SGA
LAW OFFICES

Issue 1
January 2016

"I like to pay taxes. With them, I buy civilization."

— Oliver Wendell Holmes Jr.

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PUNJAB

AMENDMENT IN SCHEDULE 'B' AND 'E' OF THE PVAT ACT, 2005	NO. S.O.60/P.A.8/2005/S.8/2015	14.12.2015	55

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News From Court Rooms

Petition for Special Leave to Appeal (C) .. of 2015 CC No. 19686 of 2015

(Arising out of impugned final judgment and order dated 15/7/2015 in VATAP No. 176/2013 passed by the High Court of Punjab & Haryana at Chandigarh)

M/s AB SUGARS LTD.

Versus

STATE OF PUNJAB AND ANR.

27th November, 2015

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s): Mr. Kapil Sibal, Sr. Adv.
Mr. Devashish Bharuka, Adv.
Mr. Ravi Bharuka, Adv.
Mr. Aasia Hasan, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

ORDER

Delay condoned.

Notice returnable on 22.01.2016.

Dasti service in addition, is permitted.

Learned counsel for the petitioner is permitted to serve the notice on standing counsel for the State of Punjab (Excise & Taxation department).

[Charanjeet Kaur]
A.R.-cum-P.S.

[Vinod Kulvi]
Asstt. Registrar

Karnataka HC: Assessee allowed to submit declaratory forms before Tribunal along with reasons for their non-submission earlier.

Central Sales Tax Act : Assessee failed to produce Forms 'C' and 'F' before Assessing Authority and it approached Tribunal seeking opportunity to produce declaratory forms before it. The Tribunal taking view that reasons assigned by assessee in not having produced forms before Assessing Authority were not acceptable, rejected appeal. Held, assessee was to be permitted to establish reasons assigned in not producing declaratory forms before Assessing Authority. (Laxmi Polychem India Ltd. – October 7,2015).

Gujarat HC : A.O. can't attach bank accounts for non-payment of tax dues during pendency of appeal & stay application.

Gujarat VAT - Where against orders of assessment, assessee filed appeals together with stay applications and in meanwhile Assessing Authority issued on assessee a notice of demand and on same day he passed an order under section 44 attaching bank accounts of assessee. Conduct of Assessing Authority in attaching bank accounts was not warranted, when appeals together with stay applications were pending consideration before First Appellate Authority. (Automark Industries (I) Ltd – October 17, 2015).

P & H HC : Inclusion of 'association of persons or body of individuals, whether incorporated or not' in meaning of word 'person' under Section 65B(37) of Finance Act, 1994 through the Finance Act, 2012 is constitutional. (Jaswant Sing Mann – October 6,2015)

SC : Sales to related parties to be valued on basis of sales made to unrelated parties in same period.

Central Excise : In case of sales to related parties, value has to determined based on sale price to other buyers for same period during which goods were sold by assessee to related buyers. (Dujodwala Products Ltd. – November 18, 2015).

SC : Apex Court directs tribunal to decide whether value of software meant for upgrading could be included in value of mobile phone.

Customs : Where Tribunal rendered conflicting view on 'inclusion of value of software in value of imported mobile phones', Supreme Court remanded matter for consideration of issue by larger bench of Tribunal. (Bhagyanagar Metals Ltd. – October 15, 2015).

CESTAT, New Delhi :

Service Tax : When no value of service or service tax had been realised by the appellant from the customers, appellant was entitled to adjust the service tax paid in excess if it had refunded the value of taxable service and service tax thereon from whom it was received. (Bharat Sanchar Nigam Ltd – October 8, 2015).

SC : Value of goods sold on credit basis to be reduced by interest on receivables if such interest was included into price.

Ce**ntral Excise :** Where an assessee offers cash discount for immediate payment, it is clear that interest on receivables relating to credit period offered is also inbuilt into price and therefore, assessee is entitled to deduction in respect of interest on receivables inbuilt into price. (Castrol India Ltd. – November 6, 2015).

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SUPREME COURT OF INDIA

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CIVIL APPEAL NO. 5155-5156 OF 2007

COMMISSIONER OF CENTRAL EXCISE, MYSORE
Vs
TVS MOTORS COMPANY LTD.

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

15th December, 2015

HF ▶Assessee

Pre-Delivery Inspection (PDI) Charges and After-Sale Service Charges (ASS) are not to be included in the assessable value of manufacturer which are incurred by the authorised dealer.

CENTRAL EXCISE – TRANSACTION VALUE - PRE-DELIVERY INSPECTION (PDI) CHARGES - AFTER-SALE SERVICE CHARGES (ASS) – WHETHER INCLUDIBLE IN ASSESSABLE VALUE – PDI CHARGES AND FREE ASS CHARGES ARE THE EXPENSES BORNE BY AUTHORISED DEALER OUT OF THEIR RETAILING PROFIT – NOT PART OF TRANSACTION PRICE OF THE MANUFACTURER – CIRCULAR TO THE CONTRARY STRUCK DOWN BY BOMBAY HIGH COURT – REASONING APPROVED BY SUPREME COURT – PDI CHARGES AND FREE ASS CHARGES NOT INCLUDIBLE IN ASSESSABLE VALUE UNDER SECTION 4 OF CENTRAL EXCISE ACT.

Facts

The order in original was passed framing provisional assessment fo the period from 1.7.2001 to 31.02.2002 and 1.4.2002 to 31.03.2003 holding that PDI Charges and free-ASS Charges are includible in the assessable value on the basis of circular dated 01.07.2002. Appeal filed by the assessee was accepted by the Commissioner and Revenue's appeal before CESTAT had failed. The said decision was challenged before Supreme Court and it was held-

Held

Where the manufacturer himself does the ASS and incur any expenditure thereon, the same is not deductible from the price charged by him from the buyer. Likewise, where the manufacturer has sold his goods to his dealer and wholsale dealer thereafter does ASS to the customer and incurs expenditure therefor, it cannot be added back to the sale price charged by the manufacturer from the dealer for computing the assessable value. Reliance placed upon the Board Circular dated 19.11.1997 is misplaced as the said circular was withdrawn by another circular dated 12.12.2002 after CESTAT had decided otherwise and appeals of the Department against such decisions were dismissed by Supreme Court. Moreover, the said Circular was in respect of statutory provision that prevailed prior to 2000 and a new circular dated 01.07.2002 was issued by the Board after that. However, the aforesaid clarification was struck down by High Court of Bombay in the case of Tata Motors Ltd. vs Union of India, 2012 (286) ELT 161

(Bom). The Supreme Court agreed with the enunciation of legal position stated by the High Court. The sequetur of the aforesaid discussion would be to hold that PDI Charges and free ASS charges would not be included in assessable value under section 4 of the Act for the purpose of paying excise duty.

Cases followed:

- *Maruti Udyog Limited v. CCE, Delhi-III 2004 (170) ELT 245 (Tri-Del)*
- *Maruti Suzuki India Ltd. v. CCE, New Delhi 2010 (257) ELT 226*
- *Ford Motor India Ltd. v. Secretary of State AIR 1938 PC 15 = 1978 (2) ELT (J 265) (PC)*
- *A.K. Roy v. Voltas Ltd. (1973) 3 SCC 503*
- *Philips India Ltd. v. CCE, Pune 1997 (91) ELT 540*
- *Commissioner v. Telco Ltd. 2001 (130) ELT A260 (S.C.)*
- *Union of India v. Bombay Tyre International (1984) 1 SCC 467*
- *Government of India and Ors. v. MRF Ltd. and Ors. (1995) 4 SCC 349*
- *Mahindra and Mahindra Ltd. v. Collector of Central Excise 1998 (103) ELT 606*
- *Hindustan Motors Ltd. 1998 (101) ELT 198 (T)*
- *Escorts Tractors Ltd. 1999 (078) ECR 342 (T)*
- *Tata Motors Ltd. v. Union of India 2012 (286) ELT 161 (Bom.)*

Present: For Appellant: Mr. B. Krishna Prasad, Adv.
Mr. M. P. Devanath, Adv.
Mr. Shreekant N. Terdal, Adv.

For Respondent(s): Mr. M. P. Devanath, Adv.

Mr. Jay Kishor Singh, Adv.
Mr. Arvind Kumar Sharma, Adv.
M/s. Karanjawala & Co., Adv.

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A.K. SIKRI, J.

1. The question of law which arises for consideration in all these appeals is identical, which is the following one; Whether the pre-delivery inspection charges (for short 'PDI') and after sales service charges (for short 'ASS') are to be included in the assessable value?

2. For the sake of convenience, however, we take note of the facts from the record of Civil Appeal Nos. 5155-5156/2007 wherein M/s. TVS Motors Company Ltd. (hereinafter referred to as the 'assessee') is the respondent. The assessee is holding central excise registration for the manufacturing and clearing two wheeled motor vehicles classified under Chapter Sub-Heading 8711.20 and 8711.10 of the Central Excise Tariff Act, 1985. The assessee sells their goods directly to the customers through sales depots spread throughout the country. The assessee had requested for provisional assessment with respect to the depot sales as they could not determine the normal transaction value at the time of clearance at factory gate in respect of such depot clearance. The provisional assessment was finalized for the period from 01.07.2001 to 31.03.2002 and 01.04.2002 to 31.03.2003 vide Order-in-Original No. 47 of 2004 dated 19.07.2004 and 44/2005 dated 04.05.2005. The above said Order-in-Original's included PDI charges and free ASS charges in the assessable value. The reason for doing so by the Adjudicating Authority was Circular No. 643/34/2002 dated 01.07.2002 wherein it has clarified the same to be included in the assessable value.

The assessee filed an appeal against the above cited orders before the Commissioner (Appeals), Mangalore, who, vide Order-in-Appeal No. 227/2005 CE dated 24.10.2005, disallowed inclusion of PDI charges and free ASS charges in the assessable value by relying on the Custom Excise and Service Tax Appellate Tribunal (CESTAT) decision in the case of ***Maruti Udyog Limited v. CCE, Delhi-III 2004 (170) ELT 245 (Tri-Del)*** and remanded the

case to the Adjudicating Authority to re-examine the disputed issues in the light of settled legal positions and finalise the provisional assessments accordingly.

Aggrieved by the above Order-in-Appeal, the Department filed an appeal before the CESTAT, Bangalore. The Tribunal, vide final Order Nos. 1860 & 1861/2006 dated 03.11.2006 has rejected Department's appeal and upheld the Commissioner (Appeals), Order-in-Appeal, holding that the abatement in respect of PDI charges and ASS charges is correct, by relying upon the Tribunal's decision in the case of Maruti Udyog Limited and remanded the case to the original Authority for re-computation. We may note that the Tribunal's decision in the case of Maruti Udyog Limited was questioned by the Department before this Court vide C.A. No. D 7670 of 2006, which was rejected on the ground of delay. It is under the aforesaid circumstances the Tribunal's order is challenged by way of instant appeals filed by the Department.

3. We may point out, at this stage, that some other Bench(es) of the Tribunal had taken contrary view and the matter was referred to the Larger Bench which decided the issue in the case of ***Maruti Suzuki India Ltd. v. CCE, New Delhi 2010 (257) ELT 226***. It has held that the definition of 'transaction value' would cover the free PDI as well as ASS charges. It is in this backdrop that three appeals are filed by the assessees questioning the validity of the orders passed by the Bench taking the aforesaid view.

4. Some of the essential features which needs to be pointed out are that the excise duty is payable on the 'transaction value' as per the provisions of Section 4 of the Act. The provisions of Section 4 amended in the year 2000. All these cases pertained to the period post 2000. Therefore, it is the amended provision of Section 4 which, inter alia, states that excise duty is to be paid on 'transaction value'. The definition of transaction value is given in Section 4(3)(d) of the Act. However, in order to comprehensively answer the issue, it would be necessary to traverse through the unamended provision which prevailed before the amendment in Section 4 by the Finance Act of 2000 and to then determine as to whether amended provision has resulted in altering the provision in the context of the issue raised in these appeals.

5. The counsel for the parties on either side were ad idem that PDI and ASS undertaken by Dealers and expenditure incurred by them which is not recovered or charged by the assessee from the dealers is not to be included for the purposes of excise duty. The position that the agreement between manufacturer and dealer requires dealer to undertake these activities does not affect this position. Firstly, these are legitimated usual dealer activities in the automobile industries throughout the world including India. Thus, incurring of these items of expenditure by dealer in usual business practice is not an unusual or ex-bonding/peculiar position. This was so settled, way back in the year 1938 by the Privy Council in ***Ford Motor India Ltd. v. Secretary of State AIR 1938 PC 15 = 1978 (2) ELT (J 265) (PC)***, in the case of cars itself in the context of valuation in India under Sea Customs Act. The same has been applied and followed by this Court in this very context, though pertaining prior to 01.07.2000 in ***A.K. Roy v. Voltas Ltd. (1973) 3 SCC 503*** The issue in that case was as to whether excise duty was payable on retail sale price or on wholesale cash price. In the said case, the respondent-company carried on the business of manufacturing air conditioners, water coolers and component parts thereof. It organised the sales of these articles from its head office at Bombay as also from its branch office at Calcutta, Delhi, Madras, Bangalore, Cochin and Lucknow. From these offices it effected direct sales to consumers at list prices and the sales so effected came to about 90 to 95% of its production. Apart from these sales, it also sold the articles to wholesale dealers from different parts of the country in pursuance of agreements entered into with them. The agreements provided that the dealers should sell the articles at the list prices, the respondent would sell them the articles at 22% discount over the list prices, the dealers

would not be entitled to any discount on the prices of accessories, and the dealers should give service to the units sold in their territory. The respondent's case was that the list price, after deducting the discount of 22% allowed to the wholesale dealers, would constitute the "wholesale cash price" for determining ad valorem value. This case was accepted by the excise authorities up to the end of 1962. However, thereafter Department changed its stand by taking the position that excise duty would be assessed and levied not on the footing of the 'wholesale cash price' but on the basis of retail price. Order-in-Original was passed to that effect and the appeal of the respondent-assessee was also dismissed. The Order-in-Appeal was challenged by filing writ petition in the High Court which was allowed and the judgment of the High Court was upheld by this Court while some of the discussions which was relevant for our purposes is contained in para 12 wherein the Court took note of and discussed earlier judgment of the Privy Council. We would, therefore, like to reproduce this para in its entirety:

> *"12. In Ford Motor Company of India Limited, v. Secretary of State for India in Council (AIR 1938 PC 15 : 65 IA 32 : 172 IC 771) the appellants before the Privy Council, who imported Ford Motor vehicles from Canada to India, where they had a monopoly of the supply of those vehicles, sold them only to authorised dealers or distributors, each of whom was sole agent for a retail seller of the vehicles in a particular district. The appellants obtained from the distributors information as to their future requirements and placed consolidated orders accordingly with the manufacturers in Canada. The retail price charged by the distributors to the public was that stated in a price list issued by the appellants and current at the time of the arrival of vehicles in India, and the price payable by the distributors to the appellants was the same price less a discount of 20 per cent. The distributors had to pay that price before obtaining delivery, which was given "free on rail". On arrival in India the vehicles were not completely assembled, and were so delivered to the distributors, an agreed allowance against the price being made by the appellants. On the question whether Section 30(a) or 30(b) of the Sea Customs Act, 1878, applied, for the purpose of finding out the real value of the goods for levy of customs duty, the Privy Council held that the price charged by the appellants to the distributors excluding the assembling allowance was the "wholesale cash price, less trade discount" for which the vehicles were sold "at the time and place of importation" within the meaning of Section 30(a) of that Act, the terms of which are more or less similar to those of Section 4(a) of the Act. This case is an authority for the proposition that mere existence of the agreements between the respondent and the wholesale dealers under which certain obligations were undertaken by them like service to the articles, would not render the price any the less the 'wholesale cash price'. To put it in other words, even if the articles in question were sold only to wholesale dealers on the basis of agreements and not to independent persons, that would not make the price for the sales anything other than the 'wholesale cash price'. The argument that what was relevant to determine the 'wholesale cash price' under clause (a) of Section 30 of the Sea Customs Act, 1878, was the price of goods of a like kind and quality was negatived by the Privy Council by saying that goods under assessment may, under clause (a) be considered as members of their own class even though at the time and place of importation there are no other members and that the price obtained for them may correctly represent the price obtainable for goods of a like kind and quality at the time and place of importation."*

6. Another decision which may be relevant for our purposes is the case of ***M/s. Philips India Ltd. v. CCE, Pune 1997 (91) ELT 540*** wherein advertisement expenses and free ASS

during guarantee period was provided by dealers to the product of Philips under agreement. This agreement between the appellant and their dealers are genuine agreements entered into an arms length. The assessee/manufacturer had agreed to share half of the advertisement expenses since advertisement benefited both the manufacturer as well as the dealer. The assessee/appellant had claimed deductions of the aforesaid expenditure which was held by the Adjudicating Authority as inadmissible. The decision was upheld in appeal before the Commissioner as well as the Tribunal. However, this Court reversed the view of the lower authorities holding that the assessee would be entitled to claim deduction from price realised from dealers on the aforesaid account after taking note of the relevant clauses of the Agreement between the parties from which it was found that the agreements were genuine entered into on arms length basis and were between principle to principle under which payments were in fact made. Paras 5 and 6 of this judgment are reproduced below:

> *"5. It seems to us clear that the advertisement which the dealer was required to make at its own cost benefited in equal degree the appellant and the dealer and that for this reason the cost of such advertisement was borne half and half by the appellant and the dealer. Making a deduction out of the trade discount on this account was, therefore, uncalled for.*
>
> *6. As to the after sales service that the dealer was required under the agreement to provide, it did of course enhance in the eyes of intending purchasers the value of the appellant's product, but such enhancement of value enured not only for the benefit of the appellant; it also enured for the benefit of the dealer for, by reason thereof, the dealer got to sell more and earn a larger profit. The guarantee attached to the appellant's products specified that they could be repaired during the guarantee period by the appellant's dealers anywhere in the country. Thus, though one dealer might have to repair goods sold by another dealer and incur costs in that regard, he also had the benefit of having the goods he sold reparable throughout the country. The provision as to after sales service, therefore, benefited not only the appellant; it was a provision of mutual benefit to the appellant and the dealer."*

7. Likewise, in the case of ***Commissioner v. Telco Ltd. 2001 (130) ELT A260 (S.C.)***, by brief order, this Court affirm the view of the Tribunal holding that when sale to independent dealers is at an arm's length, payment directly made by the assessee for labour ASS to additional service centres arranged by the assessee and subsequent recovery of such expenses by the assessee from the dealer, is not a case of flow back of additional consideration nor does such an arrangement make such dealer an agent of the assessee.

