



Issue 2
January 2016

"Rich bachelors should be heavily taxed."

It is not fair that some men should be happier than others."

— Oscar Wilde

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News From Court Rooms

KARNATAKA HC : HC's judgment continued to be binding even if it was not challenged by revenue due to monetary limitations.

Central Excise: Judgment passed by co-ordinate Bench of High Court is binding on another bench of High Court even if earlier judgment of High Court has not been appealed against by Revenue owing to monetary limits. Revenue's appeal dismissed. (Mangalore Refinery & Petrochemicals Ltd. – December 2, 2015).

GUJARAT HC :

Cenvat Credit: Services by way of hiring of vehicles, used for transportation of employees in connection with business are eligible input services. Revenue's appeal dismissed. (Essar Oil Ltd. – December 9, 2015). s 14 lakh cost imposed by the High court on the Department officers M/s Overseas Enterprises vs. UOI (Patna High Court)

Entire law on accountability of public officials for acts of omission and commission explained. Customs officials directed to pay costs of Rs. 14 lakh + interest @ 9% p.a. from personal account & to face disciplinary action for "high-handedness", arbitrariness" and seeking to "hoodwink" Court

Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socioeconomic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner

which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries



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PUNJAB & HARYANA HIGH COURT

GSTR NO 5 OF 2015.

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SKOL BREWERIES LTD.

Vs

STATE OF HARYANA

A.K. MITTAL AND RAMENDRA JAIN, JJ.

22nd December, 2015

HF ► Assessee

Matter is remanded as it has been adjudicated by Tribunal by relying on its earlier judgment inapplicable to the case.

APPEAL – TRIBUNAL – PURCHASE TAX LEVIED BY REVISIONAL AUTHORITY – REBATE OF TAX PAID U/S 15A ALSO DISALLOWED - APPEAL FILED BEFORE TRIBUNAL – DISMISSAL FOLLOWING EARLIER JUDGMENT – REFERENCE BEFORE HIGH COURT - HELD EARLIER DECISION ON DIFFERENT FACTS – NOT CONTROVERTED BY STATE – MATTER REMANDED TO TRIBUNAL FOR FRESH DECISION – S. 6 AND S. 15A OF HGST ACT, 1973

Facts

The Revisional Authority revised the assessment order and levied purchase tax u/s 6 of the Act partially disallowing claim under S. 15A of the Act. On appeal before Tribunal, the order was upheld merely relying on an earlier judgment passed by it. Hence, a reference has been filed before the High Court contending that the said judgment is not applicable to the petitioner's case.

Held:

That the state has not been able to controvert that the issue in the said judgment was different from the issue involved herein.

Therefore, the matter is remanded to Tribunal to decide afresh in accordance with law.

Case referred:

- *Thomas & Katyal Pvt. Ltd Murthal V/s state of Haryana(STA No. 70 of 1993-94)*

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

AJAY KUMAR MITTAL, J.

1. This order shall dispose of GSTR Nos. 4 to 11 of 2010 as according to the learned counsel for the parties, all the references are interconnected and common questions of law and facts are involved therein. For brevity, the relevant facts are being extracted from GSTR No. 5 of 2010.

2. In GSTR No.5 of 2010, the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as “the Tribunal”) vide order dated 4.2.2010 has referred for opinion of this Court following questions of law under Section 42 of the Haryana General Sales Tax Act, 1973 (in short GSTR No. 5 of 2010 “the Act”) arising out of its order dated 22.1.2002 passed in STA Nos. 659, 660, 611, 319 to 321 and 501 of 2000-01:-

- (i) *Whether the Tribunal is justified to hold that beer (IMFL) is an item covered by Entry 24A of Schedule 'B' of Haryana General Sales Tax Act, 1973?*
- (ii) *Whether the Tribunal is justified to uphold the action of the Revisional Authority not to allow set off under Section 15A of the Haryana General Sales Tax Act on the ground that the item is covered by Entry 24A of Schedule 'B' and raising the demand against the dealer?*

3. A few facts necessary for adjudication of the references as narrated therein may be noticed. The petitioner is a dealer registered under the Act and is engaged in the business of manufacturing of beer. The Assessing Authority vide order dated 15.10.1997 framed the assessment for the year 1993-94. Vide order dated 21.2.2000, the assessment order was revised by the Revisional Authority and levied purchase tax under Section 6 of the Act partially disallowing claim under Section 15A of the Act. Still dissatisfied, the petitioner filed an appeal before the Tribunal. The Tribunal vide order dated 24.4.2002 while relying upon its earlier decision dated 22.1.2002 in **STA No. 70 of 1993-94 (M/s Thomas & Katyal Pvt. Ltd. Murthal v. State of Haryana)** dismissed the appeal along with other connected appeals. Hence, the references.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner(s) submitted that the Tribunal has decided the issue by relying upon its order dated 22.1.2002 passed in **M/s Thomas & Katyal Pvt. Ltd. Murthal's case (supra)** whereas the case of the petitioner(s) is totally different. It was urged that in these circumstances, the order of the learned Tribunal was unsustainable. The said contentions of the learned counsel were noted by this Court vide order dated November 18, 2015.

6. Learned State counsel was not able to controvert that the issue in **M/s Thomas & Katyal Pvt. Ltd. Murthal's case (supra)** was different from the issue involved herein. However, it was urged that on merits the controversy is to be decided against the petitioner(s).

7. Since the Tribunal has decided the appeals only on the basis of the decision in **M/s Thomas & Katyal Pvt. Ltd. Murthal's case (supra)**, the matter requires to be remanded to the Tribunal to decide afresh in accordance with law.

8. In view of the above, the matter is remanded to the Tribunal to decide the same afresh after hearing the parties and by passing a speaking order in accordance with law.

9. References stand disposed of accordingly.

**PUNJAB & HARYANA HIGH COURT****CWP NO. 21178 OF 2015**[Go to Index Page](#)**TANEJA OVERSEAS****Vs****STATE OF PUNJAB AND OTHERS****A.K. MITTAL AND RAMENDRA JAIN, JJ.**23rd December, 2015**HF ► Direction given**

The department is directed to decide on the reply sent by petitioner in response to the notice issued before proceeding further.

TIN – LOCKING OF - LACK OF ACTION BY DEPARTMENT – NOTICE ISSUED FOR LOCKING OF TIN – REPLY FILED BY PETITIONER ALONGWITH CLAIM OF REFUND – NO RESPONSE ON PART OF DEPARTMENT – WRIT FILED – RESPONDENT DIRECTED TO DECIDE THE REPLY TO NOTICE BEFORE PROCEEDING FURTHER – R.51A OF PVAT RULES 2005

Facts

The respondent department has issued a notice threatening to lock TIN number of the petitioner without any further notice. However, the petitioner has filed a reply to the notice intimating that it is entitled to refund for assessment years 2013-14 and had applied for refund alongwith VAT 29 and indemnity bond. But no response has been received till date. Hence a writ has been filed.

Held:

The respondent is directed to decide on the reply filed and Form 29 and indemnity bond within the time specified before proceeding further.

Present: Mr. Girish Agnihotri, Senior Advocate with
Mr. Rajiv Agnihotri, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of Mandamus directing the respondents to adjudicate upon the submissions dated 11.12.2015 (Annexure P-2) before executing the notice dated 3.12.2015 (Annexure P-1) threatening to lock Tax Identification Number (TIN) of the petitioner under Rule 51 of the Punjab VAT Rules, 2005 (in short “the Rules”) without any further notice. Further, a prayer has been made for quashing the notice dated 3.12.2015 (Annexure P-1).

2. The petitioner is engaged in the business of trading and milling of paddy and is having TIN No. 03172028860. It has been filing its returns regularly, copies of annual returns for the financial years 2013-14 and 2014-15 are Annexure P-4 (Colly) and paying the tax in accordance with the returns, copies of details showing the tax deposit in these years are Annexure P-5 (Colly). For the assessment years 2013-14, 2014-15 and excess ITC, the petitioner was entitled to refund and as such applied for refund. However, respondent No.4 vide notice dated 3.12.2015 (Annexure P-1) threatened to lock TIN number of the petitioner under Rule 51A of the Rules without any further notice. The petitioner filed written submissions dated 11.12.2015 (Annexure P-2) to the notice intimating that it is entitled to refund amounting to Rs.58,50,000/- for the assessment year 2013-14 and had applied for refund for the assessment years 2013-14 and 2014-15 along with Form VAT-29 and indemnity bond (Annexure P-3 Colly). However, no response has been received till date. Rather, the TIN number of the petitioner was threatened to be locked. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has filed reply dated 11.12.2015 (Annexure P-2) and submitted Form VAT-29 and indemnity bond (Annexure P-3 Colly), but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.4 to take a decision on the reply dated 11.12.2015 (Annexure P-2) and Form VAT-29 and indemnity bond (Annexure P-3 Colly), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order before proceeding further against the petitioner, if required, in the matter.

**PUNJAB & HARYANA HIGH COURT****STA NO. 38 OF 2015**[Go to Index Page](#)**BALLAMGARH CO-OP L/C SOCIETY
Vs
COMMISSIONER OF CENTRAL EXCISE****A.K. MITTAL AND RAMENDRA JAIN, JJ.**23rd December, 2015**HF ► Assessee**

Deposit of 50% of additional demand sufficient in the circumstances of the case for entertainment of appeal.

PREDEPOSIT – SERVICE TAX - QUANTUM OF PREDEPOSIT – APPEAL – ENTERTAINMENT OF – DEMAND RAISED FOR PAYMENT OF SERVICE TAX – APPEAL BEFORE TRIBUNAL – APPELLANT DIRECTED TO DEPOSIT THE ENTIRE AMOUNT DEMANDED – APPEAL BEFORE HIGH COURT - 50 % OF SERVICE TAX LIABILITY ALREADY STOOD PAID BY APPELLANT – TRIBUNAL THUS DIRECTED TO HEAR APPEAL ON MERITS WITHOUT INSISTING ON FURTHER PREDEPOSIT – S. 35F OF CENTRAL EXCISE ACT, 1944

Facts

A demand was raised for payment of service tax alongwith interest and penalty. On appeal before commissioner, the tax was reduced to 4.46 lacs. An appeal was filed before tribunal alongwith application for stay which was dismissed in default. However, after recalling of the order, the appellant was directed to deposit the entire amount of service tax as predeposit. An appeal is thus filed before the high court contending that the appellant has already deposited a sum of Rs 1,20,935 thereby making deposit more than 50% of the total service tax demand.

Held:

The Tribunal is directed not to dismiss the appeal for want of predeposit as the appellant has already deposited more than 50% of the total service tax liability demanded from it. The appeal is disposed of.

Present: Mr. Deepak Gupta, Advocate for
Mr. Jagmohan Bansal, Advocate for the appellant.
Mr. Sunish Bindlish, Advocate with
Ms. Shriya Kalra, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 against the order dated 1.10.2015 (Annexure A-6) passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as “the Tribunal”) directing the assessee to deposit entire amount of service tax amounting to Rs. 4,46,562/- as pre-deposit.

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. In the year 2005, the appellant entered into a contract of cleaning various parts of M/s Guru Gobind Singh Super Thermal Plant, Ropar (For brevity “the Thermal Plant”). As per conditions of work order, the service recipient was required to pay service tax. The appellant did not collect or paid service tax as the Thermal Plant authorities had confirmed that their activities were not commercial or industrial and as such cleaning of their premises was not taxable. The Superintendent (Preventive), Central Excise Ropar vide letter dated 27.5.2009 (Annexure A-1) asked the Chief Engineer of Thermal Plant that whether any industrial or trading activity is being carried out by them; whether the work being done by co-operative societies of cleaning is of technical nature and whether it pertains to plant or machinery or office or residential area in Thermal Plant. In pursuance thereto, the office of Deputy Chief Engineer opined that the work of cleaning of station building/service building cleaning of technical and non-technical was of non-technical nature and the cleaning pertained to office and other areas in the plant/out the plant and it did not involve cleaning of machinery or equipment. Further, it was opined that the activities of cleaning were not in respect of commerce or industry.

