second invoice i.e. 10137172, 23 colour TV sets had been sent from its office at Greater Noida to Ludhiana but due to mistake in the computer, the destination was mentioned as Lucknow whereas the GR which was sent alongwith the invoice showed the destination as Ludhiana.

4. On the aforesaid premises, it was argued that in case there was attempt to evade tax, the appellant would not have furnished invoice 10137172 for Rs. 2,08,780/ relating to 23 colour TVs being sent from Greater Noida to Ludhiana. It was also urged that the same member of the Tribunal in his earlier decision in *M/s Karwa Consolidated Marketing Limited v. State of Punjab,* Appeal No.142 of 2011 decided on 12.9.2011, Annexure P.8, following *State of Punjab v. Whirlpool India Limited, Zirakpur, District Mohali, (*2009) 34 PHT 125 (PVT) under similar circumstances, had held the dealer not to be liable for penalty.

5. On the other hand, learned counsel for the respondents besides supporting the order passed by the Assessing authority as affirmed by the first appellate authority and the

Tribunal submitted that the penalty was rightly levied as there was attempt on the part of the dealer to evade tax in as much as in Invoice No.10137172, the destination was shown as Lucknow whereas the goods had been sent to Ludhiana.

6. Amended substantial questions of law were filed by the appellant which are as under:

> *"i) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in upholding the penalty under section 51(7) (b) on account of deficiency in the documents with regard to correct name and address of consignee, despite the fact that documents were produced voluntarily at the ICC, which rules out any evasion of tax?*
>
> *ii) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in not following its own judgment on the similar issue despite the fact that it was delivered by the same member?"*

7. After hearing learned counsel for the parties, we find force in the submissions made by learned counsel for the appellant. The explanation furnished by the appellant appears to be bonafide and under the circumstances, it cannot be said that there was any attempt to evade tax. The goods in question were transported from Greater Noida to Ludhiana whereas in the documents, it was mentioned as Lucknow. The appellant had submitted that the Code mentioned in the computer for Lucknow was 'LUC' whereas for Ludhiana it was 'LUD'. It was by mistake that 'LUC' was pressed and printed instead of 'LUD' and therefore inadvertent mistake had occurred. The appellant had produced the following documents before the ETO on duty:

> "1.Invoice No.10137174 dated 13.11.2009 for `1255154 issued by M/s L.G.Electronics India Pvt. Limited Greater Noida in favour of M/sL.G.Electronics India Pvt. Limited, Ludhiana.
>
> 2. Invoice No.10137172 dated 13.11.2009 for `208780 issued by M/sL.G.Electronics India Pvt. Limited greater Noida in favour of M/s L.G. Electronics India Pvt. Limited. Central Warehousing Corporation, Sitapur Road, Lucknow.
>
> 3. G.R. No. 146715 dated 14.11.2009 of M/s Coastal Roadways Limited, Kolkata from Greater Noida to Ludhiana.
>
> 4. Packing list.''

If there was intention on the part of the appellant to evade tax, it would not have voluntarily furnished Invoice No.10137172 for Rs.2,08,780/in respect of 23 Colour TVs which were dispatched from Greater Noida to Ludhiana. It was not disputed that the driver of the vehicle had presented both the invoices i.e. No.10137174 and 10137172 in respect of the goods amounting to Rs. 12,55,154/ and Rs. 2,08,780/respectively. One consolidated GR No.146715 from Greater Noida to Ludhiana alongwith the packing list was also presented. In such circumstances, it could not be said that there was an attempt to evade tax. Moreover, there was no tax liability at the stage of entry of goods in the State of Punjab as they were coming from Greater Noida to the branch at Ludhaina. The Tribunal had taken different view from the one as had been taken in *M/sKarwa Consolidated Marketing Limited*'s case (supra) under similar circumstances without giving any reasons. No justification has been pointed out for adopting different approach.

8. In view of the above, the substantial questions of law are answered in favour of the assessee and against the revenue. The appeal stands allowed.

PUNJAB & HARYANA HIGH COURT

VATAP NO 1 OF 2009

INTERNATIONAL TRACTORS LTD.
Vs.
STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ.

9th April, 2014

HF ▶ Revenue

SURCHARGE – EXEMPTED UNIT – SECTION 30-AA PGST ACT – ASSESSMENT FRAMED FOR YEAR 2003-04 – LEVY OF SURCHARGE CALCULATED AS TAX PAYABLE AND REDUCED FROM EXEMPTION LIMIT – ORDER UPHELD BY TRIBUNAL HOLDING SURCHARGE TO BE CALCULATED ON TAXABLE TURNOVER FOR EXEMPTED UNITS – APPEAL BEFORE HIGH COURT AGAINST INCLUSION OF SURCHARGE IN ABSENCE OF SECTION 30-AA – HELD THAT UPTO 2002, SURCHARGE WAS SEPARATELY PAYABLE DESPITE EXEMPTION AS PER SECTION 30-AA PGST ACT – IN ABSENCE OF ANY SPECIFIC PROVISION, ASSESSEE NOT ENTITLED FOR EXCLUSION OF SURCHARGE FROM CALCULATION OF TAX PAYABLE TO BE REDUCED FROM EXEMPTION LIMIT – THEREFORE, TAX AND SURCHARGE PAYABLE ON TAXABLE TURNOVER WOULD FORM A PART OF EXEMPTION ENTITLEMENT – APPEAL DISMISSED. *SECTION 5(1-C), SECTION 5(2), SECTION 30-AA PGST ACT 1948.*

SURCHARGE – SALE OF THREE WHEELERS – NO SURCHARGE LEVIABLE ON SALE OF THREE WHEELERS AS PER SECOND PROVISO TO SECTION 5(1-C) – NO LIST SUBMITTED SHOWING SALE OF THREE WHEELERS – CONTENTION CANNOT BE ACCEPTED AT THIS STAGE – LEVY OF SURCHARGE ON THIS TURNOVER ALSO UPHELD.

PENALTY – IMPOSING OF – FAILURE TO COMPLY WITH PROVISIONS OF THE ACT – APPEAL AGAINST IMPOSITION OF PENALTY AS NO SEPARATE NOTICE BEING ISSUED – HELD LIST OF SALES MADE SUBMITTED BY DEALER – NO EXPLANATION TENDERED ON BEING ASKED WHY PENALTY ACTION NOT BE TAKEN – THEREFORE, PENALTY UPHELD – *SECTION 23 PGST ACT, 1948.*

The petitioner was an exempted unit. The assessment was framed for the year 2003-04. The assessing authority deducted the amount of tax including surcharge from exemption limit. Penalty under Section 23 was also imposed. The Ld. DETC upheld the orders. On appeal before Tribunal, it was held that even though it is an exempted unit, tax is to be calculated on taxable turnover and then has to be exempted within exemption limit. Surcharge is also leviable on tax payable which will also be added to the amount of tax for reduction from exemption limit. Aggrieved by the order of Tribunal, an appeal was filed before the High

Court. Dismissing the appeal, it was held that from period 7.11.2001 to 7.12.2002, surcharge was separately payable in spite of exemption u/s 30-AA before its omission. In the absence of any specific provision in the Act or rules framed thereunder or 1991 Rules which confer any right on assessee whereby surcharge on taxable turnover would not be reduced from its exemption limit in case of exempted unit, the assessee is not entitled to claim such benefit. Therefore, tax and surcharge payable every year on the taxable turnover would form part of its exemption entitlement and thus reduced from the exemption limit.

The contention of assessee that no surcharge is payable with regard to sale of three wheelers amounting to Rs. 6,90,181/- as per second proviso to section 5(1-C) cannot be accepted as no list was submitted showing the sale as to be of three wheelers.

Also penalty u/s 23 is upheld as the petitioner was asked to explain why it not be imposed but the former had nothing to say. It cannot be said that only because separate notice was not served, imposition of penalty is bad. Therefore, appeal is dismissed.

Present: Mr. G.R.Sethi, Advocate and
Mr. Varun Chadha, Advocate for the appellant.
Ms. Radhika Suri, Addl.A.G.Punjab.

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AJAY KUMAR MITTAL, J.

1.This appeal has been preferred by the appellant-assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the Punjab VAT Act") against the order dated 11.7.2008, Annexure A.7 passed by the Punjab Value Added Tax Tribunal, Chandigarh (for brevity, "the Tribunal"), proposing to raise the following substantial questions of law for determination of this Court:-

> *"i) Having regard to the facts and circumstances of the case and on true and correct interpretation, is surcharge exigible under Section 5(1-C) of the Punjab General Sales Tax Act, 1948 upon an industrial ur1it holding exemption from payment of tax in accordance with the provisions of Punjab General Sales Tax (Deferment and Exemption) Rules 1991 when Section 30-AA under which surcharge was imposed was omitted w.e.f 7.12.2002 and there was no specific provision left for the imposition of surcharge upon the Exemption Holders?*
>
> *ii) On the facts and circumstances of the case, whether sales made by an exempted unit were deductible from gross turnover to determine taxable turnover liable to surcharge?*
>
> *iii) In the facts and circumstances of the case, whether sales of three Wheelers amounting to Rs. 6,90,181/- could be subjected to surcharge despite prohibition contained in second proviso, when no surcharge was levied on such sales made during 2004-05, for sheer non mention of the name of the commodity on which higher rate of tax i.e. 12% was assessed?*
>
> *iv) In the facts and circumstances of the case, whether penalty imposed under*

section 23 of Punjab General Sales Tax Act, 1948 could be sustained on bald narration that an opportunity of hearing was granted when neither show cause notice was served upon the assessee nor opportunity of hearing was given as per order sheet containing the proceedings of the case?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is a public limited company registered under the Companies Act, 1956. During 2003-04, the appellant was engaged in the manufacture of tractors for sale. Besides tractors, the company also produced and sold three wheelers valuing Rs. 6,90,181/- in the subsequent year. The company was registered under the Punjab General Sales Tax Act, 1948 (in short, "the PGST Act'') and also under the Central Sales Tax Act, 1956 (in short, "the CST Act''). It was also holding exemption certificate under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (in short, "the 1991 Rules''). The appellant deposited Rs. 8 lacs as surcharge from its own funds. It being exemption holder neither collected any tax nor surcharge from its customers. The assessing authority framed assessment and determined tax payable at Rs. 8,06,433/- and found Rs. 7,17,344/- as refundable. He further imposed penalty of Rs.5000/- under Section 23 of the PGST Act and after reducing the same from refundable amount of Rs. 7,17,344/-, allowed refund of Rs. 7,12,344/-. The Assessing authority While determining taxable turnover in the assessment order dated 16.3.2007, Annexure A.5 deducted Rs. 70,68,16,401/- as exempted sales of tractors made Within the State of Punjab and no tax Was assessed on this turnover but while computing the quantum of monetary exemption availed by the appellant during the year, he illegally included surcharge of Rs. 28,27,266/- and reduced the available monetary exemption by Rs. 3,10,99,922/-. Aggrieved by the order, the assessee filed appeal before the Deputy Excise and Taxation Commissioner (Appeals) [DETC (appeals)]. Vide order dated 6.9.2007, Annexure A.6, the DETC (Appeals) held that tax under Section 5 and surcharge under section 5(1C) of the PGST Act is to be assessed irrespective of the exempted units and the amount so calculated shall be reduced from the exemption amount granted to the units. The appellate authority also upheld the penalty of Rs. 5000/- imposed under Section 23 of the PGST Act. Still not satisfied, the appellant filed second appeal before the Tribunal. Vide order dated 11.7.2008, Annexure A.7, the Tribunal dismissed the appeal holding that even When the appellant is an exempted unit as per entitlement certificate, still every year tax has to be calculated on the taxable turnover and then it has to be exempted Within the exemption entitlement. The surcharge is leviable on tax payable and this shall also be added to the amount of tax for Which exemption entitlement is there since Section 30-AA of the PGST Act added on 7.11.2001 had been omitted w.e.f 7.12.2002. The Tribunal sustained imposition of surcharge in respect of sales of three Wheelers amounting to Rs. 6,90,181/- and iron scrap valuing Rs. 91,251/- and penalty of Rs.5000/- imposed under section 23 of the PGST Act. Hence the present appeal by the assessee. *(emphasis supplied)*