8. What follows from the above is that where manufacturer himself does the ASS and incurs any expenditure thereon, the same is not deductible from the price charged by him from his buyer. Likewise, where the manufacturer has sold his goods to his dealer and wholesale dealer thereafter does ASS to the customer and incurs expenditure therefore, it cannot be added back to the sale price charged by the manufacturer from the dealer for computing the assessable value. This is more so, where the ASS is done by the dealer many weeks after the goods have been sold to him by the manufacturer. Such a post-sale activity undertaken by the dealer is not relevant for the purpose of excise since the goods have already been marketed to the dealer.

9. The aforesaid decisions were followed by this Court in ***Union of India v. Bombay Tyre International (1984) 1 SCC 467*** and in the case of ***Government of India and Ors. v. MRF Ltd. and Ors. (1995) 4 SCC 349*** The aforesaid judgments were followed by the Tribunal in ***Mahindra and Mahindra Ltd. v. Collector of Central Excise 1998 (103) ELT 606*** wherein the Tribunal was considering the issue as to whether the cost of ASS rendered by the

dealers and the advertisement expenses incurred by the dealers should be included in the assessable value of the vehicles manufactured and cleared by Mahindra and Mahindra. Incidental issue as to whether PDI conducted by dealers under the terms of agreement entered into by them with Maruti Udyog should be included in the assessable value of the vehicle or not. The Tribunal rejected the contention of the Department and the aforesaid decision was upheld by this Court in the judgment reported as 1999 (111) ELT A126.

10. The position in respect of unamended provision, thus, is very clear. Coming to the amendment in Section 4 of the Act, in the year 2000, it may be noted in the first instance that definition of 'transaction value' as per Section 4(3)(d) is exhaustive and covers within its purview, the price of goods and various other amounts charged by the assessee by reason of sale or in connection with sale. This provision reads as follows:

> *"(d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."*

11. The expression 'any amount that the buyer is liable to pay to' is of significance. This expression shows that, apart from the price of the goods, the buyer should also be liable to pay an additional amount to the manufacturer/seller. In other words, the sale of the goods would not be made unless the buyer is also to pay an additional amount to the manufacturer, apart from the price of the goods. This is also supported by use of expression 'by reason or' or 'in connection with the sale' of the goods. The expression 'in connection with the sale of the goods' would only mean that but for the payment of the additional amount, the sale of the goods would not take place. When we keep in mind the aforesaid legal position, we find no error in the view taken by the Tribunal giving benefit to the assessee. Both the sides were in unison in accepting the position that no major change had been incorporated w.e.f. 01.07.2000 with emphasis on the 'different transaction value' from the 'assessable value', the essence of valuation principles had not undergone major change and the decisions delivered by this Court with regard to unamended provision on the principle of valuation were still applicable in determining the transaction value under the new provisions of Section 4 of the Act red with Central Excise Valuation (Determination of price of Excisable Goods) Rules, 2000. In fact, the Order-in-Original in ***M/s. TVS Motors Company Ltd.*** or in other cases itself proceeds on that basis.

12. Mr. Radhakrishnan, learned senior counsel appearing for the Department, attacked the decision of the Tribunal by referring to the Board's circular dated 19.11.1997 and submitted that the said circular was issued by the Board after settling the law on the issue of inclusion of ASS, expenses in the assessable value in the case of ***Bombay Tyre International***. The circular accepts the position that though the law has been settled much earlier by the aforesaid judgment rendered in the year 1984, a doubt has been raised relating to the inclusion of expenses of PDI and three initial services performed free of cost during initial usage of the vehicle by dealers in the assessable value of motor vehicle. Since these services are provided by the dealer and no separate charges for these services are paid by the manufacturer to the dealer and it is the dealer who is incurring the expenses out of the margin allowed by the manufacturer, the doubt was as to whether a portion of dealer's margin has to be included in the assessable value. The circular, thus, clarifies that going by the ratio in the case of ***Bombay Tyre***

International, ASS being part of the selling expenses will be includible in the assessable value. The Circular also clarified that subsequent judgment of this Court in ***M/s. Philips India Ltd.*** would have no bearing. As per this Circular, the said judgment is related to a case of sale of audio equipments and services are provided under a guarantee attached to the manufacturer's product that these could be repaired during the guarantee period by their dealer anywhere in the country and, therefore, was differentiated on facts. The learned senior counsel, thus, argued that the aforesaid circular amply clarifies the position and the fact situation in the present case would be covered by the judgment in ***Bombay Tyre International***.

13. We may mention that the aforesaid circular was withdrawn vide another Circular dated 12.12.2002 issued by the Board taking note of the fact that the CESTAT had decided otherwise in the case of M/s. Mahindra & Mahindra Ltd. (supra), ***M/s. Hindustan Motors Ltd. 1998 (101) ELT 198 (T)***, and ***M/s. Escorts Tractors Ltd. 1999 (078) ECR 342 (T)*** and the appeals of the Department against the aforesaid decisions of CESTAT were dismissed by this Court vide order dated 27.01.2000 which was reported as 2000 (120) ELT 290 (S.C.). Thus, while withdrawing the Circular No. 355/71/97-CX., dated 19.11.1997 and subsequent Circular No.435/1/99-CX., dated 12.01.1999, PDI and free ASS provided by the dealer of the vehicle, during the warranty period will not be included in the assessable value. Mr. Radhakrishnan, however, tried to overcome the aforesaid circular by submitting that the appeals in the aforesaid cases were dismissed by this Court on 27.01.2000 with one line order without giving any reasons. He emphasized and insisted that the issue involved in the present case is more proximate with the factual position that prevailed in ***Bombay Tyre International*** and, therefore, the same should be followed.

14. We would like to point out here that the aforesaid circular was in respect of the statutory provision that prevailed prior to 2000. There was statutory amendment carried out in the year 2000 and new valuation procedures were made effective from 01.07.2000 which led to issuance of another circular dated 01.07.2002 by the Board. Various clarifications were issued in the circular. We are concerned with point of doubt No.7 contained in that circular and the explanation thereto which makes the following reading:

7	What about the cost of **after sales service charges and pre-delivery instpection (PDI)** charges, incurred by the dealer during the warranty period?	Since these services are provided free by the dealer on behalf of the assessee, the cost towards this is included in the dealier's margin (or reimbursed to him). This is one of the considerations for sale of the goods (motor vehicles, consumer items etc.) to the dealer and will therefore be governed by Rule 6 of the Valuation Rules on the same grounds as indicated in respect of Advertisement and Publicity charges. That is, in such cases the after sales service charges and PDI charges will be included in the assessable value.

15. The aforesaid clarification, if that was to be acted upon, may go in favour of the Department. However, it is pertinent to point out that this very clarification as given by the Board was challenged in the High Court of Bombay and in the judgment rendered by the Bombay High Court in the case of ***Tata Motors Ltd. v. Union of India 2012 (286) ELT 161 (Bom.)***, the same was struck down by making following pertinent observations:

> *41. In our view, the only question which fell for consideration of this Court was whether Clause 7 of Circular dated 1st July, 2002 is in excess of the provisions of Section 4(1)(a) and 4(3)(d) of said Act as amended by Section 94 of the Finance Act of 2000. In our view, the answer to this question will decide the*

issues as between the petitioners and the respondents. In our view, it is not necessary for us to record our views on the correctness of the judgment delivered by the larger bench in the case of Maruti Suzuki (Supra). Similarly, in our view, it is not necessary to express any view on the order-in-original dated 5th December, 2011.

42. We have considered the provisions of Section 4(1)(a) as amended as well as the provisions of Section 4 as they stood prior to the amendment which came into effect from 1st July, 2000. We are in agreement with the submission advanced by learned Senior Counsel Mr. Sridharan that the provisions of Section 4 as amended are not materially different from the provisions of Section 4 as were prevailing prior to 1st July, 2000. By the amendment, a new term has been introduced by name "transaction value" and the said term transaction value has been specifically defined in Section 4(3)(d) of the said Act. The present Section 4(1)(a) r/w definition of term transaction value gives more clarity and all doubts as to how the assessable value is to be arrived at are removed. It is also noted that the various items incorporated in the term transaction value as defined in Section 4(3)(d) of said Act as forming part of value of Excisable goods are in fact the expenses/deductions specifically disallowed by the Supreme Court in Bombay Tyre International Ltd. reported in 1983 (14) ELT 1896 SC. If one closely observes the definition of the term transaction value, it uses the terminology 'servicing'. It appears that the respondents are taking the benefit of this term 'servicing' for the purpose of adding to the assessable value, the expenses incurred by the dealer towards PDI and free said services by resorting to Clause 7 of Circular dated 1st July, 2002 and Circular dated 12th December, 2002.

43. Turning to point in question, it is noticed that the definition of the transaction value in Section 4(3)(d) of the said Act is extensive and ropes in the price of the goods and other amounts charged by the assessee by the reason of sale or in connection with sale. A close reading of Section 4(3)(d) of the said Act would indicate that the term transaction value comprises of price actually paid or payable by the buyer and includes additional amount that the buyer is liable to pay or on behalf of the assessee by reason of sale or in connection of sale whether payable at the time of sale or at any other time including the amount charged for or to make provision for certain items such as advertising etc. One such item is servicing. In view of the definition of the term transaction value, it would be necessary for this Court to apply the definition of the term "transaction value" to the facts of this case and decide the matter. It is admitted by the petitioners that after a car is sold to a dealer on the terms and conditions entered into mentioned in the dealer's agreement, a dealer is required to carry out Pre Delivery Inspection as well as said services in regard to a car which is sold to a customer. From the record it is seen that a dealer is required to pay an amount to the petitioners towards the cost of the car and a dealer cannot charge more than the amount specified by the petitioners. The difference between the price so fixed by the petitioners and the price paid by the dealer constitutes what is called as dealer's margin. A dealer has to spend money to conduct PDI as well as render said services. We are inclined to accept the stand of the petitioners that the dealer is required to perform PDI as well as said services as a part of the dealer's responsibility cast on him as per the dealership agreement. The contention of the petitioners that the petitioners do not charge the dealer for the expenses incurred by the dealer towards PDI and said

services is required to be accepted. From the record it is clear that the case of the petitioners so far as the amount incurred by the dealer towards PDI and said services does not form any of the clauses viz. (a) Any amount charged for (b) Amount charged to make provision for (c) Any amount that the buyer is liable to pay to the assessee (d) Any amount that the buyer is liable to pay on behalf of the assessee. The record indicates that once a car is sold by the petitioners to the dealer at a price, the dealer is not required to pay any further amount to the petitioners on account of PDI and free after sales services/after sales services. It is clear that when the petitioners are selling the car to a dealer, price is the sole consideration and the petitioners and the dealer are not related to each other. Having complied with these requirements set out in Section 4(1)(a) of the said Act, the assessable value of the Cars will have to be treated as the one which will be the transaction value. The transaction value will have to be arrived at by taking into consideration the definition of the term transaction value appearing in Section 4(3)(d) of the said Act. The record clearly goes to show that apart from the price which is paid by the dealer to the petitioners, no amount is recovered by the petitioners from the dealer or the customer. As such, the stand of the respondents that the expenses incurred towards PDI as well as said services have to be included in the assessable value cannot be accepted. This is being observed on the ground that there is no material to show that the expenses for the pre-delivery inspection as well as after sales services are paid by the dealer to the petitioners. The dealer renders PDI and said services as a routine and legitimate activity as a dealer. It is also clear from the record and on the basis of the typical dealership agreement entered into with the dealer by the petitioners that a dealer renders PDI as well as said services on account of dealership. It is pertinent to note that the respondents have in affidavit in reply dated 29th June, 2012 admitted that the dealer carries out free PDI and after sales services at their end. It is admitted that labour cost towards PDI and said services is borne out of retailing profit. The contention of the respondents that the expenses incurred for PDI and said services must be included in the transaction value and is required to be included in the assessable value of the car is required to be negatived on the ground that the petitioners do not charge the dealer any amount equivalent to the cost incurred towards PDI and free after sales services.

44. It has been the contention of the respondents that the petitioners provide warranty in regard to the car which is sold by the dealer to the customer. According to the respondents the customer can avail of the benefit of this warranty, provided PDI is carried out in respect of the car and the customer avails of the benefit of said services. According to the respondents the warranty given by the petitioners is linked with expenses incurred towards PDI and said services and that is how the expenses incurred for PDI and said services become a part of the transaction value. We are not inclined to accept this contention. It is true that the Owner's Manual specifically indicates that if the PDI and said services are not availed of, then the customer would not be able to claim the benefit of the warranty. This will go to show that the petitioners undertake responsibilities so far as the warranty aspect is concerned provided the customer takes the benefit of PDI and said services. It has no bearing on the assessable value as it is abundantly clear that to perform PDI as well as render said services is on the dealer's obligation on account of dealership agreement and not on any other count. Once it is held that the PDI and said services are not provided by the dealer on behalf of the petitioners, it cannot be treated as

consideration for sale. It also cannot be treated as a deferred consideration. The respondents while issuing Circular dated 1st July, 2002 have wrongly referred to the Rule 6 of the said Rules and have wrongly linked the expenses incurred for PDI and said services with expenses for advertisement or publicity. It is required to be noted that the provisions of the said Rules will not be applicable to the facts of this case as the transaction between the petitioners and the dealer does not fall within the ambit of Section 4(1)(b) of the said Act. The transaction of sale of a car between the petitioners and the dealer is governed by the provisions of Section 4(1)(a) of said Act as the petitioners as assessee and the dealer as a buyer of the car are not related to each other and price is the sole consideration for the sale. In our view, reference to the Rule 6 of the Valuation Rules in Clause 7 of Circular dated 1st July, 2002 is totally misconceived. The reference made by learned Senior Counsel Mr. Sridharan to the case of Mr. A.K. Roy and Anr. Vs. Voltas Ltd. reported in 1977 (1) ELT (J-177) SC is apt. We have perused the said judgment and applying the said judgment to the facts of the present case, the respondents would be able to demand Excise duty on the amount which is charged by the petitioners to the dealer. It is to be noted that as per the record, once the car is sold by the petitioners to the dealer for a particular consideration, no other amount is payable by the dealer to the petitioners. It is required to be mentioned that the petitioners are not reimbursing any amount to the dealer towards expenses incurred for the PDI and said services and the petitioners are paying Excise duty on the entire amount for which the petitioners sale the car to the dealer. In the present case, even if it is taken that the petitioners are giving trade discount to the dealer, the petitioners are paying the Excise amount on the whole amount and not the amount which is arrived at after giving the trade discount. Learned Senior Counsel Mr. Sridharan's submission in terms of judgment in the case of Atic Industries Ltd. Vs. H.H. Dave, Assistant Controller of Central Excise and Ors. reported in 1978 (2) E.L.T. (J 444) S.C. that the price which is relevant for the purpose of Excise duty was the price when the good first entered in the stream of trade is required to be accepted. In the present case, when the petitioners sell the car to the dealer, the goods enter the stream of trade for the first time and, therefore, the amount at which the car is sold to the dealer would be the assessable value on which the Excise duty would be payable. In the present case, the expenses incurred by the dealer for PDI and said services has nothing to do with the term "servicing" mentioned in the transaction value and as such, the said expenses cannot be added to assessable value.