3. However, the respondent issued a show cause notice dated 15.9.2010 for the payment of service tax amounting to Rs. 9,86,918/- (Service Tax Rs. 9,60,196/- + Education Cess Rs. 19,204/- + S&H Education Cess Rs. 7518/-) along with interest and penalty for the period from June 2005 to March 2010. The appellant filed its reply dated 31.7.2011. The adjudicating authority vide order dated 23.9.2011 (Annexure A-2) confirmed the said demand and imposed penalty of equal amount under Section 78 of the Act and further imposed penalty of Rs. 2000/- under Section 77 of the Act. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals) who vide order dated 17.12.2012 (Annexure A-3) reduced the amount of service tax from Rs. 9.86 lacs to Rs. 4.46 lacs and accordingly reduced the amount of penalty under Section 78 of the Act. Still dissatisfied, the appellant filed an appeal (Annexure A-4) along with an application for stay on 14.3.2013 (Annexure A-5) before the Tribunal. The Tribunal vide order dated 14.7.2015 dismissed the stay application in default. Thereafter, the appellant filed an application for re-calling the said order which was allowed vide order dated 1.10.2015. The Tribunal vide order dated 1.10.2015 (Annexure A-6) directed the appellant to deposit the entire amount of service tax, i.e. Rs. 4,46,562/- as pre-deposit. Hence, the present appeal. 3. Learned counsel for the appellant submitted that the requirement of Rs. 4,46,562/- as a pre-deposit as directed by the Tribunal was unfair and excessive. He, however, submitted that the appellant has deposited a sum of Rs. 1,20,935/- on 11.12.2012, thus, making the deposit more than 50% of the total service tax demand.

4. Learned counsel for the revenue opposed the prayer made by the learned counsel for the appellant and submitted that the Tribunal has rightly directed the appellant to deposit the entire amount of service tax.

5. This Court vide order dated 15.12.2015 while issuing notice of motion for 23.12.2015 directed the Tribunal not to dismiss the appeal of the assessee for want of pre-deposit in terms of order dated 1.10.2015 as the appellant had deposited more than 50% of the total service tax liability demanded from it.

6. The primary dispute that arises for consideration in this appeal relates to the quantum of pre-deposit to be made by the appellant as a condition precedent for the hearing of the appeal by the Tribunal. After hearing learned counsel for the parties and keeping in view the totality of the facts and circumstances of the case coupled with the fact that the appellant has already deposited a sum of Rs. 1,20,935/- on 11.12.2015, thus, making total deposit of more than 50% of the total tax demand, the present appeal is disposed of by making the interim order dated 15.12.2015 absolute. The Tribunal is directed to hear the appeal on merits without insisting for any further deposit.

**PUNJAB & HARYANA HIGH COURT****CWP NO. 8361 OF 2015**[Go to Index Page](#)

SHIV MEDICAL STORE
Vs
U.T. CHANDIGARH AND OTHERS
A.K. MITTAL AND RAMENDRA JAIN, JJ.

23rd December, 2015**HF ► Assessee**

Appellate authority has the power to waive off the predeposit of 25% prescribed under Section 62(5) of PVAT Act.

PREDEPOSIT – WAIVER OF - POWER OF APPELLATE AUTHORITY TO WAIVE OFF THE CONDITION – WRIT FILED AGAINST ASSESSMENT ORDER BECAUSE OF MANDATORY CONDITION OF PREDEPOSIT THEREBY RENDERING THE PETITIONER UNABLE TO AVAIL ALTERNATE REMEDY –CONTENTION RAISED THAT APPELLATE AUTHORITY NOT EMPOWERED TO WAIVE OFF THE CONDITION DESPITE REAL HARDSHIP OF PETITIONER – WRIT DISPOSED OF WITH LIBERTY TO FILE APPEAL BEFORE APPELLATE AUTHORITY ALONGWITH INJUNCTION FROM PREDEPOSIT - S. 62(5) OF PVAT ACT 2005

Facts

Additional demand was raised on the petitioner by the Excise and Taxation Commissioner. A writ is filed before high court qua the aspect of availing alternative remedy of first appeal without enforcing the condition of predeposit of the amount. The petitioner contends being unable to avail the alternate remedy against the assessment order because of the condition u/s 62(5) under which authority has not been empowered to waive off even in cases where the petitioner is unable to make payment due to real hardship.

Held:

The writ petition is disposed of with the observation that it shall be open for the petitioner to file an appeal against the order of assessment in accordance with the provisions of the PVAT Act and also an application for interim protection/ injunction from the requirement of predeposit of 25% of the amount, which issue has already been decided by the court in the case of Punjab State Power Corporation Limited Vs State of Punjab and others.

Cases Referred:

- WP(C) No.1055 of 2013, *Dishnet Wireless Limited vs. CTO and another (SC)*
- CWP No.26920 of 2013 (*Punjab State Power Corporation Limited vs. The State of Punjab and others*)

Present: Mr. Divya Suri, Advocate,
Mr. Sachin Bhardwaj, Advocate and Mr. Madhur Sharma, Advocate for the petitioner.
Mr. IPS Doabia, Advocate for the respondent-UT Chandigarh.

AJAY KUMAR MITTAL, J.

1. Challenge in this petition is to the vires of Section 62(5) of the Punjab Value Added Tax Act, 2005 (in short, “the PVAT Act”) as applicable to the Union Territory of Chandigarh. Prayer has also been made for a direction for waiving the condition qua requirement of predeposit of 25% of additional demand for hearing the appeal before the first appellate authority under Section 62(5) of the PVAT Act.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a partnership firm which was incorporated on 12.1.2012 through the partners namely Atul Goyal and Rajesh Goyal in pursuance to the profit and loss sharing for the purpose of carrying and conducting of the business in accordance with the partnership deed. The business activities are with regard to purchase and sale of medicines and medical equipments having been procured from various manufacturers and wholesale suppliers. The said purchases were being done through account payee cheques through the banking channels covered under the Banking Regulation Act, 1949 and the payments thereof were credited to the bank accounts of the said manufacturers. All the purchases were being accounted, recorded, disclosed and declared in the purchase registers maintained as required. On 19.8.2014, there was an inspection by the respondents on the premises of the petitioner wherein due to physical stock taking, certain differences had been found out and the assessment had been concluded through interim report alongwith order of the Excise and Taxation Commissioner dated 29.9.2014 by finding a difference of Rs. 2,75,72,416/- by interpolating figures of discount provided by the petitioner on the medicine sales to one and all sundry patients identically. The respondents levied the demand of Rs. 41,40,860/- through order dated 5.3.2015, Annexure P.8 which is under challenge before this court qua the aspect of availing the remedy of first appeal without enforcing the condition of pre-deposit of the amount. According to the petitioner, the Apex Court vide order dated 31.1.2014 in WP(C) No.1055 of 2013, *Dishnet Wireless Limited vs. CTO and another* stayed the operation and implementation of sub section (5) of Section 62 of the PVAT Act as an interim protection. For the year 2014-15, the petitioner is unable to avail remedy of appeal against the assessment order because of the condition under Section 62 (5) of the PVAT Act requiring pre-deposit of 25% of the tax, interest and penalty assessed additionally. No authority under the Act has been empowered to waive off the condition even in cases where the petitioner is unable to make the payment due to real hardship. Hence the instant writ petition.

3. We have heard learned counsel for the parties.

4. On perusal of the averments made in the petition, we find that this writ petition has been filed without even filing an appeal. In such a situation, the requirement of deposit of 25% of the amount as a pre-condition under Section 62(5) of the PVAT Act for hearing the appeal before the first appellate authority does not apply.

Consequently, the writ petition is disposed of with the observation that it shall be open for the petitioner to file an appeal against the order of assessment in accordance with the provisions of the PVAT Act and also an application for interim protection/injunction from the requirement of pre-deposit of 25% of the amount, which issue has already been decided by this Court vide order of even date in CWP No.26920 of 2013 (*Punjab State Power Corporation Limited vs. The State of Punjab and others*).

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**PUNJAB & HARYANA HIGH COURT****CWP NO. 24870 OF 2015**[Go to Index Page](#)**BHARTI TRADING COMPANY****Vs****STATE OF PUNJAB & ANR.****A.K. MITTAL AND RAMENDRA JAIN, JJ.**30th November, 2015**HF ► Direction given**

The respondent is directed to adjudicate on the reply sent by petitioner regarding locking of TIN and pass a speaking order.

TIN – LOCKING OF - LACK OF ACTION ON PART OF DEPARTMENT- DEMAND RAISED ALONGWITH INTEREST ON ACCOUNT OF WRONGLY CLAIMED ITC – NOTICE ISSUED FOR DEPOSITING THE AMOUNT – OBJECTION RAISED BY DEALER – MEMO ISSUED STATING NON COMPLIANCE OF PREVIOUS NOTICE – REPLY FILED – NO RESPONSE GIVEN – WRIT FILED – DEPARTMENT DIRECTED TO PASS A SPEAKING ORDER CONSIDERING THE REPLY SO FILED – WRIT DISPOSED OF - RULE 51A OF PVAT RULES, 2005

Facts

The claim made by petitioner on account of ITC on purchases made was rejected and interest was demanded. Also, TIN was locked. A notice was issued in this regard for depositing the amount. The petitioner raised its objection. A memo was issued by the department stating that the earlier notice has not been complied with. The petitioner sent a reply to the said notice by post but no response has been received. Hence, a writ is filed in this regard.

Held:

The respondent is directed to decide the matter as per law and pass a speaking order taking into consideration the reply sent by the petitioner.

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

AJAY KUMAR MITTAL, J.

1. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to unlock its TIN number. Further, a writ of certiorari has been sought for quashing the notices dated 17.9.2015 (Annexure P-1) and dated 16.10.2015 (Annexure P-2).

2. The petitioner is engaged in the business of trading at Ludhiana and is having TIN No. 03211159233. It purchases goods from within the State of Punjab and outside of Punjab and sells the same within Punjab and in the course of inter State trade and commerce. The data

of movement of goods coming from outside Punjab and going outside Punjab are reported by the petitioner at Information Collection Centres (ICCs). The petitioner had filed its quarterly returns for the year 2014-15. The tax liability was met in the returns and ITC due to the dealer was also claimed. Respondent No.2 issued a notice for the assessment year 2014-15 to the petitioner that it had made certain purchases from the cancelled dealers and, therefore, the ITC was not allowable. Thereafter, respondent No.2 issued a notice dated 17.9.2015 (Annexure P-1) to the petitioner rejecting the calculation of ITC and interest thereon was made. However, the petitioner was directed to deposit a sum of Rs.33,98,514/- on or before 30.9.2015. The petitioner through its counsel appeared before respondent No.2 and raised objection regarding jurisdiction and also requested for unlocking its TIN number. Instead of unlocking the TIN number of the petitioner, respondent No.2 issued a memo dated 16.10.2015 (Annexure P-2) locking the TIN number stating therein that the earlier notice has not been complied with. In response thereto, the petitioner requested respondent No.2 for unlocking of TIN and sent reply dated 30.9.2015 (Annexure P-3) by post, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that in response to the notice dated 16.10.2015 (Annexure P-2), the petitioner has sent reply dated 30.9.2015 (Annexure P-3) by post to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, the present writ petition is disposed of by directing respondent No.2 to decide the matter in accordance with law after affording an opportunity of hearing to the petitioner and by passing a speaking order taking into consideration the reply dated 30.9.2015 (Annexure P-3) sent by the petitioner by post within a period of one week from the date of receipt of a certified copy of this order.

**PUNJAB VAT TRIBUNAL****APPEAL NO. 123 OF 2015**[Go to Index Page](#)**D.M. PUNGRAIN****Vs****STATE OF PUNJAB****JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN**18th September, 2015**HF ► Appellant**

Excess input tax credit is to be adjusted against predeposit required for entertainment of appeal.

PREDEPOSIT – APPEAL – ENTERTAINMENT OF – ADJUSTMENT OF ITC TOWARDS PREDEPOSIT- DISMISSAL OF FIRST APPEAL ON ACCOUNT OF FAILURE OF PREDEPOSIT – APPEAL FILED BEFORE TRIBUNAL PRAYING FOR ADJUSTMENT OF EXCESS INPUT TAX CREDIT AVAILABLE TO APPELLANT AGAINST THE REQUIREMENT OF PREDEPOSIT – DIRECTION ISSUED TO RESPONDENT TO ADJUST THE AMOUNT AGAINST 25% OF ADDITIONAL DEMAND IF AVAILABLE – S. 62(5) OF PVAT ACT, 2005

Facts

A demand was raised by the designated officer. First appeal was dismissed for non compliance of S. 62(5) of PVAT act, 2005. An appeal is thus filed before Tribunal contending that amount of predeposit be adjusted from the excess input tax credit available to the appellant.

