Issue 23
December 2015

"Aggressive tax avoidance is a serious cancer eating into the fiscal base of many countries."
---- Pravin Gordham

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NOTIFICATION AND PUBLIC NOTICE

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NEWS OF YOUR INTEREST

Edited by

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

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SUPREME COURT OF INDIA

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CIVIL APPEAL NO. 2806 OF 2015

COMMERCIAL TAXES OFFICER
Vs
A INFRASTRUCTURE LTD.

DIPAK MISRA AND PRAFULLA C. PANT, JJ.

24th November, 2015

HF ▶ Assessee – appellant

In put tax is allowed on the purchases made by exempted unit for specified goods as goods sold are not exempted goods defined under the act.

EXEMPTED UNIT – EXEMPTED GOODS – INPUT TAX CREDIT – ASBESTOS CEMENT SHEETS (A.C.S) MANUFACTURED BY ASSESSEE – ITC CLAIMED ON RAW MATERIAL PURCHASED FOR MANUFACTURING – DENIAL OF CONTENDING GOODS BEING EXEMPTED GOODS, NO ITC AVAILABLE - APPEAL FILED ARGUING THAT THE UNITS MANUFACTURING A.C.S. WERE EXEMPTED AS PER THE NOTIFICATION INSTEAD OF THE GOODS THEMSELVES – APPEAL DISMISSED – ORDER REVERSED BY HIGH COURT ENTITLING THE MANUFACTURER TO ITC – APPEAL FILED BY REVENUE BEFORE SUPREME COURT – HELD: EXEMPTED GOODS ARE DISTINCT FROM EXEMPTED PERSONS – INITIALLY GOODS STOOD EXEMPTED UNDER SCHEDULE I BUT SUBSEQUENT DELETION OF THE SAID ENTRY AND EXEMPTION GRANTED UNDER SCHEDULE II - GOODS IN QUESTION HELD TO BE EXEMPTED ON TRANSACTION OF SALE BY MANUFACTURER AS PER THE NOTIFICATION DATED 9.3.2007 BUT OTHERWISE TAXABLE ON HAPPENING OF A CHARGING EVENT – ITC IS ADMISSIBLE - APPEAL DISMISSED,

Facts

The assessee company was engaged in manufacturing of Asbestos cement sheets and had availed ITC on the raw material purchased by it. The ITC was disallowed considering the goods to be exempted goods. On appeal before the Board, it was held that in view of the notifications issued under the relevant section, the manufacturing unit of the assessee was not exempted as contended by the assessee, instead the goods manufactured by it were exempted from payment of tax. Thus ITC could not be granted. A revision petition was filed before the High court in this regard whereby the court reversed the order holding that the A.C. sheets and bricks were taken out by S.O. 371 from Schedule I and the manufacturers of these products were exempted by inclusion in Schedule II by S.O. 372 and conditions for availing such exemption were indicated in S.O. 377. Therefore, it was apparent from the notification that the intention of the state was to exempt the manufacturers of the goods in question and take away exemption available to the Asbestos sheets and bricks available to them as goods before the said date on account of its inclusion in Schedule I. The court held that manufacturer of A.C

sheets is entitled to avail ITC and the authorities below were not justified in denying the same on their own interpretation. Thus, an appeal is filed by revenue before the Apex court.

Held

Drawing a distinction between the exempted goods and exempted persons, it is concluded that the transaction of sale by the manufacturer is covered by the exemption notifications issued under S 8(3) of the Act but the goods not being exempted themselves would be taxable on the happening of a charging event. Therefore, tax would be payable on such goods in a subsequent transaction by the purchasing dealer.

It is observed that as per the Finance Bill 2007, it is clear that there is a difference between exemptions when the goods were not taxable under Schedule I and when exemption was granted under Schedule II even though goods were taxable goods. The appeal is thus dismissed.

Cases referred:

- *ACTO v. Abishek Granites Ltd.23 Tax-wrold 285*
- *CIT v. Kulu Valley Transport Co. (P) Ltd (1970) 2 SCC 192*
- *ACTO v. M/s. Suncity Trade Agency (2006) 147 STC 405*
- *State of Tamil Nadu v. M.K. Kandaswami & others (1975) 4 SCC 745*
- *Ganesh Prasad Dixit Vs. Commissioner of Sales Tax (1969) 1 SCC 492*
- *Malabar Fruit Products Co. Vs. Sales Tax Officer, Palai (1972) 30 STC 537 (Ker).*
- *CST v. Pine Chemicals Limited (1995) 1 SCC 58*
- *Indian Aluminium Cables Limited v. State of Haryana (1976) 4 SCC 27*

Present: Petitioner Advocate : Mr. Milind Kumar
Respondent Advocate : Ms. Indu Sharma

******

DIPAK MISRA, J.

1.This batch of appeals, by special leave, calls in question the legal acceptability of the common order dated 19th December, 2013 passed by the learned Single Judge of the High Court of Judicature for Rajasthan, at Jodhpur in a batch of revision petitions filed by the assessee-respondent assailing the judgment dated 23.11.2011 passed by the Rajasthan Tax Board, Ajmer (for short 'the Board') in Appeal No. 680 of 2009 and other connected appeals whereby it had affirmed the decision rendered in appeals by the Deputy Commissioner (Appeals) who had upheld the assessment orders passed by the Commercial Taxes Officer in respect of various quarters of the years 2006-2007, 2007-2008 and 2008-2009 disallowing the claim of Input Tax Credit (ITC) and charging interest under Sections 18, 22 and 55(4) of the Rajasthan Value Added Tax Act, 2003 (for brevity "the 2003Act").

2. The facts giving rise to this batch of appeals are that the assessee- company is engaged in the business of manufacturing Asbestos Cement Pressure Pipe and Asbestos Cement Sheets and it had availed ITC on the purchase of raw material used in the manufacture of A.C. Sheets. The assessing authority issued notice to the assessee for the purpose of disallowing ITC on purchase of raw material used in manufacturing A.C. Sheets for the period mentioned hereinabove and pursuant to the show cause notice the assessee filed a detailed reply and eventually the assessing authority passed orders under Section 22 of the Act disallowing the ITC and charged interest. The said orders were assailed before the Appellate Authority which declined to interfere with the orders appealed against, compelling the assessee to file second appeals before the Board which placed reliance on ***ACTO v. M/s. Suncity Trade Agency (2006) 147 STC 405*** and dismissed the appeals. The Board while dismissing the appeals opined that the assessee- Company, a manufacturing unit, had not been charged on the sales of its product, as per the notification which squarely fall under the definition of exempted

goods and hence, the final product was exempted, but it was not entitled to avail ITC as the notification clearly postulated that the units/institution was not exempted from the tax but the sales of its goods were exempted from tax as per the definition of "Exempted Goods".

3. The grievance of dismissal constrained the assessee to file the revision petitions before the High Court, and seeking interference in the revision petition it was contended that the scheme of Section 8 of the Act which deals with exemption of tax and the notification issued under the Rajasthan Sales Tax Act, 1994 (for short, 'the 1994 Act') and the various notifications issued under the said Act from time to time deal with A.C. Sheets and in view of the postulates laid down in the notification dated 09.03.2007, issued under sub-section (3A) of Section 8 wherein the manufacturer of asbestos cement sheets and bricks have been exempted and, therefore, it could not be said that A.C. Sheets manufactured by the assessee were exempted goods which is the pre-requisite for denying ITC under Section 18 of the Act. Reliance was placed on the judgment of ***ACTO v. Abishek Granites Ltd.23 Tax-wrold 285*** to buttress the proposition that exemption to unit is different from the exemption to the transaction of sale of the commodity. It was also highlighted before the High Court that when two views are possible, the view in favour of the assessee should be accepted and for the said purpose reliance was placed on ***CIT v. Kulu Valley Transport Co. (P) Ltd (1970) 2 SCC 192.*** The background of the issue of notification dated 09.03.2007 and the communication issued by the Commissioner, Commercial Taxes, Rajasthan, Jodhpur were stressed upon to bolster the plea that assessee was exempted from tax and not the A.C. Sheets manufactured by it.

4. The stand of the assessee was controverted by the revenue contending, *inter alia*, that vide notification S.O. 372, manufacturers of A. C. Sheets and Bricks were included at S. No. 20 in Schedule-II, which entitles the units to claim exemption on the sale of manufactured goods on the fulfillment of certain conditions and in view of the specific conditions stipulated in Section 18(1)(A) of the Act, ITC was not allowed. Reliance was placed on notification S.O. 377, dated 09.03.2007 issued under Section 8(3) of the Act to harp that A.C. Sheets clearly fall within the category of exempted goods. Reference was made to the definition of 'exempted goods' and 'goods' contained in Section 2(13) & (15) of the Act. It was further submitted that irrespective of whether the notification was issued under sub-Section (1) or (3) or (3A) or (4), the goods would fall within the definition of exempted goods and consequently the assessee would not be entitled to ITC. For the said purpose, reliance was placed on M/s. Sun City Trade Agency (supra).

5. The High Court referred to the dictionary clause as enumerated in Section 2(13) which deals with "exempted goods", Section 2(15) that defines the terms "goods", Section 8 which provides for "exemption of tax" and Section 18 which deals with "Input Tax Credit and thereafter, referred to the notification dated 16.03.2005 under the 1994 Act and the notifications dated 01.06.2006, 05.07.2006, 09.03.2007 and the amendment notification issued on the same day by the Finance Department (Tax Division). The learned Single Judge analysed the provisions of the Act and the notifications and took note of the fact that under the 1994 Act exemption granted related to sale of A.C. Sheets and Bricks, subject to the conditions indicated therein. The High Court further noted that the notification dated 01.06.2006 which had been issued in exercise of power under Section 8(2) and Schedule-I which was amended and A.C. Sheets and Bricks having contents of fly ash 25% more than by weight was inserted as entry 60A, and further adverted to the notification issued under the same provision, on 05.07.2006 vide which the Schedule-I was amended and entry 60A was substituted. After so stating, the learned Single Judge referred to the notifications issued on 09.03.2007 that deals with A.C. Sheets and also noted the fact that vide S.O. 371 issued under Section 8(2) of the Act, the existing entry 60A was deleted from Schedule-I and further by S.O. 377 issued under Section 8(3A) of the Act which pertained to "manufacturers of asbestos cement sheets and bricks"

were added in Schedule-II and it provides the conditions for availing exemption for sale of A.C. Sheets and Bricks manufactured in the state.

6. On the aforesaid basis, the Court proceeded to further observe that by notification dated 16.03.2005 under the 1994 Act and the notifications dated 16.02.2006 and 05.07.2006 read with notification dated 09.03.2007 A.C. Sheets and Bricks were exempted. The goods, that is, A.C. Sheets and Bricks were taken out by S.O. 371 and the manufacturers of A.C. Sheets and Bricks were exempted by inclusion in Schedule-II by S.O. 372 and conditions for availing such exemption by the manufacturers were indicated by S.O. 377. On the basis of the aforesaid analysis, the revisional Court opined that it is significant that while S.O. 371 had been issued under Section 8(2) of the Act, S.O. 372 and 377 had been issued under Section 8(3A) and (3) respectively, which provisions, as noticed hereinbefore, dealt with Schedule-I under Section 8(2) and Schedule-II under Sections 8(3) and (3A), which in turn related to exemption of goods and exemption of persons respectively, therefore, it was apparent from the notifications issued on 09.03.2007 that the intention of the State was to exempt the manufacturers of A.C. Sheets and Bricks subject to fulfillment of conditions as indicated in S.O. 377 and to take away exemption available to A.C. Sheets and Bricks as goods, as was available before the said date on account of its inclusion in Schedule-I.

7. As the impugned order would show, the High Court distinguished the judgment rendered in ***Sun City Trade Agency*** (supra), on the ground that the said decision dealt with a situation wherein the exemption notification pertaining to stainless steel flats, ingots and billets were exempted from tax on the conditions indicated in the notification and it had been held therein that merely because the exemption is conditional or given subject to fulfillment of certain conditions it does not mean that such goods would fall outside the definition of exempted goods.

8. The learned Single Judge referred to the definition contained in Section 2(13) of the Act which deals with exempted goods and not with exemption of person or class as indicated in Section 8(3) of the Act, and observed that the intention of the legislature in incorporating Section 18(1)(e) of the Act takes away the exempted goods from the purview of the ITC and not the person or class of persons exempted under Section 8(3) and the intention of the legislature was not to include exempted goods in the category of exempted persons as mentioned in Section 18(1)(e) of the Act, and hence, it was demonstrable that the goods and dealers are treated separately and the same was also evident from the provision of Section 5 of the Act.

9. As is evident, the High Court further proceeded to opine that the goods included in Schedule-II were entitled for ITC inasmuch as the said conditions indicated for exemption related to Self-Help Groups and those who had been registered with the Khadi and Village Industries Commission or Rajasthan Khadi and Village Industries Board by the notifications S.O. 376 and S.O. 378 issued on 09.03.2007 wherein a specific stipulation had been made to the extent that no input tax credit shall be claimed by such dealers in respect of purchase of raw materials used for manufacture of aforesaid goods. Thereafter, the High Court proceeded to observe:-

> "*If the persons included in Schedule-II were not entitled to claim ITC, there was no reason to include the said conditions for the above noted persons. Apparently, it is the sale of goods made by person or persons included in Schedule-II, which is exempt and not the goods manufactured by them, whereas, for denying ITC, the requirement is that of 'exempted goods'.*"

10. Being of this view the learned Single Judge held that:-

> *"In view of express language of Section 18(1)(e) of the Act, notifications S.O. 371 and S.O. 372 read with S.O. 377, the petitioner who is a manufacturer of A.C. Sheets is entitled to avail ITC and the authorities below were not justified in denying Input Tax Credit to the petitioner based on interpretation put by them on inclusion of the petitioner in Schedule-II under Section 8(3A) and notification S.O. 377 dated 09.03.2007 issued under Section 8(3) of the Act."*

11. The expression of the said view and the ultimate setting aside of the orders of the Court below, as stated earlier, is the subject matter of assail in these appeals.

12. We have heard Mr. Shovan Mishra and Mr. Milind Kumar, learned counsel for the appellant and Mr. Paras Kuhad, learned senior counsel for the respondent.

13. To appreciate the controversy at hand, it is necessary to scrutinize the various provisions of the Act and the notifications that have been issued from time to time. Section 2(13) and 2(15) define "exempted goods" and "goods" respectively, and they are extracted below:-

> *"Section 2(13) **"Exempted goods"** means any goods exempted from tax in accordance with the provisions of this Act;*
>
> *Xxx xxx xxx*
>
> *Section 2(15**) "goods"** means all kinds of movable property, whether tangible or intangible, other than newspapers, money, actionable claims, stocks, shares and securities, and includes materials, articles and commodities used in any form in the execution of works contract, livestock and all other things attached to or forming part of the land which is agreed to be served before sale or under the contract of sale."*

14. Section 8 deals with exemption of tax and Section 18 lays down the method, the manner and the conditions prescribed for availing the input tax credit. Section 8 and the relevant portion of Section 18 are reproduced below:-

> ***"Section 8 – Exemption of tax –***
>
> *(1) The goods specified in the Schedule-I shall be exempt from tax, subject to such conditions as may be specified therein.*
>
> *(2) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the Official Gazette, add to or omit from, or otherwise amend or modify the Schedule-I, prospectively or retrospectively, and thereupon the Schedule shall be deemed to have been amended accordingly.*
>
> *(3) The State Government in the public interest, by notification in the Official Gazette, may exempt whether prospectively or retrospectively from tax the sale or purchase by any person or class of persons as mentioned in Schedule-II, without any condition or with such condition as may be specified in the notification.*
>
> *(3A) Subject to such conditions as it may impose, the State Government may, if it considers necessary so to do in the public interest, by notification in the Official Gazette, add to or omit from, or otherwise amend or modify the Schedule-II, prospectively or retrospectively, and thereupon the Schedule shall be deemed to have been amended accordingly.*
>
> *(4) The State Government may, if it considers necessary in the public interest so to do, notify grant of exemption from payment of whole of tax payable under this*

Act in respect of any class of sales or purchases for the purpose of promoting the scheme of Special Economic Zones or promoting exports, subject to such conditions as may be laid down in the notification.

(5) Every notification issued under this section shall be laid, as soon as may be after it is so issued, before the House of the State Legislature, while it is in session for a period of not less than 30 days, which may comprised in one session or in two successive sessions and if before the expiry of the sessions and if before the expiry of the sessions in which it is so laid or of the session immediately following the House of the State Legislature makes any modification in such notification or resolves that any such notification should not be issued, such notification thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder."

Section 18 – Input Tax Credit:-

(1) Input tax credit shall be allowed, to registered dealers, other than the dealers covered by sub-section (2) of Section 3 or Section 5, in respect of purchase of any taxable goods made within the State from a registered dealer to the extent and in such manner as may be prescribed, for the purpose of :-

(a) sale within the State of Rajasthan or;

(b) sale in the course of Inter-State trade and commerce; or

(c) sale in the course of export outside the territory of India; or

(d) being used as packing material of goods, other than exempted goods, for sale; or

(e) being used as raw material except those as may be notified by the State Government in the manufacture of goods other than exempted goods, for sale within the State or in the course of Inter-State trade or commerce; or

(f) .....

(g) ....."