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

4. Learned counsel for the appellant submitted that the goods produced by the appellant being exempt from payment of sales tax for a period of 10 years, no surcharge could be levied which would reduce the exemption entitlement of the assessee. According to the learned counsel, in view of Rule 4A of the 1991 Rules, surcharge is on taxable turnover

and not on the gross turnover. Reference was made to Section 5(2) of the PGST Act which defines "taxable turnover". Reference was also made to Rule 29 of the Punjab General Sales Tax Rules, 1949 (in short, "the 1949 Rules"). It was urged that the Assessing officer - the first appellate authority and also the Tribunal had erred in determining surcharge for purposes of calculating tax payable and reducing it from the exemption limit which was allowed to the assessee. It was also submitted that no surcharge was leviable on sales of three-wheelers amounting to Rs. 6,90,181/- in view of second proviso to section 5(1-C) of the PGST Act. The imposition of penalty under Section 23 of the PGST Act was also challenged. Support was drawn from following judgments:-

i) ***M/s Hoshiarpur Large and Medium Industries Association and others v. State of Punjab and others,*** (2002) 19 PHT 613;

ii) ***Jai Durga Cotton Mills v. State of Haryana and others,*** (2010) 29VST 617;

iii) ***Kagaz Print N Pack (India) Pvt. Limited, Bahadurgarh, District Jhajar v. State of Haryana,*** (2006) 28 PHT 266, and

iv) ***State of Haryana and others v. Liberty Enterprises***, (2009) 22 VST 1.

5. On the other hand, learned counsel for the State besides supporting the order passed by the Tribunal submitted that the surcharge Was to be calculated on the net sales made by the assessee and had been rightly reduced from the exemption limit which was allowed to the assessee.

6. After hearing learned counsel for the parties, we do not find any merit in the appeal.

7. Question Nos. (i) and (ii) relate to whether surcharge was to be calculated on the taxable turnover and thereafter the total amount of tax and surcharge reduced from the exemption entitlement of the assessee.

8. It Would be apposite to refer to certain relevant provisions.

(i) Section 5(1-C) of PGST Act provides for levy and collection of surcharge on the taxable turnover of a dealer which is to be calculated at the rate of ten per centum of tax payable by him under the Act. It reads thus:-

<u>Section 5(1-C) of PGST Act</u>

"Notwithstanding anything contained in this Act, there shall be levied and collected on the taxable turnover of a dealer, a surcharge, which shall be calculated at the rate of ten percentum of the tax payable by him under this Act.

Provided that the aggregate of the tax and the surcharge payable under this Act, shall not exceed in respect of goods declared to be of special importance in inter state trade or commerce by section 14 of the Central Sales Tax Act, 1956, the rate fixed by section 15 of that Act.

Provided further that no surcharge shall be levied on any type of motor vehicles including their chassis and bodies, motor cycles, motor cycle combinations, motor scooters, mopeds, two Wheelers, three Wheelers and other roadworthy contraptions excluding tractors and harvest combines."

(ii) Section 5(2) defines "taxable turnover" to mean:-

*"**5(2)**. In this Act the expression "taxable turnover" means that part of a dealer's gross turnover during any period, Which remain after detecting therefrom -*

(a) his turnover during that period on -

(i) the sale of goods declared tax-free under section 6

(ii) Sales to a registered dealer of good other than sales of goods liable to tax at the first stage under sub-section (I-A) declared by him in a prescribed from as being intended for resale in the State of Punjab or Sale in the course of inter-State trade or commerce or sale in the course of export of goods out of the territory of India, or of goods specified in his certificate of registration for use by him in the manufacture in Punjab of any goods other than goods declared tax-free under section 6, for sale in Punjab , or sale in the course of inter State trade or commerce or sale in the course of export of goods out of the territory of India and on sales to a registered dealer of containers or other materials -for the packing of such goods :

Provided that in case of such sales other than those made on commission basis by a commission agent to the registered dealer, a declaration duly filled up and signed by the registered dealer to whom the goods are sold and containing prescribed particulars on a prescribed form obtained from the prescribed authority is furnished by the dealer who sells the goods:

Provided further that in case of a dealer whose gross turnover does not exceed five lac rupees in a year or a sum as may be notified by the State Government from time to time in this behalf, and Whose amount of tax is assesseed under sub-section (1) of section II of this Act, the declaration referred to in the preceding proviso shall not be required.

(iii) XXXXXXXXX

(iv) sales to any undertaking supply in 'electrical energy to the public under a licence of sanction granted or deemed to have been granted under the Indian Electricity Act, 1910, of goods for use by it in the generation or distribution of such energy

(v) sales or purchases of goods falling under section 29,

(vi) the purchase of goods Which are sold not later than six months after the close of the year to a registered dealer, or in the course of inter-State trade or commerce, or in the course of export out of the territory of India:

Provided that in the case of such a sale to a registered dealer, a declaration, in the prescribed form and duly filled and signed by the registered dealer to Whom the goods are sold, if furnished by the dealer claiming deduction.,

(vii) such other sales or purchases as may be prescribed,

(b) The amount of sales tax included in the gross turnover."

(iii) Under **Section 30-A of the PGST Act**, the State Government is empowered to exempt any class of industries from the payment of tax in the interest of industrial development of the State subject to conditions and period as may be prescribed. It is couched in the following terms:-

> ***"Power to exempt certain class of industries*** *– The State Government may, if satisfied that it is necessary or expedient so to do in the interest of industrial development of the State, exempt such class of industries from the payment of tax, for such period and subject to such conditions, as may be prescribed.*
>
> *Provided that in the case of industries which came into production for the first time on or after the first day of April 1989, or wherein modernization, expansion or diversification has been carried out in accordance with the industrial policy, 1989, the Government may exempt such industries from the payment of tax With effect from the Ist day of April 1989, subject to such conditions as may be prescribed:*
>
> *Provided further that in the case of industries which came into production for the first time after the 24" day of June, 1991, or wherein expression, modernization or diversification has been carried out in accordance with the electronics Policy, 1991, the Government may exempt such industries from the payment of tax with effect from the 24m day of June, 1991, subject to such conditions, as may be prescribed.*
>
> *Explanation : For the purpose of this section:*
>
> *i) the industrial policy, 1989 shall mean the Industrial Policy of 1989, notified by the Government of Punjab in the Department of Industries as amended from time to time,*
>
> *ii) the electronics Policy, 1991 shall mean the electronics Policy of 1991 notified by the Government of Punjab in the Department of Industries as amended from time to time."*

(iv) **Section 30AA of PGST Act** was inserted on 7.11.2001 and was omitted with effect from 7.12.2002. It begins with a non-obstante clause. The plain words of the provision indicate the legislative intent to pay the levy of surcharge under Section 5(1C) even where the industries had been granted exemption under Section 30A of the PGST Act. In other words, in the case where exemption had been granted to class of industries under Section 30A of the PGST Act, they were liable to pay the surcharge levied under Section 5(1C) thereof. Before omission, it reads thus:

> ***"Liability to pay surcharge*** *- Notwithstanding any exemption granted to pay class of industries under section 30-A of this Act, such industries shall pay the surcharge levied under sub section (1-C) of section 5 of the Act, in the manner, as may be prescribed."*

The validity of this provision was upheld by the Division Bench of this Court in M/s Hoshiarpur Large and Medium Industries Associations case (supra).

(v) Rule 4A of 1991 Rules relevant for present appeal is as under:-

(1)"Not withstanding anything contained in any other provision of these rules, and subject to the provisions of sub rule (2) -

i) Group of industries which are set up in 'A' category area on or after the first day of October 1992 and the goods produced by them shall be exempt from the payment of sales tax for a period of ten years commencing from the date of production for the first time in the State of Punjab, subject to the condition that the total sales tax exemption shall not exceed 300 percent of their fixed capital investment.

Provided that all fly ash based units, that is units, which use at least twenty five percent fly ash as raw material by weight or by volume, shall be eligible for incentives which are available to the units located in 'A' category area, irrespective of their location, throughout the State of Punjab.

Xx xx xx xx xx xx xx xx xx"

According to aforesaid rule, Industries falling in 'A' category area on or after lst October 1992 producing goods shall be exempt for a period of 10 years from the date of commencing production in the State of Punjab which shall not exceed 300 percent of the fixed capital investment.

vi) Under Rule 29 of the 1949 Rules, registered dealer is entitled to deduct various amounts from the gross turnover enumerated thereunder while calculating his taxable turnover. It nowhere refers to levy or exemption of payment of surcharge on taxable turnover.

8. A combined reading of the aforesaid clearly spells out that for purposes of determining the "taxable turnover", deductions as admissible under Section 5(2) of the PGST Act and Rule 29 of the 1949 Rules are to be allowed. Section 5(1C) of the PGST Act deals with levy of surcharge whereas Section 30-A of the Act provides for framing of rules for deferment and exemption. It may be noticed that during the period from 7.11.2001 to 7.12.2002, surcharge was separately payable inspite of exemption entitlement in view of Section 30AA in the PGST Act before its omission. In the absence of any specific provision in the PGST Act or the rules framed thereunder or under 1991 rules which confers any right on the assessee whereby surcharge on the taxable turnover would not be reduced from its exemption limit in case of exempted unit, the assessee is not entitled to claim such benefit. Accordingly, it is held that the tax and surcharge payable every year on the taxable turnover would form part of its exemption entitlement. *(emphasis supplied)*

9. The Tribunal while repelling the contention of the counsel for the appellant had noticed as under:-

"Counsel for the appellant had argued that as per section 5(2) (a) clause (vii) of the Act, the taxable turnover means that part of dealer's gross turnover during any period which remains after deducting therefrom, such other sales or purchases as may be prescribed. It was argued that as per section 2(f) of the Act prescribed means prescribed by rules made under this Act. It was further argued that rules i.e. Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 had been made and when there was tax exemption, no surcharge would be payable as taxable turnover has to be calculated after deducting there from the turnover on which

exemption is there.