Held:

The appeal is disposed of directing the respondent to adjust the 25% of additional demand against the ITC available. If no amount is found available for adjustment then the order passed by the DETC would remain intact.

Present: Mr. Avneesh Jhingan, Advocate counsel for the appellant.
Mrs. Sudeepti Sharma, Dy. Advocate General for the State.

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

1. This appeal is directed against the order dated 15.12.2014 passed by the Deputy Excise and Taxation Commissioner (A), Faridkot Division, Bathinda whereby, the appeal of the appellant Punjab Grains Procurement Corporation Ltd. (herein referred as Pungrain for the short) was dismissed for non compliance of Section of 62 (5) of the Punjab Value Added Tax Act, 2005.

2. I have gone through the order dated 30.10.2014 passed by the Designated Officer-

cum-Excise and Taxation Inspector, Faridkot creating an additional demand of Rs.95,98,484/-. The State has neither filed any writ petition challenging the Section 62 (5) of the Act nor any stay has been granted by the Hon'ble High Court. Therefore there is no impediment in disposal of this appeal.

3. Having perused the order dated 30.10.2014, it transpires that ITC amounting to Rs.2,70,34,216/- was available to the department in the financial year 2008-09.

4. The District Manager has moved an application dated 2.12.2014 stating that amount of 25% of the additional demand could be adjusted from the excess ITC available to the appellant.

5. In these circumstances, the appeal is disposed off with a direction to the respondent to forward the amount to the extent of 25% of the additional demand from the ITC available which may be adjusted towards completing of 25% of the additional demand and on satisfaction regarding such compliance, the Deputy Excise and Taxation Commissioner would hear and decide the appeal on merits. If no amount is available for adjustment then the order passed by the Deputy Excise and Taxation Commissioner would remain intact.

6. Resultantly, this appeal is disposed off accordingly.

7. Pronounced in the open court.

**PUNJAB VAT TRIBUNAL****APPEAL NO. 205 OF 2014**[Go to Index Page](#)**INTEX TECHNOLOGIES (I) LTD.****Vs****STATE OF PUNJAB****JUSTICE A.N. JINDAL, (RETD.)
CHAIRMAN****HF ► Revenue**

Penalty upheld where earphones and data cables are not separately shown in the invoices raised for mobile phones.

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – MOBILE PHONES – ACCESSORIES OF MOBILE PHONES – STOCK TRANSFER OF MOBILE PHONES AND THEIR RESPECTIVE ACCESSORIES(CHARGERS, EARPHONES AND DATA CABLE) IN A SINGLE PACK – INVOICE SHOWING ONE PRICE INCLUSIVE OF PRICE OF MOBILE PHONE AND ITS ACCESSORIES -NO SEPARATE PRICE OF ACCESSORIES SHOWN– PENALTY IMPOSED ON ACCOUNT OF ABSENCE OF BILL OF ACCESSORIES – MATTER REMITTED TO DESIGNATED OFFICER ON APPEAL – MOBILE CHARGERS CONCLUDED TO BE COMPOSITE PART OF CELL PHONE BY THE OFFICER – APPEAL BEFORE TRIBUNAL – RELYING ON A JUDGMENT PASSED BY SUPREME COURT, OTHER ACCESSORIES LIKE EAR PHONES AND DATA CABLE CONCLUDED TO BE INDEPENDENT PARTS CAPABLE OF BEING SOLD SEPARATELY THEREBY REQUIRING SEPARATE PRICING – ONLY MOBILE CHARGERS CAN BE SOLD AS A COMPOSITE PACK WITH MOBILE PHONES – PENALTY FOR NON DISCLOSURE OF PRICE OF EAR PHONE AND DATA CABLE UPHOLD – S. 51(7)(c) OF PVAT ACT 2005

Facts

The appellant company is engaged in reselling of mobile phones accessories, computer and computer peripherals. Some pieces were dispatched on stock transfer pieces. The driver produced the Stock transfer invoice and GR. The stock transfer invoice mentioned price of mobile phones and no separate price had been mentioned regarding ear phones and data cables.

The goods were detained on account of absence of bill against the accessories transported and penalty was imposed. On appeal, the matter was remitted to the designated officer to find out as to whether the sale of mobile phone included the accessories as a single transaction or that the accessories had separate identity capable of being sold independently. It was observed by the AETC that the mobile chargers are part of mobile phones and not an accessory (composite part of cell phone) but other accessories like ear phones and data cables have independent identity. An appeal was filed before first appellate authority. On dismissal, an appeal is filed before Tribunal.

Held:

The designated officer has already held that the mobile chargers are a composite part of cell phone.

However, following the judgment in the case of Nokia India Pvt. Ltd Vs State of Punjab, it is held that the ear phones and the data cable are not a composite part of cell phone and are independent product and could be separately sold without selling the cell phone.

Therefore, penalty imposed on account of non disclosure of the price of ear phones and data cable while sending the mobile phones is upheld. The appeal is dismissed.

Present: Mr. Sushil Ghai, Advocate Counsel for the appellant.

Mr. N.D.S. Mann, Additional Advocate General for the State.

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

1. This appeal is directed against the order dated 28.3.2014 passed by the First Appellate Authority, Patiala Division, Patiala dismissing the appeal against the order dated 23.8.2012 passed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, ICC, Shambu (Import) imposing a penalty of Rs.94,500/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005.

3. The appellant company M/s Intex Technology (I) Ltd. is a registered under the Punjab Value Added Tax Act, 2005 as well as the Central Sales Tax Act, 1956 with TIN No.0393110383. The company is engaged in the business of resale of mobile phones accessories, computers and computer peripherals. On 9.4.2010, the appellant dispatched 900 pieces of mobile phones which were covered by the stock transfer note dated 12.4.2010 for Rs.26,37,600/-. When the vehicle reached the ICC Shambu (import) Barrier, it was checked. The driver of the vehicle presented the following documents-

1. Stock Transfer Invoice No.1040100105, dated the 9.4.2010 issued by M/s Intex Technologies (I) Ltd., C-40, Okhala Industrial Area, New Delhi-110020 in favour of the above dealer for Rs.26,37,600/- and
2. GR No, 335385988, dated the 9.4.2010 issued by GATI Transporters, for the transportation of the goods from Delhi to Sahnewal.

4. The goods were detained for the reason that accessories were being transported without any bill. Since the transaction needed verification from the account books, therefore, a notice was issued in response to which the appellant alleged that the goods were in packed condition and every packet contained a hand set as well as one charger, ear phone and data cable. The price recorded over the packet included the price of the charger and other accessories packed in it. At the time of sale of mobile, no price is claimed for the charger and other accessories. A person, when purchases the product of the company i.e. mobile phone, he is handed over the complete set comprised of mobile phone, data cable accessories and charger. The Assistant Excise and Taxation Commissioner after considering the contentions, vide order dated 26.4.2010, imposed a penalty to the tune of Rs. 1,62,000/- against the appellant.

5. Aggrieved by the said order, the appellant preferred the appeal whereupon, the First Appellate Authority, vide order dated 15.12.2011, remitted the case back to the Designated Officer with the direction to find out as to whether the sale of mobile phone and accessories was a single transaction i.e. whether the mobile phone included the accessories as well in the transaction and that the accessories as such did not have a separate identity, a separate tag and separate value. It was further directed to verify through the market survey and the owners of the goods as to whether the accessories are separately sold in the market or the sale is a composite

one and does not have two separate identities.

6. In response to the said order, Assistant Excise and taxation Commissioner, ICC, Shampoo (import) observed that the chargers are mandatory part of the mobile phone and not an accessory, however, the remaining parts i.e, ear phones and data cables have independent identity and could be sold independently of the mobile phone. Moreover, they are not mentioned in the description of the invoice. However, it further observed that the detaining officer assessed the value of the goods on the higher side i.e, Rs.3,15,000/-, Consequently, the Designated Officer reduced the penalty to the tune of Rs.94,500/-, vide his order dated 23.8.2012.

7. On appeal, the First Appellate Authority, Patiala Division, Patiala vide his order dated 28.3.2014, dismissed the appeal with the following observation:-

"I have heard the arguments of Ld. counsel as well as of the state representative and seen the record and it is clear that the relief regarding value of goods has already been given to the dealer and at this stage there is nothing to intervene into the matter and appeal is dismissed."

8. Arguments heard. Record perused.

9. There is no denying a fact that the appellant was taking the goods on the basis of the stock transfer invoice. The goods contained mobile chargers, ear phones and data cables. The stock transfer invoice contained the price of the mobile phones and no separate price has been mentioned regarding ear phones and data cables. The Designated Officer has already considered the charger a composite part of the mobile phone, to be sold with the mobile.

10. Now the question remains to be considered is "whether the ear phone and data cable are accessories and could be sold independently in the market. The issue is securely covered by the Apex Court judgment delivered in the case of Nokia India Pvt Ltd. Vs State of Punjab and others decided on 17th December, 2014, wherein, the battery transfer was not considered to be composite part of mobile phone, but an independent product and could be sold separately without selling the cell phone, On the analogy of the aforesaid judgment, it does not appeal to the common sense that the ear phone and the data cable are a composite part of the cell phone. The Detaining Officer who also conducted market survey observed that the ear phone and the data cable are independent products and could be sold separately without selling the cell phone. It is a matter of common sense that though, the mobile phone is an incomplete and cannot work without the charger and as such could be considered as a composite part of the mobile phone, but ear phone and data cable could be sold independently in the market. The Cell Phone could be used even without data cable and ear phone.

11. In these circumstances, I have no reason to make an exception to the view taken by the courts below qua the penalty imposed on account of non disclosure of the price of ear phone and the data cable while sending the mobile phone, the charger and the aforesaid accessories in the same pack.

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

13. Pronounced in the open court.

**PUNJAB VAT TRIBUNAL****APPEAL NO. 22 OF 2015**[Go to Index Page](#)**J.K. ELECTRICAL****Vs****STATE OF PUNJAB****JUSTICE A.N. JINDAL, (RETD.)****CHAIRMAN**4th December, 2015**HF ► Assessee**

Mentioning of 'electrical goods' instead of 'transformers' is not misdescription of goods for imposition of penalty u/s 51.

PENALTY – CHECK POST/ ROADSIDE CHECKING -ATTEMPT TO EVADE TAX – MISDESCRIPTION OF GOODS - VEHICLE CONTAINING CORE ASSEMBLY AND TANK(TRANSFORMERS UNDER REPAIRS) IN TRANSIT FOR JOB WORK OR REPAIRS INTO STATE OF PUNJAB– GOODS DETAINED AS VAT XXXVI DECLARED GOODS AS 'ELECTRICAL GOODS' – PENALTY IMPOSED FOR EVASION OF VAT AND ENTRY TAX – APPEAL BEFORE TRIBUNAL – ACCOUNT BOOKS OF APPELLANT SHOW TAX PAID ON GOODS USED IN MAKING OF TRANSFORMERS – NO TAX OTHERWISE INVOLVED AS GOODS WERE TO BE RETURNED AFTER JOB WORK – ENTRY TAX STOOD PAID IN ORDER TO RELEASE GOODS -NON MENTIONING OF 'TRANSFORMERS' ON DOCUMENTS IMMATERIAL AS MENTIONING OF 'ELECTRICAL GOODS' ALSO INDICATES THE GOODS IN QUESTION – VAT INVOICES NOT EXAMINED THOROUGHLY BY DESIGNATED OFFICER – NON SPEAKING ORDER PASSED BY AUTHORITIES BELOW – IMPUGNED ORDER SET ASIDE – APPEAL ACCEPTED AND DESIGNATED ORDER DIRECTED TO PASS A FRESH SPEAKING ORDER – S. 51(7)(C) OF PVAT ACT, 2005

Facts

The goods i.e. core assembly and tank were being brought from Uttarakhand into the state of Punjab by the appellant for doing job work of repairs. The goods were detained on account of misdescription of goods indicating as 'electrical goods' in VAT VVVXI forms suspecting evasion of VAT and Entry tax. Penalty was imposed u/s 51(7)(b) of the PVAT Act, 2005. An appeal is filed before Tribunal.