15. As has been stated earlier, the High Court has referred to various notifications. The notification dated 16th March, 2005 was issued under Section 15 of the Rajasthan Sales Tax Act, 1994. It is as under:-

"Notification dated 16.03.2005 under the Act of 1994:-

S. No. 1874; F.4(78)FD/Tax/2004-168 dated 16.03.2005

In exercise of the powers conferred by section 15 of the Rajasthan Sales Tax Act 1994 (Rajasthan Act No. 22 of 1995) and in supersession of this Department's Notification No. F.4/(68)FD/Tax-Div/99-271 (S.No. 1147), dated, January 24, 2000 (as amended from time to time), the State Government being of the opinion that it is expedient in the public interest so to do, hereby exempts form tax the sale of asbestos cement sheets and bricks, manufactured in the State by an industrial unit having fly ash as its main raw material on the following conditions, namely:-

1. that such fly ash shall constitute twenty five percent or more in the contents by weight of such asbestos cement sheets and bricks; and

2. that such unit commences commercial production by 31.12.2006.

This notification shall remain in force upto 23.1.2010."

16. The said notification as mentioned therein was to remain in force upto 23.1.2010. When the said notification was in vogue another notification dated 1.6.2006 was issued under Section 8 of the 2003 Act. The said notification is as under:-

"Notification

Jaipur, Dated : 01.06.2006

In exercise of the powers conferred by sub-section (2) of Section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following further amendments is SCHEDULE-I appended to the said Act; namely:-

AMENDMENTS

4. After the existing S.No. 60 and before S.No. 61, the following new S. No. and entries thereto shall be inserted, namely:-

"60A.	*Asbestos cement sheets and bricks having contents of fly ash 25% or more by weight.*	*Subject to the condition of entry in Registration Certificate of the selling dealer."*

17. On 05.07.2006 another notification was issued in exercise of the powers conferred by sub-section (2) of Section 8 of the 2003 Act. On 09.03.2007, S.O. 371 was issued by the Finance Department (Tax Division) vide which S. No. 68A from Schedule-I appended to the Act (2) deleted. May it be noted that S. No. 60A was substituted by notification dated 05.07.2006 which has been referred to hereinbefore.

18. The notification dated 09.03.2007, S.O. 372 was issued by the Finance Department (Tax Division) and the said department also issued another notification on the same day which is relevant. Both the notifications are reproduced below:-

"Notification dated 09.03.2007 S.O. 372:-

FINANCE DEPARTMENT
(TAX DIVISION)

NOTIFICATION

Jaipur, March 9, 2007

S.O. 372 – In exercise of the powers conferred by sub-section (3A) of Section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby makes the following amendments is Schedule-II appended to the said Act, namely :-

AMENDMENTS

In Schedule-II appended to the said Act:-

(1) .....

(2) After the existing S.No.18 and entries thereto the following new S.Nos. and entries thereto shall be added; namely :-

19	*Self Help Group*	
20	*Manufacturers of asbestos cement sheets and bricks*	

Notification dated 09.03.2007, S.O. 377

"FINANCE DEPARTMENT
(TAX DIVISION)

NOTIFICATION

Jaipur, March 9, 2007

S.O. 377 – In exercise of the powers conferred by sub-section (3) of Section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby exempts from payment of tax, the sale of asbestos cement sheets and bricks manufacturers in the State having contents of fly ash twenty five per cent or more by weight, on the following conditions, namely :-

(1) that the goods shall be entered in the registration certificate of the selling dealer;

(2) that the exemption shall be for such goods manufactured by the dealer who commenced commercial production in the State by 31.12.2006; and

(3) that the exemption shall be available up to 23.01.2010."

19. As we find the High Court in the impugned order has referred to the provisions of the Act and the notifications. On a careful scrutiny of the order passed by the High Court, it is perceivable that it has proceeded on the foundation that there is a distinction between the exempted units and exempted sales, and finally manufactured sales area, or to put it differently, the final transactions of goods or a sale when it takes place. Thus, the distinction as laid down by the learned Single Judge is based on exemption of unit and exemption on transaction or sale.

20. On an analysis of the scheme of the Act, it is manifest that there is difference between exempted goods, i.e., goods on which no Value Added Tax is payable and are, therefore, not taxable and other cases where a particular transaction when it satisfies specific condition is not taxable. In this regard reference to the authority in ***State of Tamil Nadu v. M.K. Kandaswami & others (1975) 4 SCC 745***, would be seemly, for this Court had adverted to three distinct concepts; taxable persons, taxable goods and taxable events and how they were distinguished. It was observed in the said case that if the said distinction is overlooked, it may lead to serious error in construction and application of a taxing provision or enactment. In the case of taxable or non-taxable/exempted goods, the focal point and the focus is on the character and class of goods in relation to their exigibility. Referring to the provisions of Section 7-A of the Madras General Sales Tax, 1959, the expression in the Act "taxable goods", it was opined as regards the goods mentioned in the First Schedule of the Act that the sale and purchase was liable to tax at the rate and at the point specified therein. It was further held that the goods which were exempt were not taxable goods and, therefore, could not be brought to charge and taxed. However, notwithstanding the goods being taxable goods, there could be circumstances in a given case by reason of which a particular sale or purchase would not attract sales tax.

21. Be it noted, in the said decision, Section 7-A of the Madras General Sales Tax Act, 1959, which reads as under, fell for consideration:-

> *"(1) Every dealer who in the course of his business purchases from a registered dealer or from any other person, any goods (the sale or purchase of which is liable to tax under this Act) in circumstances in which no tax is payable under Sections 3, 4 or 5, as the case may be, and either-*
>
> > *(a) consumes such goods in the manufacture of other goods for sale or otherwise; or*
> >
> > *(b) disposes of such goods in any manner other than by way of sale in the State; or*
> >
> > *(c) dispatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall pay tax on the turnover relating to the purchase aforesaid at the rate mentioned in Sections 3, 4 or 5 as the case may be whatever be the quantum of such turnover in a year:*
> >
> > *Provided that a dealer (other than a casual trader or agent of a non-resident dealer) purchasing goods the sale of which is liable to tax under sub-section (1) of Section 3 shall not be liable to pay tax under this sub- section, if his total turnover for a year is less than twenty-five thousand rupees."*

Section 7-A, it was observed, provided for such situations where the goods were taxable goods in the hands of the purchasing dealer, if any of the conditions (a), (b) and (c) of sub-section (1) of Section 7-A was satisfied. In the facts of the case, it was noticed that the goods in question were chargeable to tax as they were taxable goods under Schedule I, but exemption had been granted. Reversing the decision of the High Court, reference was made to an earlier decision of the Supreme Court in ***Ganesh Prasad Dixit Vs. Commissioner of Sales Tax (1969) 1 SCC 492*** and a decision of Kerala High Court in ***Malabar Fruit Products Co. Vs. Sales Tax Officer, Palai (1972) 30 STC 537 (Ker).***

22. With reference to the decision in ***Ganesh Prasad Dixit*** (supra) and the language in Madhya Pradesh General Tax Act, 1959, it was observed:

> *"29. The impugned Section 7-A is based on Section 7 of the Madhya Pradesh Act. Although the language of these two provisions is not completely identical, yet their substance and object are the same. Instead of the longish phrase, "the goods, the sale or purchase of which is liable to tax under this Act" employed in Section 7-A of the Madras Act, Section 7 of the Madhya Pradesh Act conveys the very connotation by using the convenient, terse expression, "taxable goods". The ratio decidendi of Ganesh Prasad (supra) is therefore, an apposite guide for construing Section 7-A. Unfortunately, that decision, it seems, was not brought to the notice of the learned Judges of the High Court."*

23. With reference to Kerala General Sales Tax, 1963, this Court noted the following reasoning given by the Single Judge of the Kerala High Court :-

> *"32. Holding that Section 5-A, was valid and intra vires the State Legislature, the learned Judge explained the scheme of the section, thus:-*
>
> *Though normally a sale by a registered dealer or by a dealer attracts tax, there may be circumstances under which the seller may not be liable as, for example, when his turnover is below the specified minimum. In such cases the "goods" are liable to be taxed, but the sales takes place in circumstances in*

which no tax is payable at the point in which tax is levied under the Act. If the goods are not available in the State for subsequent taxation by reason of one or other of the circumstances mentioned in clauses (a), (b) and (c) of Section 5A(1) of the Act then the purchaser is sought to be made liable under Section 5A.

* * *

Another instance I can conceive of is a case of a dealer selling agricultural or horticultural produce grown by him or grown in any land in which he has interested, whether as owner, usufructuary mortgagee, tenant or otherwise. From the definition of "turnover" in Section 2 (xxvii) of the Act it is evident that the proceeds of such sale would be excluded from the turnover of a person who sells goods produced by him by manufacture, agriculture, horticulture or otherwise, though merely by such sales he satisfies the definition of 'dealer' in the Act. Thus, such a person selling such produce is treated as a dealer within the meaning of the Act and the sales are of goods which are taxable under the Act but when he sells these goods, it is not part of his turnover. Therefore, it is a case of a dealer selling goods liable to tax under the Act in circumstances in which no tax is payable under the Act. In such a case, the purchaser is sought to be taxed under Section 5A provided the conditions are satisfied. The case of growers selling goods to persons to whom Section 5A thus applies is covered by this example."

24. In ***CST v. Pine Chemicals Limited (1995) 1 SCC 58***, this Court posed the following question:-

"7. The simple question before us is whether the Bench which decided Pine Chemicals is right in holding that the benefit of the said sub-section is available even where the goods are exempted with reference to industrial unit and for a specified period, viz., period of five years from the date the relevant unit goes into production. In other words, the question is whether an exemption of the nature granted under Government Order No. 159 dated 26-03-1971 is an exemption available "only in specified circumstances or under specified conditions" within the meaning of the Explanation to Section 8(2-A), as contended by the State or is it a case where the goods are exempt from the tax 'generally' within the meaning of Section 8(2-A), as contended by the respondents/dealers? We are of the opinion that the respondents/dealers' contention cannot be accepted in view of the clear and unambiguous language of the sub-section."

25. Thus, the Court drew a distinction between goods, generally exempt from tax after noticing that Section 8(2A) of the Central Sales Tax Act specifically uses the expression "exempt from tax generally or subject to tax generally at a rate which is lower than 4%", and accordingly observed that when the goods are exempt under certain specified circumstances alone, the exemption is not a general, but a conditional one. In such circumstances, it cannot be said that the goods are exempt from tax generally for the exemption may vary from unit to unit and would depend upon date of commencement of production of each unit. Reference was made to earlier decision in ***Indian Aluminium Cables Limited v. State of Haryana (1976) 4 SCC 27***, wherein it has been held that exemption from tax when conferred by conditions or in certain circumstances, there was no exemption from tax generally.

26. At this juncture, we are required to understand the effect of the principles spelt out in above decisions especially in ***K.N. Kandaswami and Others*** (supra) on the facts of the present case. There is no doubt that a distinction has to be drawn between exempted goods, which means complete exemption for the specified goods, and when the goods are taxable

goods, but a transaction or a person is granted exemption. When the goods are exempt, there would be no taxable transactions or exemption to a taxable person. In other cases, goods might be taxable, but exemption could be given in respect of a taxable event, i.e., exemption to specified transactions from liability of tax or exemption to a taxable person, though the goods are taxable. Such exemptions operate in circumscribed boundaries and not as expansive as in the case of taxable goods. Exemptions with reference to taxable events or taxable persons would not exempt the goods as such, for a subsequent transaction or when the goods are sold or purchased by a non-specified person, the subsequent transaction or the taxable person would be liable to pay tax. It is, in this context, it has been highlighted by the respondent and, in our opinion, absolutely correctly that Section 4 of the Act provides for levy of tax in a situation where the goods, which were not exempted but could otherwise not be subjected to tax on account of exemption granted to a person or to a transaction. The goods remain taxable goods through exemption stands granted to a particular individual or a specified transaction. That being so, all subsequent transactions in those goods, which are not specifically exempt and not undertaken by an exempted person could be subjected to taxation. Therefore, the appellant though exempted from payment of tax, subsequent transactions of sale of asbestos cement sheets would be taxable. The transaction of sale by the manufacturer/dealer covered by the exemption notifications issued under Section 8(3) of the Act would be protected or an exempted transaction, but the goods not being exempted goods would be taxable and could be taxed on the happening of a taxable or charging event. It is simply because the goods are not exempt from tax or exempted goods, but are taxable. As a logical corollary it follows that the Value Added Tax would have to be paid on the taxable goods in a subsequent transaction by the purchasing dealer.

27. As a sequitur, we are obliged to observe that if the contention of the appellant is to be accepted, the respondent though covered by exemption notification under Section 8(3) of the Act could be at a disadvantage because finally when the subsequent sale is made by a non-exempted dealer or tax stands paid on the non-exempted transfer, the goods, i.e., asbestos cement sheet, would suffer the tax on the entire sale consideration. This would place an exempted manufacturer-dealer at a disadvantageous position and make his products uncompetitive inspite of the exemption notifications under Section 8(3) of the Act.

28. In the context of the issue in question, the respondents have rightly highlighted that where the appellant wanted to restrict the benefit of ITC when a particular dealer or transaction was exempted, it was so stipulated in the exemption notification issued under Sections 8(3) and 8(4) of the Act. Such notifications admittedly do exist and were issued by the appellant. They are also right in drawing support from the note sheets relating to Finance Bill 2007 as also the communications issued by Commissioner of Commercial Taxes. The note sheets and the communication of the Commissioner draw a clear distinction between exemptions when the goods were not taxable as they do fall under the First Schedule and when an exemption was granted under the Second Schedule, which relates to specified transaction of sale or exempted dealers even when the goods were taxable goods. In latter cases, subsequent dealers undertaking sale of goods would be liable to pay tax on sale of such products. There can be no shadow of doubt that subsequent dealers undertaking sale of goods manufactured and sold by the respondent company would be liable to pay tax on such products.

29. In view of the aforesaid premised reasons, we do not find any merit in these appeals and accordingly they stand dismissed. There shall be no order as to costs.

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PUNJAB & HARYANA HIGH COURT

CWP No. 11165 of 2015

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SAMSUNG INDIA ELECTRONICS PVT. LIMITED
Vs
STATE OF PUNJAB AND ANOTHER

A.K. MITTAL AND RAMENDRA JAIN, JJ.

2nd November, 2015

HF ▶ Revenue

Mobile chargers are not part of cell phones and are liable to be taxed @ 12.5 % under schedule F of the PVAT Act.

ENTRIES IN SCHEDULE – MOBILE CHARGERS - WHETHER PART OF CELL PHONES – HELD: NO – MOBILE CHARGERS SOLD IN A COMPOSITE PACK ALONG WITH THE CELL PHONES ARE ACCESSORIES AND NOT PART OF CELLPHONES- TO BE TAXED UNDER SCHEDULE F INSTEAD OF SCHEDULE B OF THE PVAT ACT – JUDGMENT OF APEX COURT FOLLOWED- PETITION DISMISSED – *ENTRY 60(6) (g) OF SCHEDULE B AND SCHEDULE F OF PVAT ACT, 2005*

Facts

The petitioner company is manufacturing and selling mobile phones which are sold alongwith the chargers so as to make it one composite box for retail purposes. The mobile phone box contains battery charger and VAT is discharged at the time of sale of the box at the rate of 5.5% as per entry No. 60(6)(g) of Schedule B of the Act. A notice for assessment was issued on 21/5/2014. On 17.12.2014 it was held by the Apex court that the mobile phone charger was an accessory to the mobile phone and was not a part of cell phone. It has been categorically mentioned that it is to be taxed @ 12.5% under schedule F of the Act. It was thus liable to be taxed under the residuary entry. In view of this, a demand was raised against the petitioner. A writ is filed in this regard.

Held

In view of the judgment passed in the case of Nokia India Pvt. Ltd. by the Apex Court, it is clear that the mobile chargers are liable to be taxed @ 12.5% under Schedule F of the Act.

Also, the assessment order passed on 4/5/2015 has been held to be within the limitation period.

Cases followed:

- *State of Punjab and others vs. Nokia India Pvt. Limited*, Civil Appeal Nos.11486 &11487 of 2014
- *Amrit Banaspati Company Limited vs. State of Punjab and others, CWP No.21811 of 2014*

Present: Mr. Balbir Singh, Sr. Advocate with Mr. Surjeet Bhadu, Advocate and Mr. A.R.Madhav Rao, Advocate for the petitioner.

Mr. Jagmohan Bansal, Addl.A.G.Punjab.

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AJAY KUMAR MITTAL, J.

