SGA
LAW OFFICES

Issue 2

16th January 2017

"There is no worse tyranny than to force a man to pay for what he does not want merely because you think it would be good for him."

— Robert A. Heinlein

NOMINAL INDEX

NOTIFICATION

NEWS OF YOUR INTEREST

Edited by

Aanchal Goyal, Advocate
Partner SGA Law Offices
#224, Sector 35-A, Chandigarh – 160022
Tele: +91-172-5016400, 2614017, 2608532, 4608532

News From Court Rooms

CESTAT, AHMEDABAD : Central Excise : An 100% EOU vacated the premises before fulfillment of the export obligations. Recovery of outstanding dues of ED cannot be made from the Lessor by attachment of the property. (***Madhusudan Textiles – November 25, 2016***).

CESTAT, NEW DELHI : Service Tax : Split-up of works contract into 80% towards supply of materials and 20% towards value of taxable service is allowed as such split was based on the work orders received from autonomous bodies like CPWD, etc. and VAT was paid on supply of goods. Demand set aside and appeal allowed. (***Gogia Brothers – December 14, 2016***).

SC : Service Tax : Where two assessees, namely, 'GSFC' and 'GACL' received acid through common pipeline from Reliance Industries and said acid came first to premises of 'GSFC', where handling facilities were installed, and from there it was shared between 'GSFC' and 'GACL' in ratio of 60:40 respectively and further by an agreement handling facilities expenditure was shared equally by both parties, payment of handling expenditure which was made by 'GACL' to 'GSFC' was share of 'GACL' and it could not be treated as common service provided by 'GFSC' to 'GACL' in order to levy service tax upon 'GSFC'. (***Gujarat State Fertilizers & Chemicals Ltd. – November 22, 2016***).

CESTAT, MUMBAI : Service Tax : The appellant had collected excess service tax from the clients which they have returned to them by way of credit to their account. It is possible that the clients would have taken the credit of service tax shown in the invoices. The appellants have not got the invoices reassessed for the revised value. The order of the lower authority demanding service tax, on the value of invoices, is therefore sustained and the appeal is rejected. (***RSV Hospitality & Development P Ltd. – December 2, 2016***).

CESTAT, NEW DELHI : Service Tax : The premises of the SEZ is to be construed as the port of export. Refund benefits allowed to the appellant on the GTA services utilized for transportation of goods to the SEZ Unit. (***Grasim Industries Ltd. – December 16, 2016***)

MADHYA PRADESH HC : Madhya Pradesh VAT : Leasing of Broadband Lines is not liable for VAT since a subscriber of a lease line does not become the owner of the line either by control or by possession and hence such charges are only for services rendered and there is no element of sale therein. (***Idea Cellular Ltd., and others – January 3. 2017***)

SC : ASSAM VAT: On condonation of delay issues the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking Section 5 of the Limitation Act 1963 so as to supplement the provisions of the VAT Act which excludes the operation of Section 5 by necessary implications. (***Patel Brothers – January 4, 2016***).

CESTAT, CHANDIGARH: CENVAT credit : In fact when the goods were procured by the assessee the dealer was registered with the department, CENVAT credit cannot be denied on the ground that at the time of investigation the dealer was non-existent. (***Vallabh Steel Ltd. – October 28, 2016)***.

CESTAT, Bangalore : Central Excise : There is no such stipulation that the input services must be provided or received in the factory of manufacture in the case of 100% EOU. The appellant is entitled to refund of cenvat credit in respect of Renting of Immovable Property Services received. (***Apotex Research P Ltd. – December 16, 2016***)

KARNATAKA HC : Karnataka VAT : Mobile battery charger sold along with mobile phone in one retail package was mere accessory of mobile phone and was taxable at separate rate of tax. (***ABM Tele Mobiles India P Ltd. – November 14, 2016***).

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SUBJECT INDEX

Issue 2
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SUPREME COURT OF INDIA

CIVIL APPEAL NOS. 49-50 OF 2017

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PATEL BROTHERS
Vs
STATE OF ASSAM AND ORS.

A.K. SIKRI AND ABHAY MANOHAR SAPRE, JJ.

4th January, 2017

HF ▶ Revenue

Section 5 of Limitation Act cannot be applied for seeking condonation of delay under Assam VAT Act, 2003 for filing of Revision before High Court.

LIMITATION – CONDONATION OF DELAY - REVISION PETITION – HIGH COURT WHETHER SECTION 5 OF LIMITATION ACT IS APPLICABLE TO REVISION PETITION FILED U/S 81 OF ASSAM VAT ACT –SECTION 84 OF THE LOCAL ACT EXPRESSLY MENTIONS APPLICABILITY OF SEC. 4 AND 12 OF LIMITATION ACT TO PROCEEDINGS UNDER THE VAT ACT, IT IS IMPLIED THAT OTHER SECTIONS, INCLUDING SEC. 5 OF LIMITATION ACT, ARE EXCLUDED – SEC. 29(2) OF LIMITATION ACT EXPRESSLY LAYS DOWN THAT PROVISIONS OF THIS ACT TO APPLY IN ABSENCE OF EXPRESS PROVISION IN SPECIAL LAW – VAT ACT PRESCRIBES THE FORUMS AND TIME LIMIT OF THEIR ENTERTAINING APPEALS OR REVISIONS - THEREFORE, SEC. 5 OF LIMITATION ACT IS EXCLUDED BY VIRTUE OF LANGUAGE USED IN SEC. 84 OF THE VAT ACT – *SEC. 29(2), SEC. 5 OF LIMITATION ACT; SEC. 81 AND 84 OF VAT ACT, 2005*

Facts

The appellant has been running business of purchasing tea. For the assessment years in question, full exemption which was allowed earlier was reduced after reassessment. An appeal filed was dismissed against which the appellant filed an appeal before Tribunal. The appeal was dismissed and the appellant preferred a revision petition u/s 81 of the VAT Act. The High Court dismissed the Revision Petition holding that Section 5 of Limitation Act was not applicable and since there was delay of 335 days, the petition was not maintainable on grounds of delay in view of section 81 of the Act. It was held that only section 4 and 12 of Limitation Act are applicable as per S. 84 of the VAT Act. Aggrieved by this, an appeal is filed before Supreme Court contending that S.5 of Limitation Act is applicable in respect of Revision petition filed u/s 81 of Assam Value Added Tax Act.

Held:

Section 84 makes only S.4 and S.12 of the Limitation Act applicable to proceedings under the Act. The apparent legislative intent is to exclude other provisions including S. 5 of the Limitation Act.

S.29(2) of the Limitation Act stipulates that in absence of any express provision in a special law, provisions of S. 4 to S. 24 would apply. If intention of legislature was to include S.5 , then there was no necessity to make specific provision of S. 84of VAT Act thereby making only S.4 and S.12 of Limitation Act applicable.

A scrutiny of scheme of VAT Act goes to show that it is a complete code not only laying down the forum but also prescribing the time limit within which each forum would be competent to entertain the appeal or revision. It prescribes the period of Limitation for both assessee and revenue. Therefore, by virtue of language in S.84 of the VAT Act, section 5 stands excluded by implication.

Following earlier judgments it is held that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking S.5 of Limitation Act so as to supplement the provisions of VAT Act which excludes the operation of S.5 by necessary implications.

The appeals are dismissed.

Cases referred:

- *Mangu Ram v. Municipal Corporation of Delhi & Anr. (1976) 1 SCC 392*
- *Kaushalya Rani v. Gopal Singh (1964) 4 SCR 982*
- *State of Madhya Pradesh & Anr. v. Anshuman Shukla (2014) 10 SCC 814*
- *Hukumdev Narain Yadav v. Lalit Narain Mishra (1974) 2 SCC 133*
- *Commissioner of Customs and Central Excise v. Hongo India Private Limited & Anr. (2009) 5 SCC 791*

Present: ***For Petitioner(s):*** Mr. Arunabha Chowdhury, Mr. Karma Dorjee, Mr. Anupam Lal Das, Ms. Shruti Choudhry, Mr. Sahil Monga

For Respondent(s): Mr. Nalin Kohli, Sr. Advocate, Mr. Ankit Roy, Mr. Vishakha Ahuja, Mr. Shuvodeep Roy,Adv.

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A.K. SIKRI, J.

1.Leave granted.

2. The question of law which has fallen for determination in these appeals is as to whether provisions of Section 5 of the Limitation Act, 1963 are applicable in respect of revision petition filed in the High Court under Section 81 of the Assam Value Added Tax Act, 2003 (hereinafter referred to as the 'VAT Act').

3. In order to decide this question, which is a pure question of law, it is not necessary to state the facts in greater detail. The seminal facts which require reproduction are mentioned below:

The appellant was running a business of purchasing tea and is a registered dealer under the Assam General Sales Tax Act, 1993 as well as the VAT Act and the Central Sales Tax Act, 1956. Based on the sales of his business, the appellant had submitted the declaration in Form 'C' for the years 1998-1999, 1999-2000, 2000-2001 and 2001-2002 reflecting the value of sales. Based on the representation made by the appellant, Respondent No. 2/Superintendent of Tax allowed full exemption of sales tax as per Section 8(5) of Central Sales Tax Act, 1956. But, the information given by the appellant turned out to be false and as a result of which Respondent No. 2 passed an order dated 29.06.2004 reducing the exemption granted to the petitioner for the year 19998-99 along with imposing penalty. Similar orders of re-assessment were passed in respect of the other assessment years giving rise to the connected proceedings. Aggrieved by the order dated, 29.06.2004, the appellant preferred appeals before Respondent No. 3/Appellate Authority along with applications for the stay of the demand. By order dated

29.07.2005, Respondent No. 3 had directed the appellant to deposit 25% of the demanded dues within 30 days and stayed rest of the demand. The appellant preferred appeals before the Assam Board of Revenue/Appellate Tribunal against the order dated 29.07.2005, which was dismissed by the order dated 26.08.2008. A review application filed against the aforesaid order came to be dismissed by the Appellate Tribunal by the order dated 27.08.2013. Aggrieved, appellant filed Revision Petitions under section 81(1) of the VAT Act.

4. Section 81 of the VAT Act also prescribes a limitation period of 60 days within which such revision petition is to be preferred to High Court. Since there was a delay of 335 days in filing these revision petitions, these petitions were filed along with applications under Section 5 of the Limitation Act, 1963, seeking condonation of delay. The High Court has dismissed the applications for condonation of delay holding that provisions of Section 5 of the Limitation Act, 1963 are not applicable. For this purpose, the High Court has referred to Section 84 of the VAT Act which makes provisions of Sections 4 and 12 of the Limitation Act, 1963 to such petitions. On that basis, it is held by the High Court that since only Sections 4 and 12 of the Limitation Act, 1963 are made specifically applicable to these proceedings, by necessary implication Section 5 of the Limitation Act stands excluded.

5. It was argued by Mr. Chowdhury, learned counsel appearing for the appellant, that the approach of the High Court in dealing with the provisions of VAT Act and applicability of Limitation Act, 1963 to such proceedings was faulty inasmuch as the High Court did not take note of and discussed other provisions of the VAT Act and also failed to give due weightage to Section 29(2) of the Limitation Act, 1963.

In the first instance, he referred to Section 79 of the VAT Act which is a provision relating to appeals to the Appellate Authority. As per Section 79(1) of the VAT Act, appeal against the order of the taxing authority can be filed with the appellate authority within 60 days from the date of receipt of such order of the taxing authority. Sub-section (2) of Section 79 of the VAT Act empowers the appellate authority to entertain the appeal even beyond 60 days, provided it is presented within a further period of 180 days, if the appellate authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the stipulated period of 60 days1[1].

6. The learned counsel next referred to Section 80 of the VAT Act2[2] which deals with appeals to the Appellate Tribunal inter alia against the orders of the Appellate Authority. Here also, period of 60 days for preferring such an appeal is provided under sub-section (3) of Section 80 of the VAT Act and proviso to sub-section (3) empowers the Appellate Tribunal to condone the delay, if the appeal is preferred within a further period of 120 days, on sufficient

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[1] Relevant portion of Section 79 of the VAT Act reads as under: "79. Appeals to the appellate authority: (1) Any person aggrieved by an order passed under the Act by a taxing authority lower in rank than a Deputy Commissioner of Taxes, may appeal to the Appellate Authority, in the manner as may be prescribed, within sixty days from the date of receipt of such order.

(2) Where the Appellate Authority is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of sixty days, it may admit an appeal after the expiry of the said period provided it is presented within a further period of one hundred eighty days"

[2] 80. Appeals to the Appellate Tribunal: (1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order,-

(a) an order passed by the Appellate Authority under Section 79, and

(b) an order passed by an authority not below the rank of Deputy Commissioner of Taxes.

(2) omitted.

(3) Every appeal under sub-section (1) shall be filed within sixty days of the date on which the order sought to be appealed against is communicated to the person;

Provided that the Appellate tribunal may admit an appeal after the expiry of sixty days if he is satisfied that the Appellant had sufficient reasons for not filing the appeal within the aforesaid time, if, it is within a further period of one hundred twenty days.

cause being shown for not filing the appeal within 60 days of limitation prescribed. The learned counsel contrasted the aforesaid provisions of Sections 79 and 80 with Section 81[3] of the VAT Act and pointed out that whereas there was specific provision for condonation of delay in filing appeals under Sections 79 and 80 of the VAT Act, no such equivalent provision was made in Section 81 of the VAT Act. As per Section 81 of the VAT Act, revision can be preferred to the High Court against the order of the Appellate Tribunal within 60 days. However, there is no provision giving specific power to the High Court to condone the delay if the revision is preferred beyond 60 days. As per the learned counsel, the reason for not providing such a provision was that provisions of Limitation Act, 1963 including Section 5 thereof were applicable.

7. Insofar as Section 84 of the VAT Act[4] is concerned, it was submitted that Sections 4 and 12 of the Limitation Act, 1963 were made applicable for specific purpose of computing the period of limitation under the said Chapter and High Court committed a grave error while holding that because of the aforesaid provision only Sections 4 and 12 of the Limitation Act, 1963 were made applicable to the VAT Act thereby excluding other provisions of the Act.

8. For this purpose, the learned counsel relied upon Section 29(2) of the Limitation Act, 1963[5] which makes provisions contained in Sections 4 to 24 (inclusive) of the Limitation Act, 1963 applicable in case of suit, appeal or application under any special or local law, where these provisions are not expressly excluded by such special or local law.