Section 5(1-C) provides for surcharge to be levied and collected on the taxable turnover of dealer @ 10% of tax payable by him under the Act. Even when the appellant is exempted unit as per entitlement certificate, still every year tax has to be calculated on the taxable turnover and then it has to be exempted within the exemption entitlement. The surcharge is leviable on tax payable and this shall also be added to the amount of tax for which exemption entitled is there since section 30AA added on 7.11.2001 has been omitted w.e.f 7.12.2002. If that section had been there then surcharge was separately payable even inspite of exemption but in view of the fact that section 30AA had been omitted already in December 2002 and the present assessment year is 2003-04, the surcharge leviable on the tax has to be added towards the exemption entitlement. No fault can be found with the order of the authorities below in calculating the surcharge and then adjusting it against the exemption limit."

Thus Questions (i) and (ii) stand answered against the assessee.

10. Adverting to question No.(iii), the findings recorded by the Tribunal may be noticed as under:-

"It was further argued that there had been sale of three wheelers of the amount of Rs.6,90,181/- and as per second proviso to section 5(1C), no surcharge is leviable in case of three wheelers. However, from the file of the department, no list was found having been submitted by the appellant to be that of the sale of three wheelers. As such, the contention of counsel for the appellant in this respect cannot be accepted."

The Tribunal had noticed that the assessee had failed to file any list to show that there was sale of three-wheelers and therefore by virtue of second proviso to section 5(l-C) of the PGST Act, no such surcharge was leviable. A perusal of the assessment order and the order passed by the DETC (Appeals) also shows that there was no material to show that the finding recorded by the Tribunal was perverse or erroneous.

11. Taking up the last question regarding levy of penalty, Section 23 of the PGST Act confers power on the appropriate authority to impose penalty for contravention or failure to comply with the provisions thereof or the rules made thereunder. It is to the following effect:-

Section 23 - Penalty

(1) Whosoever contravenes, or fails to comply with, any of the provisions of this Act or the rules made thereunder or any order or direction made or given thereunder, shall if no other penalty is provided under this Act for such contravention or failure, be liable to imposition of a penalty, not exceeding two thousand rupees and where such contravention or failure is a continuing one to a daily penalty not exceeding fifty rupees during the period of the continuance of the contravention or failure.

(2) An officer not below the rank of Excise and Taxation Officer appointed under sub-section (l) of section 3 may, after affording to the person a reasonable opportunity of being heard, impose the penalty mentioned in sub section (1).

The Tribunal had noticed that the assessee was asked to explain why action for penalty against it be not taken to which it did not respond. Once that was so, it could not be said that the levy of penalty under section 23 of the PGST Act was unwarranted. The observations of the Tribunal read thus:-

> *"Counsel for the appellant had further argued that no penalty could be imposed as it was a penal action and notice was not issued. However, from the order of the assessing authority, it would come out that dealer had furnished in complete lists of sales made to the registered dealers. He was asked to explain as to why penal action under section 23 of the Act be not taken. He had nothing to say. Thereafter penalty of Rs.5000/- was imposed under section 23 of the Act after hearing the dealer. In view of the facts mentioned in the order, it cannot be said that only because separate notice was not issued, imposition of penalty was bad and should be deleted."*

12. Examining the judgments relied upon by the learned counsel for the appellant, suffice it to be notice that they were not directly relating to the issue as raised in the present appeal. Further, in view of the factual matrix involved therein, the aforesaid judgments do not come to the rescue of the appellant.

13. In view of the above, the substantial questions of law are answered against the assessee and in favour of the revenue. Consequently, finding no merit in the appeal, the same is hereby dismissed.

PUNJAB & HARYANA HIGH COURT

CWP No. 3961 of 2015

KOHINOOR FOODS LTD.
Vs.
STATE OF HARYANA AND OTHERS

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

4th March, 2015

HF ▶ Petitioner

RECOVERY OF TAX – SECURITY – APPEAL FILED BEFORE TRIBUNAL CANNOT PROCEED IN ABSENCE OF PROPER CONSTITUTION -WHETHER RECOVERY PROCEEDINGS COULD BE INITIATED – PETITIONER ALLEGED TO HAVE FURNISHED SECURITY U/S 33(5) OF THE HVAT ACT – INITIATION OF RECOVERY PROCEEDINGS DESPITE FURNISHING OF SECURITY – HELD, RESPONDENTS TO DECIDE WHETHER ADEQUATE SECURITY FURNISHED BY PETITIONER – RECOVERY PROCEEDINGS TO BE STAYED TILL SUCH DECISION IS TAKEN AND FOR ONE WEEK THEREAFTER – PETITIONER REFRAINED FROM DISPOSING OF ITS IMMOVABLE PROPERTY TILL THEN – *SECTION 33(5) OF THE HVAT ACT*

The petitioner had filed this writ petition since the Tribunal had not been constituted then to decide the matter in dispute. In this case the respondents argued that in the event of the petitioner furnishing the security as per section 33(5) of the Act, recovery proceedings would not be initiated. On the other hand, the petitioner stated that it had offered the security but the same was not considered by the respondents. Hence, the writ petition is disposed off by directing the concerned officer of the respondents to decide whether the security offered by the petitioner is adequate or not. Till such decision is taken and for one week thereafter the recovery proceeding is stayed and the petitioner is refrained from disposing off its immovable properties till then.

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

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S.J.VAZIFDAR A.C.J.

1. The only reason that this petition has been filed is because the Tribunal under the Haryana Value Added Tax Act, 2003 has not been constituted. The constitution of the Tribunal also depends upon certain other proceedings which have been filed unconnected to the present writ petition. In the circumstances, the appeal that had been filed by the petitioner cannot proceed at this stage.

2. Learned counsel for the respondents states that in the event of the petitioner's furnishing the security as contemplated by Section 33(5) of the said Act, recovery proceedings would not be initiated.

3. The petitioner states that it had offered the security but the same has not even been considered by the respondents.

4. It is, in the first instance, necessary for the respondents to consider whether the security offered by the petitioner is satisfactory or not.

5. The writ petition is, therefore, disposed of by directing the concerned officer of the respondents to decide whether the security offered by the petitioner is adequate or not. Till such decision is taken and for a period of one week thereafter, the recovery shall not be made pursuant to the order dated 22.12.2014. Till then, in any event, the petitioner shall not dispose of its immovable properties or encumber the same in any manner whatsoever.

PUNJAB & HARYANA HIGH COURT

VATAP No. 74 of 2014
VATAP No. 75 of 2014
VATAP No. 90 of 2014
VATAP No. 94 of 2014

DELTON CABLES LTD
Vs.
STATE OF HARYANA AND OTHERS

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

10th March, 2015

HF ▶ Petitioner

ASSESSMENT – C-FORMS – EXTENSION OF TIME FOR PRODUCTION OF FURTHER C-FORMS SOUGHT – APPEAL BEFORE FIRST APPELLATE AUTHORITY POST ASSESSMENT SEEKING PERMISSION FOR PRODUCTION OF C-FORMS IN POSSESSION – PERMISSION GRANTED REMANDING THE CASE THEREBY – APPEAL BEFORE TRIBUNAL SEEKING TIME AS FURTHER C-FORMS WERE TO BE AVAILABLE IN FUTURE - APPEAL REJECTED AS NO SUCH PRAYER MADE BEFORE THE FIRST APPELLATE AUTHORITY – APPEAL BEFORE HIGH COURT – PLEA OF THE APPELLANT THAT C-FORMS WERE AVAILABLE AND THAT NO FURTHER TIME WOULD BE SOUGHT BY IT ACCEPTED – ASSESSING OFFICER TO PASS FRESH ORDER TAKING INTO CONSIDERATION THE ADDITIONAL C-FORMS PRODUCED UPTO THE DATE FIXED BY THE COURT – HENCE, ONE MORE OPPORTUNITY GRANTED TO THE ASSESSEE – APPEAL ALLOWED

After the assessment order was passed in Feb. 2012, an appeal was filed before the First Appellate Authority contending that the appellant be permitted to produce further C-forms obtained by it. The appeal was allowed and matter was remanded to the assessing officer. Against this order, an appeal was filed before the Tribunal that the petitioner be permitted to produce the further C-forms that may be available in future. The Tribunal dismissed the application on the ground that such prayer was not made before the First Appellate Authority. On appeal before High Court, it was pleaded that the appellant would not seek any further time for production of C-forms and fresh assessment order may be passed after considering the further C-forms which were now available with the appellant. Allowing the appeal, one more opportunity to furnish the additional C-forms was granted and the assessing officer directed to pass an order considering the C-forms that would be furnished upto 17.03.2015.

Present : Mr. Rajiv Agnihotri, Advocate, for the appellant.
Ms. Mamta Singhal Talwar, Assistant Advocate General,
Haryana, for the respondents.

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S.J.VAZIFDAR A.C.J.

1. The main issue in these appeals being same, we dispose of the appeals by this common order and judgment.

2. We for our convenience refer the facts in appeal No. 74 of 2014R

3. The assessment order was passed on 09.02.2012. The appellant filed an appeal against the same contending inter-alia that it ought to be permitted to produce further 'C' Forms obtained by it. By an order dated 14.12.2012 passed by the First Appellant Authority, the appellant was permitted to produce before the Assessing Officer 'C' Forms available with the appellant. The matter was accordingly remanded to the Assessing Officer to pass a fresh assessment order after taking into consideration the further 'C' Forms.

4. The appellant challenged this order before the Tribunal contending that it ought to be permitted to produce the further 'C' Forms that may be available to it in future. The Tribunal dismissed the application inter-alia on the ground that a prayer for the same had not been made before the First Appellant Authority. It is against this order dated 14.11.2013 that the present appeal has been filed by the appellant. 5. It is not contended that further 'C' Forms cannot be relied upon. There indeed must be some limit to the time by which an assessee ought to produce the 'C' Forms before the Assessing Officer. Learned counsel appearing on behalf of the appellant states that he will not seek any further time for production of 'C' Forms and that the fresh assessment orders may be passed after taking into consideration the further 'C' Forms which are now available with the appellant and that may be filed by the appellant within one week from today. The ends of justice would be met by giving the appellant one more opportunity to furnish the additional 'C' Forms.

5. It is not contended that further 'C' Forms cannot be relied upon. There indeed must be some limit to the time by which an assessee ought to produce the 'C' Forms before the Assessing Officer. Learned counsel appearing on behalf of the appellant states that he will not seek any further time for production of 'C' Forms and that the fresh assessment orders may be passed after taking into consideration the further 'C' Forms which are now available with the appellant and that may be filed by the appellant within one week from today. The ends of justice would be met by giving the appellant one more opportunity to furnish the additional 'C' Forms.

6. Accordingly, we set-aside the impugned order and judgment of the Tribunal and permit the appellant to produce further 'C' Forms latest by 17.03.2015. The Assessing Officer shall pass a fresh assessment order after taking into consideration the 'C' Forms that may be furnished upto and including 17.03.2015. The undertaking not to seek further time to produce 'C' Forms is accepted.