CM No.12627 of 2015

1. Rejoinder is taken on record. CM stands disposed of.

CWP No.11165 of 2015

2. The petitioner prays for quashing the impugned order dated 4.5.2015, Annexure P.8 raising tax demand of Rs. 1,93,05,198/from it.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner – Samsung (India) Electronics Pvt. Limited is manufacturer and seller of consumer electronics, IT and telecom products in the Indian market. It is a registered dealer under the provisions of the Punjab Value Added Tax Act, 2005 (in short, Punjab VAT Act"). It is engaged *inter alia* in selling of mobile phones and accessories. In case of sale of mobile phones, the petitioner alongwith the mobile phones also packages and supplies mobile chargers, batteries, earphones, data cables, etc. in one single package, so as to make it one composite box put up for retail sale. The mobile phone box contains battery charger and VAT is discharged at the time of sale of the box at the rate of 5.5% as per Entry No. 60(6)(g) of Schedule B of the Punjab VAT Act. The invoice shows that the VAT is charged on the price mentioned on the box which contains mobile phone alongwith the battery charger, data cable etc. Notice of assessment was issued to the petitioner for appearance on 21.5.2014. However, the assessment proceeding were kept pending till the decision of the Apex Court in ***State of Punjab and others vs. Nokia India Pvt. Limited***, Civil Appeal Nos.1148611487 of 2014. On 21.5.2014, the petitioner through its authorized representative appeared before respondent No.2 and filed its reply. In Nokia India Pvt. Limited's case (supra), it was held by the Apex Court vide order dated 17.12.2014 that mobile phone charger was an accessory to the mobile phone and it was not a part of the mobile phone. The battery charger was separate item and was distinguishable from mobile phones and therefore, it was liable to be taxed as per the residuary entry of the Punjab VAT Act. Respondent No.2 issued letter dated 8.1.2015 to the petitioner to appear before it on 15.1.2015 alongwith certain documents. The petitioner submitted written submissions. Vide order dated 4.5.2015, Annexure P.8, respondent No.2 relying on judgment of the Apex Court in ***Nokia India Pvt. Limited's*** case (supra) concluded that the battery charger was a separate item and was distinguishable from mobile phones and therefore, it was liable to be taxed as per the residuary entry of the Punjab VAT Act. Accordingly, tax demand of Rs.1,93,05,198/was fastened on the petitioner. Hence the instant writ petition.

4. Reply by way of short affidavit has been filed on behalf of the respondents by Shri Shalinder Singh, Designated Officer cum Excise and Taxation Officer, Ludhiana II. It has been *inter alia* stated therein that the issue has already been settled by the Apex Court in ***Nokia India Pvt. Limited's*** case (supra). Further, the petitioner has an efficacious statutory remedy of appeal under Section 62 of the Punjab VAT Act before the Deputy Excise and Taxation Commissioner (Appeals); under Section 63 of the Act before the Tribunal and under Section 68 of the Act before this Court. Without exhausting the statutory remedies available to the petitioner under the above provisions, it has no right to invoke the extra ordinary jurisdiction of this court under Article 226 of the Constitution of India. It has been further stated that the assessment order was passed under Section 29(2) of the Punjab VAT Act on 4.5.2015 in respect of the assessment year 201011. The petitioner filed the requisite returns. During

scrutiny, it was found that the returns were not correctly filed. Notice was issued to the petitioner under section 29(2) of the Punjab VAT Act on 5.5.2014. The petitioner was directed to produce the account books, balance sheet etc. In the meantime, the Apex Court in ***Nokia India Pvt. Limited's*** case (supra) decided identical issue vide order dated 17.12.2014. The assessment proceedings in the case of the petitioner were again taken up by issuing notice to it. On examination of the papers, it was found that sale of 7,81,008 mobile phones to the value of Rs. 269,21,55,517.92 had been made. The petitioner claimed that the mobile phone chargers and other accessories sold by it were not to be charged separately on a separate rate of tax as was applicable under the Punjab VAT Act. The explanation on being found to be not satisfactory, the assessment was framed. It has been further stated that Schedule B of Punjab VAT Act contains the list of goods taxable at the rate of 4%. Cell Phone (Mobile Phone) is mentioned in the said Schedule at Sr.No.6(g) under Entry 60 thereof and is liable to be charged at the rate of 4%. The said entry does not cover 'accessories' for the purpose of taxing the item at 4% and rather the same are required to be charged at the rate of 12.5% in accordance with Schedule F. The Apex Court while dealing with those very entries categorically held in ***Nokia India Pvt. Limited's*** case (supra) that accessories of mobile phone were not covered under Schedule B. The provisions of Section 29(4) of the Punjab VAT Act Act alongwith proviso and explanations had been introduced w.e.f 15.11.2013 whereby for any assessment to be made under section 29(2) of the Punjab VAT Act, the period of limitation has been prescribed six years after the date when the annual statement is filed or due to be filed whichever is later. In the present case, the assessment order dated 4.5.2015 is within time. Further this Court in ***CWP No.21811 of 2014, M/s Amrit Banaspati Company Limited vs. State of Punjab and others*** decided on 7.8.2015 upheld the validity of the provisions of the amended Section 29(4) of the Punjab VAT Act holding that amendment was retrospective. On these premises, prayer for dismissal of the petition has been made.

5. After hearing learned counsel for the parties, we find that the issue has already been decided against the petitioner by the Apex Court in ***Nokia India Pvt. Limited's*** case (supra) wherein it has been held as under:

> ***"16.*** *The Assessing Authority, Appellate Authority and the Tribunal rightly held that the battery charger is not a part of the mobile/cell phone. If the charger was a part of cell phone, then cell phone could not have been operated without using the battery charger. But in reality, it is not required at the time of operation. Further, the battery in the cell phone can be charged directly from the other means also like laptop without employing the battery charger, implying thereby, that it is nothing but an accessory to the mobile phone. The Tribunal noticed that as per the information available on the website of Nokia, the Company has invariably put the mobile battery charger in the category of an accessory which means that in the common parlance also, the mobile battery charger is understood as an accessory. It has also been noticed by the Tribunal that a Nokia make battery charger is compatible to many models of Nokia mobile phones and also many models of Nokia make battery chargers which are compatible to a particular model of Nokia mobile phone, imparting various levels of effectiveness and convenience to the users.*
>
> *Xx xx xx xx xx xx xx xx xx*
>
> ***19.*** *In view of the aforesaid facts, we find that the Assessing Authority, Appellate Authority and the Tribunal rightly held that the mobile/cell phone charger is an accessory to cell phone and is not a part of the cell phone. We further hold that the battery charger cannot be held to be a composite part of the cell phone but is an independent product which can be sold separately,*

> *without selling the cell phone. The High Court failed to appreciate the aforesaid fact and wrongly held that the battery charger is a part of the cell phone."*

Learned counsel for the petitioner was unable to distinguish the judgment passed by the Apex Court. Further, the issue with regard to the vires of Section 29(4) of the Act stands concluded against the petitioner by judgment of this court dated 7.8.2015 rendered in ***M/s Amrit Banaspati Company Limited's*** case (supra).

6. In view of the above, no ground for interference is made out with the impugned order. Consequently, finding no merit in the petition, the same is hereby dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP No. 19673 of 1996

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GUPTA STEEL ROLLING MILLS
Vs
UNION OF INDIA AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

3rd September, 2015

HF ▶ Revenue

Refund of Excise duty paid by mistake cannot be granted as the claim made is time barred in view of Rule11 and Rule 173J of 1944 Rules.

REFUND – EXCISE DUTY – LIMITATION- PERIOD FOR FILING A CLAIM – EXCISE DUTY PAID UNDER MISTAKEN BELIEF – REFUND CLAIM DENIED BEING TIME BARRED – APPEALS DISMISSED – WRIT FILED CONTENDING THAT DUTY PAID WAS UNDER MISTAKE AND SHOULD BE REFUNDED AS IT WERE OTHERWISE RECOVERED WITHOUT AUTHORITY OF LAW – REFUND NOT VALID IN VIEW OF RULE 11 OF THE RULES AS CLAIM OUGHT TO BE FILED WITHIN A PERIOD OF THREE YEARS FROM DATE OF PAYMENT – NO REFUND UNDER RULE 173J ALLOWED IN VIEW OF FINDING OF TRIBUNAL INDICATING ABSENCE OF MATERIAL SHOWING CLEARANCES BEING EFFECTED WITHIN TIME EVEN IF ONE YEAR IS TO BE COUNTED – WRIT PETITION DISMISSED – RULE 11 AND RULE 173J OF CENTRAL EXCISE RULES, 1944

Facts

The petitioner had paid excise duty on iron and steel products which was otherwise not liable to be paid. The petitioner applied for refund which was denied as the claim was time barred in view of Rule 11 Central Excise Rules, 1944. Aggrieved by the orders of the authorities below, a writ is filed contending that the law of limitation would not govern the claim of refund when the duty was paid under mistake of law and as such duty recovered would be without authority of law.

Held

The claim of petitioner under Rule 11 is rejected as it was clearly beyond the period of three months from the date of payment of the said duty as required under Rule 11 of the 1944 Rules.

Claim was made under rule 173J of the 1944 Rules. Even if it is assumed that the claim was valid under the said Rule even then, as per the order of Tribunal, the petitioner has not been able to produce details of the clearances effected within time even if one year is to be counted. Thus benefit of limitation of one year under this Rule is also barred as per the order of Tribunal. This finding of Tribunal has not been controverted by the petitioner. The writ petition is dismissed.

Cases relied upon:

- *Porcelain Electrical Mfg. Co. v. Collector of C. Ex., New Delhi 1998 (98) ELT 583 (SC)*

Case distinguished

- *Shalimar Textile Mfg. Pvt. Limited v. Union of India and others 1986 (25) ELT 625 (Bom.)*

Present: Mr. Sandeep Moudgil, Advocate for the petitioner.
Mr. Sunish Bindlish, Advocate for the respondents.

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AJAY KUMAR MITTAL, J.

1. By way of instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the orders dated 22.1.1987 (Annexure P-2) passed by respondent No.4, dated 27.5.1987 (Annexure P-3) passed by respondent No.3 and dated 13.9.1996 (Annexure P-4) passed by the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi (in short "the Tribunal") and to direct the respondents to refund the amount of excise duty along with interest thereon.

2. A few relevant facts necessary for adjudication of the present petition as narrated therein may be noticed. The petitioner had paid the excise duty on iron and steel products made of steel ingots amounting to Rs. 1,03,670.60 in terms of notification No. 206/63. Since no duty was liable to be paid on such products, the petitioner applied for refund, the details of which are as under:-

i) Refund claim of Rs.41,161.33 pertaining to the period 22.4.1972 to 7.7.1972;
ii) Refund claim of Rs.26399.87 paise pertaining to the period of 1.8.1972 to 31.3.1973;
iii) Refund claim for Rs.36109.50 paise pertaining to the period of 1.7.1973 to 26.2.1974.

3. Respondent No.4 decided the refund claim as under:-

> *"5. I have gone through the records of the refund claim of the party carefully and find that an amount of Rs.2189.35 sanctioned by the then Assistant Collector, Central Excise, Patiala is admissible to the party out of the Ist claim for Rs.41,161.23 (Rs.9,938.61 already paid) and out of the refund claim, an amount of Rs.29,033.27 is not admissible being time barred under Rule 11 of the Central Excise Rules, 1944, as the claim pertained to the period 22.7.72 to 7.6.72 and was received on 4.6.73. Accordingly, Rs.1905.43 were also not admissible out of 3rd claim for Rs.36,109.50 as this part of duty was paid on flats which is not admissible under Notification No. 206/63 (Rs.34,204.07 already paid). The refund for 2nd claim has already been paid in full.*

4. Feeling dissatisfied, the petitioner filed an appeal before respondent No.3 who vide order dated 27.5.1987 (Annexure P-3) dismissed the appeal. It was recorded as under:-

> *"1. This appeal has been filed against order C.No.V(26AA)18/37/74/108-110, dated 22.1.87 of the Assistant Collector Central Excise Patiala. In the impugned order, the Assistant Collector rejected the refund claim of Rs.29033.27 and Rs.1905.43 on the ground that the claims were time barred under Rule 11 of the C.E. Rules, 1944. The appellant's contention is that initially, the Appellate Collector had given the benefit of Notification No. 206/63 and the Assistant Collector had no authority to reject the claim as time barred. The second plea taken by the appellant was that their case was not covered under Rule 11. The scope of Rule 11 was restricted to claims of refund arising out of duties or charges paid through inadvertence error or misconstruction whereas the appellant's case is a case of payment of duty under mistake of law and as such*

their case was not governed under Rule 11 but was to be governed under the Central law of limitation.

2. I have gone through the facts of the case, grounds of appeal and the submissions made by the counsel Shri G.S. Bhangoo, during the personal hearing. I observe that none of the pleas taken by the appellant has any force. The matter of sanction of refund as per the directive of the Collector (Appeals) was considered by the Assistant Collector who has given a finding that the claims were time barred. Further, it would be wrong to state that the appellant's case is not covered under Rule 11. It is clearly a case covered under 'misconstruction'. It would not be correct to hold that inadvertence error or misconstruction related to clerical or arithmatical error only. I, therefore, do not find any merit in the appeal and the same is hereby rejected."

5. Further, the petitioner preferred an appeal against the order, Annexure P-3, which was dismissed by respondent No.2 vide order dated 13.9.1996 (Annexure P-4). Hence, the present writ petition.

6. Learned counsel for the petitioner relying upon the judgment of Bombay High Court in ***Shalimar Textile Mfg. Pvt. Limited v. Union of India and others 1986 (25) ELT 625 (Bom.)*** submitted that the law of limitation would not govern the claim of refund when the duty paid was under the mistake of law and as such the duty recovered would be without authority of law.

7. Opposing the prayer of the petitioner, learned counsel for the revenue relied upon the judgment of the Apex Court in ***Porcelain Electrical Mfg. Co. v. Collector of C. Ex., New Delhi 1998 (98) ELT 583 (SC)*** to contend that the refund claim would be governed by the time limit provided under the statute and not by general law of limitation when the refund claim is filed before the departmental authorities.

8. After hearing learned counsel for the parties and perusing the record, we find merit in the contention of the learned counsel for the revenue. Rule 11 of the Central Excise Rules, 1944 (in short "1944 Rules") prevailing prior to 1.6.1977 reads thus:-

"No duties or charges which have been paid or have been adjusted in an account current maintained with the Collector under Rule 9, and of which repayment wholly or in part is claimed in consequence of the same having been paid through inadvertence, error or misconstruction, shall be refunded unless the claimant makes an application for such refund under his signatures and lodges it with officer within three months from the date of such payment or adjustment, as the case may be."

9. Under Rule 11, where a claimant had deposited any duty or charge under a misconstruction was required to lodge his claim for refund under his signatures with the concerned officer within three months from the date of such payment.

10. Rule 173J of the 1944 Rules at the relevant time prescribed time limit for recovery of short levy or refund of excess levy wherein it had been stipulated that the provisions of Rules 10 and 11 shall apply to the assessee and for the expression 'three months' in these rules, the expression 'one year' shall stand substituted. Thus, a claim for refund under Rule 173J of the 1944 Rules was required to be made within the statutory period of one year provided thereunder.

11. Dealing with Rule 11 and Rule 173J of the 1944 Rules, the Apex Court ***in Porcelain Electrical Mfg. Co's*** case (supra), has held that where a claimant had filed an application under Rule 11 read with Rule 173J of the 1944 Rules and sought its remedies under

the Statute, it would be bound by the limitation provided under the Act and the Rules. The relevant observations read thus:-

> *"3. In challenging the order of the Tribunal the learned counsel for the appellant urged that the duty having been paid under mistake of law, the period of limitation applicable was three years. Reliance is placed on Commissioner of Sales Tax, U.P. v. Auriaya Chamber of Commerce, Allahabad, 1986 (25) ELT 867, D. Cawasji & Co. & others v. State of Mysore & Anr., 1978 (2) ELT (J 154) and English Electric Co. (supra). None of these decisions appear to be helpful. The decisions were rendered in cases in which the assessee had sought its remedy by way of invoking extraordinary jurisdiction of the High Court or this Court and it was in those cases that the Court held that the period of limitation was three years.*
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> *4. In our opinion, the controversy stands concluded by the decision of this Court in Collector of Central Excise, Chandigarh v. M/s Doaba Cooperative Sugar Mills Ltd., Jaandhar, 1988 (37) ELT 478 (SC) = 1988 Supp. SCC 683.The relevant observations are extracted below:*
>
> > *"But in making claims for refund before the departmental authority, an assessee is bound within four corners of the statute and the period of limitation prescribed in the Central Excise Act and the Rules framed thereunder must be adhered to. The authorities functioning under the Act are bound by the provisions of the Act."*
>
> *5. Since the appellant had filed an application under Rule 11 read with Rule 173J and sought its remedy under the statute, it was bound by the limitation provided under the Act and the Rules. It was not open to the appellant to claim that even though the period of limitation was provided under the statute for refund, the application filed by it should be processed and considered under the general law of limitation."*

12. The application for refund of duty paid for the period in question was lodged on 4.6.1973 which was clearly beyond the period of three months from the date of payment of the said duty as required under Rule 11 of the 1944 Rules. The petitioner was, therefore, not entitled to any refund in terms of Rule 11 of the 1944 Rules.

13. The claim of the petitioner under Rule 173J of the 1944 Rules has also been refuted in the written statement as under:-

> *"2. That as regards the contention of the petitioner regarding the applicability of Rule 173J instead of Rule 11 and its consequential claim for availability of a period of limitation of one year, the kind attention of this Hon'ble Court is invited to the finding of fact recorded by the Ld. Tribunal wherein it has been held that the petitioner had not been able to produce the relevant information with regard to the details of the clearances effected within time even if one year time is to be accounted. Even the said finding has not been assailed by the petitioner in the present CWP. Therefore, assuming though denying that Rule 173J was applicable to the present case even then the petitioner is barred from claiming the benefit of the limitation period of one year in view of the aforesaid findings of the Ld. Tribunal."*

14. No material could be referred to by learned counsel for the petitioner to controvert the aforesaid submission. Thus, we do not find any merit in the claim of the petitioner under Rule 173J of the 1944 Rules also.