9. It was argued that in the absence of any provision expressly excluding the applicability of Sections 4 to 24 of the Limitation Act, 1963, those Sections were applicable qua revision petitions filed under Section 81 of the VAT Act and, therefore, Section 5 of the Limitation Act, 1963 was also applicable to such proceedings. To placate his aforesaid submissions, the learned counsel relied upon the judgment of this Court in the case of ***Mangu Ram v. Municipal Corporation of Delhi & Anr. (1976) 1 SCC 392***. In that case, special leave petitions were filed against the condonation of delay to the application for grant of special leave under Section 417, Cr.P.C., 1898 against acquittal of the petitioners by the trial court, in spite of the mandatory period of limitation provided in sub-section (4) of Section 417. Question arose whether in the case of ***Kaushalya Rani v. Gopal Singh (1964) 4 SCR 982***, which held Section 417, Cr.P.C., 1898 a special law and excluded application of Section 5 on a construction of Section 29(2)(b) of the old Act of 1908 applied under the corresponding provision of Limitation Act, 1963 which governed the case. The Court held that since the case was governed by Limitation Act, 1963, judgment in Kaushalya Rani case did not apply. For applicability of the Limitation Act, 1963 to such proceedings, the Court referred to Section 29(2) of the Limitation Act, 1963 holding that there is an important departure made by the Limitation Act, 1963 insofar as the provision contained in Section 29, sub-section (2), is concerned. Under the Indian Limitation Act, 1908, clause (b) to sub-section (2) of Section 29 provided that for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any

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[3] "81. Revision to High Court : (1) Any dealer or other person, who is dissatisfied with the decision of the Appellate Tribunal, or the Commissioner may, within sixty days after being notified of the decision of the Appellate Tribunal, file a revision to the High Court, and the dealer or other person so appealing shall serve a copy of the notice of revision on the respondents to the proceedings."

[4] Section 84 of the VAT Act reads as under: "84. Application of Section 4 and 12 of Limitation Act, 1963 : In computing the period of limitation under this chapter, the provisions of Section 4 and 12 of the Limitation Act, 1963 shall, so far as may be, apply."

[5] Section 29(2) of the Limitation Act, 1963 reads as under: "29(2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of ?

special or local law the application of Section 5 was in clear and specific terms excluded. But under Section 29(2) of Act, the provisions of Section 5 shall apply in case of special or local law to the extent to which they are not expressly excluded by such special or local law. Since under the Limitation Act, 1963, Section 5 is specifically made applicable by Section 29 (2), it is only if the special or local law expressly excludes the applicability of Section 5 that it would stand displaced. The Court held that there is nothing in Section 417(4), Cr.P.C., which excludes the application of Section 5 of Limitation Act, 1963.

10. Learned counsel for the appellant also referred to the case of ***State of Madhya Pradesh & Anr. v. Anshuman Shukla (2014) 10 SCC 814***. In that case, question of applicability of Section 5 of the Limitation Act arose in relation to revision petition that can be preferred under Section 19 of the M.P. Madhyastham Adhikaran Adhiniyam, 1983 (as it stood prior to its amendment in 2005). The Court held that since unamended Section 19 did not contain any express rider on power of the High Court to entertain applications for revision after expiry of prescribed limitation thereunder, provisions of Limitation Act, 1963 would become applicable vide Section 29(2) thereof.

11. It further held that as the High Court was conferred with suo moto power under Section 19 of Adhiniyam, 1983 to call for record of an award at any time, there was no legislative intent to exclude the applicability of Section 5 of the Limitation Act, 1963.

12. Mr. Nalin Kohli, learned senior counsel appearing for the respondents, on the other hand, submitted that the High Court had exhaustively dealt with the issue and rightly found that since Section 84 of the VAT Act confined the applicability of Limitation Act only in respect of Sections 4 and 12 thereof to the proceedings under the said Chapter, by necessary implication the other provisions of the Limitation Act, 1963 including Section 5 thereof stood excluded. He submitted that for the purpose of finding whether other provisions are excluded or not, the focus should be on the scheme of the special law as laid down in ***Hukumdev Narain Yadav v. Lalit Narain Mishra (1974) 2 SCC 133*** wherein it was held that even if there exists no express exclusion in the special law, the Court has right to examine the provisions of the special law to arrive at a conclusion as to whether the legislative intent was to exclude the operation of the Limitation Act. According to him, Section 84 of the VAT Act clearly depicted such a legislative intent.

12. After examining the matter in the light of law laid down in various judgments cited by both the parties, we are of the view that the High Court has given correct interpretation to the provisions of Section 81 of the VAT Act, when this provision is read along with Section 84 thereof.

13. In the case of ***Commissioner of Customs and Central Excise v. Hongo India Private Limited & Anr. (2009) 5 SCC 791***, the question that fell for determination was that as to whether the High Court had power to condone the delay in presentation of the reference application under unamended Section 35-H(1) of the Central Excise Act, 1994 beyond the period prescribed by applying Section 5 of the Limitation Act. Unamended Section 35-H dealt with reference application to the High Court. Under sub-section (1) thereof, such reference application could be preferred within a period of 180 days of the date upon which the aggrieved party is served with notice of an order under Section 35-C of the Central Excise Act. There was no provision to extend the period of limitation for filing the application to the High Court beyond the said period and to condone the delay. Pertinently, under the scheme of the Central Excise Act as well, in case of appeal to the Commissioner under Section 35 of the Act, which should be filed within 60 days, there was a specific provision for condonation of delay upto 30 days if sufficient cause is shown. Likewise, appeal to the Appellate Tribunal could be filed within 90 days under Section 35-B thereof and sub-section (5) of Section 35-B gave power to the Appellate Tribunal to condone the delay irrespective of the number of days, if sufficient

cause is shown. Further, Section 35-EE provided 90 days time for filing revision by the Central Government and proviso thereto empowers the revisional authority to condone the delay for a further period of 90 days. However, when it came to making reference to the High Court under Section 35-G of the Act, the provision only prescribed the limitation period of 180 days with no further clause empowering the High Court to condone the delay beyond the said period of 180 days. It was, thus, in almost similar circumstances, the judgment was rendered by this Court. The categorical opinion of the Court was that in the absence of any such power, the High Court did not have power to condone the delay. In that case also, provisions of Section 29(2) of the Limitation Act, 1963 were pressed into service. But this argument was rejected in the following manner:

> *30. In the earlier part of our order, we have adverted to Chapter VI-A of the Act which provides for appeals and revisions to various authorities. Though Parliament has specifically provided an additional period of 30 days in the case of appeal to the Commissioner, it is silent about the number of days if there is sufficient cause in the case of an appeal to the Appellate Tribunal. Also an additional period of 90 days in the case of revision by the Central Government has been provided. However, in the case of an appeal to the High Court under Section 35-G and reference application to the High Court under Section 35-H, Parliament has provided only 180 days and no further period for filing an appeal and making reference to the High Court is mentioned in the Act.*
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> *31. In this regard, it is useful to refer to a recent decision of this Court in Punjab Fibres Ltd. [(2008) 3 SCC 73] The Commissioner of Customs, Central Excise, Noida was the appellant in this case. While considering the very same question, namely, whether the High Court has power to condone the delay in presentation of the reference under Section 35-H(1) of the Act, the two-Judge Bench taking note of the said provision and the other related provisions following Singh Enterprises v. CCE [(2008) 3 SCC 70] concluded that: (Punjab Fibres Ltd. case [(2008) 3 SCC 73] , SCC p. 75, para 8)*
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> > *"8. ... the High Court was justified in holding that there was no power for condonation of delay in filing reference application."*
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> *32. As pointed out earlier, the language used in Sections 35, 35-B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days.*
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> *33. Even otherwise, for filing an appeal to the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the Commissioner and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for an appeal and revision."*

In the process, the Court also explained the expression 'expressly excluded' appearing in Section 29(2) of the Limitation Act, 1963 in the following manner:

> *"34. Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted, what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to the High Court.*
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> *35. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court."*

The aforesaid judgment is a complete answer to the arguments of the appellant.

15. It may be relevant to mention here that after the judgment in ***Hongo India Private Limited & Anr.,*** Section 35-H of the Central Excise Act, 1994 was amended by the Parliament by Act 32 of 2003 with effect from 14.05.2003 giving power to the High Court to condone the delay by inserting sub-section (2A). It is, therefore, for the legislature to set right the deficiency, if it intends to give power to the High Court to condone the delay in filing revision petition under Section 81 of the VAT Act.

16. Argument predicated on 'no express exclusion' loses its force having regard to the principle of law enshrined in ***Hukumdev Narain Yadav***. Therein, the Court made following observations while examining whether the Limitation Act would be applicable to the provisions of the Representation of the People Act or not:

> *"17. … but what we have to see is whether the scheme of the special law, that is in this case the Act, and the nature of the remedy provided therein are such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If on an examination of the relevant provisions it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our view, even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation."*

17. Thus, the approach which is to be adopted by the Court in such cases is to examine the provisions of special law to arrive at a conclusion as to whether there was legislative intent

to exclude the operation of Limitation Act. In the instant case, we find that Section 84 of the VAT Act made only Sections 4 and 12 of the Limitation Act applicable to the proceedings under the VAT Act. The apparent legislative intent, which can be clearly evinced, is to exclude other provisions, including Section 5 of the Limitation Act. Section 29(2) stipulates that in the absence of any express provision in a special law, provisions of Sections 4 to 24 of the Limitation Act would apply. If the intention of the legislature was to make Section 5, or for that matter, other provisions of the Limitation Act applicable to the proceedings under the VAT Act, there was no necessity to make specific provision like Section 84 thereby making only Sections 4 and 12 of the Limitation Act applicable to such proceedings, inasmuch as these two Sections would also have become applicable by virtue of Section 29(2) of the Limitation Act. It is, thus, clear that the Legislature intended only Sections 4 and 12 of the Limitation Act, out of Sections 4 to 24 of the said Act, applicable under the VAT Act thereby excluding the applicability of the other provisions.

18. Judgment in the case of ***Mangu Ram*** would not come to the aid of the appellant as the Court found that there was no provision under the Cr.P.C. from which legislative intent to exclude Section 5 of the Limitation Act could be discerned and, therefore, Section 29(2) of the Limitation Act was taken aid of. Similar situation prevailed in ***Anshuman Shukla's*** case. On the contrary, in the instant case, a scrutiny of the scheme of VAT Act goes to show that it is a complete code not only laying down the forum but also prescribing the time limit within which each forum would be competent to entertain the appeal or revision. The underlying object of the Act appears to be not only to shorten the length of the proceedings initiated under the different provisions contained therein, but also to ensure finality of the decision made there under. The fact that the period of limitation described therein has been equally made applicable to the assessee as well as the revenue lends ample credence to such a conclusion. We, therefore, unhesitantly hold that the application of Section 5 of the Limitation Act, 1963 to a proceeding under Section 81(1) of the VAT Act stands excluded by necessary implication, by virtue of the language employed in section 84.

19. The High Court has rightly pointed out the well settled principle of law that *"the court cannot interpret the statute the way they have developed the common law 'which in a constitutional sense means judicially developed equity'. In abrogating or modifying a rule of the common law the court exercises the same power of creation that built up the common law through its existence by the judges of the past. The court can exercise no such power in respect of statue, therefore, in the task of interpreting and applying a statue, Judges have to be conscious that in the end the statue is the master not the servant of the judgment and no judge has a choice between implementing it and disobeying it."* What, therefore, follows is that the court cannot interpret the law in such a manner so as to read into the Act an inherent power of condoning the delay by invoking Section 5 of the Limitation Act, 1963 so as to supplement the provisions of the VAT Act which excludes the operation of Section 5 by necessary implications.

20. We, thus, do not find any infirmity in the judgment rendered by the High Court. The present appeals are devoid of any merit and are, accordingly, dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 950 OF 2006

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G.R. WOOL AGENCIES
Vs
STATE OF PUNJAB AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

17th November, 2016

HF ▶ Petitioner – Assessee

Notice issued for Revision after 7 years is set aside on account of delay.

LIMITATION – REVISION – NOTICE – ASSESSMENT YEARS FROM 1990 TO 1994 – ASSESSMENT ALREADY FRAMED – NOTICE FOR REVISION ISSUED AFTER MORE THAN SEVEN YEARS OF PASSING OF ORDERS OF ASSESSMENT – WRIT FILED ON GROUNDS OF DELAY IN ISSUING SUCH NOTICE – WRIT ALLOWED IN VIEW OF AN EARLIER JUDGMENT OF SUPREME COURT HOLDING THAT REVISIONAL NOTICE CAN NOT BE ISSUED AFTER DELAY OF 5 YEARS. – *S.21(1) OF PGST ACT, 1948*

Facts
Assessment for the years 1990-91, 1992-93 and 1993-94 were framed. However, a notice dated 29/11/2005 was issued for Revision. A writ is filed contending that revision of the said Assessment Years cannot be made as the notice is issued after a period of 7 years.

Held:
Following the judgment passed by Supreme court in the case of Bhathinda District Coop Milk P. Union Limited (2007) 10 VST 180, the notice issued needs to be set aside on account of delay. The writ is allowed.

Present: None for the petitioner.
Mr. Piyush Bansal, DAG Punjab.

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RAJESH BINDAL, J.

1. Aggrieved against the common notice dated 29.11.2005 (Annexure P-7) issued under Section 21(1) of the Punjab General Sales Tax Act, 1948 (for short, 'the Act'), for suo-moto revision of the assessments for the assessment years 1990-91, 1992-93 and 1993-94, the petitioner has filed the present petition.

2. Legal issue raised is that the notice dated 29.11.2005 was issued for revision more than 7 years after passing of the orders of assessment, which is beyond maximum period

prescribed under the Act for any action. The dates on which assessments were framed for different years are as under:

Assessment years	Date
1990-91	23.02.1998
1992-93	28.05.1998
1993-94	09.06.1998

3. The identical issue was considered by Hon'ble the Supreme Court in State of Punjab and others vs Bhatinda District Coop. Milk P.Union Limited (2007) 10 VST 180. It was observed that even if no period of limitation is provided under the Act for exercise of revisional jurisdiction that does not mean that the power can be exercised at any time. Five years period was held to be the final limit. Notice issued in that case after a period of five and a half years was set aside. The issue regarding maintainability of the writ petition against the show cause notice was also considered and it was opined that the revisional authority could not have gone into the issue sought to be raised in the writ petition being creature of statute. Relevant paras of the judgment are extracted below:-

> *"17. A bare reading of Section 21 of the Act would reveal that although no period of limitation has been prescribed therefor, the same would not mean that the suo moto power can be exercised at any time.*
>
> *18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.*
>
> *19. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in subsection (6) of*
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> *Section 11 of the Act is five years.*
>
> *xx xx xx*
>
> *23. The question as to what would be the reasonable period did not fall for consideration therein. The binding precedent of this Court, some of which had been referred to us heretobefore, had not been considered. The counsel appearing for the parties were remiss in bringing the same to the notice of this Court. Furthermore, from a perusal of the impugned notice dated 4.9.2006, it is apparent that the Revisional Authority did not assign any reason as to why such a notice was being issued after a period of 5½ years.*
>
> *24. Question of limitation being a jurisdictional question, the writ petition was maintainable.*
>
> *25. We are, however, not oblivious of the fact that ordinarily the writ court would not entertain the writ application questioning validity of a notice only, particularly, when the writ petitioner would have an effective remedy under the Act itself. This case, however, poses a different question. The Revisional Authority, being a creature of the statute, while exercising its revisional jurisdiction, would not be able to determine as to what would be the reasonable period for exercising the revisional jurisdiction in terms of Section 21 (1) of the Act. The High Court, furthermore in its judgment, has referred to some binding*

precedents which have been operating in the field. The High Court, therefore, cannot be said to have committed any jurisdictional error in passing the impugned judgment."

4. If read in the light of the aforesaid judgment of Hon'ble the Supreme Court, the notice issued for revising the assessment after more than 7 years certainly deserves to be set aside on account of delay. The ground on which revisional power is sought to be exercised is irrelevant as the delay has not been explained.

