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Issue 9
May 2015

NOMINAL INDEX

NOTIFICATION

NEWS OF YOUR INTEREST

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SUBJECT INDEX

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PUNJAB & HARYANA HIGH COURT

VATAP-47-2014

CEBON INDIA LIMITED

Vs.

STATE OF HARYANA AND ANOTHER

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

24th April, 2015

HF ▶ Revenue

EXEMPTION – EXEMPTED UNIT – EXPANSION – WHETHER LIABLE TO BE ASSESSED JOINTLY WITH ORIGINAL UNIT- ORIGINAL UNIT (UNIT 1) EXEMPTED – EXPANDED UNIT (UNIT 2) SEPARATELY REGISTERED FOR CLAIMING FURTHER EXEMPTION – EXEMPTION TO UNIT 2 DENIED – DEMAND RAISED AGAINST UNIT 2 VIDE ASSESSMENT ORDER – CONTENTION RAISED BY APPELLANT THAT DUE TO DENIAL OF EXEMPTION TO UNIT 2 BOTH UNITS 1&2 FORMED A SINGLE ENTITY AND WERE LIABLE TO BE ASSESSED JOINTLY AND NOT SEPARATELY – HELD, EXEMPTION IS GRANTED TO A UNIT AND NOT TO THE COMPANY - DISTINCTION BETWEEN COMPANY AND UNIT AS DRAWN IN RULES POINTED OUT – WHETHER SECOND UNIT IS GRANTED SEPARATE REGISTRATION OR NOT IS IRRELEVANT IN DETERMINING WHETHER THE UNIT TO WHICH EXEMPTION IS GRANTED HAS ACHIEVED PRODUCTION FIGURE – CLUBBING OF THE TWO UNITS FOR PURPOSE OF ASSESSMENT DISALLOWED - APPEAL DISMISSED – RULE 29 A OF HGST RULES, 1975

The appellant had set up an industrial unit and had obtained exemption for the same u/s 13 of the Act r/w Rule 28- A from 1996- 2003. Later, an expanded unit (unit 2) was set up in the same vicinity for which further exemption was applied for. For this purpose separate registration was obtained in respect of unit 2. Due to requirements of Rule 28 A not being met, application for unit 2 was rejected. The DETC had cancelled exemption certificate of the existing unit also. However, in 2002 , exemption of the original unit was restored. The assessment for the year 1997-98 was framed for unit 2 (expanded unit) and a demand of Rs 2,05,176/- was raised. The appellant contended that since exemption application for unit 2 was rejected, both the units remained a single entity and the tax returns filed for the expanded unit could only be assessed jointly with the returns of the original unit and the production capacity and the actual production of both units ought to be considered while determining whether requirements of Rule 28-A were complied with or not. The appellant did not file returns for unit 2 and instead tried to avail the benefit of exemption granted to first unit.

Dismissing the appeal, it is held by the High Court that requirement of sub-rule 11 of 28-A have to be met. The exemption is to be sought by a unit interalia of a company and is granted to the unit not to the company. The court has pointed out the difference between the unit and

the company as drawn throughout the Rules. It is irrelevant whether registration in respect of 2nd unit is granted or not. Even if not granted or subsisting, it will be irrelevant in determining whether the unit for which exemption is granted has achieved the production figures and other requirements. Therefore, clubbing of the two units is not allowed in the present case.

Case referred:

State of Haryana and others V/s Bharti Tele Tech Ltd. 2014 (3) SCC 556

Present: Mr. Piyush Kant Jain, Advocate, and Mr. Suresh Kumar Yadav, Advocate, for the appellant.
Ms. Mamta Singla Talwar, AAG, Haryana.

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S.J. VAZIFDAR, A.C.J.

The above seven appeals are filed under Section 36(1) of the Haryana Value Added Tax Act, 2003 against a common order dated 22.10.2013 passed by the Haryana Tax Tribunal. The appeals are, therefore, disposed of by a common order and judgement. We will for convenience refer to the facts from VATAP-47-2014.

2. The above seven VATAPs No. 47 to 53 pertain to the assessment years 1997-1998, 1996-1997, 1998-1999, 1997-1998, 1996-1997, 1995-1996 and 1995-1996, respectively. There are two appeals each for the three assessment years 1995-1996, 1996-1997 and 1997-1998 as there were separate assessments under the Central Sales Tax Act and the Haryana General Sales Tax Act. For the assessment year 1998-1999, the assessment was only under the Haryana General Sales Tax Act and there is, therefore, only one appeal in respect thereof.

3. The appellant had set up an industrial unit at Gurgaon in the State of Haryana. The appellant is a registered dealer under the Haryana General Sales Tax Act, 1973 and the Central Sales Tax Act, 1956. The appellant was allowed exemption from payment of tax under Section 13-B of the Haryana Sales Tax Act read with Rule 28-A of the Haryana General Sales Tax Rules, 1975 for a period of seven years from 04.04.1996 to 03.04.2003 for an amount of Rs. 283.76 lacs.

4. The appellant's case is that it subsequently made an additional fixed capital investment of Rs. 1.57 crores which increased its production capacity. The appellant applied for the grant of a further exemption from payment of tax in relation to the expansion unit. The appellant contends that it had obtained the separate registration in respect of the expanded unit bearing Registration Certificate No. 18200737 only for the limited purpose of becoming eligible to avail the exemption and started filing separate returns for its two units referred to as Unit No. 1 and Unit No. 2. On taking instructions, Mr. Piyush Kant Jain, learned counsel appearing on behalf of the appellant states that the second unit/expanded unit was a separate independent unit, although in the same area/vicinity/plot.

5. The appellant admits that while the application for the second unit was under process, its manufacturing activities had to be suspended allegedly due to unavoidable circumstances. The exemption for Unit No. 2 was not allowed by the authorities. Although the exemption for the original/first unit was also withdrawn, it was restored by the Appellate Authority by an order dated 11.12.2002. The appellant contends that upon rejection of the application for exemption with respect to the Unit No. 2/expansion unit, both the units formed but a single entity and the tax returns filed for the expansion unit could only be assessed jointly with

the returns of the original unit and the production capacity and the actual production of both the units ought to be considered while determining whether the requirements of Rule 28-A and in particular sub Rule (11) thereof were complied with or not.

6. The appellant contends that respondent No. 2/Excise and Taxation Officer-cum-Assessing Authority wrongly framed separate ex-parte assessments for Unit No. 2/the expanded unit by an order dated 27.01.1999 in respect of assessment years 1997-1998 under the Haryana Sales Tax Act and raised an additional demand of Rs. 2,05,176/-. The appellant filed an appeal against the assessment order before the Joint Excise and Taxation Commissioner (Appeals), Faridabad which was disposed of by an order dated 25.08.2009. The appellant thereafter filed a further appeal before the Haryana Tax Tribunal which was rejected by the impugned order dated 22.10.2013.

7. The appellant contends that this appeal raises the following substantial questions of law:-

"(i) Whether the dealer is bound to be assessed to tax separately after the rejection of claim for further exemption qua expansion of the existing unit for which a separate registration was taken for limited purpose of becoming eligible for applying for further exemption?

(ii) Whether Rule 28A of the Sales Tax Rules prohibits extending benefits of exemption from payment of tax on sale of products of expanded capacity within the overall limit of exemption granted to the original unit?"

8. Section 13-B of the Haryana Sales Tax Act reads as under:-

*"**13B- Powers 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 either prospectively or retrospectively and subject to such conditions as may be prescribed."*

9. Rule 28A of the Haryana General Sales Tax Rules, 1975 reads as under:-

"28A (2) For the purpose of this Chapter, unless the context otherwise requires.

*(c) "**New Industrial Unit**" means a unit which is or has been set up in the State of Haryana and comes or has come into commercial production for the result of purpose or transfer of old machinery except when purchased in the course of import into the territory of India or when the cost of old machinery does not exceed 25% of the total cost of machinery re-establishment, amalgamation, change of lease, change of ownership, change in constitution, transfer of business, reconstruction or revival of existing unit;*

*(d) "**expansion/diversification of industrial unit**" means a capacity set up or installed during the operative period which creates additional productions / manufacturing facilities for manufacture of the same product/products as of the existing unit (expansion) or different products (diversification) at the same or new location, and*

(i) in which the additional fixed capital investment made during the operative period exceeds 25% of the fixed capital investment of the existing unit, and

(ii) which results into increase in annual production by 25% of the installed capacity of the existing unit in case of expansion.

X X X X X X

*(f) '**eligible industrial unit**' means :-*

(i) a New Industrial Unit or expansion or diversification of the existing unit, which-

(I) has obtained certificate of registration under the Act.

X X X X X X

*(j) "**eligibility certificate**" means a certificate granted in form S.T.72 by the appropriate Screening Committee to an eligible industrial unit for the purpose of grant of exemption deferment;*

*(k) "**exemption certificate**" means a certificate granted in form S.T.73 by the Deputy Excise and Taxation Commissioner of the District to the eligible industrial unit holding eligibility certificate which entitles the unit to avail of exemption, from the payment of sales or purchase tax or both, as the case may be.*

X X X X X X

(11)(a) The benefit of tax-exemption/deferment under this rule shall be subject to the condition that the beneficiary/industrial unit after having availed of the benefit:-

(i) shall continue its production at least for the next five years not below the level of average production for the preceding five years; and (ii) shall not make sales outside the State for next five years by way of transfer of consignment of goods manufactured by it.

(b) In case the unit violates any of the conditions laid down in clause (a), it shall be liable to make, in addition to the full amount of tax-benefit availed of by it during the period of exemption/deferment, payment of interest chargeable under the Act as if no tax exemption/deferment was ever available to it;

Provided that the provisions of this clause shall not come into play if the loss in production is explained to the satisfaction of the Deputy Excise and Taxation Commissioner concerned as being due to the reasons beyond the control of the unit.

Provided further that a unit shall not be called upon to pay any sum under this clause without having been given reasonable opportunity of being heard."

10. As we mentioned earlier, on 07.11.1996, the appellant had applied for exemption under Rule 28-A. In accordance with Rule 28-A, the appellant made an application on behalf of the expansion unit for the grant of eligibility certificate for tax exemption/deferment for a period of seven years from the date of exemption. 19.02.1996 was stated to be the date of going into commercial production.

11. On 09.09.1998, the appellant was granted registration certificate No. 18200737 in respect of Unit No. 2/the expansion unit, whereas for the first unit registration certificate No. 1815049 had been granted.

12. On account of the manufacturing activities of the original unit having been suspended and the appellant having been unable to meet the requirements of Rule 28-A the application for exemption of Unit No. 2/expansion unit was rejected by a communication dated 05.08.1999. The Joint Director in the said communication noted that the Higher Level Screening Committee had observed that the appellant had not appeared before the Committee; that the report of the DETC noted that the unit had not yet completed the documents; that the unit was lying closed and that the DETC had even cancelled the exemption certificate of the existing unit as the existing unit and the expansion unit were lying closed. The committee decided not to grant benefit of sales tax exemption to the expansion unit and decided to reject the application. On 11.12.2002, the appeal was allowed and the exemption in respect of the original unit continued.

13. Admittedly, the appellant's application for exemption with respect to Unit No. 2 had been rejected and the appellant did not challenge the same. The appellant had only succeeded in getting the exemption of the original unit/Unit No. 1 restored. Admittedly, the

appellant had not filed any return for Unit No. 2 on the basis that it was a separate unit and instead sought to take the benefit of exemption granted to the first unit. Mr. Jain, the learned counsel appearing on behalf of the appellant, contended that on account of the rejection of the exemption in respect of the Unit No. 2/expansion unit, it remained a part of the appellant-company and, therefore, its production must be taken into account while ascertaining whether the condition of exemption in respect of the first/original unit was complied with or not as required by Rule 28-A (11).

14. The submission is liable to be rejected in view of the judgement of the Supreme Court in *State of Haryana and others Vs. Bharti Tele Tech Limited, 2014 (3) SCC 556*. It was contended before the Supreme Court, as it was before us that as the assessee had established another unit as an expansion unit which had come into commercial production with effect from 27.03.1998 and for the purpose of determining the level of production after 12.12.1998 the production figures of the expansion unit were also required to be taken into account. The Supreme Court held as under:-

> *"16. The said decision in R.K. Mittal Mills case, as we perceive, was rendered in a totally different context. In the present case, we are not concerned with the withdrawal of eligibility certificate. We are concerned with the consequences that have been enumerated in clause (b) of sub-rule (11) of Rule 28-A which clearly stipulates that in case of violation of clause 11 (a) (i) of sub-rule (11), the assessee shall be liable for making, in addition to the full amount of tax-benefit availed of by it during the period of exemption/deferment, with interest chargeable under the Act. Thus, reliance placed by the High Court on the said decision is misconceived and inappropriate.*
>
> *17. The nub of the matter is whether production of two different units can be combined together to meet the requirement of the postulate enshrined under the Rule. The production of the beneficiary unit had failed to fulfil the stipulation incorporated in sub-rule (11)(a)(i) of Rule 28-A of the Rules. It is also the undisputed position that the production of the expanded unit has been computed and clubbed with the first unit to reflect the meeting of the criterion. The competent authority has come to a definite conclusion that the expanded capacity had been created to show that the rate of production is maintained but it is fundamentally a subterfuge. The authority has also taken into consideration the different items produced and how there has been loss of production of EPBT in the first unit. The High Court has failed to appreciate the relevant facts and, without noticing that the respondent assessee had clubbed the production of the units, lancinated the orders passed by the forums below.*
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> *19. Mr. Jain has laid immense emphasis on the term "expansion" of the existing unit. The term "expansion" has been defined in clause (d) of sub-rule (2) of Rule 28-A which reads thus:-*
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> *"28-A. (2)(d) 'expansion/diversification of industrial unit' means a capacity set up or installed during the operative period which creates additional productions/manufacturing facilities for manufacture of the same product/products as of the existing unit (expansion) or different products (diversification) at the same or new location –*
>
> *(i) in which the additional fixed capital investment made during the operative period exceeds 25% of the fixed capital investment of the existing unit; and*
>
> *(ii) which results into increase in annual production by 25% of the installed capacity of the existing unit in case of expansion."*
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> *20. On a careful reading of the aforesaid provisions, it is quite clear as day that they deal with the eligibility to get the benefit of exemption/deferment from the payment of*

tax. On a studied scrutiny of clause (f)(i)(I), it is manifest that it is incumbent on the unit to obtain certificate of registration under the Act. The submission of Mr. Jain is that the second unit has obtained the registration certificate under the Act and, hence, the production of the said unit, being eligible, is permitted to be included. Needless to say, obtainment of registration certificate is a condition precedent to become eligible but that does not mean that the production of the said unit will be taken into account for sustaining the benefit of the first unit. They are independent of each other as far as sub-rule (11) of Rule 28-A is concerned. We are disposed to think so as the grant of exemption has a sacrosanct purpose.

21. The concept of exemption has been introduced for the development of industrial activity and it is granted for a certain purpose to a unit for certain types of goods. Exemption can be granted under the Rules or under a notification with certain conditions and also ensure payment of taxes post the exemption period. The concept of exemption is required to be tested on a different anvil, for it grants freedom from liability. In the case at hand, as we understand, it is "unit" specific. The term "unit" has not been defined. The grant of exemption unit wise can be best understood by way of example. An entrepreneur can get an exemption of a unit and thereafter establish number of units and try to club together the production of all of them to get the benefit for all. It would be well-nigh unacceptable, for what is required is that each unit must meet the condition to avail the benefit.

27. In the case at hand, as we have already held that clubbing is not permissible. It amounts to a violation of the conditions stipulated under subrule (11)(a)(i) of Rule 28-A and, therefore, the consequences have to follow and as a result, the assessee has to pay the full amount of tax benefit and interest. The approach of the High Court is absolutely erroneous and it really cannot withstand close scrutiny."

15. Mr. Jain contended that in the case before the Supreme Court, the original unit which had been granted exemption had ceased to exist and, therefore, the ratio of the judgement is inapplicable to the case before us. The submission is not well founded. The ratio of the judgement would equally apply to a unit which, though not closed, does not meet the requirements of sub Rule (11) of Rule 28-A. The question whether the requirements of sub Rule (11) have been met or not does not depend on whether the unit is closed or not. The question is whether the requirements of sub Rule (11) have been met or not. If they have not been met, the reasons for not meeting the requirements are totally irrelevant.

16. The exemption is to be sought by and in respect of a unit, inter alia, of a company and is granted to the unit. The distinction between the juristic entity, namely, the company and a unit thereof has been drawn throughout the Rules. The Rules we quoted earlier are only a few illustrations of this. The exemption is given to the unit and not to the company. The refusal of the exemption to the second unit makes no difference in determining whether the provisions of sub Rule (11) of Rule 28-A had been met by the unit to which the exemption was granted. For this reason, it is irrelevant whether the registration certificate in respect of the second unit is granted or not and if granted whether it is subsisting or not. Even if it is not subsisting or not granted, it would be irrelevant while determining whether the unit in respect of which exemption is granted has achieved the production figures and has met the other requirements.

17. The appeals are, therefore, dismissed.

PUNJAB & HARYANA HIGH COURT

CWP NO. 4595 OF 2015

LIFE LONG INDIA LTD
Vs.
STATE OF HARYANA & OTHERS

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

30th March, 2015

HF ▶ Petitioner

STAY OF RECOVERY – SECURITY – APPEAL PENDING BEFORE TRIBUNAL – TRIBUNAL NOT BEING CONSTITUTED, WRIT FILED FOR INTERIM RELIEF – SECURITY OFFERED TO BE FURNISHED BY A FIXED DATE – STAY OF RECOVERY PROCEEDINGS PRAYED FOR – HELD, RECOVERY TO BE STAYED IN THE EVENT OF FURNISHING OF SECURITY TILL DECISION OF RESPONDENTS REGARDING ITS ADEQUACY – ADVERSE DECISION TO LEAD TO INITIATION OF RECOVERY PROCEEDINGS ONE WEEK THEREAFTER – PETITIONER RESTRAINED FROM DISPOSING OF ITS IMMOVABLE PROPERTY TILL PENDENCY OF APPEAL.

An appeal had been filed before the Tribunal regarding stay of recovery proceedings. As the Tribunal was not constituted then, the appeal couldn't proceed at that stage. Hence, a writ was filed before High Court. The Hon'ble High Court has ordered that if the petitioner furnishes security by 15/4/2015, the recovery proceedings would be stayed. The proceedings wouldn't be initiated till the respondents decide whether the security offered is adequate or not. In the event of the decision being adverse to the petitioner, the recovery proceedings would be initiated one week thereafter. The petitioner was refrained from disposing of its immovable property till the pendency of appeal.

Case referred:

M/s Kohinoor Foods Ltd. V The State of Haryana and others CWP No. 3961 of 2015

Present: Mr. Rajiv Agnihotri, Advocate for the petitioner

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S.J. VAZIFDAR, A.C.J.

The petitioner has filed an appeal before the Tribunal. However, the Tribunal under the Haryana Value Added Tax Act, 2003 has not yet 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. In lieu thereof, it is not possible for the petitioner to seek interim relief before the Tribunal. Considering the order passed in similar matter including order dated 04.03.2015 in Civil Writ Petition No.3961 of 2015 *(M/s Kohinoor Foods Ltd. v. The State of Haryana and others*), we dispose of this writ petition by the following order:

In the event of the petitioner furnishing by15.04.2015 security contemplated under Section 33(5) of the said Act, recovery proceedings be not initiated. The respondents shall consider whether the security, if offered by the petitioner, is satisfactory or not. In the event of security being offered by 15.04.2015, the recovery proceedings shall not be initiated till the decision of the respondents on the question as to whether the security is adequate or not and for a period of one week thereafter, in the event of the decision being adverse to the petitioner. However, pending the appeal the petitioner shall not dispose of its immovable properties or encumber the same in any manner whatsoever.

PUNJAB & HARYANA HIGH COURT

CWP NO. 4529 OF 2015

LIFE LONG MEDITECH LTD
Vs.
STATE OF HARYANA & OTHERS

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

30TH March, 2015

HF ▶ Petitioner

ENTERTAINMENT OF APPEAL – SECURITY/BONDS- DISMISSAL OF APPEAL BY FIRST APPELLATE AUTHORITY DUE TO FAILURE TO FURNISH BONDS U/S 33(5) OF THE ACT – WRIT FILED AS TRIBUNAL NOT CONSTITUTED THEN TO CHALLENGE THE IMPUGNED ORDERS – PETITIONER WILLING TO FURNISH BONDS- FIRST APPELLATE AUTHORITY DIRECTED TO HEAR APPEAL ON MERITS ON FURNISHING OF BONDS BY THE FIXED DATE AS REQUIRED UNDER LAW – *SEC 33(5) OF HARYANA VAT ACT*

The first appellate authority had dismissed the appeal on the ground of failure to furnish the bonds as required u/s 33 of the Act. Since the Tribunal was not constituted then, the impugned orders are challenged by way of writ. The petitioner is willing to furnish the bonds in the present case. It is directed that the first appellate authority would hear the appeal on merits if the petitioner furnished the bonds on or before 15/4/15.