15. Adverting to the judgment of the Bombay High Court in ***Shalimar Textile Mfg. Pvt. Ltd's*** case (supra) suffice it to notice that it being contrary to the aforesaid authoritative pronouncement of the Apex Court in **Porcelain Electrical Mfg. Co's** case (supra), cannot be held to be enunciating the legal proposition correctly.

16. In view of the above, finding no merit in the writ petition, the same is hereby dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP No. 11491 of 2015

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MICROMAX INFORMATICS LTD.
Vs
STATE OF PUNJAB AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

2nd November, 2015

HF ▶ Petitioner

Time is granted to file an appeal against the assessment order after vires of S. 29(4) of the Act have been upheld by the Court.

APPEAL – ASSESSMENT ORDER – EXTENSION OF TIME – ASSESSMENT ORDER PASSED - VIRES OF S. 29(4) UPHELD SUBSEQUENTLY BY HIGH COURT – WRIT FILED SEEKING EXTENSION OF TIME FOR FILING OF APPEAL AGAINST THE SAID ASSESSMENT ORDER IN VIEW OF S.29(4) OF THE ACT – PRAYER GRANTED – LIBERTY GIVEN TO FILE APPEAL WITHIN 30 DAYS BEFORE APPROPRIATE AUTHORITY – APPEAL NOT TO BE DISMISSED ON GROUND OF LIMITATION IF FILED WITHIN THE TIME SPECIFIED – APPEAL DISPOSED OF – *S. 29 & 62 OF PVAT ACT, 2005*

Fact

As the vires of S. 29(4) of the Act have been upheld by the court, the petitioner has filed a writ for challenging the assessment orders before the appropriate authority. Thus, a prayer for granting 30 days time for filing of appeal is made.

Held

Disposing the writ petition, liberty is granted to file an appeal challenging the assessment orders within a period of 30 days. The authorities are directed not to dismiss the appeal on the ground of limitation if appeal is filed within a period of 30 days

Cases referred:

- *Amrit Banaspati Company Ltd. Vs. The State of Punjab and others, CWP No. 21811 of 2014*

Present: Mr. Tarun Gulati, Mr. Sandeep Goyal and
Mr. Shashi Mathews, Advocates for the petitioner.
Mr. Jagmohan Bansal, Addl. AG, Punjab.

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AJAY KUMAR MITTAL, J.

1. The petitioner has approached this Court under Article 226/227 of the Constitution of India, *inter alia* challenging the vires of Section 29(4) of the Punjab Value Added Tax Act, 2005 (for short 'the Act') and also the assessment orders Annexure P-11 (Colly.).

2. Learned counsel for the petitioner very fairly submitted that since the question of vires of Section 29(4) of the Act has been upheld by the Division Bench of this Court ***in CWP No. 21811 of 2014, (M/s Amrit Banaspati Company Ltd. Vs. The State of Punjab and others)***, decided on 07.08.2015, therefore, the petitioner may be allowed to challenge the assessment orders Anneuxre P-11 (Colly.) which is an appealable order by filing appeal before the appropriate authority. He, however, prayed that 30 days time may be granted to the petitioner to file an appeal before the appropriate authority.

3. Learned State counsel does not seriously dispute the prayer of the petitioner to avail the alternative remedy of appeal, in case the same is filed within 30 days.

4. In view of the above, the instant petition is disposed of. However, liberty is granted to the petitioner to file an appeal challenging the assessment orders Annexure P-11 (Colly.) within a period of 30 days from today. It is directed that in case the appeal is filed within 30 days from today, the same shall not be dismissed on the ground of limitation.

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PUNJAB & HARYANA HIGH COURT

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CWP No. 23270 OF 2015

AJAY ENTERPRISES (P) LTD.
Vs
STATE OF HARYANA AND OTHERS

A.K. MITTAL AND SHEKHER DHAWAN, JJ.

31st, October, 2015

HF ▶ None

The assessee is directed to first file a reply/objection to the impugned notice served to it instead of invoking the writ jurisdiction.

REVISION – ASSESSMENT – JURISDICTION – REVISIONAL AUTHORITY - SERVICE OF NOTICE FOR REVISION OF ASSESSMENT ORDER AFTER EXPIRY OF LIMITATION PERIOD – WRIT FILED CHALLENGING THE NOTICE ON THE BASIS OF ABSENCE OF POWER OF THE AUTHORITY TO ISSUE SUCH NOTICE – HELD: NO JUSTIFIABLE REASON TO INTERFERE WITH THE NOTICE – PETITIONER OUGHT TO FILE REPLY AND RAISE ALL PLEAS AS RAISED IN THIS WRIT BEFORE THE AUTHORITIES - REVISIONAL AUTHORITY TO DECIDE THE REPLY WITHIN SIX WEEKS, IF FILED, AND PASS A SPEAKING ORDER – PETITIONER OPEN TO TAKE RECOURSE TO AVAILABLE REMEDIES IN CASE OF GRIEVANCE BY THE ORDER SO PASSED – *S.34 OF HVAT ACT, 2005*

Facts

The assessee had filed its returns for the year 2007-08 and an assessment order dated 31.5.2010 was passed. However, a notice for revision was issued on 19.8.2015. The assessee filed a writ contending that the said notice was served after an expiry of more than seven years and that the revisional authority had no power to make any revision.

Held

It is observed that the petitioner has neither filed any reply/objection to the said notice nor raised any pleas before the competent authority as have been raised in this writ petition. Therefore, there is no reason to interfere with the notice at this stage. The petitioner should file a reply within two weeks which has to be decided by the revisional authority within a period of six weeks thereafter. However, in case of any grievance by the order so passed, the petitioner will be open to take recourse to any remedy available under the law

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

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AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the notice

dated 19.8.2015 (Annexure P-2). Further, a writ of prohibition has been sought directing respondent No.3 not to proceed with the revisional proceedings initiated vide notice, Annexure P-2 under Section 34 of the Haryana Value Added Tax Act, 2003 (in short "the Act").

2. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner had filed its return of income for the assessment year 2007-08. The said return was processed under Section 15(3) of the Act which was assessed at nil turnover vide assessment order dated 31.5.2010 (Annexure P-1). However, penalty of Rs. 1,000/- was imposed upon the dealer under Section 40 of the Act. In view of Section 17 of the Act, re-assessment can be made within five years from the expiry of financial year or before expiry of 2 years following the date when the assessment becomes final whichever is later. In the present case, the Department can initiate proceedings on or before 31st March, 2013 but no such proceedings are initiated during the said period. A circular dated 7.5.2013 was issued by the Excise and Taxation Commissioner, Haryana, to the effect that the developers entering into agreements for sale of constructed apartments or flats prior to or during construction are chargeable to VAT. Consequently, another circular dated 4.6.2013 was issued regarding making of assessments on builders and developers. Subsequently, vide circular dated 10.2.2014, the circular dated 7.5.2013 was varied and value of the land was sought to be included for imposition of VAT. A notice dated 19.8.2015 (Annexure P-2) was issued to the petitioner for revision of the assessment order dated 31.5.2010 (Annexure P-1). According to the petitioner, the show cause notice, Annexure P-2, for revision of the assessment year 2007-08 was issued after the expiry of more than seven years. The revisional authority has no power to make any revision in terms of notification dated 31.3.2003 (Annexure P-3) issued under Section 34(2) of the Act. The earlier notifications dated 31.3.2003 have later on been re-notified on 15.5.2003 (Annexures P-4 to P-7/A Colly). Hence, the present writ petition.

3. We have heard learned counsel for the petitioner.

4. The writ-petitioner has challenged the notice, Annexure P-2, issued by the Deputy Excise and Taxation Commissioner-cum-revisional authority, Gurgaon (East), Gurgaon on the ground that the same was beyond limitation. It was urged that the notice having been issued without jurisdiction being beyond limitation, the proceedings pursuant thereto could not continue.

5. From the perusal of the writ petition, we find that the petitioner on receipt of the notice, Annexure P-2, had filed the writ petition in this Court challenging the same to be without jurisdiction. The petitioner had neither filed any objection/reply to the said notice nor raised the pleas as have been raised in the instant writ petition before the competent authority.

6. At this stage, we do not find any justifiable reason to interfere with the notice under challenge. However, we clarify that the proper course of action for the noticee is to file detailed and comprehensive objection/reply and to raise all the pleas as have been raised in the writ petition. In case any objection/reply is filed by the petitioner within a period of two weeks from the date of receipt of the certified copy of the order, the revisional authority shall decide the same within a period of six weeks from the date of receipt of the objection/reply in accordance with law after affording an opportunity of hearing to the petitioner and by passing a speaking order before proceeding further in the matter.

7. The writ petition stands disposed of accordingly.

8. It is, however, made clear that in case the petitioner has any grievance after the order is passed by revisional authority, it shall be open to the petitioner to take recourse to the remedies as may be available to the petitioner in accordance with law.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 37 OF 2014

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NEW DEVI GRIT UDYOG
Vs
STATE OF HARYANA AND OTHERS

A.K. MITTAL AND RAMENDRA JAIN, JJ.

8th September, 2015

HF ▶ Appellant

Buyer is not to be denied Input Tax Credit for deficiency in tax invoices issued by the seller.

INPUT TAX CREDIT – TAX INVOICE – ABSENCE OF DETAILS ON INVOICES – BOULDERS PURCHASED BY ASSESSEE FROM REGISTERED SELLER – TAX INVOICES ISSUED – RETURNS DULY FILED BY BOTH PARTIES – INPUT TAX CREDIT DENIED TO BUYER ASSESSEE ON THE GROUNDS OF ABSENCE OF NAME AND TIN NUMBER ON TAX INVOICES PRODUCED – APPEAL BEFORE HIGH COURT – HELD: RULE 54(3) IS PROCEDURAL MEANT FOR SAFEGUARDING INTEREST OF REVENUE FROM NON GENUINE TRANSACTION – BUYER NOT TO BE MADE LIABLE FOR INVOICES ISSUED BY SELLER – NON MENTIONING OF TIN AND NAME CANNOT BE CONCLUSIVELY HELD AGAINST BUYER – MATTER REMANDED FOR FRESH DECISION – APPEAL DISPOSED OF – *RULE 54(3) OF HVAT RULES, 2005*

Facts

The appellant had purchased boulders from the selling firm registered in Haryana which was required to issue the tax invoices as per the Act. The tax invoices were issued by it and returns were filed by both buyer and seller. However, during assessment, Input Tax was denied to the buyer on the ground that the tax invoices and C4 certificates were not produced by the assessee. On appeal it was held that the original purchase invoices and VAT C4 certificates were not produced by appellant. The invoices in possession of the appellant did not bear its name, TIN number mentioned by the seller at the time of issue which is a mandatory requirement as per Rule 54 of the HVAT Rules, 2003.An appeal is filed before the High court.

Held

Non -mentioning of TIN on invoices cannot be taken to be fatal against the buyer as it is issued by the seller. Rule 54(3) is to safeguard interest of revenue from non genuine transactions and is procedural in nature. It is not within the control of the purchaser to ensure that the tax invoice bears his name and tin number. Unless a mandatory duty is cast on the seller, purchaser cannot be made liable for it. Non- mentioning of TIN can be a circumstance but cannot be held conclusively against the buyer. Thus matter is remanded to assessing authority to consider the matter afresh and not reject the tax invoice merely on the ground that it does

not bear name of buyer and TIN where the buyer is able to justify the transaction by producing evidence before him. The appeal is disposed of.

Cases followed:

- *Standard Concrete & Stone Agency, Faridabad and others vs. State of Haryana and others,*(1998) 12 PHT 185 (SC)
- *SPL Industries Limited vs. Union of India and others,* CWP No.11495 of 2012
- *State of Punjab and another vs. City Petro, (2009) 021 VST 0353*
- *Marmagoa Steel Limited vs. Union of India,* 2005(192) ELT 82 (Bom.)
- *Vimal Enterprise vs. Union of India,* 2006(195) ELT 267 (Guj.)

Case distinguished:

- *Babu Verghese and others vs. Bar Council of Kerala and others, (1999) 3 SCC 422*

Present: Shri Rajiv Agnihotri, Avneesh Jhingan, Sandeep Goyal and Anil Kumar Rana, Advocates for the appellants.

Ms. Mamta Singla Talwar, DAG, Haryana with Shri Saurabh Mago, AAG, Haryana.

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AJAY KUMAR MITTAL, J.

1. Affidavit dated 7.9.2015 of Shri Arvind Kumar, Excise & Taxation Officer, office of Deputy Excise and Taxation Commissioner (ST), Faridabad (West), Faridabad, in terms of order dated 17.8.2015 filed by State counsel in court today is taken on record.

2. This order shall dispose of a bunch of 72 appeals viz. VAT Appeal Nos.37, 206, 212, 105, 213, 106, 109, 111, 126 to 140, 146, 148 to 155, 158, 159, 162, 164, 107, 165, 168, 169, 171 to 175, 177, 185 to 187, 208, 210, 216, 222, 226 to 229, 232, 235, 241, 242, 247 to 251, 258, 215, 224, 225, 239 and 240 of 2014 as learned counsel for the parties are agreed that the issue involved in all the appeals is identical. However, the facts are being extracted from VAT Appeal No.37 of 2014.

3. VAT Appeal No.37 of 2014 has been preferred by the assessee-appellant under Section 36 of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the orders dated 26.3.2007, 30.6.2008, 7.6.2012 and 27.8.2013, Annexures A.1, A.2, A.4 and A.7 respectively rejecting appeals in STA Nos.584-585 of 2008-09 for the assessment year 2003-04, claiming following substantial questions of law:-

i) Whether the Haryana Tax Tribunal, passing the order Annexure A.7, was right in rejecting the appeal only on one issue that too without deciding anything it being an apex fact finding authority?

ii) Whether in the facts and circumstances whether the authorities below did not pass contradictory order when the assessing authority writes record produced but disallowed claim as if no document produced the appellate authority entertained such documents though rejected the same, and further Tribunal passed orders against itself and then finally without going into the record it being an apex fact finding authority rejecting the appeal?

iii) Whether the order passed by the Haryana Tax Tribunal was right in not providing an opportunity to the appellant to avail statutory benefits?

iv) Whether the order passed by the Haryana Tax Tribunal Annexure A.4 was right in not adjudicating the issue of limitation?

v) Whether the statutory notice in Form N.2 is not barred by limitation?

vi) Whether the order passed by the Haryana Tax Tribunal Annexure A.4 was right in not remanding the case when full Bench of Haryana Tax Tribunal had already remanded large number of cases giving its observations to be decided afresh when similar issue is involved?"

4. A few facts relevant for the decision of the controversy involved as narrated in VAT Appeal No.37 of 2014 may be noticed. The assessee is a proprietorship concern registered under the HVAT Act and the Central Sales Tax Act, 1956 (in short,. "the CST Act") having TIN No.06951817261. It is engaged in the manufacturing and trading of crushing stones material **rori bajri** and stone dust etc. The appellant purchases boulders from within the State of Haryana from one seller M/s Faridabad Gurgaon Minerals Limited, Faridabad who has been allotted the area on lease by Mines and Geological Department Haryana after payment of tax. M/s Faridabad Gurgaon Minerals Limited being a registered dealer is required to issue tax invoices as per the HVAT Act. The seller gives invoices to the appellant as issued to it by Mines and Geological department Haryana. Assessment of the seller is framed accordingly. The seller as well as the appellant are filing returns and discharging tax obligations in accordance therewith and claiming input tax on the basis of above said invoices. For the assessment year 2003-04, proceedings were initiated by way of issuance of notice in Form N2 and as per the claim of the appellant, it produced invoices as well as C.4 certificates. Presence of Mr. D.V.Taneja, Advocate was marked who produced books of account. The assessment was framed vide order dated 26.3.2007, Annexure A.1, disallowing input tax of Rs. 3,68,935/- as the original purchase invoices and certificates in Form C4 were not submitted by the appellant. Aggrieved by the order, the assessee filed appeal before the Joint Excise and Taxation Commissioner (Appeals). Vide order dated 30.6.2008, Annexure A.2, the appeal was dismissed holding that the appellant failed to produce original purchase invoices and VAT C4 certificates before the respondent during the assessment proceedings. The invoices in possession of the appellant did not have its name, TIN number mentioned by the seller on them at the time of issue which is mandatory requirement under Rule 54 of the Haryana Value Added Tax Rules, 2003 (HVAT Rules"). The assessee went in appeal before the Tribunal. Vide order dated 7.6.2012, Annexure A.4, the Tribunal dismissed the appeal. The review petition filed by the appellant also met the same fate vide order dated 27.8.2013, Annexure A.7 passed by the Tribunal. Hence the instant appeals by the assessee-appellants.