5. For the reasons mentioned above, the writ petition is allowed.

6. The impugned notice dated 29.11.2005 (Annexure P-7) is set aside.

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PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 590 OF 2013

PUNJAB AGRI PRODUCTS
Vs
STATE OF PUNJAB

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

6th December, 2016

HF ▶ Assessee

Purchase of goods from farmers on behalf of ex-Punjab principals does not attract Purchase Tax under Punjab VAT Act 2005 being an inter-state purchase by ex-Punjab dealers

INTER-STATE SALES – PURCHASE TAX – AGENT - MENTHA OIL – PURCHASE OF GOODS ON BEHALF OF EX-PUNJAB PRINCIPALS FROM FARMERS – PURCHASE TAX LEVIED BY ASSESSING AUTHORITY – TRIBUNAL HELD THE TRANSACTION TO BE IN THE COURSE OF INTER-STATE TRADE AND COMMERCE – NO PURCHASE TAX LEVIABLE UNDER THE PUNJAB VAT ACT – SECTION 84 DEBARS STATE GOVT. TO IMPOSE ANY TAX ON INTER-STATE TRANSACTIONS – LEVY SET ASIDE – CASE REMITTED BACK FOR PASSING FRESH ORDER WITHOUT LEVYING PURCHASE TAX ON INTER-STATE TRANSACTIONS *[SECTIONS 20 AND 84 OF PUNJAB VAT ACT 2005, SECTION 3(a) OF CST ACT 1956]*

WORDS AND PHRASES – NOTWITHSTANDING – NON-OBSTANTE CLAUSE – OVERRIDES CONTRADICTORY PROVISIONS IN THE STATUTE.

Facts

Appellant is a dealer registered under Punjab VAT Act and is also acting as an agent on behalf of ex-Punjab principals for the purchase of Mentha Oil from farmers. The modus operandi adopted by the assessee is to procure orders from ex-Punjab principals and make the purchases from farmers and despatching the same to the principals located outside the State of Punjab. The purchases are made from farmers who are unregistered dealers. The appellant is only acting as agent and is receiving the commission and loading and unloading charges on actual basis. The Assessing Authority levied the tax under section 20 of Punjab VAT Act holding the goods liable for purchase tax as the goods had been despatched to ex-Punjab principals without any payment of tax. On appeal before Tribunal.

Held:

The undisputed facts are that appellant has been engaged in the business of purchasing Mentha Oil on behalf of three Jammu firms under the Agreement to that effect. As per that agreement, the appellant was to purchase certain quantity of Mentha Oil at prevailing market rate on commission basis for and on behalf of the principals from the cultivators etc. Therefore, the appellant acting as an agent, was to despatch the goods so purchased to the principals at Jammu who had already made the lumpsum payment in advance. Out of said amount, the agent

deducts the expenses against insurance of goods, freight, loading and unloading, bhrai, wages, testing and GLC charges, expenses to seal the drums, stencilling and miscellaneous expenses etc. The commission was to be received in the Bijak prepared by the agents which would include all other incidental expenses.

If the aforesaid facts are considered which are based upon the evidence produced, the entire purchase made by appellant was for and on behalf of ex-Punjab principals and there was nothing purchased by him in his own account or sold inside the State of Punjab. The goods were to be taken to Jammu in the premises of ex-Punjab principals and nothing could remain in the State of Punjab for sale.

In the light of admitted facts and the documents produced including the agreement, Delivery Note, purchase Slip, Statement of Account and bank statements, it is apparent that the appellant was an agent having received some advance for purchasing Mentha Oil from the agriculturists on behalf of Jammu dealers and despatched it on commission basis. Therefore, these transactions are the purchases in the course of inter-state purchase by ex-Punjab principals and not the purchases made by appellant in the State of Punjab.

While examining the catena of judgments and putting them on altar of the facts of the present case, the only conclusion which could be drawn is that the purchases made by the agents of Mentha Oil and the despatch under the agreement to ex-Punjab principals would amount to inter-state purchase in the light of judgment of Supreme Court in the case of ***Commissioner of Sales Tax, UP vs Bakhtawar Lal Kailash Chand, Arhti*** *as well as in the case of* ***Rapti Commission Agency****. Accordingly, no Purchase Tax is leviable.*

Section 84 being the non-obstante clause, would override all other provisions of the Act which are contrary to it including Section 20 on the basis of which tax has been imposed by the Assessing Authority.

Accordingly, the appeals are accepted and the impugned orders are set aside and the cases are remitted back to the Assessing Authority to frame the assessment afresh in the light of observations made by the Tribunal to the effect that no Purchase Tax could be imposed on the inter-state purchase made by the appellant and despatched to his ex-Punjab principals at Jammu.

Case referred:

- *Commissioner of Sales Tax, UP Vs. Hanuman Trading Company Volume 43 Sale Tax Cases page 408*
- *Rapti Commission Agency Vs. State of UP and another (2006) 6 SCC page 522*

Present: Mr. K.L.Goyal, Sr. Advocate alongwith
Mr. Rohit Gupta, Advocate counsel for the appellant.
Mr. N.K. Verma, Sr. Dy. Advocate General for the State.

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

1. This order of mine shall dispose off two connected appeals relaling to the assessment year 2005-06 and 2006-07 arising out of the common order dated 30.4.2013 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissing the appeal of the appellant against the order dated 2.9.2008 and creating the additional demand, both the appeals are based on common facts and involve the common questions of law, therefore, both are decided together.

2. The factual back ground of this case is that the appellant being a purchasing agent under agreement dated 3rd March, 2005 with four Jammu firms namely (a) Shiva Mint

Industries, (b) Ambika International, (c) G.Tech Industries and (d) Jay Ambay Arommatics, has been purchasing Mentha Oil inside the State of Punjab and dispatching the said oil to the aforesaid firms for use of the same for manufacturing of taxable goods. The purchase and dispatch were made from out of amount received in advance from the aforesaid firms (Ex-Punjab Principals) through banking channels). The appellant has been charging only actual expenses and commission from the principals vide different agreements. The goods were purchased and stored for a few days till the full truck load was ready and than dispatch to their Ex-Principals. The appellant has been recording the amount of advance received, the purchases and dispatches made, the expenses and the commissioner deduced into their account books.

3. The appellant is a registered dealer under the Punjab Value Added Tax Act, 2005 as well as under the Central Sales Tax Act, 1956. Similarly, the Ex-Punjab Principals are also registered under the Jammu and Kashmir VAT Act as well as under the Central Sales Tax Act, 1956.

4. The sellers are the farmers of the State of Punjab who are not taxable or registered persons.

Assessment year 2006-07 in Appeal No. 591 of 2013

5. Being dis-satisfied with the return, the case was taken up /or scrutiny and the notice was issued to the appellant for showing cause as to why the liability to pay the tax be not fixed against him as per provisions of Sector 20 and 81 of the Punjab Value Added Tax Act, 2005. Ultimately after holding a deep probe, he observed that according to the agreement with the Ex-Punjab Principals, the appellant was engaged to purchase the goods i.e. "mentha oil" on behalf of the principals and dispatching the same to them, otherwise by way of sale in the course of inter state sale, therefore, the appellant was liable to pay the tax on the purchase value of the taxable goods. Since mentha oil was taxable @ 12.4%, therefore, the appellant was liable to pay the tax to the tune of Rs.4,39,56,857/-- in addition to it, the authorities were also directed to proceed U/s 56 of the Punjab Value Added Tax Act, 2005. Similarly, he also created the following demand against the Ex-Punjab Principals:-

a)	Shiva Mint Industries	-	1,86,19,484/-
(b)	Ambika International	-	1,23,61,520/-
(c)	G.Tech Industries	-	1,43,36,370/-

Assessment year 2005-06 in Appeal No, 590 of 2013

6.On filing of the return for the year 2005-06, the same was also taken up for scrutiny. Consequently, a notice U/s 29(2) was issued against the appellant to the effect that since it has been established that the appellant purchased the goods on behalf of their agents (Ex-Punjab Principals) and dispatched the same to them, outside the State of Punjab otherwise than by way of sale/export, therefore, they are liable to pay tax. After holding due enquiry, the Assessing Authority observed that on the basis of the documents, the reply filed by the parties as well as after examination of the provisions of Section 20 and 81 of the Punjab Value Added Tax Act, 2005. It is established that the appellant purchased the go ids (mentha oil) within the State from unregistered persons and dispatched there to their Jammu dealers (its ex-principals), other than by way of sale or in the course of inter State sale or export, therefore, they were liable to pay purchase tax. The Designated Officer further observed that the total sales have been shown in the VAT-20 at Rs. 17,54,21,860/- whereas, he furnished the detail of the goods purchased and dispatched to the Jammu dealers as per details given below:-

a)	Shiva Mint Industries	-	17,11,03,387/-
	Total purchases	-	18,16,85,032/-

	Tax @ 12.5%	-	2,13,87,923/-
b)	Ambika International, Jammu-Total purchases	-	1,05,81,645/-
	Tax @ 12.5%	-	13,22,706/-

7. The Assessing Authority also directed to proceed against them U/s 56 of the Punjab Value Added Tax Act, 2005 for filing the wrong returns.

8. The Appellate Authority dismissed both the appeals against the common order hence these second appeals.

9. The Counsel for the appellants has urged that Admittedly, the appellant, under the agreements, made purchases of mentha oil on behalf of the Jammu dealers i.e. a) Shiva Mint Industries, (b) Ambika International, (c) G.Tech Industries against the advance payment made by them and the appellant has been dispatching the mentha oil containers after collecting the same when they were a truck load fit for dispatch. The farmers are unregistered dealers from whom he has been purchasing the mentha oil; however, the payments were made to them through banking channels. Since, the appellant has been receiving "he commission and the loading and unloading charges as per actual basis, therefore, the sale being an interstate sale, he was not liable to pay any tax. He has taken me through the provisions of Article 246 of the Constitution of India relevant entries 54 and 92-A in the two lists appended to the seventh Schedule of the Constitution of India. Section 3 & 6 of the Central Sales Tax Act, 1956 as also Sections 20, 81 & 84 of the Punjab Value Added Tax Act, 2005 and has urged that the authorities below have made a futile attempt to distinguish the judgment delivered in case of Commissioner of Sales Tax Vs. Bakhtawar Lal Kailash Chand reported in AIR 1992 SC 1952/87 STC 196, M/s Rapti Commission Agency Vs. State of UP and others (2006) 28 PHT 225 (SC). He has also urged that the authorities below have not properly appreciated the provisions of law and lave wrongly conferred the jurisdiction upon the State Legislature viz-a-viz imposition of tax on purchases made on behalf of Ex-Punjab Principals, he has further urged that it was an interstate purchase, therefore, the Designated Officer has wrongly levied purchase tax by invoking Section 20 & 81 of the Punjab Value Added Tax Act, 2005. Particularly when Section-84 of the Act creates a complete bar over the State Legislature not to legislate any provision for imposing tax on the sale or purchase of goods takes place outside the State or in the course of interstate trade or commerce or in the course of import of goods into or export of the goods out of the territory of India. It has been argued that the legislation under the Article 246 read with Entry 92-A of List-I of VIIth Schedule appended to the Constitution of India is within the exclusive ambit and jurisdiction of the Union Government. No tax can be imposed on interstate purchase by the State. Entry 54 of list-II (State list) of the same schedule allows the State Government to levy tax on the purchase of goods but subject to the provisions of Entry-92-A of list I. State Government has no power to levy tax on the interstate purchase in any manner. It was also highlighted by the counsel that though the case of the appellant is that Section 20 of the Punjab Value Added Tax Act allows the State Government to levy tax on the interstate purchase, but the provisions of Section 84 of the said Act, will have overriding effect, therefore, no tax on interstate purchase can be levied in view of the provisions of Section 20 and 81 of the Act, as these provisions being violative of Article 246 of the Constitution of India read with Entry 92-A of list-I and Entry 54 of list-II are liable to be ignored. It has been also contended that Section 6 of the Central Sales Tax Act, 1956 is the charging Section which provides for imposition of tax only on interstate sales and no provision in the said Act has been made for imposition of tax on the interstate purchase. He has also taken me through Section 3 of the Central Sales Tax Act, 1956 which defines the interstate sale as the sale or purchase that occasions movement of goods from one State to another. In the present case also the purchase of the goods by the appellant occasions the movement of goods

firm the State of Punjab to State of Jammu and Kashmir therefore, it would also amount to interstate purchase on which State of Punjab has no legislative competence to impose tax.

10. To the contrary, the State Counsel Sh. N.K.Verma Sr. Deputy Advocate General, Punjab has given much stress over the definition of sale and purchases while referring to Section 3 and 6 of the Central Sales Tax Act, 1955 and has also referred to explanation 2 of Section 3 which reads as under:-

Section 3

Explanation 2:- *"Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of the goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any another State."*

11. Similarly, he has contended that Section 6 deals with the liability to pay tax on the interstate sales and not on the interstate purchase. It was also contended that since the appellants purchased the goods on behalf of the Ex-Punjab Principals, therefore, in the light of Section 81 of the Punjab Value Added Tax Act both are liable to pay tax on the purchase of goods. He has also highlighted that after the purchase the goods, those were transferred to the other State and the sale concluded in the Jammu and Kashmir, therefore, the appellant is liable to pay purchase tax. After the goods are taken to the other State, the law of that State would govern the tax on sale of goods, while taking me through the judgments cited by the counsel for the appellant, he has tried to convince that neither the judgment delivered in case of M/s Bakhtawar Lal Kailash Chand M/s Hanuman Trading Company, M/s Rapti Commission and M/s Cooperative Sugar Mills being on different facts and circumstances, are not applicable to the facts of the case. Since the Punjab VAT Act has specifically provided liability of payment of tax upon the purchaser U/s 20 of the Act. The transaction in question fulfills all the in gradients for creating liability of purchase tax upon the appellant as the purchase has been made from an unregistered dealer and the goods were being dispatched out of the State by the agent of the Ex-Punjab Principals not as a result of sale, therefore, the appellant was liable to pay tax.

12. I have heard the rival contentions and have gone through the records of the case, the crucial issue involved in both the appeals is as under:-

1. "Whether Section 20 of the Punjab Value Added Tax Act, 2005 is violative of Section 246 of the Constitution of India Gs well as Section 84 of the Punjab Value Added Tax Act?"
2. "Whether Section 84 of the Punjab VAT Act, would override Section 20 of the Punjab VAT Act?"

Arguments heard. Record Perused.

13. The undisputed facts are that the appellant has been engaged in the business of purchasing mentha oil on behalf of three Jammu firms namely (a)Shiva Mint Industries, (b) Ambika International and (c) G.Tech Industries (herein after referred to as Ex-Punjab Principals) under an agreement dated 3rd March, 2005.

14. Vide the terms of agreement, the appellant was to purchase certain quantity of mentha Oil at prevailing market rate for and on behalf of the Principals from the cultivators etc. on commission basis.

(2) Thereafter, the agent was to dispatch the goods so produced to the principals at Jammu;

(3) The principals had to make lump sum payment in advance by means of bank draft to the agents against the above purchases as per requirement. The agent was to receive the payment out of the said amount against insurance of goods; Freight; Loading and Unloading, Bharai, Wages, Testing and G.L.C. charges, Expenses to seal the drums, stenciling and misc. expenses etc. The Commission was to be received in the Beejak issued by the agents. The amount of commission so received was to include other incidental expenses.