45. On consideration of the Clause 7 of Circular dated 1st July, 2000, it is apparent that the respondents have brought into existence a deeming provision that is to say the respondents have treated all the manufacturers of cars on one platform and by fiction taken a decision to add the expenses incurred towards PDI and said services in the assessable value. It will have to be mentioned that in all cases where the expenses incurred towards PDI and said services are solely borne by the dealer and the manufacturer like petitioners have nothing to do with the said expenses then adding those expenses in the assessable value would be contrary to the provisions of Section 4(1)(a) r/w Section 4(3)(d) of the said Act. Looking to the facts and circumstances of this case, the respondents have not been able to place on record any material to show that the amount incurred towards PDI and said services can fall within the definition of the transaction value."

We agree with the enunciation of legal position stated by the High Court.

16. We have also to keep in mind these cases pertain to the period post 2000. It is also to be borne in mind that the clarification very categorically proceeded on the basis that the services were provided free by the dealer 'on behalf of the assessee' and the same was 'during the warranty period'. The clarification given, keeping in mind the aforesaid two features, makes all the difference inasmuch in these cases, we find that the services which are provided by the dealers are on their behalf and not on behalf of the assessees. The facts disclosed that the amount which was reimbursed by the assessee to their dealers pertaining to free service was being claimed as abatement in relation to the normal transaction value. It was one of the contention of these assessees that free service charges is a post sale activities and all post sale activities continued to be excludable in determining transaction value.

17. On the other hand, we would like to refer to Circular dated 12.05.2000 which was issued contemporaneously with the amendment in Section 4. It expressly states that amount should be recovered from the buyer by the assessee-manufacturer and makes the following reading in this behalf:

> *"2.2 Definition of 'transaction value' has also been modified to make it more transparent. Any amount paid by the buyer himself or on his behalf to the assessee by reason of, or in connection with the sale, would form part of the transaction value. Any amount that is charged or recovered from the buyer on account of factors like advertising or publicity, marketing and selling organization expenses, storage and outward handling etc. will also be part of the transaction value. In fact, most of the charges that are recovered on account of the specific activities by advertising or publicity, etc. mentioned in the definition of transaction value are includable in the computation of 'value' under the existing section.*
>
> *4. As such, the definition of transaction value does not seem to be divergently wider in content and scope from the interpretation of 'value' under existing Section 4. The definition of 'transaction value' should help set at rest any doubt regarding amounts that are charged or recovered from the buyer in respect of specific kind of operations done by the assessees. In essence, whatever is recovered from the buyer by reason of, or in connection with the sale, whether payable at the time of sale or at any other time is included in the transaction value. ... (emphasis supplied)"*

18. This very position is reiterated by the Board in its circular Letter F. No. 354/81/2000-TRU dated 30.06.2000 which gives clause by clause explanation of the Section. Relevant extract from the same is reproduced herewith as under:

> *"6. ...It may also be noted that where the assessee charges an amount as price for his goods, the amount so charged and paid or payable for the goods will form the assessable value. If, however, in addition to the amount charged as price from the buyer, the assessee also recovers any other amount by reason of sale or in connection with sale, then such amount shall also form part of the transaction value for valuation and assessment purposes. Thus if assessee splits up his pricing system and charges a price for the goods and separately charges for packaging, the packaging charges will also form part of assessable value as it is a charge in connection with production and sale of the goods recovered from the buyer ...*
>
> *7. It would be seen from the definition of 'transaction value' that any amount which is paid or payable by the buyer to or on behalf of the assessee, on*

> *account of the factum of sale of goods, then such amount cannot be claimed to be not part of the transaction value. In other words, if, for example, an assessee recovers advertising charges or publicity charges from his buyers, either at the time of sale of goods or even subsequently, the assessee cannot claim that such charges are not includable in the transaction value. The law recognizes such payment to be part of the transaction value that is assessable value for those particular transactions."*

19. The sequitur of the aforesaid discussion would be to hold that PDI charges and free ASS charges would not be included in the assessable value under Section 4 of the Act for the purposes of paying excise duty. The view taken by the Tribunal in favour of assessees in this behalf is correct in law and all the appeals of the Department, i.e. C.A. Nos. 5155-5156/2007, 1763-1764/2009, 2204/2013, 2205/2013, 957-959/2014, 7854-7865/2014 and 7444/2008 are dismissed. On the other hand, Larger Bench view in ***Maruti Suzuki*** does not lay down the law correctly and is, therefore, overruled and the appeals filed by the assessees, i.e. C.A. Nos. 7007/2011, 7550/2011 and 3768-3769/2011 are allowed.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 14975 OF 2015

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SATISH AGGARWAL & CO.
Vs
STATE OF PUNJAB AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

14th December, 2015

HF ▶ None

The petitioner is directed to file a detailed representation towards acceptance of lower deduction of tax at source by department.

TAX DEDUCTION AT SOURCE - LOWER RATE OF TAX – DECLARATION FILED FOR ACCEPTING A LOWER DEDUCTION OF TAX AT SOURCE BY PETITIONER – DENIAL OF – WRIT FILED IN THIS REGARD – PLEAS TAKEN IN WRIT PETITION ABSENT IN APPLICATION FILED WITH DEPARTMENT EARLIER – PETITIONER DIRECTED TO FILE A DETAILED REPRESENTATION – DEPARTMENT TO DECIDE AFTER HEARING PETITIONER – *S.27 OF PVAT ACT,2005*.

Facts
The petitioner has submitted a declaration with the respondent department for accepting a lower deduction of tax at source. The department has however, controverted the averments made. A writ is filed for issuance of direction to the department for the same.

Held:
As observed, the pleas taken in this writ petition have not been taken before concerned authorities. Therefore, the petitioner is permitted to file a detailed and comprehensive representation along with all documents within a period of 15 days from date of receipt of order. The authorities shall decide the same within a period of next one month after hearing the petitioner.

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

Mr. Jagmohan Bansal, Addl. AG, Punjab.

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AJAY KUMAR MITTAL, J.

1. The prayer made in this writ petition filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of *Mandamus*, directing the respondents to accept the declaration submitted by the petitioner to be sufficient for lower deduction of tax at source. It has further been prayed that respondent No.3 be directed to deduct tax at source @ 2% only.

2. After issuance of notice of motion, reply has been filed on behalf of respondents No.1 to 3, controverting the averments made in the writ petition.

3. A perusal of the writ petition more particularly Annexure P-1, dated 18th May, 2015, which is an application submitted by the petitioner for lower deduction of tax at source shows that all the pleas as sought to be taken in this writ petition had not been taken before the concerned authorities. In such a situation, while disposing of the present writ petition, we permit the petitioner to file a detailed and comprehensive representation along with all the relevant and supporting documents within a period of 15 days from the date of receipt of certified copy of this order. It is further observed that in case such representation is filed by the petitioner, the same shall be decided by the respondents within next one month after giving an opportunity of hearing to the petitioner and by passing a speaking order discussing all the arguments raised by the petitioner therein, in accordance with law.

4. Needless to say, the respondents shall not be influenced by any observations made in the order dated 26th August, 2015 (Annexure R-1), while passing the fresh order.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 8149 OF 2015

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NIAGARA METALS INDIA LTD.
Vs
UNION OF INDIA AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

15th December, 2015

HF ▶ None

Petitioner is relegated to avail alternative remedy instead of invoking writ jurisdiction.

WRIT- ALTERNATIVE REMEDY – EXCISE DUTY – ORDER PASSED BY COMMISSIONER RAISING A DEMAND – WRIT FILED – ORDER CONTENDED TO BE APPEALABLE – CONSEQUENTLY, PETITIONER RELEGATED TO FILE APPEAL BEFORE APPELLATE AUTHORITY – WRIT PETITION DISPOSED OF – *A. 226 AND A.227 OF CONSTITUTION OF INDIA*

Facts
A demand of 38.86 crores was raised and an equal amount of penalty was confirmed by the Commissioner of central excise, Ludhiana. A writ is filed against the order.

Held
The order being appealable, the petitioner is relegated to avail alternative remedy by filing appeal before appellate authority instead of invoking writ jurisdiction.

Present: Mr. Jagmohan Bansal, Advocate for the petitioner (s).
None for respondent No. 1.
Mr. Kamal Sehgal, Advocate for respondent No. 2.
Mr. Arastu Chopra, Advocate for
Mr. Vikram Jain, Advocate respondent No. 3.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of CWP Nos. 8149 and 10528 of 2015 as learned counsel for the parties are agreed that the issue involved in both the petitions is identical. However, the facts are being taken from CWP No. 8149 of 2015.

2. In this petition (CWP No. 8149 of 2015) filed under Articles 226 and 227 of the Constitution of India, challenge is to the order-in-original dated 25.02.2015 (Annexure P-12) passed by respondent No. 2- Commissioner of Central Excise, Ludhiana, whereby the demand of Rs. 36.86 crores along with equal amount of penalty was confirmed. Further prayer has also been made for issuance of a writ of mandamus directing respondent No. 3-Development

Commissioner, Noida Special Economic Zone, Noida, to adjudicate show cause notice dated 05.04.2013 (Annexure P-2).

3. Learned counsel for respondent No.3 submitted that in pursuance to the show cause notice dated 05.04.2013 (Annexure P-2), an order has been passed by respondent No. 3 on 22.09.2015, which is an appealable order and if the petitioner is aggrieved by the said order, then it may file an appeal before the Appellate Authority. Learned counsel for the petitioner submitted that the petitioner has no grievance against the said order.

4. Learned counsel for respondent No. 2 submitted that the order under challenge dated 25.02.2015 (Annexure P-12) passed by respondent No. 2 is also an appealable order and this fact has not been disputed by learned counsel for the petitioner.

5. In view of the above, while relegating the petitioner(s) to challenge the order-in-original dated 25.02.2015 (Annexure P-12) passed by respondent No. 2 by filing an appeal, it is observed that in case, such an appeal is filed by the petitioner before the Appellate Authority within a period of 30 days from the date of receipt of certified copy of this order, the same shall not be dismissed on the ground of limitation and shall be decided on merits, in accordance with law.

6. The instant petition stands disposed of accordingly.

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PUNJAB & HARYANA HIGH COURT

CRIMINAL MISC. NO. 32237 OF 2015

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ASHOK TIWARI
Vs
STATE OF PUNJAB

JUSTICE INDERJIT SINGH

11th December, 2015

HF ▶ Revenue

Anticipatory bail denied in view of necessity of custodial interrogation to recover forged bills and documents.

ANTICIPATORY BAIL –FORGERY – FIR REGISTERED FOR FORGERY OF BILL BOOKS AND FRAUDULENTLY OBTAINING SIGNED CHEQUES UNDER PRETEXT OF GETTING LOAN TO THE COMPLAINANT FIRM – SALES SHOWN AND RETURNS FILED BY THE ACCUSED ON BEHALF OF COMPLAINANT'S FIRM THOUGH UNAUTHORIZED – NO TAX DEPOSITED WITH DEPARTMENT DESPITE RECOVERING IT FROM DIFFERENT FIRMS – CONSEQUENT LOSS CAUSED TO COMPLAINANT FIRM – ANTICIPATORY BAIL SOUGHT BY ACCUSED – PETITION DISMISSED IN VIEW OF REQUIREMENT OF CUSTODIAL INTERROGATION FOR RECOVERY OF FORGED BILLS AND OTHER DOCUMENTS – *S. 438 OF CR.P.C. AND S. 420 OF IPC*

Facts

FIR had been lodged against the petitioner in this case wherein the complainant had stated that the petitioner had unsurped thousands of rupees in connivance with two other people by fraudulently obtaining signed cheques and documents and getting printed forged bill books. It had issued forged bills on behalf of the complainant firm and unauthorized filing of Vat returns though he was never authorized to do so. It had shown sales of crores of rupees. No tax is deposited by the accused with the department which was recovered from different firms. However, the petitioner – accused has filed this petition seeking anticipatory bail.

Held:

The State counsel states that custodial interrogation of the accused petitioner is necessary as the forged bills and other documents are to be recovered from him. Therefore, it is not a fit case where anticipatory bail can be granted. The petition is, thus, dismissed.

Present: Mr. Gautam Dutt, Advocate for the petitioner.
Ms. Simsi Dhir Malhotra, Deputy Advocate General, Punjab
for the respondent-State.
Mr. Bikram Chaudhary, Advocate for the complainant.

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INDERJIT SINGH, J.

1. The petitioner has filed this petition under Section 438 Cr.P.C. for grant of anticipatory bail in case FIR No.255 dated 16.7.2015 registered for the offences under Sections 420, 465, 467, 471 and 120-B IPC at Police Station Jodhewal, Ludhiana, District Ludhiana.

2. Notice of motion has been issued in this case.

3. Ms. Simsi Dhir Malhotra, learned Deputy Advocate General, Punjab has put in appearance on behalf of the respondent-State and Mr. Bikram Chaudhary, learned Advocate has appeared on behalf of the complainant and contested this bail petition.

4. I have heard learned counsel for the petitioner as well as learned Deputy Advocate General, Punjab appearing for the respondent- State and learned Advocate for the complainant and have gone through the record.

5. The FIR in the present case has been registered by Surinder Sharma-complainant against the present petitioner/accused. The allegations in the FIR are that Ashok Tiwari along with Abhishek Pandey and Bank Officer in connivance with each other usurped thousands of rupees of the complainant fraudulently for obtaining signed cheques and documents and getting printed forged bill books and printing of bill books of the firm of the complainant and issued forged bills on behalf of the firm of the complainant and unauthorized filing of VAT returns and caused loss to the complainant from Government organization and threatening to kill. It is stated that the complainant was running hosiery business, namely, M/s Style Enterprises as a proprietor and he used to pay sales tax and VAT etc. The above named accused persons were known to him for quite some time and in the month of October 2012 above named accused came to him and discussion started regarding demand of money, the above accused asked him that if he needs loan for his business then they could arrange loan at cheap rate of interest as they knew a lot of Bank Managers. He agreed to borrow loan and in view of getting him loan they obtained his signatures on some blank documents and also arranged a meeting with one person as Senior Officer of IndusInd Bank and asked him to pay him Rs.50,000/-. They opened his bank account at their own and he only appended his signatures. They also took blank letter pads of his firm and also took over a cheque book from him after getting his signatures, on the pretext that the same was required for installments of the Bank and assured him that a loan of Rs.25 Lacs shall be passed with few days. In the FIR, it is also alleged that the complainant came to know that they have got printed forged bill book in the name of his firm by mentioning wrong address and by getting the number of Ashok Tiwari printed upon it and issued forged bills to different parties and had shown the sale of around Rs.25 to Rs.30 crores and also filed VAT return on behalf of his firm wherein Ashok Tiwari has shown himself as authorized signatory, whereas, he never authorized him with regard to his firm, nor he was informed regarding issuing of bill book, issuing of bills or to deal with any Bank or any other department. It is stated that the above named persons committed fraud worth crores of rupees with him as well as with the Government. It is also stated that quarterly returns for the financial year 2012-13 with Sales Tax Department had been filed showing the sale of Rs.18,67,13,109/- and in the fourth quarterly return for the financial year 2012-13 sale of Rs.8,20,84,906/- was shown. It is also allegation in the FIR that the accused has not deposited with the Sales Tax Department Rs.1,62,58,278/- which was recovered from different firms.

6. At the time of arguments, learned counsel for the complainant as well as learned State counsel contested the bail petition. It is also stated by the complainant that he moved an application on 12.6.2013 regarding which the inquiry was got conducted by the State Government and then the FIR was registered. The leaned State counsel also stated that during investigation, inquiries have been conducted by the Sales Tax Department Income-tax Department etc. The learned State counsel states that the custodial interrogation of the present

petitioner is necessary in this case as the forged bills and other documents are to be recovered from him.

7. Keeping in view the nature and gravity of the offences and the fact that the present petitioner is required for custodial interrogation, I do not find it a fit case where the petitioner is entitled to the benefit of anticipatory bail.

8. Therefore, finding no merit in this petition, the same is dismissed.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 66 of 2009

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KAPURTHALA BELTINGS
Vs
STATE OF PUNJAB & OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

24th September, 2015

HF ▶ Revenue

Export Oriented Unit has to export a minimum 25% of products produced in order to avail exemption.