Held:

The appellant has maintained account books reflecting the purchase orders and payment of tax on the goods involved in making the transformers in order. Regarding payment of entry tax on the said goods, the same has been paid for releasing of goods.

The order with respect to non mentioning of 'transformers' on VAT invoices is incorrect. The mentioning of electrical goods is not incorrect as it includes core tank and other materials. Also, electrical goods are also not tax free. So mentioning of electrical goods does not save

appellant from tax liability. The order is passed by designated officer without examining VAT invoices and is non speaking. The appeal is accepted and Designated officer is directed to pass a fresh speaking order after providing an opportunity of being heard to appellant and leading evidence in support of his case.

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

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

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

1. This appeal is directed against the order dated 24.5.2013 passed by the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Patiala Division, Patiala (herein referred as First Appellate Authority) dismissing the appeal of the appellant against the order dated 13.2.2014 imposing a penalty of Rs.7,17,000/- U/s 51(7) (b) of the Punjab Value Added Tax Act, 2005.

2. The brief facts of the case are that on 31.1.2013 when the drivers alongwith vehicles bearing Nos.PB-05R-9349 and PB-03N-0617 reached ICC Shamboo Import, they presented the bills/challan Nos.78 and 79, dated 30.1.2013 relating to core assembly and tank (transformers under repairs) of the capacity of 25 KVA 63 KVA 100 KVA valuing Rs.13 lacs as brought from Uttra Khand Power Corporation Ltd. alongwith declarations (Vat XXXVI two numbers) in that regard and also a transit slip No. D20130100377649 issued by the transporter.

3. The detaining officer while suspecting this case to be that of tax evasion, forwarded the same to the Assistant Excise and Taxation Commissioner who while observing that there was mis-description of goods i.e. electrical goods in the VAT XXXVI Forms, imposed a penalty to the tune of Rs.7,17,000/- U/s 51 (7) (b) of the Punjab Value Added Tax Act 2005. The appeal preferred by the appellant was dismissed by the First Appellate Authority with the following observations:-

1. "The ETI pointed out that penalty has rightly been levied as the description of goods has been intentionally given wrong in order to avoid the payment of tax and also the entry tax. The record of the firm also shows that this firm has been bringing old and damaged transformers into the state of Punjab and sending these transformers after repairs which involved addition of electrical and other items (which have been damaged). It involves full fledged production process similar to involve in the production of the new transformers and costly parts and equipment and is added in this repair but no tax has been paid for other process. So attempt to evade tax is there."

4. Arguments heard. Record perused.

5. The counsel for the appellant has urged that the appellant had obtained the purchase orders from M/s Uttra Khand Power Corporation Ltd., Roorki for aluminum wound damaged distribution transformers to be sent without scrap (only tank and core) of 25,63,100,160 and 250 KVA capacities against specification No. CCP01/9/2011-2012 and to be sent back after repairs. Accordingly as per this purchase order as referred to above, the appellant has been receiving the damaged transformers for repairs in routine from M/s Uttra Khand Power Corporation Roorki and the same were sent back after job work alongwith Form VAT XXXVI and Form XVI issued under Utrtrahand value Added Tax Act, 2005. In the VAT XXXVI at Sr. No. 10 under the column commodity, "transformers" has been specifically mentioned.. Similarly, in the invoice/challan, the words 'core and tank issued to the Firm for repairing/job work' have been specifically mentioned. Under these circumstances, no entry tax is payable as

the goods in question were meant for job work/ repair, whereas, as per the provisions of Punjab tax on entry into the Local Areas Act, 2000. The state could impose the entry tax over the goods which entered into the State of Punjab for consumption or use thereof. Thus in circumstances, if the goods are sent for the purposes of job work, no entry tax could be claimed. It has been further argued that the assessing authority admitted that the appellant has been bringing old and; damaged transformers in the State of Punjab and sending the same back to the corporation after repairs which involve addition of many electrical and other items which have been damaged. It involves full fledged production process similar to those involved in production of new transformers and large costly parts and equipment is added in this repair work. But no tax has been paid for this process.

6. Taking note of the aforesaid observations, the counsel has submitted that the appellant has already paid the tax on the goods consumed, in the job work and has also issued sale invoice in this regard. He had also disclosed all these intrastate transactions in his Form VAT 18. However, the Designated Officer as well as the appellate Authority have tried to step in to, the shoes of the Assessing Authority as they have tried to determine taxability of the job work, whereas the Designated Officer is not authorized to do so U/s 51 of the Punjab Value Added Tax Act, 2005. The counsel has again reiterated that since the goods were not brought into State of Punjab for consumption or sale but only for repairs/job work, therefore, no tax was payable over the goods, consequently, no presumption regarding the attempt, to evade tax can be drawn.

7. To the contrary, Mr. Sukhdeep Singh Brar, Additional Advocate General has; urged that since VAT XXXVI accompanying the goods was bearing the mis-description of the goods therefore, the Assistant Excise and Taxation Commissioner, Designated Officer was justified in holding that the goods were not covered by the genuine documents.

10. Arguments heard. Record perused, what disturbs much to this Tribunal is that the Designated Officer never made any effort to know about the value of the reasoned order and has been passing sketchy orders. The reason is the life line of an order and the order must depict the brief *facts* and the arguments raised. In this case, the order does not even indicate as to when the goods were detained and by whom; when the case was transferred to him and when he issued notice to the consignee. It also does not contain the observations as to if the consignee was given opportunity of being heard. The order starts with the words that Mr. Ramesh Kumar accountant of the consignee alongwith S.M. Dixit, Counsel appeared with written arguments." The order does not contain as to what written submissions were submitted by the appellant in support of his case and what the officer commented.

11. The findings with regard to the imposition of penalty on account; of attempt to evade tax has been imposed on the following grounds:-

1. *Biils and E-ICC are not genuine.*
2. *The mis-description was made in the E-ICC with intention to avoid entry tax.*
3. *The Assessing Authority Bathinda is intimated that CST is not charged on freight and labour on earlier sales while sending the transformers to the other states.*

12. It is surprising to note about the height of the poison which the officer is developing against the appellants about its previous transactions. Whereas the appellant is very fair in its conduct while stating that he has been bringing the damaged transformers without any scrap i.e. core and the tank only and has been sending the same after job work. The goods were being sent against the purchase orders and he has been paying the tax on the goods which are involved in making the transformers in order, including labour and binding. He has been

maintaining the account books in that regard. The Assistant and Excise and Taxation Commissioner, ICC import has made written submissions dated 9.12.2013 which are already on the record. These submissions affirm the fact about the maintenance by the appellant. The relevant paras No, 2 and 3 of the written submissions are reproduced as under:-

2. *That the appellant had paid Entry tax upon the goods on 7.2.2013 under the directions of the detaining officer i.e. ETO at the ICC. Thus appellant has accepted the goods as transformers. However, penalty has not been imposed under Entry Tax Act, because the matter is pending in the Hon'ble Punjab and Haryana High Court which could be recovered in accordance with the orders of the Hon'ble High Court.*
3. *That as directed by this Hon'ble Tribunal the A ETC, Bathinda was requested vide letter No. 1443 dated 26.11.2013 to verify the documents produced by the appellant from its account books and to send a report to the effect whether these stand entered in the accounts books or not. The AETC, Bathinda has intimated vide his letter No. 1526 dated 27.11.2013 that these documents have been found correct.*

13. As regards the payment of entry tax on 7.2.2013 it appears to be under pressure obviously for releasing the goods. As regards the penalty, the matter is said to be pending in the Hon'ble High Court and penalty could be imposed only after the decision is made by the Hon'ble High Court.

14. The order passed by the designated officer is incorrect, in as much as, qua the non mention of the transformers in the VAT invoices. The goods were covered by VAT invoices No. i.e. 78 and 79 dated 30.1.2013. The Vat invoices clearly indicate that the core and the tank of the capacity 25,63,100 had been sent to the appellant for repairs/ job work. Had he made/ little effort to examine the VAT invoices then he would not have recorded the wrong fact that the VAT invoices did not contain the word transformers, Transformers (under repairs), as is known in layman's language, consist of core, tank and other parts when it is workable as used in technical language:, Thus, the order appears to be vague and non speaking and has been passed' without application of mind. The declaration form as generated by the consigner may be containing the word "electrical goods" but that also is not incorrect for two reasons i.e. electrical goods include core tank and other burnt material (i.e. electrical parts), secondly electrical goods are not tax free. Therefore the use of the word electrical goods in the declaration does not help the appellant to escape liability of tax. The department should have examined the VAT invoices and then made out about the taxability of the goods. The transit slip which the appellant was also carrying, as issued by the transporter, also bears the specific words "old tank."

15. Not only the Assistant Excise and Taxation Commissioner has passed the vague order based on incorrect facts but the Deputy Excise and Taxation Commissioner also appears to have not sensitized the issue while observing that many electrical goods are added in the damaged transformers for making them workable, which are taxable. In this regard, it has to be observed that the appellant is answerable independently about the goods which he adds to the empty old tanks to make them in order, however the appellant has submitted that he has already paid the tax qua those parts and, equipment.

16. Resultantly, to my mind both the orders do not stand in the eye of law and need to be set-aside and the Designated Officer has to make a specific finding qua the following issues:-

1. *Whether the goods were brought into the State of Punjab for repairs/job work and if the appellant, in that case, is liable to pay the Entry Tax under the Punjab tax on entry into local Areas Act, 2000.*

2. *Whether it is proved from documents i.e. Vat invoices as well as transit slip that these were the core assembly and tanks (i.e. transformers requiring repairs) and whether this core assembly and tanks are the electrical goods.*
3. *Whether the appellant has been maintaining the record with regard to the tax on repairs of these transformers.*

17. In these circumstances, this appeal is accepted, impugned orders are set- aside and the Designated Officer is directed to decide the case a fresh by passing speaking order after providing opportunity to the appellant of being heard and leading evidence in support of his case. The appellant is directed to appear before him on 4.1.2016.

18. Pronounced in the open court.

**PUNJAB VAT TRIBUNAL****APPEAL NO. 278 OF 2012**[Go to Index Page](#)**B.S. ENTERPRISES****Vs****STATE OF PUNJAB****JUSTICE A.N. JINDAL, (RETD.)****CHAIRMAN**20th November, 2015**HF ► Assessee**

Evidence lead by appellant not being properly considered by the appellate authority, matter is remitted for reconsideration.

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – RECONSIDERATION OF EVIDENCE – GOODS IN TRANSIT MEANT FOR INTERSTATE SALE – ABSENCE OF RETAIL INVOICE - PENALTY IMPOSED FOR NON PRODUCTION OF GR AND VAT XXXVI BEFORE THE AUTHORITIES – APPEAL BEFORE TRIBUNAL CONTENDING THAT ALL OTHER COVERING DOCUMENTS THOUGH COMPLETE, NOT CONSIDERED BY DESIGNATED OFFICER – OPPORTUNITY OF BEING HEARD NOT GRANTED – HELD:– IMPUGNED ORDER SILENT ON VALIDITY OF EVIDENCE AND ARGUMENTS PUT FORTH BY APPELLANT – APPELLANT TO BE ALLOWED TO EXPLAIN ITS CASE -MATTER REMITTED FOR RECONSIDERATION AFTER GIVING AN OPPORTUNITY OF BEING HEARD – APPEAL ACCEPTED – S. 51(7)(c) OF PVAT ACT, 2005

Facts

The goods were loaded from Ludhiana and the bill was issued from Kapurthala for an interstate sale to Ponta Sahib. The bill was produced. However, suspecting the transaction, notice was issued alleging that no retail invoice was produced. As no GR and VAT XXXVI were produced before the authorities, penalty was imposed u/s 51(7)(c) of the Act. An appeal has been filed before Tribunal contending that the appellate authority declined to accept its arguments without commenting over them. It is pleaded that if the appellant is given an opportunity of being heard by the designated officer, he will be able to prove his case.

Held:

The appellant has produced some documents before the Tribunal and pleaded that in the presence of other documents i.e. VAT Invoice and Form VAT XXXVI being issued by both the states; no GR is required. In the interest of justice, the appellant should be provided an opportunity of being heard. All these documents and arguments by the appellant need specific finding. The appellate authority has also not commented on the validity of the documents presented. Therefore, the case is remitted to the designated officer for reconsideration after providing an opportunity of being heard to the appellant.