15. Now while examining the case in the light of the agreement, there is lot of evidence on the record that the appellant has been working, as agent of the Ex-Punjab Principals and nothing was being purchased by him in his own account or sold inside the State of Punjab.

16. It is not disputed that the appellant was registered under the Punjab Value Added Tax Act, 2005 as well as under the Central Sales Tax Act, 1956. Similarly, the Ex-Punjab Principals are also registered dealers under the Jammu and Kashmir Value Added Tax Act, 2005 as well as under the Central Sales Tax Act, 1956, The goods were to be taken to Jammu arid Kashmir at the premises of the Ex-Punjab Principals for use in manufacturing of the taxable goods. It is also established on the record that nothing more was charged by the appellant except the commission or other incidental charges spent by him towards forwarding the goods to the Ex-Punjab Principals at Jammu.

17. Now the following question arises for determination:-

> *"Whether the purchase tax is applicable to the goods dispatched by the appellant otherwise then by way of sale in the course of interstate trade or commerce and whether the goods were purchased by the Punjab dealers for dispatching the same to Ex-Punjab Principal at Jammu and Kashmir was an interstate sale.*

18. In light of the admitted facts as well as the documents so produced on the record including the agreement, delivery note, purchase slip, statement of accounts and banking statements. It is apparent that the appellant was an agent having received some advance for purchasing mentha oil from the agriculturalists on behalf of Jammu Dealers and dispatching the same to the Ex-Punjab Principal at Jammu on commission basis, therefore, these transactions apparently are the purchases in course of interstate purchase.

19. The interstate purchase has been defined in Section 3 of the Central Sales Tax Act, 1956 which reads as under:-

Section-3 *When is a sale or purchase of goods said to take place in the, course of interstate trade or commerce.*

A sale or purchase of goods shall be deemed to take place .in the course of interstate sale trade or commerce if the sale or purchase:-

a) Occasions the movement of the goods from one State to another or
b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

20. From the bare reading of the section, it transpires that the following conditions must be satisfied before a sale or purchase can be said to take place in the course of inter state trade or commerce:-

1. There is an agreement to sell which contains a stipulation express or implied regarding the movement of goods from one State to another.
2. That in pursuance of the said contract the goods in fact move from one State to another.

3. The movement of goods follows upon and is necessary consequence of sale or purchase as the case may be and not the other way round.

21. According to Clause (a) of Section-3, an interstate sale or purchase is one which occasions the movement of goods from one State to another. In other words, the movement of goods from one State to another must be the necessary incident-the necessary consequence- of sale or purchase. A case of cause and effect-the cause being the sale or purchase and the effect being the movement of the goods to another State. The purport of this clause has been succinctly stated by Shah, J. in Tata Iron and Steel Co. Ltd., Bombay vs. S.R.Sarkar, (1979) 2 SCC 242:-

> *"In our view, therefore, within clause (b) of section 3 are Included sales in which property in the goods passes during the movement of the goods from one State to another by transfer of documents of title thereto: clause (a) of Section 3 covers sales, other than those included in clause (b), in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State.*
>
> *8. To the same effect is the decision in Union of India Vs. K G. Khosla & Co. (P) Ltd. Chandrachud,. DJ, speaking on behalf of himself, D.A. Desai and R.S. Pathak, XL Ruled (SCCpp.247-48, para 15) observed as under:-*
>
> *"(i) It is not true to say that for the purposes of Section 3 (a) of the Act it is necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale. The true position in law is as stated in Tata Iron and Steel Company Ltd.. Bombay Vs. S.R. Sarkar wherein Shah, J. speaking for the majority observed that clauses (a) and (b) of Section 3 of the Act are mutually exclusive and that Section 3 (a) covers sales in which the movement of goods from one State to another is the result of a covenant or incident of the contract of sale, and property in the goods passes in either State. Sarkar X speaking for himself and on behalf of Das Gupta, 1 agreed with the majority that clauses (a) and (b) of Section 3 are mutually exclusive but differed from it and held that a sale can occasion the movement, of the goods sold only when the terms of the sale provide that the goods would be moved; in other words, a sale occasions a movement of goods when the contract of sale so provides. The view of the majority was approved by this Court in the Cement Marketing Co. of India V. State of Mysore, State Trading Corporation of India V. State of Mysore and Singareni Collieries Co. Vs. State of A.P., In K G. Khosla & Co. V. Deputy Commissioner of Commercial Taxes, counsel for the revenue invited the court to reconsider the question but the Court declined to do so. In a recent decision of this Court in Oil India Ltd. V. Superintendent of Taxes it was observed by Mathew, 1, who spoke for the Court, that; (1) a sale which occasions movement of goods from one State to another is a sale in the course of inter-State trade, no matter in which State the property in the goods passes; (2) it is not necessary that the sale must precede the inter-State movement in order that the sale may be deemed to have occasioned such movement, and (3) it is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade or commerce that the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of and incidental to the contract of sale. The learned Judge added that it was held in a number of cases by the Supreme Court that if the movement of goods from one State to*

another is the result of a covenant or an incident of the contract of sale, then the sale is an inter-State Sale."

22. The decision in Khosla & company case (Supra) explains that to be called an interstate sale or purchase, it is not necessary that the contract of sale must expressly provide for and or stipulate the movement of goods from one State to another. It is enough if such movement of goods, is implicit in the contract of sale. If, however, the movement of goods is neither expressly provided for in the contract nor is it implicit in it, the movement of goods from one State to another-even if one takes place-can't be related to the sale/purchase. In such a case the movement of goods would be unconnected with and independent of the sale or purchase. It would not fall U/s 3 (a).

23. It may further be observed that the issue with regard to interstate purchase was also dealt with by the Allahabad High Court in case of ***Commissioner of Sales Tax, UP Vs. Hanuman Trading Company Volume 43 Sale Tax Cases page 408*** and their Lordships took also similar view. This case relates to also purchase of food grains and oil seeds in UP made by the assessee as agent of Ex-UP Principals. The Hon'ble High Court while dealing with the different provisions of law reached the conclusion that no purchase tax was leviable for the following reasons:-

1. There was contract between Ex-UP buyers and the assessee to buy notified goods and send them to the Ex- UP Principals.
2. On the purchase of the goods for the Ex- UP principals in their account the assessee could not divert the goods.
3. As regards the necessity of the seller to have a say in the movement of the goods, the tests appear to be satisfied, as it was the purchaser who had contracted with the Ex-UP buyers and sent the goods outside the State.

24. While going through the facts of the present case in order to find cut if the aforesaid principles of law are applicable to the facts of the present case aid whether, it is also an interstate purchase not subject to purchase tax, it is observed that the goods were purchased through commission agent, the movement of the goods was an integrated part of the purchase. The purchase was made on behalf of the Ex-UP Principals in their account on commission basis under an agreement and the goods were to be dispatched to the state of Punjab in the account of Ex-Punjab Principals and no purchase was made in their own account therefore, the law as enunciated in the aforesaid judgments is applicable to the facts of the present case. It may also be mentioned that judgment titled as ***Rapti Commission Agency Vs. State of UP and another (2006) 6 SCC page 522*** has a direct bearing on the present case. This case relates to the mentha oil itself a id the purchases were made on behalf of the Ex-UP Principals. It was argued before the Supreme Court by the appellant that since the transaction in question is in interstate transaction, the State legislature had no competence to provide deduction of tax at the time of making the purchase and a person not liable pay tax could not be compelled to go through procedure provided under the statue for the purposes of assessment and determination of the tax liability. The plea raised by the appellant was allowed by the Supreme Court.

25. Section-3 deals with the interstate sale/ purchase whereas Section 4 refers to the matter that when a sale or purchase of goods is said to take place out side a State and when once a sale or purchase of goods is determined in accordance with said provision to take place inside a particular State. It must be deemed that it has not taken place in any other State. Section 6 is the charging section and does not deal with the interstate sale out only an intrastate sale.

26. Thus while examining the catena of the judgments and putting them on altar of the facts of the present case, then only one conclusion would be drawn that the purchase made by the agents of mentha oil and dispatch the same under an agreement to Ex-Punjab Principals would amount to interstate purchase, therefore, in the light of the judgment delivered in case of commissioner of sales tax UP Vs. Bakhtawar Lal Kailiash Chand Arhti as well as the case of Rapti Commission Agency (Supra), no purchase tax was leviable.

27. The counsel for the State has taken me through Section 20 and Section 81 in order to contend that in view of the mandatory provisions of Section 20 (c) (d) of the Act, tax was leviable when the goods were purchased and dispatched to a place outside the State otherwise then as a result of sale in the course of interstate sale, Trade or Commerce or Export out of India. Having heard the contention I do not countenance the same. Provisions of Section 20 (d) of the Act read as under:-

> *Section 20: "Where a taxable person purchases the taxable goods from a person other than a taxable person or registered person and:-*
>
> *(a)* _____
>
> *(b)* _____
>
> *(c)* _____
>
> *(d) Dispatches them to a place outside the State. Otherwise than as a result of sale in the course of interstate sale trade or commerce or export out of India.*
>
> *There shall be levied a tax on the taxable turnover or purchase of such goods at the rate applicable to such goods as per schedules:-*

28. Section 81 deals with the liability of the principals and agents but it is not a charging section, therefore, it can't be invoked for making assessment. It is only a section meant for recovering the tax from the agents if the recovery from the principals is not possible. In the present case, authorities below did not hold vicarious liability of the appellant but assessed both the principals and the agent and also held both of them liable to pay of the amount of tax. Tax liability can't be fastened upon two different individuals which arises from the same set of transactions. However, principals and agent could be held vicariously liable for the transaction provided they are held liable to pay the tax. Now while reiterating, it may be observed that Section 20(d) appears to have been incorporated though, in the interest of the revenue but without taking note Of Section 84 of the Act which is a non obstante clause regarding imposition of tax on interstate purchase or sale.

> ***SECTION-84*** ***PROVISIONS IN CASE OF INTERSATE TRADE:-***
>
> *Notwithstanding any thing contained in this Act, a tax on the sale or purchase of goods shall not be imposed under this Act:-*
>
> *(a) Where such sale or purchase takes place out side the State; or;*
>
> *(b) Where such sale or purchase takes place in the course of interstate trade or commerce; or*
>
> *(c) Where such sale or purchase takes place in the course of import of the goods into or export of the goods out of the territory of India:*

PROVIDED THAT the last sale or purchase of any goods proceeding the sale or purchase occasioning the export of such goods out of the territory of India, shall also be deemed to be in the course of such a export, if such last sale or purchase takes place after making an agreement or order [for such export subject to be furnishing a declaration in form "H" as specified in the Central Sales Tax (Registration and Turnover) Rules, 1957, by the purchaser.]

29. On bare reading of the section, it transpires that it is non obstante clause overriding an contradictory provision introduced in the statue regarding taxation. The effect of this clause has been succinctly elaborated in the principles of statuary interpretations by the Hon'ble Justice G.P.Singh, Ex-Chief Justice of the High Court of Madhya Pradesh as follows:-

"A clause beginning with 'Notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force' is sometimes appended to a Section in the beginning, with a view to give the enacting part of the Section, in case of conflict, an overriding effect over the provision or Act mentioned in the non-obstante clause. It is equivalent to saying that in spite of the provision or Act mentioned in the non-obstante clause, the enactment following it will have its full operation or that the provisions embraced in the non-obstante clause will not be an impediment for the operation of the enactment." The Hon'ble Supreme Court in the case of State of Bihar V. Bihar MSESKK Maha Sangh, AIR 2004 SCW 7151 held:

"A non-obstante clause is generally appended to a Section with a view to give the enacting part of the Section, in case of conflict, an overriding effect over the provisions in the same or other Act mentioned in the non-obstante clause. It is equivalent to saying t lat in respect of the provisions or Acts mentioned in the non-obstante clause, the provisions following it will have its full operation or the provisions embraced in the non-obstante clause will not be an impediment in the operation of the enactment or the provisions in which non-obstante clause occurs."

(iv) That under Article 246 of the constitution of India read with Entry 92A of List-I of Seventh Schedule appended to the Constitution of India, tax on the purchase of goods, where such purchases take place in the course of interstate trade or commerce is within the exclusive ambit and jurisdiction of the Union Govt. No tax car be imposed on interstate purchases by the State Govt. Entry 54 of List- II (State List) of the same Schedule allows the State Govt., of levy tax on the purchase of goods, subject to provisions of Entry 92A List-I. The State Govt., has no power to levy tax on inters ate purchases in any manner. Although it is the case of the appellant that Section 20 of the Punjab VAT Act levy's tax on the interstate purchases and again in view of Section 84 of the said Act, where the Section has overriding effect, no tax on inter State purchases can be levied, but if it is taken that the interpretation as given by the Respondent ETO relating to Sections 20 and 81 is correct, these two Sections will be unconstitutional, being violative of Article 246 of the Constitution of India read with Entry 92A of List-I and Entry 54r of List-II and liable to be declared as such. It is further submitted that facts of the case as given in that judgment in the case of assessee

are para materia and are exactly the same in its effect except some minor changes.

(v) That in these circumstances, it is submitted that the order passed by the Ld. Assessing Authority levying tax on the purchase of goods and raising demand and penalty is illegal, without jurisdiction and against the constitutional mandate and therefore liable to be quashed. As already stated above, the Ld. Designated Officer has conveniently ignored to discuss the impact of Section 84 of the Punjab VAT Act 2005, the constitutional provisions and the judgment of Hon'ble Supreme Court of India reported in Bakhtawar Lal Kailash Chand supra.

30. Thus while closely examining section 84 it would have to be held that the section 20(d) of the Act so far It allows the authorities to tax on the interstate purchase is liable to be ignored.

31. Consequently, while examining the case from all the angles, this Tribunal is of the view that no purchase tax is leviable on mentha oil which has been purchased by the agent/appellant pursuant to a contract between him and Ex-Punjab Principals and which was dispatched outside the State of Punjab otherwise then as a result of sale in course of sale, trade or commerce or export out of India.

32. No other argument has been raised by the counsel for the appellant or the State.

33. Resultantly, both the appeals are accepted, the impugned judgments are set-aside and the cases are remitted back to the authorities to frame the assessment afresh in the light of the observations made by the Tribunal to the effect that no purchase tax could be imposed on the interstate purchase made by the agent/appellant and dispatched the same to his Ex-Punjab Principals as referred to above at Jammu. Copy of the judgment be placed in the connected file.

34. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 189 OF 2016

MITTAL COAL TRADERS
Vs
STATE OF PUNJAB

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

6th December, 2016

HF ▶ Revenue

Production of original VAT invoice is mandatory for claiming ITC where there is mismatch of data.