EXEMPTION – EXEMPTED UNIT – EXPORT ORIENTED UNIT – EXEMPTION CERTIFICATE GRANTED INITIALLY FOR A PERIOD OF TEN YEARS – EXPORT MUCH LESS THAN 25% OF THE MINIMUM PRODUCTS PRODUCED – EXEMPTION GRANTED CANCELLED FOR FAILURE TO FULFILL QUALIFYING REQUIREMENT TO BE EOU - CONTENTION RAISED THAT SUCH REQUIREMENT REGARDING 25% EXPORT IS NOT MANDATORY TO AVAIL EXEMPTION – AS PER DEFINITION AND RULES, 25% EXPORT OF THE PRODUCTION IS COMPULSORY – NO ILLEGALITY FOUND IN FINDINGS RECORDED BY AUTHORITIES BELOW -APPEAL DISMISSED – *RULE 8(1)(vi) AND RULE 2(xi-a) OF PGST (D&E) RULES, 1991*

EXEMPTION – EXEMPTED UNIT – EXEMPTION CERTIFICATE – EXEMPTION CERTIFICATE GRANTED EXEMPTING PAYMENT OF SALES TAX FOR SPECIFIED PERIOD– BUSINESS PREMISES INSPECTED – SALE INVOICES REFLECTED SALES TAX COLLECTED FROM CUSTOMERS – EXEMPTION CERTIFICATE CANCELLED FOR FAILURE TO DEPOSIT THE SALES TAX WITH GOVERNMENT - CONTENTION RAISED THAT ONLY 'HANDLING CHARGES' COLLECTED – ARGUMENT NOT FOUND CONVINCING – 'HANDLING CHARGES' NOT MENTIONED ON SALE INVOICES –ADMISSION BY APPELLANT BEFORE ASSESSING AUTHORITY REGARDING CHARGING OF SALES TAX TAKEN INTO ACCOUNT – NO PERVERSITY FOUND IN FINDINGS RECORDED BY AUTHORITIES BELOW – APPEAL DISMISSED – *S. 10(4) AND 30-A OF PGST ACT.*

Facts

The appellant was granted a certificate of exemption as an Export Oriented Unit for exemption of payment of sales tax for a period from 2000 to 2010. However, a notice was issued for cancellation of the same in view of violation of S.10(4) and 30-A of PGST Act as it was alleged that the appellant had collected sales tax from its customers in shape of handling charges. Consequently, the exemption certificate was cancelled. It was also alleged that the appellant had failed to export 25% of its products and thereby did not qualify the minimum requirement of law as (EOU) under Rule 2 (xi-a) of the Rules. On dismissal of appeals, an appeal is being filed before the High court.

Held

It is held that the appellant did not export the minimum quantity of 25% of its products as required compulsorily under law. It has been categorically recorded by the assessing authority that the appellant exported nothing out of India.

It was noticed in sale invoices that sales tax had been charged. Full amount of goods including sales tax was charged from customers as seen in accounts of each customer. The sales tax so collected was not deposited with the government. There was no mentioning of the 'handling charges' on the sale invoices or in sale books. Even otherwise it was admitted before the assessing authority regarding receipt of sales tax from its customers. In view of the findings recorded by assessing authority which have been upheld by the DETC and Tribunal and no perversity being shown in them, the appeal is dismissed.

Present: Mr. Aman Bansal, Advocate for the appellant.
Mr. Piyush Kant Jain, Addl. A.G., Punjab.

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RAMENDRA JAIN, J.

1. This order shall dispose of VATAP Nos.66 and 67 of 2009 as according to the learned counsel for the parties, common issues arise in both the appeals. However, the facts are being extracted from VATAP No. 66 of 2009.

2. VATAP No.66 of 2009 has been preferred by the appellant- assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the Act") against the order dated 6.2.2009, Annexure A-8 passed by the Punjab Value Added Tax Tribunal, Chandigarh (in short, "the Tribunal"), claiming following substantial questions of law:-

"i) Whether in the facts and circumstances of the case, the learned Tribunal is justified in law in upholding the cancellation of exemption certificate dated 20.4.1998 (Annexure A.2)?

ii) Whether in the facts and circumstances of the case, the learned Tribunal is justified in sustaining the cancellation of exemption certificate (Annexure A.2) by holding that there had been violation of Rule 2(xi- a) of the Exemption Rules which is a definition clause?

iii) Whether the learned Tribunal could sustain the cancellation of the exemption certificate (Annexure A.2) without finding violation of a particular provision of the Act or the Rules made thereunder, casting an obligation upon the appellant to export 25% of the production in order to achieve the status of 'Export Oriented unit'?

iv) Whether in the facts and circumstances of the case, Rule 8(1) (vi) has been rightly invoked?

iv) Whether the learned Tribunal is justified in holding that the appellant has violated the provisions of Rule 2 (xi-a) of the Exemption Rules when respondent No.3, the first appellate authority had not recorded any finding on this issue?"

3. A few facts relevant for the decision of the controversy involved as narrated in VATAP No.66 of 2009 may be noticed. The appellant established a unit at village Dhawankha Jagir, Jalandhar Road, Kapurthala to manufacture the Rubber/Leather Nylon Sandwich Beltings and other transmission beltings in the financial year 1989-90 and got it registered as a

'dealer' under the provisions of erstwhile Punjab General Sales Tax Act, 1948 (for short, 'PGST Act') and also under the Central Sales Tax Act, 1956 (hereinafter referred to as 'the CST Act') vide registration No. 25334411. Thereafter, Punjab Value Added Tax Act, 2005 (for short, 'the VAT Act') came into being with effect from 01.04.2005. The appellant continued to be registered as a taxable person under TIN No.03651090024 and used to regularly file its quarterly returns under the PGST Act as well as CST Act. In the year 2000, on expansion of production capacity, the appellant applied for the grant of incentive of sales tax exemption, whereupon, General Manager, District Kapurthala issued eligibility certificate No. 537 dated 30.01.2001 (Annexure A-1) authorizing it to take incentive of sales tax exemption for a period of ten years or for the maximum amount of Rs. 45,71,000/- with effect from 30.09.2000 to 29.09.2010. Pursuant thereto, the Assistant Excise and Taxation Commissioner, Kapurthala also issued exemption certificate No. 123/2001- 02 dated 23.01.2002 (Annexure A-2) (on expansion basis) to the appellant as an Export Oriented Unit (EOU). Accordingly, the appellant was exempted from payment of sales tax for the period 30.09.2000 to 29.09.2010 subject to the maximum limit of Rs.45,71,000/-. On the inspection of the business premises by the Taxing Authorities, certain books of account, sale invoices pertaining to the year 2000-01 and 2001-02 were taken into possession. Accordingly, respondent No.4-Assistant Excise and Taxation Officer-cum-Assessing Authority, Kapurthala, issued notice dated 12.09.2002 under Rule 8 of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 (for short, 'the Rules') to explain as to why its exemption certificate should not be cancelled for illegally collecting sales tax of Rs.4,41,658/- from its customers in the shape of handling charges in violation of the provisions of Sections 10(4) and 30-A of the PGST Act. The appellant contested the notice, taking the plea that the aforesaid amount of Rs.4,41,658/- was charged as "handling charges" and not "sales tax" from its customers. However, the above plea of the appellant could not convince respondent No.4 and resultantly, vide order dated 14.11.2002 (Annexure A3), he cancelled the exemption certificates under Rule 8(1) (vi) of the Rules for violating the provisions of Rule 2(xi-a) and under section 10(4) read with section 30-A of the PGST Act. It was also held that the appellant failed to export at least 25% of its products in the markets outside India during the aforesaid period 2000-01 and 2001-02 and, therefore, did not fulfill the minimum qualifying requirement of law as "Expert Oriented Unit" defined under Rule 2(xi-a) of the Rules. Aggrieved by the aforesaid order dated 14.11.2002 (Annexure A-3), the appellant filed appeal before the Deputy Excise and Taxation Commissioner (Appeals), Jalandhar Division, Jalandhar who remanded the case back to respondent No.4 with a direction to pass afresh order after considering the reply of the appellant vide order dated 23.05.2003 (Annexure A-4). After giving an opportunity of hearing to the appellant, respondent No.4 did not differ with his findings given in order dated 14.11.2002 (Annexure A-3) and cancelled the exemption certificate granted to the appellant vide order dated 30.08.2005 (Annexure A-5). Aggrieved by the aforesaid order dated 30.8.2005 (Annexure A-5), the appellants preferred two separate appeals under Section 20(1)(a) of the PGST Act before respondent No.3, which were dismissed vide order dated 17.10.2006 (Annexure A-6). Being dissatisfied, the appellants approached the Punjab Value Added Tax Tribunal, Chandigarh (hereinafter referred to as 'the Tribunal') by way of filing its appeals, but remained unsuccessful. Hence the instant appeals by the appellant-assessee.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellant submitted that the authorities below misconstrued the definition of 'Export Oriented Unit' given under Rule 2 clause (xi-a) of the Rules, which nowhere provides that the appellant was legally bound to export 25% of its production to claim exemption under Rule 8(1)(vi) of the Rules. Hence, non-achieving the status of 'Export Oriented Unit' as defined in Rule 2(xi-a) of the Rules did not lead to violation of any of the provision of the Act or the Rules made thereunder so as to clothe the respondents with

jurisdiction to cancel/sustain the cancellation of the exemption certificate. It was further submitted that the authorities below had erred in holding that the appellant under the garb of "handling charges" was unauthorizedly charging "sales tax" from its customers against "C" Form and "STXXII" Form on the sale invoices in violation of PGST Act/Rules. Even otherwise, the Department of Industries, Punjab had never recommended the cancellation of exemption certificate of the appellant, therefore, the same was wrongly cancelled by the respondent- authorities.

6. On the other hand, learned State counsel while refuting the above arguments of learned counsel for the appellant prayed for dismissal of the appeals.

7. We have given our considerable thoughts to the rival submissions made by learned counsel for the parties.

8. The twin issues that arise for consideration in these appeals are:-

(i) Whether the authorities below erred in cancelling the exemption certificate granted to the petitioner being Export Oriented Unit?

(ii) Whether the appellant had charged only handling charges from its customers?

9. Before dealing with the arguments, it is necessary to reproduce the definition of 'Export Oriented Unit' given in Rule 2(xi-a) of the Rules which reads thus:-

"Rule 2 (i) to (x) XXX XXX XXX

(xi-a) 'Export oriented unit' *means an industrial unit exporting at least twenty-five per cent of its products in markets outside India with minimum value addition of thirty-three per cent against direct receipt of foreign exchange or through merchant exporters including the Punjab Small Industries and Export Corporation or any other trading house registered as such with the Department of Industries, Punjab "*

10. A perusal of the above provisions shows that export of at least 25% of the production by an `Export Oriented Unit' at the markets outside India is compulsory. It has been categorically recorded by the assessing authority that in the assessment years 2000-01 and 2001-02, the appellant exported nothing outside India. In the assessment year 2001-02, the appellant exported only 1.68% of its products in the markets outside India. Further, after going through the said sale invoices and agreement, it was noticed by the assessing authority that the appellant had charged sales tax in the sale vouchers and also posted the same in the sale book under the respective heads i.e. "PST" (Punjab Sales Tax) and "CST" (Central Sales Tax) as the case may be. The Assessing Authority also found that the appellant had neither charged or recovered any handling charges from the customers nor mentioned the same in the sale vouchers. Only in some bills "forwarding and postage" was charged which were posted accordingly. These entries of sale prices including the sale tax element were then posted in the accounts of each customer and, thus, the full amount of goods including the sale tax was collected from the customers. However, sale tax collected from the customers was not deposited by the appellant into Government Treasury in violation of the provisions of Sections 10(4) and 30-A of the PGST Act. To clarify the above fact, the Assessing Authority even mentioned the details of 14 sale vouchers in his order. The above said sale vouchers were never disputed by the appellant. The stand of the appellant that it had only charged "handling charges" from its customers was disbelieved by the Assessing Authority after confronting the appellant with its own ledger page No. 39 of M/s. Kapurthala Hi-Tech Transbelt Private Limited (appellant in VATAP No. 67 of 2009) sister concern of M/s. Kapurthala Beltings (appellant in VATAP No. 66 of 2009) wherein the entries of "CST" of Rs.4,03,657.49 Paise

(Form J-236 Page) and "PST" Rs.36,800.92 Paise and "PDT" Rs.56.38 Paise were transferred to Trading Account totaling Rs.4,40,514.79 Paise as on 31.03.2001. The stand of the appellant that the said entries were wrongly made was not found to be genuine as it could not give any satisfactory reply. The appellant was also disbelieved, because of not mentioning of charging of "handling charges" on the sale invoice/bills or in the sale books. Even otherwise the appellant had admitted before the Assessing Authority that the amount received from the customers included sales tax. Thus, it was rightly held by the Assessing Authority that the appellant had violated the provisions of the rules and accordingly, was not entitled to any exemption under Rule 8(2) of the Rules. The relevant findings recorded by the Assessing Officer relating to charging of sales tax read thus:-

> *"Here, in this case the dealer was granted exemption certificate No.123/2000-2001 dated 23.1.2002 to avail sales tax exemption of Rs. 45,71,000/- for the period from 30.9.2000 to 29.9.2010 as one of the incentives. But the dealer intentionally by violating the provisions of law planned and decided to charge and collect sales tax under the Act and the Central Act from his customers and retained the same with him for illegal and fraudulent enrichment, with this scheme in mind he did not mention on the sale invoices/bills that his unit was exempt from payment of sales tax so that his customers could never know that their seller (this dealer) was exempt from payment of tax and could not charge and collect sales tax from them. The photo copies of some sale invoices are placed on the file. With this mode, he has been successful in charging and collecting tax from his customers. This is proved from the inter-state sale order dated 1.6.1998 of M/s Sameswar Enterprises, Coimbatore in case of sister concern - M/s Kapurthala Hi-Tech Transbelt (P) Limited, wherein provision for charging 4% CST against 'C form is agreed upon. Copy of this agreement is available on record. Similar orders are booked by the other dealer also.*
>
> *The dealer has charged sales tax under the Act and the Central Act in the sale vouchers and posted them in sale book under the respective heads "PST" (Means Punjab sales Tax) and "CST" (Central Sales Tax) as the case may be. In respect of every bill separate entry has been made in the sale book. The dealer neither charged nor recovered any handling charges from the customers and has not mentioned this fact anywhere in sale vouchers or sale book. Only in some bills "forwarding and postage" is charged which is posted accordingly in sale book in an independent column. The entries of sale prices including the sale tax element are then posted in the account of each customer and thus the full amount of sale price of goods including sale tax is collected from the customers. The amount of sales tax charged and collected Rs.12,504/- and Rs.4,29,155/- under the Act and the Central Act respectively during the year 2001-02 from the customers which has not been paid by the dealer into the Govt. treasury was confronted to the dealer.*
>
> *xx xx xx xx xx xx xx xx*
>
> *After going through the record carefully i.e. sale vouchers, account books and other relevant record, I find that the dealer has charged tax and pocketed it but he was not authorized to do so. Moreover the requirements mentioned for availing exemption being an EOU have not been fulfilled by him as such he has contravened the provisions of the Punjab Deferment and Exemption Rules 1991. In view of the above mentioned facts, the exemption certificate granted under the Punjab Exemption and Deferment Rules, 1991 is hereby cancelled."*

12. The Deputy Excise and Taxation Commissioner (Appeals) upheld the findings recorded by the Assessing Officer. On further appeal by the assessee, the Tribunal concurred with the findings recorded by the authorities below. The Tribunal recorded that the appellants were not 'Export Oriented Unit' with the following observations:-

> *"Rule 8(1) provides for cancellation of Deferment and Exemption Certificate. As per clause (vi) of this rule, the (Exemption and Deferment) certificate was liable to be cancelled if any of the provisions of the Act were violated.*
>
> *Counsel for the appellant argued that the exemption certificate had been wrongly cancelled and appellant had not violated any rule. However, percentage of export out of India of its product was found to be 0% during last two quarters of 2000-01, 1.68% during the year 2001-02 and 0% in the first and second quarter of 2002-03. Counsel for the appellant had fairly conceded that the appellant has not been able to meet out the requirement of exports of 25% of its products in the market outside India till this date and may not be able to do so till even 29.9.2010, when the validity of the exemption certificate would otherwise expire.*
>
> *When appellant has throughout been unable to comply with requirement to come within the definition of Export Oriented Unit as given in Rule 2 clause (xi-a) of Punjab General Sales Tax (D&E) Rules and even may not be able to meet the targets at all then there is violation of provisions of Rule 8(1) Clause (vi) of Punjab General Sales Tax (D&E) Rules, 1991.*
>
> *Under these circumstances, the exemption certificate was liable to be cancelled, on this very score. As such, there is no merit in this appeal. The same is accordingly, dismissed."*

11. Both the issues have rightly been concluded against the appellant. Learned counsel for the appellant has not been able to show any illegality or perversity in the findings recorded by the authorities below warranting interference by this Court. Thus, questions of law as claimed are answered against the appellants in these appeals. Consequently, both the appeals stand dismissed.