All the appeals are disposed of in the same terms.

PUNJAB & HARYANA HIGH COURT

CWP No. 3764 of 2015

HAMDARD (WAKF) LABORATORIES
Vs
STATE OF HARYANA AND OTHERS

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

2nd March, 2015

HF ▶ Petitioner

RECOVERY OF TAX – BANK GUARANTEE – ASSESSMENT ORDER DT. 23.01.2014 PASSED TREATING PETITIONER'S PRODUCT TAXABLE @12.5% UNDER RESIDUAL ENTRY – BANK GUARANTEE SOUGHT TO BE ENCASHED - ASSESSMENT ORDER PASSED ALLEGED TO HAVE BEEN BASED ON 'OPINION' DT. 01.03.2013 RENDERED U/S 56(3) OF THE ACT – OPERATION OF THAT OPINION STAYED IN A SEPARATE WRITE PETITION – RESPONDENTS RESTRAINED FROM INVOKING THE BANK GUARANTEE AT THIS STAGE IN VIEW OF THE STAY OF OPERATION OF OPINION – PETITIONER DIRECTED TO KEEP BANK GUARANTEE ALIVE FAILING WHICH RESPONDENTS TO BE ENTITLED TO INVOKE IT – COURT ENTITLED TO MODIFY THE ORDER PASSED IN THE ABOVE MENTIONED WRIT – *SECTION 56 OF THE HVAT ACT, 2003*

The petitioner's product was assessed under the residuary entry entailing a tax at the rate of 12.5%. The petitioner had filed a writ for directing the respondent to treat it under entry 100D of Schedule C of the Act taxable @ 4%. Bank guarantee was also sought to be encashed against the demand raised. The petitioner alleged that the assessment order passed against it was based on the opinion given dt. 01.03.2013 under section 56(3) of the Act. In a writ petition it was brought to the notice that the operation of that opinion having been stayed by the order of the Division bench dt. 29.10.2014 in CWP No. 14192 of 2014 the recovery on the basis of the assessment order was not justified. It is held, in view of the stay of the operation of the opinion, the respondents are refrained from invoking the bank guarantee at this stage. Also, the petitioner would keep the bank guarantee alive till otherwise ordered by the court. The bank guarantee shall be renewed four weeks prior to the expiry thereof failing which the respondents shall be entitled to invoke the same and receive the proceeds pursuant thereto. The petitioner shall not dispose of any of its immovable properties without the leave of the Court. It is also mentioned that this order is subject to modification to the court and would not prevent the Tribunal from proceeding with the matter.

Present: Mr. Ashok Aggarwal, Senior Advocate,
with Mr. Pankaj Gupta, Advocate, for the petitioner.

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S.J.VAZIFDAR A.C.J.

Issue notice of motion returnable forthwith.

Ms. Mamta Singla Talwar, learned Additional Advocate General, Haryana accepts notice on behalf of all the respondents.

The petitioner has challenged the invocation of a bank guarantee and has also sought a writ to set aside the first appellate order dated 04.07.2014 (Annexure P-5), a demand notice dated 20.02.2015 (Annexure P-6) and a letter dated 24.02.2015 (Annexure P-7) whereby the bank guarantee was sought to be encashed. The petitioner has further sought a writ of mandamus directing the respondents to treat its product as a drink assessable under entry 100 D of Schedule C of the Haryana Value Added Tax Act, 2003 (in short the Act). The respondent No. 1 has by an opinion dated 01.03.2013 (Annexure P-2) rendered under Section 56(3) of the Act held the petitioner's product to be assessable under the residuary article entailing a tax at the rate of 12.5%. Under entry 100 D, the assessment is at 4%.

2. By an order dated 29.10.2014 (Annexure P-4) in CWP-14192-2014, a Division Bench of this Court observed prima-facie that the show cause notices were issued without jurisdiction and stayed the operation of Annexure P3 which, we are informed, is the said opinion dated 01.03.2013. The assessment order dated 23.01.2014 (Annexure P/4-A) in the present case and the order passed by the First Appellate Authority proceed on the basis of the opinion dated 01.03.2013. The operation of that opinion having been stayed by the order of the Division Bench dated 29.10.2014 (Annexure P-4) subsequently the recovery on the basis of the assessment order against the petitioner thus is not justified. Had the assessment order been on the basis other than merely the opinion it may have been a different matter altogether.

3. By the said order dated 29.10.2014, the counsel for the State was directed to have instructions with respect to the constitution of the Haryana VAT Tribunal. The Division Bench observed that in view of the failure to constitute the Tribunal, this Court is flooded with appeals. The learned counsel appearing on behalf of the State of Haryana states that the Tribunal is soon to be constituted. There is, however, some difficulty on the part of the State Government in this regard in view of another writ petition in which the question of the mode and manner of appointment has been raised.

4. Be that as it may, the petitioner cannot be faulted for not having moved the appeal against the opinion of the respondent No. 1. We see no reason at this stage at least to consider the issue on merits. The petitioner is at liberty to file an appeal under Section 33(6) of the Act before the Appellate Tribunal. In view of the operation of the opinion dated 01.03.2013 having been stayed, it would be only fair to restrain the respondents from invoking the bank guarantee at this stage. The issue as to whether the bank guarantee ought to be extended or modified can be considered in CWP-14192-2014 which has challenged the said opinion. Further the interest of the respondents can be safeguarded by directing the petitioner to keep the bank guarantee alive from time to time.

5. In these circumstances, the writ petition is disposed of by the following order:-

The respondents shall not invoke the bank guarantee without the leave of the Court. No further coercive action shall also be taken without the leave of the Court.

This order is, however, subject to the petitioner keeping the bank guarantee alive till otherwise ordered by this Court or by the Appellate Tribunal as the case may be. The bank guarantee shall be renewed four weeks prior to the expiry thereof failing which the respondents shall be entitled to invoke the same and receive the proceeds pursuant thereto.

The petitioner shall not dispose of any of its immovable properties without the leave of the Court or the Appellate Tribunal as the case may be.

This order does not prevent the Tribunal when constituted from proceeding with the matter. It will also be open to the Court in CWP-14192-2014 to modify this order as well as the order restraining the respondents from taking coercive action.

PUNJAB & HARYANA HIGH COURT

CWP No. 23497 of 2014

HARYANA STATE POLLUTION CONTROL BOARD
Vs.
THE COMMISSIONER OF INCOME TAX

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

9th March, 2015

HF ▶ Petitioner

RECOVERY OF TAX – ATTACHMENT OF BANK ACCOUNTS – STATUTORY CORPORATION – DISPUTE REGARDING ENTITLEMENT OF EXEMPTION U/S 10 (23C)(IV) – PROCEEDINGS REGARDING REFUSAL OF EXEMPTION PENDING – PENALTY LEVIED – BANK ACCOUNT ATTACHED FOR RECOVERY – APPROPRIATION BY DEPARTMENT OF CERTAIN AMOUNT – APPLICATION FOR STAY REJECTED BY CIT - HELD BY HIGH COURT THAT PRAYER FOR REFUND OF AMOUNT APPROPRIATED AS INTEREST NOT TO BE ENTERTAINED AT THIS STAGE – HOWEVER, PETITIONER BEING A STATUTORY CORPORATION RECEIVING GRANTS ALSO FROM CENTRE, NO COERCIVE ACTION SHOULD BE TAKEN TILL PENDENCY OF DECISION BY CIT.

The respondents contend that the petitioner had not obtained exemption under Section 10(23C)(iv) and registration under Section 12AA of the Act and are not entitled to the exemption that they are claiming. Penalty was levied under the provisions of Income Tax Act. Proceedings in respect of the refusal of exemption are pending. However, in addition to the attachment of accounts, some amount has been appropriated by the department. Also, banks were called upon to pay the amount lying to the credit of the petitioner with the respondents. The petitioner had filed an application for stay before CIT but it was rejected.
It is held by the High Court that the two drafts prepared by the Bank for payment to the department have been restrained from withdrawal by the interim order passed by the court. The bank is thus directed to cancel the draft and credit the same to the account of the petitioner.
However, prayer for refund of amount already taken is not entertained at this stage and must wait for the decision of the appeal before CIT.
In these circumstances the petitioner being a statutory corporation, no coercive action should be taken against it till the pendency of the appeal before CIT. Also, the petitioner should not seek any adjournment before the CIT.

Present: Mr.Sandeep Goyal, Advocate, for the petitioner.
Mr.T.K.Joshi, Advocate, for the respondents-Department.

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S.J.VAZIFDAR A.C.J.

1. The petitioner has challenged the respondents' action, attaching six bank accounts, appropriating the amounts therefrom for its payments of the penalty levied, under the provisions of the Income Tax Act, 1961 (for short, the 'Act').

2. The petitioner is a Government of Haryana undertaking. It receives grants from the Central Government and from the State Government. The same are used for the purpose of discharging its statutory functions and duties.

3. The respondents contend that the petitioner had not obtained exemption under Section 10(23C)(iv) and registration under Section 12AA of the Act and as a result thereof, they are not entitled to the exemption that they are claiming. There are proceedings, therefore, pending in respect of the refusal of exemption under Section 10(23C)(iv) of the Act. In the event of the petitioner succeeding in those proceedings there is a possibility that the entire demand including for the principal will be set aside.

4. By an order dated 21.01.2015, a Division Bench of this Court expressed the hope that the petitioner's appeal before the CIT (Appeals) would be decided by the next date of hearing. The same is still pending.

5. The tax dues have already been paid. In addition thereto, pursuant to the attachment of the accounts, an amount of about Rs.11.27 crores has already been appropriated by the respondents-Department against a demand of Rs. 51 crores towards interest. The petitioner had, thereafter, filed an application for stay on 10.11.2014 before the CIT (Appeals). The same was rejected on the very same date, without affording the petitioner a hearing. On the same day, the Banks were called upon to pay the amount lying to the credit of the petitioner with the respondents.

6. Thus, the petitioner's stay application has not been appropriately considered. The only ground on which it was rejected is that the pendency of the appeal is not a ground for granting the stay. The pendency of the appeal was, however, not the only ground on which the stay was sought. There are several other factors including the constitution of the petitioner and the nature of its functions it is carrying out under the statute.

7. Two drafts amounting to Rs. 4 crores and Rs.18 crores, we have been informed, have been prepared by the Bank for payment to the Department but the respondents have been restrained from withdrawing the same, by the interim order passed by this Court on 17.11.2014. To allow the drafts to remain in operation would not enure to the benefit of either of the parties as the interest would stop running from the date on which they have been prepared. The Bank shall, therefore, cancel the drafts and credit the same to the account of the petitioner.

8. We are, however, not inclined to entertain the prayer for refund of the amount of about Rs. 11.27 crores, at this stage. The same must await the decision of the appeal before the CIT(Appeals).

9. In these circumstances and especially considering the fact that the petitioner is a statutory Corporation and receives grants also from the Central Government, it would be proper that no coercive action is taken against the demand of penalty till the decision of the appeal before the CIT (Appeals). The petitioner shall not seek any adjournment on any ground before the CIT (Appeals).