INPUT TAX CREDIT – VAT INVOICE - BOGUS PURCHASES – RETURNS FILED – ITC CLAIMED - PURCHASE INVOICES NOT PRODUCED – CLAIM DISALLOWED – APPEAL FILED – PRODUCTION OF VAT INVOICE ESSENTIAL TO CLAIM ITC – DATA MISMATCH – CERTIFICATION BY SELLING FIRM REGARDING NO SALE BEING MADE TO APPELLANT FIRM – PENALTY AND INTEREST UPHELD – APPEAL DISMISSED – *SECTION 13 OF PVAT ACT, 2005.*

Facts

The appellant had claimed ITC in his returns. No purchase invoices were produced. The claim was denied on account of mismatch of data with the sale invoice and certification by seller firm that the said firm did not make any sale to the appellant as claimed by it. This document is not countered by the appellant. Penalty and interest are imposed consequently. An appeal is filed before Tribunal

Held:

Production of original VAT Invoice was essential to claim ITC. The data mismatch was also shown. As it is apparent that the said purchase is false, no ITC could be granted to appellant. Therefore, penalty and interest are also rightly imposed. The appeal is dismissed.

Present: Mr. Rakesh Cajla, Advocate Counsel for the appellant.
Mr. B.S. Chahal, Dy. Advocate General for the State.

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

1. The case relates to the assessment year 2009-10. The Excise and Taxation Officer-cum-Designated Officer, Patiala vide his order dated 5.11.2015 created additional demand of Rs.1,07,734/- under the Punjab Value Added Tax Act, 2005 and Rs.12,918/- under the Central Sales Tax Act, 1956. The appeal against the order qua the assessment under the Punjab Value

Added Tax Act was dismissed by the First Appellate Authority, Patiala Division, Patiala on 3.6.2016. Hence this second appeal.

2. M/s Mittal Coal Traders, Hira Bagh, Jiwan Vatika, Rajpura Road Patiala is a taxable person registered under the Punjab Value Added Tax Act, 2005.

3. The firm filed the annual statement for the year 2009-10 in form VAT-20. On perusal of the record it transpired that the returns filed by him are not complete or correct. Being not satisfied with the returns filed, the Assessing Authority issued notice U/s 29 (2) of the Act. In response to which the appellant appeared through his counsel, whereupon, he was confronted with following facts :-

1. The appellant had failed to produce any original invoices for the purchase of coal worth Rs.5,75,145/- against which he had claimed ITC.
2. 'C' forms to the tune of Rs.1,66,899/- have not been submitted in order to support the interstate sale.

4. After due enquiry and in the light of the admission made by the appellant that he had no answer to the queries, the Assessing Authority created the additional demand. The appeal filed by the appellant also failed.

5. In order to assail the findings returned by the authorities below, the appellant has submitted that admittedly the appellant failed to produce any invoice qua the purchase of coal to the tune of Rs.5,75,145/- on account of which ITC to the tune of Rs.23,006/- was disallowed. However, he has relied upon the ledger account of the seller firm and the bank account in order to prove the purchase of the coal to the tune of Rs.5,63,298/- and has urged that the production of VAT invoice was not essential in the light of the sales as shown by Shubham Sales Agency Patiala in its account books.

6. To the contrary, the State counsel has urged that the department had fully investigated case on account of the mismatch of the data and considered that non production of the VAT invoice regarding sale of coal for Rs, 5,75,145/- was essential for grant of Input Tax Credit.

7. Arguments heard. Record perused.

8. The main controversy in the case is with regard to purchase of coal to the tune of Rs.5,75,145/- by the appellant from Shubham Sales Agency Patiala against which he claimed ITC to the tune of Rs.23,006/-. In this regard, it may be observed that' production of original VAT invoice was essential to claim the ITC. In this case, no VAT invoice was produced. Rather, from the mismatch data of the return with the sale invoices and the record of the seller firm, it transpires that Shubham Sales Agency certified that the said firm did not make any sale of coal to the appellant as claimed by him. This document was not countered by the appellant in any manner.

9. Since it is apparent from the record that the purchase as alleged is false, therefore, no ITC could be granted to him, consequently the order of penalty and interest upon the said amount also appear to be rightly imposed.

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

11. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 415 OF 2015

KAUR SAIN EXPORTS LTD.
Vs
STATE OF PUNJAB

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

8th December, 2016

HF ▶ Assessee

Penalty during roadside checking cannot be imposed where goods are in transit for export out of country on the basis of difference in weight between invoice and G/R.

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – EXPORTS – GOODS IN TRANSIT TO DRY PORT MEANT FOR FURTHER EXPORT TO DUBAI – GOODS REPORTED AT ICC- GOODS DETAINED ON THE GROUNDS THAT WEIGHT OF GOODS SHOWN MUCH HIGHER THAN SHOWN IN GR – PENALTY IMPOSED PRESUMING THAT THE APPELLANT HAD SHOWN HIGHER WEIGHT TO CLAIM HIGHER ITC ON YARN USED IN MANUFACTURING THOSE GOODS – APPEAL BEFORE TRIBUNAL – HELD: NO INVESTIGATION MADE BY OFFICER REGARDING HIGHER PRICE SHOWN AGAINST ACTUAL PRICE – CONTENTION REGARDING CLAIM OF HIGHER ITC LATER ON THE BASIS OF HIGHER WEIGHT REFUTED AS IT COMES WITHIN PURVIEW OF ASSESSING AUTHORITY- BILL OF LADING AND CUSTOM CERTIFICATE SHOWN PROVING GOODS EXPORTED – NO TAX PAYABLE ON GOODS FOR EXPORT AS PER S. 84 OF CST ACT –APPEAL ACCEPTED – *S. 51 OF PVAT ACT, 2005*

Facts

Hosiery goods manufactured by appellant were in transit to Mundra Port for further export to Dubai. While goods were in transit, the driver produced the documents at the ICC. The goods were detained as the weight of the goods was much higher than that shown in GR. Though it was explained that the goods were sold by pieces and that the price was not higher than the actual price, penalty was imposed under the presumption that the appellant would claim higher ITC on raw yarn used in manufacturing by showing heavier weight of goods. On appeal before Tribunal.

Held:

No investigation was made by designated officer regarding higher price shown than actual price. Contention regarding higher claim of ITC on raw material is not relevant as it is to be determined by the Assessing authority. Bill of lading and custom certificate show that the goods were exported which means they are not taxable as per S. 84 of the Act. Therefore, evasion of tax cannot be attributed in the present case. The assessing authority has already examined this issue and allowed refund for exports u/s 5 of CST Act. Thus, the appeal is accepted.

Present: Mr. Tanvi Gupta, Advocate Counsel for the appellant.

Mr. N.K.Verma, Sr. Deputy Advocate General for the State.

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

1. Vide order dated 30.6.2014, the appellant was slapped with a penalty to the tune of Rs.60,80,906/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005 (for short the Act of 2005) by the Excise and Taxation Officer- cum-Incharge, Information Collection Centre, Doomwali, Bathinda. The appeal filed by the appellant against the said order before the Deputy Excise and Taxation Commissioner (A) Ferozepur Division, Headquarter at Bathinda also failed.

2. The appellant firm is an export house as the 90% of the readymade garments manufactured by the appellant are usually exported out of India. The goods involved in the case were being supplied by the appellant at Dubai through the purchase order No.RBG/KSL/128/2013-14, dated 2.4.2014 issued by Rashid Obaid Sain Alshamsi Trading IIC, Dubai (UAE) for supply of the readymade garments to M/s Martex International IIC. P.O. Box No.51518, Dubai (UAE). In compliance with the said purchase order, the appellant firm had dispatched the goods through carriage by road from Ludhiana dry port to Mundra port from where the goods were to be exported for Dubai.

3. On 14.6.2014 when the aforesaid consignment loaded from Ludhiana dry port through truck NO.PB-06H-8827, reached Information Collection Centre, Doomwali, the appellant's driver produced the following documents:-

1. Invoice No.25 and 26 dated 12.6.2014 issued by M/s Kaursain Exports Ltd. Ludhiana for Rs.97,16,547/- and Rs.1,05,52,940/-.
2. GR No.135, dated 12.6.2014 issued by M/s Preet Transport, Ludhiana.

4. When the goods were verified physically in the presence of Sh. Avnish Mittal, Director of the company, it was found to contain the hosiery goods, on Physical verification of the goods through the electronic digital kitchen weighing machine, it was detected that the weight of the goods was shown a number of times higher then what was shown in the GR. A detailed inventory was prepared. When confronted with this discrepancy, Sh. Avnish Mittal, Director of the company failed to make any plausible explanation. Consequently, the goods were detained and the notice u/s 51(6)(a) of the Punjab Value Added Tax Act, 2005 was issued. Ultimately, the case was forwarded to the Designated Officer who also issued notice to the owner of the goods, in response to which Sh. S.M. Dixit, Advocate appeared on the behalf of the appellant and stated that the weight of the goods is not relevant because the goods were sold by pieces and the price was not higher than the actual price. He also highlighted that since the goods were in the course of export out of India and bearing the price in dollars, therefore, no tax was payable on such goods.

5. Ultimately, after hearing the counsel for the appellant, the Designated Officer though observed that the goods were ready made garments and were under transportation in the course of export to Dubai, but did not agree with the contention that no VAT was involved in the translation and further observed that since the person exporting the goods were entitled for refund of the amount of tax on raw yarn form which the goods were manufactured, therefore the weight of goods would certainly effect the purchase of Raw yarn from inside the State of Punjab which is taxable, therefore, the appellant while showing the fictitious weight of the goods would be able to claim more UC then admissible. In other wards since the appellant showed more weight of the goods in the consignment, therefore, under the garb showing more weight, he would claim TTC for a higher amount. The weight of the raw material purchased,

the goods manufactured and exported were thoroughly considered while computing of amount of refund. Since, the dealer, with the intention to claim higher ITC, showed the weight of goods at a higher rate, therefore, the appellant was subjected to penalty to the tune of Rs.60,80,906/- U/s 51(7) (b) of the Punjab Value Added Tax Act, 2005. The appeal filed by the appellant was dismissed.

6. Hence this second appeal.

7. As regards, the display of higher price over the goods then the actual price it may be mentioned that no such investigation was made by the Designated Officer in order to make out the actual price of the goods. Rather from the circumstances, it appears that the Designated Officer accepted the price of the goods as shown in the invoice and imposed penalty accordingly rather than upon the actual price as alleged.

8. Moreover, the alleged claim of more input tax credit on purchase of excess quantity of raw material is not relevant U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005. As this issue could only be determined by the concerned Assessing Authority at the time of assessment of the firm.

9. Section 51 of the Punjab Value Added Tax Act provides for carrying the genuine documents i.e. invoice, delivery challan, sale bill, GR, e- trip or other documents to a destination. The goods as carried by were shown to be not accompanied by proper and in genuine documents and the actual value1 of the goods has not been investigated by the Designated Officer.

10. The other ingredient for imposition of penalty U/s 51 of the Act is the proof of an attempt to evade the tax on the part of the appellant. In this case, admittedly the goods were being transported for shipment out of the country i.e. Dubai, therefore, the appellant was carrying the necessary invoice and the GR at the time of taking the goods. The department has also not denied this fact, therefore since the goods were meant for export, therefore, it comes under the category of "0" rated sales as declared U/s 17 of the Punjab Value Added Tax Act, 2005. The custom certificate and the bill of lading produced on the record leave no iota of doubt in my mind to hold that the goods had crossed custom frontiers of India on the way of United Urab Entherfnd. As such, in the light of Section 84 of the Punjab Value Added Tax Act, the goods were not taxable. Section 84 of the Punjab Value Added Tax Act reads as under:-

> *SECTION-84 PROVISIONS IN CASE OF INTERSTATE TRADE:-*
>
> *Notwithstanding any thing contained in this Act, a tax on the sale of purchase of goods shall not be imposed under this Act,-*
>
> *(a) Where such sale or purchase takes place out side the State; or*
>
> *(b) Where such sale or purchase takes place in the course of interstate trade or commerce; or*
>
> *(c) Where such sale or purchase takes place in the course of import of the goods into or export of the goods out of the territory of India:*
>
> *PROVIDED THAT the last sale or purchase of any goods proceeding the sale or purchase occasioning the export of such goods out of the territory of India, shall also be deemed to be in the course of such a export, if such last sale or purchase makes place after making an agreement or order [for such export subject to furnishing a declaration in form "H" as specified in the Central Sales Tax (Registration and Turnover) Rules, 1957, by the purchaser.]*

11. On bare reading of the Section, it transpires that since it was a sale outside the State of Punjab and the goods were in the course of export out of the Territory of India, therefore, no tax was payable. Consequently, the evasion to pay tax can't be attributed.

12. In any case the claim of ITC or any other sort of refund was not within preview of Section 51 of the Punjab Value Added Tax Act, 2005 and it could be determined by the Designated Officer at the time framing the assessment and the Assistant Excise and Taxation Commissioner, Ludhiana could be referred to examine the same .at the time of making the assessment of the concerned financial year. However, the Designated Officer had power to examine only "if the goods carried by the appellant were accompanied by the proper and genuine documents?" Record reveals that the Designated Officer did not find any fault with the documents, but proceeded to impose the penalty on the ground which was not within the scope of his investigation. It may also be observed that the goods were accompanied by the proper and genuine documents.

13. While going to the worst, it is noticed that the issue with regard to claim of ITC by the appellant has been examined by the Assistant Excise and Taxation Commissioner, Ludhiana and he allowed ITC, while accepting the value of the goods purchased amounting to Rs.29,87,60,747/- and granted refund of Rs.1,46,63,759/- vide voucher number Form VAT-30 for the period w.e.f. 1.4.2014 to 30.6.2014 after considering the export out of India amounting to Rs.18,44,71,682/-.

14. Thus, since Assessing Authority has already examined the issue with regard to .the claim of ITC over the disputed goods and allowed the refund while considering these transactions as export out of India U/s 5 (1) of the Central Sales Tax act, 1956, therefore, the presumption regarding attempt to evade the tax stand rebutted. Thus, while examining the case from any angle, it is observed that the appellant never attempted to evade tax over the goods.

15. Resultantly, in the wake of the aforesaid discussion, I accept the appeal, set-aside the impugned order passed by the authorities below and quash the order of penalty. Consequently, the security bound if furnished, or the amount of the penalty if deposited, be released to the appellant.

16. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 291 OF 2015

ANURAG STEEL & COAL TRADERS
Vs
STATE OF PUNJAB

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

3rd November, 2016

HF ▶ Revenue

Penalty is upheld for reuse of Invoices for interstate sale of goods.

PENALTY – ATTEMPT TO EVADE TAX – ROAD SIDE CHECKING/ CHECK POST – INGENUINE INVOICE – GOODS IN TRANSIT FROM MANDI GOBINDGARH TO JAIPUR – INVOICES PRODUCED APPEARED TO BE INGENUINE – ENQUIRY HELD TO DETERMINE FACTS – INVOICES IN QUESTION ALREADY FOUND ISSUED ON EARLIER DATE TO ANOTHER FIRM OF JAIPUR – PENALTY UPHELD FOR REUSING INVOICES THEREBY ESTABLISHING ATTEMPT TO EVADE TAX ON PART OF APPELLANT – TRANSACTION NOT ENTERED IN ACCOUNT BOOKS – NO GR PRODUCED - APPEAL DISMISSED – *S.51 OF PVAT ACT, 2005.*

Facts

Goods loaded in a vehicle were in transit from Mandi Gobindgarh to Jaipur. The documents (VAT invoice no 36 & 37) produced appeared to be manipulated. It was observed that similar bill numbers were issued by the dealer earlier in the name of another firm of Jaipur for which no explanation was tendered by appellant. These invoices were not found entered in account books which raised further doubt. No GR was produced for verification of the consignment. Thus penalty is imposed for attempt to evade tax.

