SGA
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Issue 8
April 2015

NOMINAL INDEX

NEWS OF YOUR INTEREST

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SUBJECT INDEX

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SUPREME COURT OF INDIA

SLP NO. 14932 OF 2010

STATE OF HARYANA & ANR.
Vs.
JAI DURGA COTTON MILLS

THE CHIEF JUSTICE AND ARUN MISHRA, J

11th April, 2015

HF ▶ Petitioner - Assessee

EXEMPTED UNITS – RULE 28A – HGST RULES – TAX ON SALE TO REGISTERED DEALERS – WHETHER INCLUDIBLE IN THE NOTIONAL TAX LIABILITY FOR CALCULATION OF EXEMPTION LIMIT – HIGH COURT HELD THAT THE TAX ON SALE TO REGISTERED DEALERS IN NOT TO BE COUNTED FOR NOTIONAL TAX LIABILITY FOLLOWING JUDGEMENT OF LIBERTY ENTERPRISES – ON SLP BEFORE SUPREME COURT – HELD – THE MATTER IN THIS REGARD IS SETTLED BY THE JUDGMENT OF LIBERTY ENTERPRISES – SLP DISMISSED.

The High Court had held that tax on sale made to a registered dealer would not be taken into consideration while calculating notional tax liability for the purpose of Rule 28A in the case of exempted units following Supreme Court Judgment in "State of Haryana vs. Liberty Enterprises", (2009) 14 SCC 310. On SLP before Supreme Court, it was held that the matter is squarely covered by the aforesaid judgment and thus the SLP was dismissed.

Case referred

Jai Durga Cotton Mills vs. State of Haryana (2010) 29 VST 617: 36 PHT 571 (AFFIRMED)

Case followed

State of Haryana vs. Liberty Enterprises (2009) 14 SCC 310

For Petitioner(s): Mr. Shekhar Raj Sahrma, Adv.
Mr. Rajiv Singh, adv.

For Respondent(s) Mr. Sandeep Goyal, Adv.
Mr. Pawanshree Agrawal,Adv.
Mr. Vivek Gupta,Adv.
Mr. M. P. Devanath,Adv.
Mr. Vivek Sharma, Adv.
Mr. Ambrish Pandey, Adv.
Mr. Aditya Bhattacharya, Adv.

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Upon hearing the counsel the court made the following order:

ORDER

Learned counsel appearing for the parties to the lis would agree that the issues raised in the present special leave petitions are squarely covered by a decision of this Court in the case of "State of Haryana vs. Liberty Enterprises", (2009) 14 SCC 310.

In view the above, these special leave petitions are also dismissed on the same terms, conditions, observations and directions.

PUNJAB & HARYANA HIGH COURT

CWP NO. 747 OF 2013

VIVEK SHIKSHA SAMITI
Vs.
CHIEF COMMISSIONER OF INCOME TAX, PANCHKULA

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

25th March, 2015

HF ▶ Petitioner

EXEMPTION – INCOME TAX ACT – EDUCATIONAL INSTITUTION APPLICATION REJECTED ON MERITS AND NON- COMPLIANCE – APPLICATION FILED FOR EXEMPTION U/S 10(23C)(vi) OF THE ACT – REJECTED ON TWO GROUNDS - PROFITS OBSERVED TO BE HIGHER THAN 15% IN THE PAST FIVE YEARS AND NON -FURNISHING OF REQUISITE DOCUMENTS – PETITIONER ALLEGED HAVING DULY FURNISHED DOCUMENTS – WRIT DISPOSED OF WITH AN OPPORTUNITY TO PETITIONER TO PRODUCE DOCUMENTS - MATTER TO BE DECIDED BY COMMISSIONER OF INCOME TAX IN VIEW OF JUDGEMENT PASSED IN QUEEN'S EDUCATIONAL SOCIETY – *SEC 10 (23C) (vi) OF INCOME TAX ACT*

The petitioner had applied for exemption under the Income Tax Act. The application was rejected as it was observed that the profit margin was 25.05% which is higher than the limit of 15% as provided. Also, documents such as vouchers were not produced. However, a writ was filed alleging that the petitioner had furnished the documents. It is observed by the court that there had been some communication gap. One more opportunity is granted to the petitioner to produce the documents. The matter is to be decided by the Commissioner income Tax (Exemption) in view of Supreme Court judgement passed in case of Queen's Educational Society. The writ is disposed of.

Case Referred

Queen's educational society Vs. Commissioner of Income Tax CA No.5167 of 2008

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

Ms.Urvashi Dhugga, Advocate, for the respondent.

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S.J.Vazifdar, Acting Chief Justice

1. Rule. Rule returnable and heard finally.

2. The petitioner has challenged the order dated 24.09.2012 (Annexure P5), passed by the Chief Commissioner of Income Tax, Panchkula, rejecting its application for exemption, filed under Section 10(23C)(vi) of the Income Tax Act, 1961.

3. The impugned order observes that after debiting the depreciation etc., the profit margin is 25.05%, which is higher than the limit of 15%, under the said provision. However, as rightly argued on behalf of the respondent, the order does not state that this is for more than 5 years. Disallowance can only be if this position continues for a period of more than 5 years. The order is also passed *inter alia* on the ground that the petitioner did not produce certain documents such as vouchers.

4. Mr.Goyal, learned counsel for the petitioner states that vide the notice dated 25/29.03.2012 (Annexure P3), the respondent called upon the petitioner to furnish certain documents. The same were furnished, as is evident from the petitioner's letter (Annexure P4). The petitioner's grievance is that the impugned order should not have been passed due to the non-compliance of the said notice dated 25/29.03.2012. Further, the respondent did not, upon receipt of the reply, allege that the particulars have not been furnished.

5. It is not necessary to go into this aspect in any further detail. There appears to have been some communication gap in this regard. The ends of justice would be served by granting the petitioner, an opportunity of producing the documents required by the respondent.

6. In these circumstances, the impugned order dated 24.09.2012 (Annexure P5) is set aside and the matter is remanded for a fresh decision, after giving the petitioner an opportunity of producing any document(s) that the respondent may require. We are informed that the matter will, now, be decided by the Commissioner of Income Tax (Exemption), Chandigarh. The matter shall be decided, in accordance with law, including on the basis of the judgment passed by the Supreme Court in **CA No. 5167 of 2008** titled *M/s Queen's Educational Society Vs. Commissioner of Income Tax*, decided on 16.03.2015.

Writ petition is, accordingly, disposed of.

PUNJAB & HARYANA HIGH COURT

I.T.A. No.350 of 2014

MOHAN LAL BANSAL
Vs.
INCOME TAX OFFICER, WARD-II(1), FARIDABAD

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

31st March, 2015

HF ▶ Appellant

REMAND – INCOME TAX ACT – MATTER REMANDED TO ASSESSING OFFICER BY ITAT – CONTENTION RAISED BEFORE HIGH COURT THAT IMPUGNED ORDER CONTAINS OBSERVATIONS BY TRIBUNAL AGAINST APPELLANT – ON APPEAL AGAINST REMAND ORDER, HELD THAT APPREHENSION NOT WELL FOUNDED – OBSERVATIONS ARE PRIMA FACIE – HAD THEY BEEN CONCLUSIVE TRIBUNAL WOULD HAVE DECIDED ITSELF – MATTER TO BE LEFT OPEN FOR THE APPELLANT TO RAISE CONTENTIONS IN FURTHER PROCEEDINGS - REMAND PROCEEDINGS TO BE DECIDED ON MERITS UNINFLUENCED BY OBSERVATION OF TRIBUNAL – WRIT DISPOSED OF.

In this case the matter was remanded by Income Tax Tribunal pertaining to assessment year 2007-08 for the assessing officer to decide genuineness of purchases. Certain observations were made against appellant in the impugned order.An appeal was filed against the remand order. It is held that observations made by Tribunal were only prima facie and not conclusive; otherwise the Tribunal would have decided the matter itself. Parties should be allowed to keep it open to raise contentions in further proceedings. It is held that the remand proceedings ought to be decided on merits uninfluenced by observations made by the Tribunal in the impugned order.

Present: Mr. Sandeep Goyal, Advocate for the appellant

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

This is an appeal against the order of the Income Tax Appellate Tribunal remanding the matter pertaining to assessment year 2007-08 to the Assessing Officer.

2. We are not inclined to interfere with the Tribunal's exercise of jurisdiction in remanding the matter for fresh consideration. It will be necessary for the Assessing Officer to

determine whether the transactions of purchase by the appellant from the two entities are genuine or not.

3. Mr. Goyal submitted that the impugned order contains observations against the appellant. The apprehension is not well-founded. Firstly, the observations are only *prima facie*. If they were conclusive in nature, the Tribunal would have itself decided the matter. All the contentions of the parties are obviously open before the Assessing Officer and in further proceedings. The proceedings, upon remand, would be decided on their merits uninfluenced by the *prima facie* observations of the Tribunal in the impugned order. Even issues such as whether the other two entities had discharged their onus regarding the genuineness of the transactions are kept open. It would also be open, for instance, for the appellant to contend that even assuming that they did not or do not establish the genuineness of their transactions, it may not effect the appellant's case, if the appellant is otherwise able to establish the genuineness of his transactions.