Present: Mr. J.S. Bedi, Advocate, Counsel for the appellant.

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

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

1. The Assistant Excise and Taxation Commissioner, vide order dated 18.3.2010 imposed a penalty to the tune of Rs.1,55,000/- under Section 51 (7) (c) of the Punjab Value Added Tax Act, 2005. The appeal filed against the said order was dismissed on 18.9.2012.

2. The sole question involved in case is "whether the penalty could be imposed for non production of G.R. especially when all the covering documents relating to the goods are found to be correct?"

3. On 4.3.2010 at 1.00 P.M. when driver of the appellant while carrying the goods reached the ICC near Ponta Sahib, produced the following documents:-

1. *Bill No. 838 of M/s B.S. Enterprises Kapurthala dated 3.3.2010 for Rs.3,10,335/-.*

4. The goods had been loaded from Ludhiana whereas the bill was issued from Kapurthala. The Detaining Officer doubted the documents and issued notice to the dealer. It was interstate sale from Kapurthala to Ponta Sahib. According to the Rules, the dealer was required to issue retail invoice whereas the invoice relating to the transaction was vat invoice, therefore, the Detaining Officer issued a notice, in response to which Shri Paramjit Singh, Advocate appeared and was asked to produce the account books. On 6.3.2010, the owner of the goods appeared and produced bill book but failed to produce: 'the G.R. and VAT-XXXVI. Considering the case to be of evasion of tax, he forwarded the same to the Assistant Excise and Taxation Commissioner (Designated Officer) for taking action U/s 51 (7) (c) of the Punjab VAT Act. The Assistant Excise and Taxation Commissioner also issued notice to the appellant for 11.3.2010. However, since none appeared before the Assistant Excise and Taxation Commissioner, therefore, the case was decided ex-parte on merits by imposing penalty of Rs.1,55,000/-. The appeal filed before the Deputy Excise and Taxation Commissioner has also been dismissed.

5. The Counsel for the appellant has urged that as a matter of fact neither the Assessing Authority served him properly nor considered his evidence before it and decided the appeal in a summary way only on the ground that no retail invoice and G.R. have been produced. The appellant also failed to produce the required information at any ICC though, it was an interstate sale.

6. Though, the appellant had addressed lengthy arguments yet- appellate authority declined to accept the same without commenting over the arguments but merely on the ground that the arguments are not based on the facts and the appellant has failed to explain the discrepancies. The argument set up by the appellant is that if he is provided an opportunity of being heard by the Designated Officer, then he may be able to prove his innocence. He has also produced before me the following documents:-

1. *The bill/VAT invoice dated 2.3.2010 vide which he had purchased the goods from M/s Gursewak Industries for Rs.1,39,577/- alongwith the trading account of Gursewak Industries in support of the said purchase.*
2. *The VAT Invoice dated 18.2.2010 with regard to the purchase of the goods from M/s PEE YIE Industries in favour of the appellant for sum of Rs. 1,16,472/- alongwith the trading account of PEE: YIE Industries in this regard.*

3. *The copy of the VAT invoice dated 3.3.2010 for sale of the goods in favour of M/s Savitri Engineering product, Village Surajpur, Ponta Sahib, District Sirmour issued by PEE YIE' Enterprises.*
4. *Form VAT XXXVI issued by Excise and Taxation Department, Punjab dated 6.3.2010.*
5. *Form No. XXXVI dated 7.3.2010 issued by the ICC of Himachal Pradesh regarding passing of the goods to Ponta Sahib.*
6. *The "C" Form under Rule 12 (1) of the Central Sales Tax Act dated 13 August, 2010 issued in favour of PEE YIE Enterprises alongwith trading account of BS Enterprises.*
7. *Form VAT 15,23,18 and 24 for the year 2009-10.*

7. It has been further submitted that the appellant had sold the goods against "C" Forms. He had purchased the goods within the State of Punjab after making full payment of VAT and sold the same in the course of Inter State Sale after charging the tax, he had recorded the transaction in the account books and had reported at the ICC, therefore, no penalty could be imposed upon him. He has further urged that in the presence of the other documents i.e. VAT invoice Form VAT XXXVI issued by both the States, no GR was required. As a matter of fact, since the vehicle was not hired from the transport company, therefore, no GR was issued.

8. On going through, the documents, it transpires that the appellant was in possession of lot of documents as referred to above and he also wanted to explain as to how the goods were loaded from Ludhiana instead of Kapurthala, therefore, it would be expedient in the interest of justice to provide him an opportunity of being heard. The appellant also wants to explain as to how the Form VAT XXXVI was issued on 6 March, 2010 when the goods reached the ICC on **4th March, 2010**. All these documents as well as the arguments submitted by the counsel need specific findings thereon. The Appellate Authority has also not commented on the validity and value of the aforesaid documents.

9. Under these circumstances, it is a fit case for reconsideration by the Designated Officer.

10. Resultantly, I accept the appeal, set-aside the impugned order and remit the case to the Designated Officer who after providing an opportunity to the appellant to lead evidence, decide the case afresh according to law.

11 .Pronounced in the open court.



PUNJAB VAT TRIBUNAL

APPEAL NO. 209 OF 2015

[Go to Index Page](#)

SABHARWAL ENTERPRISES

Vs

STATE OF PUNJAB

JUSTICE A.N. JINDAL, (RETD.)

CHAIRMAN

1st October, 2015

HF ► Revenue

Compliance of condition of predeposit is mandatory.

PREDEPOSIT – APPEAL – ENTERTAINMENT OF – DEMAND RAISED ON ACCOUNT OF WRONG CLAIM OF ITC – DISMISSAL OF FIRST APPEAL FOR NON COMPLIANCE OF S. 62(5) OF PVAT ACT – APPEAL BEFORE TRIBUNAL PRAYING FOR WAIVER OF PREDEPOSIT CONTENDING THAT THE IMPUGNED ORDER IS VOID – PREDEPOSIT IS MANDATORY FOR HEARING OF APPEAL – MERITS OF THE CASE TO BE SEEN AT LATER STAGE – APPEAL DISMISSED – S.62(5) OF PVAT ACT, 2005

Facts:

A demand was raised against the appellant on account of claiming ITC on purchases made from cancelled dealers. First appeal was dismissed due to failure of predeposit. An appeal is filed before Tribunal praying for waiver of predeposit contending that the impugned order has no legs to stand upon.

Held:

Distinguishing the judgment passed by Apex court, it is held that the case is inapplicable to the present case. The mandatory provisions of law compel the Appellate Authority for entertaining the appeal after predeposit is made. The merits of the case have to be seen later. Legality of the order is to be seen later. Therefore, the appeal is dismissed. An opportunity is granted to appellant for depositing the required amount before entertainment of appeal by the First Appellate Authority.

Case distinguished:

- *M/s Pennar Industries Ltd. V/s State of A.P and others*

Case Applied:

- *Emerald International Ltd. V/s State of Punjab and others (1997) 116 PLR 797*

Present: Mr. Satish Aggarwal, Advocate Counsel for the appellant.
Mr. N.K. Verma, Sr. Dy. Advocate General for the State.

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

1. The Excise and Taxation Officer-cum-Designated Officer, Ludhiana-II while deciding the assessment for the year 2011-12 framed the assessment by creating additional demand to the tune of Rs.1,14,47,569/-. The appeal against the said order dated 16.9.2014 was dismissed on 2.2.2015 by the Deputy Excise and Taxation Commissioner (A) Ludhiana Division, Ludhiana (herein referred as First Appellate Authority) on the ground of non compliance of Section 62 (5) of the Punjab Value Added Tax Act, 2005.

2. The appellant had filed all the four quarterly returns on time and had also furnished the annual statement in forms VAT 20. During scrutiny, it transpired that the statement mismatched the data available on the computer cardex, the Designated Officer noticed that the purchases disclosed by the dealer (were not genuine being made from the cancelled dealers. He also observed that they were claiming ITC on purchases of brass whereas the corresponding sellers were either not showing any sale to them or selling iron and steel as per their returns regarding the same transactions. Consequently, after hearing the appellant, the demand was created. The Deputy Excise and Taxation Commissioner vide his order dated 2.2.2015 dismissed the appeal on the ground of non compliance of Section 62(5) of the Act, hence this second appeal.

3. I have heard the arguments of the rival parties. The counsel for the appellant has stated that the impugned order has no legs to stand and it would be undesirable to require the assessee to comply with the condition as envisaged U/s 62 (5) of the Act. In this regard, he has placed reliance on the judgment delivered in case of M/s Pennar Industries Ltd. versus State of A.P. and others decided by the Supreme Court on 9.2.2009.

4. To the contrary, the State Counsel has urged that the provisions of Section 62 (5) of the Act are mandatory, therefore, the appellant has to deposit 25% of the additional demand before his appeal is entertained. Having given a thoughtful consideration to the rival contentions, it is observed that the judgment delivered by the Apex Court in case of M/s Pennar Industries Ltd. (Supra) is not applicable to the facts of the case. This judgment does not interpret the provisions of law and is based on the principles of natural justice. But in the present case, the mandatory provisions of law compel the Appellate Authority for entertaining the appeal unless 25% of the additional demand is deposited. 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 there under or under the Central Sales Tax Act, 1956(Act No. 74 of 1956)."

5. Similarly the rule 71(3) of the Rules framed under the Act are reproduced as under:-

71(3) "Receipt for statutory payment of twenty five per cent of the amount, shall also be submitted with the memorandum of appeal."

6. The merits of the case have to be seen at later stage but at the time of entertaining of the appeal, the court has to see whether the mandatory provisions of law have been complied with. It has also been observed in case of Emerald International Ltd. vs. State of Punjab and

others, (1997) 116 PLR 797 and M/s Maruti Udyog Ltd. and others decided on 7.9.2000 that legality of the order is not be seen at the initial stage and the mandatory provisions under the Act have to be complied with before the appeal is entertained.

7. Admittedly, Section 62(5) of the Act has not been complied with in the present case, therefore, the appellate authority was justified in dismissing the appeal.

8. Resultantly, finding no merit in the appeal, the same is dismissed. However, the appellant is provided two months more time to comply with Section 62(5) of the Act. On doing so, the appeal shall be entertained and decided on merits by the First Appellate Authority, otherwise orders passed by the First Appellate Authority would remain intact.

9. Pronounced in the open court.

**PUNJAB VAT TRIBUNAL****APPEAL NO. 86 OF 2015**[Go to Index Page](#)**JAINSON APPLIANCES****Vs****STATE OF PUNJAB****JUSTICE A.N. JINDAL, (RETD.)****CHAIRMAN**8th October, 2015**HF ► Partly revenue and partly appellant**

Mere bringing of goods into the state after paying CST does not conclude inapplicability of Rule 64-C of the PVAT Rules when information is not generated at ICC

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – ESCAPE ROUTE – GOODS IN TRANSIT APPREHENDED ON ESCAPE ROUTE – NO VAT XXXVI PRODUCED – PENALTY IMPOSED FOR EVADING TAX BY KEEPING GOODS OUT OF BOOKS AND NON REPORTING AT ICC – PENALTY ALSO IMPOSED U/S 51(12) OF THE ACT – APPEAL BEFORE TRIBUNAL – MERE PAYMENT OF TAX UNDER CST NOT ENOUGH TO SUFFICE THE DAMAGE CAUSED ON ACCOUNT OF TAKING ESCAPE ROUTE THEREBY ATTEMPTING EVASION OF TAX – PENALTY U/S 51(7)(c) UPHOLD - PENALTY U/S 51(12) DELETED AS IT IS MEANT FOR TRANSPORTERS – APPEAL PARTLY ACCEPTED – S. 51(7)(c) AND S. 51(12) OF PVAT ACT, 2005

Facts

The appellant is a vendor of electrical goods. The goods were sent from Baddi (HP) to Banur (Punjab) for which an invoice and GR were issued. However, the vehicle was apprehended by the mobile wing officer but no VAT XXXVI was produced nor any virtual ICC was reported as required u/r 64-C of the Rules, 2005. Suspecting evasion of tax by not getting information generated at ICC, penalty was imposed u/s 51(7)(c) and 51(12) of the Act. On dismissal of first appeal, an appeal is filed before Tribunal

Held:

The contention raised is that CST was paid on the transaction and therefore there was no intention to evade tax. This explanation is not sufficient to evade Punjab tax and keeping goods out of books. Non generation at ICC means violation of Rule 64 (c) when goods were coming by road and were meant for interstate transaction. Mere payment of 1.5% tax under CST is not enough to suffice damage caused on account of bringing goods into state of Punjab by keeping them out of books and adopting escape route.