Held:

The inference drawn from the enquiry is that the appellant was using fictitious invoices for taking goods to Jaipur. It has reused invoices with an intention to evade tax. Intention to evade tax is established from the modus operandi of appellant. The appeal is dismissed.

Present: Mr. Surinder Kumar Moudgil, ITP for the appellant.
Mr. B.S. Chahal, Dy. Advocate General for the State.

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

1. Vide order dated 17.2.2009, the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala imposed a penalty to the tune of Rs.2,17,936/- U/s 51(7)(b) of the Punjab Value Added Tax Act, 2005. The appeal filed against the said order was dismissed by the First Appellate Authority, Patiala Division, Patiala on 10.2.2015.

2. On 8.2.2009, when the Excise and Taxation Officer, Mobile Wing, Patiala checked the vehicle bearing No. HR-37-B-2462 carrying E.R.W. Pipes from Mandi Gobindgarh to Jaipur, the driver produced the following documents:-

1. VAT Invoice No. 36 & 37 dated 7.2.2009 of M/s Anurag Steel and Coal Traders, Mandi Gobindgarh, in favour of M/s Salwan Industrial Corp., Industrial Area, First Floor, Road No.1, Jaipur (Rajasthan), for Rs.5,47,748/- and Rs.1,78,794/- respectively (Excluding VAT).
2. GR. No.3713 and 3714 dated 7.2.2009 of M/s Shri Hari Transport Co., (Regd) G.T. Road Sirhind side, Mandi Gobindgarh.

3. On scrutiny, the Detaining Officer detected that VAT Invoice No.36 & 37 appeared to be manipulated. Consequently, he recorded the statement of Sh. Pala Singh, Driver of the vehicle and issued a notice to him being the representative of the owner of the goods for. 10.2.2009. On the said date Sh. Vijay Kumar, Manager alongwith Sh. Jatinder Pal Singh, Advocate appeared. They produced photo copy of the R.C., sale and purchase account, VAT Account and Party account. They also produced purchase-Bill No.98:.dated 7.2.2009 of M/s R.S. Steel Tubes, G.T. Road, Khanna, Bill No.133 dated 7.2.2Q09 Issued by M/s Suneel Steel, Mandi Gobindgarh, Bill No. 92 dated 7.2.2009 of M/s Nalas Industrial Corporation, Mandi Gobindgarh. Copy of the purchase order received from-M/s Salwan Industrial Corporation, Jaipur was also produced. However, no G.R. Book for further verification was produced. From the documents, the Detaining Officer doubted that the transaction was not covered by the genuine documents. Consequently, he forwarded the case to the Designated Officer, who also issued to the owner of the goods, in response to which the Counsel for the appellant again appeared and contested the case.

4. After due enquiry, the Designated Officer observed that the transaction was not covered by genuine documents. Similar bill numbers 36 & 37 were also issued by the dealer on 24.1.2009 for Rs. 5,11,787/- and Rs.3,12,344/- including VAT) in the name of M/s Shivalik Steel Arihant Power, First Floor, Road No.l, Jaipur. When confronted, the counsel for the appellant failed to make any explanation regarding the issuance of same bill numbers 36 and 37 again on 7.2.2009. When the bills bearing these numbers had already been issued on 24.1.2009 and the same were not found entered in the account books of the dealer, therefore, hanky panky. On the part of the appellant is highlighted. Sh. Vijay Kumar, in his statement, disclosed that the account books maintained were computerized. He also admitted that invoice of same, number could not be prepared by the computer. He also failed to explain as to why these bills were not found entered in the account books. The counsel has failed to explain as to why the invoices No.36 and 37, dated 24.1.2009 were not entered in the account books. The appellant also did not produce the GR book for verification of the consignment. The Designated Officer further observed that actually the invoices No. 36 and 37 dated 24.1.2009 were issued earlier in the name of a dealer of Jaipur thereafter the invoices bearing the same number dated 7.2.2009 were again issued. The modus operandi was to bring back the invoice issued second time with the intention to suppress the turnover and evade the tax. The appeal filed against the said order was dismissed.

5. Hence this second appeal.

6. The truck loads of the goods were detained on the basis of the secret information to the effect that the appellant has been evading the tax while adopting the modus operandi to the effect that after the goods reached destination, the invoices; are brought back and the goods were sent again on the basis of previously used invoices again to the purchasers. The department was bound to conduct an enquiry in this regard as such the invoices No. 36 and 37 dated 7.2.2009 pursuant to which the goods were being sent were required to be verified. On verification, it was found that the appellant had already issued VAT invoices bearing No.36 and

37 on 24.1.2009 in favour of M/s Shivalik Steel Arihant Power, First Floor, Road No.l, Jaipur. Now the appellant was again sending the goods to another dealer of Jaipur under the second set of invoices bearing No.36 and 37, dated 7.2.2009. The invoice dated 24.1.2009 was not found entered in the account books of the appellant Mr. Vijay Kumar, representative of the firm admitted that when once the invoices No.36 and 37 were issued on 24.1.2009 then the invoices bearing the same numbers could not be issued on 7.2.2009. Thus, the inference would be drawn that the goods taken to Jaipur were covered by fictitious invoice. The appellant also failed to produce the GR book in order to prove the genuineness of the GR accompanying the goods. All this goes to show that the appellant reused the invoices already issued by him with the intention to evade the tax. Consequently, it would have to be concluded that the documents covering the transaction were not proper and genuine. The intention to evade the tax is apparently proved on the record.

7. Having gone through the record of the case and perused the order passed by the authorities below, the same appear to be well reasoned and well founded and as such do not call for interference by the Tribunal.

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

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 372 OF 2015

CALVIN AND BEAVER SPORTS PVT. LTD.
Vs
STATE OF PUNJAB

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

8th November, 2016

HF ▶ Assessee

Designated officer committed on error while passing order of penalty and interest without assigning reasons in case of excess ITC being available.

INPUT TAX CREDIT - PENALTY AND INTEREST – EXCESS ITC AVAILABLE – APPEAL FILED AGAINST IMPOSITION OF PENALTY AND INTEREST ON THE GROUND THAT EXCESS ITC AVAILABLE TO APPELLANT TO DEDUCT THE TAX DUE FROM HIM THEREBY NEGATING THE NEED TO LEVY INTEREST AND PENALTY – ORDER PASSED WITHOUT ASSIGNING REASONS - MATTER REMITTED BACK TO CONSIDER THE PLEA OF EXCESS ITC AVAILABLE – APPEAL ACCEPTED – *SECTION 53 AND SEC. 32(3) OF PVAT ACT, 2005*

Facts
Penalty u/s 53 and interest u/s 32 thereon was imposed on the appellant for wrong claim of ITC. An appeal is filed contending that since excess ITC payable to the appellant was lying with the department and the amount of tax due could have been deducted from that excess amount, question of penalty and interest did not arise.

Held:
The designated officer has erred in imposing penalty and interest without assigning reasons. It is also not recorded in the order if any notice was issued u/s 53 before imposing penalty. The appropriate authority is competent to consider if the demand of tax could be adjusted from the ITC available to the appellant. Thus, the appeal is accepted and the case is remitted back to the Assessing authority to pass a fresh order.

Present: Mr. Ankit Dhiman, Advocate counsel for the appellant.
Mr. B.S. Chahal, Dy. Advocate General for the State.

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

1. This appeal has arisen out of the order dated 24.7.2015 passed by the Deputy .Excise and Taxation Commissioner (A), Patiala Division, Patiala dismissing the appeal against the order dated 20.8.2014 passed, by the Assessing Authority, creating additional demand, to the tune of Rs.84,405/- under the Punjab Value Added Tax Act, 2005.

2. The Counsel for the appellant has contended that the case relates to the assessment year 2009-10 and it was decided on 20.8.2014. Since in the year 2009-2010, the ITC to the tune of Rs.24,380/- was rejected on account of mis- match as per mis-match report of the computer/Departmental data based therefore a penalty of Rs.33,157/- U/s 53 @ 2% for 65 months and an interest of Rs.24,868/- U/s 32 (3) for 65 months was imposed. Inspite of the fact that, at the time of passing the order, an amount of Rs.3,44,575/- as lying excess on account of ITC payable to the appellant arid the amount of tax due could be deducted from, the said excess ITC, therefore, no1 demand could raised against him. Eventually, he has urged that no penalty and interest could be imposed upon the appellant and the demand could be satisfied out of the excess ITC available to him.

3. To the contrary, the State Counsel has urged that the penalty was imposed not on account of rejection of the ITC, but due to the wrong filing of the returns. As such, the order is quite valid.

4. Having heard the rival contentions and having perused the orders passed, by the Excise and Taxation Officer, this Tribunal is of the opinion that the Designated Officer fell in error while passing the order of penalty and interest without assigning any reasons therefore. It is not recorded in the order if any notice U/s 53 of the Act was issued against the appellant before passing the order.

5. The Counsel for the appellant has not disputed to the remitting of the case so (that the speaking order could be passed by the Designated Officer. Only the appropriate authority is competent to consider if the demand of tax could be adjusted from the ITC available to the appellant without imposing tax and penalty.

6. Resultantly, this appeal is accepted, impugned order is set-aside and the case is remitted back to the Assessing Authority to pass a fresh speaking order. In accordance with law.

7. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 352 OF 2014

INDORE NITRIDERS
Vs
STATE OF PUNJAB

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

6th December, 2016

HF ▶ Revenue

Penalty upheld on account of concealment of goods and documents in vehicle.

PENALTY – CHECK POST – ATTEMPT TO EVADE TAX – GOODS (CATTLE FEED) IN TRANSIT INTO PUNJAB – VEHICLE APPREHENDED – RAILWAY GOODS FOUND HIDDEN UNDER THE CATTLE FEED – INVOICE RELATING RAILWAY GOODS FOUND ON PHYSICAL SEARCH – ADMISSION BY DRIVER THAT GOODS PURPOSELY NOT GENERATED AT ICC AS PER DIRECTIONS OF CONSIGNOR – PENALTY IMPOSED – APPEAL – ADMISSION BY DRIVER AND NON GENERATION OF GOODS AT ICC ALONGWITH THE FACT OF CONCEALMENT OF RAILWAY GOODS AND INVOICE RELATED THERETO TAKEN INTO ACCOUNT – PENALTY UPHELD – *S. 51 OF PVAT ACT, 2005*

Facts

The vehicle carrying goods Taramira i.e. cattle feed was coming into State of Punjab. It was apprehended by the Mobile Wing officer. On physical search 20 sets of suspension bearing tubes i.e. railway parts were found hidden under the cattle feed. On further search the invoice related to these parts was produced. It was admitted that the consignor had directed the driver not to generate the goods at ICC. Penalty is imposed u/s 51 for intention to evading tax. An appeal is thus filed in this regard.

Held:

Admission by driver regarding non-reporting of goods on direction of owner, concealing goods under cattle feed and omission to generate the goods at nearest ICC without any plausible explanation attract penalty. The appeal is dismissed.

Present: None for the appellant.
Mr. N.K. Verma, Sr. Dy Advocate General for the State.

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

1. The Designated Officer, Ludhiana-I vide his order dated 13.11.2013 slapped a penalty to the tune of Rs. 14,08,642/- upon the appellant U/s 51 (7) (c) read with Section 51

(12) of the Punjab Value Added Tax Act, 2005. The appeal against the said order was dismissed by the First Appellate Authority, Ludhiana on 11.8.2014.

2. On 17.10.2014, the driver, while carrying the taramira (cattle feed) and some Railway parts (10 sets of Suspension Bearing Tubes worth Rs. 21,90,733/) was coming from Indore Khanna to Patiala (State of Punjab). When he reached near godown of M/s Sumit Trading Company, Khanna, he was apprehended by the Excise and Taxation Officer, Khanna. When confronted with the transaction, he produced:- . .

(1) GR of South Goods Carrier showing destination from Jaora (MP) to Khanna.

(2) Form No.57232 prescribed by Madhya Pradesh Government relating to Taramira.

(3) A declaration under Form VAT XXXVI issued by ICC Dhabi Gujran.

3. However, on physical checking of the goods Tubes of 'Suspension Bearing Tubes" were also found lying under the bags of taramira in the truck for which he failed to produce any documents. On further search, an invoice No.264 dated 12.10.2013 of Indore Nitriders issued in favour of "Diesel loco modernization works Patiala" was recovered.

4. The driver of the vehicle admitted that the documents related to the goods (railway parts) but he was unable generate the goods at the ICC as per directions of the consignor. . He was told not to generate the goods at any ICC of the State of Punjab. No form VAT XXXVI was produced showing the generation of this invoice at any ICC. No form regarding generation of goods at the ICC as prescribed by Madhya Pradesh Government was furnished.

5. While suspecting the evasion of tax, the goods were detained and a notice was issued to the owner of the goods for appearing on 17.10.2013. None appeared upto 20.10,2013 before the Detaining Officer, therefore he forwarded the case to the Designated Officer who also issued notice to the owner of the goods for 31.10.2013.

6. In response to the notice, Mr. Atul Khanna, Advocate, appeared on behalf of the appellant on 20.11,2013 who explained that he was the tender holder of the railways and diesel loco modernization work, Patiala. The goods brought by him were not for sale but for his own consumption.

7. After holding due enquiry, the Designated Officer observed that the "Suspension Bearing Tubes" were found loaded in the vehicle below the taramira bags. The driver did not generate about the goods at the ICC Dhabi Gujran and he jumped the ICC with intention to evade the tax. The invoice relating to the railway part was produced only after the goods were recovered therefore, the inference could be drawn that the appellant had requisite intention to evade the tax. The appeal filed by the appellant was also dismissed.

8. Sh. Kulbir Singh, Counsel for the appellant, while assailing the orders passed by the authorities below, urged that the goods were not meant for sale and were accompanied by proper and genuine documents. The goods were plant and machinery used by Indian railway for its Workshop and were duly tax paid, therefore/ penalty U/s 51 (7) (c) as well as 51 (12) of the Punjab Value Added Tax Act, 2005 could not be imposed.

9. On the other hand, the State Counsel has urged that the appellant while bringing the goods from outside the State of Punjab crossed the ICC without generating the goods in Form VAT XXXVI. Though, the appellant had disclosed about the other goods i.e. taramira at the ICC yet he did not disclose about the "Suspension Bearing Tubes" (a very costly items). The driver had also admitted that he was directed by the owner not to disclose the goods at the ICC,

therefore, he acted in that direction. As such the intention to evade the tax was very much apparent attracting penalty U/s 51 (7) (c) of the Act.