4. The appeal is, therefore, disposed of but subject to the above clarifications. It is reiterated that the remand proceedings whether before the Assessing Officer or in any proceedings to challenge the decision of the Assessing Officer would be decided on their own merits uninfluenced by the observations of the Tribunal.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 211 OF 2014

GHASI RAM PANNA LAL
Vs.
STATE OF HARYANA & ANOTHER

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

24th March, 2015

HF ▶ Appellant

CONDONATION OF DELAY – APPEAL – SICKNESS OF MARRIED DAUGHTER – ASSESSMENT YEAR 2007-08 – APPEAL AGAINST ASSESSMENT ORDER AND PENALTY ORDER FILED AFTER 761 DAYS AND 250 DAYS RESPECTIVELY SEEKING CONDONATION ON GROUNDS OF ILLNESS OF MARRIED DAUGHTER OCCUPYING THE WHOLE FAMILY IN HER TREATMENT – APPEAL REJECTED OBSERVING THAT FOR THE ASSESSMENT YEAR IN QUESTION, BUSINESS HAD RISEN AND THAT MARRIED DAUGHTER WAS RESPONSIBILITY OF IN-LAWS- APPEAL BEFORE TRIBUNAL DISMISSED – DELAY CONDONED BY COURT ACCEPTING ILLNESS OF MARRIED DAUGHTER IS A SUFFICIENT CAUSE IRRESPECTIVE OF THE FACT THAT BUSINESS OF APPELLANT HAD FLOURISHED – FIRST APPELLATE AUTHORITY DIRECTED TO HEAR APPEAL ON MERITS – *SEC 5 OF LIMITATION ACT, 1963*

Assessment was framed for the year2007-08 vide order dated 29/3/2011. Penalty was imposed on 13/8/2012. An appeal was filed before the First Appellate Authority along with an application for condonation of delay against the order dated 29/3/2011 after a delay of 761 days and against penalty order after a delay of 250 days. In both cases the ground for condonation was taken as medical illness of married daughter. It was pleaded that the daughter of the appellant had been married in 2011 in Balliya district in U.P. and had been diagnosed with blood clot cancer disease few months after marriage and had to be brought back to Gurgaon for medical treatment. The family had remained occupied for a period of 2 years for getting her treated. The Joint Excise and Taxation Commissioner did not find this as a sufficient cause and observed that since the business had flourished in the assessment year, shelter of daughter's illness was a lame excuse. Moreover, it was held that married daughter was a responsibility of her in- laws. An appeal was filed before Tribunal which was also rejected. On appeal before High Court, it is held that the the ground taken up by appellant was a sufficient cause which was proved with sufficient medical record. Mere flourishing of appellant's business was held not to be a ground for not condoning the delay. Accepting the appeal, delay is condoned and the Ld.Joint Excise & Taxation Commissioner is directed to hear the appeal on merits.

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

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G.S.SANDHAWALIA J.

1. This judgment shall dispose of VATAP Nos.211 & 230 of 2014, involving common questions of law and facts. However, to dictate orders, facts have been taken from VATAP No. 211 of 2014 titled *M/s Ghasi Ram Panna Lal vs. State of Haryana & another.*

2. Challenge in the present appeal is to the order dated 06.05.2014 (Annexure A7), passed by the Haryana Tax Tribunal, Chandigarh (for short, the 'Tribunal'), whereby it has failed to exercise its jurisdiction and declined to interfere in the Appellate Order dated 21.10.2013 (Annexure A5) vide which the Joint Excise & Taxation Commissioner (Appeals) Faridabad (for short, the 'JETC') had dismissed the appeal of the appellant, against the order of assessment dated 29.03.2011 (Anneuxre A2) being time barred by 761 days, as per the case of the respondents. Similarly, the second appeal filed against the order of penalty, was also dismissed, being time barred by 250 days, as per the case of the respondents. Appeal No.230 of 2014 pertains to the case of penalty, imposed under Section 38 of the Haryana General Sales Tax Act, 1973, vide order dated 13.08.2012 and the appeal against the same was also dismissed on the same ground.

3. The facts of the case would go on to show that the assessment was made on 29.03.2011 in the case of the appellant, who is a proprietary concern and a dealer, trading in iron & steel, cement & white cement and ACC sheets. Since no appeal was filed against the assessment order, the respondent-authorities imposed a penalty of Rs. 36,26,530/- on 13.08.2012. An appeal was filed before the JETC along with an application for condonation of delay against the order dated 29.03.2011 and the plea taken was that the date of communication of the order was 25.06.2011. The ground for condonation of delay was that the daughter of the appellant, who had been married in February, 2011, in Baliya District in Uttar Pradesh, had been diagnosed with blood clot cancer disease few months after the marriage and had to be brought back to Gurgaon for medical treatment. She had remained hospitalised in Gurgaon for a long period and was also treated as outdoor patient after series of clinical tests. The family had remained occupied for a period of 2 years for getting her treated and thus, a sufficient case was sought to be made out on that ground. The medical file was to be produced during the hearing.

4. The JETC dismissed the appeal on the ground that there was no sufficient ground or logical explanation shown why the appeal had not been filed within the specified period of limitation. The gross turn-over of the appellant firm having increased to Rs. 3.07 crores during the assessment year 2007-08 showed that the appellant was very active in his business and could not take shelter of the so-called illness of his married daughter. Further justification was sought to be given in the order by holding that the daughter was not divorced and the in-laws had the responsibility and therefore, it was only a lame excuse and the JETC declined to condone the delay, vide order dated 21.10.2013 (Annexure A5).

5. The appellant took the case to the Tribunal, which has further dismissed the appeal vide the impugned order dated 06.05.2014 (Annexure A7) by recording a finding that the appellant had not bothered about the filing of the appeal and he had no intention of doing the same and noticed that the limitation period was of 60 days from the date of communication and though under Section 5 of the Limitation Act, 1963, the Courts had power, in the totality of the events, did not interfere.

6. The appellant has, thus, raised the following question of law:

> *"Whether on the facts and in the circumstances of the case the Ld. Tribunal was justified in not condoning the delay wherein there exists a sufficient cause for the same?"*

7. In addition to the above question of law, the issue of perversity also arises in the present case as there is no denying the fact that the appellant has placed sufficient material on record before this Court in the form of medical treatment file of his daughter, Ms. Ritika Singla, aged around 26 years. The treatment started in the month of June, 2011 and the MRI report was prepared at Bangalore. Other materials have also been placed on record to show that she had been treated in various hospitals at New Delhi, including Sir Ganga Ram Hospital, Dr.Doda's Diagnostics & Healthcare and Medanta Hospital at Gurgaon. A perusal of the said record would go on to show that the patient was suffering from complication of blood flow in the femoral veins which had got compressed. The said fact was never specifically denied or controverted in any manner by the respondent-authorities and it is not that the authorities came to a different conclusion that the certificates issued were incorrect and were only created for making out a sufficient cause. The illness was also of the period after the order was passed in March, 2011 and allegedly communicated in June, 2011.

8. Merely because the appellant was a dealer in cement, steel and ACC sheets and that his business kept on flourishing during this period would not be a ground to hold that the delay was not to be condoned. The reasoning to deny the benefit of condonation of the delay caused cannot be held to be justified in the facts and circumstances of the case. The Apex Court in ***Collector, Land Acquisition, Anantnag Vs. Mst. Katiji (1987) 2 SCC 107*** and ***G.Ramegowda, Major Vs. Special Land Acquisition Officer, Bangalore (1988) 2 SCC 142***, has held that each and every days' delay is not to be explained and that the word 'sufficient cause' is an elastic term and if the explanation offered is not concocted, the case should be decided on merits as substantial justice is the paramount consideration.

9. Reference can also be made to the principles laid down by the Apex Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others 2013 (12) SCC 649***, which read as under:

> *"15. From the aforesaid authorities the principles that can broadly be culled out are:*
>
> *i) There should be a liberal, pragmatic, justice-oriented, nonpedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
>
> *ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*
>
> *iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*
>
> *iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*
>
> *v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.*
>
> *vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*
>
> *vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

16. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non- serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters."

10. In the present case, the application was very specific and the delay was sought to be condoned on the ground of illness of his married daughter who had been treated at various hospitals all over the country and had been suffering from blood clot cancer disease.

11. In such circumstances, we are of the opinion that the question of law framed above is liable to be answered in favour of the appellant that the Tribunal was not justified in not allowing the application for condonation of delay and the reasoning given to dismiss the appeal, suffered from perversity. Resultantly, the order dated 06.05.2014 (Annexure A7), passed by the Tribunal, is set aside and the application for condonation of delay, filed before the JECT is accepted on account of sufficient cause having been shown. Resultantly, the JECT shall hear both the appeals on merits. Both the appeals are allowed in the above stated terms.

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CWP NO. 6405 OF 2015

NOVATEUR ELECTRICAL AND DIGITAL SYSTEMS PRIVATE LIMITED
Vs.
STATE OF HARYANA AND OTHERS

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

6th April, 2015

HF ▶ Petitioner

BANK GUARANTEE – NOTICE FOR ATTACHMENT WHILE APPEAL PENDING BEFORE FIRST APPELLATE AUTHORITY – DEMAND RAISED PURSUANT TO ASSESSMENT – APPEAL FILED AGAINST ASSESSMENT ORDER – NOTICE FOR ATTACHMENT ISSUED DURING PENDENCY OF APPEAL – CHALLENGE TO THE IMPUGNED ORDERS STATING PETITIONER READY TO FURNISH BANK GUARANTEE BY A CERTAIN DATE – HELD, IMPUGNED ORDERS NOT TO BE IMPLEMENTED IN THE EVENT OF FURNISHING OF GUARANTEE TILL THE DISPOSAL OF APPEAL AND FOR A PERIOD OF 4 WEEKS THEREAFTER.