5. We have heard learned counsel for the parties.

6. Learned counsel for the assessee-appellants submitted that the Assessing Officer had never doubted the transaction. Further, tax charged by the seller, and the payment by the purchaser to the seller and in turn by the seller to the department was undisputed. The returns filed by the seller and the buyer were not doubted. The seller's assessment was finalized where the turnover had been accepted. Reference was made to Section 28(2) of the HVAT Act regarding maintenance of accounts. According to the learned counsel, it was the duty of the seller dealer to issue the invoice. The seller dealer did not mention the name of the appellant-dealers thereon. There is no evasion and the documents are issued by the seller dealer, in such circumstances, the denial of input tax credit to the appellant was totally unjustified. Reliance was placed on judgments in ***Standard Concrete & Stone Agency, Faridabad and others vs. State of Haryana and others,***(1998) 12 PHT 185 (SC), CWP No.11495 of 2012, ***M/s SPL Industries Limited vs. Union of India and others,*** decided on 31.1.2013 (P&H), ***State of Punjab and another vs. City Petro, (2009) 021 VST 0353, Marmagoa Steel Limited vs. Union of India,*** 2005(192) ElT 82 (Bom.) and ***Vmal Enterprise vs. Union of India,*** 2006(195) ELT 267 (Guj.),

7. Case of the revenue was that the tax invoices which were produced by the buyer did not contain the name of the buyer and also its TIN number. It was urged that in such

circumstances, the Assessing Officer had rightly declined the benefit of input tax credit to the appellants. Reliance was placed on judgment of the Apex Court in ***Babu Verghese and others vs. Bar Council of Kerala and others,*** *(1999) 3 SCC 422.*

8. It would be advantageous to reproduce the relevant statutory provisions which read thus:-

> ***Section 2(w)***
>
> *"(w) "input tax" means the amount of tax paid to the State in respect of goods sold to a VAT dealer, which such dealer is allowed to take credit of as payment of tax by him, calculated in accordance with the provisions of section 8;"*
>
> ***Section 2(zl)***
>
> *" 'tax invoice' means an invoice required to be issued according to the provisions of sub-section (2) of section 28 by a VAT dealer for sale of taxable goods to another VAT dealer for resale by him or for use by him in manufacture or processing of goods for sale, and which entitles him to claim input tax in accordance with the provisions of section 8;"*
>
> ***Section 8(2)***
>
> *"8(2) A tax invoice issued to a VAT dealer showing the tax charged to him on the sale of invoiced goods shall, subject to the provisions of subsection (3), be sufficient proof of the tax paid on such goods for the purpose of sub-section (1)."*
>
> ***Section 28(2)***
>
> *"28(2) Every dealer required to furnish returns under subsection (2) of section 14 shall, -*
>
> *(a) in respect of every sale of goods, effected by him*
>
> *(i) to any dealer;*
>
> *(ii) to any other person on credit;*
>
> *(iii) to any other person on cash, where the sale price of the goods exceed one hundred rupees or such other amount not exceeding five hundred rupees, as may be prescribed, compulsorily, otherwise, on demand by such person, issue to the purchaser, where he is a VAT dealer to whom the goods are sold for resale by him or for use by him in manufacture or processing of goods for sale, a tax invoice, otherwise a retail/other sale invoice, -*
>
> *A. in the case of specific or ascertained goods, at the time the contract of sale is made; and*
>
> *B. in the case of unascertained or future goods, at the time of their appropriation to the contract of sale; showing the prescribed particulars:*
>
> *Provided that if the contract of sale requires that the goods be delivered over a period of time, he may issue a delivery note showing the prescribed particulars at the time of dispatch of the goods, every time such dispatch is made, and when the delivery of the goods is complete or a month closes in between, he shall issue a consolidated*

tax invoice or retail/other sale invoice, as the case may be, showing the prescribed particulars, in respect of the goods sold during the month or part thereof, as the case may be;

(b) maintain, in the prescribed manner, account of all sales not falling within clause (a);

(c) in respect of every dispatch of goods otherwise than by sale, issue a delivery note at the time of the dispatch showing the prescribed particulars; and

(d) preserve a carbon copy of every invoice or delivery note issued under clause (a) or clause (c) for a period of eight years following the close of the year when the sale was made and where some proceedings under this Act are pending, till the completion of such proceedings.

Rule 54(3)

"(3) An invoice or a delivery note shall at least contain the following particulars-

Tax invoice/Retail invoice/Sale invoice/Delivery Note

Serial Number: *Date: DD:MM:YY*

Time: HH:MM

Note: - Time is to be mentioned by stone crusher owners, quarry contractors/lessees in every case, and by other dealers in case the value of goods exceeds ten thousand rupees.

(i) *Full name and address of the selling dealer/consignor with his TIN, if any*

(ii) *Nature of transaction - whether sale, consignment transfer or job work etc.*

(iii) *Name and address of the purchaser/ consignee (in case he is a dealer registered under the Act, mention his TIN)*

(iv) *Description of goods*

(v) *Quantity of goods*

(vi) *Value of goods with break-up according to rate of tax applicable (In case of delivery note, approx. value may be given and no break-up is necessary.)*

(vii) *Tax, where charged separately (Not compulsory when a delivery note is issued or an invoice is issued by a lump sum dealer, an unregistered dealer, or a VAT dealer making sale to a consumer.)*

(viii) *Vehicle number (Where the goods are carried in a vehicle.)*

(ix) *Name of the person carrying the goods (Where the goods are carried in a vehicle.)*

Signature of the selling dealer / consignor or his authorized signatory.

Name in full and status"

9. A combined reading of the aforesaid provisions shows that under Rule 54(3) of the HVAT Rules, the buyer is required to produce the tax invoice, its name and TIN number entered on it. However, the question would be whether the purchaser can be penalized where the seller does not comply with the same. In our opinion, the answer would be in the negative. The non mentioning of the buyer's name or TIN number as it is issued by the seller cannot be taken to be fatal against the buyer and benefit of input tax credit declined to the buyer on that basis alone. The purpose of incorporating Rule 54(3) of the HVAT Rules is to safeguard the interest of the revenue from non-genuine transactions. It is procedural in nature and does not confer any substantive right. In the event of non-mentioning of the name and TIN No. of the buyer, a heavy onus is cast on the said dealer to produce material to discharge the said onus by producing other sufficient evidence to show that the transaction was genuine and it had made payment of VAT to the seller. Moreover, it is not within the control of the purchaser to ensure that the tax invoice contains his name and TIN No. as it is issued by the seller. Unless a mandatory duty is cast on the seller to issue tax invoice with such particulars, the purchasers cannot be penalized for no fault of theirs.

10. The Gujarat High Court in ***Vimal Enterprise'***s case (supra) while considering grant of Cenvat/Modvat credit, observed as under:-

> "18 If on facts, it is possible to find out that the transaction is genuine and bonafide transaction, the identity of the supplier is established, the document showing duty paid inputs is supported by the facts, and the records of the supplier show that the supplier has purchased duty paid goods before resale and passed on the credit of duty, there is no reason why the benefit should be denied. Once the object for which a provision is enacted is satisfied merely venial or technical breach by itself should not permit the authorities to adopt a stand which frustrates the object for which the entire scheme of modvat has been framed. The endeavour must be to ensure that the scheme is made effective and not frustrated. In other words, the goods , which have been subjected to duty when used as inputs for manufacture of final product, should not be made to bear duty once again as that would have a cascading effect not intended by legislature in so far as the ultimate consumer is concerned. Therefore, even approaching from the view point of ensuring that the object with which the provision has been enacted is satisfied, if the facts of the present case are tested, the answer would be that the petitioner was entitled to avail of the modvat credit, the petitioner having done all that was possible within its powers and nothing further remained to be done so far as the petitioner was concerned.'

11. Similarly, the Bombay High Court in ***Marmagoa Steel Limited's*** case (supra) recorded thus:-

> *"10. For availing the credit of duty, what is required to be established under Rule 57G is that the inputs received are infact duty paid. The procedure set out in Rule 57G of the Central Excise Rules is to ensure that the credit is taken on the basis of duty paid documents. The bill of entry is one such document set out in Rule 57G. The said rule does not require that the bill of entry should be in the name of the person claiming credit of duty. It is not in dispute that the goods imported and cleared on payment of duty by one person can be used as inputs and credit of duty can be claimed by another person by establishing that the imported duty paid goods have been received as inputs and that the importer has not taken credit of that duty. In the present case, it is established that the duty paid goods are received as inputs, however, the credit is denied on the*

ground that the Bill of entry is not endorsed in the name of the appellant. Rule 57G does not require that for taking credit of duty, the bill of entry should be endorsed in the name of the claimant. Counsel for the revenue could not point out any provision of law in the Act or the Rules regarding the endorsement of bills of entry. In the absence of any provision regarding endorsement on the bill of entry, the credit of duty cannot be denied on the ground that the bill of entry is not endorsed in the name of the claimant. As stated here above, what is required to be established for taking credit of duty is that the goods used as inputs are duty paid and that the credit of duty paid on the said goods has not been taken. In the facts of the present case, the evidence on record i.e. the bills of entry together with the certificates issued by excise authorities at Surat and Goa clearly show that the goods imported and cleared under the bills of entry on payment of duty were received and utilized by the appellant as inputs in its factory and that the importer has not utilized the credit of duty paid on the said goods. Thus, the appellant has established that the inputs received under the bills of entry were duty paid and therefore, the authorities below were not justified in denying the credit of duty to the appellant. The two decisions relied upon by the Tribunal do not support the case of the revenue. In the case of Balmer Lawrie & Co. (supra), the issue was not relating to the endorsement on the bills of entry and therefore, the said decision is distinguishable on facts. Similarly, the decision of the tribunal in the case of Tata Iron and Steel Co. Limited (supra) is also distinguishable on facts as the said decision is based on erroneous concession made by the counsel for the appellant therein that in the case of Balmer Lawrie & Co., it is held that the Modvat credit is not available on the basis of endorsed copies of bills of entry."

12. In the present cases, the Assessing Officer was not justified in declining the benefit of input tax credit only on the ground that the tax invoices did not contain the name of the buyer and also its TIN number. No doubt, non mentioning of the name and the TIN number can be a circumstance, but it cannot be held to be conclusively against the purchaser. The judgment cited by learned counsel for the State in ***Babu Verghese's*** case (supra) was different. The question involved therein was validity of extension granted by the Bar Council of India to existing members of Kerala Bar Council (KBC) under proviso to Section 8 of the Advocates Act, 1961 and consequent validity of elections held by KBC during the extended term.

13. In such circumstances, we find that the matter requires to be remanded to the Assessing Officer who shall consider the matter afresh and shall not reject the tax invoice only on the ground that it does not contain the name of the buyer and its TIN number where the buyer is able to justify the genuineness of the transaction by producing evidence before him. Ordered accordingly. Consequently, the impugned orders Annexures A.1, A.2, A.4 and A.7 are set aside. All the appeals stand disposed of as such.

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PUNJAB & HARYANA HIGH COURT

VATAP NO 11 OF 2015

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AMBUJA CEMENT LTD.
Vs
STATE OF PUNJAB & ANR.

A.K. MITTAL AND RAMENDRA JAIN, JJ.

18th September, 2015

HF ▶ *Appellant- Assessee*

Appellate Authority has no jurisdiction to go beyond the grounds of appeal agitated before it by the party.

APPEAL – APPELLATE AUTHORITY – JURISDICTION - POWER TO ADJUDICATE ON ISSUES BEYOND SUBJECT MATTER OF APPEAL – NOTIONAL TAX LIABILITY CALCULATED BY DESIGNATED OFFICER BY ADDING PRIMARY FREIGHT TWICE BY MISTAKE ALTHOUGH PRINCIPALLY IT AGREED WITH THE APPELLANT ON THE METHOD OF CALCULATING IT - APPEAL FILED BEFORE DETC ON THE GROUNDS OF MATHEMATICAL MISCALCULATION OF NOTIONAL TAX LIABILITY- DEPARTMENT ARGUED THAT MATTER NEEDED FRESH CONSIDERATION AS STOCK VALUE TRANSFER STOOD CALCULATED ON LOWER SIDE THEREBY RAISING A NEW CONTENTION – MATTER REMANDED BY DETC FOR FRESH DECISION ON THE BASIS OF FRESH ISSUE RAISED– DISMISSAL OF APPEAL BY TRIBUNAL – APPEAL BEFORE HIGH COURT – HELD: FOLLOWING EARLIER JUDGMENTS, APPELLATE AUTHORITY NOT JUSTIFIED IN REMANDING THE MATTER ON BASIS OF THOSE ISSUES WHICH WERE NOT SUBJECT MATTER OF APPEAL BEFORE IT- IMPUGNED ORDERS SET ASIDE – DETC TO DECIDE AFRESH AFTER HEARING BOTH PARTIES – *S. 62 OF PVAT ACT.*

Facts

In this case an assessment for the year 2009-10 was taken up. Notional tax liability was mis-calculated by the designated officer by adding the primary freight twice. It was however agreed in principal that only two components i.e. cost of goods at factory gate plus primary freight were to be added. On appeal before DETC filed by appellant dealer, the Excise and Taxation Inspector submitted that the impugned order was illegal and needed fresh determination as stock transfer price had been determined on the lower side. The matter was remanded by the first appellate authority for consideration of issues raised by department which were otherwise not the subject matter of the appeal. The Tribunal dismissed the appeal filed by appellant against the remand order. An appeal has been filed before High Court contending that it is beyond jurisdiction of appellate authority to remand the matter for fresh assessment including those issues which were not subject matter of appeal before him.

Held

Following earlier judgments passed by this Court, it is held that the first appellate authority was not justified in remanding the matter for fresh assessment for considering those issues which were not subject matter of appeal before it .The orders passed by Tribunal and DETC for remanding the matter for fresh assessment are set aside. The DETC shall pass fresh order as per law. However, it shall be open for the state to take recourse to any remedy according to law in which Revisional proceedings were initiated and were later dropped on the basis of order of first appellate authority.

Cases followed:

- *State of Haryana vs. Frick India limited, (1990) 76 STC 148 (P&H)*
- *Global Business India Pvt. Limited vs. State of Haryana (2013) 45 PHT 439 (P&H)*
- *State of Kerala vs. M/s Vijaya Stores, (1978) 4 SCC 41*

Present: Mr. Sandeep Goyal, Advocate for the appellant-assessee.

Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of VATAP Nos.11 to 14 of 2015 as according to the learned counsel for the parties, the issue involved in all these appeals is identical. However, the facts are being extracted from VATAP No.11 of 2015.

2. VATAP No.11 of 2015 has been filed by the revenue under Section 9(2) of the Central Sales Tax Act, 1956 (in short, "the CST Act) read with Section 68 of the Punjab Value Added Tax Act, 2005 (in short, "the PVAT Act) against the order dated 30.3.2015, Annexure A.6 passed by the Punjab Tribunal (constituted under the Punjab Value Added Tax Act, 2005) in Appeal No.283 of 2014 for the assessment year 2009-10, claiming following substantial questions of law:-

> *"i) Whether on the facts and circumstances of the case, the learned Tribunal is justified in holding that the first appellate authority was within his jurisdiction to remand the matter for fresh assessment including those issues which were not subject matter of appeal before him?*
>
> *ii) Whether on the facts and circumstances of the case, the appellate authority is empowered to decide those issues which have not been raised in the grounds of appeal and no appeal has been filed by the revenue?*

3. A few facts relevant for the decision of the controversy involved as narrated in VATAP No.11 of 2015 may be noticed. The assessee is a dealer who is engaged in the manufacturing and sale of cement having its manufacturing units at Ropar and Bathinda in Punjab. The Ropar unit is exempted under the provisions of the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991 read with notification dated 6.4.2005 issued under section 92(3) of PVAT Act for a period from 24.6.2004 to 23.6.2019 for an amount of Rs.498,49,74,000/-. Similarly, Bathinda unit is exempt for an amount of Rs.171,87,00,000/- for a period from 14.2.2001 to 13.2.2016. The assessee is registered with assessing authority, Ropar for the purpose of sales tax assessment. Assessment of the dealer for the year 2009-10 was taken up for consideration by the assessing authority on the basis of annual returns filed by the appellant in VAT 20. In the reruns filed by the appellant, it had calculated notional tax liability on the stock transfers made by it to its own branches in other States for subsequent sale as per the value of goods at the time of dispatch derived by adding margin and primary

freight upto the destination in the cost of the goods and some portion of gross profit so as to arrive at the correct value of stock transfer. The value so determined was considered as the estimated value of the goods so transferred as per condition 3(ii) of the notification dated 6.4.2005 issued under section 92(3) (a) of the PVAT Act. The estimated value of stock transfer considered by the appellant included the cost of production and primary freight besides some portion of gross profit whereas other expenses like secondary freight, forwarding expenses, godown rent, administrative expenses and octroi etc. were left to be borne by the consignee branch. The tax was calculated on the said value at the rate of 4% and was reduced from the total overall exemption limit of the assessee which was available to it at the beginning of the year 2009-10. For the assessment years 2005-06 and 2006-07, similar methodology had been adopted by the appellant and was being accepted by the respondents. Before the Assistant Excise and Taxation Commissioner, detailed submissions had been made by the assessee to the effect that only the value of goods at factory gate and primary freight can be considered to be the estimated value of the goods stock transferred on which the notional tax was to be calculated at the rate of 4%. Accordingly, the designated Officer vide order dated 31.1.2013, Annexure A.1 calculated the tax on the cost of goods at factory gate plus primary freight. However, while doing so, he had included the primary freight again and thereby committed the mistake of including the same amount twice over even though in principle, he had agreed with the appellant that besides these two components, the value of goods could not be included in any other manner. Feeling aggrieved, the assessee filed appeal before the Deputy Excise and Taxation Commissioner (Appeals) [DETC(A)]. The DETC (A) recorded the version of the Excise and Taxation Inspector in detail to the effect that the impugned order was illegal and needed to be set aside as fresh orders were required to be made since the stock transfer price had been determined on the lower side and therefore, the case needed reconsideration in the interest of State revenue and justice. According to the assessee, infact, the appeal proceedings being carried out were converted into revisional proceedings for the benefit of the department by the first appellate authority and that too without granting any opportunity of hearing in that regard. The assessee went in appeal before the VAT Tribunal. During the pendency of the said appeal, the respondents initiated fresh assessment proceedings in pursuance to the directions given by the first appellate authority. The assessee approached this Court by filing CWP No.18476 of 2014. This court allowed the assessment proceedings to continue but directed that draft order shall be produced before the court on the next date of hearing. The assessee approached the Apex Court by filing SLP(C) No.26831 of 2014. The Apex Court granted liberty to the assessee to raise the issues before this court. In pursuance to the aforesaid order, this Court relegated the assessee to appear before the VAT Tribunal and counsel for the State had agreed that during the pendency of the appeal before the Tribunal, the consideration of draft assessment order shall be kept in abeyance. Accordingly, this court disposed of the said writ petition with a direction that the Tribunal shall decide the appeal within three months from that date i.e. 6.10.2014. Vide order dated 30.3.2015, Annexure P.6, the appeals filed by the assessees were dismissed. Hence the instant appeals by the assessees.