10. Arguments heard. Record perused.

11. Admittedly, the driver of the vehicle bearing No.PB-13R-4069, while carrying two types of goods i.e. "taramira" as well as 20 sets of "Suspension Bearing Tubes", was coming from Indore to Khanna. The goods were highly priced and lying hidden under taramira bags about which only driver knew. He did not submit the invoice No.264 dated 12.10.2013 (relating to the railway parts) before the ICC Dhabi Gujran while crossing the ICC. He did not stop the vehicle at the ICC Dhabi Gujran and even on checking by the Excise and Taxation Officer at the godown of M/s Sumlt Trading Company, Khanna, he produced invoice No.12 dated 13.10.2013 relating only to "taramira" issued by M/s Suresh Traders New Anaz Mandi, Jaora (MP) in favour of M/s Raj Shree Industries, Khanna, Mandi. It was only after search of the truck that 20 sets of Suspension Bearing Tubes were recovered and on further search, the invoice No.264 dated 12.10.2013 relating to the goods i.e. 20 sets of "Suspension Bearing Tubes" was recovered. The driver admits during enquiry that he had not reported about the consignment at the ICC under the instructions of the consignor party. The counsel has also failed to make any plausible explanation, as to why the consignment relating to invoice No.264 was not reported at the ICC.

12. It has been made mandatory under the provisions of the Punjab Value Added Tax that the carrier of the goods while entering or leaving the limits of the State will have to generate the information about the goods at the nearest ICC. The appellant has neither complied with the mandatory provisions of law nor has submitted any plausible explanation for this omission. Rather, the circumstances are that he crossed the border without generating the goods at the ICC; he concealed the goods under the bags of taramira and did not show the invoice relating to these goods to the Detaining Officer at the time of detention. All the aforesaid circumstances enable this Tribunal to hold that all was well not with the driver and he concealed the material facts for which he has no plausible explanation to make therefore, such violation of the mandatory provisions of Act would certainly attract the penalty.

13. Having perused the orders passed by the authorities below, the same appear to be well reasoned and well founded and need no interference at this level.

14. Resultantly, this appeal being devoid of any merit is dismissed.

15. Pronounced in the open court.

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NOTIFICATION (HARYANA)

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EXEMPTION LEVY OF VAT ON SALE OF TECHNETIUM 99M GENERATORS USED IN DIAGNOSIS OF CANCER

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT
NOTIFICATION

The 17th October, 2016

No. 21/ST-1/H.A. 6/2003/S.59/2016. – In exercise of the powers conferred by sub-section (1) of section 59 of the Haryana Value Added Tax Act, 2003 (6 of 2003), and with reference to Haryana Government, Excise and Taxation Department, Notification No. Web No.20/ST-1/H.A. 6/2003/S.59/2016, dated the 21st September, 2016, the Governor of Haryana hereby makes the following amendment in Schedule B and C appended to the said Act, namely:-

AMENDMENT

In the Haryana Value Added Tax Act, 2003 (6 of 2003),-

(i) in Schedule B, under columns 1 and 2, after serial number 49 and entry thereagainst, the following serial number and entries thereagainst shall be inserted, namely:-

"49A Technetium 99M Generators for use in diagnosis of cancer"

(ii) in Schedule C, under columns 1 and 2, for serial number 102(69) and entry thereagainst, the following serial number and entries thereagainst shall be substituted, namely:-

"102(69)	Radioactive chemical elements and radioactive isotopes (including the fissile chemical elements and isotopes) and their compounds; mixtures and residues containing these products but not including Technetium 99M Generators for use in diagnosis of cancer	2844:00:00"

SANJEEV KAUSHAL
Additional Chief Secretary to Government, Haryana,
Excise and Taxation Department.

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GST DELAYED, ROLLOUT NOW LIKELY ON 1 JUNE

Expectations are that the GST legislation will be now be introduced in the first half of the budget session of Parliament

The rollout of the goods and services tax (GST) is likely to be delayed by two or three months, according to two people familiar with the situation.

The government is yet to lock down a date, but is likely to settle for either 1 June or 1 July, the people said on condition of anonymity.

Expectations are that the GST legislation will be introduced in the first half of the budget session and the government will seek to get it passed after the recess.

While the new dates would delay the rollout, they are also well within the mandatory deadline of September—after which the central and state governments will lose powers to levy any indirect taxes other than GST.

Differences between the centre and the states, especially over the sharing of powers, has delayed the final approval for supporting legislations for GST, a tax reform which will for the first time bind the country into a common market.

States like Kerala and West Bengal had sought a delay in the implementation of the tax, arguing that state finances cannot withstand the double whammy of demonetization and GST.

GST will subsume a host of indirect taxes levied by the centre and the states, including excise duty, service tax, value-added tax, entry tax, luxury tax and entertainment tax.

Though its implementation would have been easier from the beginning of a fiscal year, it can be implemented anytime. GST is an indirect tax levied at the point of sale and hence can be introduced at the beginning of any month.

Finance minister Arun Jaitley is expected to announce the timetable for this ambitious tax reform in his budget speech on 1 February.

The finance ministry will also have to work out its revenue estimates for 2017-18 based on GST's implementation date.

All eyes will now be on the crucial 3-4 January meeting of the GST council in New Delhi that will discuss the contentious issue of sharing of administrative powers between the centre government and the state governments.

A consensus is imperative for the integrated GST bill that deals with the levy of GST on inter-state movement of goods to receive the council's approval.

So far, after months of deliberation, the council has approved the draft central and state GST legislations, and has given its nod to the bill on the compensation of states for revenue losses arising from a transition to GST.

While the central GST bill, integrated GST bill and the bill on the compensation of states for revenue losses will be tabled in Parliament, the state GST bill has to be tabled in state assemblies.

"Since April 1 looks difficult, the government has little option but to bring in GST from any month next year. Since it is a transaction tax, it can be brought in at any time. However, the challenge will be to do a revenue forecast in the budget. It will be prone to huge errors," said N.R. Bhanumurthy, a professor at the National Institute of Public Finance and Policy.

Courtesy: LiveMint
2nd January, 2017

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AGRICULTURE DEFINITION REVISED: ABSENTEE LANDLORDS, FOOD PROCESSING FIRMS BROUGHT UNDER GST NET

The Council retained its proposed definition of 'agriculturist' to allow a land to have been personally cultivated only if it's farmed by individuals and family members of a HUF.

While expanding the definition of agriculture to include dairy, poultry and stock breeding, the Goods and Services Tax (GST) Council last month declined entry of individuals leasing out farmland on rent or share cropping as agriculturist, thereby bringing absentee landlords and food processing companies hiring land for farming under the proposed indirect tax net.

As per the definition agreed at the Council's fifth meeting on December 2-3, agriculture would include floriculture, horticulture, sericulture, pisciculture, raising of crops, grass or garden produce, grazing, dairy, poultry, stock breeding, piggery, apiculture, the mere cutting of wood or grass, gathering of fruit, collection of minor food produce, raising of man-made forest or rearing of seedlings or plants.

But the Council stood steadfast on the definition of agriculturist to allow only individuals or a Hindu Undivided Family (HUF) who carry out farming on their own or by family members; by servants on wages payable in cash or kind; or, by hired labour under one's personal supervision or the personal supervision of any member of one's family.

Exemption to agriculturists would have implied tax relief to a person, while exemption to products like dairy and poultry provide tax relief to the products.

The Council retained its proposed definition of 'agriculturist' to allow a land to have been personally cultivated only if it's farmed by individuals and family members of a HUF. Similar dispensation would be given to serving member of the armed forces, widows, minors or people with physical or mental disability even when land is cultivated by servants or hired labour. The council's refusal came despite requests by several states, including large farming ones like Punjab and Haryana.

It declined Punjab's suggestion to add a sub-clause for inclusion of agricultural operation through any usufructuary, mortgage or lease or otherwise and to include cooperative societies within the meaning of agriculturist. It, however, agreed to consider the state's request for exempting lease of agricultural land from service tax when it exemptions under GST come up for discussion at a later stage.

While Telangana suggested that the definition should not be limited to those who cultivate the land personally as small landholders might give their land to other ryots, Haryana said that no restrictions should be put and even contract farming should be allowed since landholdings were small.

Delhi claimed that tenancy was quite common in India and to make them taxable under GST would be a very big decision which needed to be discussed. But Gujarat stated that a company that entered into a tenancy agreement should get registered and pay GST, adding that if tenancy was illegal in a state, it could not be legalised in GST.

Courtesy: The Indian Express
3rd January, 2016

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GST MEET: STATES DEMAND TAX ON HIGH SEA SALES, HIGHER COMPENSATION

With the states and the Centre in a deadlock over the important provisions of IGST bill, finance ministers of many states said that the April 1 deadline for GST rollout is likely to be missed.

The Goods and Services Tax (GST) Council on the first day of its eighth meeting kickstarted discussion on the provisions of the Integrated GST (IGST) bill, with the states and the Centre locking horns on the issue of tax jurisdiction over high sea sales in offshore regions of coastal states. The talks remained inconclusive and may resume on Wednesday along with the other contentious issue of cross empowerment pertaining to division of control over tax assessees under the proposed indirect tax regime.

With the states and the Centre in a deadlock over the important provisions of IGST bill, finance ministers of many states said that the April 1 deadline for GST rollout is likely to be missed.

"We couldn't reach a consensus on a very important issue that relates to defining of a state. This is 12 nautical miles from the state can states charge GST from them or not? Right now, Gujarat, Karnataka, Kerala, Odisha, Maharashtra, West Bengal, many states are now charging VAT or sales tax within 12 nautical miles. For example, when a ship is loaded with oil or products, the tax on that is charged by the states," West Bengal finance minister Amit Mitra said.

"Some states earn as much as Rs 600 crore and Gujarat has Rs 1,200 crore from this source. All the coastal states combined, irrespective of parties, in saying that we must have 12 nautical miles within the state jurisdiction," he said. The issue has been referred to the law ministry by the Council's chairman, finance minister Arun Jaitley, Mitra added.

Kerala finance minister Thomas Isaac said: "The current practice is states collect sales tax, sale in high seas and so on. But in the draft law, the Union was to define the territorial waters to a distance of 12 nautical miles. Now that was not acceptable."

On the likely timeline of GST implementation, finance ministers of most states said that the April 1 deadline is likely to be missed. BJP-ruled Gujarat's FM Nitin Patel said GST may become a reality only from September.

Issac said even if the supporting legislations of GST get passed in Budget, the indirect tax regime cannot be rolled out before June. "It (GST) can happen anytime, say, June, July, August..definitely not April. If laws can be passed in the Budget session, then definitely June-July," he said.

Delhi deputy Chief Minister Manish Sisodia said, "I don't think it can happen in April, maybe one or two months delay."

States also demanded higher compensation citing the adverse impact on their revenue after the government scrapped high-value notes. The compensation bill is likely to be redrafted to enable raising higher funds than the initially estimated amount of Rs 55,000 crore for compensation since increasing the list of demerit goods for levying cess is not feasible, states' FMs said.

"Demerit category is not expandable. The demerit goods are already covered under the cess. Not many items that can be classified as sin goods," Rajasthan's urban development minister Rajpal Singh Shekhawat said.

Pointing to the contraction in West Bengal's tax revenue by 2 per cent in November 2016 as against a growth of 11 per cent in the same period last year, Mitra said that states would need higher compensation.

Mitra said that the Centre should stick to its constitutional commitment of giving 100 per cent compensation to states for any loss suffered after the implementation of GST. He said West Bengal was committed to GST implementation but the "demonetisation tsunami" derailed it.

Courtesy: The Indian Express
4th January, 2016

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LOSSES DUE TO GST TRANSITION MAY GO UP TO RS90,000 CRORE, WARNS AMIT MITRA

At GST council meeting, states demand increased compensation from centre citing effect of note ban

The goods and services tax (GST) council kicked off negotiations on the integrated goods and services tax bill on Tuesday, while putting off discussion on the contentious issue of sharing of administrative powers till Wednesday.

On the first day of the two-day meeting, states including Karnataka, Tamil Nadu, Kerala, Maharashtra, Gujarat, West Bengal and Andhra Pradesh strongly opposed the centre's proposal to take away the taxation rights of states under GST on transactions occurring in territorial waters extending up to 12 nautical miles from the coast in the IGST bill. The matter has now been referred to the law ministry for its opinion. At present, a substantial portion of tax revenues of coastal states comes from levy of value-added tax on sales of bunker fuels to vessels and on gas explored in territorial waters.

The states also pointed to the increased need for compensation for losses arising from a transition to GST. West Bengal finance minister Amit Mitra said the estimated losses to states from the transition to GST could go up to Rs80,000-90,000 crore from the Rs55,000 crore estimated at present and the centre should ensure that the entire loss for states is compensated.

"The GST council took a decision to create a fund of Rs55,000 crore for compensating states with cess on demerit and luxury. This was the model before the tsunami of demonetisation. Now, everybody's compensation would go up. We had at that time estimated that at most five states would need compensation as others will manage to achieve 14% growth. But now many more states would need compensation," he said.

Most states also ruled out GST's implementation from 1 April.

The eighth meeting of the GST council discussed around 16 sections of the IGST bill with 10 sections remaining, said finance ministers who attended the meeting.

But the council's nod to the IGST bill will be dependent on the centre and states finding a middle path on the issue of administrative control. While states like Tamil Nadu, West Bengal and Kerala are sticking to their demand for administrative control over all taxpayers who have an annual revenue threshold of less than Rs1.5 crore and equal division between the centre and states for those above this level, the centre is unwilling to yield to this demand as it will leave it only a small taxpayer base of around 700,000 to administer. The other option being discussed was to divide the small pool of taxpayers that are likely to be audited under the GST.

The council also heard representations from various government departments wherein concerns of sectors including banking and insurance, telecom, civil aviation, railways and commerce

were highlighted. Government departments and public sector units sought centralized registration as well as lower tax rates under GST.

Commerce minister Nirmala Sitharaman sought lower GST rates for employment-intensive plantation, leather and cement industries and urged not to end duty exemptions for exporters. "Given leather industry creates a lot of employment, we have sought zero GST rate or to keep it at the lowest GST range (below 5%). Given government's commitment for housing for all and building large-scale infrastructure projects, cement sector also needs to be in a GST rate below the revenue neutral rate of 18%," she said.

Making a presentation before the GST council, Sitharaman also sought exemption of IGST on goods transferred from SEZs across states. Sitharaman said since SEZs are considered economic zones outside the country's territory, IGST should not apply on transactions among them.

Kerala finance minister Thomas Isaac said that sectors like telecom, banking and insurance provide services and are seeking special treatment like single registration and lower tax rates. "The council has not taken a final call on single registration under GST," he said.

Courtesy: LiveMint
4 January, 2017

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AKALI MLA DEEP MALHOTRA IN DOCK FOR EXCISE ACT VIOLATIONS

PATIALA: The excise and taxation department has initiated the process of selling properties of Shiromani Akali Dal (SAD) MLA from Faridkot Deep Malhotra and his associates as they have failed to deposit excise fee to run liquor vends.

This has come as a double blow for the sitting MLA as the Akali Dal has given ticket to Parambans Singh 'Bunty' Romana from Faridkot to contest upcoming polls.

The excise department has to recover Rs.30 crore from Malhotra and his associates for running liquor shops in Patiala, Sangrur, Moga and Fathegarh Sahib districts.

The department has so far identified three prime properties in Delhi's Punjabi Bagh, hotel in Pitampura and a bungalow in North Avenue.

"Following the orders of the excise and taxation commissioner, red entry has been made in the revenue records in Punjab and a letter has been written to Delhi government to do the needful. After this, the attachment process will be initiated and the properties will be auctioned," said an excise and taxation officer.