However, penalty u/s 51(12) is deleted as it is meant to bring the transporters into net who violate the provisions of S. 51. The appellant is a consignor and cannot be subjected to penalty u/s 51(12) of the Act. The appeal is partly accepted.

Present: Mr. Navdeep Monga, Advocate Counsel for the appellant.
Mrs. Sudeepti Sharma, Dy. Advocate General for the State.

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

1. This appeal is directed against the order dated 18.12.2014 passed by the Deputy Excise and Taxation Commissioner (Appeals), Patiala Division, Patiala, (herein referred as the First Appellate Authority) dismissing the appeal of the appellant against the order dated 12.11.2013 passed by the Assistant Excise and Taxation Commissioner Mobile Wing Punjab Chandigarh imposing a penalty of Rs. 10,90,500/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005.

2. The appellant is a vendor of electric goods. On 29.10.2013, the appellant had dispatched the goods i.e. 1410 pieces of electric room heaters to M/s Bajaj Electric Ltd., Banur against invoice No. 411 (Book No.9) dated 29.10.2013 for Rs. 16,95,912.75/- and the said goods were also covered by GR No. 117236 issued by M/s Oracle India (a local Supplier). The driver of the truck, after loading the goods reached ICC Baddi and made a declaration in Form VAT XXXVI-A and started the onward journey towards its destination i.e. Banur. However, when the driver reached on the link road connecting Chhatbir with Banur Landran Road, he was intercepted by Shri S.S. Brar, ETO, Mobile Wing. On Checking the driver produced the following documents:-

1. *Invoice No.411 dated 29.10.2013 for Rs.16,95,913/- issued by M/s Jainson Appliances, Baddi in favour of M/s Bajaj Electrical Limited, Banur.*
2. *GR No. 117236 dated 29.10.2013 of M/s The Nalagarh Truck Operator Union from Baddi to Banur.*

3. No form VAT XXXVI was produced showing thereby that the goods were reported at any ICC while entering into the state of Punjab from Himachal Pradesh as required u/s 51 (4) of the Act, ibid nor any virtual ICC was reported as required u/r 64C of the PVAT Rules, 2005.

4. While suspecting that the goods were not accompanied by proper and genuine documents and the appellant had adopted the escape route and made an attempt to evade the payment of tax due to the State of Punjab by not getting the information generated in respect of the goods under transport as required u/s 51 (2) and (4) of the Act ibid, forwarded the case to the designated officer. Ultimately the designated officer, after hearing the appellant, imposed a penalty of Rs.10,90,500/- u/s 51 (7) (c) of the Act ibid.

5. The Designated Officer observed that the vehicle alongwith electric goods was coming from Baddi in Himachal Pradesh to Banur where the Godown of the consignee was located. The vehicle had adopted the escape route from Baddi via Kurali-Kharar-Landran towards Banur. The goods were intercepted on the road connecting Chhatbir with Banur Landran. One fails to understand as to why the vehicle owner, while entering the Punjab, did not report at the two ICCs namely 'Mullanpur' and 'Balongi' ICC which were nearest ICCs and could been easily approached by the truck driver.

6. The first appeal filed by the appellant was also dismissed. The First Appellate Authority also observed that *"the argument of the appellant that the goods were to be reported at Banur ICC, is not plausible because the goods were to be unloaded at the Godown of the consignee at Banur therefore, the appellant could have easily avoided the reporting at Banur ICC. Section 51 (4) of the Act ibid says that the owner or person incharge of the goods and the goods vehicle entering the limits or leaving the limits of the state, stop at nearest check post or*

information Collection Center, as the case may be, and shall furnish in triplicate a declaration..... "Further, the appellant could not produce proper and relevant documents to support his case."

7. Hence the appellant has preferred this second appeal.

8. I have heard the arguments as advanced by the both the parties and have perused the record of the case. The counsel for the appellant has urged that the generation of form XXXVI or information at virtual ICC was essential in the light of Rule 64 (c), but Rule 64 (c) is not applicable to the facts of the present case. He has further urged that since the goods were brought into State of Punjab after paying the CST @ 1.5% on "C" Forms. There was no intention to evade the tax. The goods were accompanied by the genuine documents, no tax of the State of Punjab was involved. As such the penalty imposed against the appellant under Section 51 (7) (c) is illegal. Similarly, it has been submitted that penalty under Section 51 (12) of the Act could be imposed only when the transporter fails to give information as required under Sub-Section (2) about the consignor or the consignee within a specified time or about transport of the goods without documents or with in-genuine documents then he would be liable to pay tax due on such goods at the VAT rate and the penalty as prescribed U/s 51 of the Act.

9. In the present case, the name of the consignor and consignee and all relevant information was written on the invoice and the transporter did not conceal any such information, therefore no penalty could be imposed under Section 51 (12) of the Act. To support this argument, the appellant has placed reliance upon the judgment delivered in case of *Subhash Brothers (2012) 42 PHT page/315 PVT*.

10. On the other hand, State counsel has submitted that the goods have been sold by the person in Himachal Pradesh to the Punjab dealer and were being imported to the premises of the Punjab dealer at Banur. It was obligatory on the part of the appellant to generate the e-ICC or VAT XXVI at nearest ICC while entering into the State of Punjab. Though the appellant crossed two ICCs i.e. Mullanpur and Balongi yet he did not report about the goods at any of them. Therefore, the intention to evade tax is apparent attracting Section 51 (7) (c) of the Act.

11. Arguments heard. Record perused.

12. Admittedly, the appellant M/s Jainson Appliances had dispatched the goods worth Rs.16,95,912.75/- from Baddi (HP) to Banur situated in the State of Punjab. It was a transaction of sale. The Punjab Tax has not been paid. The copy of the VAT XXXVI appended with the documents reveals that the goods were reported on 29.10.2013 at 9.45 PM at the check post Baddi. It is further evident that the driver was apprehended on the link road after more than 12 hours. The distance from Baddi to place of apprehension is not more than 40 KMs. At any cost, this much distance could be covered within an hour or so.

13. There are two ways from Baddi to reach Banur, one via Pinjore and Zirakpur and the other via Balongi, Mullanpur, Mohali and then to Banur. If one travels from Baddi via Mohali then two ICCs i.e. Balongi and Mullanpur fall on the way and if one travels through Zirakpur then before reaching Banur ICC Zirakpur falls on the way. The appellant appears to have not reported either at Zirakpur or any other ICC falling on the way but he adopted the escape route as he was intercepted on the link road connecting Chhatbir i.e. Banur Landran Road. Thus apparently, the appellant wanted to reach the premises of the consignee while avoiding all the ICCs. Mere payment of 1.5% CST is not sufficient and may be a good excuse for him to evade the Punjab Tax and to keep the goods out of books of account. In such situation, the non generation at ICC in violation of Rule 64 (c) assumes importance.

14. While exporting or importing the goods in case of sale transaction, the information has to be given in the following manner:-

- (a) *E-ICC is required to be done in both the cases i.e. in case of export of goods outside the State of Punjab (Under Rule 64-B).*
- (b) *In case of import of goods into the State of Punjab from outside by air, railway or dry port (Under Rule 64-C).*

Rule 64-B read with rule 2 (hh) of PVAT Rules, 2005 deals with the procedure for furnishing information under E-ICC system relating to export of goods outside the State of Punjab by any mode of transition. An owner or person incharge of the specified goods, before putting the same into transit for export out of the state, for trade or commerce by any mode of transition, has to report the information relating to such export on the virtual ICC in form VAT-12.

Rule 64-C: *If a person imports any goods into the State of Punjab either by air or railways or by dry ports then as per Rule 64- C he needs mandatorily to report the said transaction on the virtual ICC in form VAT-12, before taking the delivery of such goods or before transition of such goods by road, whichever is earlier. That means import of all goods by railway or air or by dry port will have to be reported on E-ICC and such reporting will have to be done before taking the delivery of such goods or before transition of such goods by road, whichever is earlier.*

It should be noted that E-ICC system is applicable on the specified goods and monetary limit in case of Rule 64-B, but in case of Rule 64-C system of E-ICC is applicable on all the goods irrespective of nature of goods or the monetary limit.

15. Thus, on bare reading of Rule 64-C, the E-ICC was to be generated before taking the delivery of such goods or before transition of such goods by road, whichever is earlier. In the present case, the goods were coming by road and it was an interstate transaction as such Rule 64-C is applicable in the present case. As regards, the argument that the goods had entered into State of Punjab after paying the CST therefore rule 64 (c) is not applicable, I do not agree to the said contention. Mere payment of 1.5% of tax on account of CST would not be suffice as against the damage which may result on account of bringing the goods into the State of Punjab by way of keeping the same out of the books of account, particularly, when there was an attempt to evade tax, the adoption of the escape route by itself is sufficient to draw the inference that appellant attempted to evade the tax.

16. Now coming of the applicability of Section 51 (12) of the Act, I need to reproduce the same as under:-

"(12) Where a transporter fails to give information as required under Sub Section (2) about the consignor or consignee of the goods, within such time, as may be specified or transports the goods without documents or with in-genuine documents, he shall be liable to pay, in addition to the penalty leviable under this Section, the tax due on such goods at the VAT rate applicable under this Act."

17. In this regard, it may be observed that the transporter was imposed an obligation to report about the goods as prescribed under Section 51 (2) of the Act through virtual information Collection Center in form 12. The violation of the Section attracts penalty under Section 51 (12) of the Act. The Section to my mind is meant to bring the transporters into net, who violate the provisions of Section 51 of the Act and it is not applicable to the consignor or the consignee, therefore, the appellant being the consignor can't be subjected to penalty under Section 51 (12) of the Act.

18. Resultantly, this appeal is partly accepted, the penalty U/s 51 (7) (c) is ordered to be maintained whereas the penalty U/s 51 (12) of the Act is deleted, however the separate proceedings could be initiated against the transporter U/s 51 (12) of the Act.

19. Pronounced in the open court.

**PUNJAB VAT TRIBUNAL****REVISION NO. 6 OF 2014**[Go to Index Page](#)**JREW ENGINEERING LTD.****Vs****STATE OF PUNJAB****JUSTICE A.N. JINDAL, (RETD.)****CHAIRMAN**8th October, 2015**HF ► Assessee**

Matter is remitted back for rectifying due wrong calculation of reversed amount of Input tax credit.

INPUT TAX CREDIT – REVERSAL OF INPUT TAX CREDIT – BRANCH TRANSFERS - CALCULATION MISTAKE – REVERSED AMOUNT ENHANCED BY REVISIONAL AUTHORITY – APPEAL BEFORE TRIBUNAL ON ACCOUNT OF CALCULATION MISTAKE IN REVISED ORDER - MATTER REMITTED FOR RECTIFICATION DUE TO INCORRECT APPLICATION OF FORMULA OF CALCULATION - S.13 OF PVAT ACT 2005, RULE 24 OF PVAT RULES 2005

Facts

The Input Tax credit was reversed by the Ld. ETO on account of branch transfer. The Revisional Authority enhanced the reversal. The appellant has filed an appeal against this Revisional Order reducing the refund.

Held:

There is no dispute regarding reversal and the refund due. The dispute is regarding calculation of reversal of ITC. Therefore, case is sent back for rectification to Revisional Authority as the formula to be applied for calculation of ITC reversal u/r 24 is not applied correctly.

Present: Mr. Sandeep Goyal, Advocate Counsel for the appellant.
Ms Sudeepti Sharma, Dy. Advocate General for the State.

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

1. Mrs. Sunita Jagpal, ETO vide order dated 3.4.2013 had passed the order for reversing the ITC to the tune of Rs. 82,65,439/- on account of branch transfer. Thereafter, vide order dated 18.3.2014, the revisional authority did not agree with the ETO and enhanced the reversal to the tune of Rs. 91,85,338/-. Meaning thereby, he observed that reversal to the tune of Rs. 91,85,338/- should have been made and the appellant was liable to lesser amount of refund. ETO had given refund of Rs. 52,85,998/- were as AETC reduced the refund to the tune of Rs. 42,97,999/-. Against this revisional order reducing the refund, dated 18.3.2014, the appellants have heard the appeal.