4. We have heard learned counsel for the parties.

5. The primary issue that arises for consideration in this appeal is whether the first appellate authority was justified and within its jurisdiction to remand the matter for passing fresh assessment order after considering the issues which were not assailed by the assessee. Support was drawn from judgments in ***State of Haryana vs. Frick India limited,*** *(1990) 76 STC 148 (P&H),* ***Global Business India Pvt. Limited vs. State of Haryana*** *(2013) 45 PHT 439 (P&H) and* ***State of Kerala*** *vs.* ***M/s Vijaya Stores,*** *(1978) 4 SCC 41* to urge that it was not within the domain of the first appellate authority to have remanded the matter on which the assessee was not aggrieved. The revenue had other remedies open in case the order was found

to be not in consonance with law.

6. On the other hand, learned counsel for the State besides supporting the impugned order submitted that the revisional authority for the assessment year 2007-08 had initiated revisional proceedings but had dropped them in the light of the order of the first appellate authority. Thus, a prayer was made for revival of the revisional proceedings.

7. The matter is no longer res integra. In ***State of Haryana*** *vs.* ***Frick India Limited,*** *(1990) 76 STC 148*, the question for consideration was whether the appellate authority was competent to go into the matters which were not raised in appeal and direct examination of the fresh issues by the assessing authority which the appellate authority considered, had not been properly examined at the time of consideration of the appeal, without having recourse to the provisions of Section 40 of the Haryana General Sales Tax Act, 1973 (in short, the HGST Act"). After considering the matter, it was held by this Court that under the HGST Act, the appellate authority i.e. the DETC(A) had not been vested with the powers to act on his own motion. Only when an appeal was filed under Section 39 of the Act, did the appellate authority adjudicate upon the specific issues raised in the grounds of appeal or upon those which were urged before it at the time of hearing. The respondent was also given an opportunity to be heard and to reply to the points raised by the appellant. However, the appellate authority while deciding an appeal filed by a party could not take up issues on merit which had not been raised by the appellant. The respondent in the appeal could not invite the appellate authority to take up on merits points or issues not raised,pleaded or urged by the appellant. Accordingly, the DETC(A) was not held to be competent to go into the matters not raised in the appeal and set aside the order of the assessing authority. The relevant observations read thus:-

> *"6. It is manifest that Section 39 ibid confers a right on a party aggrieved by any order passed under the Act or the rules made thereunder to file an appeal. When the order is made by the Assessing Authority, the appeal lies to the Deputy Excise and Taxation Commissioner ; when the order is made by the Deputy Excise and Taxation Commissioner, to the Commissioner and if the order is made by the Commissioner, to the Tribunal.*
>
> *7. It is also clear from the language of Section 39 and has indeed been conceded by the learned counsel for the parties that both the assessee and the department can file appeals against the orders by which they are aggrieved. On an appeal filed, the appellate authority has been invested with powers to pass such orders as it may deem to be just and proper including an order enhancing the amount of tax or penalty or interest or all. Section 39 has been drafted on the pattern of various sections in different statutes conferring powers of appeal. In substance, it conforms to Section 96 of the Code of Civil Procedure. Wide powers have been given to the appellate authority to examine the impugned orders and to judge and determine their legality and propriety. Any party aggrieved by any order passed by an authority exercising jurisdiction under the Act or the Rules, may file an appeal against that order raising its grievances and pleas challenging the legality and propriety of the order. Whatever pleas are raised by a party in its appeal, are examined by the appellate authority and a decision is rendered thereon affirming by varying, amending or rescinding the impugned orders or remanding the case for fresh decision. This jurisdiction, however, can be invoked only on appeal filed by a party. The Deputy Excise and Taxation Commissioner in contradistinction of the Commissioner has not been invested with powers to act on his own motion. Only when an appeal is filed, the appellate authority adjudicates upon the*

specific issues raised in the grounds of appeal or those which are urged before it, at the time of hearing. The respondent is also given an opportunity of hearing and replying to the points raised and urged by the appellant."

Further, the judgment in ***Frick India Limited's*** case (supra) was followed by this Court in ***Global Business India Pvt. Limited's*** case (supra), wherein it was recorded as under:-

"11. The issue in respect of the power of the Tribunal to enhance the tax liability came up for consideration before the Supreme Court in State of Kerala v. Vijaya Stores, (1978) 4 SCC 41. The Court held that Kumar Vimal the Tribunal cannot enhance the Tax lability against the dealer in an 2013.04.26 12:24 I attest to the accuracy and integrity of this document Chandigarh VATAP Nos.123 & 122 of 2012 -7- appeal filed by him. The court observed as under:

"5. Considerable emphasis was laid by counsel for the appellant upon sub-section (4) which indicates what things the Appellate Tribunal may do while disposing of an appeal and in particular it was pointed out that under sub-section (4)(a)(i) the Appellate Tribunal has been given power "to enhance the assessment" while disposing of an appeal against an order of assessment after giving the party a reasonable opportunity of being heard and it was urged that such power could be exercised even when the appeal against the Appellate Assistant Commissioner's assessment order had been preferred by the assessee and not by the Department. To place such a construction on sub-section (4) (a)(i) would amount to ignoring the scheme of Section 39. Subsection (1) provides for an appeal being preferred against an assessment order passed by the Appellate Assistant Commissioner under Section 34(3) either by the assessee or by the Department through an officer empowered by the Government in that behalf. Further, sub- section (2) provides for filing of cross-objections by a party, against whom an appeal has been preferred, notwithstanding that he has not himself appealed against the decision or any part thereof and such crossobjections are to be disposed of by Appellate Tribunal as if it were an appeal. Then comes sub- section (4) which enumerates the various powers conferred upon the Appellate Tribunal while disposing of such appeals (including cross-objections) and the power conferred upon the Appellate Tribunal under Section 4(a)(i) is "to confirm, reduce, enhance or annul the assessment"; the power to enhance the assessment must be appropriately read as relatable to an appeal or cross-objections filed by the Department. The normal rule that a party not appealing from a decision must be deemed to be satisfied with the decision, must be taken to have acquiesced therein and be bound by it, and, therefore, cannot seek relief against a rival party in an appeal preferred by the latter, has not been deviated from in sub-section (4) (a) (t) above. In other words, in the absence of an appeal or cross-objections by the Department against the Appellate Assistant Commissioner's order the Kumar Vimal Appellate Tribunal will have no jurisdiction or power to enhance 2013.04.26 12:24 I attest to the accuracy and integrity of this document Chandigarh VATAP Nos.123 & 122 of 2012 -8- the assessment. Further, to accept the construction placed by the counsel for the appellant on sub-section (4) (a) (i) would be really rendering sub-section (2) of Section 39 otiose, for if in an appeal preferred by the assessee against the Appellate Assistant Commissioner's order the tribunal would have the power to enhance the

assessment, a provision for cross-objections by the Department was really unnecessary. Having regard to the entire scheme of Section 39, therefore, it is clear that on a true and proper construction of sub-section (4)(a)(i) of Section 39 the Tribunal has no jurisdiction or power to enhance the assessment in the absence of an appeal or cross-objections by the Department".

A Division Bench of this Court in State of Haryana vs. Frick India Ltd., 1990 (76) STC 148 followed the said decision in relation to the power of the Tribunal under the Haryana General Sales Tax Act, 1973. Similar view has been taken by a single bench of this court in a judgment reported as Fixwell Pushin Cords Pvt. Ltd. case (supra).

We may notice that the provisions under consideration in Vijaya Stores case (supra) were some what different. The Kerala Act contemplated filing of appeal and cross objections. Therefore, the court held that scheme of the Statue does not contemplate enhancement of Tax, without availing the remedy of appeal or cross objections. Though, in the Statue under consideration, there is no provision of filing of cross objections but that fact will not materially change the position of law. Therefore, we hold that without appeal or the provisions of cross- objections, the Tribunal or the Appellate Authorities under the Act could not enhance the tax lability.

Consequently, the appeals are allowed and the order passed by the Tribunal and the first Appellate Authority are set aside. The matter is remitted back to the Joint Excise and Taxation Commissioner to pass fresh Kumar Vimal 2013.04.26 12:24 I attest to the accuracy and integrity of this document Chandigarh VATAP Nos.123 & 122 of 2012 -9- orders in accordance with the orders now passed by this court. However, the acceptance of these appeals will not preclude the Revenue to initiate such other proceedings as are permissible in law against the dealer in accordance with law."

8. Similarly in ***The State of Kerala vs. M/s Vijaya Stores***, (1978) 4 SCC 41, enhancement of assessment by the Tribunal in the absence of cross appeal or cross objections by the department was held to be impermissible. It was observed by the Apex Court as under:-

The question raised before us really turns upon the correct interpretation to be placed on s. 39(4) of the Act, but sub ss. (1), (2), (3) and (4) of s. 39 are material for our purposes which run thus:

"39. Appeal to the Appellate Tribunal. (1) Any officer empowered by the Government in this behalf or any other person objecting to an order passed by the Appellate Assistant Commissioner under sub section (3) of section 34 and any person objecting to an order passed by the Deputy Commissioner under subsection (1) of section 35, and any person objecting to an order passed by the inspecting Assistant Commissioner under clause (c) of sub-section (4) of section 28 may, within a period of sixty days from the date on which the order was served on him in the manner prescribed, appeal against such order to the Appellate Tribunal;

Provided that the Appellate 'Tribunal may admit an appeal presented after the expiration of the said period if it is satisfied that the appellant had sufficient cause t'or not presenting the appeal within the said period.

(2) The officer authorised under sub-section (1) or the person against whom an appeal has been preferred, as the case may be on receipt of

notice that an appeal against the order of the Appellate Assistant Commissioner has been preferred under sub-section (1) by the other party, may, notwithstanding that he has not appealed against such order or any part thereof, file, within thirty days of the receipt of the notice, a memo random of cross-objections, verified in the prescribed manner against any part of the appellate Assistant Commissioner, and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub- section (1) . [1961] 12 S.T.C. 677.

19-526 SCI/78542 (3) The appeal or the memorandum of cross-objections shall be in the prescribed form and shall be verified in the prescribed manner, and, in the case of an appeal preferred by any person other than an officer em powered by the Government under sub-section (1), it shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed.

(4) In disposing of an appeal, the Appellate Tribunal may, after giving the parties a reasonable opportunity of being head either in person or by a representative.

(a) in the case of an order of assessment or penalty.

(i) confirm, reduce, enhance or annul the assessment or penalty or both;

(ii) set aside the assessment and direct the asses sing authority to make a fresh assessment after such further enquiry as may be directed; or

(iii) pass such other orders as it may think fit; or

(b) in the case of any other order, confirm, cancel or vary such order."

Considerable emphasis was laid by counsel for 'the appellant upon sub-s.(4) which indicates what things the Appellate Tribunal may do while disposing of an appeal and in particular it was pointed out that under 'sub-s.(4)(a)(i) the Appellate Tribunal has been given power 'to enhance the assessment" while disposing of an appeal against an order of assessment after giving the party a reasonable opportunity of being heard and it was urged that such power could be exercised even when the appeal against the Appellate Assistant Commissioner's assessment order had been preferred by the assessee and not by the Department. To place such a construction on sub-s. (4)(a)(i) would amount to ignoring the scheme of s. 39. Sub-s. (1) provides for an appeal being preferred against an assessment order passed by the Appellate Assistant Commissioner under s. 34(3) either by the assessee or by the Department through an officer empowered by the Government in that behalf. Further, sub-3. (2) provides for filling of cross-objections by a party, against whom an appeal has been preferred, notwithstanding that he has not himself appealed against the decision or any part thereof and such cross-objections are to be disposed of by Appellate Tribunal as if it were an appeal. Then comes sub-s. (4) which enumerates the various powers conferred upon the Appellate Tribunal while disposing of such appeals (including crossobjections) and the power conferred upon the Appellate Tribunal under s. 4(a) (i) is "to confirm, reduce, enhance or annul the assessment"; the power to enhance the assessment must be

appropriately read as relatable to an appeal or crossobjections filed by the Department. The normal rule that a party not appealing from a decision must be deemed to be satisfied with the decision, must be taken to have acquiesced therein and be bound by it. and, therefore, cannot seek relief against a rival party in an appeal preferred by the latter, has not been deviated from in sub-s.(4)(a)(i) above. In other words, in the absence of an appeal or cross-objections by the Department against the Appellate Assistant Commissioner's order the Appellate Tribunal will have no jurisdiction or power to enhance the assessment. Further, to accept the construction placed by the counsel for the appellant on sub-s. (4)(a)(i) would be really rendering sub-s. (2) of s. 39 otiose, for if in an appeal preferred by the assessee against the Appellate Assistant Commissioner's order the tribunal would have the power to enhance the assessment, a provision for cross- objections by the Department was really unnecessary. Having regard to the entire scheme of s. 39, therefore, it is clear that on a true and proper construction of sub-s. (4) (a) (i) of s. 39 the Tribunal has no jurisdiction or power to enhance the assessment in the absence of an appeal or crossobjections by the Department."

9. In view of the above, the first appellate authority was not justified in remanding the matter for fresh assessment for considering those issues which were not subject matter of appeal before it. Consequently, the impugned order dated 30.3.2015 passed by the Tribunal as well as order dated 17.7.2014 passed by the DETC(A) for remanding the matter for fresh assessment are set aside and the matter is remanded to the first appellate authority to pass fresh order in accordance with law after hearing learned counsel for the parties. Needless to observe, that it shall be open for the State to take recourse to any remedy in accordance with law in which revisional proceedings were initiated and were later on dropped on the basis of the order of the first appellate authority and/or the Tribunal. The appeals stand disposed of.

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PUNJAB & HARYANA HIGH COURT

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VATAP NO. 78 OF 2014

CENTRAL PHOENIX CLUB
Vs
STATE OF HARYANA

A.K. MITTAL AND RAMENDRA JAIN, JJ.

12th October, 2015

HF ▶ Appellant Club

Matter is remanded to assessing authority to find out if the appellant club has supplied items to its non-members before tax is levied on such items.

CLUB – SALE – LEVY OF SALE TAX ON FOOD AND DRINKS – DEMAND RAISED AGAINST ASSESSEE CLUB ON ACCOUNT OF SUPPLY OF FOOD AND DRINKS TO NON MEMBERS – APPEALS DISMISSED BY AUTHORITIES – APPEAL BEFORE HIGH COURT CONTENDING ONUS ON DEPARTMENT TO PROVE FACILITIES BEING GIVEN TO NONMEMBERS AS ALLEGED –MATTER REMANDED TO ASSESSING AUTHORITY TO RE-ADJUDICATE THE ISSUE AFTER FINDING WHETHER ITEMS SUPPLIED TO ITS MEMBERS OR NONMEMBERS AND THEIR EXIGIBILITY TO TAX – APPEAL DISPOSED OF- *S.2(1)(ze)*

Facts

A demand was raised on assessment against the club for having supplied foods and drinks to nonmembers which were exigible to tax. On dismissal of appeals by authorities below, an appeal has been filed before High Court. It is contended that the onus was on department to produce instances of supply of food etc. to non members so as to bring appellant club within the ambit of the Act which it had failed to do so.

Held

The matter is remanded to the assessing authority to re-adjudicate the issue by recording a finding relating to items provided to the members and non members separately and their exigibility to tax. The assessing officer shall pass order as per law. The appeals are disposed of.

Cases referred:

- *Cosmopolitan Club v. State of Tamil Nadu and others (2009) 19 VST 456 (SC)*
- *Cosmopolitan Club v. State of Tamil Nadu and others (1999) 115 STC 183 (TNTST)*
- *Madras High Court in (2002) 127 STC 475 (Mad)*

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

Ms. Mamta Singla Tawar, DAG, Haryana with Mr. Saurabh Mago, AAG, Haryana.

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AJAY KUMAR MITTAL. J.