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PUNJAB & HARYANA HIGH COURT

VATAP 76 OF 2014

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SANTOSH PARGAL & CO.
Vs
STATE OF HARYANA

A.K. MITTAL AND SHEKHAR DHAWAN, JJ.

17th August, 2015

HF ▶ Assessee

Order passed by Tribunal based on its earlier decision in another case is set aside on appellant's plea regarding difference in issues involved in both cases.

APPEAL - JOB WORK OF PROCESSING RAW LEATHER INTO FINISHED LEATHER DONE BY APPELLANT – TAX LEVIED ON MATERIAL CONSUMED IN JOB WORK – APPEAL BEFORE TRIBUNAL DISPOSED OF FOLLOWING ITS DECISION IN AN EARLIER CASE RELATED TO TEXTILE INDUSTRY WHEREIN TEXTILE CLOTH WAS SUBJECT TO EXCISE DUTY – APPEAL BEFORE HIGH COURT CONTENDING THAT CASE SO FOLLOWED BY TRIBUNAL BEING DIFFERENT NOT TO APPLY IN PRESENT CASE– CONTENTION RAISED NOT CONTROVERTED BY STATE – MATTER THUS REMANDED TO TRIBUNAL TO DECIDE AFRESH AFTER HEARING BOTH PARTIES – APPEAL DISPOSED OF

Facts

The appellant is engaged in job work of processing wet blue leather to finished leather supplied by the exporters for processing by the appellant company. The assessing authority levied tax and interest on the material consumed in the job work. On appeal before Tribunal, the order was passed against the appellant by following an earlier case related to textile industry wherein the question was as to whether tax could be levied on cloth which was subjected to excise duty. On appeal before high court, it is contended by appellant that in present case no excise duty is leviable. The issue is as to how much chemical was transferred in processing of hides and skin as no chemical gets attached to leather. The present case has been wrongly disposed of by Tribunal following its earlier decision in the case of Northern India Textile Processors Association.

Held

That the State has not been able to controvert that the issue involved in the present case and in the earlier case are different. The matter is remanded to Tribunal to decide afresh after hearing both the parties.

Case referred:

- *Northern India Textile Processors Association, Faridabad vs. State of Haryana, STA No. 180 of 2005-06*

Present: Mr. Avneesh Jhingan, Advocate for the appellant.
Ms. Mamta Singla Talwar, DAG, Haryana.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of VAT Appeal Nos. 76 and 77 of 2014 as learned counsel for the parties are agreed that the issue involved in both the appeals is identical. However, the facts are being extracted from VAT Appeal No.76 of 2014.

2. VAT Appeal No.76 of 2014 has been preferred by the assessee- appellant under Section 36 of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated 28.2.2013, Annexure A.4 passed by the Haryana Tax Tribunal at Chandigarh (in short, "the Tribunal") in STA No.892 of 2010-11 dated 28.2.2013, claiming following substantial questions of law:-

i) *Whether in the facts and circumstances of the case, the disposal of appeal by the Tribunal in terms of its earlier order in which the issue involved was distinct is sustainable in law?*

ii) *Whether in the facts and circumstances of the case, the present appeal could have been disposed of in lieu of the decision of STA 180 of 2005-06 inspite of the fact that no additional excise duty is leviable in the present case?*

iii) *Whether in the facts and circumstances of the case, the chemicals, detergents, bleaches etc. can be taxed when there is no passing of such property in job work?*

iv) *Whether in the facts and circumstances of the case, on entire value of the dyes and chemicals, tax can be levied, when part of them is transferred to the customers alongwith the leather?*

v) *Whether in the facts and circumstances of the case, the charging of interest in the case in hand is legal especially when the position regarding taxability itself is fluid?*

3. A few facts relevant for the decision of the controversy involved as narrated in VAT Appeal No.76 of 2014 may be noticed. The appellant is a partnership firm. It is carrying out business of tannery at Murthal, District Sonepat. i.e. processing of wet blue leather sheep/goat skin to finished leather used for leather garments, goods and shoes for export. It is mainly doing job work in which wet blue leather is supplied by the exporter for processing into finished leather. It uses chemicals, fat liquors, dyes, syntans, sodium bicarbonate etc. for cleaning, washing and drying the leather. It is registered under the HVAT Act and Central Sales Tax Act, 1956 (in short, "the CST Act"). The Assessing authority while framing assessment for the assessment year 2006-07 levied tax and charged interest on the material consumed in the job work and additional demand of Rs.1,72,332/- was created under the HVAT Act and Rs.7,81,665/- under the CST Act. Aggrieved by the order, the appeals were filed before the first appellate authority by the assessees in both the cases. Vide order dated 4.1.2011, Annexure A.2, the appeals were dismissed. The assessees went in appeals before the Tribunal. Vide order dated 28.2.2013, Annexure A.4, the Tribunal disposed of the appeals in terms of its earlier decision dated 10.9.2012 in STA No. 180 of 2005-06 (***M/s Northern India Textile Processors Association, Faridabad vs. State of Haryana***). In that case, challenge was made to clarification dated 14.1.2005 issued by the Government of Haryana. In the said case, gray cloth was washed, bleached, dyed and printed on job work basis. Since additional excise duty was payable on textile and cloth remained cloth earlier and after the job work, no tax

could be charged because of levy of additional excise duty. The Government rejected the claim of the dealers. The Tribunal upheld the clarification and taxability of the material consumed in the job work inspite of the fact that additional excise duty was leviable on textile. In the present case, according to the appellant, it is processing leather and not textile. No additional excise duty was thus leviable. The issue involved herein was not the same as in ***M/s Northern India Textile Processors Association's*** case (supra). Hence the instant appeals by the assessee-appellants.

4. We have heard learned counsel for the parties.

5. Learned counsel for the assessee-appellants submitted that the Tribunal has decided the issue on the basis of its decision in ***M/s Northern India Textiles Processors Association's*** case (supra). A copy of the order passed in the said case has been produced which shows that the issue involved in the said case was with regard to textile industry and whether VAT could be levied on cloth which was subjected to additional excise duty. The Tribunal held that the tax could be levied on deemed sale of dyes and chemicals. In the present case, no additional excise duty was leviable. The issue was how much chemical was transferred in processing of hides and skins as no chemical gets attached to the leather. The appeals of textile industry with regard to quantum of tax to be levied on dyes and chemicals are pending before the Tribunal. The present appeals have been wrongly disposed of by the Tribunal following its earlier decision in ***M/s Northern India Textiles Processors Association's*** case (supra).

6. After hearing learned counsel for the parties, we find that learned counsel for the State was unable to controvert that the issue involved in the two cases was not different. Consequently, the substantial questions of law are answered accordingly. The impugned order dated 28.2.2013, Annexure A.4 in both the appeals passed by the Tribunal is set aside and the matter is remanded to the Tribunal to decide it afresh after hearing learned counsel for the parties in accordance with law. The appeals stand disposed of.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 193 OF 2014

KHANNA PAPERS MILLS LTD.
Vs
STATE OF PUNJAB

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

4th December, 2015

HF ▶ Revenue

No input tax credit is available on purchase of Petrolium coke used in captive power generation for manufacturing taxable goods.

INPUT TAX CREDIT – PETROLEUM COKE – GENERATION OF POWER FOR CAPTIVE USE FOR MANUFACTURING TAXABLE GOODS – MANUFACTURING OF TAXABLE GOODS BY APPELLANT – PETROLEUM COKE PURCHASED FOR USING IN OWN THERMAL WASTE CAPTIVE POWER PLANT FOR MANUFACTURING PROCESS – QUESTION RAISED BEFORE TRIBUNAL REGARDING AVAILABILITY OF ITC ON SUCH PURCHASE – IN VIEW OF S. 13(4) OF THE ACT, ITC IS NOT AVAILABLE ON PETROL AND PETROLEUM PRODUCTS - EARLIER JUDGMENT PASSED BY HIGH COURT FOLLOWED – NO ITC AVAILABLE TO APPELLANT- DEALER – APPEAL DISMISSED – *S. 13(4) AND S. 13(5) OF THE PVAT ACT*

Facts

The appellant is engaged in manufacturing of paper products for which petroleum coke is used and thereafter the goods are sold in interstate trade. It has set up its own thermal waste captive power plant inside its industrial premises where the petroleum coke is used for generation of power after procuring it from a refinery at Bathinda. It is contended that ITC is available for the goods used in generation of power used for captive consumption. The ITC has been disallowed by the ETC while deciding application u/s 85.An appeal is filed before Tribunal.

Held

Following the judgment passed by the Hon'ble High Court in the case of Malwa Spinning Mills Ludhiana Vs state of Punjab (2011) 39 VST 65, it is held that no ITC is available to the appellant in the light of clause (b) of subsection 5 of S. 13. Thus, the appeal is dismissed.

Cases followed:

- *Malwa Spinning Mills Ludhiana Vs State of Punjab (2011) 39 VST 65*

Present: Mr K.L Goyal, Sr. Advocate alongwith Mr. Navdeep Monga, Advocate counsel for the appellant.

Mr. Sukhdeep Singh Brar, Additional Advocate General for the State.

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

1. The Excise and Taxation Commissioner, Punjab, Patiala vide undated order issued to the appellant on 26.4.2014, while deciding the application U/s 85 of the ITC, observed that the ITC on the goods used in generation distribution and transmission of electrical energy consumption is available subject to the provisions of section 13 (4) of the Punjab Value Added Tax Act.

2. Now the question awaiting adjudication before me is "whether the applicant is eligible for Input Tax Credit on the purchaser of petroleum coke used for generation, distribution and transmission of electric energy for captive consumption?"

3. The appellant is a taxable person and is engaged in the business of manufacturing of paper and paper products mainly by recycling process in his industrial premises at Fatehgarh Road Amritsar. He uses the material including waste paper chemical packing material and petroleum coke for manufacturing of the goods and thereafter he sells the goods in the course of interstate trade or commerce. In order to make up his energy requirements, he has setup his own thermal waste captive power plant inside the industrial premises where the petroleum coke and other material is used for generation of power. The hard coke is procured from different collieries and petroleum coke is procured from Guru Gobind Singh Refinery, Bathinda. The invoice documents also transpire that the petroleum coke has been classified under tariff head 27131100 of the Central Excise Tariff Act being the residue of petroleum product, it has been further submitted that Section 13 (5) (i) of the Punjab VAT Act the 1TC was available on the goods used for generation, distribution and transmission of electric energy used for captive consumption, Though it is recorded in Section 13 (5) (i) of the Act, 2005 that the said ITC would be subject to the conditions as mentioned in 13 (4) of the Punjab VAT Act, yet Section 13 (4) does not prohibit the grant of ITC however as per proviso to Section 13 (4) of the Act, the ITC is available if such goods are used in production of the taxable goods for captive generation of power, Thus, the counsel has prayed that the Excise and Taxation Commissioner has not property applied, interpreted and understood the relevant provisions and has refused to grant the ITC on the petroleum coke.

4. To the contrary, Mr. Sukhdip Singh Brar, Addl. Advocate General has submitted that the Section 13 (5)(i) specifically creates a restriction over the grant of ITC and proviso to this section has again created restriction that ITC would be available on the goods used for generation,, transmission and distribution of power for captive consumption subject to Section 13 (4) of the Act. Section 13 (4) does not include petroleum diesel or petroleum coke or other spices of petrol or diesel except transformer oil for grant of ITC, therefore, the order passed by the Excise and Taxation Commissioner, Punjab, as liable to be maintained.

5. Before further discussion is held, it would be essential to go into relevant provisions regarding availability of the ITC in cases where the raw material is used for generation distribution and transmission of electrical energy for captive consumption.

6. Section 13 (5) (i) reads as under:-

> *13 (5) A taxable person under this section, shall not quality for Input Tax Credit in respect of tax paid on the purchase of:-*
>
> *(i) Goods used in generation, distribution and transmission of electric energy unless such generation, distribution and transmission of electric energy is for captive consumption, in which case it would be allowed subject to provisions of sub Section (4) of this Section.*

It is dear that U/s 13 (5) (i) 3TC is available subject to the provisions of section

13 (4) of the Act which reads as under:-

> 13 (4) Input Tax Credit on furnace oil, transformer oil, mineral, turpentine oil, water mefchanolmixture, naptha and lubricants, shall be allowed only to the extent by which the amount of tax exceeds four percent,
>
> PROVIDED THAT these goods are used in production of taxable goods or captive generation of power.

6. On perusal of the aforesaid provisions the following fundamentals need to be examined for grant of Input Tax Credit where the goods are used for generation and distribution of the electrical energy are enumerated as under:-

1. *Whether the goods which are used for generation, distribution and transmission of electrical energy for captive consumption or for manufacturing the taxable goods and whether such goods are recorded in Sub Section (4) of Section 13 of the Act which would be an exception and Input Tax would be available on these goods i.e. the furnace oil, transformer oil, mineral turpentine oil, water mephanolmixture, naptha and lubricants.*
2. *The ITC would be available on the goods as mentioned in Section 13 (4) of the Act only to the extent by which the amount of tax paid in the state exceeds 5%. The further condition has been made that the ITC would be available if the aforesaid goods are used in production of taxable goods or captive generation of power.*
3. *The Petrol and the petroleum products including petroleum cake, diesel and its products, spirit or other fuels have not been included in Sub Section (4) of Section 13 of the Act.*

7. The Hon'ble High Court of Punjab and Haryana in case of M/s Malwa Spinning Mills Ludhiana Vs State of Punjab (2011) 39 VST page 65 had the occasion to make the deliberations over a similar question. Their Lordships while interpreting Section 13 (5) (i) and 13 (4) of the Act decided the matter in favour of the revenue while holding that in the light of clause (b) of Sub Section 5 of Section 13. No ITC was available and clause 13(5) (i) would not apply in favour of the appellant.

8. In these circumstances, this Tribunal is not inclined to make a distinct view then what was observed by the Division Bench of Punjab and Haryana High Court in case of Malwa Spinning Mills (Supra).

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

10. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 179 to 182 OF 2014

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INDERJIT FORGINGS PVT. LTD.
Vs
STATE OF PUNJAB

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

20th November, 2015

HF ▶ Revenue

Compliance of Predeposit for entertainment of appeal is mandatory when there is nothing to show that the impugned order is void or without jurisidiction.

PREDEPOSIT – APPEAL – ENTERTAINMENT OF – PROVISIONAL ASSESSMENT FRAMED RAISING A DEMAND DISALLOWING ITC– DISMISSAL OF FIRST APPEAL FOR FAILURE OF PREDEPOSIT – APPEAL BEFORE TRIBUNAL PRAYING WAIVER OF PREDEPOSIT ON ACCOUNT OF APPELLANT'S POVERTY AND ASSESSMENT ORDER BEING VOID – APPEAL DISMISSED AS ORDER FOUND NEITHER VOID NOR BEYOND JURISDICTION – HUGE TURNOVER OF APPELLANT SUGGESTED AGAINST THE FACTUM OF POVERTY – ASSESSING AUTHORITY DIRECTED TO FRAME REGULAR ASSESSMENT – *S. 62(5) OF PVAT ACT AND RULE 71 OF PVAT RULES,2005*

Facts

A provisional assessment was framed raising a demand against the appellant dealer for having made a claim of ITC on bogus purchases. An appeal was filed which was dismissed for failure of predeposit. An appeal is thus filed before Tribunal contending that since the assessment order is void there is no need to deposit 25% of additional demand and that the appellant is a poor person.

Held:

The order passed by the authorities is neither void nor without jurisdiction so as to call for any relaxation. Therefore, compliance of S. 62(5) of PVAT act is to be made. The first appellate authority was justified in refusing to entertain the appeal without predeposit.

Regarding inability to pay tax it is observed that the appellant has a huge turnover and cannot be said to be poor person.

The appeal is dismissed and assessing authority is directed to frame regular assessment within three months.

Present: Mr. Navdeep Monga, Advocate counsel for the appellant.

Mrs. Sudeepti Sharma, Dy. Advocate General for the State.

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

1. This order of mine shall dispose off four connected appeals No.179, 180, 181 and 182 of 2014. Since all these appeals involve the common question law, therefore ail are decided together.