Present: Mr. Rajiv Agnihotri, Advocate for the petitioner

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S.J.VAZIFDAR,ACTINGCHIEFJUSTICE

The petitioner has challenged an order of the first appellate authority, *i.e.*, Joint Excise and Taxation Commissioner(Appeals), Faridabad, dismissing the appeal on the ground that the petitioner had failed to furnish the bonds as required by Section33(5) of the Haryana Value Added Tax Act, 2003.

2. The order is challenged by way of this petition as the Tribunal has not been constituted as yet. In several matters, we had permitted the petitioners, as an interim measure, to file the bonds as required by Section 33(5) of the said Act instead of furnishing a guarantee or depositing the amount. Those were the matters in which the petitioners had also challenged the findings of the first appellate authority. In the present case, the petitioner is willing to furnish the bonds in accordance with Section 33(5) of the said Act.

3. In that view of the matter, it would not be necessary to accept the statement and let the petitioner await the constitution of the Tribunal. The matter may be heard by the first appellate authority in view of the petitioner having agreed to furnish thebonds.

4. The writ petition is, therefore, disposed of by directing that in the event of the petitioner furnishing the bonds in accordance with Section 33(5) of the said Act on or before 15.04.2015, the first appellate authority shall hear the appeal on merits.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 11 OF 2012

UNITED SPIRITS LTD.
Vs.
STATE OF HARYANA AND ANOTHER

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

31st March, 2015

HF ▶ Appellant / assesee

UNJUST ENRICHMENT – PURCHASE OF GOODS ON ALLEGED PAYMENT OF TAX – DEEMED INCLUSION OF SUCH TAX AT THE TIME OF SALE OF TAXFREE GOODS – QUESTION OF UNJUST ENRICHMENT DOES NOT ARISE AS THE DEALER HAS ALREADY PAID THE TAX – CONVERSELY IF THE GOODS ARE PURCHASED WITHOUT PAYMENT OF TAX – QUESTION OF INCLUSION OF TAX IN SALE PRICE DOES NOT ARISE – NO CASE OF UNJUST ENRICHMENT – APPEALS ALLOWED – STATE DIRECTED TO REFUND THE AMOUNT

The appellant who is a manufacturer of liquor, purchased the raw material i.e. ethyl alcohol which was tax-free. The appellant was held liable for purchase tax, as the appellant is last purchaser of taxable goods within the State. The appellant, however, claimed that selling dealer is seeking exemption under the Industrial Policy of the State, and as such purchases of appellant would not be exigible to tax. The appeal of the appellant was rejected up to Tribunal as the selling dealer, i.e. Haryana Organics could not obtain necessary exemption upto decision by the Tribunal. However, subsequently, the writ petition filed by Haryana Organics for grant of exemption was allowed by the High Court and accordingly, the appellant filed a Review Application before the Tribunal. The Tribunal came to a conclusion that the appellant is no longer liable to pay the tax but the Review Application was rejected on the ground of unjust enrichment.

On appeal before the High Court, it is held that the reasoning adopted by the Tribunal is perverse. Looking at either way, there is no unjust enrichment as the solitary basis for the Tribunal to hold that the appellant has collected the tax is the factum of inclusion of tax by the seller of ethyl alcohol to the appellant. One the Tribunal had observed that appellant had paid the tax to his seller, the question of unjust enrichment in his hands does not arise. Conversely, if the appellant has not paid the tax at the time of purchase, the question of including the same in the sale price of liquor would not arise. Accordingly in none of these events, the appellant can be denied the benefit on the ground of unjust enrichment.

The appeals were thus allowed and the State was directed to refund the amount within 12 weeks.

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

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S.J. VAZIFDAR, A.C.J.

1. These appeals are against the order of the Haryana Tax Tribunal rejecting the appellant's application for review under Section 41 of the Haryana General Sales Tax Act, 1973 (in short 'the Act'). The facts in both the appeals are similar. The appeals are therefore, disposed of by this common order and judgment. For convenience, we will refer to the facts from VATAP No. 11 of 2012.

2. The appeal is admitted on the substantial question of law raised in para no. 3 of the appeal which read thus:

> *"(1) Whether the department is justified in levying the tax upon the selling dealer of appellant i.e. M/s. Haryana Organics as well as the appellant for the same transaction?*
>
> *(2) Whether the Tribunal was justified in coming to a conclusion that the price of goods sold by the appellant/assessee included the tax despite the fact that this finding has never been given by any of the lower authorities nor it was confronted by the assessee during the course of arguments before this Hon'ble Tribunal?*
>
> *(3) Whether the authorities under the act can levy any tax on the ground of undue enrichment, even though there is no provision for the same?"*

3. The substantial question of law really is whether the Tribunal was justified in rejecting the appellant's claim on the ground of unjust enrichment.

The appellant manufactures liquor. M/s. Haryana Organics sold ethyl alcohol to the appellant. Ethyl alcohol is taxable under the Act whereas liquor was not taxable at the relevant time namely the assessment year 1998-99.

In respect of the said sales, M/s. Haryana Organics issued certificates including for the assessment years 1998-99 and 1999-2000 certifying that the rate of spirit supplied during the said period was inclusive of sales tax and other government levies as applicable to them. In view thereof, the appellant did not issue ST-15 certificates.

M/s. Haryana Organics issued the said certificate dated 12.03.2001 confirming that it was entitled to exemption under Section 13-B of the Act read with Rule 28-A of the Haryana General Sales Tax Rules, 1975. The application for exemption was, however, rejected. M/s. Haryana Organics challenged the rejection by filing CWP No. 18240 of 1997, was disposed of by a learned Single Judge by an order and judgment dated 22.10.2002 [2003 (132) STC 493 P&H]. The learned Judge held that the respondents therein were not justified in denying the exemptions to the petitioners and remanded the matter to the High Level Screening Committee for fresh determination of the claim of M/s. Haryana Organics in the light of the observations made therein. The respondents' appeal against the said order was dismissed by an order and judgment of the Division Bench dated 03.03.2009 (2009) 39 VST 616 (P & H).

Thereafter, the respondents, in view of the orders in CWP No. 18240 of 1997, considered the matter afresh and issued the eligibility certificate in favour of M/s. Haryana Organics. The certificates granted sales tax exemption of `496.82 lacs for a period of 9 years from the date of commercial production namely 31.03.1994 to 30.03.2003. In order words, the exemption was granted in respect of the assessment year 1998-99 and 1999-2000, which are relevant in the above appeals.

4. While the proceedings were pending between M/s. Haryana Organics and the respondents regarding the former's application for exemption under Section 13-B of the Act read with Rule 28-A:

(i) assessment orders had been passed in respect of M/s. Haryana Organics. In view of the exemption having been subsequently granted, M/s. Haryana Organics challenged the demand; and

(ii) an assessment order dated 10.04.2001 was made in respect of the appellant for the assessment years 1998-1999 and 1999-00. The appellant was assessed to purchase tax on the ground that neither the appellant nor M/s. Haryana Organics had in fact paid the same and that M/s. Haryana Organics was not an exempted unit under the said Act. On 23.12.2002, the Tribunal dismissed the appeal against the assessment order.

However, as we mentioned earlier, the learned Single Judge by the order and judgment dated 22.10.2002 had allowed the said writ petition CWP No. 18240 of 1997 filed by M/s. Haryana Organics and directed the respondents to consider the application for exemption afresh.

4. As we mentioned earlier, the Tribunal had by the order dated 23.12.2002, upheld the levy of purchase tax upon the appellant as the appellant was the last purchaser of taxable goods to be used for the purpose of manufacturing non taxable goods. In view of this order, the appellant filed the above review application before the Tribunal. As we also mentioned earlier, thereafter the respondents issued the eligibility certificate in favour of M/s. Haryana Organics for 9 years which included the assessment years 1998-99 and 1999-2000 which are relevant in this appeal.

5. The Tribunal by the impugned order, held that in view of M/s. Haryana Organics subsequently becoming entitled to the exemption, the review application was maintainable. The Tribunal, therefore, admitted the review petition. The Tribunal also came to the conclusion that the appellant was no longer liable to pay the tax. However, the review was rejected on the ground of unjust enrichment. The Tribunal held:

> *"9.....So far as purchases of alcohol effected from M/s. Haryana Organics during the year 1998-99 is concerned, by admission of both, the seller and the purchaser, the price of the alcohol charged was inclusive of sales tax applicable at the relevant time, therefore, it would be legally justifiable to presume that as a prudent businessman, the applicant-assessee ought to have factored the element of tax in the price of alcohol (purchased by him) in the price of liquor manufactured and sold by him. Thus from the angle of exemption is eventually granted to M/s. Haryana Organics or not for the relevant period. In this view of the matter, the review is rejected."*

6. The reasoning adopted by the Tribunal is perverse. Looked at either way, there is no question of unjust enrichment. The Tribunal has proceeded on the basis of the appellant's contention that the purchase price paid by the appellant included the sales tax element and, therefore, inferred that the appellant must have added the element of tax in the price of alcohol sold to the consumers.

7. Assuming that the tax had been paid by the appellant and had been recovered from the consumers, the matter would end there. The appellant would not be burdened with any tax itself. However, the appellant was compelled to deposit the entire purchase tax element with the Assessing Authorities as a condition precedent to the maintainability of its appeal. Far from being unjustly enriched the appellant in this manner is actually out of the pocket to the extent of the amount paid as a condition precedent to the maintainability of the appeal. In the event of the same being refunded, there would be no question of unjust enrichment.

8. Conversely assuming that the appellant had not paid the tax, it would be reasonable to presume on the same line of reasoning adopted by the Tribunal that the appellant had not recovered the amount from the consumers. In any event, the Tribunal has not come to any finding against the appellant to the effect that it actually recovered the amount from the consumers. There would be no justification for us to speculate to this effect in the appellant's appeal. In that event also, the appellant would be out of pocket to the extent of the amount deposited by it as a condition precedent for the maintainability of its appeal. The amount, therefore, must even in that event be refunded.

9. In the circumstances, both the appeals are allowed. The amount shall be refunded by the respondents within 12 weeks from today.

PUNJAB & HARYANA HIGH COURT

CWP NO. 5730 OF 2014

CHD DEVELOPERS LTD

Vs.

STATE OF HARYANA AND OTHERS

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ

22nd April, 2015

HF ▶ Assessee/Dealers

Revenue/ General Principles

WORKS CONTRACT – DEVELOPERS ENGAGED IN THE CONSTRUCTION OF FLATS FOR SUBSEQUENT SALE – PROPERTY IN GOODS PASSED TO BUYERS IN THE SHAPE OF IMMOVABLE PROPERTY – ARTICLE 366(29A) – CONSTITUTE WORKS CONTRACT – EVEN IF SOME PORTION OF LAND IS ALSO SOLD ALONGWITH IT – AMOUNTS TO DEEMED SALE – STATE COMPETENT TO LEVY TAX.

WORKS CONTRACT – MEASURE OF TAX - DEVELOPERS ENGAGED IN THE CONSTRUCTION OF FLATS FOR SUBSEQUENT SALE – ONLY VALUE OF GOODS CAN BE TAXED – STATE ENTITLED TO PRESCRIBE FORMULA FOR DEDUCTION OF LABOUR AND LAND BY FIXED PERCENTAGE WHERE BOOKS OF ACCOUNTS ARE NOT MAINTAINED OR IMPROPER – TAXABLE EVENT IS TRANSFER OF PROPERTY WHICH TAKES PLACE AT THE TIME OF INCORPORATION - VALUE OF GOODS AT THE TIME OF INCORPORATION CAN ONLY BE TAXED.

WORKS CONTRACT – MEASURE OF TAX - DEVELOPERS ENGAGED IN THE CONSTRUCTION OF FLATS FOR SUBSEQUENT SALE - ACTIVITY OF CONSTRUCTION UNDERTAKEN BY DEVELOPER IS WORKS CONTRACT ONLY FROM THE STAGE HE ENTERS INTO A CONTRACT WITH FLAT BUYER – IF FLAT IS SOLD AFTER CONSTRUCTION THEN THERE IS NO WORKS CONTRACT – GOODS CAN NOT BE DEEMED TO HAVE BEEN SOLD BY THE BUILDER – GOODS TRANSFERRED AFTER THE AGREEMENT IS ENTERED INTO WITH THE FLAT BUYER CAN ONLY BE MADE TO CHARGEABLE TO TAX.

WORKS CONTRACT – MEASURE OF TAX - DEVELOPERS ENGAGED IN THE CONSTRUCTION OF FLATS FOR SUBSEQUENT SALE – NO TAX CAN BE CHARGED FROM THE DEVELOPER IN RESPECT OF GOODS INCORPORATED IN THE WORKS CONTRACT ON WHICH SUB-CONTRACTOR HAS ALREADY PAID THE TAX.

WORKS CONTRACT - CIRCULARS - DEVELOPERS ENGAGED IN THE CONSTRUCTION OF FLATS FOR SUBSEQUENT SALE – RELATES TO LEVY OF TAX ON DEVELOPERS – PROVIDES FOR MEASURE OF TAX AND DEDUCTION TOWARDS LABOUR AND OTHER LIKE CHARGES – NO ILLEGALITY.

PRINCIPLES OF STATUTORY INTERPRETATION – WORKS CONTRACT – RULES OF READING DOWN – SUCH MEANING SHOULD BE ASSIGNED TO THE PROVISION WHICH WOULD MAKE IT

EFFECTIVE AND ADVANCE THE PURPOSE OF ACT – SHOULD BE DONE WITHOUT DOING ANY VIOLENCE TO THE PROVISIONS OF THE ACT – RULE OF READING DOWN IS TO CONSTRUE A PROVISION HARMONIOUSLY AND TO STRAIGHTEN OR IRONING OUT CREASES TO MAKE A STATUTE WORKABLE.

WORKS CONTRACT – MEASURE OF TAX - DEVELOPERS ENGAGED IN THE CONSTRUCTION OF FLATS FOR SUBSEQUENT SALE - EXPLANATION (i) TO SECTION 2(1)(zg) OF THE ACT - DEFINES 'SALE PRICE' - PROVIDES FOR DEDUCTION ON ACCOUNT OF LABOUR, MATERIAL AND SERVICES RELATED CHARGES FROM THE GROSS TURNOVER- NOT A CHARGING PROVISION- IT IS IN THE DEFINITION CLAUSE- PROVISION DOES NOT SUFFER FROM ANY VICE OR DEFECT OF UNCONSTITUTIONALITY.

WORKS CONTRACT – MEASURE OF TAX - DEVELOPERS ENGAGED IN THE CONSTRUCTION OF FLATS FOR SUBSEQUENT SALE -THE PROVISIONS OF LAW INSOFAR AS THOSE SEEK TO CHARGE SALES TAX ON ANY AMOUNT OTHER THAN THE VALUE OF GOODS TRANSFERRED IN THE COURSE OF EXECUTION OF WORKS CONTRACT, THE PROVISION WOULD BE ULTRAVIRES THE CONSTITUTION OF INDIA - TAX IS TO BE COMPUTED ON A VALUE NOT EXCEEDING THE VALUE OF TRANSFER OF PROPERTY IN GOODS AND AFTER THE DATE OF ENTERING INTO AGREEMENT FOR SALE WITH THE BUYERS-WHEREVER THE DEDUCTIVE METHOD IS TO BE EMPLOYED, THEN IT HAS TO BE ENSURED THAT TAX IS CHARGED ONLY ON THE VALUE OF TRANSFER OF PROPERTY IN GOODS ON AND AFTER THE DATE OF ENTERING INTO AN AGREEMENT FOR SALE WITH THE BUYERS - DEDUCTIVE METHOD - SHOULD ORDINARILY INCLUDE A RESIDUARY CLAUSE IN CONSONANCE WITH THE MANDATE OF LAW SO AS TO COVER ALL SITUATIONS WHICH CAN BE ENVISAGED.

WORKS CONTRACT – MEASURE OF TAX - DEVELOPERS ENGAGED IN THE CONSTRUCTION OF FLATS FOR SUBSEQUENT SALE - VALUE OF IMMOVABLE PROPERTY OR ANYTHING DONE PRIOR TO THE DATE OF ENTERING OF THE AGREEMENT OF SALE IS TO BE EXCLUDED - VALUE OF GOODS - WOULD BE THE VALUE OF THE GOODS AT THE TIME OF INCORPORATION IN THE WORKS EVEN WHERE PROPERTY IN GOODS PASSES LATER- RULE 25(2) OF THE RULES IS HELD TO BE VALID BY READING IT DOWN TO THE EXTENT INDICATED HEREINBEFORE AND ALSO SUBJECT TO THE STATE GOVT. REMAINING BOUND BY ITS AFFIDAVIT FILED IN THE COURT - STATE GOVT. SHALL BRING NECESSARY CHANGES IN THE RULES IN CONSONANCE WITH THE ABOVE OBSERVATIONS.

WORKS CONTRACT – SUB-CONTRACTOR – SECTION 42 - JOINT AND SEVERAL LIABILITY OF CONTRACTOR AND SUBCONTRACTOR – ONLY TO SAFEGUARD REVENUE IN CASE OF DEFAULT BY SUB-CONTRACTOR - SAID PROVISION CANNOT BE SAID TO BE ARBITRARY, DISCRIMINATORY OR UNREASONABLE.

WORKS CONTRACT – DEVELOPERS ENGAGED IN THE CONSTRUCTION OF FLATS FOR SUBSEQUENT SALE – SECTION 9 & RULE 49 - COMPOSITION SCHEME – LUMPSUM TAX – OPTIONAL SCHEME – ONCE OPTED THE DEALER CANNOT QUESTION THE METHOD OF CALCULATION OF LIABILITY – CIRCULAR TO DEAL WITH COMPOSITION SCHEME CANNOT BE FAULTED AS WELL.

CONSTITUTION OF INDIA – WRIT – ALTERNATIVE REMEDY - THE VIRES OF VARIOUS PROVISIONS OF THE ACT, RULES AND CIRCULARS WERE UNDER CHALLENGE - REMEDY OF WRIT PETITION CANNOT BE SHUT DOWN - ONE OF THE ACCEPTED EXCEPTIONS TO THE RULE OF ALTERNATIVE REMEDY - INDIVIDUAL ISSUES REGARDING NON-TAXABILITY OF TRANSACTIONS ON MERITS - PARTIES WOULD BE AT LIBERTY TO RAISE ALL THOSE ISSUES BEFORE THE ASSESSING AUTHORITY/REVISIONAL AUTHORITY.

The petitioners who are developers engaged in the business of development and sale of apartments/flats/units, approached the High Court for seeking a writ in the nature of mandamus for declaring Explanation (i) to Section 2(1)(zg) of Haryana VAT Act 2003 and Rule 25(2) of Haryana VAT Rules, 2003 to be ultravires the Constitution of India insofar as they include the value of land for charging VAT on developers. The challenge was also made to the notices issued for assessment, circulars issued by the Department and orders of assessment.

The High Court has held:

On the taxability of such agreements/ transactions

Insofar as the agreement between developers/builders/promoters and the prospective purchasers to construct a flat and thereafter sell the same with some portion of land, would constitute a works contract and therefore, the State is empowered to levy tax on such contracts. For this purpose, the court has relied upon the judgments of Supreme Court in the case of K. Raheja Development Corporation vs State of Karnataka, (2005)5 SCC 162 and a Larger Bench case in Larsen & Toubro Ltd. vs State of Karnataka, 65 VST 1 (SC). It was held that the States are empowered to levy sales tax on the sale of goods in an agreement of sale of flat which also has a component of a deemed sale of goods.

On the Measure of tax in such transactions:

Where the developer/builder/promoter/contractor or the sub-contractor maintains proper books of account, it shall be the value of the goods incorporated in the works contract as per books of account. On the other hand, where the developer/contractor/sub-contractor does not maintain proper accounts or the accounts maintained by him are not found worthy of credence, it would be permissible for the State Legislature to prescribe a formula for determining the charges for labour, service and cost of land by fixing a particular percentage of the works contract and to allow deduction of the amount thus determined from the value of the works contract for assessing the value of the goods involved in the execution of the works contract. The taxable event is the transfer of property in the goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works. The value of the goods which can constitute the measures for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in the works. The activity of construction undertaken by the developer etc. would be works contract only from the stage he enters into a contract with the flat purchaser. However, the deduction permissible under various heads would depend upon facts of each case on the basis of material available on record. It is clarified that where the agreement is entered into after the completion of the flat or the unit, there would be no element of works contract but in a situation, where agreement is entered into before the completion of construction, it would be a works contract. If at the time of construction and until the construction was completed, there was no contract for construction of the building with the flat purchaser, the goods used in the construction cannot be deemed to have been sold by the builder since at that time there is no purchaser even if building is intended to be sold after construction would be of no

consequence. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State government. Taxing the sale of goods element in a works contract under Article 366(29A)(b) read with Entry 54 List II of Schedule VII of the Constitution of India is permissible even after incorporation of goods provided tax is directed to the value of the goods at the time of incorporation and does not purport to tax the transfer of immovable property. No tax can be charged from the developer/builder/promoter or contractor in respect of the value of goods incorporated in the works contract after the agreement with the flat purchaser on which the sub-contractor has already paid the tax.