A demand of about Rs 8.46 crores was raised vide assessment order dated 16/1/05 and 29/1/15. An appeal was filed before the Joint Excise and Taxation Commissioner. However, notices and summons were issued by the Assistant collector 1st grade – cum – Excise & Taxation Officer demanding payment and threatening to issue a warrant of arrest and attachment in the event of the petitioner failing to do so. The petitioner stated that it would furnish an unconditional bank guarantee on or before 14.4.2015. The statements were accepted. The High Court ordered that the impugned orders shall not be implemented till 14/4/15 in the event of furnishing of bank guarantee and till the disposal of appeal and 4 weeks thereafter.

Present: Mr. Kashmiri Lal Goyal, Senior Advocate with Mr. Amrinder Singh and Mr. A.P. Singh, Advocates for the petitioner

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

Notice of motion.

2. Ms. Mamta Singla Talawar, AAG, Haryana, accepts notice on behalf of the respondents.

3. The petitioner has filed an appeal before the Ist Appellate Authority, namely, Joint

Excise & Taxation Commissioner (Appeals) against an assessment order dated 16.01.2015 and 29.01.2015 raising an aggregate demand of about Rs.8.46 crores.

4.The petitioner, in this petition, has challenged the notices and summons issued by the Assistant collector Ist Grade-cum-Excise & Taxation officer, Sonepat, demanding payment and threatening to issue a warrant of arrest and attachment in the event of the petitioner failing to do so -(Annexure P/1 (collectively).

5. As we noted earlier, the appeal is pending before the first appellate authority. We dispose of this petition in view of the statement made on behalf of the petitioner that they will on or before 14.04.2015 furnish an unconditional guarantee of a nationalised bank in the sum of Rs.8.50 crores to the satisfaction of the first appellate authority. The guarantee shall remain valid for a period of six weeks after the decision of the first appellate authority.

6. The statements are accepted. In view of the undertaking to furnish the guarantee, the impugned orders shall also not be implemented till 14.04.2015. In the event of the petitioner furnishing a guarantee, as aforesaid, the impugned notices shall not be implemented pending the hearing and final disposal of the appeal and for a period of four weeks thereafter.

7. Copy *dasti* under the signatures of the Bench Secretary.

PUNJAB & HARYANA HIGH COURT

CWP NO. 6214 OF 2015

DHURI POLYMERS
Vs.
STATE OF PUNJAB AND OTHERS

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

1st April, 2015

HF ▶ Petitioner

PENALTY – ATTEMPT TO EVADE TAX – CHECK POST/ ROADSIDE CHECKING – SHOW CAUSE NOTICE – MATTER ALREADY HEARD BY EXCISE AND TAXATION OFFICER – WRIT FILED AGAINST SHOW CAUSE NOTICE ALLEGING THAT OFFICER HAS TOLD TO PASS ORDERS AGAINST THE PETITIONER- DEALER TO MEET HIS TARGETS – NO GROUNDS FOUND TO ENTERTAIN PROCEEDINGS AT THIS STAGE BY HIGH COURT – RESPONDENTS DIRECTED TO DECIDE IN ACCORDANCE WITH LAW AND TO MENTION REASONS WHILE PASSING ORDERS.

The goods of the dealer were detained and a show cause notice was served . The appellant appeared before the officer. The matter was heard but the orders were not passed as yet. The dealer filed a writ alleging that he has been told by the Ld. Officer that the action would be taken against the petitioner to meet his targets. Disposing of the writ, it is held that there is no reason to entertain the proceedings at this stage. The officer is directed to pass orders as per law and also mention the reasons for the order so passed.

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

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

1. The petitioner has already replied to the show cause notice which has been impugned in this petition. The petitioner has appeared before the Excise and Taxation Officer and been heard by him. The order, however, has not been passed. The petitioner's vehicle and the goods contained therein continue to be detained. We see no reason to entertain the proceedings at this stage at least. The petitioner alleges that it has been told by the Excise and Taxation Officer and the AETO that the action is going to be taken against the petitioner in order to meet the targets.

2. We are confident that the officer will decide the matter in accordance with law and not for the reasons alleged by the petitioner. Needless to state that the reasons shall be furnished by the respondents for the order to be passed pursuant to the impugned show cause notice.

3. The writ petition is accordingly disposed of.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 219 OF 2014

OM TRADING COMPANY
Vs.
STATE OF HARYANA

S.J. VAZIFDAR, ACTING CHIEF JUSTICE AND GURMIT RAM, J.

30th March, 2015

HF ▶ Appellant

CONDONATION OF DELAY – APPEAL – COMMUNICATION GAP BETWEEN COUNSEL AND APPELLANT – DISMISSAL OF APPEAL BY TRIBUNAL DUE TO DELAY IN FILING – COPY OF ORDER PASSED BY FIRST APPELLATE AUTHORITY ALLEGED NOT BEEN RECEIVED BY APPELLANT – DENIAL BY COUNSEL REGARDING RECEIPT OF COPY OF ORDER – HELD BY HIGH COURT, APPELLANT NOT TO BE VISITED WITH SUCH DRASTIC CONSEQUENCES AS DISMISSAL OF APPEAL ON ACCOUNT OF COMMUNICATION GAP BETWEEN APPELLANT AND ADVOCATES – MATTER RESTORED BEFORE TRIBUNAL TO BE HEARD ON MERITS.

The appeal before Tribunal was dismissed due to delay of 77 days in filing it. It was observed by the Hon'ble High Court that it involved substantial question of law. The reason for delay was that the copy of order was not received by it and his counsel denied having received it either. The High Court has allowed the appeal as the appellant should not be visited with such a drastic consequence of dismissal of appeal on account of communication gap between him and his counsel. The matter is restored before the Tribunal to be decided on merits.

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

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

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

1. This is an appeal against the order and judgement of the Tribunal dated 23.01.2012 dismissing the appellant's appeal on the ground that there was a delay of 77 days in filing the same. The appeal raises substantial questions of law contained in paragraph 13. It is agreed that the procedure is that the order passed by the First Appellate Authority is forwarded to the counsel/advocate. The learned advocate denied having received the copy of the order. Even assuming that the advocate had received the copy of the order, it would make no difference. The appellant did not receive the copy of the order.

2. We do not see any reason for the appellant to be visited with such a drastic consequence of the dismissal of the appeal on account even of any communication gap between the appellants and their advocates.

3.The impugned order is set aside. The appeal before the Tribunal shall stand restored and be decided on merits.

4.Disposed of.

PUNJAB & HARYANA HIGH COURT

CWP NO. 11781 OF 1994

INDO-PIRIN GLOVES LIMITED
Vs.
STATE OF HARYANA & OTHERS

RAJIVE BHALLA AND B.S. WALIA, JJ

15th January, 2015

HF ▶ Revenue

APPEAL – TRIBUNAL – WHETHER MAINTAINABLE AGAINST DISMISSAL OF REVIEW PETITION – ASSESSMENT ORDER PASSED – DISMISSAL OF APPEAL BY FIRST APPELLATE AUTHORITY – APPEAL BEFORE TRIBUNAL ALSO DISMISSED – WRIT PETITION FILED BEFORE HIGH COURT – REVIEW PETITION ALSO FILED BEFORE FIRST APPELLATE AUTHORITY – WRIT DISMISSED WITH OBSERVATIONS THAT THE MERITS OF REVIEW PETITION FILED BEFORE FIRST APPELLATE AUTHORITY SHOULD NOT BE EFFECTED - REVIEW PETITION BEFORE FIRST APPELLATE AUTHORITY DISMISSED – APPEAL BEFORE TRIBUNAL DISMISSED BEING NOT MAINTAINABLE – ON WRIT HELD - SINCE THE ORIGINAL ORDER HAD ATTAINED FINALITY UPTO HIGH COURT THE FILING OF APPEAL AGAINST DISMISSAL OF REVIEW PETITION WAS MEANINGLESS – IN THIS REGARD THE TRIBUNAL HAD HELD THAT THE APPEAL WAS NOT MAINTAINABLE

Pursuant to the assessment order passed assessing the petitioner to tax, an appeal was filed before JETC which was dismissed. The review petition filed was also dismissed. Appeal against the original order was dismissed by the Tribunal as barred by limitation. A writ was filed against this order. In the meanwhile, the petitioner filed an appeal against the order passed by JETC dismissing the review petition. The writ was dismissed holding that it should not affect the pending review petition. The appeal before Tribunal challenging the order of JETC against dismissal of review petition was dismissed holding that appeal against order of review is not maintainable. Aggrieved by the order, a writ was filed alleging that the appeal is maintainable u/s 39(2) of the Act. It is held by the High Court that mere fact that the order of High Court records that any observation in the order shall not affect the decision of appeal on merits in the pending review cannot be construed as affirmation of the maintainability of appeal against dismissal of review. Since the challenge to the original order passed by JETC and the Tribunal had attained finality with dismissal of writ, the filing of appeal against dismissal of review petition was meaningless. It was in this context that the Tribunal had held that appeal is not maintainable.