2. The facts of all these four appeals are enumerated as under:-

Appeal No.179 & 180 of 2014

3.The case relates to the provisional assessment for the period w.e.f. 1.1.2013 to 313.2013. During the scrutiny of the return for the quarter ending 31 March, 2013, the appellant had made purchases from M/s S.K. Industries, Ludhiana for Rs.17,02,94,207/- claiming ITC of Rs.70,63,243/- and he showed the sales to M/s Rupal Wood Works in form VAT-23 for Rs.18,14,85,998/- showing tax amount of Rs.81,66,870/-, After scrutiny, it came out that the transactions allegedly shown with M/s S.K. Industries were not genuine as no movement of goods took place and no tax has been deposited in the Government Treasury by the purchasing and selling taxable persons. He recorded that it was a chain of bogus dealers who wrongly claimed tax credit in order to reduce their tax liability. Consequently, a demand to the tune of Rs.83,11,344/- was created under the Punjab Value Added Tax Act and Rs.1,77,677/- under the Central Sales Tax Act, 1956.

4. The appellant filed the appeals which were dismissed by the Deputy Excise and Taxation Commissioner for non compliance of Section 62 (5} of the Act, 2005, hence these two appeals No. 179 & 180 of 2014 have been filed by the appellant.

Appeal No.181 & 182 of 2014

5. The case relates to the provisional assessment for the period w.e.f. 1.4.2013 to 5.7.2013, During the scrutiny of the return for the quarter ending 31 March, 2013, the appellant had made purchases from M/s S.K. Industries, Ludhiana for Rs.17,02,94,207/- claiming ITC of Rs.70,63,243/- and he showed the sales to M/s Rupal Wood Works inform VAT-23 for Rs.18,14,85,998/- showing tax amount of Rs.81,66,870/-. After scrutiny it came to light that the transactions allegedly shown with M/s S.K. Industries were not genuine as no movement of goods took place and no tax has been deposited in the Government Treasury by the purchasing and selling taxable persons. He recorded that it was a chain of bogus dealers who had claimed tax credit in order to reduce their tax liability. Consequently, a demand to the tune, of Rs,16,92,639/- under the Punjab Value Added Tax Act and Rs.1,79,314/- under the Central Sates Tax Act, 1956 was created, The appellant filed the two separate appeals which were dismissed by the Deputy Excise and Taxation Commissioner for non compliance of Section 62(5) of the Act 2005, hence these two appeals No, 181 & 182 of 2014 have been filed by the appellant.

6. Arguments heard. Record perused.

7. The common question involving in all four appeals is “whether the appeal could be entertained without compliance of Section 62 (5) of the Punjab Value Added Tax Act, 2005 and Rule 71 (3) of the Rules framed thereunder?"

8. The contentions raised by the counsel for the appellant are that the orders passed by the assessing authorities are absolutely illegal, therefore, there would be no fun to deposit 25% the additional demand. Consequently, the appellant cannot be compelled to deposit the same .and appeals could be entertained without deposit of 25% of the additional demand. It was also urged that since the appellants are poor persons, therefore, they are unable to pay tax.

9. Having given my thoughtful consideration to the aforesaid contentions, it is observed that the provisions of Section 62(5) of the PVAT Act are mandatory in nature and impose a condition upon the appellant to deposit the 25% of the additional demand if he wanted his

appeal to be entertained and decided on merits. The orders passed by the assessing officers, in the aforesaid cases, are neither void nor without jurisdiction so as to call for any relaxation, however, the legality of the order has to be seen later on, but the appellant has to make compliance of Section 62 (5) of the PVAT Act and rule 71 sub Rule (3) of the rules framed thereunder before the appeals are entertained.

10. Admittedly, in the aforesaid cases the appellants have not deposited the amount in accordance with Section 62 (5) and Rule 71 (3) of the rules. Section 62 (5) of the Act reads as under:-

> **Section 62** *(5)* *No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of additional demand, penalty and interest, if any.*
>
> *EXPLANATION:- For the purposes of this sub-Section "additional demand" means any tax imposed as a result of any order passed under any of the provisions of this Act or the rules made thereunder or under the Central Sales Tax Act, 1956 (Act No.74 of 1956)."*

Rule 71 reads as under:-

> ***Rule 71*** *An appeal against every original order referred to in Section 62, shall contain the following particulars and information namely:-*
>
> *(i)* ----------
>
> *(ii)* ----------
>
> *(3)* *Receipt for statutory payment of 25% of the amount, shall also be submitted with the memorandum of appeal.*

11. It may also be added that non compliance of section 62(5) of the Act would entail refusal to entertain the appeal. Similarly, on non compliance of rule 71 (3) of the Rules, the rule 72 would come into force which reads as under:-

> *1)* *If memorandum of appeal is not filed as per provisions of rule 71, the appeal shall not be entertained.*

12. As such in the light of the aforesaid mandatory provisions of law the First Appellate Authority was justified in refusing to entertain the appeal for non compliance of the aforesaid provisions of law.

13. The other contention raised by the appellant in the appeals is that the provisions of Section 62 (5) of the Act and Rule 71 (3) of the Rules should not be read with mathematical precision and could be relaxed in an appropriate case. The appellants being poor persons are unable to deposit such a huge amount, therefore the said provisions could be relaxed in their cases. To the contrary, the State Counsel has opposed the arguments tooth and nail while contending that the appellants have a huge turn over and the appeal has been filed just to put off the tax liability. The demand has been created after comparing the data as recorded in the returns with the data as taken up from the computer cardex.

14. While examining the cases regarding inability to pay the tax, the appellants have huge turn over therefore, they can't be said to be poor persons unable to pay the tax.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 1 OF 2015

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NEW KIMAT RAI JEWELLERS
Vs
STATE OF PUNJAB

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

7th December, 2015

HF ▶ Asssessee

In the absence of any proper enquiry before imposing penalty under Section 51, the matter is to be remanded back for consideration of evidence.

ATTEMPT TO EVADE TAX- JEWELLERY DETAINED WHILE GOODS ALLEGEDLY COMING FROM LUDHIANA TO PATIALA – DEPARTMENT IMPOSING HIGHER PENALTY HOLDING THAT GOODS WERE COMING FROM DELHI TO PATIALA – POLICE CLAIMED THE DETENTION WHILE GOODS COMING FROM LUDHIANA TO PATIALA IN THE PRESS CONFERENCE – NO DOCUMENT CONSIDERED WHILE PASSING PENALTY ORDER – NO PROPER ENQUIRY HELD – STATEMENTS RECORDED WHILE PERSON UNDER CUSTODY – ORDER SHEET FOUND TO HAVE BEEN TAMPERED WITH – CASE NEEDS FRESH RECONSIDERATION – MATTER REMANDED BACK TO DESIGNATED OFFICER.

Facts

Appellant was apprehended while transporting jewellery worth Rs. 41,55,357/- by Police officials. The case was handed over to Department of Excise and Taxation, which resulted into imposition of penalty @ 50% u/s 51(7)(c) of the Act. First appeal filed against said order is also dismissed.

On appeal before the Tribunal, it is contended by the assessee:

that no proper procedure was followed by the Detaining Officer at the time of search as the statements have been recorded without free will and consent since the person was under Police custody. The goods were never apprehended by Excise & Taxation Department as Police officials held a Conference disclosing such detention. The statements were also not given voluntarily. Most importantly, the Police had informed the Press that appellant had come from Ludhiana to Patiala but the Detaining Officer with an intention to enhance the penalty, made out a case that goods were coming from Delhi to Patiala resulting into imposition of penalty @ 50%. Moreover, the order in question is totally non-speaking and suffers from surmises and conjectures as the transaction in question was an intra-state transaction which was covered by genuine documents.

On appreciation of documents produced before the Court, it is held

Held

The Detaining Officer is not justified in holding that goods were coming from Delhi to Patiala when the record suggests that goods were coming from Ludhiana. Even the Police Officials while issuing the Press statements had specifically informed that they had recovered gold from son of the appellant when he had brought the same from Ludhiana. The statements recorded later on cannot be believed as the same could not have been recorded when the person was under the custody of Police. Moreover, the zimni orders have not been recorded properly as it has been found tampered at 8 places. The documentary evidence has also not been considered while passing the impugned order. On the basis of facts and the documents produced, it is concluded that no proper enquiry has been held before imposition of penalty and no documents have been considered while passing the impugned order. The matter is accordingly remanded back to the Designated Officer for holding fresh enquiry and after consideration of various documents which were produced before the Tribunal.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith Mr. Sandeep Goyal, Advocate Counsel for the appellant.

Mr. Sukhdip Singh Brar, Addl. Advocate General for the State.

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

1. This appeal is directed against the order dated 30.10.2014 passed by the First Appellate Authority, Patiala Division, Patiala dismissing the appeal of the appellant and upholding the penalty imposed upon him to the tune of Rs. 20,77,680/- by the Designated Officer on 30.7.2013.

2. The appellant Kirti Gupta is running a jewellery shop in the name and style of M/s New Kimat Rai, Jewellers, Darshani Gate, Patiala and is registered as a taxable person both under the Punjab Value Added Tax Act, 2005 and the Central Sales Tax Act, 1956.He has also a branch at Mall Plaza Fountain Chowk, Ludhiana. He has been maintaining the books of account relating to the business. He has been transferring the jewellery/bullion from Patiala to Ludhiana branch and vise versa i.e. from Ludhiana to Patiala branch as a routine. The goods were sent and received as per business requirement against the proper transfer voucher issued from the regular challan book maintained by the appellant. Shri Kirti Gupta is the son of the proprietor of the appellant firm.

3. In the intervening night of 16/17.7.2013. Shri Kirti Gupta had brought the gold ornaments from Ludhiana to Patiala and was apprehended by Sh. Karansher Singh Gill, SHO of the Police Station Kotwali, Patiala.

4. It is further alleged that since the appellant was not having documents supporting the possession of gold, therefore, he was taken into custody and was handed over to Shri Jaswinder Singh, Excise and Taxation Officer who detained the goods and recorded the statement of Shri Kirti Gupta. The gold was evaluated, whereupon it proved to be worth Rs,41,55,357/-. Shri Jaswinder Singh then forwarded the case to the Assistant Excise and Taxation Commissioner, Patiala who after issuing notice upon the appellant imposed a penalty to the tune of Rs.20,77,680/- U/s 51 (7) (c) of the Act. The appellant filed the appeal against the said order dated 30.7.2012 but the same was dismissed on 30.10.2014, hence this appeal.

5. The Counsel for the appellant has challenged the impugned order on the following grounds:-

1. *The Detaining Officer tempered the record and did not make any statement*

of his free will and consent as alleged. The alleged statement having been recorded in the police station has no evidentiary value.

2. *Shri Kirti Gupta on the night of 16/17 July, 2013 had come with gold ornaments accompanied by relevant documents from Ludhiana and when he reached near T.B. Hospital, Patiala, he was apprehended by the police. The police people did not bother to examine the documents pertaining to the possession of the ornaments and detained him, took him to the police station, called for a press conference get him photographed to gain publicity and thereafter, some times in the evening, he was handed over to Sh. Jaswinder Singh, Excise and Taxation Officer who manipulated the documents and forwarded the case to the Designated Officer.*

3. *The statement if any allegedly signed by Shri Kirti Gupta was not his voluntary statement, the police party had procured the same under pressure and undue Influence.*

4. *The District Police Chief and the other police officers had disclosed to the press that the appellant had come from Ludhiana to Patiala, but the Designated Officer with intention to enhance the penalty projected that Kirti Gupta had brought golden ornaments from Delhi to Patiala.*

5. *The impugned order is non speaking, bad in law and not based on the appreciation of fact situation and evidence. The order suffers from surmises and conjectures and has been passed solely on the ground that the appellant had brought the goods from outside the State of Punjab and therefore, failed furnish the information of movement of goods at the ICC, whereas, actually, the goods were brought from inside from the State of Punjab for which no information was required to be given at the ICC.*

6. *The goods were covered by all the genuine documents which the officers ignored to peruse despite the same were placed before them. The Designated Officer has ignored the same and did not comment about them in the order. The appellant had no intention to evade the tax and in the absence of any mensrea, no penalty could be imposed.*

6. To the contrary, the State Counsel while supporting the orders of penalty has urged that the goods were brought by the appellant from outside the State of Punjab, therefore, the necessary information at the nearest ICC was required to be given but the appellant has failed to do so. The appellant had also not shown any documents at the time when he was apprehended. The time, place circumstances and the manner in which he was apprehended clearly reveal that there was intention to evade the tax and keep the goods out of books of account.

7. Arguments heard. Record perused.

8. After hearing the rival contentions, the following questions arise to be answered which are enumerated as under:-

(i) *Whether the procedure as followed by the Detaining Officer at the time of search was in accordance with the provisions of the Act?*

(ii) *Whether the respondents had the jurisdiction to detain and recover the jewellery beyond the area of ICC?*

(iii) *Whether the proper opportunity was given to the appellant of being heard before imposition of the demand?*

(iv) Whether the goods were covered by the proper and genuine documents?

9. As regards the search and procedural process, it may be observed that the Excise and Taxation Officer is not fair in his representation, he states that the appellant was coming from Delhi to Patiala with the goods, whereas the lot of record indicates that he was coming from Ludhiana which also supports the case of appellant that it was intrastate transfer and not interstate transfer as alleged by the Designated Officer. The appellant had brought the goods from head office at Mall Plaza Ludhiana. Initial documents, if examined also indicate and prove that it is a case of intrastate transfer. The news item dated 18.7.2013 published in the news paper Patiala kesari and Indian Express specifically disclose that the gold was recovered from Kirti Gupta Raghuver Gupta and they had brought the same from Ludhiana. These news papers also reflect the photograph of Kirti Gupta with the Police Officers and the gold items. There is also press statement given by the S.S.P., Patiala to the effect that Kirti. Gupta and Raghuver Gupta had brought the gold ornaments from Ludhiana when they were apprehended. These news items are made the part of the record. The other inference which could be drawn from the news item is that Kirti Gupta remained in the custody of the police since wee hours of 17.7.2013 till evening of that day and during this period, the police had called the press conference issued the press statements and got their photographs while displaying the ornaments also. Consequently, the inference would be that the notice was issued to Sh. Kirti Gupta when he was in custody and it does not amount to an opportunity provided to him of being heard, but it could be said to be a formality completed by the department in order to plug the hole because if the detaining officer actually wanted to hear the appellant then notice could be issued to the proprietor of the firm consignor i.e. Kimat Rai of M/s New Kimat Rai Jewellers and they should not have shown such a hurry and provided him at least one day's time to support the transaction by the documents. Had some opportunity been given to the proprietor of the firm consignor of the goods then he would have come forward with the documents supporting the goods. Similarly, no reliance could be placed on the statement of the Kirti Gupta recorded on the same day. As this statement also appears to have been recorded prior to 10.30 A.M. on 17.7.2013 as the statement indicates about the confirmation made by him about the receipt of the notice. Thus it would be safe to observe that the statement recorded on 17.7.2013 of Mr. Kirti Gupta during the custody of the police being inadmissible is of no consequence. Besides the statement of Kirti Gupta recorded in hand, there is another statement related to him which is on the printed form and it is not known as to when the statement was recorded by Sh. Jaswinder Singh in his own hand and the department is unable to explain that in the light of first alleged statement why his second statement on a printed form was got signed.

10. The another suspicion circumstance which creates a doubt over the genuineness of the proceedings is the Zimni order dated 17.7.2013 recorded by Sh. Jaswinder Singh, ETO. If this order recorded in Punjabi is read, then it can easily be inferred that earlier Jaswinder Singh tried to record the statement of Kirti Gupta which was later on tempered at about 8 places to convert it into a zimni order. Thus in the light of the authentic evidence that the appellant was in police custody when the alleged statement of Kirti Gupta was recorded, no value can be attached to such statements and the documentary evidence i.e. photographs, press conference and news items speak to the volumes that Mr. Kirti Gupta had come from Ludhiana to Patiala. As such the appellant would be believed when he states that he had come with the ornaments from the Ludhiana to Patiala and it would also be safe to hold that the proceedings were tempered and detention suffers from illegalities.

11. Now coming to the question whether the Assistant Excise and Taxation Commissioner/Designated Officer actually provided an opportunity of being heard to the appellant before imposition of penalty, it may be observed that there is no denying a fact that before imposition of penalty the Designated Officer was bound to call for the appellant;

provide him an opportunity of being if heard, hold an enquiry, and as per clause (b) of Sub-Section 7 of Section 51, if on enquiry he finds that there has been an attempt to evade tax due or likely to be due under this act, he shall, by order, impose, on the consigner or the consignee of the goods, a penalty which shall be equal 30% of the value of the goods. Similar is the procedure for imposing penalty under Section 51(7)(c) of the Act. Difference between U/s 51 (7)(b) and 51 (7) (c) is that in the former case, the penalty could be imposed in case of violation of the conditions as envisaged U/s 6 (a) of Section 51 of the Act.