1. This order shall dispose of three appeals bearing VATAP Nos. 78 to 80 of 2014 as according to the learned counsel for the parties, the factual and legal issues involved therein are identical. For brevity, the facts are being extracted from VATAP No. 78 of 2014.

2. VATAP No. 78 of 2014 has been filed by the assessee under Section 36 of the Haryana Value Added Tax Act, 2003 (in short "the Act") against the order dated 11.12.2012 (Annexure A-3) passed by the Haryana Tax Tribunal, Haryana, Chandigarh (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

(i) Whether in the facts and circumstances of the case, the assessing authority had jurisdiction to frame assessment in absence of any transfer order communicated to the appellant as per Rule 7(5) of HVAT Rules?

(ii) Whether in the facts and circumstances of the case, the appellant being a member's club fall within the ambit of definition of dealer under the HVAT Act?

(iii) Whether in the facts and circumstances of the case, the appellant club is liable to be registered under HVAT Act and it supply of food, drinks etc. to its members can be taxed?

(iv) Whether in the facts and circumstances of the case, the Tribunal in not following the decisions of various Courts including the Apex Court has not acted in contravention of judicial indiscipline?

(v) Whether in the facts and circumstances of the case, the order of assessment which is based upon a wrong fact and over ruled judgment the same can be upheld?

(vi) Whether in the facts and circumstances of the case, the finding of the Tribunal holding that there is no principle of mutuality in case of the appellant is not perverse?

3. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The revenue initiated assessment proceedings against the dealer for the years 2003-04, 200405 and 2005-06 to which the appellant filed reply. The assessing authority vide assessment order dated 23.8.2006 (Annexure A-1) levied tax and created demand of Rs.6,50,528/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner (Appeals) who vide order dated 3.1.2008 (Annexure A-2) dismissed the appeal. Still dissatisfied, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 11.12.2012 (Annexure A-3) upheld the findings of the Commissioner (Appeals) and dismissed the appeal. Hence, the present appeal.

4. We have heard learned counsel for the parties and perused the record.

5. Learned counsel for the appellant-dealer submitted that the authorities below were in error in deciding the issue against the appellant. It was urged that the Rules and Memorandum of Association of the club shows that it is only the members and their dependents who are permitted to visit the club and use the facilities. It was argued that the onus was upon the Department to produce instances of supply of food etc. to non-members so as to bring the appellant-club within the ambit of the Act which it had failed to do so. It was not disputed that tax could be levied if facility was provided to the non-members or their dependents, guests etc. On the aforesaid premises, the orders of the authorities below were assailed. Learned counsel

for the appellant contended that the assessing authority while passing the assessment order had relied upon the decision of Tamil Nadu Taxation Tribunal in ***Cosmopolitan Club v. State of Tamil Nadu and others (1999) 115 STC 183 (TNTST)*** which was upheld by the ***Madras High Court in (2002) 127 STC 475 (Mad)***. However, the Apex Court in ***Cosmopolitan Club v. State of Tamil Nadu and others (2009) 19 VST 456 (SC)*** had set aside the said decision of Madras High Court while considering the identical issue as to whether supplies of food and drinks to its members involved any element of sale. Further, under similar circumstances the Supreme Court had remanded the case for reconsidering finding of fact regarding the relationship between the club and its members in the matter of supplying food and drinks viz., whether the club was acting as an agent of the members or whether the property in the food and drinks passed from the club to its members. Learned counsel for the appellant argued that in such circumstances, the matter requires to be remanded to the Assessing Officer to re-adjudicate the issue by recording a definite finding relating to the items provided to the members and non-members separately and thereafter, in case it is found that the entire facilities were provided to the members only no amount was exigible to tax and in case the Assessing Officer on the basis of the material records a finding that the appellant had been entertaining the non-member as well, it could levy tax only on that amount which was provided to the non-members.

6. Learned State counsel could not refute the aforesaid submissions.

7. After hearing learned counsel for the parties and in view of the above, we find force in the submission of learned counsel for the appellant. Accordingly, we set aside the orders passed by the authorities below and remand the matter to the Assessing Officer to re-adjudicate the matter to examine the issue and record a definite finding relating to the items provided to the members and non-members and their exigibility to tax. The Assessing Officer shall pass fresh order in accordance with law after affording an opportunity of hearing to the appellant-dealer or its representative. The substantial questions of law stand answered accordingly.

8. As a result, the appeals are disposed of.

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PUNJAB & HARYANA HIGH COURT

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VATAP NO. 233 OF 2014

KIRPAL EXPORTS
Vs
DEPUTY EXCISE AND TAXATION COMMISSIONER

A.K. MITTAL AND RAMENDRA JAIN, JJ.

13th October, 2015

HF ▶ Assessee

Matter is remanded to Tribunal to decide afresh as impugned order was passed exparte.

EXPARTE ORDER – RECTIFICATION APPLICATION – REJECTION OF – APPEAL FILED BEFORE TRIBUNAL AGAINST THE ASSESSMENT ORDER- APPEAL DISMISSED AND ORDER PASSED EXPARTE – RECTIFICATION APPLICATION FILED CONSEQUENTLY – REJECTION OF - APPEAL BEFORE HIGH COURT – PERUSAL OF ORDER SHOWS REPETITION OF ORDER PASSED BY AUTHORITIES BELOW WITHOUT GIVING ANY FINDINGS - IN INTEREST OF JUSTICE MATTER REMANDED TO TRIBUNAL TO DECIDE AFRESH AS IMPUGNED ORDER WAS PASSED EXPARTE – RECTIFICATION OUGHT TO HAVE BEEN ALLOWED TO PROVIDE OPPORTUNITY TO PUT FORWARD APPELLANT'S CASE – MATTER REMANDED TO TRIBUNAL - APPEAL ACCEPTED – *S. 66 OF PVAT ACT, 2005*

Facts

The appellant had filed its annual returns for the year 2005-06. Certain discrepancies were noticed and an additional demand was raised. Aggrieved by the order an appeal was filed before DETC which was dismissed. On further appeal, Tribunal too dismissed it. A rectification was filed before Tribunal of the said order which was rejected. An appeal is filed before High Court contending that the Tribunal has acted arbitrarily and that the authorities below have failed to comply with S.84 thereby creating additional demand.

Held

In the interest of justice, both the cases are remanded back to Tribunal to decide afresh as the order dismissing the appeal was passed exparte depriving the appellant of its legitimate right to put forth his case.

The orders passed by Tribunal are simply a repetition of the orders passed by authorities below dismissing the appeal without giving any findings. When the applicant filed an application for rectification, it should have been given an opportunity to present his case. The orders passed by Tribunal are set aside. The appeal is accepted and matter is remanded back to Tribunal and the appellant is directed to appear before Tribunal on the specified date.

Present: Mr. Aman Bansal, Advocate for the appellant.

Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

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RAMENDRA JAIN, J.

1. Delay of 192 days in filing the appeal is condoned.

2. This order shall dispose of two appeals bearing VATAP Nos. 233 and 234 of 2014 as according to learned counsel for the parties, common questions of law and facts are involved therein. For brevity, the facts are being taken from VATAP No. 233 of 2014.

3. VATAP No. 233 of 2014 has been filed by the assessee under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the orders dated 27.2.2012 (Annexure A-3) and dated 24.8.2012 (Annexure A-4) passed by the Value Added Tax Tribunal, Punjab (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

a) Whether the impugned orders passed by the Id. below authorities without taking into account the material submissions and against the statutory provisions of law is legally sustainable in the eyes of law?

b) Whether the act on the part of the ld. below authorities to pass the impugned orders in lack of jurisdiction is legally sustainable in the eyes of law?

c) Whether the impugned orders are legally sustainable in the eyes of law?

4. The appellant is carrying on the business of readymade garments. The appellant filed its returns for the Financial Year 2005-06 and annual statement in Form VAT-20, declaring the data of its sale and purchase. While scrutinizing VAT-20 Form, the Excise and Taxation Officer made an additional demand of Rs.26,20,799/- with the observation that the appellant had sold the car for Rs. 6,24,342/- but did not include its value in the returns nor deposited the tax on the sale of fixed assets. Even export sales shown by the appellant were not genuine, because as per documents, the appellant had sold the goods on 25.11.2005 which were dispatched to foreign buyers by the exporters to whom the sale were made against 'H' Forms on 12.12.2005, whereas as per bill of lading, the goods were dispatched on 11.6.2006 i.e. in the next year. ICC data of the appellant also did not tally with the export sales mentioned in the 'H' Forms. The appellant also failed to explain and produce evidence including purchase vouchers in support of its ITC claim. The appellant had also tried to convert the taxable interstate sale of Rs.2,85,996/- as export sale. Accordingly, respondent No.2-assessing authority framed the assessment by creating an additional demand of Rs.26,20,799/- vide order dated 20.11.2009 (Annexure A-1). Aggrieved with the said order dated 20.11.2009, creating additional demand of Rs.26,20,799/-, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana, but remained unsuccessful and thus, preferred second appeal before the Tribunal, who too dismissed its appeal vide order dated 27.2.2012 (Annexure A3). Thereafter, the application of the appellant for rectification of the aforesaid order dated 27.2.2012 (Annexure A-3) dismissing its appeal, was also rejected vide order dated 24.8.2012 (Annexure A-4) by the Tribunal. Still dissatisfied, the appellant has preferred the present appeal along with an application for condonation of delay of 192 days in filing the present appeal.

5. We have heard learned counsel for the parties and have perused the case file.

6. Learned counsel for the appellant submitted that the orders of the Tribunal dated 27.2.2012 (Annexure A-3) and dated 24.8.2012 (Annexure A-4) rejecting its appeal and application for rectification of the aforesaid order, are not legally sustainable in the eyes of

law, being based on surmises and conjectures. It was further submitted that the Tribunal has acted in an arbitrary manner in upholding the orders of the the Deputy Excise and Taxation Commissioner (Appeals), Ludhiana as well as the Excise and Taxation Officer-cum-Designated Officer, Ludhiana. The authorities below had failed to take into account that Form 'I' was required for export of goods and not 'H' Form. Form 'H' were produced by the appellant duly received against export of goods along with the bill of lading which was a sufficient proof that the goods have been exported. The respondents also failed to comply with the provisions of Section 84 of the Act with regard to export before creating huge demand against the appellant and thus, impugned orders are liable to be set aside.

7. On the other hand, learned State counsel supported the orders passed by the authorities below and prayed for dismissal of the appeals.

8. After giving our thoughtful consideration to the above submissions of learned counsel for the parties, we feel that the interest of justice would be met, if both the cases are remanded back to the Tribunal to decide the same afresh after affording an opportunity to the appellant to raise all such possible legal pleas, because the impugned order dated 27.2.2012 (Annexure A-3) dismissing the appeal of the appellant, was passed ex parte, depriving the appellant of its legitimate right to put forward its case.

9. Further, the appellant was even not permitted to explain the time gap in between i.e. difference of dates shown in the dispatched dates. Perusal of the order, Annexure A-3, shows that it has made simply re-petition of the orders passed by the appellate authority as well as of the Excise and Taxation Officer-cum-Designated officer, dismissing the same without giving its own findings. When the appellant filed an application for rectification of the aforesaid order dated 27.2.2012 dismissing its appeal, in the interest of justice, the Tribunal should have afforded an opportunity to the appellant to put forward its case.

10. In view of the above, the appeals are allowed and the orders, Annexures A-3 and A-4, respectively, passed by the Tribunal are set aside. The matter is remanded back to the Tribunal with a direction to pass a fresh and speaking order in accordance with law after affording an opportunity of hearing to the appellant. The appellant shall appear before the Tribunal on 15.12.2015.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 93 OF 2014

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STATE OF HARYANA
Vs
OM PESTICIDES

A.K. MITTAL AND RAMENDRA JAIN, JJ.

7th September, 2015

HF ▶ Respondent – Company

Pesticides/ Weedicides manufactured by assessee being concentrates are to be used for plants after diluting them and are thus covered under Entry 38B of Schedule B and exempted.

ENTRIES IN SCHEDULE – INSECTICIDES/ PESTICIDES – COMPANY MANUFACTURING CONCENTRATED FORM OF CERTAIN CHEMICALS – CLARIFICATION SOUGHT PLEADING SUCH CHEMICALS ARE PESTICIDES AND WEEDICIDES TO BE COVERED UNDER ENTRY 38B OF THE SCHEDULE – CONTENTION RAISED BY STATE THAT SUCH CHEMICAL HAS TO BE IN A MARKETABLE STATE TO BE DIRECTLY USED FOR PLANTS TO QUALIFY FOR EXEMPTION – ANSWER GIVEN AGAINST APPLICANT - APPEAL BEFORE TRIBUNAL – HELD: GOODS IN QUESTION ARE TECHNICAL GRADES IN CONCENTRATED FORM AND AFTER DILUTION BY ADDING INERTS ARE USED FOR PLANTS AND ARE COVERED UNDER THE SAID ENTRY – APPEAL BY STATE CONTENDING THAT ASSESSEE IS A MANUFACTURER AND NOT DIRECTLY SELLING FINAL PRODUCTS AND THUS GOODS IN QUESTION BEING INTERMEDIATE GOODS DO NOT QUALIFY FOR EXEMPTION - HELD: OBSERVATION OF TRIBUNAL IS CORRECT – SAID GOODS FALL UNDER ENTRY 38B OF SCHEDULE B OF HVAT ACT – APPEAL DISMISSED ON MERITS - ENTRY 38B OF SCHEDULE B OF HVAT ACT.

LIMITATION – APPEAL - CONDONATION OF DELAY – DELAY IN FILING OF APPEAL BY STATE – FOLLOWING JUDGEMENT PASSED BY APEX COURT, HELD; MERELY BECAUSE DELAY IS BY STATE, DELAY NOT TO BE CONDONED IN ABSENCE OF SUFFICIENT CAUSE – APPEAL DISMISSED ON GROUNDS OF LIMITATION- *S.5 OF LIMITATION ACT.*

Facts

The respondent company sought a clarification as to whether goods namely methyl parathion, cartap hydrochloride, acephate acetamiprid etc. which are insecticides / pesticides are covered under entry 38B of the schedule B of the Act or not. The State pleaded that to qualify for exemption from payment of VAT under entry 38B the goods must be in a marketable state directly to be used for plants only and not otherwise as such like intermediate goods which are used in formulation of such final products. Aggrieved by the order, an appeal was filed by the company before Tribunal whereby it was held that the said goods were covered under the entry in question as they are technical grades in concentrated form and after dilution by adding inerts and emulsifying agents etc. are used for plant production and are thus exempt from tax

as they are covered under entry 38B. Aggrieved by this, an appeal is filed by the appellant state before the Hon'ble High Court.

Held

It was urged before the court that the activity of the assessee is manufacture and not sale of the pesticides, weedicides and insecticides. They are not final products and in such a situation were not covered under entry 38B which says 'Pesticides, Weedicides and insecticides used for plants only'.

Relying on various judgements, it is held that the Tribunal was right in concluding that the product of the respondent assessee was covered under entry 38B of the Schedule B of the Act.

Also relying on another case, it is held that delay cannot be condoned in absence of sufficient cause. Therefore, the appeal is dismissed on the grounds of limitation as well as merits.

Cases referred:

- *Kissan Chemicals vs. Union of India and others, 1996(64) DLT 73 (Del)*
- *B.H.Vasudeva Pai and Sons vs. State of Karnataka, (2006) 146 STC 232 (Karnataka)*
- *Union of India (UOI) and others vs. Pesticides Manufacturing and Formulators Association of India, AIR 2003 SC 1*

Cases relied upon:

- *Bombay Chemical Private Limited vs. The Collector of Central Excise, Bombay I, Bombay, AIR 1995 SC 1469 (SC)*
- *Union of India and another vs. southern Distributors, (1996) 102 STC 509 (Mad)*
- *National Organic Chemical Ind. Limited vs. Commissioner of Sales Tax, (1992) 87 STC 471 (Del)*
- *Amalendu Kumar Bera and others vs.The State of West Bengal, 2013(2) RCR (Civil) 534*

Present: Ms. Mamta Singla Talwar, DAG, Haryana with Mr.Saurabh Mago, AAG, Haryana.
Mr. A.K.Sachdeva, Advocate for respondent No.1 in VATAP No.93 of 2014.
Mr. Arun Nehra, Advocate for respondents in VATAP Nos. 15 and 10 of2015.

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AJAY KUMAR MITTAL, J.

1. This order shall dispose of a bunch of 11 appeals viz. VAT Nos.93 of 2014, 10, 15, 27, 28, 29, 30, 31, 37, 38, 39 of 2015 as learned counsel for the parties are agreed that the issue involved in all the appeals is identical. However, the facts are being extracted from VAT Appeal No.93 of 2014.

2. VAT Appeal No.93 of 2014 has been preferred by the appellant-State under Section 36(1) of the Haryana Value Added Tax Act, 2003 (in short, "the HVAT Act") against the order dated 23/17.1.2013, Annexure A.2 passed in STA No.151 of 2012-13, claiming following substantial questions of law:-

"i) Whether the chemicals namely Methyl Parathion, Cartap Hydrochloride, Acephate, Acetamiprid, imidaclorid, pretilachlor, paraquat, dichloride, Carbendazim, sold by the appellant firm being intermediate products and not the final product marketable for use on plants only fall under entry No.38B of Schedule B of HVAT Act 2003?

ii) Whether the Hon"ble Haryana Tax Tribunal was justified in holding that the above mentioned intermediate chemicals (which cannot be used in as such form on the plants) are covered by Entry No.38B of HVAT Act 2003?

iii) Whether the process is involved in obtaining the final product to be used for plants only from the above mentioned chemical in manufacturing

process and if yes whether the raw material and the final product are alike so as to be covered under Entry No.38B of Schedule B of HVAT Act, 2003?"