Present: Mr. Jagmohan Bansal, Advocate for the petitioner.
Ms. Mamta Singhal Talwar, AAG, Haryana.

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RAJIVE BHALLA, J

1.The petitioner prays for issuance of a writ for quashing orders Annexure P-8 passed by the Sales Tax Tribunal, Haryana (hereinafter referred to as "the Tribunal"), Annexure P-4 passed by the Assessing Authority and Annexure P-6 passed by the Joint Excise and Taxation Commissioner (Appeal), Faridabad (hereinafter referred to as the "JETC").

2.Counsel for the petitioner submits that as no sale has been proved or even took place within the State of Haryana, the assumption of jurisdiction by the Assessing Officer to assess the transport of machines from Gurgaon to Delhi to sale tax, is not warranted. Counsel for the petitioner further submits that the machinery was imported into India, pursuant to a joint venture between the State Trading Corporation of India Limited (A Government of India undertaking), ITC Pirin Sofia, Bulgaria and M/s Liberty Footwear, Karnal with share holding of 40%, 40% and 20% respectively. The machinery was stored in the godown in Gurgaon as the project had to be executed at Gurgaon but on account of certain difficulties in the project, the project was abandoned and eventually the joint venture company went into liquidation. To avoid payment of rent, the machine was being transported to the premises of the State Trading Corporation in Delhi, when it was stopped at Haryana-Delhi Border and eventually the Assessing Officer, by inferring a sale passed order (Annexure P-4), assessing the petitioner to sales tax. The petitioner thereafter filed an appeal before the JETC, which was dismissed on 06.11.1990. A review petition filed against the order passed by the JETC was dismissed on 23.03.1992. Appeal filed by the petitioner against the original order passed by the JETC was dismissed by the Sales Tax Tribunal as barred by limitation. The petitioner filed a writ petition against this order. In the meantime, the petitioner filed an appeal against the order passed by the JETC, dismissing the application for review. The writ petition was dismissed by holding that this order shall not affect the pending review petition. The appeal filed by the petitioner challenging order passed passed by the JETC dismissing the application for review was dismissed, by the Tribunal by holding that an appeal against an order of review is not maintainable. Counsel for the petitioner further submits that as Section 39 (2) of the Haryana Sales Tax, Act, 1973, uses the word "an order", the Tribunal has erred in dismissing the appeal. The Tribunal has itself in other cases, by orders Annexures P-9 and P-10 held that an appeal is maintainable against an order dismissing an application for review. Counsel for the petitioner prays that the impugned order may be set aside and the matter may be remitted to the Tribunal for adjudication afresh.

3.Counsel for the revenue submits that the writ petition is mis-conceived. The petitioner filed an appeal before the Tribunal against, order dated 06.11.1990, passed by the JETC on 06.11.1990. The Tribunal dismissed the appeal as barred by limitation. The petitioner filed a writ petition challenging this order. The writ petition was dismissed. The Tribunal, therefore, rightly dismissed the appeal against the order dismissing the application for review.

4. We have heard counsel for the parties and perused the impugned order.

5. The petitioner is before us challenging order passed by the Tribunal, dismissing his appeal against the order passed by the JETC refusing to review its order. A perusal of the impugned order reveals that the Tribunal dismissed the appeal by holding that an appeal against an order of review is not maintainable. A bare reading of Section 39 (2) of the Haryana General Sales Tax Act, 1973, reveals that Section 39 (2) of the Act commences with the words "An order" thereby leaving no ambiguity that an appeal is maintainable against any and every order, including an order dismissing an application for review, unless prohibited by any statutory provision. The question before us is, however, entirely different namely whether an appeal against an order dismissing an application for review is maintainable after challenge to the original order has failed.

6. The petitioner was assessed to sale tax. An appeal filed by the petitioner before the JETC was dismissed on 06.11.1990. The petitioner filed an application for review of this order. The application for review was dismissed on 23.03.1992. The appeal, filed by the petitioner against order dated 06.11.1990 was dismissed as barred by limitation. The petitioner filed CWP No.1214 of 1993 which was dismissed by holding as follows:-

> *"The appellate Authority dismissed the appeal, as barred by time, holding that there was no sufficient cause for condoning the delay. Whether there existed sufficient grounds for condoning the delay or not, is a question of fact and can not be gone into in writ jurisdiction. The contention of learned counsel for the petitioner is that ground for condonation of delay in filing the appeal was taken that the petitioner was wrongly advised by the counsel to file a review application against the order of the First Appellate Authority, it has not been shown to us that affidavit of the counsel, who had given such wrong advice, was filed before the appellate Authority. We find no ground to entertain this writ petition and dismiss the same. It may be further observed, as stated by counsel for the petitioner that an appeal has already been filed against the order rejecting the review application, that any observation made in this order will not affect the decision of such an appeal on merits."*

7. A perusal of the aforesaid order dismissing the writ petition reveals that order passed by the Tribunal, dismissing the appeal, filed to challenge order passed by the JETC, was affirmed by holding that the petitioner is unable to show sufficient cause for condonation of delay, thereby shutting out any further challenge to the assessment order. The mere fact that the order records that any observation in the order shall not affect the decision of the appeal on merits in the pending review cannot be construed as an affirmation of the maintainability of the appeal against the order dismissing the review petition. The petitioner's contention that the order passed in the writ petition should be read as directing the Tribunal to decide the appeal against the order of review on merits, disregards the fact that challenge to the original order passed by the JETC and the Tribunal having attained finality with dismissal of the writ petition, the filing of any appeal against dismissal of the review petition by the JETC was meaningless. It was in this context that the appeal filed by the petitioner was not maintainable before the Tribunal. Consequently, we have no option but to dismiss the writ petition.

8. Dismissed accordingly.

PUNJAB & HARYANA HIGH COURT

CWP NO. 6714 OF 2014

SANATAN DHARAM SHIKSHA SAMITI
Vs.
CHIEF COMMISSIONER OF INCOME TAX

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

25th March, 2015

HF ▶ Assesse

EXEMPTION – INCOME TAX ACT – EDUCATIONAL INSTITUTION – EXEMPTION APPLIED U/S 10(23C)(vi) – APPLICATION REJECTED – WRIT FILED – MATTER REMANDED TO CCIT TO DECIDE AS PER LAW LAID DOWN IN KSHATRIYA SABHA MAHARANA PRATAP BHAWAN – CCIT AGAIN REJECTED THE APPLICATION ON SAME GROUBNS – NO FRESH CONSIDERATION TAKEN UP – NO DISCREET ENQUIRY MADE – ON WRIT - REASONS CITED FOUND IDENTICAL TO PREVIOUS ORDER ALREADY SET ASIDE BY HIGH COURT – MATTER REMANDED TO CIT (EXEMPTION) TO DECIDE AS PER LATEST JUDGEMENT OF CIT VS QUEEN'S EDUCATIONAL SOCIETY.

The application filed by the petitioner for exemption u/s 10(23C)(vi) of the Act was rejected. A writ was filed and the same was disposed of with the case of Kshatriya Sabha Maharana Pratap Bhawan and the matter was remanded to the CCIT to decide in the light of the judgment mentioned above. The order passed by the CCIT was repeated with the same reasons as cited earlier. Also, it was clearly mentioned that no discreet enquiry has been made in this regard. On filing of writ, it is held that since no fresh consideration has been taken up the impugned order is set aside. The CIT (exemption) would decide the matter including question of limitation as per the law laid down in Queen's Educational Society.

Case referred

M/s Queen's Educational Society Vs. Commissioner of Income Tax, CA No.5167 of 2008

Present: Mr.Sandeep Goyal, Advocate, for the petitioner.
Ms.Urvashi Dhugga, Advocate, for the respondent.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

1. Rule. Rule returnable and heard finally.

2. The petitioner has challenged the order dated 11.11.2013 (Annexure P21), passed by the Chief Commissioner of Income Tax, Panchkula (for short, the 'CCIT'), rejecting its application for exemption/approval, filed under Section 10(23C)(vi) of the Income Tax Act, 1961 (for short, the 'Act') for the assessment years 2005-06 to 2008-09.

3. The petitioner has sought the said exemption by filing application dated 31.03.2008 (Annexure P4), which was rejected vide the impugned order. The original order was challenged in CWP No.858 of 2009 titled *Kashatriya Sabha Maharana Partap Bhawan, Kurukshetra Vs. Union of India & another*, decided on 29.01.2010 and the Division Bench of this Court *inter alia* held that earning profits is not a deciding factor to conclude that an educational institution exists for profit. The Division Bench further held that where more than 15% of the income of the educational institution is accumulated on or after 01.04.2002, the period of accumulation of amount exceeding 15% is not permissible beyond 5 years, provided the excess income has been applied or accumulated for exemption, wholly or exclusively, for the purpose of education. It was further held that on an application, the authority could grant approval, subject to such terms and conditions as it may deem fit, provided that they are not in conflict of the Act and that the parameters of earning profits beyond 15% and its investment is wholly for the purpose, as may be expressly stipulated, as per the statutory requirement.

4. Considering the order that we intend passing, it is not necessary to refer to the judgment in any detail. Suffice it to note that the Division Bench ultimately allowed the writ petitions, set aside the impugned orders and directed the CCIT to decide the same, afresh, after considering every case independently, but in the light of the judgment.