12. Section 51 (6) (a) which invites penalty U/s 51 (7) (b) requires following conditions:-

(1) If the Officer incharge of the check post has reasons to believe that:-

(a) The goods under transport are meant for trade, and are not covered by proper and genuine documents as mentioned in Sub-Section (2) and (4) of Section 51 of the Act or

(b) The person has made an attempt to evade payment of tax

13. However, Section 51(6)(b) which invites penalty U/s 51(7)(c) requires the following conditions:-

(a) The owner on questioning has not produced the documents as mentioned in Section 51 (2) and (4) of the Act.

(b) He has not submitted the declaration on the nearest check post or Information Collection Centre while entering or existing out of the State.

14. The penalty as imposed U/s 51 (7) (c) is higher and can be imposed in case the consignor or the consignee does not produce documents as provided under Sub-Section (2) and (4) of Section 51, But while holding enquiry under both the provisions a proper opportunity of being heard and lead evidence has to be given before imposition of penalty. The present case lacks this feature as though the consigner was issued a notice of the enquiry for 29.7.2013 but it was taken up on 30.7.2013 instead of 29.7.2013. The file does not speak as to what happened on 29.7.2013. In any case, the officer instead of providing some time to the appellant to reply to the notice and present the relevant documents, disposed off the case on 30.7.2013 itself by imposing penalty equal to 50% of the value of the goods involved.

15. In these circumstances, this Tribunal is of the view that the manner in which the officer proceeded to impose penalty does not amount to holding of proper enquiry and providing sufficient opportunity of being heard before imposition of penalty. Had the appellant been provided some time to the appellant to produce the documents then he would have at least presented his case and produce the documents before the order was passed.

16. Notwithstanding the fact that procedure regarding search and seizure as adopted by the detaining officer is defective yet the fact remains that since 1-1/2 k.g. gold ornaments recovered by the appellant on 17.7.2013, therefore, he was required to satisfy the Taxation Department by proving the documents which cover the gold items, however, it upto the department to analyze the and examine their authenticity. The appellant has produced before me the following documents:-

1. Challan No. 4 & 5 dated 16.7.2013 showing the branch transfer.

2. VAT Invoice No. 6 dated 3.7.2013 of M/s Bhagwati Jewellers.

3. Trading Account of Ludhiana Branch Office w.e.f. 1.4.2013 to 31.3.2014.

4. *VAT Invoice No.213 dated 13.5.2013 and VAT Invoice No. 343, dated 13.6.2013 of Miglani Jewellers.*
5. *VAT Invoice No.323, dated 5.7.2013.*
6. *Transfer Challan No.7, dated 16.7.2013 of M/s New Kimat Rai Jewellers*
7. *VAT Invoice No.9, dated 5.7.2013 of M/s Bhagwati Jewellers.*
8. *Receipt Voucher No. 10 dated 13.7.2013 of M/s New Kimat Rai Jewellers*
9. *VAT Invoice No. 11 dated 6.7.2013 of M/s Bhagwati Jewellers.*
10. *Challan No.12 and 13 of New Kimat Rai Jewellers,*
11. *VAT Invoice No. 14, dated 8.7.2013, 16, dated 9.7.2013, 19, dated 11,7.2013, 21, dated 13.7.2013 of M/s Bhagwati Jewelers.*
12. *Trading account of New Kimat Rai Jewellers, Branch Officer, Ludhiana dated 1.4.2013 to 31.3.2014.*
13. *A copy of news paper items and press conference held by District Chief Patiala on 17.7.2013.*

17. That apart, the appellant has also raised the issue that in case of detention of goods beyond the area of ICC, the appellant could not be penalized U/s 51 (7) (c) of the Act. He has also taken me through the order passed by the Designated Officer, which to my mind is silent qua the answer to the aforesaid issue. In these circumstances, this Tribunal is of the opinion that it is a fit and appropriate case for remitting the same to the 'Designated Officer for holding necessary enquiry before imposition of penalty.

18. Resultantly, I accept this appeal, set-aside the impugned order of penalty and direct the designated officer to examine the case of the appellant in the light of the aforesaid observations, take the necessary evidence which the appellant wants to produce and then decide the same afresh in accordance with law. The appellant is directed to appear before the designated officer on 22.12.2015.

19. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 219 OF 2015

Go to Index Page

OM SHANTI STEEL INDUSTRIES
Vs
STATE OF PUNJAB

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

1st December, 2015

HF ▶ Dealer/Assessee

Penalty imposed u/s 51 is set aside as goods are covered by proper documents.

PENALTY – ATTEMPT TO EVADE TAX - CHECK POST/ ROAD SIDE CHECKING – TWO CONSIGNMENTS SENT TOGETHER IN A VEHICLE BY APPELLANT FIRM AND ANOTHER FIRM B – INVOICES AND OTHER DOCUMENTS PRODUCED - GOODS DETAINED UNDER DOUBT THAT GOODS PURCHASED BY APPELLANT FIRM FROM FIRM B AND PURCHASE VOUCHER IN RESPECT OF SUCH PURCHASE NOT SHOWN – ABSENCE OF E-TRIP – PENALTY IMPOSED U/S 51- APPEAL BEFORE TRIBUNAL – HELD: PURCHASE VOUCHER NOT REQUIRED BY LAW TO BE ACCOMPANIED WITH GOODS – BILL AND GR WITH RESPECT TO GOODS IN TRANSIT DULY PRODUCED - IN CASE OF DOUBT REGARDING PURCHASE FROM FIRM B, ENQUIRY OUGHT TO HAVE BEEN DONE – APPEAL ACCEPTED AND PENALTY DELETED – *S. 51(7)(b) OF PVAT ACT, 2005*

Facts

The goods vehicle going from Mandi Gobindgarh to Jalalabad was apprehended. It was found that the vehicle was carrying two consignments covered by invoice issued by the appellant firm in favour of firm A and another invoice issued by firm B in favour of firm C. The department has alleged that the goods were purchased from firm C by the appellant firm but e- trip was not generated with respect to transaction made between appellant firm and firm A. It was also alleged that the bill relating to firm C was procured later on. Penalty was imposed u/s 51. An appeal is filed before Tribunal.

Held

That the essential requirements of producing bill and GR accompanied with goods has been fulfilled. In case of doubt of sale made by firm C to appellant firm, enquiry should have been done. As per law, purchase voucher issued by firm C to appellant firm, is not required to be accompanied with the goods Therefore, the goods carried by appellant were covered by proper and genuine documents. The penalty is deleted on account of incorrect order passed by the authorities below.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith Mr. Navdeep Monga, Advocate
Counsel for the appellant.

Mr. Amit Chaudhary, Addl. Advocate General for the State.

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

1. The Assistant Excise and Taxation Commissioner, Mobile Wing Bathinda (herein referred as the designated officer), vide order dated 16.5.2013, imposed a penalty of Rs. 50,500/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005. The appeal against the said order filed by the appellant was dismissed by the First Appellate Authority on 2.7.10.2014, hence this second appeal has been filed.

2. Briefly stated, the facts of the case are that on 8.5.2013 the driver while loading TMT Bars in the vehicle No. HR-S7-4097 was going to Jalalabad. When he was apprehended by the Excise and Taxation Officer, Mobile Wing Bathinda, he presented the following documents-

1. GR No. 12849, 7.5.2013 of the Khanna Calcutta Transport- Company, Khanna.
2. Invoice No. 019,dated 7.5.2013 of M/s Om Shanti Steel Industries, Mandi Gobindgarh in favour of M/s Vikram Enterprises, Jalalabad for 3.910 MT for Rs, 1,68,245/-.
3. E-trip slip XXXIV-D serial No. ICCOOIS133786002, dated 7.5.2013 for bill No. 786, dated 7.5.2013 for Rs. 2,64,809/-.
4. Excise Invoice Mo. 786, dated 7.5.2013 of M/s Aar Kay Industries, Mandi Gobindgarh in favour of M/s Baldev Krishan and Sons, Jalalabad for 6.080 MT for Rs.2,64,809/.
5. GR No. 12850 dated 7.5.2013 Khanna Calcutta Transport Company, Khanna.

3. The Detaining Officer detained the goods and then forwarded the case to the Designated officer.

4. The Designated Officer issued notice U/s 51 (7) (b) of the Act whereupon he imposed a penalty to the tune of Rs.50,500/- upon the appellant.

5. The Counsel for the appellant has urged that the vehicle in question was carrying two consignments, one issued by Om Shanti Steel Industries, Mandi Gobindgarh in favour of M/s Vikram Enterprises, Jalalabad for Steel Bars weighing 3.910 MT for Rs.1,68,245/- and the other consignment was covered by the invoice No, 786 issued by M/s Aar Kay Industries, Mandi Gobindgarh in favour of M/s Baldev Krishan & Sons, Jalalabad for 6,080 MT for Rs.2,64,809/-. The goods were covered by the proper and genuine documents. It was an intrastate transfer as the goods were being taken away from Mandi Gobindgarh to Jalalabad, District Ferozepur, therefore, no tax could be imposed.

6. To the contrary, Mr. Sukhdip Singh Brar, Additional Advocate General for the appellant has stated that the goods were allegedly -purchased by M/s Om Shanti Steel Industries, Mandi Gobindgarh from M/s Aar Kay Industries, Mandi Gobindgarh. The invoice relating to M/s Aar Kay Industries, Mandi Gobindgarh was procured lateron, therefore, the penalty was imposed.

7. After deliberating over the arguments raised by the rival parties, I find merit in the contentions raised by the counsel for the appellant, The driver of the truck bearing No. HR-57-4097 was in possession of two consignments; one issued vide invoice No. 19, dated 7.5.2013 for 3.910 MT from Mandi Gobindgarh to Jalalabad, The other transaction was under invoice No.736 dated 7.5.2013 of M/s Aar Kay Industries, Mandi Gobindgarh in favour of M/s Baldev Krishan & Sons, Jalalabad for 6.080 MT, The G.R. No, 12849 related to the transporting of the goods by the appellant. There was no requirement of law to produce the purchase bill of the goods from M/s Aar Kay. Industries, Mandi Gobindgarh to the appellant, yet he in order to prove all bonafides, produced the purchase bill of 3.910 MT from M/s Aar Kay Industries in his favour, The Assistant Excise and Taxation Commissioner has recorded a wrong fact that "the books of account were not produced before the Excise and Taxation Officer. The invoice of e-trip was not produced relating to the present consignment, The selling roller mill had issued Bill No. 787 for his own sale to another firm and bill No.788 to the present appellant. It seems that bill No.788 was issued after detention of the goods." But these facts apparently are not correct. The essential requirement that the bill and G.R, should accompany the goods at the time of its transport/movement of the goods has been fulfilled, If the authorities had doubted about the sale of the TMT bars by M/s Aar Kay Industries to the appellant then the notice of enquiry could have been issued to the said selling firm or his business premises could have been Inspected but this factor could not be attributed to the appellant. The law does not require that the purchase voucher as issued by Aar Kay Industries to the appellant should also accompany the goods. The sale voucher is issued by the appellant to finds mention in the order.

8. All this goes to show that the goods carried by the appellant from Mandi Gobindgarh to Jalalabad through the truck were covered by the proper and genuine documents. The confusion was created on account of the fact that these were two consignments and the designated Officer doubted that the bill issued by the appellant in favour of Vikram Enterprises was factitious. This doubt to my mind was just a camouflage in order to pass incorrect order of penalty. Having examined the orders passed by the authorities, the same are not correct and need to be set-aside.

9. Resultantly, the appeal is accepted, impugned order is set-aside and the order of penalty is quashed.

10. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 334 OF 2014

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KOHLI CHEMICALS
Vs
STATE OF PUNJAB

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

5th November, 2015

HF ▶ Revenue

Assessment order is not void as the proceedings have been duly recorded by the officer thereby negating waiver of condition of predeposit.

PREDEPOSIT – APPEAL – ENTERTAINMENT OF – DEMAND RAISED ON ACCOUNT OF INGENUINE CLAIM OF ITC – DISMISSAL OF FIRST APPEAL ON ACCOUNT OF NON COMPLIANCE OF CONDITION OF PREDEPOSIT – APPEAL BEFORE TRIBUNAL PRAYING WAIVER OF PREDEPOSIT CONTENDING ASSESSEMENT ORDER TO BE VOID IN ABSENCE OF ORDER SHEET – HELD: ORDER SHEET DULY PREPARED BY OFFICER ALONGWITH RECORDING OF DISCUSSIONS THAT TOOK PLACE – ASSESSMENT ORDER NOT VOID IN SUCH EVENTUALITY – MERITS OF CASE TO BE SEEN LATER – COMPLIANCE OF PREDEPOSIT ESSENTIAL - APPEAL DISMISSED – *S. 62(5) OF PVAT ACT*

Facts

In the present case a demand was raised against the appellant-assessee on account of bogus purchases and ingenuine claim of ITC. First Appeal was dismissed due to failure of predeposit. An appeal is filed before Tribunal contending that the assessment order is void as no order sheet was prepared in respect of that. Thus, it is prayed that the condition of predeposit be waived off.

Held

The record reveals that after the case was transferred to another officer, the notices and the order sheet have been recorded regularly. All the discussions have been duly recorded. The appellant cannot take the plea that no order sheet was prepared.

The merits have to be seen later after the appeal is entertained but at this stage the appellant was bound to comply with the provision of S. 62(5) of the Act. The appeal is dismissed and the appellant is granted one more opportunity to deposit 25% of the additional demand raised for entertainment of appeal.

Case followed:

- *Emerald International Ltd. V/s State of Punjab and others (1997) 116 PLR 797,2001 122 STC 382PH*

Present: Mr. B.K, Gupta, Advocate counsel for the appellant,

Mrs. Sudeepti Sharma, Dy. Advocate General for the State.

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

1. This appeal is directed against the order dated 5.9.2014 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana (herein referred as the First Appellate Authority) dismissing the appeal (for non compliance of Section 62 (5) of the Punjab Value Added Tax Act) against the order dated 11.3T2014 creating additional demand to the tuneof Rs.3,30,51,478/- under the Punjab Value Added Tax Act and Rs.1120/- under the Central Sales Tax Act.

2. Briefly stated the facts are that the appellant filed the annual statement for the year 2009-10. On scrutiny of the annual statement, it was detected that the taxable person had made the purchases from the cancelled dealers and had also made other seemingly ingenuine purchases from other dealers and claimed the ITC. Notices were issued to the appellant on different dates, thereafter, the case was transferred to Harsimrat Kaur Grewal, Excise and Taxation Officer, who initiated proceedings by issuing a notice on 20.11.2013 for 25.11.2013. Ultimately, after scrutiny of the total purchases made by the firm during the period 2009-10, it transpired that the appellant had not made genuine purchases and his sellers were cancelled dealers. Ultimately, the demand was created against the appellant; the appeal filed by him was dismissed by the First Appellate Authority on 5.9.2014 U/s 62 (5) of the Act read with Rule 71 (3) of the Rules of 2005, hence this second appeal.

3. The Counsel for the appellant has argued that since the order is void in the eyes of law, therefore, the appellant could not be compelled to comply with Section 62 (5) of the Punjab Value Added Tax Act, 2005. On asking, he disclosed -that no order-sheet has been prepared and the order is non speaking.