10. The writ petition is, accordingly, disposed of.

PUNJAB & HARYANA HIGH COURT

CWP No. 7906 of 2014

PEPSICO INDIA HOLDINGS (P) LTD.
Vs.
STATE OF PUNJAB AND OTHERS

RAJIVE BHALLA AND B.S. WALIA, JJ

10th February, 2015

HF ▶ Petitioner

DELEGATED LEGISLATION – RETROSPECTIVE AMENDMENT - RATE OF TAX – SCOPE OF POWER OF STATE GOVERNMENT TO AMEND RETROSPECTIVELY – PETITIONER MANUFACTURING AND TRADING BEVERAGES AND SNACKS – NOTIFICATION DATED 25.03.2014 ISSUED BY GOVERNMENT RAISING RATE OF TAX ON THESE ITEMS WITH RETROSPECTIVE EFFECT FROM 01.03.2014 – NO NOTICE FOR AMENDMENT ISSUED BY STATE AS REQUIRED U/S 8 – HELD THAT STATE HAD NO POWER TO AMEND THE RATE OF TAX RETROSPECTIVELY BY WAY OF NOTIFICATION UNLESS PROVIDED BY THE ACT – PERUSAL OF SECTION 8 SHOWS ABSENCE OF ANY LEGISLATION CONFERRING POWER ON CONCERNED AUTHORITY TO ISSUE A NOTIFICATION WITH RETROSPECTIVE EFFECT – IMPUGNED NOTIFICATION SET ASIDE TO THE EXTENT OF RETROSPECTIVITY – WRIT ALLOWED – ***SECTION 8 OF PVAT ACT***

The petitioner is engaged in manufacturing and trading of beverages and snacks. Vide notification dt. 25.03.2014, the state government increased the rate of tax to 14.5% on the goods in question with retrospective effect from 01.03.2014. Notice as required u/s 8 of the Act was issued before 15 days of issuing of notification. During the disputed period, the petitioner had already made sales worth crores at the lower rate of tax applicable before amendment. A writ was filed praying for quashing of the retrospective operation of the impugned notification as it is ultra vires of section 8 and violative of delegated legislation as it prescribed rate of tax with retrospective effect. Allowing the writ, it is held that no retrospective amendment can be made in the rate of tax by way of notification unless the power to make such amendments retrospectively has been specifically provided under the Act and the State Government is duly authorised in this behalf. Section 8 of the Act shows legislation has not conferred any such power to notify retrospectively. Since, there is neither any express or implied power conferred by legislation on the concerned authorities to issue notification retrospectively, the impugned notification is set aside to the extent of retrospectivity.

Present: Sh. Sandeep Goyal, Advocate for the petitioner.
Sh. Jagmohan Bansal, Additional Advocate General, Punjab.

Editorial Note

In view of the decision taken in the case of Pepsico India Holdings (P) Ltd, the petition in the case of M/s Shree Ganesh Traders vs. State of Punjab and others (CWP No. 17559 of 2014) was also allowed on dt. 27.2.2015 thereby setting aside the impugned order dt. 08.08.2014 and the matter is restored to the Assessing Authority to decide afresh.

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B.S. WALIA,J.

1. The instant writ petition raises the following substantial questions of law:-

(i) Whether on the facts and in the circumstances of the case, the impugned notification dated 25.3.2014 is ultravires Section 8 of the Act in so far as it operates retrospectively?

(ii) Whether on the facts and in the circumstances of the case, the impugned notifications are violative of exercising of delegated legislation as it prescribes stages for levying tax and levying tax with retrospective effect?

2. At this stage it is relevant to mention here that as per the averments in paragraph No. 6 at page No. 8 of the writ petition, the petitioner has given up the challenge to the prescribing of stages at which tax is leviable.

3. Thus the only question which needs answer in the instant writ petition is with regard to the prayer for quashing of notification Annexure P-4 dated 25.03.2014 in so far as the same operates retrospectively on the ground that the retrospective operation of the notification is beyond the scope of powers of the State Government under Section 8 of the Punjab VAT Act, 2005 (hereinafter to be referred as 'the Act').

4. The petitioner is a company registered under the Companies Act, 1956 with its head office at Gurgaon but for the purpose of sales tax in the State of Punjab, the petitioner is registered with the Assessing authority, Sangrur. The petitioner is engaged in the basiness of manufacturing and trading of beverages and snacks.

5. Petitioners plea is that as per the scheme of the Act, value added tax is leviable on the taxable turnover at the rates specified in the Schedules notified by the State Government from time to time and that under Section 8(3) of the Act, the State Government has the power to alter the rates of tax specified in any of the Schedules and to amend the Schedules by addition or revision of any entry subject to the condition that a proper notice of 15 days as required is given. However, the condition of giving notice can be dispensed with if the State Government is satisfied that immediate action is required by recording reasons for doing so. Section 8 of the Act is re-produced here under:-

"8. Rate of Value Added Tax

(1) Subject to the provisions of this Act, there shall be levied on the taxable turnover of a person other than a registered person, VAT at such rate, as specified in Schedules, but not exceeding fifty five paisa in a rupee:

Provided that the rate of tax applicable on purchase or sale of declared goods, shall not exceed five percent or such rate, as specified in clause (a) of section 15 of the Central Sales Tax Act, 1956.

(2) Notwithstanding anything contained in this section, where any goods are sold in container or are packed in any packing material, the rate of tax applicable to such container or packing material, shall, whether the price of the container or packing material is charged separately or not, be the same as is applicable to the goods, contained or packed therein and the turnover in respect of the container and packing material, shall be included in the turnover of such goods. Where the goods, sold in container or packed in packing material are tax free, the sale of such container or packing material shall also be tax free.

(2A) Every person executing works contracts shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under this Act:

Provided that where accounts are not maintained to determine the correct value of goods at the time of incorporation, such person shall pay tax at the rate of twelve and half per cent on the total consideration received or receivable, subject to such deductions, as may be prescribed.

(3) The State Government after giving fifteen days notice by notification, of its intention so to do, may by like notification, alter the rate of tax specified in any of the Schedules, add to or omit from or otherwise amend the Schedules and thereupon, the Schedule shall be deemed to have been amended accordingly:

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

6. It is the stand of the petitioner that Schedule-A contains the entries on which no tax is payable in terms of Section 16 of the Act and are treated as exempted goods whereas the goods mentioned in Schedule-B are taxable presently @ 5.5 % and which rate at the time of incorporation of Punjab VAT Act, 2005 was 4%. Schedule-C contains goods which are taxable @1% e.g. bullion, gold, silver, ornaments and precious stone etc. Schedule C-1 containing list of goods taxable @ 4% was added vide notification dated 29.01.2010 w.e.f. 29.01.2010. Schedule-D provides for the levy of tax @20% on liquor, petrol and ATF. In addition to the aforementioned Schedules in which rates were specifically provided, the State legislature had also appended Schedule-E to the Act, in which the list was given on which the rate of tax was leviable at special rates. The State Government kept on adding or omitting certain items from the said Schedule and goods mentioned therein are taxable at different rates. Schedule-F levies tax @13% (at present) on all those goods which are not mentioned in any other Schedules.

7. Counsel for the petitioner contends that the State Government issued Notification Annexure P-1 dated 13.12.2013 operative w.e.f. 01.01.2014, wherein certain amendments were carried out in Schedules A and E by virtue of which certain goods were notified as tax-free at distributor, wholesaler or retailer stage subject to the condition that tax has been paid at the first stage i.e. by manufacturer or first importer of such goods. By virtue of this amendment, goods in question i.e. branded snakes and namkeen were exigible to tax @ 14.5% + surcharge. As has been noted above, that although the State Government may not be authorized to prescribe the stages at which tax was leviable but the petitioner has given up the plea in respect thereto at this stage. Relevant entries as incorporated Scheudle-E against Entry 87(ix) and the rate of tax mentioned against this item was 6.25%. Relevant entries inserted in Schedule A and E respectively, are reproduced below:-

Schedule A

LIST OF TAX FREE GOODS

Entry No.	*Particulars*
87.	*The following commodities shall be tax free at the wholesaler or distributor or retailer stage provided that tax has already been paid at the first point of sale i.e manufacturer or first importer's stage:-* *vi. All types of **branded** and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, jellies, ketchup and spreads;* *ix. Roasted or fried grams and groundnuts, **namkeens and branded snacks**;*

Schedule E
LIST OF GOODS TAXABLE AT SPECIAL RATES

Entry No.	Particulars	Rate of Tax
15	*These following commodities shall be taxable at the first point of sale i.e manufacturer or first importer's stage, at the rates specified against these entries in the Table given below, namely:-* *6. All types of **branded** and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, jellies, ketchup and spreads;* *9. Roasted or fried grams and groundnuts, **namkeens and branded snacks**;*	*14.5* *6.25*

8. The petitioner's stand is that following the notification, it vide notification dated 13.12.2013 (Annexure P-1) are reproduced below:-

Schedule A

Entry No.	Particulars
91.	*All types of **branded or packaged food** products such as chips, wafers, chocolates, toffees, ice creams, Corn Flacks, pasta, macroni, biscuits, frozen products, meal makers, instant soups, instant noodles, ready to eat products, **namkeens**, custard powder, **snacks**, bakery products, baby foods etc.* ***Note: These commodities shall be tax free at the wholesaler or distributor or retailer stage provided that tax has already been paid at the first point of sale i.e. manufacturer or first importer's stage.***

Schedule E

Entry	Particulars	Rate of Tax
20.	*All types of **branded or packaged food** products such as chips, wafers, chocolates, toffees, ice creams, Corn Flacks, pasta, macroni, biscuits, frozen products, meal makers, instant soups, instant noodles, ready to eat products, **namkeens**, custard powder, **snacks,** bakery products, baby foods etc.* ***Note: These commodities shall be taxable at the first point of sale i.e. manufacturer or first importer's stage.***	*14.5 percent*

9. Thereafter notification Annexure P-2 dated 21.02.2014 was issued by the state Government w.e.f. 01.03.2014 wherein Schedules A, B and E were amended. In this amendment, the earlier notification was amended and some more commodities were made tax

free at the distributor, wholesaler or retailer stage subject to the condition that tax has been paid at the first stage.