5. The petitioner's case, however, was decided on remand. On the other hand, in the meantime, the assessment orders were completed on the basis that no exemption had been obtained under Section 10(23C)(vi) of the Act. The petitioner has challenged these orders. The CCIT has held against the petitioner. The appeals against the order of the CCIT are pending in this Court. We are informed that in those appeals, a Division Bench of this Court has passed an interim order, directing the CCIT to decide the applications, in accordance with the judgment passed by the Division Bench in CWP No.858 of 2009 on 29.01.2010.

6. Thereafter, the impugned order was passed by the CCIT. After setting out the facts, the CCIT furnished the reasons for rejecting the application. All the paragraphs except paragraph No.7 are almost identical to the order dated 23.03.2009 (Annexure P14), which had been set aside by the Division Bench vide judgment dated 29.01.2010. It does not appear to be a fresh consideration of the matter in its entirety. The impugned order concludes with paragraph No.7. It is important to note that in paragraph No.7, it has been specifically stated that in a short span of time, no discrete enquiry could be made. It is also pertinent to note that for the subsequent years, the exemption has been granted. The impugned order, therefore, has in fact, not complied with the order dated 29.01.2010, in its correct perspective. It was for the CCIT to go into the matter afresh and then pass an order.

7. One of the contentions raised by Ms. Dhugga, learned counsel appearing for the respondent, is that the issue of limitation, as regards the applications for assessment years 2005-06 to 2007-08 were correctly decided vide the original order dated 23.03.2009 and therefore, that issue stands concluded.

8. The submission is not well founded. Whether the issue was correctly decided or not, is not relevant at this stage. The fact is that the order dated 23.03.2009 was set aside by the Division Bench vide order dated 29.01.2010, in its entirety. It is necessary, therefore, for the CCIT to decide the matter afresh including on the question of limitation.

9. In the circumstances, the impugned order dated 11.11.2013 (Annexure P21) is set aside. We are informed that the matter is, now, to be decided by the Commissioner of Income Tax (Exemption), Chandigarh. Accordingly, the Commissioner of Income Tax (Exemption), Chandigarh shall decide the matter, afresh, in accordance with the judgment dated 29.01.2010. We reiterate that all the issues including the issue of limitation shall be decided after keeping in mind the principles laid down by the Apex Court in **CA No.5167 of 2008** titled *M/s Queen's Educational Society Vs. Commissioner of Income Tax,* decided on 16.03.2015.

10. The writ petitions are, accordingly, disposed of.

PUNJAB & HARYANA HIGH COURT

CWP NO. 2606 OF 2015

BEETEL TELETECH LIMITED
Vs.
STATE OF HARYANA AND OTHERS

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

12th March, 2015

HF ▶ Assessee

STAY OF RECOVERY – BANK GUARANTEE- INVOCATION – LEVY OF INTEREST UNDER CST AND HVAT ACT – CONSOLIDATED APPEAL FILED – BANK GUARANTEE FURNISHED DURING PENDENCY OF APPEAL – INVOCATION SOUGHT BEFORE ORDER PASSED – COMMON ORDER PASSED SUBSEQUENTLY REMANDING THE MATTER BACK TO ASSESSING OFFICER REGARDING INTEREST UNDER HVAT ACT – APPEAL RELATING TO CST DISMISSED BEING NOT MAINATANABLE IN VIEW OF CONSOLIDATED APPEAL BEING FILED – WRIT FILED – LIBERTY TO PETITIONER TO FILE FRESH APPEAL UNDER CST – INVOCATION OF BANK GUARANTEE STAYED TILL DECISION OF ASSESSING OFFICER REGARDING HVAT AND APPEAL UNDER CST WHICHEVER IS LATER

The petitioner was assessed and interest under the local act and CST was levied. A consolidated appeal was filed during the pendency of which Bank Guarantee was furnished. The JETC had heard the arguments and reserved the judgment. In the meantime bank guarantee was sought to be invoked. Subsequently, a common order was passed remanding the matter regarding issue of interest under local act to the assessing officer and dismissing the issue regarding CST on the ground that a consolidated appeal was not maintainable. On writ filed it was held by the High Court it is not necessary at this stage to decide whether a consolidated appeal is maintainable. The petitioner is at liberty to file a fresh appeal relating to CST and delay if any should be condoned in such circumstances. The respondents are restrained from invoking the Bank Guarantee until after the expiry of a period of four weeks from the date of assessment order with respect to HVAT and decision in the appeal against CST whichever is later.

Present: Mr. Aman Partap and Mr.Amrinder Singh, Advocates for the petitioners.

Ms. Mamta Singla Talwar, AAG Haryana.

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

CM No.3157 of 2015

CM is allowed.

Document (Annexure P-6) is taken on record.

CWP No.2606 of 2015

Rule. Rule returnable forthwith and heard finally.

2. The petitioner has challenged the communication dated 9.2.2015 (Annexure P-1) of respondent No.2-Excise and Taxation Officer-cum-Assessing Authority encashing the bank guarantee issued by respondent No.4 – Kotak Mahindra Bank at the request of the petitioner and in favour of respondent No.2. This guarantee in the sum of `1.75 Crores was furnished in the appeals filed by the petitioner before respondent No.3 – Joint Excise and Taxation Commissioner (Appeals) (for short `JETC') and was sought to be encashed after arguments had been heard but judgment had not been pronounced. The same was stayed by interim order dated 12.2.2015 by the court. Subsequently, during the course of writ petition, respondent No.3 – JETC, passed the order in the appeal on 30.1.2015 (Annexure P-6). The Assessing Officer had assessed the petitioner to Haryana VAT and to Central sales tax by a common assessment order. As it was a common assessment order, the petitioner filed a single consolidated appeal challenging the same as regards levy HVAT and CST. The JETC by the order dated 30.1.2015 in the appeal remanded the matter as far as the interest component on HVAT was concerned. The Assessing Authority is still to pass the fresh order pursuant to the remand order. It would not be proper therefore, at this stage to invoke the bank guarantee in respect of the interest demanded on the dues towards the HVAT. As far as the principal amount is concerned, the petitioner in any case has not been successful in challenging the same and the petitioner has already paid the same. By the said order dated 30.1.2015, the JETC dismissed the appeal insofar as it related to the CST assessed by the Assessing Officer on the ground that a single consolidated appeal was not maintainable. The appeal, therefore, insofar as related to the assessment of CST was dismissed not on merits but on a technicality.

3. We do not consider it necessary to decide whether this view was correct or not. In other words it is not necessary atleast at this stage to decide as to whether a consolidated appeal is maintainable. It would be open to the petitioner to file a separate appeal against the order of the Assessing officer in relation to the assessment of the CST. The issue to say the least debatable. If there is a power to condone the delay, we see no reason why the delay should not be condoned in such circumstances. The ends of justice would demand the same.

4. In the event of an appeal being filed the guarantee that has already been issued would naturally continue pending such appeal.

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

> The respondents are restrained from the receiving any amount under the said bank guarantee until after the expiry of a period of four weeks from the date of the assessment order by the Assessing Officer with respect to the interest on HVAT and the decision in the appeal before JETC against the assessment of CST whichever is later.
>
> This order is subject to the appeal before the JETC being filed on or before 15.4.2015.

PUNJAB & HARYANA HIGH COURT

CWP NO. 28512 OF 2013

IDEA CELLULAR LTD.
Vs.
UNION OF INDIA AND OTHERS

RAJIVE BHALLA AND AMOL RATTAN SINGH, JJ

23rd March, 2015

HF ▶ Petitioner Company

REFUND – SALES TAX - TAX COLLECTED WITHOUT AUTHORITY OF LAW WHETHER REFUNDABLE WHEN ASSESSMENT ORDERS HAVE ATTAINED FINALITY – SEC 20 OF HVAT ACT – VAT COLLECTED ON SIM CARD ACTIVATION SERVICE – SUPREME COURT DECIDED AGAINST SUCH LEVY – REFUND DENIED ON GROUNDS THAT ASSESSMENT ORDERS ALREADY ATTAINED FINALITY AND WERE NEVER APPEALED AGAINST – WRIT FILED AGAINST RETENTION OF TAX – CONTENTION BY STATE THAT IT HAS NO POWER TO REFUND U/S 20 OR REMIT IT AS SERVICE TAX DUE FROM PETITIONER TO UNION OF INDIA – ON WRIT HELD THAT COURTS TO RISE ABOVE INHERENT IMPEDIMENTS AND ENSURE UNLAWFUL COLLECTION BE REFUNDED – ARTICLE 226 ENSURES UNDOING OF TAX COLLECTION EVEN AFTER ASSESSMENT ORDERS HAVE ATTAINED FINALITY – MERE FACT THAT ORDERS HAVE BEEN PASSED FOR LEVYING AND COLLECTION WOULD NOT CONFER LEGITIMACY IN RETAINING THE TAX – STATE DIRECTED TO FORWARD THE AMOUNT TO UNION OF INDIA TO DISCHARGE LIABILITY TO PAY SERVICE TAX AS PRAYED BY PETITIONER – ASSESSMENT ORDERS SET ASIDE.

On the premise that activation of sim card is a sale, the state collected VAT from the petitioner pursuant to assessment order passed. After the Supreme Court held in the case of Bhartiya Sanchar Nigam Limited that this is a service and not sale, the petitioner claimed refund which was denied. A writ was filed questioning if the state could retain the amount collected as Vat after it being considered unlawful as per Supreme Court judgement, otherwise the petitioner would be doubly taxed as it had to pay service tax for the same period. The petitioner has prayed that the tax already collected be forwarded to service tax department of the union of India after declaring the assessment order in question as non- est. The state has agreed that though it has no authority to levy VAT on such service, it has no statutory power to refund the same and as the assessment orders have attained finality, a writ cannot be issued to set aside these orders or direct the state for refund or remittance to union of India.