2. Having heard the rival contentions, it comes out that there is no dispute with regard to the reversal and the refund of the amount to the appellant. However, the matter is of calculations. Mrs. Sudeepti Sharma does not dispute this fact but she has submitted that calculations would be properly made by the revisional authority, therefore, it would be appropriate if the matter is sent back to him for rectifying the same from Rs. 42,97,999/- to Rs. 52,85,998/- and the reversal could be shown at Rs. 82,60,720/-.

3. Mistake in the order passed by the revisional authority took place for the reason that the formula which was to be applied for calculating the reversal under rule 24 was not applied correctly. In the light of fair concession made by state counsel on the instructions of Mr. Bhupinder Bhatia, ETO, Mohali, the case is sent back for necessary rectification. The AETC would dispose off this matter within two months from the receipt of this order.”



NOTIFICATION (Haryana)

[Go to Index Page](#)

REGARDING AMENDMENTS IN SECTION 59A OF HVAT ACT 2003

PART II
HARYANA GOVERNMENT
LEGISLATIVE DEPARTMENT

Notification

The 13th January, 2016

No. Leg. 1/2016.—The following Ordinance of the Governor of Haryana promulgated under clause (1) of article 213 of the Constitution of India on 11th January, 2016 and is hereby published for general information:—

HARYANA ORDINANCE NO. 1 OF 2016

THE HARYANA VALUE ADDED TAX (AMENDMENT) ORDINANCE, 2016 AN ORDINANCE

further to amend the Haryana Value Added Tax Act, 2003.

Promulgated by the Governor of Haryana in the Sixty-sixth Year of the Republic of India.

Whereas the Legislature of the State of Haryana is not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Haryana hereby promulgates the following Ordinance:—

1. This Ordinance may be called the Haryana Value Added Tax (Amendment) Ordinance, 2016.
2. For section 59A of the Haryana Value Added Tax Act, 2003, the following section shall be substituted; namely:—

“59A Amnesty Scheme.—Notwithstanding anything to the contrary contained in this Act and rules framed thereunder, the Government may, by notification in the Official Gazette, notify amnesty scheme covering payment of tax, interest, penalty or any other dues under the Act, for the period prior to the 1st April, 2015, subject to such conditions and restrictions, as may be specified therein, covering tax, rates of tax, period of limitation, interest, penalty or any other dues payable by a class of dealers or classes of dealers or all dealers.”.

Substitution of section 59A of Haryana Act 6 of 2003.

CHANDIGARH:
THE 11th January, 2016.

PROF. KAPTAN SINGH SOLANKI,
GOVERNOR OF HARYANA.

Short title.

Substitution of
section 59A of
Haryana Act 6
of 2003.

KULDIP JAIN,
Administrative Secretary to Government Haryana,
Law and Legislative Department.

**NOTIFICATION (Haryana)**[Go to Index Page](#)**NOTIFICATION REGARDING REVISION OF RATE TAX ON
THE SALE OF BIDI**

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 1st January, 2016

No. 01/ST-1/H.A. 6/2003/S.59/2016. - 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 (1) of section 59 read with proviso to said sub-section of the Haryana Value Added Tax Act, 2003

(6 of 2003), the Governor of Haryana hereby makes the following amendment in Schedule C appended to the said Act, with immediate effect, by dispensing with the condition of previous notice, namely:-

AMENDMENT

In the Haryana Value Added Tax Act, 2003 (6 of 2003), in Schedule C, serial number 10A and entry thereagainst shall be omitted.

ROSHAN LAL,
Additional Chief Secretary to Government, Haryana,
Excise and Taxation Department.



NOTIFICATION (Punjab)

[Go to Index Page](#)

VAT-15 e-FILLING FORMS AS REVISED ON 11.01.2016



Excise & Taxation Department Govt . of Punjab

Form VAT 15
Return by a Taxable Person
[See rule 36]

TIN		PERIOD(QUARTER)		YEAR	
NAME		STATE	PUNJAB		

1	SALES DETAILS	AMOUNT(Rs.)
(a)	Gross Sale (including works contract (i.e. Job Work also) turnover and sale of capital goods but excluding consignment sales, stock transfer, sale in transit and sales on High seas) (As per WS 5B-1A)	0
(b)	(i) Less : Sales Returns (As per VAT 18 and VAT 23)	0
	(ii) Less : Cancellation of Sales (As per VAT 18 and VAT 23)	0
	(iii) Less : Cash / Trade Discount on Sales (As per VAT 18 and VAT 23)	0
(c)	Less: Tax element included in sales (As per WS 5B-2)	0
(d)	Balance net sales (a - b - c)	0
(e)	Less: Zero rated sales excluding sales within state against form H (As per VAT-18)	0
(f)	Less: Sales made against Form H within State (As per VAT 23)	0
(g)	Less: Interstate sale including sales of tax free goods (As per VAT-18)	0
(h)	Less: Tax free sales within state (As per VAT-23)	0
(i)	Less: Deductions allowable u/r 15(4) / 15(6) in case of works contractors (i.e. job work also) (As per WS 3A)	0
(j)	Less: Sale of Diesel & Petrol as have suffered VAT in the hands of various Oil Companies in Punjab (As per WS 5B-6(i))	0
(k)	Less: Sales made as an exempted unit (As per VAT 23)	0
(l)	Less: Purchase value of the goods purchased from exempted units and sold to other than taxable persons (As per WS 5B-10(i))	0
(m)	Less: Sales to various Managements exempted in State (Schedule-A) and SEZ units (As per VAT 23)	0
(n)	Balance Net sales subject to VAT (d - (e + f + g + h + i + j + k + l + m))	0

2	PURCHASE DETAILS	AMOUNT(Rs.)
(a)	Gross Purchases (including capital goods, stock transfer receipts, consignment receipts, purchase in transit & job work got done) (As per WS 5B-1(b))	0
(b)	(i) Less: Purchase return (As per VAT 19 and VAT 24)	0
	(ii) Less: Discounts (As per VAT 19 and 24)	0
(c)	Less: Imports from outside Territory of India (As per VAT 19)	0
(d)	Less: Interstate purchases including Tax free goods (As per VAT 19)	0
(e)	Less: Branch Transfer/Consignment receipts (As per VAT 19)	0
(f)	Less: Purchases against 'H' Form from outside the state (As per VAT 19)	0
(g)	Less: Purchases against H Form within State (As per VAT 24)	0
(h)	Less: Tax free Purchases (As per VAT 24)	0
(i)	Less: Purchase liable to tax u/s 19 (1) in the hands of the person filling the return (As per VAT 24)	0
(j)	Less: Value of taxable goods purchased from other than taxable and registered person [excluding given in 2(i)](as per VAT 24)	0
(k)	Less: Purchases of Diesel & Petrol as have suffered VAT in the hands of various Oil Companies in Punjab. [Explanation 8 of Sec. 2 (zg)] (As per WS 5B-6(ii))	0
(l)	Less: Purchases made from Exempted units (As per VAT 24)	0
(m)	Less: Purchases not eligible for ITC U/S 13(5) (As per VAT 24)	0
(n)	Less: Purchases not eligible for ITC U/R 15(6) (As per WS 3A where account not maintained)	0
(o)	Less: Element of labour paid on job work got done (As per WS 5B-3)	0
(p)	Less: Retail Purchases(Including purchase from Registered person) (As Per VAT-24)	0
(q)	Net Purchases eligible for input tax credit. [a - (b+c+d+e+f+g+h+i+j+k+l+m+n+o+p)]	0

3	MISCELLANEOUS INFORMATION (WHEREVER APPLICABLE)	Amount(Rs.)
(a)	Value of Branch Transfers/Consignment Transfers made during the return period (As per VAT 18)	0
(b)	(i) Amount paid to contractor / sub contractors (As per WS 5B-7(ii))	0
	(ii) Amount of TDS deducted and deposited (As per WS 5B-7(iii))	0
(c)	Sale of pre owned cars (i) Below 1000cc (in nos.) (As per WS 5B-8(i))	0
	(ii) Above 1000cc (in nos.) (As per WS 5B-8(ii))	0
(d)	Sales made on High seas basis (As per WS 5B-9)	0
(e)	Sales in transit u/s 3(b) of the CST Act, 1956 (As per VAT 18)	0
(f)	The value of goods purchased on which PIDF is payable under the Pb. Inf. (Dev. & Regulation) Act, 2002 (As per WS 5B-11(i))	0
(g)	The amount of PIDF payable (As per WS 5B-11(ii))	0
4	CALCULATION OF VAT OUTPUT LIABILITY	AMOUNT(Rs.)
(a)	VAT on net taxable sales during the return period (As per WS 6A)	0
(b)	Add: Purchase Tax on turnover as per Col. 2(i) u/s 19(1) (As per WS 6B)	0
(c)	Add purchase tax u/s 20 (As per WS 2B)	0
(d)	Add: Prior period net adjustment of output tax (As per WS 1E)	0
(e)	Total Output tax [(a)+(b)+(c) +(d)]	0
5	CALCULATION OF INPUT TAX CREDIT	AMOUNT(Rs.)
(a)	ITC b/f from previous return period (as per Worksheet 5-A)	0
(b)	Add: ITC available for utilization (as per WS 6C)	0
(c)	Add: ITC, debited earlier, on goods received back after job work u/s 13(3) (As per WS 1D(ii))	0
(d)	Add: ITC allowable on goods liable to purchase tax as per Section 19(4) (As per WS 2A)	0
(e)	Total input tax credit available [(a)+(b)+(c)+(d)]	0
(f)	Less: Apportionment of ITC for manufacturing tax free goods (As per WS 1A)	0
(g)	Less: Apportionment of ITC for branch transfer u/s 13(2) (As per WS 1B)	0
(h)	Less: Reversal of input tax credit on Lubricants etc. u/s 13(4) (As per WS 1C)	0
(i)	Less: ITC debited on goods sent for job work u/s 13(3) (As per WS 1D-i))	0
(j)	Less: Reversal of ITC on inter state sales of Schedule 'H' goods & products manufactured therefrom u/s 19(5)(as per WS 2C)	0
(k)	Less: Reversal of ITC on Capital goods as per rule 19 (As per WS 1F)	0
(l)	Less: Reversal of ITC for lost, destroyed or damaged goods (rule 21) (As per WS 1G)	0
(m)	Less: Reversal of ITC on account of goods sold at lesser price than the purchase price (As per WS 1H)	0
(n)	Less: Any other Reversal (As per WS 1I)	0
(o)	Less: Prior period net adjustment to input tax (As per WS 1E)	0
(p)	Net input tax credit available for utilization [(e)-{(f)+(g)+(h)+(i)+(j)+(k)+(l)+(m)+(n)+(o)}]	0
6	TAX CALCULATION	AMOUNT(Rs.)
(a)	Total Output Tax (As per Col. 4(e))	0
(b)	Less: Monthly Tax paid with VAT-16 (As per WS 5B-4(iii))	0
	(i) 1st Month of the Quarter (As per WS 5B-4(i))	0
	(ii) 2nd Month of the Quarter (As per WS 5B-4(ii))	0
	(iii) 3rd Month of the Quarter (As per WS 5B-4(iii))	0
(c)	Less: ITC Available (c(i) + c(ii))	0
	(i) Actual ITC available for utilization(As per Col. 5(p))	0
	(ii) Notional ITC (As per WS 4B-e)	0
(d)	Less: Advance Tax Paid (As per WS 5B-12(iv) +13(iv))	0
(e)	Less: TDS against tax Deduction Certificate; deducted & deposited in Govt. Treasury by Contractee (As per WS 3B)	0
(f)	Difference (a-b-c-d-e)	0
(g)	Excess ITC, if any, after adjustment in (f)	0
	(i) Actual	0
	(ii) Notional	0
(h)	Less: Balance CST Liability after deducting the CST paid (As per CST-1 Col. 10(i))	0
(i)	Difference (g-h)	0
(j)	Excess ITC after adjustment under (i):	0
	(i) Actual	0

	(ii) Notional	0
(k)	Less: Amount of refund claimed but not deducted from ITC so far (As per WS 5B-5)	0
(l)	Balance excess ITC, if any, to be carried forward to the next return:	0
	(i) Actual	0
	(ii) Notional	0
(m)	(i) Net Tax payable under CST	0
	(ii) Net Tax payable under VAT	0
	(iii) Net payable PIDF (As per WS 5B-11(ii))	0

Remarks (if any)	
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PAYMENT SECTION



NEWS OF YOUR INTEREST

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RELIEF FOR RETAILERS: GST MAY CONSIDER DISCOUNTS

MUMBAI: The draft Model GST Act, which is being given the final touches by the government, is likely to alleviate a major concern of retailers as the proposed goods and services tax (GST) will be paid on the actual supply price and will factor in discounts given to customers.