10. Contention on behalf of the petitioner is that by virtue of amendment Annexure P-2 dated 21.02.2014, goods being sold by it i.e. namkeen and branded snacks were thereupon taxable @6.25%+ surcharge as there was a specific mention of these items in started charging tax @ 6.25%+ surcharge @ 10% being taxable at the first stage on these items which were concerned under the Entry 'namkeens and branded snacks'. The petitioner has annexed copy of invoices as Annexure P-3 to the writ petition showing charging of tax by it at the lower rate. Grievance of the petitioner is that subsequently, the State Government issued notification Annexure P-4 dated 25.03.2014 applicable w.e.f. 01.03.2014 amending the Schedules by virtue of which the item in question i.e. branded snacks and namkeen were made taxable @ 14.5%+ surcharge. In other words, vide notification Annexure P-4 dated 25.03.2014, the goods were made taxable at higher rate retrospectively w.e.f. 01.03.2014, whereas the petitioner during the period in dispute had already made sales worth Rs. 6,74,61,646/-, as per details given in Annexure P-5. After 25.03.2014, the relevant entries read as under:-

Schedule A
LIST OF TAX FREE GOODS

Entry No.	*Particulars*
87.	*The following commodities shall be tax free at the wholesaler or distributor or retailer stage provided that tax has already been paid at the first point of sale i.e manufacturer or first importer's stage:-* *vi. All types of **branded** and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, jellies, ketchup and spreads;* *ix. Roasted or fried grams and groundnuts, **namkeens and branded snacks**;*

Schedule E
LIST OF GOODS TAXABLE AT SPECIAL RATES

Entry No.	*Particulars*	*Rate of Tax*
15	*These following commodities shall be taxable at the first point of sale i.e manufacturer or first importer's stage, at the rates specified against these entries in the Table given below, namely:-* *(1) **** *(2) **** *(3) **** *(4) **** *(5) **** *6. All types of **branded** and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee*	*14.5*

	premix, tea premix, jellies, ketchup and spreads; *9. Roasted or fried grams and groundnuts,* ***namkeens and branded snacks****;*	*6.25*

11. For convenience sake, the comparative table showing levy of tax and the relevant entries at different times, attached as Annexure P-6 is reproduced hereunder:-

Schedules	**Upto 31.12.2013**		**01.01.2014 to 28.02.2014**		**01.03.2014 to 24.03.2014**		**25.03.2014 onwards**	
	Particulars of entry	**Rate of tax**	**Particulars of entry**	**Rate of tax**	**Particulars of entry**	**Rate of tax**	**Particulars of entry**	**Rate of tax**
A			**Entry 91**	**Tax free**	**Entry 87**	**Tax free**	**Entry 87**	**Tax free**
			Note: These commodities shall be tax free at the wholesaler or distributor or retailer stage provided that tax has already been paid at the first point of sale i.e. manufacturer or first importer's stage. *All types of branded or packaged food products such as chips, wafers, chocolates, toffees, ice creams, Corn Flacks, pasta, macroni, biscuits, frozen products, meal makers, instant soups, instant noodles, ready to eat products,* ***namkeens****, custard powder,* ***snacks****, bakery products, baby foods etc.*		***The following commodities shall be tax free at the wholesaler or distributor or retailer stage provided that tax has already been paid at the first point of sale i.e manufacturer or first importer's stage:-*** *vi. All types of* ***branded*** *and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, jellies, ketchup and spreads;* *ix. Roasted or fried grams and groundnuts,* ***namkeens and branded snacks***		***The following commodities shall be tax free at the wholesaler or distributor or retailer stage provided that tax has already been paid at the first point of sale i.e manufacturer or first importer's stage:-*** *vi. All types of branded and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix,* ***branded snacks and namkeen,*** *ketchup and spreads;* *ix. Roasted or fried grams and groundnuts,* ***namkeens and branded snacks***	
B	Unbranded Bhujia and Namkeen	**5.5+ surcharge**	**Entry 123** *Unbranded Bhujia and Namkeen*	**5.5+ surcharge**	**Entry 123** ***Unbranded Bhujia and Namkeen***	**5.5+ surcharge**	**Entry 123** ***Unbranded Bhujia and Namkeen***	**5.5+ surcharge**
E			**Entry 20**	**14.5 + surcharge**	**Entry 15**	**6.5+ surcharge**	**Entry 15**	**14.5+surcharge**
			Note: These commodities shall be taxable at the first point of sale i.e. manufacturer or first importer's stage. *All types of* ***branded or packaged food*** *products such as chips, wafers, chocolates, toffees, ice creams, Corn Flacks, pasta, macroni, biscuits, frozen products, meal makers, instant soups, instant noodles, ready to eat products,* ***namkeens****, custard powder,* ***snacks,*** *bakery products, baby foods etc.*		*These following commodities shall be taxable at the first point of sale i.e manufacturer or first importer's stage, at the rates specified against these entries in the Table given below, namely:-* *6. All types of* ***branded*** *and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, jellies, ketchup and spreads;* *9. Roasted or fried grams and groundnuts,* ***namkeens and branded snacks****;*		*These following commodities shall be taxable at the first point of sale i.e manufacturer or first importer's stage, at the rates specified against these entries in the Table given below, namely:-* *6. All types of* ***branded*** *and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals, Muesilli, Corn Flacks, pasta, macroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix,* ***branded snacks and namkeens****, ketchup and spreads;* *9. Roasted or fried grams and groundnuts,* ***namkeens and branded snacks****;*	
F	Unclassified	13+ surcharge						

12. Petitioners grievance is that Section 8 of the Act does not authorize the State Government to amend the Schedules by issuing a notification with retrospective effect and that the provisions of Section 8 provide that the State Government may alter the rate of tax or add or omit any of the entries in the Schedule by notification after giving 15 days notice unless circumstances exists which requires the amendment with immediate effect by recording reasons in writing for doing so. Submission on behalf of the petitioner is that the State Government neither issued any notice for amendment with immediate effect nor dispensed with the condition of previous notice but surprisingly vide notification Annexure P-4 dated 25.03.2014, the rate of tax was enhanced from 6.25% to 14.5% w.e.f. 01.03.2014 despite there being no provision authorising retrospective amendment of rate of tax chargeable. Besides, tax could not be levied stage wise as according to Section 8 of the Act ibid, the State Government has power to only make amendments in the Schedules with respect to rate of tax and the goods but it is not authorized to prescribe the stage at which such goods are leviable to tax.

13. Learned counsel for the petitioner has placed reliance on the judgment of this Court in CWP No. 7499 of 2006 titled as **M/s Kumar Brothers (Chemists) Pvt. Ltd. vs. The Union Territory of Chandigarh and others,** decided on 11.04.2006, whereby this Court quashed a notification issued with retrospective effect under Section 5 (1) of the Punjab General Sales tax Act, 1948, which is para material to Section 8 of the Punjab VAT Act, 2005, by observing as under:-

> "*It is thus obvious that notification dated 30.11.2005 (P-9) issued by respondent Nos 1 and 2 with retrospective effect from 13.7.2000, could not be issued by giving the earlier notification dated 25.2.2005 retrospective effect and stating that it must be deemed to have come into force on and with effect from 13.7.2000 because there is neither any express power conferred by the legislation on the concerned authorities to issue such a notification by giving it retrospective effect. We are also unable to find either by the process of interpretation or otherwise from necessary intendment any intention of the legislature to confer such a power on the competent authority. Therefore, notification dated 30.11.2005 (P-9) is liable to be set aside…"*

14. Learned counsel by referring to the decision in **M/s Kumar Brothers (Chemists) Pvt. Ltd.'s case (Supra),** has contended that only legislation can clothe the executive with the power to issue a notification from retrospective effect but the same cannot be done by the executive. He has also placed reliance on the below mentioned judgments referred to in **M/s Kumar Brothers (Chemists) Pvt. Ltd.'s case (Supra):-**

1) **Income tax officer, Alleppey v. M.C. Ponnoose, (1970) 75 ITR 174 (SC);**
2) **Bakul Cashew Co. V. Sales Tax Officer, Quilon, (1986) 62 STC 122 (SC),**
3) **Baldev Raj Hari Kishan v. State of Punjab, (1999) 114 STC 223 (P&H) [Annexure P-II]; and**
4) **Jiwan Agricultural Implements Works Workshop Co-operative Industrial Society Limited vs. State of Punjab, (2000) 119 STC 340 (P&H).''**

15. Learned counsel for the petitioner has summed up his case by arguing that the notification Annexure P-4 dated 25.3.2014 making the amendment applicable retrospectively w.e.f. 1.3.2014 is legally unsustainable as no notification can be issued by the executive or State Government from a retrospective date in the absence of any power in respect thereto conferred by the legislation. Learned counsel for the petitioner by referring to Section 8(3) of the Act has submitted that there is no such power a discernible there from even by way of express words or by necessary intendment conferred on respondent No. 1 to issue a notification from a retrospective date.

16. On the aforementioned basis, learned counsel for the petitioner contends that the impugned notification is liable to be set aside.

17. Written statement on behalf of respondents No. 1 to 3 has been filed by Shri Darbara Singh Assistant Excise and Taxation Commissioner, Mini Secretariat, Sangrur, in which inter alia, it has been pleaded that in certain circumstances, the legislature is competent to make a notification effective retrospectively as provided under Article 245 of the Constitution and that the power under Article 245 is plenary which includes the power to make a law with retrospective effect and even subordinate legislation can be allowed to be made retrospectively. In support of amendment of notifications retrospectively, reliance has been placed on the following judgments:-

1) **Metro Trading Syndicate vs. State of Kerala (1994) 94 STC (Ker);**
2) **D. Caswasji & Co. Vs. The State of Mysore and another (1973) 31 STC 445 (Mys) and**
3) **VRV Foods Limited vs. State of H.P. and others (2011) 46 VST 417 (HP)**

18. We are however of the view that the aforesaid judgments are not applicable in the facts of the case.

19. In paragraph No. 10 of the reply on merits it has been mentioned that the notification Annexure P-4 dated 25.03.2014 was issued by the State Government by dispensing with the condition of 15 days notice as provided under Section 8(3) of the Act while in paragraph No. 12 of the reply it has been mentioned that it was wrong to say that the State government was not authorized to issue a notification with retrospective effect while in paragraph No. 13 it is mentioned that the amendment in question was notified as provided under Section 8(3) of the Act and that as per the said provision, the State Government was fully competent to issue such a notification keeping in view the interest of Government revenue.

20. We have heard learned counsel for the parties and with their able assistance have perused the record and are of the view that the writ petition must succeed as it is well settled law that no retrospective amendment can be made in the rate of tax by way of notifications unless the power to make such amendments retrospectively has been specifically provided under the Act and the State government is duly authorized in this behalf. A perusal of Section 8 of the Act, which has been reproduced in the earlier part of the judgment reveals that the legislation has not conferred any power on the competent authorities to issue a notification with retrospective effect. In the absence of express or implied provision in the legislation itself, the State Government cannot issue a notification from a retrospective effect. Reference in this context can be made to the decision of the Hon'ble Supreme Cour tin **Bakul Cashew Co.'s case (Supra),** wherein following the view taken in Income Tax Officer Alleppey, their Lordships observed as under:- (*emphasis supplied)*

> "Notification G.O. Ms. No. 127/73/TD dated October 12,1973, issued by the State Government of Kerala granting retrospectively an exemption in respect of tax payable under Section 5 of the Kerala General Sales tax Act, 1963, by cashew manufacturers in the State on the purchase turnover of cashew-nuts imported from outside India through the Cashew Corporation of India for the period September1, 1970, to September 30, 1973, was validly cancelled by the Government by its subsequent Notification bearing G.O. Ms. No. 143/73/TD dated November 9, 1973, because on the date of the notification granting exemption the State Government did not have power under section 10 as it then stood to grant an exemption retrospectively. It was only subsequently in 1980 when Section 10(1) was amended by inclusion of the specific words "either prospectively or retrospectively" that the State Legislature

conferred power on the State Government to grant exemption with retrospective effect.