1) It is held that as per Article265 of the Constitution of India, a tax shall not be levied except by authority of law. The collection of VAT on sale of sim cards is thus non – est being without authority of law.

2) Though sec 20 of the Act does not provide for refund, the court must rise above inherent impediments and ensure the state does not levy tax without authority or refund it if so collected.

3) Article 226 would come to rescue of an aggrieved party to undo a tax collection made without authority of law even after assessment orders have attained finality, otherwise it would be an unconstitutional levy.

4) The levy and collection of tax pursuant to assessment orders not being relatable to a statutory power emanating from a statute is therefore violative of Article 264 of constitution of India and a nullity. Mere fact that orders have been passed levying and collecting tax would not confer legitimacy on the act of the state to retain it.

5) The state is thus directed to forward this amount to union of India to discharge the petitioner's liability to pay service tax. The assessment orders in question are declared nullity. The amount of VAT transferred by the state to service tax department shall not be deemed to be full and final till adjudication by the authority concerned.

Cases referred:

U.P. Pollution Control Board and others V Kanoria Industrial Ltd. And another, (2001) 2 SCC, 549
Fizz Dinks P ltd. V State of Haryana and others , (2001) 123 STC 183(P&H)
Saraswati Sugar Mills V Haryana state board, (1992) 1 SCC 418
Solonah Tea Co. Ltd. V Supdt. Of Taxes, Nowgong (1988) 1 SCC, 401
Shree Baidyanath Ayurved Bhawan (P)Ltd. V State of Bihar, (1996) 6 SCC,86

Present: Mr. K.L.Goyal, Sr. Advocate, with Mr. Sandeep Goyal, Advocate, for the petitioner.
Mr. Sunish Bindlish, Advocate,for respondent nos.1, 4,5 and 6.
Ms. Mamta Singal Talwar, AAG, Haryana for respondent nos. 2, 3, and 7.

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RAJIVE BHALLA, J.

1. The petitioner is before us praying for issuance of a writ of mandamus directing respondent No.2 and respondent No.3 to refund sales tax/VAT deposited by the petitioner, on the activation of SIM cards, for issuance of a writ of certiorari quashing assessment orders dated 22.02.2006, 26.03.2008 and 22.02.2006 (Annexures P-3A, P-3B and P-3C), passed by the Assessing Authority under the Haryana Value Added Tax Act, 2003 and for quashing order dated 15.10.2013 (Annexure P-9), dismissing the representation for refund of the amount of VAT illegally retained by the State of Haryana.

2. Counsel for the petitioner submits that the petitioner provides cellular services and for the said purpose, activates SIM cards. The State of Haryana collected VAT from the petitioner, pursuant to assessment orders dated 22.02.2006, 26.03.2008 and 22.02.2006 (Annexures P-3A, P-3B and P-3C) on the premise that activation of SIM cards is a sale. The Supreme Court having held in *Bharat Sanchar Nigam Limited and another vs Union of India and others, (2006) 145 SCT 91* and in the case of the petitioner in *Idea Mobile Communication Ltd. v. C.C.E. & C., Cochin, 2011(43) VST 1 (SC)* that activation of SIM card is a service and not a sale, the petitioner approached the State of Haryana for refund of the amount of VAT but as no action was taken in the matter, filed CWP No. 25638 of 2012, which was disposed of directing the respondents to decide the petitioner's representation for refund. The representation was illegally dismissed, on 15.10.2013 (Annexure P-9) on entirely irrelevant

considerations, namely, that the petitioner did not challenge its liability before the Assessing Authority, the petitioner did not file any appeal against the assessment orders and as the petitioner has charged value added tax from its customers, the amount cannot be refunded.

3. Counsel for the petitioner further submits that the Supreme Court having held that activation of SIM card is not a sale, the question before the authorities was not whether the petitioner did or did not challenge its liability to pay VAT or did or did not file an appeal but whether the State of Haryana could continue to retain the amount collected as VAT after the Supreme Court had held that the petitioner is not liable to pay VAT. Admittedly, the VAT paid by the petitioner and retained by the State of Haryana is not relatable to any statutory provision and, therefore, must be refunded to the petitioner.

4. In case, the State of Haryana does not refund this amount, the petitioner would be doubly taxed as the Service Tax Department of the Union of India, has raised a demand for deposit of service tax for the period for which the petitioner has deposited VAT. Counsel for the petitioner further submits that a declaration of law by the Supreme Court applies from the date of inception of a statute and therefore, does not confer any right upon the State of Haryana to charge, or retain VAT, without authority of law. Counsel for the petitioner further submits that there is no question of unjust enrichment as all that the petitioner asserts and prays for is that as assessment orders and tax collected are without authority of law, the assessment orders may be declared nonest and the tax collected by the State of Haryana may be forwarded to the Service Tax Department of the Union of India.

5. Counsel for the petitioner relies upon a judgment of the Hon'ble Supreme Court in ***U.P.Pollution Control Board and others v. Kanoria Industrial Ltd. And another, (2001) 2 SCC 549*** and a Division Bench judgment of this Court in ***Fizz Drinks P. Ltd. v. State of Haryana and others, (2001) 123 STC 183*** , to support of these arguments.

6. Counsel for the State of Haryana submits that the assessment orders have become final. The petitioner, therefore, cannot pray for issuance of a writ to quash the assessment orders and or direct refund of the amount voluntarily deposited by the petitioner. The petitioner deposited VAT in accordance with the assessment orders and in the absence of any plea raised at the time of assessment about its exigibility to tax, cannot seek quashing of assessment orders or refund. Counsel for the State of Haryana relies upon a judgment of the Supreme Court in ***Dhampur Sugar (Kashipur) Ltd. v. State of Uttaranchal and others, (2007) 8 SCC 418***. Counsel for the State of Haryana also submits that Section 20 of the VAT Act, which confers the power of refund does not apply to the present case and as the Haryana VAT Act does not contain any provision that allows the respondents to refund the amounts deposited by the petitioner, the writ petition may be dismissed.

7. Counsel for the State of Haryana further submits that the judgment in *Bharat Sanchar Nigam Limited* (supra) clearly indicates a prospective overruling of the Supreme Court's opinion in the ***State of Uttar Pradesh v. Union of India (supra)*** and, therefore, cannot enure to the benefit of the petitioner. It is also contended that in case the State of Haryana is directed to refund the amount to the petitioner, it would be a case of unjust enrichment, a course prohibited by law. Counsel for the State of Haryana relies upon a judgment in ***M/s Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536*** in support of this argument.

8. Counsel for the Union of India submits that in ***Bharat Sanchar Nigam Limited*** (supra), the Supreme Court has clarified that the gross total amount received by the operator, from the subscriber, for activation of SIM card, is exigible to service tax. The petitioner is obliged to deposit service tax and whether the assessee has paid VAT to the State of Haryana, for this period, is irrelevant.

9. Counsel for the Union of India further submits that the amount paid by the petitioner

to the Haryana VAT Department may not be construed as a final determination of the petitioner's liability towards service tax or a discharge of the petitioner's liability.

10. We have heard counsel for the parties and perused the impugned orders.

11. The petitioner is a telecom service provider and as a part of its business, activates SIM cards. A dispute whether this business activity is a 'sale' exigible to sales tax or a 'service' exigible to service tax, came up for consideration and was decided by the Supreme Court in ***State of UP and another*** (supra), by holding that activation of SIM cards is a sale and exigible to VAT. The petitioner was, therefore, assessed to tax under the Haryana VAT Act, 2003 (hereinafter referred to as 'the Act'), by assessment orders dated 22.02.2006, 26.03.2008 and 22.02.2006 (Annexures P-3A, P-3B and P-3C) and deposited VAT.

12. The question whether activation of SIM cards is a service or a sale came up for consideration before a larger Bench of the Supreme Court in ***Bharat Sanchar Nigam Limited and another*** (supra) and was answered by holding that activation of SIM cards is a 'service' and not a 'sale'. The petitioner is, therefore, liable to pay service tax on the activation of SIM cards and not VAT. The Union of India has, consequently, raised a demand for service tax for the period during which the petitioner paid VAT.

13. The petitioner prayer to be precise is that as the State of amount so levied and collected may be refunded to the petitioner or remitted to the Union of India. The State of Haryana, on the other hand, while not denying that it has no authority to levy VAT on the activation of SIM cards, contends that it has no statutory power, to refund this amount and as assessment orders Annexures P-3A, P-3B and P-3C have attained finality, a writ cannot be issued to set aside these orders or direct the State to refund this amount to the petitioner or remit it to the Union of India.

14. The first question that requires an answer is whether the State of Haryana has collected Value Added Tax on activation of SIM cards, without authority of law. The State of Haryana does not deny that in ***Bharat Sanchar Nigam Limited*** (supra), the Supreme Court has held that activation of SIM cards is a service and not a sale. The State of Haryana also does not deny that the collection of VAT on activation of SIM cards is not relatable to any statutory provision. As postulated by Article 265 of the Constitution of India a tax shall not be levied except by authority of law i.e., a tax shall be valid only if it is relatable to statutory power emanating from a statute. The collection of VAT on the sale of SIM cards, not being relatable to any statutory provision, must be held to be without authority of law and as a consequence non-est.