On the validity of circulars issued by State Government:

Insofar as validity of instructions dated 7.5.2013, 4.6.2013 and 10.2.2014, Instructions No. 952/ST-1 dated 7.5.2013 issued by State is concerned, it provides that the agreements/contracts entered by developers with prospective buyers for sale of apartments/flats before the completion of construction constitutes works contract and thus VAT was imposable on such transactions. Clause 4 of the said circular relates to measure of tax and deduction towards labour and other like charges. Circular dated 4.6.2013 was issued regarding making of assessments on builders and developers. In view of legal position enunciated hereinabove, there is no illegality in the issuance of circulars dated 7.5.2013 and 4.6.2013.

On the principles of Interpretation regarding constitutionality of a provision:

The Rule of interpretation requires that such meaning should be assigned to the provision which would make the provisions of the Act effective and advance the purpose of the Act. This should be done wherever possible without doing any violence to the language of the provision. A statute has to be read in such a manner so as to do justice to the parties. The rule of reading down is to construe a provision harmoniously and to straighten crudities or ironing out creases to make a statute workable.

On the validity of Explanation (i) to Section 2(1)(zg):

Explanation (i) to Section 2(1)(zg) of the Act which defines 'sale price' provides for deduction on account of labour, material and services related charges from the gross turnover as defined under Section 2(1)(u) of the Act while arriving at the "sale price" in a works contract. It is not a charging provision which creates any liability for assessing VAT in a "works contract". It is in the definition clause of the Act and the provision does not embrace within its ambit something which is otherwise prohibited by law. Thus, the said provision does not suffer from any vice or defect of unconstitutionality.

On the inclusion of 'LAND' & Immovable Property in the taxable turnover under HVAT Act:

While analyzing the provisions with regard to calculation of taxable turnover relating to transfer of goods involved in execution of such works contract, the provisions of law insofar as those seek to charge sales tax on any amount other than the value of goods transferred in the course of execution of works contract, the provision would be

ultravires the Constitution of India. The tax is to be computed on a value not exceeding the value of transfer of property in goods and after the date of entering into agreement for sale with the buyers. Wherever the deductive method is to be employed, then it has to be ensured that tax is charged only on the value of transfer of property in goods on and after the date of entering into an agreement for sale with the buyers. Wherever deductive method has been prescribed under the Rules, it should ordinarily include a residuary clause in consonance with the mandate of law so as to cover all situations which can be envisaged.

Accordingly, the value of immovable property or anything done prior to the date of entering of the agreement of sale is to be excluded from the agreement value. The value of goods in a works contract in the case of a developer would be the value of the goods at the time of incorporation in the works even where property in goods passes later for the purpose of levy of tax. Consequently, rule 25(2) of the Rules is held to be valid by reading it down to the extent indicated hereinbefore and also subject to the State Govt. remaining bound by its affidavit filed in the Court. The court has also observed that State Govt. shall bring necessary changes in the Rules in consonance with the above observations.

On the validity of Section 42

Insofar as challenge to Section 42 is concerned, the said provisions only safeguard the interest of Revenue in the event of failure on the part of sub-contractor to discharge his liability of tax in respect of transaction entered by the sub-contractor with the contractor. Accordingly, the said provision cannot be said to be arbitrary, discriminatory or unreasonable in any manner.

On the validity of Section 9 and Rule 49

Equally, the challenge to validity of Section 9 of the Act and Rule 49 of Rules, cannot be accepted. Rule 49 of the Rules and Section 9 of the Act provides for scheme of lumpsum tax under Composition Scheme which is purely optional in nature. The dealers not under any bounden duty to subscribe to the Scheme and once he has opted for Composition Scheme which is optional, then he cannot question the method of determining his tax liability under those provisions. The circular to deal with Composition Scheme can also not be faulted.

On the Alternative Remedy:

Insofar as the preliminary objection with regard to alternative remedy is concerned, since the vires of various provisions of the Act, Rules and Circulars were under challenge, the remedy of writ petition cannot be shut down. This is one of the accepted exceptions to the rule of alternative remedy. Insofar as the individual issues regarding non-taxability of transactions on merits are concerned, the parties would be at liberty to raise all those issues before the Assessing authority/revisional authority in accordance with law.

Conclusion:

To conclude, the assessment order passed by Assessing Authority or revisional authority are liable to be set aside with liberty to the appropriate authority to pass fresh orders in the light of legal principles enunciated hereinbefore. In the cases where only notices have been issued, the competent authority shall be entitled to proceed further and pass order in accordance with law keeping in view the interpretation laid down by the Court. The writ petitions are thus partly allowed.

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. Puneet Aggarwal, Advocate,
Mr. Sandeep Goyal, Advocate,
Mr. Rishab Singla, Advocate, for the petitioner (s)

(in CWP No. 5730 and 7575 of 2014).
Mr. Manav Bajaj, Advocate for
Mr. Sumeet Goel, Advocate for the petitioner

(in CWP No. 6845 of 2014).
Mr. Rajiv Agnihotri, Advocate for the petitioner(s)

(in CWP Nos. 7440, 7441 and 7614 of 2014).
Mr. Gajendra Maheshwari, Advocate and
Mr. Puneet Siddhartha, Advocate for the petitioner(s)

(in CWP Nos. 7720, 8338, 8339, 12387 and 12429 of 2014).
Mr. Bhupeshwar Jaswal, Advocate for
Mr. Mukul Aggarwal, Advocate for the petitioner

(in CWP No. 7832 of 2014).
Mr. Ashwani Chopra, Senior Advocate with
Mr. Pankaj Gupta, Advocate for the petitioner

(in CWP No. 7834 of 2014).
Mr. Shammi Kapoor, Advocate and
Ms. Megha Suri, Advocate for the petitioner

(in CWP No. 7908 of 2014).
Mr. Rajesh Goyal, Advocate for
Mr. Pritam Saini, Advocate for the petitioner
Mr. Amar Pratap Singh, Advocate and
Mr. Amrinder Singh, Advocate for the petitioner (s)

(in CWP Nos. 9314, 9364, 9370, 9456, 11072, 110911 and 13684 of 2014).
Mr. Sanjay Singh, Advocate for
Mr. Karanvir Singh Khehar, Advocate for the petitioner

(in CWP No. 11696 of 2014).
Mr. Vikram Jeet Singh, Advocate for
Mr. Aman Pal, Advocate for the petitioner

(in CWP No. 12170 of 2014).
Ms. Tanisha Peshawaria, DAG, Haryana with
Mr. M.K. Dutta, Advocate for State of Haryana.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of 65 petitions bearing CWP Nos. 5730, 5731, 5746, 5751, 5753, 5754, 5755, 6043, 6044, 6050, 6051, 6119, 6132, 6135, 6142, 6143, 6148, 6149, 6165, 6199, 6224, 6250, 6363, 6845, 7138, 7440, 7441, 7575, 7614, 7720, 7832, 7833, 7834, 7908, 8093, 8338, 8339, 9314, 9342, 9364, 9370, 9456, 9748, 10027, 10029, 10030, 10342, 10404, 10405, 10408, 10409, 10411, 10412, 10413, 10422, 11072, 11091, 11696, 12107, 12387, 12429, 12667, 13684, 18075 of 2014 and 5120 of 2015 as according to learned counsel for the parties, the issues involved herein are identical. For brevity, the facts are being extracted from CWP No. 5730 of 2014.

2. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus declaring Explanation (i) to Section 2(1)(zg) of the Haryana Value Added Tax Act, 2003 (in short "the Act") and Rule 25 (2) of the Haryana Value Added Tax Rules, 2003 (hereinafter referred to as "the Rules") (Annexure P-1 Colly) in particular and other related provisions in so far as they include the value of land for charging Value Added Tax (for brevity "VAT") on developers to be *ultra vires* the Constitution of India in so far as it violates Article 246 of the Constitution of India read with Schedule VII, List II, Entry 54; for issuance of a writ in the nature of certiorari for quashing the notices (Annexure P-3 Colly) issued by respondent No.3 for charging tax on sale of flats/apartments/units and to make assessments of VAT; for quashing the circulars dated 4.6.2013 and 10.2.2014 (Annexure P-2 Colly) being in violation of the provisions of the Act and for issuance of a writ of mandamus directing respondent No. 4 not to charge and to refund the tax already paid in so far as it related to the value of materials sought to be charged to VAT. Besides, in some writ petitions, assessment orders passed by the assessing authority whereas in other writ petitions, the revisional order passed by the revisional authority on the basis of circulars and aforesaid provisions have also been assailed. In some cases, validity of Section 42 and Section 9 of the Act read with Rule 49 of the Rules has also been challenged.

3. Briefly stated, the facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The petitioner is a developer engaged in the business of development and sale of apartments/flats/units. Interested buyers enter into a flat buyers agreement. The property is ultimately sold by execution of sale deed on payment of stamp duty on total consideration. A circular dated 7.5.2013 was issued by the Excise and Taxation Commissioner, Haryana stating therein that the developers entering into agreements for sale of constructed apartments or flats prior to or during construction were chargeable to VAT. Consequently, a circular dated 4.6.2013 was issued regarding making of assessments on builders and developers. Subsequently, vide circular dated 10.2.2014, the circular dated 7.5.2013 was varied and value of the land was sought to be included for imposition of VAT. Notices (Annexure P-3 Colly) for re-assessment for the year 2010-11 under Section 17 of the Act were issued for imposing tax on the transaction of sale of flats, floors and villas amounting to ` 42,98,90,718/- as being under assessed. The petitioner filed reply (Annexure P-4) to the said notices. However, no response was received in this regard. The developer being engaged in the sale of immovable property where stamp duty was paid and also there being no mechanism provided under the Act for computation of tax, the imposition of tax insisted by the authorities was unconstitutional and beyond the provisions of the Act and Rules. Hence, the present writ petitions. Upon notice, respondents No.2 and 3 contested the writ petitions by filing written statement. It was pleaded therein that the issue regarding applicability and levy of VAT on builders and developers engaged in the activities of construction of building, flat and commercial properties and selling the same to the prospective buyers which the petitioners are contesting by way of the present writ petitions has already been settled by the Apex Court in

M/s Larsen & Toubro Limited v. State of Karnataka (2013) 46 PHT 269 (SC) wherein it was held that the builders and developers etc. engaged in the activities of the construction of building, flat and commercial properties were covered in the definition of "works contract" and were liable to sales tax laws of the State. The definition of 'works contract' contained in the Act is similar to that of VAT Act of Karnataka. Petitioner- M/s CHD Developers Limited is also a builder/developer/promoter who was engaged in the development of residential/commercial properties. A variety of agreements were entered into by the petitioner (s) with its prospective buyers for construction and sale of flats/apartments/villas/commercial projects against valuable consideration. Hence, the activity was covered by the definition of the expression 'works contract' as contained in Section 2(1) (zt) of the Act. Further, the definition of 'sale' as contained in clause (ze) of Section 2(1) of the Act covers the activities of 'works contract' which is similar to that of the VAT Act of Karnataka. The definition of "sale in the State" as contained in clause (zf) of sub-section (1) of Section 2 of the Act also covers the activities of 'works contract' which reads as under:-

> *"(zf) "Sale in the State" in relation to a sale as defined in sub-clause (ii) of clause (ze) means transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract in the State."*

4. In view of the above and the law settled in **M/s Larsen & Toubro Limited's case (supra)**, the respondents were satisfied that the petitioner has incurred liability for payment of VAT under the Act and accordingly, they have issued notice asking the petitioners to furnish requisite details to enable them to quantify correct tax liability under the Act. It was further pleaded that the respondents have initiated assessment proceedings under the Act to determine the actual tax liability of the petitioners and had provided reasonable opportunity of being heard to represent during the course of assessment proceedings. The petitioners have remedy to challenge the order passed under the Act. Further, this Court vide order dated 19.1.2012 passed in CWP No. 16751 of 2011 [reported as (2013) 57 VST 453] relegated the petitioner therein to the appellate authority to challenge the assessment order before it. The respondents knowing well that sale of land was not taxable under the Act being immovable goods, issued notice only for computing the tax liability on sale of goods liable to tax involved in the execution of the works contract under the Act and no notice proposing levy of tax on value of land has been issued by them. According to the respondents, the circulars dated 7.5.2013 (Annexure P-2), dated 4.6.2013 and dated 10.2.2014 were issued by respondent No.2 which related to works contractors and developers/ builders so as to remove some confusion amongst the departmental officers in determining the gross turnover and deductions allowable therefrom and consideration which was liable to tax. The said circulars in no way interfere with the quasi judicial functions of the Assessing Officers. It was further pleaded that there is transfer of property in goods in the said execution of the contract and the transfer is for a consideration to be paid in stages. Such transfer of property in goods was covered under clause (zt) of subsection (1) of Section 2 of the Act. Therefore, the petitioner was contractor and the prospective buyer a contractee. The other averments made in the writ petitions were denied and a prayer for dismissal of the same was made.

5. Learned counsel for the petitioners submitted that the builders/developers were not works contractors as they were engaged in sale of immovable property. It was argued that the provisions of Explanation (i) to Section 2(1)(zg) of the Act and Rule 25(2) of the Haryana Value Added Tax Rules were *ultra vires* the Constitution of India as under Entry 54 List II of Seventh Schedule to the Constitution of India, the State was empowered to charge tax on transfer of property in goods in execution of works contract whereas under its garb, they seek to charge tax on a value which was far in excess of the value of goods transferred in the course of execution of works contract including value of immovable property and expenses unrelated with transfer of property in goods. It was next submitted that it is well settled that all the

elements on which the State Legislature did not have power to charge VAT or sales-tax have to be specifically excluded by way of express and specific provisions and if any of the elements remain unspecified, the provisions shall be *ultra vires* the Constitution. Reference was made to definition of sale price in Section 2(ad) of UP VAT Act, 2008 which allows deduction for charges for labour, services and other prescribed amounts while Rule 9 of the Rules framed thereunder relates to determination of turnover of sale of goods involved in execution of works contract where deduction of proportionate amount of cost of land and amount representing the cost of establishment and other similar expenses is provided for. Support was also gathered from Rule 3 of Delhi VAT Rules, 2005 which provides for taxing works contract after excluding charges towards cost of land and other expenses elaborately referred in sub-rule 3 of Rule 3. It was urged that when the State had no power to charge tax on anything except value of transfer of property in goods, by its own admission, the provisions under the Act and Rules were indeed leading to inclusion of value addition in immovable property thereof whereas the Supreme Court in **M/s Larsen & Toubro Limited's case (supra)** had held that the State had the power to charge tax only on value additions in goods, property in which gets transferred after entering into agreement with the buyer. It was further contended that when the definition of 'works contract' was to be read with the definition of 'sale price', it was clear that the assessment had to be framed keeping in view pure and simple works contractors and not developers. Even no tax can be charged on the developer in respect of materials transferred directly by the subcontractor as Section 42 of the Act provides for levy of tax on the developer only in cases where property had been transferred by the subcontractor who fails to discharge his liability. Further, Section 42 of the Act stipulates joint and several liability of the contractor and subcontractor involved in the execution of the works contract. Section 42(2) of the Act provides that in case the main contractor proves to the satisfaction of the assessing authority that the tax has been paid by the sub-contractor and the assessment of such tax has become final, then he shall not be liable to pay tax on the sale of such goods. According to the learned counsel, taxing the contractor and sub-contractor for the same sale amounted to double tax and there could not be two deemed sales in one works contract. It was further urged that the activity of construction undertaken by the developer would only be a works contract from the stage when the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred by the developer, after the agreement is entered into with the flat purchaser, is the only component that can be made chargeable to tax by the State under the Act. Lastly, in the alternative, learned counsel submitted that if the VAT is levied on the element of transfer of immovable property in the composite contract by bringing it within the scope of term 'works contract', then to that extent the transaction should not be treated as conveyance as the property passes not by conveyance but by the agreement which was considered to be an agreement for construction. Therefore, the stamp duty cannot be charged treating the transaction as conveyance and stamp duty, if any, paid till date, becomes refundable. The levy of VAT and stamp duty on the transfer of immovable property amounted to double taxation. In some of the writ petitions, validity of the provisions of Section 9 of the Act read with Rule 49 of the Rules have also been questioned.

6. On the other hand, learned State counsel stressing preliminary objection regarding maintainability of writ petition on the plea of alternative remedy drew support from the judgments in **State of Haryana and others v. M/s Alfa Surgical P. Ltd. 2001 (124) STC 417 (SC), Commissioner of Income Tax, Gujarat v. Vijaybhai N. Chandrani 2013 (14) SCC 661, M/s Alcatel India Ltd., New Delhi v. State of Haryana, (2003) 22 PHT 418 (P&H)** and **Larsen & Toubro Limited v. State of Haryana and others, (2013) 57 VST 453 (P&H).** Challenging the merits of the claim of the petitioners as well, it was urged that the method of calculation of value of land for the purposes of levying VAT adopted by the State was totally in conformity with the principles laid down by the Apex Court in **Larsen & Toubro** and **Raheja Builders' s cases (supra).** It was further contended that the Act which is in complete

consonance with Entry 54, List II, Seventh Schedule of the Constitution, provides for levy of tax on goods which expression does not include immovable property. Further, the State had furnished an affidavit specifically stating that there was no proposal to tax land component in the case of developers/builders. It was argued that the other provisions of the Act and the Rules, the validity of which have been challenged by the petitioners, were in conformity with law.

7. We have heard learned counsel for the parties.

8. Noticing the contentions of learned counsel for the parties, the following primary issues emerge for our consideration:-

(i) Whether the developers and builders are works contractors and the agreement between the developer/builder/promoter and the prospective purchaser to construct a flat and thereafter sell the same with some portion of land, authorises the State to impose VAT thereon?

(ii) If the answer to the first issue is in the affirmative, whether the method of valuation of VAT on such agreements, can directly or indirectly, include the value of land by following the method of calculation of the taxable turnover in the manner expressed by the Commissioner vide circulars dated 7.5.2013, 4.6.2013 and 10.2.2014 and also in terms of Explanation (i) to Section 2(1)(zg) of the Act and Rule 25(2) of the Rules?

(iii) Whether the provisions of Section 42 of the Act and also Section 9 of the Act read with Rule 49 of the Rules would qualify to be legal and valid?

(iv) Whether the alternative remedy of appeal etc. would debar this Court to entertain the present writ petitions?

9. Adverting to first issue, necessarily one has to make reference to the following:-

(a) Statutory provisions

(b) Legislative history relating to taxability of 'works contract' and constitutional provisions.

10. Learned counsel for the petitioners drew the attention of this Court to the relevant provisions of the Act. The Act came into force in the State of Haryana w.e.f. 1.4.2003. It purports to levy VAT at each stage. A dealer would now pay tax after deducting the tax paid on purchases made during a quarter from the tax collected by him on sale of goods during that quarter. Section 2 of the Act defines various terms which finds mention therein. According to Section 2(1)(zg) of the Act, “sale price” means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed at the time of sale as cash or trade discount according to the practice, normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof and the expression “purchase price” shall be construed accordingly. Explanation (i) appended thereto, which is material for resolving controversy involved herein, provides that in relation to the transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract, sale price shall mean such amount as is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour and other service charges incurred for

such execution, and where such labour and other service charges are not quantifiable, the amount of such charges shall be calculated at such percentage as may be prescribed.

11. Section 2(1)(zn) of the Act defines "taxable turnover" to mean that part of the gross turnover which is left after making deductions therefrom in accordance with the provisions of section 6; plus purchase value of goods liable to tax under sub-section (3) of section 3.

Under Section 2(1)(zt) of the Act "works contract" includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the assembling, construction, building, altering, manufacturing, processing, fabrication, installation, fitting out, improvement, repair or commissioning of any movable or immovable property.

"Goods" have been described under Section 2(1)(r) of the Act as under:-

"(r) "goods" means every kind of movable property, tangible or intangible, other than newspapers, actionable claims, money, stocks and shares or securities but includes growing crops, grass, trees and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."

The definition of "gross turnover" falls under Section 2(1)(u) of the Act in the following terms:-

"(u) "gross turnover" when used in relation to any dealer means the aggregate of the sale prices received or receivable in respect of any goods sold, whether as principal, agent or in any other capacity, by such dealer and includes the value of goods exported out of State or disposed of otherwise than by sale;

Explanation. – (i) The aggregate of prices of goods in respect of transactions of forward contracts, in which goods are actually not delivered, shall not be included in the gross turnover.