An authority which has the power to make subordinate legislation cannot make it with retrospective effect unless it is so authorised by the legislature which has that power conferred on it."

21. The same view has been reiterated and followed by the Hon'ble Supreme Court in the case of **Mahabir Vegetable Oils (P) Ltd. vs. State of Haryana (2006) 3 SCC 620.**

> **"**41. ...... It is beyond any cavil that a subordinate legislation can be given a retrospective effect and retroactive operation, if any power in this behalf is contained in the main act, Rule making power is a species of delegated legislation. A delegate therefore can make rules only within the four corners thereof.
>
> 42. it is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. [See West v. Gwynne, (1911) 2 Ch. 1]"

22. It is therefore, clear that notification Annexure P-4 dated 24.03.2012 issued by the respondents with retrospective effect from 01.03.2014 could not be issued by giving the same retrospective effect and stating that it must be deemed to have come into force on and w.e.f. 01.03.2014, since there is neither any express power conferred by the legislation on the concerned authorities to issue such a notification by giving it retrospective effect nor we are able to find either by process of interpretation or otherwise from necessary intendment any intention of the legislature to confer such a power on the competent authority. Therefore, notification dated 24.3.2014 (Annexure P-4) is liable to be set aside to the extent of retrospectively. (*emphasis supplied*)

23. In **Baldev Raj Hari Kishan vs. State of Punjab (1999) 114 STC 223 (P&H),** this Court observed as under:-

> "*... These notification can be operative only prospectively, i.e., with effect from the date these were published in the official Gazette. They cannot be operative with effect from the date mentioned therein as the State Government in exercise of its subordinate legislative power can issue notifications prospectively and not retrospectively as no power has been conferred on the State Government to legislate retrospectively, by the legislature...''*

24. For the reasons mentioned above, the writ petition succeeds and the impugned notification Annexure P-4 dated 24.03.2014 is set aside to the extent of its retrospective applicability.

25. We may however add here that despite it being well settled law that a notification is not applicable retrospectively unless the law applicable confers such a power on the concerned authorities, the respondents have chosen to issue such a notification despite there being no express or implied power under the law applicable to do so and despite it being open to the respondents to obtain opinion with regard to the legality of the proposed action. We expect that in situations warranting exercise of power to issue a notification with retrospective effect, the State satisfies itself as to the legality of the proposed action as power the law applicable before resorting to the same. The same would be in keeping with the Rule of law

PUNJAB VAT TRIBUNAL

VATAP NO. 582 of 2013

INDIAN SUCROSE LTD
Vs.
STATE OF PUNJAB

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

23rd December, 2014

HF ▶ Revenue

PRE-DEPOSIT – APPEAL – ENTERTAINMENT OF – DEMAND RAISED ON ACCOUNT OF SHORTAGE OF TAX DEPOSITED - PENALTY AND INTEREST LEVIED – MORE THAN HALF OF OUTPUT TAX ASSESSED CONTENDED TO HAVE BEEN PAID – PRAYER FOR ENTERTAINMENT OF APPEAL WITHOUT ANY FURTHER PRE-DEPOSIT AS MORE THAN 25% OF TAX, INTEREST AND PENALTY CONTENDED TO BE ALREADY DEPOSITED – AMOUNT ALREADY PAID ALLEGED BY DEPARTMENT AS NOT INCLUSIVE OF INTEREST AND PENALTY AMOUNT THAT HAD BEEN LEVIED – HELD, APPELLANT LIABLE TO PAY 25% OF TAX, PENALTY AND INTEREST AS DUE AGAINST IT – FIRST APPELLATE AUTHORITY DIRECTED TO ENTERTAINMENT APPEAL IF 25% AMOUNT OF TAX, PENALTY AND INTEREST DUE PAID BY APPELLANT – *SECTION 62(5) OF PVAT ACT, 2005.*

In this case, a demand had been raised against the assessee on the basis of purchases amounting to Rs. 54,65,37,761/- showed whereas expenses on the procurement not being added, thereby amounting to Rs. 66,26,57,782/-. An appeal is filed before the Tribunal against the assessment order contending that there was no requirement to deposit 25% of the demand raised as more than the requisite amount was already paid as tax by the appellant. As per the department, the amount already paid as tax was short of the amount of penalty and interest. It is held by the Tribunal that the appeal would be entertained by the 1st appellate authority after it is satisfied that 25% amount of tax, penalty and interest as due against the appellant has been paid by the latter.

Present: Mr. Sandeep Goyal, Advocate counsel for the appellant.
Smt. Sudeepti Sharma, Deputy Advocate General for the State

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

1. This appeal is directed against the order dated 1.8.2013 passed by the Deputy Excise and Taxation Commissioner, Camp Office, Jalandhar, whereby he dismissed the appeal of the appellant against the order dated 18.10.2010 passed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, Hoshiarpur, creating an additional demand of Rs.2,09,83,714/- for the assessment year 2006-07 on the ground of non compliance of the

62 (5) of the Punjab Value Added Tax Act, 2005.

2. The facts in the background of the case are that the appellant had purchased the sugarcane of Rs.54,65,37,761/- and had showed the same in the return but the expenses on the procurement of sugarcane Rs.34,30,864/- are not shown and total unexplained amount comes to Rs.66,26,57,782/-.

3. Being not satisfied with the vat return filed by the taxable person, the Designated Officer issued a statutory notice U/s (29) read with rule 47 of the Punjab Value Added Tax Act, 2005 on 23.09.2010 and again for 18.10.2010. Ultimately, after verification of the returns the additional demand of Rs.2,09,83,714/- was created. The penalty and interest proceedings were ordered to be taken afterwards.

4. The Counsel for the appellant has first contended that the assessment is time barred. In this regard, it may be observed that it was the assessment of the financial year of 2006-07. Notice was Issued within three years i.e. 23.9.2010 and the order was passed on 18.10.2010 as such the assessment is not time barred.

5. The second contention raised by the Counsel is that out of the total output tax assessed by the ld. Officer was 4,89,68,650/-, out of which Rs.2,79,84,936/- stands paid. Therefore, more than 25% of the tax due stands already deposited, as such appeal should have been entertained. Having considered this contention, it transpires that there is no dispute with the fact total out put tax was Rs.4,89,68,650.00, out of which the tax already paid was Rs.2,79,84,936.00. The State Counsel has contended that this amount does not include penalty and Interest regarding which the proceedings are taken separately, as such the appellant was required to deposit 25% amount i.e.2,09,83,714/-, which can be termed as additional demand. The Counsel for the appellant has next contended that the order of assessment is void as no tax under Punjab Value Added Tax Act could be levied by the State Government on the sugarcane. In support of his case, he has quoted judgment delivered in case Gobind Sagar decided on 29.7.2010 because on decision of this issue, the right of appeal of the party against whom it is decided would be lost.

6. As regards, the validity of the imposition of tax, this court keeps reservations to go into the said issue and leaves it to the Appellate Authority to decide about the same.

7. As regards compliance of Section 62(5) of the Act, the Assessing Authority framed the assessment on 18.10.2010 against which the appeal was filed on 16.1.2011 that is much prior to the introduction of the amendment. Therefore, the law as was inforce at the time, when the appeal was filed, would be applied. The Section 62 (5) which was applicable at the time of filing of the appeal reads as under:-

> Section 62 (5) *"No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of additional demand, penalty and interest, if any."*

8. Thus, the appellant is liable to pay 25% of the tax, penalty and interest if any due against the appellant.

9. Resultantly, this appeal is accepted. The impugned orders are set-aside and the Deputy Excise and Taxation Commissioner would entertain the appeal after satisfying himself if 25% amount of tax, penalty and interest as due against the appellant has been paid by the appellant.

10. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

VATAP NO. 448 of 2014

OM STEELS
Vs.
STATE OF PUNJAB

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

23rd December, 2014

HF ▶ Dealer

NOTICE – PENALTY UNDER SECTION 51(7) PVAT ACT – GOODS IN TRANSIT SEIZED – PENALTY U/S 51(7)(B) IMPOSED BY AETC BY ISSUING UNDATED NOTICE TO DEALER – IGNORANCE OF RULE 47 REQUIRING 10 DAYS CLEAR NOTICE – ORDER PASSED AGAINST APPELLANT WITHOUT CALLING FOR EVIDENCE – FINDINGS RECORDED WITHOUT CONSIDERING ANY DOCUMENTS PRESUMING THAT THE COMPUTERISED BILL WAS SUSPECTED TO BE DELETED FROM THE CPU – ORDERS PASSED BY AETC SET ASIDE BY TRIBUNAL BEING CRYPTIC IN NATURE – CASE REMITTED TO DECIDE AFRESH – *SECTION 51(7) OF PVAT ACT 2005, RULE 47 OF PVAT RULES.*

In this case, the goods of the dealer had been seized and penalty u/s 51(7)(b) of the PVAT Act 2005 had been imposed by the AETC-cum-Dy. Director. The dealer had filed an appeal before the Tribunal questioning the procedure undertaken by the Ld. Officer while imposing penalty. It was held that the said notice was undated and not clear regarding the date of service. The Ld. AETC neither gave 10 days clear notice nor did he call for the evidence to be produced before him and misstated that the GR books and the CPU were not produced by the appellant. Without considering any documents, he has recorded that the computerised bill was suspected to be deleted from CPU. Finding the order of the Ld. Officer cryptic in nature, the case is remitted to be decided afresh.

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

1. The respondents have urged that as per Punjab VAT Rules 2005 that within 72 hours of the seizure of the goods, the case has to be forwarded to 2005 to invite the objections of the party or reply to the notice regarding the detention of the goods at the Information Collection Centre or seizure by the Mobile Wing, as the case may be. After that, in response to the notice, the dealer or the consignee or the consignor as the case may be (of the goods), has to appear before the Designated Officer to file the reply and thereafter, it is required to produce the account books. Then after taking into consideration, the entire evidence (including documents) produced by the dealer / appeallant, the penalty is imposed, if the case is found fit. Now in this case, though notice was issued by the Assistant Excise and Taxation Commissioner-cum-Deputy Director (Investigation) Mobile Wing, Patiala u/s 51(7)(b) of the Punjab Value Added Tax Act, 2005, but the said notice is undated and it is also not clear as to

on which date this notice was served. As per Rule 47, ten days clear notice was to be served upon the appellant before passing any order. It is not denied by the State counsel that the detention was made on 15.09.2011 and the case forwarded to the AETC by the detaining officer on 19.2.2011. The Assistant Excise and Taxation Commissioner ignored the basic provisions of law before deciding the case. Neither, he gave 10 days clear notice nor he called for the evidence to be produced before him, but without so asking, he misstated that the GR books and CPU were not produced by the appellant. It appears that he even did not open the sealed envelop containing the documents to record the findings. But without documents, he recorded that the computerized bill was suspected to be deleted from the CPU.