Excise and taxation commissioner Varun Roojam could not be contacted as he was off to Delhi for a meeting.

Earlier, the excise department had directed the banks to freeze Malhotra's bank accounts, but later withdrew the orders. Malhotra could not be contacted for comments.

The excise department has already fined Malhotra for running his own liquor distillery in violation of rules.

Last month, the department had auctioned properties of the Ferozepur liquor contractor for not paying excise fee.

Courtesy: Hindustan Times
4th January, 2016

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GST COUNCIL MEETING: DEADLOCK OVER HIGH SEA TAXES PERSISTS; APRIL 1 TARGET UNLIKELY

Most states say GST can be implemented from June or July; next GST Council meeting on January 16.

An agreement on the crucial issue of 'dual control', which envisages a division of control over tax assessees between the states and the Centre under the proposed Goods and Services Tax (GST) and is at the heart of the wrangling between the two sides, remained inconclusive in the eighth GST Council meeting that ended Wednesday. Even as the Council discussed other provisions of the Integrated GST bill, some states raised their objections on the definition of territory and tax jurisdiction in offshore areas of coastal states and demanded a higher share in the split of GST rate, thereby pushing the deliberations aground.

With the deadlock between states and the Centre continuing over these two issues of definition of territory and dual control, the deadline of April 1 is completely ruled out. Most states said GST can be implemented only from June or July. The next GST Council meeting is on January 16.

"The IGST law was discussed. It has 11 chapters. The initial 10 chapters have nearly been approved and some issues remain open because they are being discussed. We will meet again because the nature of discussions was inconclusive," finance minister Arun Jaitley said.

Jaitley said legal drafts of the supporting legislations of GST have been prepared including the gaps of pending issues. The draft bills have been sent to law ministry for legal vetting, after which it will be shared with the Council members for approval.

Kerala's finance minister Thomas Isaac said the Centre noted the concerns of the states on the issues of territorial waters and need for higher compensation. "The Centre seems to be in a mood to reconsider some of the stands it is adopting. It is appreciating the position of the states — be it our concerns on compensation or reconsidering it's stand on the issue of territorial waters," Isaac said.

Isaac said he is hopeful that the Centre and the states will be able to find a solution on the dual control issue in the next meeting. States including West Bengal and Kerala reiterated their demand of retaining exclusive control over tax assessees below the threshold of Rs 1.5 crore turnover. West Bengal FM Amit Mitra said, "…we could not pass the IGST law because there were things that have been held back.

There was no discussion on the question of dual control where the states want that below Rs 1.5 crore you cannot have dual control."

States have been demanding tax jurisdiction in the GST regime over high sea sales in offshore regions within 12 nautical miles, whereas Centre claims it to be a Union-administered territory.

"The issue broadly is that area within 12 nautical miles into the sea is Indian territory and a question arises whose territory it is.

Conventionally, service tax and customs is charged by Government of India in those areas…as far as fishing business is concerned the Constitution provides for fishing rights to states in that area,"Jaitley said.

Explaining further on the issue, he said, "Some states have been levying taxes in the nature of sales tax/VAT. Centre has not levied it. So, the case of states is since we have been levying taxes, we should be allowed to levy taxes. The contra argument is this strictly does not fall within the definition of state territory and under article 366(30) this is to be considered as a Union administered territory because the definition in Union Territory in Constitution is what is not part of a scheduled state, is a Union Territory."

Jaitley said that a constitutional issue needs to be found on the issue and the solution has to be legally tenable.

Some states including Kerala, Delhi,West Bengal, Karnataka, Meghalaya and Tamil Nadu have asked for a higher share of the GST rate, proposing a 60:40 split. So for the peak GST rate of 28 per cent, states are now demanding SGST of 60 per cent of 28 per cent (16.8 per cent), while Centre gets to keep CGST amounting to 40 per cent of 28 per cent, that is, 11.2 per cent. The initial proposition of the division of the GST rates between the Centre and the states was of equal division (50:50), Jaitley said.

Courtesy: The Indian Express
5th January, 2017

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TAX REFUND TO EXPORTERS UNDER GST WITHIN SEVEN DAYS: NIRMALA SITHARAMAN

The Department of Revenue has promised to refund tax claims of exporters within seven days under the new GST regime, thus addressing a major concern of the sector, Commerce and Industry Minister Nirmala Sitharaman said today.

The Department of Revenue has promised to refund tax claims of exporters within seven days under the new GST regime, thus addressing a major concern of the sector, Commerce and Industry Minister Nirmala Sitharaman said today. The minister also said that exporters would get interest on the refund if it is delayed beyond two weeks.

Exporters have been demanding ab-initio exemption from payment of taxes under the Goods and Services Tax (GST) regime arguing that delay in refunds often takes months and also results in blocking the working capital. They also stated that exports need to be encouraged in view of the global slowdown. The minister recently raised the issues of exporters in the GST Council meeting.

The concern of the exporters was that the refund should not take too long, she told reporters after chairing the meeting of the Council for Trade Development and Promotion here today. In today's meeting, the exporters were assured "that on 90 per cent of the amount (of refund), within seven days, the refund will be made and if there is an undue delay, interest will be paid on the amount due," Sitharaman said.

Elaborating on the issue, Commerce Secretary Rita Teaotia said the Department of Commerce has been taking up this matter with the Department of Revenue (DoR). "GST clearly provides that the taxes must be paid and that the refund will be provided. So since the regime is so structured, in order to see that there is minimum pain to the exporters, what the DoR has committed that 90 per cent of the refund will be made within seven days. Delays beyond that would invite interest payment," she said. She said the remaining 10 per cent will be subject to whatever verification revenue department is required to do. "This assurance satisfies the exporters," she added.

Revenue department will work on the details to ensure that exporters do not suffer because of delay in refund. Teaotia said exporters will get interest if the refund is delayed beyond two weeks. "The issue about interest payment, what that amount would be and whether it would kick in after two weeks…that detail DoR would decide," the Commerce Secretary said.

Further, the secretary said that on the issues related to tax treatment of SEZs under GST, the Department of Commerce has made representations before the GST Council. "We are looking for favourable consideration of our submissions," she said.

The Commerce and Industry Ministry has recently suggested to the GST Council to exempt leather and plantations sector from the GST ambit.

Courtesy: The Financial Express
5th January, 2017

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STATES RECORD JUMP IN VAT COLLECTIONS AFTER NOTE BAN

NEW DELHI: Demonetisation seems to have led to a windfall for states thanks to a spurt in value added tax (VAT) collections since Prime Minister Narendra Modi's November 8 announcement, according to the latest data.

This appears to undermine the contention that the cash crunch punctured demand after the government invalidated Rs 500 and Rs 1,000 currency notes.

Most states witnessed a sharp increase in sales tax collections, with those of Nagaland, Meghalaya and Jammu & Kashmir surging by 133%, 84% and 82%, respectively.

The combined VAT collections of 23 states, which have provided data to the Centre, was up 18.1% in November, suggesting strong sales. For December, data is available for 17 states and that shows a rise in tax on the sale of goods at 8.9%.

The data substantiates the central government's claims that demonetisation has had a positive impact on revenue collection.

The Centre's own revenues were up sharply in November. Among the big states, only West Bengal reported a VAT contraction of 7.84% in December.

Economists however were cautious about making definitive judgements based on the data. "This seems to be largely because traders rushed to get rid of old notes... booked higher sales," said Abheek Barua, chief economist, HDFC BankBSE 0.31 %. "It could also be due to the increase in petrol and diesel prices."

DK Joshi of CrisilBSE -0.40 % described the revenue increase as a blip.

"This jump is due to demonetisation. Traders would have deposited higher taxes to get rid of old currency. They would have collected dues against sales and paid taxes on them," he said.

Tax collections for a number of states in December continued to show higher growth than October though lower than November. Barua said the move toward cashless payments will have a positive impact on tax collections in long run.

MANUFACTURING HOLDING ON?

According to VAT collection data for November and December 2016, the manufacturing states of Maharashtra and Tamil Nadu showed growth in both the months over the same period a year earlier. For Gujarat, the other big manufacturing state, data is not available.

Maharashtra's VAT collections grew 25.99 % in November and 16.73 % in December against 4.74% in October. Tamil Nadu's VAT collections grew 5.96%, 9.72% and 11% in October, November and December, respectively.

Arunachal Pradesh and Tripura saw a decline in November VAT collections though they had seen a rise in October. West Bengal and Kerala showed lower growth over October. West Bengal's collections fell by about 8% in December. Meghalaya witnessed a decline of 66.41% in December 2016. Uttar Pradesh reported a 16% surge in VAT collections in November and followed that with a 6.9% rise in December.

Courtesy: The Economic Times
9th January, 2017

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HOPEFUL OF RESOLVING ISSUES TO ROLL OUT GST FROM APRIL 1: FINANCE MINISTER ARUN JAITLEY

GANDHINAGAR: Finance Minister Arun Jaitley on Wednesday said the Centre is still aiming to roll out the Goods and Services Tax (GST) regime from April 1 and that a few critical issues that are pending are expected to be sorted out in the next few weeks.

Revenue Secretary Hasmukh Adhia said once GST in place no dealer would be able to escape non payment of taxes. "There will be a computerised system to have invoice to invoice matching. The government is working overtime to make GST a reality," Adhia said.

"We would want it to be implemented from April if all issues are resolved. But implementing it before September 16 is a necessity," Arun Jaitley said. He was speaking at the eight edition of vibrant gujarat at a session on GST as the gamechanger for indian economy.

As of now the rollout of GST is stuck because of differences between the Centre and states on its implementation. As per the Constitutional Amendment passed by Parliament for the GST implementation, some of the existing levies would expire after September 16.

Jaitley added that a digitised economy along with GST will lead to expansion of formal economy.

With more efficient tax system and more digitisation, the economy would be cleaner, bigger, Jaitley said, adding that demonetisation can lead to more formal banking transactions, thus making the society more tax compliant.

"We are substantially in terms of taxation, a non-compliant society. The narrowness of our tax base is realised by the data. Formal transactions can lead to higher revenues, and make us more compliant," Jaitley said.

Courtesy: The Economic Times
12th January, 2017

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DOES GST NETWORK REQUIRE SECURITY CLEARANCE, MHA ASKS R&AW, IB

The move is likely to cause a delay in the rollout of the much-awaited GST as Home Ministry officials said GSTN has not obtained any clearance earlier.

The Union Home Ministry has sought a response from the Research and Analysis Wing (R&AW) and the Intelligence Bureau (IB) on whether Goods and Services Tax Network (GSTN), the special purpose vehicle set up to provide IT infrastructure and services to the central and state governments for implementation of the Goods and Services Tax (GST), needs a security clearance.

The move is likely to cause a delay in the rollout of the much-awaited GST as Home Ministry officials said GSTN has not obtained any clearance earlier. The government owns 49 per cent in it, with the central and state governments owning 24.5 per cent each, while 51 per cent is controlled by private companies, including HDFC, ICICI Bank among others. Some of these private entities are controlled by foreign institutional investors (FIIs), said officials.

An e-mail query sent to GSTN, non-government private limited company formed under Section 8 of the Companies Act, remained unanswered. As per the GSTN website, the authorised capital of the company is Rs 10 crore.

MHA officials also argued that since GSTN is controlled by Indian companies, they may not need a clearance from the Home Ministry. However, a scrutiny is required on the role of FIIs which control up to 75 per cent of some of the entities that are part of GSTN.

The enquiry was launched following BJP MP Subramanian Swamy's letter to Prime Minister Narendra Modi, questioning the Rs 300-crore grant being given by the Finance Ministry to privately-held GSTN. He also argued that the Central Board of Excise and Customs can perform the same work at a much less expense. It may be recalled that the GSTN SPV was set up in 2012 by the Congress-led UPA government.

The provision required that no single institution would hold more than 10 per cent equity, with the possibility of one private institution holding a maximum of 21 per cent equity. As per GSTN, HDFC Home Loans, HDFC Bank, ICICI Bank, NSE Strategic Investment Co each own 10 per cent stake, while LIC Housing Finance Ltd controls 11 per cent. GSTN was also required to help Centre and state tax administration prior to implementation of GST, added officials.

Home Ministry grants security clearances in cases where foreign investments, individuals or companies are involved and has categorised certain 'countries of concerns' which include China and Pakistan. The process of giving clearance was simplified by MHA in 2015 where 15 parameters were laid down and inputs from security agencies are now sought and processed within 4-6 weeks.

Courtesy: The Indian Express
12th January, 2017

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GST ROLLOUT UNCERTAINTY HITS BUDGET 2017 CALCULATIONS

NEW DELHI: Uncertainty over the date of the goods and sevices tax (GST) rollout is posing a dilemma for finance mandarins as they finalise this year's budget.

The original expectation was that the budget would not touch upon excise duties and service tax as they would be rolled into the multiple-rates GST structure, which was to come into being from April 1, 2017.

But with hopes of meeting the April 1 deadline receding, the government will have to quickly take a call on whether it will rejig indirect taxes in the budget to prepare for the launch of GST or leave them as they are till the new regime comes into force.

The final decision could have ramifications on revenue estimates and collections for the next fiscal year as well as the levies imposed on different products and services. According to the GST constitutional amendment passed by Parliament last year, the current indirect tax regime will lapse by September 17.

"We will take a call next week," said a senior government official privy to the deliberations on the matter. In addition to the rates, the government will also have to decide whether it wants to continue with the current method of presenting separate estimates for excise duties, customs duty and service tax. Tax experts say lack of clarity over the rollout date for the GST regime presents a problem for the government.

NEED FOR A CONTINGENCY FUND

"The budget is a challenge as neither the date nor the rates (which products would get classified in which bracket) are likely to be finalised by February 1. Further, the breakup of CGST and SGST still needs to be agreed between the Centre and states," says Pratik Jain, leader, indirect taxes, PwC.

Most government officials said it is unlikely that indirect tax rates would be changed, but it is possible that exemptions and other distortions in the indirect tax structure could be removed. The government could attempt at rationalising the structure in line with the proposed GST framework but rates may be left unchanged," said one official.

One of the options is to go ahead with the taxation regime that is in force as of now and prepare estimates on the basis of current taxes. "R ..

'WORK WITH ASSUMPTIONS'

PwC's Jain says the government would have to work with certain set of assumptions and possibly create some kind of contingency fund, should these assumptions don't work out. Buffer so created would make up for any shortfall that may arise due to any delay in implementation of the GST and difference between tax rates now and proposed under GST. The

loose ends on the GST front that have not been tied up yet are also complicating matters for the gover ..

GST is planned as a revenue-neutral exercise, which means that the switchover to new regime should not impact overall tax revenues of the government, but some cushion will have to be provided for taking into account the uncertainties around the new tax structure

The GST Council has finalised the tax rate structure, but what goods will fit in which slab and what will be the tax on services is still being worked out. States have also sought higher proportion of the revenues than 50%, which also lends an element of uncertainty to the ongoing budget process. In addition, excise exempt items as of now exceed those exempted under the proposed value added tax. A large number of services, which could also come under the ambit of GST, too are currently tax free.

Courtesy: The Economic Times
14th January, 2017