Under the revised version of the draft Model GST Act, it is likely that the reference to impose GST on maximum retail price (MRP) on supply to consumers, where the goods were governed by the Legal Metrology (LM) Act, will be removed. A host of packaged goods - ranging from mineral water, footwear to apparel - are covered by the LM Act.

The main challenge with the proposal to levy GST on MRP in the earlier draft of the Model GST Act was that the discounted prices during sales (which retail chains typically engage in, especially during the festive season) would not have been considered. Irrespective of the discounted price paid by the customer, the GST would have been levied on the MRP itself, resulting in a higher tax outgo. Consequently, sales would have become less attractive.

The government is also said to be examining how to tackle an issue under the proposed GST regime where importers of finished goods could stand to gain, which may hurt domestic manufacturing.

Currently, an importer pays a basic custom duty rate of 10%, a countervailing duty (CVD) of 12.5%, and a special additional duty (SAD) of 4%. He gets a tax credit only for the SAD.

Under the proposed GST regime, while the custom duty will remain, both CVD and SAD will be replaced by Integrated GST (IGST) for which the importer will get full credit, resulting in a lower tax outflow. TOI had pointed out both these issues in its series of articles on GST last month. Government officials say that the final draft of the model GST Act will be released this month for public comments. Stakeholders will be given time to give their feedback.

The first step towards ushering in GST is the passing of the Constitutional Amendment Bill. The government is hopeful that the Rajya Sabha will pass it in the budget session. The Model GST Act will be placed in Parliament only after the Constitutional Amendment Bill is passed by the Rajya Sabha and gets the President's assent.

Courtesy: The Times of India

5th January, 2016

**NEWS OF YOUR INTEREST**[Go to Index Page](#)**CONG UNMOVED AS GOVT REACHES OUT TO IT ON GST**

NEW DELHI, JANUARY 7 The BJP-led NDA government today made a fresh beginning to reach out to the Congress, seeking cooperation in getting passed the Goods and Services Tax Bill and the Real Estate Bill.

Parliamentary Affairs Minister M Venkaiah Naidu met Congress president Sonia Gandhi as regards three concerns flagged by the party.

The Congress interpreted the overture as an “optic”, questioning the government’s sincerity and accusing it of not coming out with any formal proposal.

Sources told The Tribune that the government conveyed to the Congress that it could consider its two concerns — doing away with additional 1 per cent levy on inter-state sales over and above GST and a mechanism to redress grievances. But it had reservations on capping GST at 18%, they said.

Two of the three concerns raised by the Congress, including doing away with 1% additional levy, were part of the recommendations made by Chief Economic Adviser Arvind Subramanian Committee in December last year. Naidu claimed the Congress chief said she would discuss the government’s response with party leaders and inform accordingly.

Congress chief spokesperson Randeep Surjewala doubted the sincerity of the Centre saying the party was looking ways to blame the Congress since the RSS and the Swadeshi Jagran Manch had red-flagged the Bill. “The PM and FM are trying to find a way out of the mess they are in following the RSS/SJM objections and want to blame the Congress for not allowing the GST Bill’s passage,” he said.

Courtesy: The Tribune

7th January, 2015



NEWS OF YOUR INTEREST

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BALLOONING SALARY BILL BIGGEST PROBLEM, SAYS DHINDSA

Under fire for the state's poor fiscal situation, Punjab government today admitted that it is facing a "financial crunch" and described "ballooning" salary and pension bill as its biggest problem.

However, it claimed that Punjab's fiscal position has improved compared to other states like Haryana during the last several years.

"Yes, we usually talk about pending and unpaid government bills in finances...we should accept those shortcomings. When you take steps towards improvement (of fiscal situation), you face some difficulties.

"We had to face financial crunch for some months after previous central government brought in changes in some policies," state Finance Minister Parminder Singh Dhindsa told reporters here.

He said that after the changes in policy, states could borrow funds only on a quarterly basis.

"Earlier, there was no restriction on borrowing. You could borrow money any time. Usually, we borrow during lean months (June to October)...But then states were asked to borrow quarterly. It has impacted us," Dhindsa said.

Rejecting the opposition Congress's charge of huge debt, Dhindsa said the state government has been able to contain its borrowings successfully.

"If you look at debt to GDP ratio, it has come down from 45 per cent to 32 per cent now," he said, adding that it is wrong to draw inference from the absolute debt figure alone.

"I can confidently say that Punjab's financial position has improved with respect to states like Haryana or others...Punjab is among the 4-5 states which have witnessed improvement in finances in last 10 years," he claimed.

To a query, Dhindsa described the high salary bill as the state's "biggest problem".

"Punjab's biggest problem is high salary of employees. Our salary, pension and retirement benefits bill has reached Rs 28,000 crore and it is growing by Rs 3,000 crore per annum," he said.

The minister blamed declining consumption for the dropping revenue collection.

"Revenue throughout country is on decline. I checked from other states as well. Consumption has overall gone down, which is impacting our VAT revenue growth.

"There is no decline in revenue collection but revenue growth is not as it was expected. Last year, our revenue growth was 6-7 per cent and this year, it will be less than 5 per cent.

"It is not only with Punjab. States like Maharashtra and Jharkhand have also witnessed 1 to 2 per cent growth and it is national phenomena because consumption is going down," he said. — PTI

Courtesy: The Tribune

13th January, 2016



NEWS OF YOUR INTEREST

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HARYANA PROMISES HASSLE-FREE BUSINESS ENVIRONMENT TO ATTRACT INVESTMENT

Ranked 14th in the ease of doing business index recently prepared by the World Bank, Haryana says it will ensure a hassle-free and cost-effective business environment to attract investment and make it to the top five in the ranking within the next few months.

Ranked 14th in the ease of doing business index recently prepared by the World Bank, Haryana says it will ensure a hassle-free and cost-effective business environment to attract investment and make it to the top five in the ranking within the next few months.

Addressing the CII's National Council Meeting, chief minister Manohar Lal Khattar said that the recently-launched Enterprise Promotion Policy, 2015 aims at attracting R1 lakh crore investment and creating four lakh new jobs in the state.

Keeping that, and the competition among the states for catching investors' fancy, in mind, Haryana would do whatever it takes to make sure that cost remains within the comfort level of the investors, time is not unnecessarily wasted for clearances, and they do not get mentally fatigued to set up shops in the state.

Khattar said the e-portal launch was meant to facilitate investors in the state, and is a step in the direction which would ensure clearances under one roof. The Enterprise Promotion Policy, 2015 has also laid down a roadmap for providing a stable and reform-oriented framework for new investments as well as the existing industry.

Stating that investment in the state has not been equally distributed, he said investors who would set up business in the remote parts would be given special incentives and projects worth up to R10 crore could be sanctioned at the deputy commissioner level, while more than R100 crore investment projects would fall under the mega category. Khattar also invited industry leaders to be part of the 'Happening Haryana Global Investors Summit' scheduled during March 7-8 in Gurgaon.

The ranking of the states, prepared by the World Bank at the behest of the government, was based on eight specified parameters which include setting up of business, allotment of land, labour reforms, procedure for environmental clearance, infrastructure, procedure for registration for tax purposes and inspections for compliance of various norms.

Haryana's industries minister Captain Abhimanyu said that the overall ecosystem in Haryana is changing and government is focused on complete transformation of regulatory framework in Haryana through liberalised and transparent development regime. The state is also ready with its labour reforms, which would be tabled in the Budget session of the state assembly.

"Our labour reforms will be even more progressive than Rajasthan," he said.

Courtesy: The Financial Express

16th January, 2016



NEWS OF YOUR INTEREST

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PUNJAB NEEDS TO PLUG LOOPHOLES TO CHECK TAX PILFERAGE: DHINDSA

Punjab finance minister Parminder Singh Dhindsa on Wednesday acknowledged non-payment of taxes prevailing in the state, asserting a huge gap in meeting the tax revenue collection “due to various factors”.

“There are some loopholes that need to be plugged to check tax pilferage,” Dhindsa said during an interaction with the media at the Chandigarh Press Club here.

He said there was no data available that could reveal the tax pilferage. The minister said that taking the revenue growth to more than 12% would be his government’s biggest challenge for the upcoming budget for the financial year 2016-17.

He said the state’s next pay commission would soon be set up for which the terms and references would have to be revised as these were earlier rejected by the Centre. It would take a year or so to set up the pay commission, he added.

Agreeing that the state government was mortgaging its assets, he said that so far it had transferred the assets like “old buildings” worth more than Rs 2,000 crore to either the Punjab Infrastructure Development Board (PIDB) or the Punjab Urban Planning and Development Authority to generate revenue capital. The minister maintained that the rate of increase in debt had lowered to 32% from 45% in 2002.

The cash-starved state has been facing overdrafts more than once in the present fiscal, raising loans from the Reserve Bank of India.

Dhindsa said the 14th finance commission had done great injustice to Punjab by not acknowledging the free power subsidy to farmers while deciding the revenue deficit grant to the state. “If we are giving huge subsidies and sops to industrialists, why not to farmers,” he asked.

Courtesy: The Hindustan Times

13 January, 2016



NEWS OF YOUR INTEREST

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PUNJAB EXCISE DEPT DETECTS RS 20-CR TAX EVASION BY BISLERI MAKER

The Punjab excise and taxation department has detected tax evasion to the tune of about Rs 20 crore by Asian Lac Health Food Private Limited, manufacturer of the Bisleri brand of mineral water.

Anurag Verma, Excise And Taxation Commissioner, Punjab, said the company had claimed that during the past four years, it had sent bottled water worth about Rs 40 crore as part of stock transfer to its Haryana branch and had paid no tax on it because as per the Central Sales Tax Act, stock transfer to other states is non-taxable.

Verma added, "Finding the claim dubious, we took up the matter with our counterpart in Haryana. A team of officials was sent to the neighbouring state. The district excise and taxation commissioner, Ambala, reported that the Haryana branch of the firm had shown receipt of stock transfer of only Rs 6.5 crore, which meant that stock transfer of about Rs 33 crore was bogus. Since bottled water is taxable at the rate of 14.3%, the tax component on this bogus transfer alone works out to Rs 4.71 crore."

Subsequently, the firm's premises were inspected, he said. It was found that the firm used preform material to manufacture water bottles. For a one-litre bottle, preform costing about Rs 2.45 is used. After going through the invoices, it was found that the cost of preform was about 25% of the bottle's cost.

Verma said the firm had shown its total sales to be Rs 25 crore in 2013-14. But when reverse calculation was done as per the cost of preform shown as purchased by the firm, the turnover came out to be about Rs 50 crore. It was found that over the past three years, the firm had suppressed its sales to the tune of Rs 95 crore. The tax element on the same works out to be about Rs 15 crore, he added.

The Excise And Taxation Commissioner said the firm was also found indulging in tax evasion by misusing the government's single-stage taxation scheme. It was detected that the company was selling one-litre water bottles to M/s Metro Cash and Carry at Rs 11 each, but for many other transactions, it had set up a sister concern, M/s Nandan Traders. In those cases, it was selling a one-litre bottle to its sister concern at Rs 8, thus avoiding tax payment on Rs 3.

Verma said investigations in the case were still in progress and a notice would be served on the company soon. He added that since the firm had committed fraud with the department, it would be liable to pay tax, interest and penalty under provisions of the Punjab Value-Added Tax (PVAT) Act, 2005.

Company in Denial Mode

When contacted, Gopal Poddar, director (marketing), Asian Lac Health Food Private Limited, said, "It's true that officials of the excise and taxation department took documents from our firm, but we have never indulged in tax evasion. Ours is a small firm, but the department is alleging that we have evaded tax of Rs 20 crore, which is impossible." He said they would challenge the tax evasion notice, as and when received, with the higher authorities in the government.

Courtesy: The Hindustan Times

11th January, 2016