(ii) Any amount received or receivable or paid or payable on account of variation, escalation or deescalation in the price of any goods sold previously to any person but not exactly determinable at that time, shall, subject to such conditions and restrictions, as may be prescribed, be included in, or excluded from, the gross turnover, as the case may be, in the manner prescribed.

(iii) Any amount collected by the dealer by way of tax shall not be included in the gross turnover and where no tax is shown to have been charged separately, it shall be excluded from the taxable turnover (denoted by 'TTO') taxable at a particular rate of tax in per cent (denoted by 'r') by applying the following formula –

$$tax = \frac{r \times TTO}{100 + r}$$

illustration – If TTO is 220 and r is 10 (per cent), tax will be 20."

12. Section 3 of the Act relates to 'Incidence of tax' which is as follows:-

***"3.** (1) Every dealer who would have continued to be liable to pay tax under this Act of 1973 had this Act not come into force, and every other dealer whose gross turnover during the year immediately preceding the appointed day exceeded the taxable*

quantum as defined or specified in the Act of 1973, shall, subject to the provisions of sub-section (4), be liable to pay tax on and from the appointed day on the sale of goods effected by him in the State.

(2) & (3) XX XX XX

(4) The tax levied under sub-sections (1), (2) and (3) shall be calculated on the taxable turnover, determined in accordance with the provisions of section 6, at the rates of tax applicable under section 7, and where the taxable turnover is taxable at different rates of tax, the rate of tax shall be applied separately in respect of each part of the taxable turnover liable to a different rate of tax.

(5) to (7) XX XX XX"

13. Reference was also made to Section 6 of the Act which provides for determination of taxable turnover. It reads thus:-

"(1) Subject to the provisions of sub-section (2), in determining the taxable turnover of a dealer for the purposes of this Act, the following deductions shall be made from his gross turnover, namely: -

(a) turnover of sale of goods outside the State;

(b) turnover of sale of goods in the course of inter- State trade and commerce;

(c) turnover of sale of goods in the course of the import of the goods into the territory of India;

(d) turnover of sale of goods in the course of the export of the goods out of the territory of India;

(e) turnover of export of goods out of State;

(f) turnover of disposal of goods otherwise than by sale;

(g) turnover of sale of exempted goods in the State;

(h) turnover of sale of goods to such foreign diplomatic missions/consulates and their diplomats, and agencies and organisations of the United Nations and their diplomats as may be prescribed; and

(i) turnover of sale of goods returned to him, subject to such restrictions and conditions as may be prescribed, and to the remainder shall be added the purchases taxable under subsection (3) of section 3, if any,

Note. - 1. In this sub-section "turnover" means. –

(i) for the purpose of clauses (a), (b), (c), (d), (g) and (h), the aggregate of the sale prices of goods which is part of the gross turnover;

(ii) for the purpose of clauses (e) and (f), the aggregate of value of goods exported out of State or disposed of otherwise than by sale, as the case may be, which is part of the gross turnover; and

(iii) for the purpose of clause (i), the aggregate of the sale prices of goods which is or has been part of gross turnover (including under the Act of 1973).

Note. - 2. If the turnover in respect of any goods is included in a deduction under any clause of this subsection, it shall not form part of deduction under any other clause of the sub-section.

(2) The deductions mentioned in sub-section (1) shall be admissible on furnishing to the assessing authority in such circumstances, such documents or such proof, in such manner as may be prescribed.

(3) Save as otherwise provided in sub-section (1), in determining the taxable turnover of a dealer for the purposes of this Act, no deduction shall be made from his gross turnover.

14. Section 9 of the Act relates to payment of lump sum tax in lieu of tax which reads as under:-

***"9.** (1) The State Government may, in the public interest and subject to such conditions as it may deem fit, accept from any class of dealers, in lieu of tax payable under this Act, for any period, by way of composition, a lump sum linked with production capacity or some other suitable measure of extent of business, or calculated at a flat rate of gross receipts of business or gross turnover of purchase or of sale or similar other measure, with or without any deduction therefrom, to be determined by the State Government, and such lump sum shall be paid at such intervals and in such manner, as may be prescribed, and the State Government may, for the purpose of this Act in respect of such class of dealers, prescribe simplified system of registration, maintenance of accounts and filing of returns which shall remain in force during the period of such composition.*

(2) No dealer in whose case composition under sub-section (1) is in force, shall issue a tax invoice for sale of goods by him and no dealer to whom goods are sold by such dealer shall be entitled to any claim of input tax in respect of the sale of the goods to him.

(3) A dealer in whose case composition under subsection (1) is made and is in force may, subject to such restrictions and conditions, as may be prescribed, opt out of such composition by making an application containing the prescribed particulars in the prescribed manner to the assessing authority, and in case the application is in order, such composition shall cease to have effect on the expiry of such period after making the application as may be prescribed."

15. Section 42 of the Act provides for levy of tax on the developer even in cases where property had been transferred by the sub-contractor. The said Section reads thus:-

***"42. Joint and several liability of certain class of dealers.** -(1) Where a works contractor appoints a sub-contractor, who executes the work contract, whether in whole or in part, the contractor and the subcontractor shall both be jointly and severally liable to pay tax in respect of transfer of property in goods whether as goods or in some other form involved in the execution of the works contract by the subcontractor.*

(2) If the contractor proves to the satisfaction of the assessing authority that the tax has been paid by the sub-contractor on the sale of the goods involved in the execution of the

works contract by the subcontractor and the assessment of such tax has become final, the contractor shall not be liable to pay tax on the sale of such goods but he shall be entitled to claim input tax, if any, in respect of them if the same has not been availed of by the sub-contractor.

(3) Where an agent purchases or sells any goods on behalf of a principal, such agent and the principal shall both be jointly and severally liable to pay tax in respect of the purchase or sale of goods by the agent.

(4) If the principal on whose behalf the agent has purchased or sold the goods proves to the satisfaction of the assessing authority that the tax on such goods had been paid by the agent and the assessment of such tax has become final, then, the principal shall not be liable to pay tax on such goods but he shall be entitled to claim input tax, if any, in respect of them if the same has not been availed of by the agent."

16. Rules 25(2) and 49 of the Rules were also referred to by the learned counsel for the petitioners. Rule 25 (2) of the Rules provides for certain exclusions to be made while computing the taxable turnover for a works contractor:-

*"**25. Computation of taxable turnover.**-(2)(a) In case of turnover arising from the execution of the works contract or job work, the amount representing the taxable turnover shall exclude the charges towards labour, services and other like charges subject to the dealer's maintaining proper records such as invoice, voucher, challan or any other document evidencing payment of charges to the satisfaction of the Taxing Authority.*

(b) For the purpose of clause (a) of sub-rule (2), the charges towards labour services for execution of works shall include,-

(i) labour charges for execution of works;

(ii) charges for planning and architects fees;

(iii) cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract;

(iv) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;

(v) other similar expenses relatable to supply of labour services;

(vi) profit earned by the contractor to the extent it is relatable to supply of labour and services subject to furnishing of a profit and loss account of the works sites: Provided that where the amount of charges towards labour, services and other like charges are not ascertainable from the books of accounts of the dealer or the dealer fails to produce documentary evidence in support of such charges, the amount of such charges shall be calculated at the percentages of valuable consideration specified in the table given below:

Table

XX XX XX XX"

17. Rule 49 of the Rules deals with lump-sum tax as under:-

"49. Lump sum scheme in respect of contractors. *(1) A contractor liable to pay tax under the Act may, in respect of a work contract awarded to him for execution in the State, pay in lieu of tax payable by him under the Act on the transfer of property (whether as goods or in some other form) involved in the execution of the contract, a lump sum calculated at four per cent of the total valuable consideration receivable for the execution of the contract, by making an application to the appropriate assessing authority within thirty days of the award of the contract to him, containing the following particulars:*

(1) Name of the applicant contractor:

(2) TIN:

(Append application for registration, if not registered or not applied for registration)

(3) Name of the contractee:

(4) Date of award of the contract;

(5) Place of execution of the contract:

(6) Total cost of the contract:

(7) Period of execution: and appending therewith a copy of the contract or such part thereof as relates to total cost and payments.

(2) The application shall be signed by a person authorised to make an application for registration. On receipt of the application, the assessing authority shall, after satisfying itself him that the contents of the application are correct, allow the same.

(3) The lump sum contractor shall be liable to make payment of lump sum quarterly calculated at four per cent of the payments received or receivable by him during the quarter for execution of the contract. The payment of lump sum so calculated shall be made within thirty days following the close of the quarter after deducting therefrom the amount paid by the contractee on behalf of the contractor under section 24 for that quarter. The treasury receipt in proof of payment made and certificate(s) of tax deduction and payment obtained from the contractee shall be furnished with the quarterly return.

(4) The lump sum contractor shall file returns at quarterly intervals in Form VAT-R6 within a month of the close of the quarter and shall pay lump sum, if any, due from him according to such return after adjusting the amount paid under sub-rule (4).

(5) The lump sum contractor shall be entitled to make purchase of goods for use in execution of the contract both on the authority of declaration in Central Form C as well as Form VAT-D1 prescribed under clause (a) of sub-section (3) of section 7 and for this purpose he shall be deemed as a manufacturer.

(6) The lump sum contractor shall maintain complete account of, declarations in Central Form C and Form VAT-D1 used by him and, the utilisation of the goods purchased on the authority of these forms. He shall be required to make use of declaration(s) in Form D3 for carrying goods of which he shall keep account. He shall also keep complete account of, payments receivable by him for the execution of the contract and, the payments actually received by him.

(7) A lump sum contractor shall have to pay lump sum in respect of every works contract awarded to him after the award of the contract in respect of which he first elected to pay lump sum and he shall continue to pay tax in respect of contracts awarded before as if he is not a lump sum contractor.

(8) A lump sum contractor may at any time by appearing before the appropriate assessing authority himself or through an authorised agent express in writing his intention to opt out of the scheme of payment of lump sum in lieu of tax payable under the Act. Such contractor in respect of the contracts awarded to him thereafter shall not be liable to pay lump sum in lieu of tax payable under the Act but in respect of the other contract(s) he shall continue to pay lump sum in lieu of tax payable under the Act till the completion of each of such contract(s).

(9) A lump sum contractor may, when rate of lump sum is revised, opt out of the scheme of payment of lump sum in lieu of tax payable under the Act by appearing before the appropriate assessing authority himself or through an authorised agent within ninety days of such revision and expressing in writing his intention to opt out of the scheme of payment of lump sum. Such contractor shall be liable to pay lump sum for the period before the revision in lump sum rate at the un-revised rate and in respect of transfer of property in any goods, whether as goods or in some other form, involved in the execution of the contract(s) thereafter he shall be liable to pay tax as a contractor not being a lump sum contractor."

18. In order to appreciate rival submissions, legislative history of the taxability of 'works contract' needs to be noticed.

19. The power to levy sales tax was conferred on the legislatures of States by Entry 54 of List II of the Seventh Schedule to the Constitution of India. The entry as originally enacted, read thus:-

"54. Taxes on the sale or purchase of goods other than newspapers."

20. After the judgment of the Apex Court in **Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1953 SC 252,** Parliament passed the Constitution (Sixth Amendment) Act, 1956 which received the assent of the President on 11.9.1956. By the said amendment, Entry 92-A in List I of the Seventh Schedule to the Constitution of India was added in the following terms:-

"92-A.Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce." In List II existing Entry 54 was substituted by the following entry:-

"54. Taxes on the sale or purchase of goods other than newspaper subject to the provisions of Entry 92- A of List I."

21. The question whether the cost of the goods supplied by a building contractor in the course of the construction of building could be subjected to payment of sales tax was resolved by the Apex Court in **State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd. 1955 SCR 379** which was an appeal filed against the decision of the High Court of Madras in Gannon Dunkerley & Co. (Madras) Ltd. v. The State of Madras. In this case the Apex Court held that on a true interpretation of the expression "sale of goods" meant an agreement between the parties for the sale of the very goods in which eventually property passed. In a building contract where the agreement between the parties was that the contractor should construct the building according to the specifications contained in the agreement and in consideration therefor received payment as provided therein, there was neither a contract to sell the materials used in the construction nor the property passed therein as movables. The Supreme Court further held that the expression "sale of goods" was at the time when the Government of India Act, 1935 was enacted, a term of well- recognised legal import in the general law relating to sale of goods and in the legislative practice relating to that topic and should be interpreted in Entry 48 in List II in Schedule VII of the Government of India Act, 1935 as having the same meaning as in the Sale of Goods Act, 1930. It was concluded that in a building contract which was one, entire and indivisible, there was no sale of goods and it was not within the competence of the Provincial Legislature under Entry 48 in List II in Schedule VII of the Government of India Act, 1935, to impose a tax on the supply of the materials used in such a contract treating it as a sale. The Supreme Court had noted in subsequent decisions that the said decision though was rendered on the basis of the provisions in the Government of India Act, 1935 was equally applicable to the provisions found in Entry 54 of List II of Schedule VII of the Constitution. By virtue of this decision, no sales tax could be levied on the amounts received under a works contract by a building contractor even though he had supplied goods for the construction of the buildings.

22. In the year 1982 Parliament passed the 46th Amendment amending the Constitution in several respects in order to bring many of the transactions, in which property in goods passed but were not considered as sales for the purpose of levy of sales tax, within the scope of the power of the States to levy sales tax. By the 46th Amendment a new clause, namely clause (29A) was introduced in Article 366 of the Constitution. Clause (29A) of Article 366 of the Constitution reads thus:

"366, Definitions.--In this Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say-

(29-A) 'tax on the sale or purchase of goods' includes—

(a) a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(c) a tax on the delivery of goods on hirepurchase or any system of payment by installments;

(d) a tax on the transfer of the right to use any goods. for any purpose (whether or not for a specified period)for cash, deferred payment or other valuable consideration;

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

(f) a tax on the supply, by way of or as part. of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made."

23. Prior to the Forty Sixth Amendment Composite Contracts were not exigible to States sales tax under Entry 54, List II of Schedule VII. After the 46th Amendment the works contract which was an indivisible one, by a legal fiction created in Article 366(29A)(b), was altered into a contract which was divisible into one for sale of goods and the other for supply of labour and services. Thus, it has become possible for the States to levy sales tax on the value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of the goods and materials supplied in a building contract which had been entered into in two distinct and separate parts.

24. Before proceeding further it would be necessary to analyze sub-clause (b) of clause 29-A of Article 366 of the Constitution. Article 366 is the definition clause of the Constitution. It provides that in the Constitution unless the context otherwise requires, the expressions defined in that article have the meanings respectively assigned to them in that article. The expression 'goods' is defined in clause (12) of Article 366 of the Constitution as including all materials, commodities and articles. Sub-clause (b) of clause (29-A) states that 'tax on the sale or purchase of goods' includes among other things a tax on the transfer of property in the goods (whether as goods or in some other form) involved in the execution of a works contract. The emphasis is on the transfer of property in goods (whether as goods or in some other form). While referring to the transfer, delivery or supply of any goods that takes place as per sub-clauses (a) to (f) of clause (29-A), the latter part of clause (29-A) stipulates that 'such' transfer, delivery or supply of any goods' shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made. Hence, a transfer of property in goods' under sub clause (b) of clause (29-A) is deemed to be a sale of the goods involved in the execution of a works contract by the person making the transfer and a purchase of those goods by the person to whom such transfer is made. The introduction of new definition in clause (29-A) of Article

366 of the Constitution had enlarged the scope of 'tax on sale or purchase of goods' wherever it occurred in the Constitution to include within its scope the transfer, delivery or supply of goods that may take place under any of the transactions referred to in sub-clause (a) to (f) thereof wherever such transfer, delivery or supply becomes subject to levy of sales tax. The expression 'tax on the sale or purchase of goods' in Entry 54 of the State List, therefore, includes a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract also. The tax leviable by virtue of sub-clause (b) of clause (29-A) of Article 366 of the Constitution thus becomes subject to the same discipline to which any levy under Entry 54 of the State List is made subject to under the Constitution.

25. Interpreting the provisions of Article 366(29A) of the Constitution of India, the Constitution Bench of the Apex Court in **Builders' Association of India and others v. Union of India (1989) 2 SCC 645** had laid down as under:-

> *"39. In view of the foregoing statements with regard to the passing of the property in goods which are involved in works contract and the legal fiction created by clause (29-A) of Article 366 of the Constitution it is difficult to agree with the contention of the States that the properties that are transferred to the owner in the execution of a works contract are not the goods involved in the execution of the works contract, but a conglomerate, that is the entire building that is actually constructed. After the 46th Amendment it is not possible to accede to the plea of the States that what is transferred in a works contract is the right in the immovable property.*
>
> *40. We are surprised at the attitude of the States which have put forward the plea that on the passing of the 46th Amendment the Constitution had conferred on the States a larger freedom than what they had before in regard to their power to levy sales-tax under Entry 54 of the State List. The 46th Amendment does no more than making it possible for the States to levy sales tax on the price of goods and materials used in works contracts as if there was a sale of such goods and materials. We do not accept the argument that sub-clause (b) of Article 366(29A) should be read as being equivalent to a separate entry in List II of the Seventh Schedule to the Constitution enabling the States to levy tax on sales and purchases independent of Entry 54 thereof. As the Constitution exists today the power of the States to levy taxes on sales and purchases of goods including the "deemed" sales and purchases of goods under clause (29A) of Article 366 is to be found only in Entry 54 and not outside it. We may recapitulate here the observations of the Constitution Bench in the case of **Bengal Immunity Company Ltd. (supra)** in which this Court has held that the operative provisions of the several parts of Article 286 which imposes restrictions on the levy of sales tax by the States are intended to deal with different topics and one could not be projected or read into another and each one of them has to be obeyed while any sale or purchase is taxed under Entry 54 of the State List.*
>
> *41. We, therefore, declare that sales tax laws passed by the Legislatures of States levying taxes on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract are subject to the restrictions and conditions mentioned in each clause or sub-clause of Article 286 of the Constitution. We, however, make it clear that the cases argued before and considered by us relate to*

one specie of the generic concept of 'works contracts'. The case-book is full of the illustrations of the infinite variety of the manifestation of "works-contracts"- Whatever might be the situational differences of individual cases, the constitutional limitations on the taxing power of the State as are applicable to "works contracts" represented by "building-contracts" in the context of the expanded concept of "tax on the sale or purchase of goods" as constitutionally defined under Article 366 (29A), would equally apply to other species of "works contracts" with the requisite situational modifications.

42. The Constitutional-Amendment in Article 366 (29A) read with the relevant taxation entries has enabled the State to exert its taxing power in an important area of social and economic life of the community. In exerting this power particularly in relation to transfer of property in goods involved in the execution of "works-contracts" in building activity, in so far as it affects the housing projects of the underprivileged and weaker sections of society, the State might perhaps, be pushing its taxation power to the peripheries of the social limits of that power and, perhaps, even of the constitutional limits of that power in dealing with unequals. In such class of cases 'building activity' really relates to a basic subsistential necessity. It would be wise and appropriate for the State to consider whether the requisite and appropriate classifications should not be made of such building activity attendant with such social purposes for appropriate separate treatment. These of course are matters for legislative concern and wisdom."

26. Approving the aforesaid decision, another Constitution Bench in **Gannon Dunkerley and Co. and others v. State of Rajasthan and others (1993) 1 SCC 364** had concluded as under:-

"49. Normally, the contractor will be in a position to furnish the necessary material to establish the expenses that were incurred under the aforesaid heads of deduction for labour and services. But there may be cases where the contractor has not maintained proper accounts or the accounts maintained by him are not found to be worthy of credence by the assessing authority. In that event, a question would arise as to how the deduction towards the aforesaid heads may be made. On behalf of the States, it has been urged that it would be permissible for the State to prescribe a formula on the basis of a fixed percentage of the value of the contract as expenses towards labour and services and the same may be deducted from the value of the works contract and that the said formula need not be uniform for all works contracts and may depend on the nature of the works contract. We find merit in this submission. In cases where the contractor does not maintain proper accounts or the accounts maintained by him are not found worthy of credence it would, in our view, be permissible for the State legislation to prescribe a formula for determining the charges for labour and services by fixing a particular percentage of the value of the works contract and to allow deduction of the amount thus determined from the value of the works contract for the purpose of determining the value of the goods involved in the execution of the works contract. It must, however, be ensured that the amount deductible under the formula that is prescribed for deduction towards charges for labour and services does not differ appreciably from the expenses for labour and services that would be incurred in normal circumstances in respect of that particular type of works contract. Since the

expenses for labour and services would depend on the nature of the works contract and would not be the same for all types of works contracts, it would be permissible, indeed necessary, to prescribe varying, scales for deduction on account of cost of labour and services for various types of works contracts.