15. We have crossed the first hurdle, namely, that the State of Haryana has no statutory authority to levy VAT on the activation of SIM cards, with ease and now proceed to answer the second question, namely, whether the Haryana Value Added Tax Act contains any provision that empowers the State to refund the tax?

16. A bare perusal of Section 20 of the Haryana Value Added Tax Act, 2003, reveals that it does not provide for refund of tax in the scenario, obtaining in the present case. Thus, the question that remains is whether after having held that the State of Haryana is not statutorily empowered to collect and levy VAT on the activation of SIM cards and the VAT Act does not permit refund in a situation as obtaining in the present case, may a writ be issued to direct the State to refund the tax and or to quash assessment orders, or is this court devoid of power to adopt such a course?

17. As a general rule, a high prerogative writ, shall not issue where a statute prescribes a complete procedure for redressal of grievances. But this general rule must admit to certain exceptions, particularly where the collection of tax is without authority of law. A court, in such a situation, must rise above these inherent impediments and ensure that the State does not levy

or appropriate tax without authority of law and if so collected is called upon to refund the amount or deposited. We draw support for our opinion from a judgment of the Supreme Court in ***U.P. Pollution Control Board and others v. Kanoria Industrial Ltd. and another, (2001) 2 SCC, 549***. The controversy in ***U.P.Pollution Control Board and others(supra)*** was that the respondents were required to pay water cess under the Water(Prevention and Control of Pollution) Cess Act, 1977 (hereinafter referred to as 'the 1977 Act'). The respondents raised a protest that since sugar industries and distilleries are not industries covered by Entry 15 of Schedule I of the Act, they are not Government rejected their objections. The respondents paid the cess but some of them filed writ petitions challenging the levy of the cess, which were dismissed. Thereafter, the Supreme Court in ***Saraswati Sugar Mills v. Haryana State Board, (1992)1 SCC 418,*** reversed the decision of the High Court by holding that sugar manufacturing industries do not fall in Entry 15 of Schedule I of the Act. The respondents made a representation to the Board seeking refund of the amounts collected without authority of law and in support of their plea relied upon the judgment in *Saraswati Sugar Mills* (supra), but as the respondents did not receive a positive response, they filed a writ petition, which was contested on the ground that the respondents are not entitled to refund, as the amounts paid have already been deposited with the Government of India.

18. After considering the rival submissions, a writ was issued , directing the Board to refund the sums realised from the respondents, subject to verification of the amount stated to have been paid by them. The U.P. Pollution Control Board filed a special leave petition. After considering whether a writ can be issued to direct refund of a tax/cess collected without authority of law, the Supreme court held that where levy and collection of tax/cess is unconstitutional or without authority of law, a writ seeking refund of the tax/cess collected without authority of law is maintainable. A relevant extract from the judgment reads as follows:

17. Again in AIR para 9, the Court held:

> *"We, therefore, hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases be appropriately raised and considered in the exercise of writ jurisdiction."*

This judgment cannot be read as laying down the law that no writ petition at all can be entertained where claim is made for only refund of money consequent upon declaration of law that levy and collection of tax / cess as unconstitutional or without the authority of law. It is one thing to say that the High Court has no power under Article 226 of the Constitution to issue a writ of mandamus for making refund of the money illegally collected. It is yet another thing to say that such power can be exercised sparingly depending on facts and circumstances of each case. For instance, in the cases on hand where facts are not in dispute, collection of money as cess was itself without the authority of law; no case of undue enrichment was made out and the amount of cess was paid under reasonable time from the date of the declaration that the law under which tax/cess was collected was unconstitutional. There is no good reason to deny a relief of refund to the citizens in such cases on the principles of public interest and equity in the light of the cases cited above. However, it must not be understood that in all cases where collection of cess, levy or tax is held to be unconstitutional or invalid, the refund should necessarily follow. We wish to add that even in cases where collection of cess, levy or tax is held to be unconstitutional or invalid, refund is not an automatic consequence but may be refused on several grounds depending on facts and

circumstances of a given case.(Emphasis supplied)

19. Before recording the aforesaid opinion, the Supreme Court relied upon a judgment in ***Solonah Tea Co. Ltd. v. Supdt. of Taxes, Nowgong, (1988) 1 SCC, 401*** and referred to a relevant paragraph from the said judgment, which reads as follows:

> *"6.The only question that falls for consideration here is whether in an application under Article 226 of the Constitution the Court should have directed refund. It is the case of the appellant that it was after the judgment in the case of Loong Soong Tea Estate the cause of action arose. That judgment was passed in July 1973. It appears thus that the High Court was in error in coming to the conclusion that it was possible for the appellant to know about the legality of the tax sought to be imposed as early as 1963, when the Act in question was declared ultra vires as mentioned hereinbefore. Thereafter the taxes were paid in 1968. Therefore the claim in November, 1973 was belated. We are unable to agree with this conclusion. As mentioned hereinbefore the question that arises in this case is whether the Court should direct refund of the amount in question. Courts have made a distinction between those cases where a claimant approaches a High Court seeking relief of obtaining refund only and those where refund is sought as a consequential relief after striking down of the order of assessment etc. Normally speaking in a society governed by rule of law taxes should be paid by citizens as soon as they are due in accordance with law. Equally, as a corollary of the said statement of law it follows that taxes collected without the authority of law as in this case from a citizen should be refunded because no State has the right to receive or to retain taxes or monies realised from citizens without the authority of law." (emphasis supplied)*

20. A reference was also made to a judgment in ***Shree Baidyanath Ayurved Bhawan (P) Ltd. v. State of Bihar, (1996) 6 SCC, 86***, wherein it was held as follows:-

> "10. *The writ petition was not a run-of-the-mill case. It was a case where the respondent-State had not acted as this Court had expected a high constitutional authority to act, in furtherance of the order of this Court. That is something that this Court cannot accept. The respondent-State was obliged by this Courts order to refund to the writ petitioners, including the appellants, the amounts collected from them in the form of the levy that was held to be illegal. If there was good reason in law for rejecting the refund claim, it should have been stated. Not to have responded to the appellants refund claim for 11 years and then to have turned it down without reason is to have acted disrespectfully to this Court. Even assuming,therefore, that this was a writ petition only for money, the writ petition fell outside the ordinary stream of writ petitions and, acting upon it, the High Court should have ordered the refund."*

21. A considered appraisal of the ratio of the aforesaid judgments, leaves no ambiguity that the factual situation so permitting, particularly where the levy and collection of tax is without authority of law, Article 226 of the Constitution of India would come to the aid of an aggrieved party, even where the assessment order has not been challenged by appeal or revision, to undo a collection of tax made without authority of law. As held by the Supreme Court, no State has the right to receive or retain taxes or monies realised from citizens without authority of law. To hold otherwise would, in our considered opinion, perpetuate an un-constitutional levy, an unconstitutional collection of a tax, and an unconstitutional retention of monies.

22. At this stage, we would also refer to a Division Bench judgment of this Court in ***Fizz Dinks P. Ltd. v. State of Haryana and others, (2001) 123 STC 183 (P&H)***, wherein after considering a similar controversy, it was held as follows:

"6. In our opinion, the objection raised by the respondents to the maintainability of the writ petition on the ground that finality attached to the orders dated May 25, 1993 and May 8, 1997 cannot be undone at this belated stage by applying the ratio of the decision rendered by the Supreme Court in the year 2000 deserves to be rejected in view of the law laid down by the Supreme Court in U.P. Pollution Control Board v. Kanoria Industrial Ltd. (2001)2 JT SC 103. One of the questions considered in that case was whether the declaration of law made by the Supreme court in a later decision can be made basis for reopening the orders which have become final. While answering the question in the affirmative, their Lordships of the Supreme court observed as under:-

> *"Another reason to defeat the claim for refund put forth is that the respondents have filed writ petitions challenging unsuccessfully the validity of levy in question and those orders have become final inasmuch as no appeal against the same has been filed. The contention is put forth either on the basis of resjudicata or estoppel. It is no doubt true that these principles would be applicable when a decision of a Court has become final. But in matters arising under public law when the validity of a particular provision of levy is under challenge, this Court has explained the legal position in Shenoy and Co. v. Commercial Tax Officer, Circle II, Bangalore (1985) 60 STC 70 (SC); (1985) 2 SCC 512 that when the Supreme Court declares a law and holds either a particular levy as valid or invalid it is idle to contend that the law laid down by this Court in that judgment would bind only those parties who are before the Court and not others in respect of whom appeal had not been filed. To do so is to ignore the binding nature of a judgment of this Court under article 141 of the Constitution. To contend that the conclusion reached in such a case as to the validity of a levy would apply only to the parties before the court is to destroy the efficacy and integrity of the judgment and to make the mandate of article 141 illusory. When the main judgment of the High Court has been rendered ineffective, it would be applicable even in other cases, for exercise to bring those decisions in conformity with the decisions of the Supreme Court will be absolutely necessary. Viewed from that angle, we find this contention to be futile and deserves to be rejected."*

23. Our opinion as to the exercise of power under Article 226 of the Constitution of India having been fortified by judgments of the Supreme Court in ***U.P. Pollution Control Board and others***, ***Saraswati Sugar Mills***, ***Solonah Tea Co. Ltd.***, ***Shree Baidyanath Ayurved (P) Ltd.*** and by a Division Bench judgment in ***Fizz Dinks P. Ltd. v. State of Haryana and others*** (supra), we find no reason to accept the arguments addressed by the State of Haryana, that a writ cannot or should not issue to direct refund of a tax levied, collected and retained, without authority of law.