4. Having perused the order dated 11.3.2014 passed by the Excise and Taxation Officer-cum-Designated Officer, it is eight pages order, the same is well reasoned and well founded. The officer has made specific observations in the order to the effect that the sale made by a taxable person is totally in connivance and collusion with selling dealers. The relevant extract of the order is reproduced as under:-

> *"In this case the taxable person is totally in connivance and collusion with the selling dealers of the taxable person which the judgment of Hon'ble Punjab and Haryana High Court in the case or M/s Gheru Lai Bal Chand Versus State of Haryana 40 PHT 145 has prominently mentioned In which the Hon'ble Court held that no liability can fastened on the purchasing registered dealer on account of non-payment of tax by selling registered dealer in the treasury unless fraudulent, collusion or connivance with the registered dealer on account of non-payment of tax by the selling dealer or its predecessors is established. The case is fully covered by the judgment of Hon'ble Punjab & Haryana High Court as the total purchasers and the selling dealers are indulged in mal practices just to eat away the govt, revenue and above mentioned purchases made by the taxable person are bogus and paper transactions only. Sufficient opportunities have already been provided to the taxable person and after hearing at length to the counsel for the taxable person, and keeping the principles of natural justice in view, legal as well as factual position explained in the proceeding paras, the Excise and Taxation Officer-cum- Designated Officer, Ludhiana concludes that the purchasing taxable' person in connivance and collusion with the selling dealer has evaded the payment of tax due to the State Government and the case is assessed."*

5. As regards, the Zimini orders, the record reveals that notices were issued to the appellant on 16.4.2013, 6.5.2013, 27.5.2013, 30.7.2013, 13.9.2013. 22.10.2013, but none appeared on behalf of the appellant. The said notices form part of the record. Since the appellant had not appeared, therefore, obviously the order-sheets may not have been recorded. In the given circumstance, it was not essential to prepare the order sheet. However, after the case was transferred to Harsimrat Kaur Grewai, Excise and Taxation Officer she issued notices on 20.11.2013 for 25.11.2013. The notice dated 20.11.2013, and the order sheet dated 25.11.2013 are on the record. Thereafter, the officer had prepared order sheets regularly.

7. Accordingly the proceedings were recorded in the order sheets of 25.11.2013. 26.11.2013, 29.11.2013, 2.12.2013, 4.12.2013, 23.1.2014, 3.2.2014 and 10.3.2014 and ultimately the order was passed on 11.3.2014. The discussion regarding the proceedings, which took place on different dates, is recorded by the designated officer in her detailed order dated 11.3.2014., Therefore, it does not lie in the mouth of the appellant to say that no order sheet was prepared by the designated officer. As regards the requirement to maintain order sheets, it may be observed that neither the statue requires maintaining of the ordersheets nor the quasi judicial authority under the VAT Act was to strictly adhere to the principles as envisaged in the code of civil procedure. The order sheets are the memory record of the proceedings which take place before the quasi judicial authorities performing quasi judicial functions, therefore, the principles of natural justice require the officer to prepare the summary record of the proceedings as such they should maintain such record. In the present case, it can't be said that officer has failed to perform this solemn Act, when after notice was served, the proceeding started, the officer started recording the order sheets.

8. In any case, the merits of the case have to be gone into after the appeal is entertained, but at this stage the appellant was bound to comply with section 62 (5) of the Act. Similar observations were made in case of Emerald International Ltd. V/s State of Punjab and others (1997) 116 PLR 797,2001 122 STC 382PH. Since, the appellant has not complied with section 62 (5) of the Act as well as rule 71 (3) of the rules framed under the Act, therefore, the Deputy Excise and Taxation Commissioner was fully competent to refuse to entertain the appeal without deposit of the 25% of the additional demand.

9. Resultantly, finding no merit in the appeal, the same is dismissed. However, the appellant is provided two months more time to deposit of 25% of the additional demand. On doing so, his appeal shall be entertained and decided by the Deputy Excise and Taxation Commissioner on merits, otherwise the order passed by the First Appellate Authority shall remain intact.

10. Pronounced in the open Court.

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CLARIFICATION (PUNJAB)

BEFORE SH. ANURAG VERMA, IAS,
EXCISE & TAXATION COMMISSIONER PUNJAB

DCM ENGINEERING LTD.

5th June, 2015

HF ▶ None

Iron Castings on which cleaning, welding, grinding and painting is done are not declared goods and hence taxable @ 5.5% plus surcharge

ENTRIES IN SCHEDULE – IRON CASTINGS – CLARIFICATION – IRON CASTINGS FALLING UNDER CHAPTER 73 OF CENTRAL EXCISE AND TARIFF ACT, 1985 – PROCESS OF CLEANING, WELDING, GRINDING AND PAINTING CARRIED OUT ON RAW CASTINGS – SOLD TO MANUFACTURERS OF TRACTORS – APPLICATION FOR DETERMINATION FILED BEFORE COMMISSIONER – SINCE MULTIPLE PROCESSES CARRIED OUT ON RAW CASTINGS, IT DOES NOT REMAIN AS CAST IRON MENTIONED IN SECTION 14(iv) OF CENTRAL SALES TAX ACT – HELD ITEM TAXABLE @ 5.5% PLUS SURCHARGE.

The assessee is a manufacturer of iron castings falling under Chapter 73 of 1st Schedule to the Central Excise Tariff Act, 1985. Such iron castings are manufactured and sold locally as well as on inter-state sale basis. An application for determination of rate on such iron castings is made to the Commissioner. Section 14(iv)(i) of the Central Sales Tax Act mentions casting iron only and not the product on which some process is carried out. Since the applicant carries out a process of cleaning, welding, grinding and painting on the raw castings after these are taken out of mould boxes, the same does not remain a cast iron which would be covered under Section 14 of Central Sales Tax Act defining declared goods. Accordingly, it is determined that the rate of tax on such items would be @ 5.5% plus surcharge as it is covered under Entry "Metal Castings" mentioned in Entry No. 70 of Schedule-B appended to Punjab VAT Act, 2005. It is also clarified that only the products falling under Chapter 73 of First Schedule to the Central Excise Tariff Act, 1985 are clarified to be falling under Entry 70 of Schedule-B and, therefore, the determination would not affect taxability of items falling under any other Schedule to the Central Excise Tariff Act, 1985.

*****

ORDER

1. The applicant has submitted that:-

> *"We DCM Engineering Ltd, Asron (Punjab) are engaged in the manufacture of iron casting falling under chapter 73 of the first schedule to the Central Excise Tariff Act 1985.*

2. The Castings so manufactured are sold to various industries outside the state of Punjab as well as within the state of Punjab. On interstate sales castings are sold to registered dealers by charging CST @ 2% against form C.

3. In case of Local sale, There are two regulations under sales Tax to charge VAT on Castings:-

1. *Charging Vat @ 6.05% (Basic Rate 5.5%) + 10% surcharge on the same) on the basis of entry 70 of Schedule B of Punjab VAT Act, 2005.*
2. *Charging VAT@ 2.75% (Basic Rate 2.5%+10% surcharge on the same) on the Basis of Notification dated 25 Jan 2014 under which Punjab Govt, had reduced the rate of iron & Steel product covered under section 14 (IV) (I) of CST Act the declared goods are falling in schedule E of Punjab VAT Act, 2005. This VAT rate has further been amended and w.e.f. 11.03.2015 (Basic Rate 3.5% +10% surcharge) on the same.*

4. In view of amendment in schedule E, as mentioned in (2) above, some of our customers in the State of Punjab who are engaged in the manufacture of Tax Free goods (Tractor) are pressing use hard to charge VAT on casting as per schedule E, meant for declared goods as no input credit is available to these customers. It has also been noticed that some of manufacturers in the state of Punjab are already charging VAT on machined Iron casting @ 2.75 % which has been further amended to 3.85% (inclusive of surcharge) effective from 11.03.2015.

5. However, in the absence of clarification, we are continuing to charge and paying Vat @ 6.05% (Basic 5.5% + 10 % surcharge) on the same. We also draw your kind attention to the decision of Hon'ble Supreme Court in the case of Vasantham Foundry V/S Union of India 1995 SCC (5) 289, wherein it was held that, Cast Iron casting in its primary and rough form must be held Cast Iron. (Copy enclosed)."

6. The Applicant has then sought clarification on whether castings produced arid sc Id by us are covered under schedule E of the Punjab Value Added Tax Act, 2005 as declared goods."

7. The Applicant Co. has submitted that it is engaged in manufacture of iron casting falling under chapter 73 of the first schedule to the Central Excise Tariff Act 1985.

8. The Applicant has suggested that its products may be classified as falling under section 14 (iv) (i) of the Central Sales Tax Act, 1956 i.e.

> *"pig iron, (sponge iron) and cast iron including (ingot moulds, bottom plates), iron scrap, cast iron scrap, runner scrap and iron skull scrap.*

9. Whereas in the principal application, the applicant co has submitted that it is manufacturing iron casting falling under chapter 73, in the subject i.e. Sub - defining the application it has asked for clarification on rate of VAT on unmachined iron casting under Punjab Value Added Tax Act, 2005". There is thus ambiguity in the contents of the application inasmuch as the products of the applicant have been alternately attempted to be defined in the application as

> *"Iron casting falling under chapter 73 of the first schedule to the central Excise Tariff Act 1985" on the one hand and "unmachined iron casting "on the other.*

10. The Hon'ble Supreme Court in Bengal Iron Corporation and Another v/s CTO & others 1993 AIR 2414 has clearly held that.

> *"Cast iron casting manufactured by the appellant do not fall within the expression 'cast iron' in entry 2 (i) of the Third schedule of the Act Andhra Pradesh General Sales Tax Act or within section 14 (iv) (i) of the Central Sales Tax Act.*

10. In the subsequent judgment of the Hon'ble Supreme Court referred to by the applicant namely, Vasantham Foundry v/s Union of India and others reported as 1995-99 STC 87 (SC), it was held that when machining or polishing was done on the cast iron then it would no longer be a declared good u/s 14 of the CST.

11. The Applicant Co. has in its application submitted a process flow chart wherein it is stated that after the raw castings are taken out of the Mould boxes then they are subjected to

- *Cleaning through shot blasting;*
- *Welding;*
- *Grinding;*
- *Painting;*

12. He has further elaborated in the process flow chart that the raw castings are transferred to the Fettling Shop where the raw castings are placed in the Shot Blasting machine for cleaning. Thereafter the castings are subjected to grinding by a Grinding Machine and welded as required. In the words of the applicant.

> *"The castings are grinded for smoothing surface, welded to fill up the holes (if any) with the help of welding electrodes ".*

13. Finally as per process flow chart of the applicant, the products are shifted to the Painting Booth for painting and then after final inspection, the products are dispatched to OEMs.

14. It is thus amply clear that the raw castings after being removed from the moulds are subjected to multiple processes of cleaning through shot blasting, welding, grinding and painting. It is quite obvious that after such elaborate processes, a final product, ready for use by manufacturers including tractor manufacturers (the applicant has not specified, whether its products are used by manufacturers of others automobiles) is produced. In the judgment of the Apex court referred to by the applicant, in Para 25, it was held:-

> *"Therefore, in our view "cast iron casting" in its basic or rough form must be held to be cast iron. But , if thereafter any machining or polishing or any other process is done to the rough cast iron casting to produce things like pipes, manhole covers or bends, these cannot be regarded as " cast iron casting". Such products cannot be regarded as 'cast iron' and cannot be treated as "declared goods" under Section 14 (iv) of the Central Sales Tax Act. This view is not in conflict with the view taken in the case of Bengal Iron Corpn.'. but it is in consonance with the decision in that case."*

15. It is obvious from the facts that multiple processes are visited upon the raw casting by the applicant whereafter the final products (whose specific nomenclatures have not been elaborated by the applicant) are derived and dispatched to the customers. In view of the elaborate processes to which the castings are subjected to by the applicant it can by no stretch of imagination be considered that the applicants' products fall under Declared goods as defined in the Central Sales Tax Act. The applicant is thus rightly charging tax @ 5.5 % + surcharge on its products falling under chapter 73 of the first schedule to the Central Excise Tariff Act, 1985 as they are covered under the entry "Metal castings" i.e. entry No. 70 of schedule B appended to the Punjab Value Added Tax Act, 2005. It is clarified that only the products falling under chapter 73 of the first schedule to the Central Excise Tariff Act, 1985 are clarified to be falling under Entry Mo. 70 of schedule B and this determination would not effect taxablity of items falling under any other schedule to the Central Excise Tariff Act 1985.

16. The question is determined accordingly.

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NOTIFICATION (Punjab)

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AMENDMENT IN SCHEDULE 'B' AND 'E' OF THE PVAT ACT, 2005

PART III
GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 14th December, 2015

No. S.O.60/P.A.8/2005/S.8/2015.-Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

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

AMENDMENT

1. In Schedule B, in Serial No. 78, after the words "de-oiled cakes", the words "except Sarson and binola Khal" shall be added.

2. In Schedule E, after Serial No. 28 and Entries relating thereto, the following shall be added, namely;-

"29. Sarson and binola khal 2 percent"

ANURAG AGARWAL,
Financial Commissioner Taxation and
Secretary to Government of Punjab,
Department of Excise and Taxation

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

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PRESSURE MOUNTS ON SAD GOVT TO SLASH VAT ON PETROL

CHANDIGARH: As part of the uniform petroleum rates formula for the region, Punjab faces the tough call of slashing value added tax (VAT) on petrol by around 10% to bring it at par with Chandigarh so that the existing difference of around Rs 5 can be bridged.

The move will result in consumers in Punjab paying much less for petrol.

There is pressure on Punjab to honour its promise after it prompted Chandigarh and Haryana to bring diesel prices at par with it, resulting in consumers shelling out Rs 2-3 per litre more in the UT.

As part of the plan to rationalize petrol prices, UT administration had recently hiked VAT.

An excise department official said the Punjab cabinet, in its meeting on Monday, has authorized a committee headed by deputy CM Sukhbir Singh Badal to decide on any need for change in VAT rates and / the matter would no longer need approval of the cabinet each time.

A decision on the proposal was expected shortly, he added. President of Mohali Petroleum Dealers Association Ashwinder Mongia said that in case the petrol prices in Punjab were brought at par with neighbouring states, there could expect an increase of 3.90 lakh kilolitreper annum in sale. There are about 800 Petrol pumps in the border areas and along the national, state highways and major district roads.

Assuming a minimum growth of 25 kl per pump/ per month, the annual volume shall increase by 2.30 lakh kl at least.

"The assumed loss of revenue by the government on account of lowering the VAT will be offset by the huge increase in sales volumes of petrol. It shall be win-win situation for the government, beleaguered, petroleum trade, as well as, general public," he said.

Meanwhile, Chandigarh-based activist R R. Garg has written to the government pointing out that even though both the Punjab government and petroleum dealers would gain from the uniform pricing, residents of the union territory were being made to shell out more for no reason. He has added that UT administration was revenue surplus and did not need to resort to such revenue generating methods by burning a hole in people's pockets.

Courtesy: The Times of India

25th December, 2015

NEWS OF YOUR INTEREST

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GST BEING DELAYED FOR 'COLLATERAL REASONS': FINANCE MINISTER ARUN JAITLEY

NEW DELHI: Indicating that the Goods and Services Tax (GST) Bill may not go through in the current session of Parliament, Finance Minister Arun Jaitley today said the Bill was being delayed for "collateral reasons".

However, the Minister added that the government will push for other reform bills in the Rajya Sabha in the remaining three days of the Winter Session, which ends on Wednesday.

The bills include amendment to the Arbitration and Conciliation Act, a legislation to set up commercial courts and bankruptcy code.

Addressing the annual general meeting of industry chamber FICCI, Mr Jaitley said, "I have no doubt in my mind that attempt to delay (GST) is entirely for collateral reasons. And the only collateral reason I suspect is if I couldn't do it, then why should somebody else do it?"

Politics should not become a hurdle to larger interest of the country, he said, adding that it would not be possible for the government to accept Congress party's demand of prescribing GST tariff in the Constitution itself.

"A delayed GST is better than a flawed GST," he said. The GST Bill is stuck in the Rajya Sabha where the ruling NDA government does not have a majority as well as stiff opposition by the Congress.

The government had planned to roll out GST from April 1, 2016.

The Bill, which is being touted as the biggest reform in indirect taxation since Independence, is unlikely to be taken in the remaining three days of the Winter Session.

The Lok Sabha has already passed the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill and Arbitration and Conciliation (Amendment) Bill.

These are likely to be taken up in the Rajya Sabha next week.

Courtesy: NDTV
19th December, 2015

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

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TAX FORMS TO BE AVAILABLE ONLINE

CHANDIGARH: In a big relief to the traders' community, the state government has decided to make C-Forms available online from January 15.

The state Excise and Taxation Department has made all necessary preparations and traders would not have to make rounds of government offices to get these forms. Deputy Chief Minister Sukhbir Singh Badal, who also holds the excise and taxation portfolio, had instructed the department to make C-Forms online from January during a meeting of the cabinet sub-committee on tax reforms held recently.

"The drive to make C-Forms available online would commence from SAS Nagar on January 15. Traders can download it from that date onward," an official spokesman said here today.

Filling C-Forms is mandatory for traders and they have been facing difficulties due to the non-availability of these forms.

Excise and Taxation Commissioner Anurag Verma said the trials conducted by the department had yielded positive results.

He added that traders from SAS Nagar could download C-Forms online by logging in from their account from January 15, adding that the highest number of such forms was submitted in Ludhiana, with SAS Nagar coming second.

The spokesman said the forms would be available for download in Ludhiana district from March and the rest of the state by April. — PTI

Courtesy: The Tribune
31st December, 2015