2. In these circumstances, it would have to held that the impugned order passed by the Assistant Excise and Taxation Commissioner, MW Patiala is cryptic in nature and has to be set aside.

3. Resultantly, this appeal is accepted. Impugned order is set-aside and the case is remitted back to the Assistant Excise and Taxation Commissioner, MW Patiala to decide the same afresh in accordance with law. The parties are directed to appear before the Assistant Excise and Taxation Commissioner on 7.4.2015.

CIRCULAR REGARDING APPEARANCE BY UNAUTHORISED PERSON

OFFICE OF THE EXCISE & TAXATION COMMISSIONER, PUNJAB

To

All Assistant Excise & Taxation Commissioners,
Incharge of Districts.

No. VAT-1-2015/379-404 Dated 03.03.2015

Subject: Representation by unauthorized person.

The department has been regularly receiving complaints that officials and subordinate staff are allowing unauthorized persons to appear in the office. Your attention is drawn to section 73 of Punjab VAT Act which is reproduced as under:-

"73. (1) A person, who is entitled or required to attend before any authority in connection with any proceedings under this Act, may represent through an agent. For the purpose of this section, an agent means a person authorised by the principal in writing to appear on his behalf before a designated officer, the Commissioner or the Tribunal or any other officer appointed by the State Government to assist the Commissioner under sub-section (2) of section 3 being:-

(a) a relative; or
(b) a person regularly employed; or
(c) a legal practitioner, who is entitled to plead in any court of law in India; or
(d) a bonafide income tax practitioner; or
(e) a chartered accountant within the meaning of the Chartered Accountants Act, 1949, (38 of 1949) and includes a person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered in the State; or
(f) a retired gazetted officer of the Punjab Excise and Taxation Department, who has an experience of working in any capacity for a minimum period of five years under this Act and/or the repealed Act; provided a period of two years had elapsed since the date of his retirement."

You are hereby directed to ensure that no unauthorized person should be allowed to attend the proceedings before any officer/officials of the department. These instructions should be meticulously followed and any lapse shall be seriously viewed.

Deputy Excise & Taxation Commissioner (VAT)
For Excise & Taxation Commissioner, Punjab

No. VAT-1-2015/405-411 Dated: 03.03.2015

A copy is forwarded to the All the Deputy Excise & Taxation Commissioners, incharge of divisions for information and necessary action.

Deputy Excise & Taxation Commissioner (VAT)
For Excise & Taxation Commissioner, Punjab

NOTIFICATIONS

NOTIFICATION REGARDING AMENDMENT OF SMALL TRADERS RAHAT SCHEME, 2014

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF .EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)
NOTIFICATION
The 11th March, 2015

No. S. O. 11/P.A.8/2005/S.8-A/2015.-Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by section 8-A of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.l5/PA.8/2005/S.8-A/2014 dated the 11th February, 2014, with immediate effect, by dispensing with the condition of previous notice namely:-

AMENDMENT

In the said notification, -

(i) in clause 1, sub- clause (b) shall be omitted;

(ii) in clause 2, for the existing Table, the following Table shall be substituted, namely: -

``Serial No.	Taxable turnover (excluding the turnover of goods covered under single stage taxation)	Tax liability
l.	Rs. 5 lac - Rs. 10 lac	Rs. 1000
2.	Rs. I0 lac - Rs. 25 lac	Rs. 5000
3.	Rs. 25 lac - Rs. 50 lac	Rs. 10000
4.	Rs. 50 lac - Rs. 75 lac	Rs. 15000
5.	Rs. 75 Lac - Rs. l Crore	Rs. 20000;

Provided that no tax is payable by a person whose taxable turnover is less than rupees five Lac, who can obtain the `No Tax Liability' Certificate from the department, on payment of fifty rupees. "

(iii) in clause 8, after Sub-clause (5), the following clause shall be inserted, namely :-

"(6) The lump sum tax and the tax slabs, shall remain un-changed till the 3lst March, 20l8, whereafter, the same would be increased at the rate of five percent of the lump sum tax."

D.P. REDDY,
Financial Commissioner Taxation and
Secretary to Government of Punjab,
Department of Excise and Taxation.

NOTIFICATION REGARDING CHANGE IN RATE OF ADVANCE TAX OF IRON AND STEEL

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-Il BRANCH)
NOTIFICATION
The 11th March, 2015

No. S. O. 10/P.A.8/2005/S.6/2015.-Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (7) of section 6 of the Punjab Value Added Tax Act, 2005, (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in the Government of Punjab, Department of Excise and Taxation, Notification No. S.O.90/P.A.8/2005/S.6/2013 dated the 4th October, 2013, namely:-

AMENDMENT

In the said Notification, in Serial No. l 6, for item (i), the following shall be substituted, namely:-

"(i) Iron and Steel (including its scrap) and Iron and Steel goods, specified in clause (iv) of section I4 of the Central Sales Tax Act, 1956, except Wheels, Tyres, Axles, Wheel Sets and Non-Cenvat paid Iron and Steel Scrap.''	3.5 percent

D.P. REDDY,
Financial Commissioner Taxation and
Secretary to Government of Punjab,
Department of Excise and Taxation.

NOTIFICATION REGARDING AMENDMENT IN SCHEDULE B AND SCHEDULE E

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)
NOTIFICATION
The 11th March, 2015-03-13

No. S.O. 9/P.A. 8/2005/S.8/2015. - Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (3) of section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendments of Schedules 'B' and 'E' appended to the said Act, with immediate effect by dispensing with the condition of previous notice, namely:-

AMENDMENT

1. In the said Schedule 'B', -
   (i) In the 'list of industrial inputs and packing materials given as per Serial No. 58', the items given at Serial Nos. 35, 37, 161, 162, 163 and 166 and the entries relating thereto shall be omitted; and
   (ii) Serial No. 163 and the entries thereto, shall be omitted;

2. In the said Schedule 'E',-
   (i) for Serial No. 3 and the entries relating thereto, the following shall be substituted, namely:-

"3. Plastic granules, plastic powder, master batches Polyvinyl Chloride, Linear low density polyethylene (LLDPE) and low density polyethylene (LDPE), High Density Polyethylene and Polymers of propylene in primary forms."	8.5 percent

   (ii) for serial No. 21 and entries relating thereto, the following shall be substituted, namely:

"21. Iron and steel goods as enumerated in clause-iv of Section 14 of Central Sales tax Act, 1956 except Non-Cenvat paid Iron and Steel Scrap.''	3.5 percent

   (iii) after Serial No. 25 and the entries relating thereto, the following serial No. shall be added, namely:-

``26. Aviation Turbine Fuel when sold at the airports in Punjab to scheduled and non scheduled airlines carrying passengers''.	4 percent

D.P. REDDY,
Financial Commissioner Taxation and
Secretary to Government of Punjab,
Department of Excise and Taxation.

NOTIFICATION REGARDING AMENDMENT IN RULE 21 IN PUNJAB VAT RULES

PART III
GOVERNMENT OR PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)
NOTIFICATION
The 11th March, 2015

No. G.S.R. 4/P.A.8/2005/S.70/Amd.(54)/2015.-ln exercise of the powers conferred by sub-section (1) of section 70 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), and all other powers enabling him in this behalf the Governor of Punjab is pleased to make the following rules further to amend the Punjab Value Added Tax Rules, 2005, namely:-

RULES

l. (I) These Rules may be called the Punjab Value Added Tax (Amendment) Rules, 2015.

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

2. In the Punjab Value Added Tax Rules, 2005 (hereinafter referred to as the said rules), in rule 2, alter clause (hhh), the following clause shall be inserted, namely: -

"(hhhh) "third stage taxable person" means a taxable person, who purchase goods from the second stage taxable person."

3. In the said rules, in rule 2 l, in sub-rule (7), for the words "second stage taxable person", the words "second stage taxable person or third stage taxable person" shall be substituted.

D.P. REDDY,
Financial Commissioner Taxation and
Secretary to Government of Punjab,
Department of Excise and Taxation.

NEWS OF YOUR INTEREST

PUNJAB CABINET DECISIONS ON VAT

Key Cabinet decisions

- The Budget session will be held between March 12 and 25. Budget to be presented on March 20
- Punjab State Civil Services Rules 2009 amended to recruit Deputy Superintendent (Jails)/District Probation Officers (Grade- II) through exam to be conducted by the PPSC
- Rahat scheme approved. A lumpsum tax for dealers having annual turnover of less than Rs 10 lakh reduced. Now, shopkeepers having Rs 5-10 lakh turnover to pay Rs 1,000 instead of Rs 5,000. No tax for turnover less than Rs 5 lakh

Notwithstanding the fall in revenue, the Punjab Cabinet today approved Value Added Tax (VAT) rationalisation for some goods. The decision has been taken just before the Budget session that will be held between March 12 and 25.

By giving its nod to either doing away with e-reporting on sale of goods (eTRIP) for major items of consumption in Punjab or reducing VAT on Aviation Turbine Fuel (ATF), the move of the Cabinet, which met under the leadership of Chief Minister Parkash Singh Badal, will only be leading to a further dip in the state's total VAT collection.

When in 2013, the state government had introduced eTRIP, the government had projected that it would help increase VAT by Rs 250-300 crore. Though the exact details of loss in revenue have not been worked out, sources say that the state government will lose around Rs 100 crore in revenue through these "relief measures" approved today.

With the Cabinet nod for doing away with eTRIP system for iron and steel, yarn, mustard, cotton, vegetable oils and paper board, sources in the government admit that tax compliance will certainly decrease and hit VAT collection.

Officials in the Excise and Taxation Department insist that they would come up with some other methods of tax compliance, but till then, the loss in revenue will have to be borne. The Cabinet has also decided to reduce VAT on Aviation Turbine Fuel (ATF) from 6.05 per cent (including surcharge) to 4.04 per cent for all scheduled and non-scheduled flights.

Government sources say that the loss will be notional as in the long run, once the Mohali International Airport gets commissioned, the airlines will refuel from here and the jump in sales will offset the loss in VAT cut.

To bring in additional revenue, the Cabinet has decided to increase VAT on natural gas that is used in large quantities by fertiliser plants in the state. VAT rate has been increased from 6 to 14 per cent.

As a result of the fall in price of crude oil and subsequent fall in price of natural gas, the state's VAT kitty has suffered a loss of Rs 39 crore under this head. By increasing the VAT rate, the state hopes to offset this loss.

Some plastic products have also been brought under VAT and the government hopes to rake in an additional Rs 20 crore VAT through these.

It may be mentioned that as against a projected growth of 15 per cent in VAT collections for the ongoing fiscal, this tax is growing at just 6.01 per cent over last year (the audited figures show that VAT collection till November 2014 was Rs 10,589.27 crore as against Rs 9,988.70 crore between April and November 2013). The state had set the target of collecting Rs 17,760 crore as VAT in 2014-15.

Courtesy: The Tribune

04th March, 2015