24. A point raised by the State of Haryana, that we must deal with is that as the assessment orders persist and the statute does not empower the State to order refund, a direction to that effect submission disregards the fact that the levy, the collection and retention of VAT by the State of Haryana, is without authority of law. The levy and collection of tax, pursuant to assessment orders dated 22.2.2006, 26.3.2008 and 22.2.2006 (Annexures P-3A, P-3B and P-3C) not being relatable to a statutory power emanating from a Statute and, therefore, violative of Article 264 of the Constitution of India and a nullity. The mere fact that orders have been passed levying and collecting tax would not confer legitimacy, on the acts of the State of Haryana in seeking to retain the amount of tax collected and retained, without authority of law. The State of Haryana would have been justified in raising such a plea if the judgment in ***Bharat Sanchar Nigam Limited*** (supra) had been held to be prospective. A

perusal of the aforesaid judgment reveals that the declaration of law is not prospective and like all general declarations of law, would be deemed to apply from the inception of the statute. The judgment having clearly held that VAT cannot be collected on activation of SIM cards, the assessment orders levying and collecting VAT, are from their inception a nullity and, therefore, the levy and collection of VAT is without authority of law and violative of Article 265 of the Constitution of India.

25. The argument that refund of this amount would amount to unjust enrichment of the petitioner is without foundation in fact or in law. The Union of India has raised a demand for service tax for the period for which the State of Haryana has levied and collected VAT. If the petitioner is called upon to pay VAT and service tax, it would be the case of double taxation. Even otherwise all that we propose to do is to direct the State of Haryana to forward this amount to the Union of India.

26. Having held as above and taking into consideration that the transaction is subject to service tax, we allow the writ petition by holding that:

(a) the assessment orders dated 22.2.2006, 26.3.2008 and 22.2.2006 (Annexures P-3A, P-3B and P-3C) are a nullity;

(b) the State of Haryana shall transfer the amount of VAT collected from the petitioner to the Service Tax Department of the Union of India;

(c) the amount of VAT transferred by the State of Haryana to the Service Tax Department of Union of India shall not be deemed to be a full and final discharge of the petitioner's liability to pay service tax, which shall depend upon adjudication by the authority concerned.

PUNJAB VAT TRIBUNAL

APPEAL NO. 612 OF 2013

R.L. INDUSTRIES
Vs.
STATE OF PUNJAB

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

23rd February, 2015

HF ▶ Appellant – dealer

PENALTY – ATTEMPT TO EVADE TAX – CHECK POST -/ROADSIDE CHECKING – GOODS IN TRANSIT INTERCEPTED – INVOICE BEING COMPUTERIZED AND SERIAL NUMBER WAS SMALL - EVASION SUSPECTED – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL – HELD THAT REASONABLE TIME TO BE GRANTED TO APPELLANT – GENUINENESS OF TRANSACTION NOT VERIFIED FROM BOOKS OF ACCOUNTS AND ARGUMENTS NOT CONSIDERED – NON SPEAKING ORDER PASSED BY Ld. OFFICER SET ASIDE – APPEAL ACCEPTED WITH A DIRECTION TO THE OFFICER TO PASS SPEAKING ORDER AFTER HEARING BOTH PARTIES – *SEC 51(7)(b) OF THE PUNJAB VAT ACT, 2005*

The goods in transit were intercepted. Documents were produced by the driver. Goods were detained u/s 51(6)(a) of the Act. The AETC mentioned that the invoice being computerized and serial number in small was suspected of being deleted after the consignment reaches the destination. The CPU was examined. The administrative password was not provided thereby raising suspicion. Penalty was imposed u/s 51 of the Act. On appeal before Tribunal, it is held that the notice doesn't bear the date it was actually issued. Reasonable time is to be granted through notice to explain the circumstances. The AETC imposed penalty without calling for record and without considering arguments. Genuineness of transaction was not verified from books of accounts. Thus he passed a non speaking order. The matter is remitted to the Ld. AETC to decide afresh after hearing both parties and pass a speaking order.

Present: Mr. K.L. Goyal, Sr. Advocate along
with Mr. Rohit Gupta, Advocate counsel for the appellant.
Mrs. Sudeepti Sharma, Deputy Advocate General for the State.

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

1. This appeal is directed against the order dated 17-7-2013 passed by the Deputy Excise & Taxation Commissioner (A) Patiala Division, Patiala dismissing the appeal against the order, dated 21-3-2011 passed by Assistant Excise & Taxation Commissioner. Mobile Wing, Patiala imposing a penalty of Rs. 1,79,593-00 under section 51(7)(b) of the Punjab Value Added Tax Act. Brief facts of the case are that on 8-3-2011 when driver with a vehicle No. PB-23-H-7294 loaded with Scaffolding Vertical & Ladger ERW Pipes was intercepted by the Excise and Taxation officer, Mobile Wing, Patiala, the driver produced the Invoice No. 21, dated 8-3-2011 in favour of M/s Steel Emporium, A-243, Road No. 6, Jaipur along with GR and Form VAT-47 issued by the purchasing dealer of Rajasthan. The goods were detained for further verification and notice under section 51(6)(a) of the Act was issued. Thereafter, the case was forwarded to Assistant Excise & Taxation Commissioner, Mobile Wing, Patiala, who also issued notice for 21-3-2011. The Assistant Excise & Taxation Commissioner on 21-3-2011 has mentioned in the order that invoice being computerised and serial number in small was suspected of being deleted after the consignment reaches the destination. It was also observed that CPU, as produced, was examined whether it allows deletion or not. The dealer has provided the user password but the Administrative Password was not provided/produced which created suspicion. The fact of deletion could not determined in the absence of Administrative Pass word. Having violated sections and rules by the appellant, a penalty of Rs. 1,79,593 was imposed under section 51(7)(b) of the Act of 2005. The appellant preferred the appeal against the order, dated 21-3-2011 which was dismissed.

2. It is also noticed that the Excise & Taxation Officer recorded in the notice dated 8-3-2011 that the actual value of the goods required proof, the bill and billety are to be compared with account books, serial number was very small. Therefore, it was to be checked from the CPU. Thereafter on 10-3-2011, the case was forwarded to Assistant Excise & Taxation Commissioner. Mobile Wing, Patiala who issued undated notice for 21-3-11 and on the same day he while observing that the bill and GR are not genuine, imposed a penalty of Rs. 1,79,593/- under section 51(7)(b) of the Act.

3. Arguments heard. Record produced.

4. After receipt of the case by the the Excise & Taxation Officer on 10-3-2011, the notice was issued by the Assistant Excise & Taxation Commissioner-cum-Dy. Director (Investigation) for 21-3-2011. Having examined the notice, it reveals that the same does not bear the date it was actually issued. The ends of justice require that a reasonable time be granted to the appellant through the notice to explain the circumstances appearing against him. In the present case, issued was issued for 21-3-2011 and on the same day, without calling for any further record, penalty was imposed. The appellant when appeared before the Assistant Excise & Taxation Commissioner on 21-3-2011 had also filed written arguments but none of the arguments was considered by the appellant. Though the Excise & Taxation officer had required the verification of the account books but Assistant Excise & Taxation Commissioner did not proceed to verify about the genuineness of the transaction from the account books. Having examined the impugned order the same is very in cryptic in nature. The same being non speaking and without application of mind is liable to be set aside. As such Assistant Excise & Taxation Commissioner required to pass a speaking order after considering the relevant contentions.

5. Resultantly, this appeal is accepted. Impugned order is set aside and Assistant Excise & Taxation Officer, Mobile Wing, Patiala is directed to pass a speaking order after hearing both the parties. Parties are directed to appear before Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala on 6-4-2015.

Pronounced in the open court.

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

EXCISE DEPT TO LAUNCH MOBILE APPLICATION FOR BUSINESSMEN

The Punjab Excise and Taxation Department is mulling a mobile application for better liaisoning between officials and traders and for sending updates.

The department already has an application for the staff of the mobile wing, whereby they can feed the registration number of the approaching goods carrier on their phone and check if has paid its dues at the inter-state check posts or evaded them and accordingly plan action then and there.

Deliberations are on over the matter and the department is likely to come up with an application which will be similar to the one being used in Madhya Pradesh called MPVAT Public. Officials had circulated the details of the plan to all offices last month and sought feedback.

Through the application, the officials will be able to know the status of returns filed by the dealers. The staff will also be able to verify the bills by feeding the codes on their phones regarding inter-state transactions through road transport and even view the registration details of dealers.

Even the dealers at their end will be able to track the status of their applications submitted to the department, get VAT notifications and circulars, rate schedules and VAT amendments. B Srinivasan, Assistant Excise and Taxation Commissioner, said the application would be launched in about two months. “Like other departments, we too want the information to be accessed very conveniently. We want to incorporate some more user-friendly modules which we are looking into,” he said. Excise and Taxation Commissioner Anurag Verma said, “We are studying various features that can be loaded in the application.”

Courtesy: The Tribune
5th April, 2015