50. A question has been raised whether it is permissible for the State Legislature to levy tax on deemed sales falling within the ambit of Article 366 (29-A)(b) by prescribing a uniform rate of tax for all goods involved in the execution of a works contract even though different rates of tax are prescribed for sale of such goods. The learned Counsel for the contractors have urged that it would not be permissible to impose two different rates of tax in respect of sale of the same article, one rate when the article is sold separately and a different rate when there is deemed sale in connection with the execution of a works contract. On behalf of the States it has been submitted that it is permissible for the State to impose a particular rate of tax on all goods involved in the execution of a works contract which may be different from the rates of tax applicable to those goods when sold separately. In the field of taxation the decisions of this Court have permitted the legislature to exercise an extremely wide discretion in classifying items for tax purposes, so long as it refrains from clear and hostile discrimination against particular persons or classes. See East India Tobaco Co. v. State of Andhra Pradesh, 1983(1) SCR 404, at p. 411, P.M. Ashwathanarayan Shetty and Ors. v. State of Karnaiaka and Ors., 1988 Supp. (3) SCR 155 at p. 188; Federation of Hotel & Restaurant Association of India v. Union of India, : [1989]178 ITR 97(SC) ; and Kerala Hotel & Restaurant Association and Ors. v. State of Kerala and Ors.: [1990] 1SCR 516. Imposition of sales tax at different rates depending on the value of the annual turnover was upheld in S. Kodar v. State of Kerala : [1975] 1 SCR 121 . Similarly, imposition of purchase tax at different rates for sugar mills and khandsari units was upheld in Ganga Sugar Co. Ltd. v. State of U.P. and Ors., : [1980] 1SCR 769 . In our opinion, therefore, it would be permissible for the State Legislature to tax all the goods involved in the execution of a works contract at a uniform rate which may be different from the rates applicable to individual goods because the goods which are involved in the execution of the works contract when incorporated in the works can be classified into a separate category for the purpose of imposing the tax and a uniform rate may be prescribed for sale of such goods.

51. The aforesaid discussion leads to the following conclusions:-

> *(1) In exercise of its legislative power to impose tax on sale or purchase of goods under Entry 54 of the State List read with Article 366 (29-A)(b), the State Legislature, while imposing a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract is not competent to impose a tax on such a transfer (deemed sale) which constitutes a sale in the course of inter-State trade or commerce or a sale outside the State or a sale in the course of import or export.*
>
> *(2) The provisions of Sections 3, 4 and 5 and Sections 14 and 15 of the Central Sales Tax Act, 1956 are applicable to a transfer of property in goods involved in the execution of a works contract covered by Article 366(29-A)(b).*

(3) While defining the expression 'sale' in the sales tax legislation it is open to the State Legislature to fix the situs of a deemed sale resulting from a transfer falling within the ambit of Article 366(29-A)(b) but it is not permissible for the State Legislature to define the expression "sale" in a way as to bring within the ambit of the taxing power a sale in the course of interstate trade or commerce, or a sale outside the State or a sale in the course of import and export.

(4) The tax on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract falling within the ambit of Article 366(29-A)(b) is leviable on the goods involved in the execution of a works contract and the value of the goods which are involved in execution of the works contract would constitute the measure for imposition of the tax.

(5) In order to determine the value of the goods which are involved in the execution of a works contract for the purpose of levying the tax referred to in Article 366(29-A)(b), it is permissible to take the value of the works contract as the basis and the value of the goods involved in the execution of the works contract can be arrived at by deducting expenses incurred by the contractor for providing labour and other services from the value of the works contract.

(6) The charges for labour and services which are required to be deducted from the value of the works contract would cover (i) labour charges for execution of the works, (ii) amount paid to a sub-contractor for labour and services; (iii) charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract; (iv) charges for planning, designing and architect's fees; and (v) cost of consumables used in execution of the works contract; (vi) cost of establishment of the contractor to the extent it is relatable to supply of labour and services, (vii) other similar expenses relatable to supply of labour and services; and (viii) profit earned by the contractor to the extent it is relatable to supply of labour and services.

(7) To deal with cases where the contractor does not maintain proper accounts or the account books produced by him are not found worthy of credence by the assessing authority the legislature may prescribe a formula for deduction of cost of labour and services on the basis of a percentage of the value of the works contract but while doing so it has to be ensured that the amount deductible under such formula does not differ appreciably from the expenses for labour and services that would be incurred in normal circumstances in respect of that particular type of works contract. It would be permissible for the legislature to prescribe varying scales for deduction on account of cost of labour and services for various types of works contract.

(8) While fixing the rate of tax it is permissible to fix a uniform rate of tax for the various goods involved in the execution of a works contract which rate may be different from the rates of tax fixed in respect of sales or purchase of those goods as a separate article."

27. On another occasion, where the developers were undertaking to build for the prospective purchasers on payment of the price in various installments set out in the agreement for such construction/development, the issue of taxability under VAT was considered by a two Judge Bench of the Apex Court in **K. Raheja Development Corporation v. State of Karnataka (2005) 5 SCC 162**, wherein it was held as under:-

> *"19. To consider whether the Appellants are executing works contract one needs to look at a typical Agreement entered into with the purchaser. The relevant clauses are clause (q), (r) of the recitals and clauses 1, 5(c) and 7, which read as follows:*
>
> *"(q) (i) Construction of the said multi-storeyed building;*
>
> *(ii) Sale of the units in the aforesaid multi-storeyed building to different persons in whose favour ultimately a Deed of Conveyance would be obtained by the Holders, directly from the Vendors, of an undivided fractional interest in the said land (i.e. the area of 5910.17 sq. metres described in the First Schedule hereunder written) and such owner of units would own, on ownership basis, the respective units on condition that an Agreement would be entered into between the Holders on the one hand and the persons (desiring to acquire on ownership basis a unit in such multi-storeyed building) on the other hand and it would be an essential, integral and basic concept, term and condition of the proposed transaction (which would be by way of a package deal not capable of being segregated or separated or terminated one without the corresponding effect on the other) that K. Raheja Development Corporation as the Land-holder would agree to sell to such persons an undivided fractional interest in the said land described in the First Schedule hereunder written on condition that they i.e. M/s K. Raheja Development Corporation as Developers on behalf of and as Developers of such person would construct for, as a unit ultimately to belong to such person a unit or units that would be so mutually selected and settled by and between K. Raheja Development Corporation and the person concerned;*
>
> *r) The Prospective Purchaser is interested in acquiring ownership rights in respect of unit/s Nos. 1101 on the eleventh floor/s of the said multi-storeyed building named `Raheja Towers' and also car parking space/s No./s nil in the basement/ground floor of the said building (hereinafter referred to as `the said Unit')"*
>
> *XX XX XX*
>
> *1. As and by way of a package deal :*
>
> *a) K. Raheja Development Corporation, (as Holders) agree to sell to the Prospective Purchaser an undivided 0.42% share, right, title and interest in the said land described in the First Schedule hereunder written (with no right to the Prospective Purchaser to claim any separate sub-division and/or right to exclusive possession of any portion of the said land) for a lump sum agreed and quantified consideration of Rs.3,25,000/- (Rupees three lacs twenty five*

thousand only) to be paid by the Prospective Purchaser to the Holders at the time and in the manner stated in Clause 2 hereof;

b) K. Raheja Development Corporation, (as Developers) agree to build the said building named `Raheja Towers', having the specifications and amenities therein set out in the Second Schedule hereunder written and as Developers for the prospective Purchaser, the Developers shall build for and as unit/s to belong to the Prospective Purchaser, the said premises (details whereof are set out in the Third Schedule hereunder written) for a lump sum agreed and quantified consideration of Rs. 5,07,000/- (Rupees five lacs seven thousand only) to be paid by the Prospective Purchaser to the Developers at the time and in the manner set out in Clause 3 hereof. The said premises shall have the amenities set out in the Fourth Schedule hereunder written.

XX XX XX

5. The undermentioned terms and provisions are express conditions to be observed, performed and fulfilled by the Prospective Purchaser, on the basis of which this Agreement has been entered into by the Holders/Developers and the due and proper fulfillment whereof are to be conditions precedent to any title being created and/or being capable of being documented by the Prospective Purchaser in the aforesaid fractional interest in the land described in the First Schedule hereunder written and/or in the said premises:

a) XX XX XX

b) XX XX XX

c) The overall control and management of the project and the development and completion of the said building shall be with the Developers and furthermore the Developers are and shall continue to be in possession of the said land and building and shall be entitled to a lien thereon and that the Prospective Purchaser shall not be entitled to claim or demand from the Holders possession of any portion of the said land or to claim or demand from the Developers possession of the said premises unless and until the Prospective Purchaser has paid in full through the Holders the full consideration money payable to the Holders under Clause 2 above and the full consideration money payable to the Developers under Clause 3 above.

XX XX XX

7. If the Prospective Purchaser commits default in payment of any of the instalments of consideration aforesaid on their respective due dates (time being the essence of the contract) and/or in observing and performing any of the terms and conditions of this Agreement, the Holders/Developers shall be at liberty, after giving 15 days notice specifying the breach and if the same remains not rectified within that time, to terminate this Agreement, in which event, a sum equivalent to 10% of the amounts that may till then have been paid by the Prospective Purchaser to the Holders and the Developers respectively shall stand forfeited. The Holders and the Developers shall, however, on such

termination, refund to the Prospective Purchaser the balance amounts of the installments of part payment, if any, which may have till then been paid by the Prospective Purchaser to the Holders and the Developers respectively but without any further amount by way of interest or otherwise. On the Holder/Developers terminating this Agreement under this Clause, they shall be at liberty to dispose off the said Unit/s and the said fractional interest in the land to any other person as they deem fit, at such price as they may determine and the Prospective Purchaser shall not be entitled to question such sale, disposal or to claim any amount from them."

20. Thus the Appellants are undertaking to build as developers for the prospective purchaser. Such construction/development is to be on payment of a price in various installments set out in the Agreement. As the Appellants are not the owners they claim a "lien" on the property. Of course, under clause 7 they have right to terminate the Agreement and to dispose off the unit if a breach is committed by the purchaser. However, merely having such a clause does not mean that the agreement ceases to be a works contract within the meaning of the term in the said Act. All that this means is that if there is a termination and that particular unit is not resold but retained by the Appellants, there would be no works contract to that extent. But so long as there is no termination the construction is for and on behalf of purchaser. Therefore, it remains a works contract within the meaning of the term as defined under the said Act. It must be clarified that if the agreement is entered into after the flat or unit is already constructed, then there would be no works contract. But so long as the agreement is entered into before the construction is complete it would be a works contract."

28. The correctness of the judgment in **K. Raheja Development Corporation's case (supra)** was doubted on a later occasion in **Larsen & Toubro Ltd's case (supra)** and it was felt by the Apex Court that the decision was required to be reconsidered by a larger Bench. The three Judges Bench of the Supreme Court in **Larsen & Toubro Ltd's case (supra)** upholding the view expressed in **K. Raheja Development Corporation's case (supra),** summarised the legal position as under:-

"(i) For sustaining the levy of tax on the goods deemed to have been sold in execution of a works contract, three conditions must be fulfilled: (one) there must be a works contract, (two) the goods should have been involved in the execution of a works contract and (three) the property in those goods must be transferred to a third party either as goods or in some other form.

(ii) For the purposes of Article 366(29-A)(b), in a building contract or any contract to do construction, if the developer has received or is entitled to receive valuable consideration, the above three things are fully met. It is so because in the performance of a contract for construction of building, the goods (chattels) like cement, concrete, steel, bricks etc. are intended to be incorporated in the structure and even though they lost their identity as goods but this factor does not prevent them from being goods.

(iii) Where a contract comprises of both a works contract and a transfer of immovable property, such contract does not denude it of its character as works contract. The term "works contract" in Article 366 (29- A)(b) takes within its fold all genre of works contract and is not restricted to one specie of contract to provide for labour and services alone. Nothing in Article 366(29-A)(b) limits the term "works contract".

(iv) Building contracts are species of the works contract.

(v) A contract may involve both a contract of work and labour and a contract for sale. In such composite contract, the distinction between contract for sale of goods and contract for work (or service) is virtually diminished.

(vi) The dominant nature test has no application and the traditional decisions which have held that the substance of the contract must be seen have lost their significance where transactions are of the nature contemplated in Article 366(29-A). Even if the dominant intention of the contract is not to transfer the property in goods and rather it is rendering of service or the ultimate transaction is transfer of immovable property, then also it is open to the States to levy sales tax on the materials used in such contract if such contract otherwise has elements of works contract. The enforceability test is also not determinative.

(vii) A transfer of property in goods under clause 29- A(b) of Article 366 is deemed to be a sale of the goods involved in the execution of a works contract by the person making the transfer and the purchase of those goods by the person to whom such transfer is made.

(viii) Even in a single and indivisible works contract, by virtue of the legal fiction introduced by Article 366 (29-A)(b), there is a deemed sale of goods which are involved in the execution of the works contract. Such a deemed sale has all the incidents of the sale of goods involved in the execution of a works contract where the contract is divisible into one for the sale of goods and the other for supply of labour and services. In other words, the single and indivisible contract, now by Forty-sixth Amendment has been brought on par with a contract containing two separate agreements and States have now power to levy sales tax on the value of the material in the execution of works contract.

(ix) The expression "tax on the sale or purchase of goods" in Entry 54 in List II of Seventh Schedule when read with the definition clause 29-A of Article 366 includes a tax on the transfer of property in goods whether as goods or in the form other than goods involved in the execution of works contract.

(x) Article 366(29-A)(b) serves to bring transactions where essential ingredients of "sale" defined in the Sale of Goods Act, 1930 are absent within the ambit of sale or purchase for the purposes of levy of sales tax. In other words, transfer of movable property in a works contract is deemed to be sale even though it may not be sale within the meaning of the Sale of Goods Act.

(xi) Taxing the sale of goods element in a works contract under Article 366(29-A)(b) read with Entry 54 List II is permissible even after incorporation of goods provided tax is directed to the value of goods and does not purport to tax the transfer of immovable

property. The value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in works even though property passes as between the developer and the flat purchaser after incorporation of goods."

29. The Supreme Court crystallizing the legal principles, in other words, had opined that the agreement between the promoter/builder/ developer and the flat purchaser to construct a flat and thereafter sell the flat with some portion of land, does involve activity of construction which would be covered under the term "works contract". The term "works contract" encompasses a contract in which one of the parties is obliged to undertake or to execute works. The activity of construction has all the attributes, elements and characteristics of works contract though essentially it may be a transaction of sale of flat. To put it differently, so long as construction is for and on behalf of the purchaser, it remains a "works contract" under the Act.

30. Further, the essential conditions to be fulfilled for sustaining levy of tax on the goods deemed to have been sold in execution of a "works contract" are as under:-

(i) there must be a works contract,

(ii) the goods should have been involved in the execution of a works contract, and

(iii) the property in those goods must be transferred to a third party either as goods or in so me other form.

These conditions are fulfilled in a building contract or any contract to do construction. In a contract to build a flat, necessarily there will be an element of sale of goods included therein and therefore, building contracts are species of the works contract. Still further, a contract comprising of both a works contract and a transfer of immovable property, such contract is not denuded of its character of being a works contract. Article 366 (29A)(b) of the Constitution of India does contemplate a situation where the goods may not be transferred in the form of goods but may be transferred in some other form which may even be in the form of immovable property. No doubt, there is no legislative competence in the State legislature to levy tax on the transfer of immovable property under Entry 54 of List II of the Seventh Schedule. However, the States are empowered to levy sales tax on the sale of goods in an agreement of sale of flat which also has a component of a deemed sale of goods.

31. Once it is concluded that the developer/builder/promoter are covered under the works contract while entering into an agreement between them and the flat purchaser to construct a flat and ultimately to sell the flat with the fraction of land, we proceed to examine the broad principles for determining the taxable turnover relating to transfer of goods involved in the execution of such works contract. Where the developer/builder/promoter/contractor or the sub-contractor maintains proper books of account, it shall be the value of the goods incorporated in the works contract as per books of account. On the other hand, where the developer/builder/ promoter/contractor/sub-contractor does not maintain proper accounts or the accounts maintained by him are not found worthy of credence, it would be permissible for the State Legislature to prescribe a formula for determining the charges for labour, service and cost of land by fixing a particular percentage of the works contract and to allow deduction of the amount thus determined from the value of the works contract for assessing the value of the

goods involved in the execution of the works contract. The taxable event is the transfer of property in the goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works. The value of the goods which can constitute the measures for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in the works. The activity of construction undertaken by the developer etc. would be works contract only from the stage he enters into a contract with the flat purchaser. However, the deduction permissible under various heads would depend upon facts of each case on the basis of material available on record. It is clarified that where the agreement is entered into after the completion of the flat or the unit, there would be no element of works contract but in a situation, where agreement is entered into before the completion of construction, it would be a works contract. If at the time of construction and until the construction was completed, there was no contract for construction of the building with the flat purchaser, the goods used in the construction cannot be deemed to have been sold by the builder since at that time there is no purchaser even if building is intended to be sold after construction would be of no consequence. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government. Taxing the sale of goods element in a works contract under Article 366 (29A)(b) read with Entry 54 List II of Schedule VII of the Constitution of India is permissible even after incorporation of goods provided tax is directed to the value of the goods at the time of incorporation and does not purport to tax the transfer of immovable property. No tax can be charged from the developer/builder/promoter or contractor in respect of the value of goods incorporated in the works contract after the agreement with the flat purchaser on which the subcontractor has already paid the tax.

32. Next, it was claimed by learned counsel for the petitioners that the State of Uttar Pradesh has framed rule 9 of UPVAT Rules, 2005 and Delhi State under Rule 3 of Delhi VAT Rules, 2005 have introduced specific provisions for charging VAT on transaction of the developers etc. whereas there is no such provision in the rules. The developer who does not carry on construction activities itself but creates sub contractors for that work, would not be liable for any tax under the Act. It would be the liability of the sub-contractor alone on account of works contract undertaken by him. Elaborating further, it was urged that in the case of a developer's transaction of sale of a flat to a buyer, if the tax can be charged, it can only be on the value of materials incorporated into the works on and after the date of entering into agreement for sale of immovable property and cannot be directed on the value of immovable property. However, the Act and the Rules do not contain *inter alia* any deduction on account of the following:-

(a) Immovable property, and

(b) value of all other expenses which are not relatable to the supply of goods such as

(1) EDC,

(2) IDC

(3) change of land use charges

(4) charges for sanctioning of maps

(5) charges for processing of maps

(6) Marketing expenses, etc.

(7) finance charges

(8) stamp duty

(9) legal expenses

(10) labour cess

(11) scrutiny fee

(12) charges for various approvals such as fire, forest, environment, aviation etc.

(13) another charges/cost/expenses not relatable to transfer of property in goods.

(14) Similar expenses which does not involve any transfer of property in goods in execution of works contract but are incidental in carrying on the business of the developer etc.

33. Still further, as urged by learned counsel, Explanation (i) to Section 2(1)(zg) of the Act provides exclusion only in respect of labour and other service charges. Likewise Rule 25(2) of the Rules also provides for deductions on that account alone. It is, therefore, clear that on application of these provisions to a developer etc., the value of immovable property and other expenses incidental thereto which are integral part of the transaction of sale of flat, would not be excluded and the net effect of which would be that rather than being a tax on value of materials transferred, the provisions lead to taxing of value of immovable property and expenses not relateable to value of materials. Rule 25(2) of the Rules only provide for deductive method in the event of labour and services but does not reduce the value of immovable property. The legality of both the provisions was put to test by the learned counsel for the petitioners.

34. Grievance was also raised relating to validity of Instructions dated 7.5.2013, 4.6.2013 and 10.2.2014 (Annexure P-2 Colly). Instructions No. 952/ST-1 dated 7.5.2013 (Annexure P-2) issued by respondent No.2 provides that the agreements/contracts entered by developers with prospective buyers for sale of apartments/ flats before the completion of construction constitutes 'works contract' and thus VAT was imposable on such transactions. Clause 4 of the said circular relates to measure of tax and deduction towards labour and other like charges. Circular dated 4.6.2013 was issued regarding making of assessments on builders and developers. In view of legal position enunciated hereinbefore, there is no illegality in the issuance of circulars dated 7.5.2013 and 4.6.2013. However, Circular issued on 10.2.2014 relates to lump sum tax under composition tax scheme and has been dealt with while analyzing the provisions of Section 9 of the Act and Rule 49 of the Rules.

35. Examining the validity of Explanation (i) to Section 2(1)(zg) of the Act and Rule 25(2) of the Rules, it would be essential to notice that in order to avoid declaration of unconstitutionality, the Courts have adopted such principles of interpretation which would result in sustaining the statute. The Constitution Bench of the apex Court in the **State of Madhya and others v. M/s Chhotabhai Jethabhai Patel and Co. and another, AIR 1972 SC 971** in para 10 had held as under: "It is settled law that where two constructions of a

legislative provision are possible one consistent with the constitutionality of the measure impugned and the other offending the same, the Court will lean towards the first if it be compatible with the object and purpose of the impugned Act, the mischief which it sought to prevent ascertaining from relevant factors its true scope and meaning."

36. Further, another Constitution Bench of the Supreme Court in **Sunil Batra v. Delhi Administration and others, AIR 1978 Supreme Court 1675**, in para 38 had observed as under: "Constitutional deference to the Legislature and the democratic assumption that people's representatives express the wisdom of the community lead courts into interpretation of statutes which preserves and sustains the validity of the provision. That is to say, courts must, with intelligent imagination, inform themselves of the values of the Constitution and, with functional flexibility, explore the meaning of meanings to adopt that construction which humanely constitutionalizes the statute in question. Plainly stated, we must endeavour to interpret the words in Ss.30 and 56 of the Prisons Act and the paragraphs of the Prison Manual in such manner that while the words belong to the old order, the sense radiates the new order. The luminous guideline in Civil Writ Petition No.6573 of 2007 17 Weems v. United States (1909) 54 L Ed 793 at p.801 sets our sights high: "Legislation, both statutory and constitutional is enacted, it is true, from an experience of evils, but - its general language should not, therefore, be necessarily confined to the form that evil had, therefore, taken. Time works changes, brings into existence new conditions and purposes. Therefore, a principle, to be vital, must be capable of wider application than the mischief which gave it birth. This is peculiarly true of constitutions. They are not ephemeral enactments, designed to meet passing occasions. They are, to use the words of Chief Justice Marshall, "designed to approach immortality as nearly as human institutions can approach it". The future is their care and provision for events of good and bad tendencies of which no prophecy can be made. In the application of a constitution, therefore, our contemplation cannot be only of what has been, but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value, and be converted by precedent into impotent and lifeless formulae. Rights declared in the words might be lost in reality. And this has been recognised. The meaning and vitality of the Constitution have developed against narrow and restrictive construction."

37. The rule of interpretation requires that such meaning should be assigned to the provision which would make the provision of the Act effective and advance the purpose of the Act. This should be done wherever possible without doing any violence to the language of the provision. A statute has to be read in such a manner so as to do justice to the parties. Moreover, the Apex Court in **B. R. Enterprises v. State of U.P., (1999) 9 SCC 700, Calcutta Gujarathi Education Society v. Calcutta Municipal Corporation (2003) 10 SCC 533** and **M.Nagraj v. Union of India (2006) 8 SCC 212** has interpreted the rule of reading down statutory provisions to mean that a statutory provision is generally read down so as to save the provision from being pronounced to be unconstitutional or ultra vires. The rule of reading down is to construe a provision harmoniously and to straighten crudities or ironing out creases to make a statute workable.

38. Explanation (i) to Section 2(1)(zg) of the Act which defines "sales price" provides for deduction on account of labour, material and services related charges from the gross turnover as defined under Section 2(1)(u) of the Act while arriving at the "sale price" in a works contract. It is not a charging provision which creates any liability for assessing VAT in a "works contract". It is in the definition clause of the Act and the provision does not embrace within its ambit something which is otherwise prohibited by law. Thus, the said provision does not suffer from any vice or defect of unconstitutionality.

39. Now we proceed to analyze Rule 25 of the Rules. The said rule provides for exclusions in respect of labour, services and other like charges and does not provide any mechanism for exclusion of the value of land. Wherever developer/builder/promoter or the sub contractor who carries on construction work in a works contract maintains proper accounts, it shall be on the basis of actual value addition on account of goods utilized in the property. Rule 25(2) of the Rules provides for deduction of charges towards labour, services and other like charges and where they are not ascertainable from the books of accounts maintained by a developer etc., the percentage rates are prescribed in the table provided in the said rule. It is necessarily required to provide mechanism to tax only the value addition made to the goods transferred after the agreement is entered into with the flat purchaser. The 'deductive method' thereunder does not provide for any deduction which relate to the value of the immovable property. The legislature has not made any express provision for exclusion of value of immovable property from the works contract and its method of valuation has been left to the discretion of the rule making authority to prescribe.

40. The State had filed an affidavit dated 24.4.2014 of Shri B.L. Gupta, Additional Excise and Taxation Commissioner, Haryana, wherein paras 3 to 8 read thus:-

> *"3. That it is affirmed that the developers/work contractors, being assessed as normal VAT dealers, are entitled to all deductions admissible as per Law/Rules.*
>
> *4. That as per the provisions contained in the Haryana VAT Act, 2003 and the rules framed thereunder, the tax is to be levied on transfer of property in goods involved in the execution of works contract. It is clarified that the definition of the word 'goods', as available in Section 2(1) (r) of the Haryana Value Added Tax Act, 2003, does not include immovable property, that is, land.*
>
> *5. That the Act ibid, which is relatable to entry 54, List II Seventh Schedule of the Indian Constitution does provide for levy of tax on sale or purchase of goods except newspaper.*
>
> *6. That having regard to above, neither any tax is leviable nor can it be levied on price of land involved in execution of works contract.*
>
> *7. That the respondents, being law abiding officers, cannot violate the above constitutional mandate.*
>
> *<u>NON-VAT DEALER (WORKS CONTRACTORS):</u>*
>
> *8. That there is, however, some difference as regards levy vis-a-vis non-VAT dealer i.e. works contractor operating under composition/lump sum scheme provided under section 9 of the Act and rule 49 of the Rules made thereunder. It*

is submitted that such works contractors, who opt for the benefit of the scheme aforesaid, are required to pay a lump sum in lieu of tax on the total valuable consideration receivable for the execution of works contract. In other words, no deduction whatsoever (including value of land), is admissible from total value consideration as the scheme is intended to provide administrative convenience and simplicity for both the assessee and the department. In such lump sum scheme, an easily observable yard stick, such as total valuable consideration in this case, is taken to compute the quantity of tax to be paid. It is submitted that the law does not oblige or force any works contractor to exercise this option against his will. He is fully free to exercise his option. If the scheme aforesaid does not suit him, he can very well refrain from the same. The provisions, referred to above, upon application of strict interpretation principle to fiscal statute, leaves no manner of doubt that such a contractor is not entitled to any deduction whatsoever."

41. The assertion in the affidavit in the absence of any specific provision in the statute or the rule would not give it a statutory flavour as the action of the respondent in furnishing the affidavit dated 24.4.2014 would not meet the test of requisite amendment in the Rules as it has to be done by the competent authority in accordance with law. Though it may be observed that the State Government shall remain bound by the affidavit dated 24.4.2014 filed by it in this Court.

42. The Apex Court in **Larsen & Toubro's case (supra)** while considering the legality of Rule 58 of the Maharasthra Value Added Tax Rules, 2005 (in short "the MVAT Rules 2005") under similar circumstances, had applied the principle of reading down a provision for upholding its constitutional validity. Rule 58 of the MVAT Rules 2005, *inter alia*, provide for determination of sale price and of purchase price in respect of sale by transfer of property in goods (whether as good or in some other form) involved in the execution of a works contract. Sub rule (1) and (1A) thereof which is relevant, reads thus:-

"(1) The value of the goods at the time of the transfer of property in the goods (whether as goods or in some other form) involved in the execution of a works contract may be determined by effecting the following deductions from the value of the entire contract, in so for as the amounts relating to the deduction pertain to the said works contract:--

(a) labour and service charges for the execution of the works;

(b) amounts paid by way of price for sub-contract , if any, to subcontractors;

(c) charges for planning, designing and architect's fees;

(d) charges for obtaining on hire or otherwise, machinery and tools for the execution of the works contract;

(e) cost of consumables such as water, electricity, fuel used in the execution of works contract, the property in which is not transferred in the course of execution of the works contract;

(f) cost of establishment of the contractor to the extent to which it is relatable to supply of the said labour and services;

(g) other similar expenses relatable to the said supply of labour and services, where the labour and services are subsequent to the said transfer of property;

(h) profit earned by the contractor to the extent it is relatable to the supply of said labour and services: Provided that where the contractor has not maintained accounts which enable a proper evaluation of the different deductions as above or where the Commissioner finds that the accounts maintained by the contractor are not sufficiently clear or intelligible, the contractor or, as the case may be, the Commissioner may in lieu of the deductions as above provide a lump sum deduction as provided in the Table below and determine accordingly the sale price of the goods at the time of the said transfer of property.

TABLE

Sr. No.	*Type of works contract*	*Amount to be deducted from the contract price (expressed as a percentage of the contract price*
(1)	*(2)*	*(3)*
1 to 15	*XX XX XX*	*XX XX*

(1A) In case of a construction contract, where alongwith the immovable property, the land or, as the case may be, interest in the land, underlying the immovable property is to be conveyed, and the property in the goods (whether as goods or in some other form) involved in the execution of the construction contract is also transferred to the purchaser such transfer is liable to tax under this rule. The value of the said goods at the time of the transfer shall be calculated after making the deductions under sub-rule (1) and the cost of the land from the total agreement value. The cost of the land shall be determined in accordance with the guidelines appended to the Annual Statement of Rates prepared under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, as applicable on the 1st January of the year in which the agreement to sell the property is registered:

XX XX XX."

43. Under sub-rule (1) to Rule 58 of the MVAT Rules, 2005, the State Government has prescribed the deductive method of taxing the works contract relating to building contracts. It broadly specifies the deduction which are admissible from the entire contract, *inter alia,* on account of labour, service charges, charges for planning, designing, architect fees and similar other expenses specified therein. The rates for deductions are specified in the table where the contractor has not maintained proper accounts which enables proper evaluation of the different deductions noted hereinbefore. However, sub rule (1A) in Rule 58 of the MVAT Rules, 2005 was inserted therein by a notification dated 01.06.2009. The rule has provided that in the case of construction contracts where the immovable property, land or as the case may be, interest therein is to be conveyed and the property in the goods involved in the execution of the construction contract is also transferred, then it is such transfer of goods alone which is liable to tax. The value of the goods at the time of transfer is to be calculated after making the deduction of the cost of the land from the total agreement value. The method for determining the cost of the land has also been specified thereunder. It stipulates that the cost of the land

shall be determined in accordance with the guidelines appended to the Annual Statement of Rates prepared under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 on Ist January of the year in which the agreement to sell the property is registered. The rule provides for measure of determination of the tax. It does not create any liability to tax as a charging provision. The Supreme Court in **Larsen & Toburo's case (supra)** specifically read down Rule 58 which were computational provision whereby exclusion of value of land on the basis of circle rates and ceiling on such deduction had been provided. The Apex Court noticed as follows:- "The value of the goods which can constitute the measure of the levy of the tax has to be the value of the goods at the time of incorporation of goods in the works even though property in goods passes later. Taxing the sale of goods element in a works contract is permissible even after incorporation of goods provided tax is directed to the value of goods at the time of incorporation and does not purport to tax the transfer of immovable property. The mode of valuation of goods provided in Rule 58 (1-A) has to be read in the manner that meets this criteria and we read down Rule 58(1-A) accordingly. The Maharashtra Government has to bring clarity in Rule 58(1-A) as indicated above. Subject to this, validity of Rule 58(1-A) of the MVAT Rules is sustained."

44. In case the provisions of law are seeking to charge sales tax on any amount other than the value of goods transferred in course of execution of works contract, the provisions would be *ultra vires* the Constitution of India. The tax is to be computed on a value not exceeding the value of transfer of property in goods on and after the date of entering into agreement for sale with the buyers. However, the 'deductive method' requires all the deductions to be made therefrom to be specifically provided for to ensure that tax is charged only on the value of transfer of property in goods on and after the date of entering into agreement for sale with the buyers. Where 'deductive method' has been prescribed under the rules for ascertaining the taxable turnover, ordinarily it should include a residuary clause in consonance with the mandate of law so as to cover all situations which can be envisaged.

45. In view of the above, essentially, the value of immovable property and any other thing done prior to the date of entering of the agreement of sale is to be excluded from the agreement value. The value of goods in a works contract in the case of a developer etc. on the basis of which VAT is levied would be the value of the goods at the time of incorporation in the works even where property in goods passes later. Further, VAT is to be directed on the value of the goods at the time of incorporation and it should not purport to tax the transfer of immovable property. Consequently, Rule 25(2) of the Rules is held to be valid by reading it down to the extent indicated hereinbefore and subject to the State Government remaining bound by its affidavit dated 24.4.2014 The State Government shall bring necessary changes in the Rules in consonance with the above observations.

46. Adverting to the issue of challenge to Section 42 of the Act is concerned, according to the learned counsel for the petitioners the assessing VAT liability on the developer when the goods have been transferred by the sub-contractor was in clear contravention of States 's power vide Entry 54 List II of Seventh Schedule. Therefore, the provision wherein the tax was to be assessed in the hands of the developers even where the property was transferred by the sub-contractor was clearly untenable in law and was liable to be quashed.

47. Under sub-section (1) of Section 42 of the Act, where the works contractor gets the construction work executed through a subcontractor, whether in whole or in part, it shall be the joint and several liability of the contractor and the sub-contractor. Sub-section (2) of Section 42 thereof clarifies that a contractor shall not be under any liability to pay tax in respect of a "works contract", if the same has been paid by a sub-contractor and that his assessment has become final. This provision only safeguards the interest of the revenue in the event of failure on the part of the sub contractor to discharge his liability of tax in respect of transaction entered by the sub contractor with the contractor. The provision, thus, cannot be said to be arbitrary, discriminatory or unreasonable in any manner. The contention of the learned counsel for the petitioners in this behalf is, thus, repelled.

48. Equally, the challenge to validity of Section 9 of the Act and Rule 49 of the Rules in CWP No. 7720 of 2014 (M/s ABW Suncity v. State of Haryana) cannot be accepted. Rule 49 of the Rules and Section 9 of the Act provides for scheme of lump sum tax under composition tax scheme which is purely optional in nature. The dealer is not under any bounden duty to subscribe to this scheme. Similar provision under the 1973 Act was upheld by Division Bench of this Court in **Tirath Ram Ahuja v. State of Haryana (1991) 83 STC 523.** Section 9 of the Act read with Rule 49 of the Rules and the circular dated 10.2.2014 provide for determination of the tax under composition scheme which is optional and are not the charging provisions for the levy of VAT. Once a dealer opts for composition scheme which is optional, he gets various advantages and privileges which otherwise are not available to ordinary VAT dealers. In such a situation, in view of the judgment of the Apex Court in **Koothattukulam Liguous v. Deputy Commissioner of Sales Tax, (2014) 72 VST 353,** the method of determining tax liability under these provisions could not be questioned by such a dealer. In view of the above, circular dated 10.2.2014 cannot be faulted.

49. Lastly, ordinarily we would have sustained the preliminary objection of alternative remedy but in view of primary challenge to the validity of Explanation (i) to Section 2(1)(zg) of the Act and Rule 25(2) of the Rules, we felt the necessity to examine the issue in these petitions.

50. The plethora of case law is a pointer to the proposition that wherever alternative remedies are available, the writ court should be loath in interfering in such matters. However, certain exceptions have been carved out by various judicial pronouncements of the Apex Court and also the High Courts.

51. A Division Bench of this Court in **Jindal Strips Limited and another v. State of Haryana and others (1996) 100 STC 45** after considering the various pronouncements of the Apex Court and other High Courts on the subject in extenso, laid down the exceptions to alternative remedy in the matter relating to exercise of writ jurisdiction as under:-

> *"From the various judicial precedents, enumerated above, this Court is of the considered opinion that availability of an alternative remedy for nonentertainment of a petition under Article 226 of the Constitution cannot be of universal application. It is true that ordinarily when the statute provides an alternative remedy, and particularly when there is complete machinery for adjudicating the rights of the parties, which by and large depend upon the facts, the High Court should refrain from entertaining and adjudicating upon the rights of the parties, but to this principle, there are certain*

exceptions and a citizen, who can successfully cover this case in either of the exceptions, cannot be shown the exit door of his entry to the High Court and be compelled to go before the authorities concerned. Some of the exceptions under which a petition may lie under Article 226 of the Constitution before the High Court without availing of an alternative remedy are when the very provisions of the statute are challenged as being ultra vires of the Constitution or repugnant to the Act itself. Obviously, the authorities constituted under the Act having jurisdiction to entertain an appeal or revision, howsoever high in the hierarchy of the department cannot quash the provisions of the Act/statute being ultra vires. They are bound to follow the Act and the provisions contained therein. The other exception is when the highest authority under the Act has taken a particular view on a question of law and the said view is known to all the subordinate authorities as also when a different or contrary view has not been expressed by the High Court or the Supreme Court. In such an event, the remedy of appeal or revision would be a remedy popularly known as from cesure to cesure or from pole to pole. Subordinate authorities are bound to follow the view expressed by the highest authority in the department constituted under the Act to deal with the appeal or revision, as the case may be. The third exception can be when the order, complained of, is wholly illegal and without jurisdiction. Such an order normally would be when it is totally contrary to the provisions of the statute or when there is no power with the authorities constituted under the Act to pass the order. Yet another exception can be when the orders are actuated on extraneous considerations or mala fides of the highest dignitaries in the State and the allegations are not frivolous and on the contrary are shown, prima facie, to be in existence. Yet another exception can be when the alternative remedy is not equally efficacious. Yet another exception can be when the matter is not decided in limine and it is taken after several years for hearing and decided on merits and meanwhile the period of limitation prescribed under the statute for filing an appeal has expired. The exceptions can be multiplied but the court does not wish to be exhaustive in detailing all the exceptions. As mentioned above, by and large, it will be dependent upon the facts and circumstances of each case."

52. The principle of law enunciated in the pronouncements relied upon by learned State counsel for alternative remedy is concerned, are well recognized. However, in the facts and circumstances enumerated hereinbefore, the remedy of writ jurisdiction cannot be shut down particularly when the vires of Explanation (i) to Section 2(1)(zg) of the Act, Rule 25(2) of the Rules and circulars issued by the Excise and Taxation Commissioner have been challenged in the writ petitions. In so far as the petitioners have raised individual issues regarding non-taxability of their transactions on merits, it shall be open for them to raise all these issues before the Assessing Authority/revisional authority in accordance with law. It shall also be open to the petitioners to agitate their grievance regarding refund of stamp duty, if any, before appropriate authority in accordance with law.

53. To conclude, in some of the writ petitions challenge has been laid by the petitioners to the assessment order passed by the Assessing Authority relying upon circular issued by the Excise and Taxation Commissioner whereas in others, the order of the revisional authority on the same premises has been assailed. Still further, in certain cases, the petitioners have approached this Court at the stage of issuance of notices for framing of assessments itself. In

our opinion, in all these matters, the assessment orders and revisional orders passed by the concerned authorities are liable to be set aside with liberty to the appropriate authority to pass fresh orders in the light of the legal principles enunciated hereinbefore. We order accordingly. In so far as cases where only notices have been issued, the competent authority shall be entitled to proceed further and pass order in accordance with law keeping in view the aforesaid interpretation noticed above. The writ petitions are, thus, partly allowed in the above terms.

PUNJAB VAT TRIBUNAL

APPEAL NO. 629 OF 2013

BHASIN INDUSTRIES

Vs.

STATE OF PUNJAB

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

6TH APRIL, 2015

HF ▶ Appellant –dealer

ENTRIES IN SCHEDULE – SILVER/ GOLD MEDALS – SILVER AND GOLD MEDALS TO FALL UNDER RESIDUAL ENTRY AS PER CLARIFICATION - APPEAL CONTENDING SUCH ITEMS TO FALL UNDER SCHEDULE C UNDER ORNAMENTS TAXABLE AT A LOWER RATE – HELD BY TRIBUNAL THAT GOLD AND SILVER MEDALS ARE SAME IN THEIR END USE I.E. ADORNING, MODE OF MANUFACTURE AND PROPERTIES AS GOLD AND SILVER ORNAMENTS – OBSERVED IT AS BEING AGAINST PRINCIPLES OF SPECIFICATIONS TO DENY PARENTAGE TO THE ITEM IN QUESTION BY ASSIGNING IT AS RESIDUARY ITEM - BENEFIT OF AMBIGUITY TO GO IN FAVOUR OF ASSESSEE IN CASE ITEM FALLING SIMULTANEOUSLY UNDER TWO ENTRIES – BEING PRODUCTS OF THE SAME PROPERTY MEDALS OF GOLD AND SILVER CAN'T BE TAKEN AWAY FROM SCHEDULE C OF THE ACT – CLARIFICATION U/S 85 QUASHED – *SCHEDULE C, ENTRY 2 OF PVAT ACT*

An appeal was filed before the Tribunal against the order of the Commissioner holding that the gold and silver medals are taxable @ 13% and are not covered under Schedule C of the Act. It was contended that they should be classified as ornaments under Schedule C Entry 2.

Allowing the appeal, it is held that the medals of gold and silver have to pass through the same process of manufacturing /moulding finishing before putting for sale. Their use is also the same as ornaments i.e. used for adorning or events. It is observed that when a particular article can be classified under a specific item in Tariff schedule, it would be against the principles of the specification to deny its parentage and consign its residuary item of the schedule. In any case of ambiguity, the benefit should go the assessee. Also, the medals and ornaments of gold and silver are products of the same property and cannot be taken away from Schedule C of the Act. The view taken by the Excise and Taxation Commissioner is quashed. However, surcharge is leviable as per the notifications issued.

Case referred:

-M/s Bharat Forge & Press Industries p Ltd. V Collector of Central Excise, Baroda Gujrat (1990) 1 SCC 532
-Dunlop India ltd. And Madras Rubber factory Ltd. V Union of India and others 1983 (13) (E.L.T) 1566 (SC)
-Commissioner of Central Excise, Calcutta V Calcutta Springs Ltd. 2008 (229) ELT 161 (SC)

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

Mr. S.S. Brar, Additional Advocate General for the State.

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

This appeal has arisen out of the order dated 2.9.2013 passed by the Excise and Taxation Commissioner, Punjab, vide which the Commissioner while deciding the case under Section 85 Punjab Value Added Tax Act, 2005 observed as under:-

(i) Silver/Gold medals are not covered under any of the entries of Schedule 'C' appended to the Punjab Value Added Tax Act, 2005.

(ii) Silver/Gold medals are taxable at the rate of 13% plus surcharge as applicable.

The precise question which arise determination before me is "whether the silver/gold medals are covered under any of the entries in Schedule 'C' appended to the Punjab VAT Act, 2005? If so what rate of tax is to be charged over them?" To decide this question will have to go back to Schedule 'C':-

'SCHEDULE-C

(See Section 8)

LIST OF GOODS TAXABLE @ 1 PERCENT

Serial No.	Name of Commodity
1.	Bullions
2.	Gold, Silver and Platinum Ornaments
3.	Noble metals and ornaments
4.	Precious Stones
5.	Pulses
6.	Unbranded besan

Schedule 'C' covers the gold and silver including its ornaments irrespective of the ratio of gold added to them. The arguments raised by the Counsel for the appellant before me is that the silver/gold medals are nothing, but are the preparations of these metals like a silver/gold ornaments as mentioned Entry 2 of Schedule 'C'. As per note 9 of chapter 71 of Central Excise Tariff Act, 1985, expression "articles of jewellery" means:

(a) Any small objects of personal adornrnent (for example rings, bracelets, necklaces, brooches, ear rings, watch chains, fobs, pendants, tie-pins, cuff-links, dress studs, religious or other medals and insignia.

(b) ****

This definition includes watch chains, dress studs, medals and insignia. The Counsel has also referred me to the Dictionary meaning of the medal. As per Oxford's Dictionary Medal means:-

> "A piece of metal, usually in the form of a disc. Struck or cast with an inscription or device to commemorate an events etc. Or awarded as a distinction for proficiency etc."

And the said dictionary interprets jewellery as under:-

> "Jewels or other ornament objects especially for personal adornment."

As per Wikipedia, the free Encyclopedia an ornament is something used for decoration. Ornament may also refer to:

- Ornament (art), a purely decorative element in architecture and the decorative arts
- Christmas ornament, a decoration used to festoon a Christmas tree
- Hood ornament, a decoration on the hood of an automobile
- Garden ornament, a decoration in a grassy area
- Peak ornament, a decoration under the peak of the eaves of a gabled building.
- Ornamental plant, a decorative plant
- Ornament (music_, a flourish that serves to decorate music
- Biological ornament, a biological structure that appears to serve only a decorative purpose.
- Bronze and brass ornamental work
- Ornaments Rubric, a prayer of the Church of England
- Ornament (football), the football team from Hong Kong.

For ornamentation of the human body see:-

- Human physical appearance
- Fashion
- Jewellery
- Tattoo

As per Wikipedia, the free Encyclopedia 'medal' has been defined as under:-

> "A medal, or mediallion, is strictly speaking, a small, flat and round (or at times, ovoid) piece of metal that has been sculpted, molded, cast, struck, stamped, or some way marked with an insignia, portrait, or other artistic rendering. A medal may be awarded to a person or organization as a form of recognition for sporting, military, scientific, academic, or various other achievements. Military awards and decorations are more precise terms for certain types of State decoration. Medals may also be created for sale to commemorate particular individuals or events, or as works of artistic expression in their own right. In the past, medals Commissioned for an individual, typically with his portrait, were often used as a form of diplomatic or personal gift, with no sense of being an award for the conduct of the recipient."

The counsel has thus urged that on combined reading of the dictionary meanings as well as while reading these words in the light of taxation statues. The medal could be said to be a specific ornament, conferred upon a persons in recognition to his distinguished work which may adorn his status. Since it is a space of the gold or silver ornaments and is in no way superior to the ornaments in quality or category therefore the medal must fall in entry 2 Schedule 'C' of the Act 2005. The counsel has also urged that the residuary section regarding classification cannot be used so easily as to take each and every item which is not mentioned in

the schedules appended to the Act and only those goods which cannot be classified on assessment and analysis, could be taken to the residuary items. It has also been observed in case M/s Bharat Forge and Press Industries (P) Ltd. versus Collector of Central Excise, Baroda, Gujarat (1990) 1 SCC 532 as under:-

> 4. The question before us is whether the department is right in claiming that the items in question are dutiable under tariff entry 68. Thus, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, unless the department can establish that the goods in question can be no conceivable process of reasoning be brought under any of the tariff item, resort can not be had to the residuary item. We do not think this has been done. Looking at tariff Item 26-AA(iv), it encompasses all sorts of pipes and tubes. It is also clear that it is of no consequence whether the pipes and tubes are manufactured by rolling, forging, spinning, casting, drawing, annealing, welding or extruding. It is true that initially pies and tubes may be obtained from sheets, billets or bars by various processes, but the process of manufacture of pipes and tubes does not end there. In order to achieve fully the purpose for which the pipes and tubes are manufactured, it is necessary to manufacture smaller pieces of pipes and tubes and also to manufacture them in such a shape that they may be able to conduct liquids and gases, passing them through and across angles, turnings, corners and curves or regulating their flow in the manner required. Smaller pieces of pipes and tubes differently shaped are manufactured for this purpose. They are merely intended as accessories or supplements to the large pipes and tubes. They are pipes and tubes made out of pipes and tubes. There is no change in their basic physical properties and there is no change in their end use. There is no reason why these smaller articles cannot also be described as pipes and tubes."
>
> It is also observed that when a particular articles can be classified under a specific item in Tariff Schedule. It would be against the principles of the specification to deny its parentage and consign its residuary item of the schedule. Similar observations were made in Dunlop India and others 1983 (13) (E.L.T.) 1566 (SC). Wherein their Lordships observed as under:-
>
> > **Classification of goods - Article classifiable under specific item can not be classified under residuary item.**
> >
> > **"**When an article is by all standards classifiable under a specific item in the Tariff Schedule it would be against the very principle of classification to deny it parentage consign its residuary item, (Para 37)"

There is no denying a fact that gold/silver ornaments are a source of decoration. Similarly, medals as created from gold or silver are to commemorate particular individuals or events. Gold or silver ornaments or medals, before they are produced, will have to pass the same process of manufacture/moulding finishing and polishing before they are put to sale. Sometimes, the golden coins are often set as pieces of jewellery or the medals. Variety of medals is also produced commercially for the commemorating or adoring or events. However, the gold/silver medals whatever the case may be made of gold, silver Guilt, bronze or lead do not loose their parentage if the gold/silver ornaments can be classified as items of schedule 'C' appended to the Act, then why medals of the same or inferior metals can be an exception to it so as to fetch higher rate of tax. Had any difference been made between gold/silver medals with the other ornaments then things would have been different. A man made confusion has invited the authorities to classify these items differently particularly when there is no basic change in their properties, thee is no change in their end use; there is no difference with regard of mode and method of manufacture. In any case the law has gone to the extent that when there

is confusion with regard to the classification of goods then the same has to be decided in favour of assessee as the benefit of ambiguity should be resolved in favour of subject. A similar view was taken in case of Commissioner of Central Excise, Calcutta vs Calcutta Springs Ltd., 2008 (229) ELT 161 (SC), wherein the Apex Court observed as under:-

> "Lastly, in the present case, the Commissioner has himself stated that on the interpretation of two entries, that it is quite possible that the liner in the question is capable of falling simultaneously under both the entries quoted above. If that be the case, then, in a classification dispute the benefit should go to the assessee."

While examining the case from another angle, the Medals being also the pieces of decoration are conferred upon a person or organization for their distinguished services whereas the ornaments are used to decorate an individual to raise his/their status or pedestal. As such ornaments being used for a better purpose could be taxed at a higher rate but not the medals. However, both being the product of some property can't be taken way from Schedule 'C' of the Punjab VAT Act.

It would also be worth which to mention here that the appellant had also got a clarification by way of an application on 17th April, 2012 from the Excise and Taxation Commissioner, Punjab regarding the classification of medals for the purpose of tax and in response to the said application, vide memo No. VAT-3-2012/2229, dated 8.4.2012. the Deputy Excise and Taxation Commissioner on behalf of the Commissioner had opined that the rate of tax on silver is 1% and surcharge would be 10%. This can also be given weight at the time of deciding this appeal.

In the aforesaid facts and circumstances, the Tribunal is of the view that the medals made of silver/gold cannot be taken away from Schedule 'C' of the Act and the view taken by the Excise and Taxation Commissioner, Punjab is bound to be quashed. As regards the surcharge that would also be applicable as per the Rules, Notifications issued by the State Government in this regard from time to time.

Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 17

PRABHAT YARN TRADERS

Vs.

STATE OF PUNJAB

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

8TH APRIL, 2015

HF ▶ Appellant

APPEAL – ENTERTAINMENT OF – PRE DEPOSIT – ADJUSTMENT OF INPUT TAX CREDIT – DEMAND RAISED ON ASSESSMENT – APPEAL BEFORE TRIBUNAL REQUESTING ADJUSTMENT OF ITC TOWARDS AMOUNT DUE AS PRE DEPOSIT FOR ENTERTAINMENT OF APPEAL – APPEAL ACCEPTED – DESIGNATED OFFICER TO DETERMINE THE ITC AVAILABLE, IF ANY, WITHIN 2 MONTHS AND ADJUST THE SAME AGAINST 25% OF ADDITIONAL DEMAND RAISED – APPELLANT DIRECTED TO PAY THE BALANCE DUE , IF ANY – ORDERS OF ASSESSING AUTHORITY TO PREVAIL IN CASE OF NON-PAYMENT / NON ADJUSTMENT – SEC 62(5) OF PVAT ACT

The appellant filed an appeal before the Tribunal requesting that while determining Input tax Credit, if found available and due, may be adjusted towards 25% of the additional demand raised as a condition for entertainment of appeal. The Tribunal accepted the appeal directing the designated officer to find out if any ITC is available for the assessment year 2012-13 within two months and adjust the same towards the amount due as pre deposit for entertainment of appeal. The appellant is directed to pay the balance if due. On failure of payment the orders of appellate authority would remain intact.

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

The said case was put up before the Chairman, VAT Tribunal Punjab on 30.03.2015 for consideration and Chairman, VAT Tribunal Punjab passed the following orders:-

The Counsel for the appellant has requested that while determining the ITC, if available is found due in favour of the appellant, that may be adjusted against the additional demand of 25% and the appellant is ready to make the payment of the balance of 25% of the additional demand. If it is so found. In these circumstances, E.T.O.-cum-Designated Officer, Ludhiana is directed to determine the ITC while deciding the assessment or the year 2012-13 within two months and if any ITC is found available to the appellant, the same may be adjusted against the

25% of the additional demand. The appellant is also directed to deposit the balance out of 25% of the additional demand, if something is found due.

Accordingly, this appeal is accepted. The appellant is directed to pay the 25% in the aforesaid terms. If the payment is made/adjusted, the appeal would be entertained, otherwise, the orders passed by the appellate authority would remain intact. Disposed off accordingly.

PUNJAB VAT TRIBUNAL

APPEAL NO. 77 OF 2014

HM STEELS LTD

Vs.

STATE OF PUNJAB

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

30TH March, 2015

HF ▶ Appellant

INPUT TAX CREDIT – BROUGHT FORWARD - ASSESSMENT YEAR 2009-10 – TAX LIABILITY DISCHARGED BY ADJUSTING ITC BROUGHT FORWARD – SUBSEQUENT DEMAND RAISED FOR THE SAME YEAR – DENIAL OF ITC BROUGHT FORWARD FROM PREVIOUS YEAR(2008-09) ALLEGING CLOSURE OF BUSINESS PREMISES OF APPELLANT PREVENTING VERIFICATION BY DEPARTMENT – APPEAL – HELD, NO ASSESSMENT BEING FRAMED FOR THE YEAR 2008-09 INDICATED ACCEPTANCE ON PART OF DEPARTMENT WITH RESPECT TO ITC BROUGHT FORWARD- CONTENTION REGARDING ABSENCE OF VERIFICATION DUE TO CLOSURE OF BUSINESS PREMISES FOUND WITHOUT SUBSTANCE – ENOUGH EVIDENCE PRODUCED TO SHOW BUSINESS NOT CLOSED – EXCESS ITC AVAILABLE DURING 2008-09 TO BE CARRIED FORWARD AND ADJUSTED AGAINST SUBSEQUENT LIABILITY, IF ANY – APPEAL ALLOWED.

The appellant had filed his returns for the year 2009-10 and discharged the tax liability after the adjustment of ITC brought forward from previous years. Subsequently a demand was raised under the PVAT Act and the CST act. The order revealed that the ITC brought forward from previous years had been rejected in the absence of proper verification. Aggrieved by the order of the appellate authority, an appeal was filed before the Tribunal. It is held that since no assessment for the previous year 2008-09 was framed, it is presumed that the excess ITC was accepted by the respondents. Therefore, the said amount should have been adjusted towards the tax liability of the year in question. The argument that no verification could be done due to the business premises being closed is without substance. The assessee was served with the assessment orders on the said address. A copy of rent deed was enclosed as proof. Entry tax had been paid during 2008-09. It could not be said that the assessee had closed the business, Accepting the appeal, the court has ordered to adjust the excess ITC available during 2008-09 to be carried forward and adjust it towards subsequent liability , if any.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith 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 is an appeal against the order dated 10.1.2014 passed by the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana Division, Ludhiana, dismissing the appeal of the appellant against the order dated 20.5.2013 passed by the Excise and Taxation Officer-cum-Designated Officer, Fatehgarh Sahib creating a demand of Rs. 15,40,964/-.

2. The appellant is a dealer duly registered under the provisions of Punjab Value Added Tax Act, 2005 as well as Central Sales Tax Act, 1956 having TIN No. 03111144156. He has been engaged in the trading of iron and steel having its offices at Harbanspura, G.T. Road, Sirhind and at Amlho Road, Mandi Gobindgarh with its Corporate Office at Chandigarh. The appellant filed its return for the year 2009-10, quarterly returns in VAT-15 and Annual Return in VAT-20 as per provisions of the Punjab Value Added Tax Act, 2005. The tax liability was discharged after the adjustment of ITC brought forward from the previous years which was amounting to Rs. 36,08,559/-. Accordingly to the appellant there was no additional liability to be discharged. However, it has been further alleged that on 20.5.2013 notice was received by the appellant, whereby a demand for Rs. 15,40,964/- under the Punjab VAT Act and Rs. 28,19,008/- under the Central Sales Tax Act was created ex-parte. The order revealed that the Assessing Authority had rejected the ITC brought forwarded from previous years in the absence of proper verification resulting into huge demand with which the appellant is burdened.

3. Arguments heard. The appellant is an old assessee of the respondents. He had also filed its returns for the year 2008-09 in which the excess ITC amounting to Rs. 36,08,559/- was carried forward and the same was not adjusted towards the tax liability for the year 2009-10. However, the Excise and Taxation Officer-cum-Designated Officer without even verifying the same rejected the ITC. No assessment for the year 2008-09 was framed therefore it would be presumed that the excess ITC was accepted by the respondent. Therefore, the said amount should have been adjusted towards the tax liability for the assessment year 2009-10, but it was not so done. The argument, that verification could not be affected as the business premises at the address of Village Harbanspura, G.T. Road, Sirhind, District Fatehgarh Sahib were found closed, is without any substance. It may be observed that the assessee was served with the assessment order for the current years on the said address. The assessee, vide letter dated 28.08.2008, had also duly intimated the respondent about his another place of business. He also enclosed the copy of rent deed. The assessee had also paid entry tax amounting to Rs. 4,70,55,571/- during 2008-09 and claimed for ITC on purchase sin Punjab on merely Rs. 4,96,993/-. In such circumstances, how it could be said that the assessee had closed the business. Thus, it would be held that the arguments raised by the State Counsel have no meaning and the arguments raised by the appellant have merit.

5. Resultantly, this appeal is accepted and the impugned order is set-aside. The excess ITC available to the appellant during the year 2008-09 be carried forward and adjusted against the subsequent liability if any.

6. Announced in open Court in the presence of the counsel for the parties.

SGA
LAW OFFICES

NOTIFICATION

PUNJAB GOVT. NOTIFICATION – INSTITUTION TAX

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF HOUSING AND URBAN DEVELOPEMENT

(Housing-II Branch)

NOTIFICATION

The 20th February, 2015

No. S.O.7/P.A.9/2011/S.3/2015. – In partial modification of Notification of the Government of Punjab, Department of Housing and Urban Development, issued *vide* No. S.O. 14/P.A.9/2011/S.3/2013, dated the 28th February, 2013 and in pursuance of the provisions of sub-section (1) of section 3 of the Punjab (Institutions and other Buildings) Tax Act, 2011 (Punjab Act No. 9 of 2011) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to levy tax per square feet per annum on Institutions and Buildings, to be calculated on the basis of multiple factors given in the below mentioned tables:-

A. Location of the Building and its proximity to the nearby urban area(s).

TABLE

Sr.No.	ZONE	Rate of Tax Square Feet
1	Outside M.C. Limits of Ludhiana upto 15 Kms	Rs. 1.25
2	Outside M.C. Limits of Jalandhar upto 10 Kms	Rs. 1.25
3	Outside M.C. Limits of Amritsar, Patiala, Khanna, Rajpura, Mandi Gobindgarh, Sirhind and Phagwara upto 7 Kms.	Rs.1.25
4	Outside M.C. Limits of Bathinda, Moga, Batala, Pathankot, Barnala, Malerkotla, Morinda, Hoshiarpur upto 5 Kms	Rs.1.00
5	Outside M.C. Limits of Sangur, Sunam, Nabha, Faridkot, Kotkapura, Ferozepur, Malout, Abohar, Sri Muktsar Sahib, Kapurthala, Saheed Bhagat Singh Nagar, Roopnagar, Tarn Taran, Gurdaspur, Samana, Jagroan, Mansa, Lalru and Kurali upto 3	Rs. 1.00

	Kms.	
6	Outside M.C. Limits of NH-1 upto 500 metres on both sides, Outside any potential zone all other NH (Except NH-1) SH/Scheduled Roads upto 1 Kms both sides of any potential zone	Rs. 1.25
7	Master Plan area of SAS Nagar, Mullanpur, Zirakpur, (Outside M.C. Limits)	Rs. 1.25
8	Master Plan Area of Kharar, Dera Bassi, Banur, (Outside M.C. Limits)	Rs. 1.25
9	Rest of Punjab (Outside M.C. Limits)	

Note: **I.** In case an Institution or a building falls in more than one zone (over lapping zones) in that case, an average of rate of two zones shall be levied.

II. In case site falls in two or more zones, then proportionate charges as applicable in each zone shall be levied.

III. In case an institution or a building is constructed during the mid of a financial year, the tax shall be charged on prorate basis.

IV. For the current Financial year (2014-2015), calculation shall be done on prorate basis.

Annual Institutional Tax (Rs.) – Covered Area (in sq.ft.) x Rate prescribed in Table number 1 x Factors as mentioned below:-

The above charges shall be enhanced/decreased based on following factors:-

B. Usage Factors:

Sr. No.	Nature of its use	Multiplication factor
1	Commercial	1.25
2	Institutional including Hotel, Marriage Palaces, Hospitals	1.0
3	Industrial and other purposes	0.75

C Land Value Factor:

Sr. No.	Collector rate per acre	Multiplication factor
1	> 1 Crore	1.00
2	50 Lacs to 1 crore	0.90
3	< 50 Lacs	0.75

D Type of building and cost of construction of Building Factor:

Sr. No.	Type of the building	Multiplication factor
1	Building with RCC Roof	1.0
2	Building with non-RCC Roof	0.75

E Rental Value Factor:

Sr. No.	Occupation/user of the Building	Multiplication factor
1	Own (Self)	0.75
2	Rented	1.0

Illustrative example for clarification purpose: The details of the building having an area of 1,00,000 sq. ft. Is as under:

Sr.	Criteria	Details of building	Rate of tax/ multiplication factor
1	Cover Area	1,00,000 sq. Ft.	
2.	Location of the building and its proximity to nearby urban area	Location outside M.C. Limits of Ludhiana upto 15 Km	1.25 per sq. Ft.
3.	Usage factor	Hospital	1.0
4.	Land Value Factor	Collector Rate	1.0
		Rs. 1.5 cores/acre	
5.	Type of building and cost of construction	Building with RCC roof	1.0
6.	Rental Value Factor	Own (self)	0.75
	Annual Tax		100000x1.25x1.0x1.0x1.0 x1.0x0.75= Rs. 93,750/-

VISWAJEET KHANNA,
Principal Secretary to Government of Punjab,
Department of Housing and Urban Development.

CHANDIGARH ADMINISTRATION – RATE NOTIFICATION

CHANDIGARH ADMINISTRATION
EXCISE & TAXATION DEPARTMENT

NOTIFICATION

The 17th April, 2015

No. E&T-ETO (Ref.)- 2015/991 With reference to the Chandigarh Administration. Excise & Taxation Department's Notification bearing No. E&T/ETO(Ref.)-2015/860 dated 31st March, 2015 and in exercise of the powers conferred by sub-section (3) of the Section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), as extended to the Union Territory, Chandigarh and all other powers enabling him in this behalf, the Administrator, Union Territory, Chandigarh, hereby makes the following amendments in Schedule 'A', Schedule 'B', Schedule 'C', Schedule 'C-1', Schedule 'E' and Schedule 'F' appended to the said Act w.e.f. 18th April, 2015 namely:-

AMENDMENT

1. In the said Schedule 'B', in Serial No. 60 and entries relating thereto, item namely "Cell Phone" shall be omitted;
2. In the said Schedule 'C-1', item namely "Pulses", thereto shall be omitted;
3. In the said Schedule 'F', the items namely, "batteries" and "Timber" shall be omitted;
4. In the said Schedule 'A', after Serial No. 65 and the entries relating thereto, the following Serial number and item shall be added, namely;
5. In the said Schedule 'B', after Serial No. 156 and the entries relating thereto, the following serial Number and item shall be added, namely;
   "157. Timber"
6. In the said Schedule 'C', after Serial No. 4 and the entries relating thereto, the following Serial number and item shall be added namely;
   "5. Pulses"
7. In the said Schedule 'E', after Serial No. 8 and the entries relating thereto, the following Serial numbers, items and rate of taxes shall be added, namely;
   "9. Batteries - 14.30%''
   "10. Mobiles - 9.35''

Sd/-
Sarvjit Singh, IAS,
Secretary Excise & Taxation,
Chandigarh Administration

SGA
LAW OFFICES

PUBLIC NOTICE

EXTENTION OF DATE OF FILING OF VAT-15 OF Q4 OF 2014-15

GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE & TAXATION

PUBLIC NOTICE

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

This is to inform all the concerned that the last date of e-filing of VAT-15 for the 4th Quarter of 2014-15 has been extended till 4th May, 2015.

Dated: 29th April, 2015

Excise & Taxation Commissioner, Punjab

THE CONSTITUTION (ONE HUNDRED AND TWENTY-SECOND AMENDMENT) BILL, 2014

A

BILL

further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-fifth Year of the Republic of India as follows:—

1. *Short title and commencement.*

(1) *This Act may be called the Constitution (One Hundred and Twenty-second Amendment) Act, 2014.*

(2) *It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.*

2. *Insertion of new article 246A*

After article 246 of the Constitution, the following article shall be inserted, namely:—

Special provision with respect to goods and services tax

"246A. (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5), of article 279A, take effect from the date recommended by the Goods and Services Tax Council.''.

3. *Amendment of article 248.*

In article 248 of the Constitution, in clause (1), for the word "Parliament", the words, figures and letter "Subject to article 246A, Parliament" shall be substituted.

4. *Amendment of article 249*

In article 249 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter"goods and services tax provided under article 246A or" shall be inserted.

5. ***Amendment of article 250.***

In article 250 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.

6. ***Amendment of article 268.***

In article 268 of the Constitution, in clause (1), the words "and such duties of excise on medicinal and toilet preparations" shall be omitted.

7. ***Omission of article 268A.***

Article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted.

8. ***Amendment of article 269.***

In article 269 of the Constitution, in clause (1), after the words "consignment of goods", the words, figures and letter "except as provided in article 269A" shall be inserted.

9. ***Insertion of new article 269A***

After article 269 of the Constitution, the following article shall be inserted, namely:—

Levy and collection of goods and services tax in course of interState trade or commerce.

‘‘269A. (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.’’.

10. ***Amendment of article 270.***

In article 270 of the Contitution,—

(i) in clause (1), for the words, figures and letter "articles 268, 268A and article 269", the words, figures and letter "articles 268, 269 and article 269A" shall be substituted;

(ii) after clause (1), the following clause shall be inserted, namely:—

‘‘(1A) The goods and services tax levied and collected by the Government of India, except the tax apportioned with the States under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).’’.

11. ***Amendment of article 271***

In article 271 of the Constitution, after the words ‘‘in those articles’’, the words, figures and letter ‘‘except the goods and services tax under article 246A,’’ shall be inserted.

12. After article 279 of the Constitution, the following article shall be inserted, namely:—

''279A. (1) ***The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and Twenty-second Amendment) Act, 2014, by order, constitute a Council to be called the Goods and Services Tax Council.***

(2) ***The Goods and Services Tax Council shall consist of the following members, namely:—***

(a) ***the Union Finance Minister..... Chairperson;***

(b) ***the Union Minister of State in charge of Revenue or Finance..... Member;***

(c) ***the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government.....Members.***

(3) ***The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.***

(4) ***The Goods and Services Tax Council shall make recommendations to the Union and the States on—***

(a) ***the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;***

(b) ***the goods and services that may be subjected to, or exempted from the goods and services tax;***

(c) ***model Goods and Services Tax Laws, principles of levy, apportionment of Integrated Goods and Services Tax and the principles that govern the place of supply;***

(d) ***the threshold limit of turnover below which goods and services may be exempted from goods and services tax;***

(e) ***the rates including floor rates with bands of goods and services tax;***

(f) ***any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;***

(g) ***special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and***

(h) ***any other matter relating to the goods and services tax, as the Council may decide.***

(5) ***The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.***

(6) ***While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.***

(7) ***One half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.***

(8) ***The Goods and Services Tax Council shall determine the procedure in the performance of its functions. Insertion of new article 279A. Goods and Services Tax Council.***

(9) ***Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—***

(a) ***the vote of the Central Government shall have a weightage of onethird of the total votes cast, and***

(b) ***the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.***

(10) ***No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—***

(a) ***any vacancy in, or any defect in, the constitution of the Council; or***

(b) ***any defect in the appointment of a person as a member of the Council; or***

(c) ***any procedural irregularity of the Council not affecting the merits of the case.***

(11) ***The Goods and Services Tax Council may decide about the modalities to resolve disputes arising out of its recommendation.".***

13. ***Amendment of article 286.***

In article 286 of the Constitution,—

(i) in clause (1),—

(A) for the words "the sale or purchase of goods where such sale or purchase takes place", the words "the supply of goods or of services or both, where such supply takes place" shall be substituted;

(B) in sub-clause (b), for the word "goods", at both the places where it occurs the words "goods or services or both" shall be substituted;

(ii) in clause (2), for the words "sale or purchase of goods takes place", the words "supply of goods or of services or both" shall be substituted;

(iii) clause (3) shall be omitted.

14. ***Amendment of article 366***

In article 366 of the Constitution,—

(i) after clause (12), the following clause shall be inserted, namely:—

'(12A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;';

(ii) after clause (26), the following clauses shall be inserted, namely:—

'(26A) "Services" means anything other than goods;

(26B) "State" with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature;'.

15. *Amendment of article 368*

In article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures "article 162 or article 241", the words, figures and letter "article 162, article 241 or article 279A" shall be substituted.

16. *Amendment of Sixth Schedule*

In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3),—

(i) in clause (c), the word "and" occurring at the end shall be omitted;

(ii) in clause (d), the word "and" shall be inserted at the end;

(iii) after clause (d), the following clause shall be inserted, namely:—

"(e) taxes on entertainment and amusements.".

17. ***Amendment of Seventh Schedule.***

In the Seventh Schedule to the Constitution,—

(a) in List I — Union List,—

(i) for entry 84, the following entry shall be substituted, namely:—

"84. Duties of excise on the following goods manufactured or produced in India, namely:—

(a) petroleum crude;

(b) high speed diesel;

(c) motor spirit (commonly known as petrol);

(d) natural gas;

(e) aviation turbine fuel; and

(f) tobacco and tobacco products.";

(ii) entries 92 and 92C shall be omitted;

(b) in List II — State List,—

(i) entry 52 shall be omitted;

(ii) for entry 54, the following entry shall be substituted, namely:—

"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and

alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";

(iii) entry 55 shall be omitted;

(iv) for entry 62, the following entry shall be substituted, namely:—

"62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.".

18. *Arrangement for assignment of additional tax on supply of goods to States for two years or such other period recommended by the Council.*

(1) An additional tax on supply of goods, not exceeding one per cent. in the course of inter-State trade or commerce shall, notwithstanding anything contained in clause (1) of article 269A, be levied and collected by the Government of India for a period of two years or such other period as the Goods and Services Tax Council may recommend, and such tax shall be assigned to the States in the manner provided in clause (2).

(2) The net proceeds of additional tax on supply of goods in any financial year, except the proceeds attributable to the Union territories, shall not form part of the Consolidated Fund of India and be deemed to have been assigned to the States from where the supply originates.

(3) The Government of India may, where it considers necessary in the public interest, exempt such goods from the levy of tax under clause (1).

(4) Parliament may, by law, formulate the principles for determining the place of origin from where supply of goods take place in the course of inter-State trade or commerce.

19. *Compensation to States for loss of revenue on account of introduction of goods and services tax*

Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for such period which may extend to five years.

20. *Transitional provisions*

Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be inforce until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

21. *Power of President to remove difficulties*

(1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order,

make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of three years from the date of such assent.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services. The proposed Central and State goods and services tax will be levied on all transactions involving supply of goods and services, except those which are kept out of the purview of the goods and services tax.

2. The proposed Bill, which seeks further to amend the Constitution, inter alia, provides for—

(a) subsuming of various Central indirect taxes and levies such as Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services;

(b) subsuming of State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on lottery, betting and gambling; and State cesses and surcharges in so far as they relate to supply of goods and services;

(c) dispensing with the concept of 'declared goods of special importance' under the Constitution;

(d) levy of Integrated Goods and Services Tax on inter-State transactions of goods and services;

(e) levy of an additional tax on supply of goods, not exceeding one per cent. in the course of inter-State trade or commerce to be collected by the Government of India for a period of two years, and assigned to the States from where the supply originates;

(f) conferring concurrent power upon Parliament and the State Legislatures to make laws governing goods and services tax;

(g) coverage of all goods and services, except alcoholic liquor for human consumption, for the levy of goods and services tax. In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council.

(h) compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for a period which may extend to five years;

(i) creation of Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State in charge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government. It is further provided that every decision of the Council shall be taken by a majority of 7 8 not less than three-fourths of the weighted votes of the members present and voting in accordance with the following principles:—

(A) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(B) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast in that meeting.

Illustration:

In terms of clause (9) of the proposed article 279A, the "weighted votes of the members present and voting" in favour of a proposal in the Goods and Services Tax Council shall be determined as under:—

WT = WC+WS Where,

WT = WC + WS =(WST/SP) × SF

Wherein—

WT = Total weighted votes of all members in favour of a proposal.

WC = Weighted vote of the Union = i.e., 33.33% if the Union is in favour of the proposal and be taken as "0" if, Union is not in favour of a proposal.

WS = Weighted votes of the States in favour of a proposal.

SP = Number of States present and voting.

WST = Weighted votes of all States present and voting i.e., i.e., 66.67%

SF = Number of States voting in favour of a proposal.

(j) Clause 20 of the proposed Bill makes transitional provisions to take care of any inconsistency which may arise with respect to any law relating to tax on goods or services or on both in force in any State on the commencement of the provisions of the Constitution as amended by this Act within a period of one year.

3. the Bill seeks to achieve the above objects.

ARUN JAITLEY

NEW DELHI;

The 18th December, 2014

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. S-31011/07/2014-SO(ST), dated the 18th December, 2014 from Shri Arun Jaitley, Minister of Finance to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Bill, recommends under clauses (1) and (3) of article 117, read with clause (1) of article 274, of the Constitution of India, the introduction of the Constitution (One Hundred and Twenty-second Amendment) Bill, 2014 in Lok Sabha and also the consideration of the Bill.

FINANCIAL MEMORANDUM

Clause 12 of the Bill seeks to insert a new article 279A in the Constitution relating to Constitution of Goods and Services Tax Council. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State incharge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government.

2. The creation of Goods and Services Tax Council will involve expenditure on office expenses, salaries and allowances of the officers and staff. The objective that the introduction of goods and services tax will make the Indian trade and industry more competitive, domestically as well as internationally and contribute significantly to the growth of the economy, such additional expenditure on the Council will not be significant.

3. At this stage, it will be difficult to make an estimate of the expenditure, both recurring and non-recurring on account of the Constitution of the Council.

4. Further, it is provided for compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for such period which may extend to five years. The exact compensation can be worked out only when the provisions of the Bill are implemented.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill seeks to insert a new article 279A relating to the constitution of a Council to be called the Goods and Services Tax Council. Clause (1) of the proposed new article 279A provides that the President, shall within sixty days from the date of the commencement of the Constitution (One Hundred and Twenty-second Amendment) Act, 2014, by order, constitute a Council to be called the Goods and Services Tax Council. Clause (8) of the said article provides that the Council shall determine the procedure in the performance of its functions.

2. The procedures, as may be laid down by the Goods and Services Tax Council in the performance of its functions, are matters of procedure and details. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE CONSTITUTION OF INDIA

* * * * *

248. ***Residuary powers of legislation***

(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

* * * * *

249. ***Power of Parliament to legislate with respect to a matter in the State List in the national interest.***

(1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force.

* * * * *

250. ***Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation***

(1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

* * * * *

Distribution of Revenues between the Union and the States

268. ***Duties levied by the Union but collected and appropriated by the States***

(1) Such stamp duties and such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

(a) in the case where such duties are leviable within any Union territory, by the Government of India, and

(b) in other cases, by the States within which such duties are respectively leviable.

* * * * *

268A. ***Service tax levied by Union and collected and appropriated by the Union and the States***.

(1) Taxes on services shall be levied by the Government of India and such tax shall be collected and appropriated by the Government of India and the States, in the manner provided in clause (2).

(2) The proceeds in any financial year of any such tax levied in accordance with the provisions of clause (1) shall be—

(a) collected by the Government of India and the States;

(b) appropriated by the Government of India and the States,

in accordance with such principles of collection and appropriation as may be formulated by Parliament by law.

269. ***Taxes levied and collected by the Union but assigned to the States***

(1) Taxes on the sale or purchase of goods and taxes on the consignment of goods shall be levied and collected by the Government of India but shall be assigned and shall be deemed to have been assigned to the States on or after the 1st day of April, 1996 in the manner provided in clause (2).

Explanation.—For the purposes of this clause,—

(a) the expression "taxes on the sale or purchase of goods" shall mean taxes on sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce;

(b) the expression "taxes on the consignment of goods" shall mean taxes on the consignment of goods (whether the consignment is to the person making it or to any other person), where such consignment takes place in the course of inter-State trade or commerce.

* * * * *

270. ***Taxes levied and distributed between the Union and the States***

(1) All taxes and duties referred to in the Union List, except the duties and taxes referred to in articles 268, 268A and 269, respectively, surcharge on taxes and duties referred to in article 271 and any cess levied for specific purposes under any law made by Parliament shall be levied and collected by the Government of India and shall be distributed between the Union and the States in the manner provided in clause (2).

* * * * *

271. ***Surcharge on certain duties and taxes for purposes of the Union***

Notwithstanding anything in articles 269 and 270, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the Consolidated Fund of India.

* * * * *

286. ***Restrictions as to imposition of tax on the sale or purchase of goods***

(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India.

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1).

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,—

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub-clause (b), sub-clause (c) or sub-clause (d) of clause (29A) of article 366,

be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

* * * * *

PART XX

AMENDMENT OF THE CONSTITUTION

368. ***Power of Parliament to amend the Constitution and procedure therefore***

(1) * * * * *

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

(a) article 54, article 55, article 73, article 162 or article 241, or Taxes levied and distributed between the Union and the States. Surcharge on certain duties and taxes for purposes of the Union. Restrictions as to imposition of tax on the sale or purchase of goods. Power of Parliament to amend the Constitution and procedure therefore. 13

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than onehalf of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

* * * * *

SIXTH SCHEDULE

[Articles 244(2) and 275(1)]

Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram

* * * * *

8. *Powers to assess* and collect land revenue and to impose taxes.

(1) * * * * *

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

* * * * *

(c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(d) taxes for the maintenance of schools, dispensaries or roads.

* * * * *

SEVENTH SCHEDULE

(Article 246)

List I- Union List

* * * * *

84. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics,

but including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

* * * * *

92. Taxes on the sale or purchase of newspapers and on advertisements published therein.

* * * * *

92C. Taxes on services.

List II-State List

* * * * *

52. Taxes on the entry of goods into a local area for consumption, use or sale therein.

* * * * *

Powers to assess and collect land revenue and to impose taxes.

54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I.

55. Taxes on advertisements other than advertisements published in the newspapers and advertisements broadcast by radio or television.

* * * * *

62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

* * * * *

LOK SABHA

A

BILL

further to amend the Constitution of India.

(Shri Arun Jaitley, Minister of Finance)

GMGIPMRND—3824LS—18.12.2014

LOK SABHA

CORRIGENDA

to

THE CONSTITUTION (ONE HUNDRED AND TWENTY-SECOND AMENDMENT) BILL, 2014

[To be/As introduced in Lok Sabha]

1. Page 2, line 32,

for "Contitution,–"

read "Constitution,–"

2. Page 4, line 16,

for "of its recommendation."."

read "of its recommendations."."

3. Page 5, in the marginal citation against clause 18,

for "by the Council."

read "by Council."

4. Page 8, omit line 11.

NEW DELHI;

December 19, 2014
Agrahayana 28, 1936 (Saka)

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

GST BILL MOVED IN LS AMID OPPN PROTEST

In what is the biggest tax reform since Independence, the Goods and Services Tax (GST) Bill that will allow seamless transfer of goods within the country and ensure a uniform tax regime, was moved for consideration and passing in the Lok Sabha today.

A collective Opposition demanded that the Bill, which had as many as 10 changes over the one tabled in 2011, should be referred to a standing committee.

The GST subsumes various Central indirect taxes, including the Central excise duty, countervailing duty, service tax, etc. It also subsumes state value-added tax, octroi and entry tax, luxury tax, among others.

Speaker Sumitra Mahajan over-ruled the protests by the Opposition and allowed Finance Minister Arun Jaitley to initiate a discussion. The Bill will be debated next week. A war of words broke out between the Opposition and the ruling combine before Mahajan gave her ruling.

Finance Minister Arun Jaitley said it was a "win-win" measure and the states had nothing to fear. However, Congress members led by Sonia Gandhi and those of the TMC, the Left, AAP and the NCP staged a walkout after their pleas for referring the Constitution Amendment Bill to the Standing Committee was not accepted by the Speaker. The Opposition alleged that the government was 'bulldozing' and bringing the Bill in a 'hush hush' manner.

The AIADMK and the BJD also opposed its consideration and repeatedly raised objections saying the states will lose revenue. The two parties did not walk out but this indicates a tough time for the government in the Rajya Sabha as AIADMK's M Thambidurai, who is also the Deputy Speaker of the Lok Sabha, countered the finance minister saying, "Tamil Nadu will lose 16,000 crore".

The government will need the support of the AIADMK in the Rajya Sabha where it is short on numbers. Jaitley said the GST can lead to 2 per cent increase in the GDP. He praised the previous UPA regime for working on the Bill.

Congress spokesperson Abhishek Manu Singhvi slammed the government for bringing the GST Bill in haste by bypassing all procedures of parliamentary democracy, including the Bill's reference to a parliamentary Standing Committee. "This is the highest form of subterfuge. The BJP, when in the opposition, stalled the Bill conceived and piloted by the UPA government. The Gujarat Government under the then Chief Minister Narendra Modi was among the states that principally opposed the Bill. And now they want to pass the Bill in haste by not even agreeing to refer it to a standing committee. This is duplicitous and hypocritical. We support the idea of GST but not the manner in which the government is pushing it", he said.

The Bill seeks to amend the Constitution to introduce a national level GST. The issue has been festering since 2003 with opinions and counter opinions being forwarded. Being a Constitution amendment, it will have to be passed with a 2/3rd majority in both the Houses of Parliament. Once passed by Parliament, it will have to be passed by at least half the number of states.

Courtesy: The Tribune
25th April, 2015