3. A few facts relevant for the decision of the controversy involved as narrated in VATAP No.93 of 2014 may be noticed. Application under Section 56(3) of the HVAT Act dated 31.1.2012 was filed by the respondent assessee to seek clarification on the issue whether the items/goods, namely, methyl parathion, cartap hydrochloride, acephate, acetamiprid, imidacloprid, pretilachlor, paraquat dichloride and carbendazim which are insecticides/pesticides are covered under Entry 38B of Schedule B appended to the HVAT Act or not. The applicant was afforded opportunity of hearing to plead its case. It was submitted that the goods were industrial raw material used in manufacturing of pesticides and insecticides and the final products will be covered in Entry 38B of Schedule B of the HVAT Act. The assessee also produced a copy of the Schedule appended to the Insecticides Act, 1968 (in short, "the 1968 Act") in which all the goods for which clarification was sought were covered under the said Act. According to the appellant State, pesticides, weedicides and insecticides are not exempt generally from payment of VAT under the HVAT Act and these are exempt when used for plants only. This means that a pesticide or insecticide or weedicide to qualify for exemption from payment of VAT under entry 38B must be in a marketable state directly to be used for plants only and not otherwise like intermediate goods which are used in formulation of such final products. Though the said items may be covered under the 1968 Act, yet the same cannot be said to be covered under Entry 38B of Schedule B of the Act as the said entry is conditional one i.e. "used for plants only". Accordingly, a detailed order on clarification sought by the assessee was passed by the Principal Secretary, Government of Haryana, Excise and Taxation Department under Section 56(3) of the Act on 16.7.2012, Annexure A.1. Aggrieved by the order, the assessee filed appeal before the Tribunal. The Tribunal vide order dated 23.1.2013, Annexure A.2 allowed the appeal holding that the goods in question being insecticides, weedicides and pesticides are technical grades in concentrated form and after dilution by adding inerts and emulsifying agents etc. are used for plants production and are covered under Entry 38 B and are thus exempt from tax. Hence the instant appeals by the appellant-State.

4. We have heard learned counsel for the parties.

5. Learned counsel for the appellant-State submitted that the product being manufactured by the respondent was not the final product and in such a situation, it did not fall under Entry 38B of Schedule B of the HVAT Act. It was urged that each and every word of the entry has to be given meaning and in view thereof, the expression "used for plants only" had to be given appropriate meaning and since the respondent assessees were not selling pesticides, weedicides and insecticides but were manufacturing the said items therefore, they were not entitled to claim benefit under Entry 38B of Schedule B of the Act. It was urged that the activity of the assessee is manufacture and not sale of the pesticides, weedicides and insecticides.

6. Opposing the contentions of the learned counsel for the State, learned counsel for the respondent assessees submitted that the items of the assessees were covered under the HVAT Act and they had been duly registered under it. Reliance was placed on judgments in ***M/s Bombay Chemical Private Limited vs. The Collector of Central Excise, Bombay I, Bombay,*** AIR 1995 SC 1469 (SC), ***Union of India and another vs. southern Distributors,*** (1996) 102 STC 509 (Mad), ***Kissan Chemicals*** *vs.* ***Union of India and others,*** 1996(64) DLT 73 (Del), ***B.H.Vasudeva Pai and Sons vs. State of Karnataka,*** (2006) 146 STC 232 (Karnataka). ***Union of India (UOI) and others vs. Pesticides Manufacturing and Formulators Association of India,*** AIR 2003 SC 1, ***National Organic Chemical Ind. Limited***

vs. ***Commissioner of Sales Tax,*** (1992) 87 STC 471 *(Del)* and ***Amalendu Kumar Bera and others vs.The State of West Bengal,*** 2013(2) RCR (Civil) 534.

7. After hearing learned counsel for the parties, we do not find any merit in these appeals.

8. Entry 38B of Schedule B of the Act which relates to exemption from payment of VAT reads thus:-

"Pesticides, Weedicides, insecticides used for plants only"

9. As per language of the entry, two conditions have to be fulfilled in order to qualify for exemption. Firstly, the items must be pesticides or weedicides or insecticides and secondly, these should be meant for use for plants only. The Tribunal has considered the matter in detail and recorded that the products used by the assessee are pesticides, weedicides and insecticides. Further, they are technical grades in concentrated form and after dilution, these products remain insecticides/pesticides or weedicides and are used for plants after mixing inerts and other such agents to make them fit for use on the plants. It was further recorded by the Tribunal in its order dated 17.1.2013 as under:-

> *"It follows from the language of the entry that an item to qualify for exemption under this entry as to be pesticides or weedicides or insecticides and further it must be used for plants only. The entry can be divided into two parts (i) that the product has to be pesticides, weedicides or insecticides and (ii) the same is used for plants only. It has been held in the impugned order the pesticides, weedicides and insecticides are not generally exempted from the payment of tax and the same will be exempted only if used for plants. The impugned order nowhere states that the produces in question are not pesticides, weedicides or insecticides. It only says that these products are not final products in the marketable state and being intermediate goods, the same are not used for plants by the farmers in that form. Thus, by implications, it has been admitted that the goods in question are pesticides, weedicides and insecticides but are not useable for plants. Otherwise also, all these products have been got registered under the Insecticides Act, 1968 from the Registration Committee of Ministry of Agriculture Government India, wherein the name of the product has been mentioned as insecticides. Therefore, there is no denying the fact that the products in question are insecticides/pesticides. This also find support from the judgment of Hon'ble Supreme court of India in case of Bombay Chemical Pvt. Limited vs. Collector of Central Excise, Bombay reported as 99 STC 339. Thus, the first condition of the Entry 38B is duly met.*
>
> *11. The next question arises whether these products are used for plants only or not? It has been held in the impugned order that since the products in question are not final products in the marketable state, therefore, the same cannot be used for plants. It has been stated therein that these products are raw material or intermediate goods intended to be used for formulation of final products which are used for plants and hence second condition is not met and on this ground the goods in question were held to be not falling under Entry 38B of Schedule B of the Act.*
>
> *12. A perusal of the documents produced by the appellants would however reveal that the products in question are technical grade in concentrated form imported in or manufactured in the State of Haryana and are further diluted by the formulators by adding inerts or some emulsifying agents for the end use by the farmers. It is also revealed that by process of dilution these items do not*

cease to be insecticides/pesticides or weedicides as the dilution process does not amount to any manufacture in view of the ratio of the judgments cited by the appellants during the hearing of the case, as also mentioned in the grounds of appeal. There is no rebuttal of this fact as well as from the respondent side. Therefore, after dilution also these products remain insecticides/pesticides or weedicides and are used for plants after mixing inerts and other such agents to make them fit for use on the plants as per the recommendations of the experts.

13. The appellants have produced alongwith appeals, the Registration certificates from the relevant authority, a perusal of which reveals that each and every product in question is used for the control of various diseases in various crops. The learned counsel for the appellant has amply demonstrated the use of the goods in question for various crops by the help of Annexures A.1 to A.8 placed on the file. Likewise, the applications made for the registration of the products under the Insecticides Act from B1 to B7 placed on the file also reveals that the products in question are used for plants. Thus there is ample documentary evidence to prove that the products in question are used for plants only. There is no rebuttal of these facts from the respondent side.

14. A similar question arose before the Hon'ble Madras High Court in the case of Union of India and another vs. Southern Distributors (supra) with regard to the BHC (Technical) Pesticide whether it is directly used on crops or not it was contended by the department that BHC (Technical) is sold by the assessee as a raw material for making the pesticide and the BHC (Technical) itself cannot be used as the pesticide for crops to claim exemption under notification. This argument was not accepted by the Hon'ble court. Likewise, in the case of National Organic Chemical Limited vs. Commissioner of Sales Tax (supra), the Hon'ble High Court of Delhi has held that as clear from the publication of Punjab and Haryana Agricultural Universities that Aldrex 30EC was used to control pests by mixing with seeds or with irrigated water and therefore it fell under Entry 27 of the 3rd Schedule to Delhi Sales Tax Act, 1975 as the pesticides for plant protection. The judgment of the Hon'ble Supreme Court in the case of Commissioner of Trade Tax UP vs. M/s Kartos international etc. (supra) as relied upon by the respondent in the impugned order is distinguishable on facts as there the items are not used for the specified purpose for claiming exemption. In the instant case it is amply proved that the items are used for the purpose specified in the entry.

15. In view of the above, we find that the goods in question are insecticides/pesticides and weedicides in concentrated form known as technical grade and after dilution by adding inerts and emulsifying agents etc. are used for plant protection for control/elimination of various diseases in the different crops as per recommendations. We hold accordingly. Resultantly, the appeal succeeds and the impugned order stands set aside."

10. Now we proceed to examine the various judicial pronouncements related with the subject. The Madras High Court delving into identical situation in ***Southern Distributor's*** case (supra) held as under:-

"2.2. We have considered the arguments of Mr. K. S. Ahmed, Senior Government Pleader, Pondicherry, for the Revenue and Mr. C. Venkataraman, learned counsel for the assessee. The notification relied upon by the assessee-respondent is to the following effect :

"In exercise of the powers conferred by sub-section (1) of section 19 of

the Pondicherry General Sales Tax Act, 1967 (Act No. 6 of 1967), the Lieutenant Governor, Pondicherry, being satisfied that it is necessary so to do in the public interest, is pleased to exempt with immediate effect, the tax payable under the said Act on the sales of pesticides meant for agricultural use in the whole of the Union Territory of Pondicherry."

It is not in dispute that so far as the sales are made locally, the sales of pesticide meant for agricultural use in the whole of the Union Territory of Pondicherry are exempt. The notification exempts sales of pesticides meant for agricultural use in the whole of the Union Territory of Pondicherry. It is not the case of the Revenue that the commodity in question will not answer the description of "pesticide", but the contention is that for the agricultural use, the rigour or power of the product should be reduced by mixing it with other material. So long as notification itself does not prescribe the pesticide of any percentage or power it is to be exempt. There is no scope for reading into the notification in question of any such limitation, as contended by the learned counsel for the Revenue. The Tribunal has chosen to place reliance on the certificates of the competent authorities concerned and other materials and has come to the conclusion that the product sold by the petitioner satisfied the requirements of the term "pesticide" and comes under the notification issued under section 19 of the Pondicherry General Sales Tax Act, 1967. We are in agreement with the finding of the Tribunal in this regard and we do not see any reason to differ from the finding of the Tribunal, which the Tribunal has arrived at, after considering various and other materials and has given a finding on fact. So, the question is whether the respondent-assessee is entitled to the exemption so far the assessment is made under the local Act. In view of the fact that we have accepted the view of the Tribunal that the goods sold by the assessee B.H.C. (Technical) is a pesticide, we do not see any reason to set aside the order of the Tribunal in so far as the exemption granted by the Tribunal is concerned. So, the Tax Case No. 978 of 1983 shall stand dismissed."

11. Further in **Bombay Chemical Pvt. Limited's** case (supra), it was observed by the Apex Court as under:-

"3.The appellant claimed that the disinfectant fluids manufactured by it were entitled to exemption after addition of item No. 18 in 1978. The Assistant Collector did not find any merit in the claim as insecticides, pesticides, weedicides and fungicides are necessarily required to possess the property and capability of killing insects, pests, fungi and weeds. It was held that the disinfectant fluids produced by the appellant did not have the property of killing any insect or pest, therefore, the goods produced by the appellant could not be held to be covered in the exemption notification. The appellate authority did not agree with this reasoning as in common parlance the products of the appellant were nothing but fungicides. In further appeal by the Department the two members out of the three who constituted the Bench did not agree with the reasoning of the Collector and reversed the order passed by him. It is the correctness of this order which is assailed in this appeal.

4. The Tribunal found that there was no dispute that the disinfectants were exciseable goods and that they were classifiable under Tariff Item 68. It was further found that these were being referred to and marketed as disinfectants

and that the preparations in question were capable of killing various bacteria and fungi, but it refused to extend the benefit of the exemption notification as the notification being confined to specified categories, the appellant was not entitled to claim exemption by extension of the principle that since the goods produced by the appellant satisfied the broad test of killing insecticides it should be held to be pesticides or fungicides. According to the Tribunal, the exemption notification being meant to cove particular formulation with well-define uses and especially for killing insects, the cannot be equated or interpreted to include disinfectants which are preparations for general disinfection purposes and which are used in the bathrooms, gutters, floor cleaning, etc. The Tribunal considered various text books and literature produced by the appellant and the Department and observed that various authors have explained the terms used in the notification and the 'disinfectant' in different senses, some giving wider meaning to it and others narrower, therefore, it was not possible to draw any conclusion as to exact demarcation between various terms. The Tribunal held that it would be unsafe to classify any product as covered in the notification merely because it has the property to kill without reference to its normal use. It then found that some of the disinfectants produced by the appellant are referred to as 'deodorant fluid'. Others contain perfumery materials, i.e., Bioflor Lavender Type and Bioflor Jasmine Type. The Tribunal held that the substances used for killing insects, pests, etc. are by their nature noxious and one is used to their having an unpleasant or irritating smell. On the other hand, the disinfectants are used either to neutralise existing unpleasant smell or even to add a pleasant smell. Consequently, even though the disinfectant fluids produced by the appellant from phenolic compounds (tar acids) could destroy bacteria and fungi, but this being a part of function as disinfectant fluids, it cannot be classified as fungicide or pesticide.

5. 'Disinfectant' is defined in Webster Comprehensive Dictionary 'as a substance used to disinfect or to destroy the germs of infectious and contagious diseases'. In the Concise Oxford Dictionary of Current English, 'disinfectant' is defined as 'a commercially produced chemical liquid that destroys germs', In Encyclopedia Britannica, Volume 4, it is explained to mean, 'any substance, such as creosote or alcohol, applied to inanimate objects to kill microorganisms. Disinfectants and antiseptics are alike in that both are germicidal, but antiseptics are applied primarily to living tissue. The ideal disinfectant would rapidly destroy bacteria, fungi, viruses, and protozoans, would not be corrosive to surgical instruments, and would not destroy or discolour materials on which it is used'. It thus cannot be disputed that a disinfectant is also a killing agent. Even the Tribunal found that the goods produced by the appellant which contained high boiling tar acid kill the bacteria in the gutters and the bathrooms. In the Report of the Deputy Chief Chemist it, was mentioned that all above products numbering 14 were formulations containing high boiling tar acid as the principal active ingredient. It then noticed definition of pesticide and disinfectant and observed that, 'it appears from the above definition that disinfectants are used for killing or inactivating micro- organisms, in some literature for oils (containing high boiling tar acid) are mentioned in pesticide manual', But he opined that it was not clear whether the formulations containing tar acids, as in the case of the goods produced by the appellant which were used as disinfectants, will be covered broadly by the term 'pesticides'.

6.'Pesticide' has been defined in Butterworths Medical Dictionary, Second Edition, as 'a comprehensive word to include substances that will kill any form of pest, e.g., insects, rodents and bacteria'. The term 'pesticide' includes a large variety of compounds of diverse chemical nature and biological activity grouped together usually on the basis of what pests they are used to destroy or eliminate, Under the US Federal Environment Pesticide Control Act, the term 'Pesticide' has, been defined to include '(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, roderit, nematode, fungus, weed, other forms of terrestrial or aquatic plants or other forms of animal life e.g., viruses, bacteria, or other microorganisms, which the administrator declares to be a pest and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant' [Pesticides in the Indian Environment, by P.K. Gupta p.2].

7.'Fungicide' inhibits growth or destroys fungi pathogenic to man or other animals or inanimate surfaces. The appellant had imported tar acid to manufacture insecticide pesticide and fungicide. The Director General had permitted import for this purpose. In the letter written by the appellant claiming exemption, it was stated that disinfectant fluids manufactured by it were capable of being used for the purpose of destroying fungi of medical importance.

8. A disinfectant which, therefore, is used for killing may broadly be covered in the word 'pesticide'. Disinfectants, may be of two types; one to disinfect and other to destroy the germs. The former, i.e., those products which are used as disinfectant for instance lavender etc. may not be covered in the expression 'pesticide'. But those products which are used for killing insects by use of substances such as high boiling tar acid have the same characteristic as 'pesticide'.

9.Item No. 18 which was added in 1978 grants exemption to the categories of goods which can be classified as insecticides, pesticides, weedicides or fungicides. They have to be understood in broad sense. The reasoning of the Tribunal that if an expression is capable of a broader and a narrower meaning then it is the latter which could be preferred does not appear to be correct. Where entries are descriptive of category of goods they have certain characteristics. Therefore, when a question arises whether a particular good is covered in any category or not, it has to be examined if it satisfies the characteristic which go to make it a good of that category. And whether in trade circle it is understood as such and if it is a good of technical nature then whether technically it falls in the one or the other category. Once it is found that a particular good satisfies the test then issue which arises for consideration is whether it should be construed broadly or narrowly. One of the settled principles of construction of an exemption notification is that it should be construed strictly, but once a good is found to satisfy the test by which it falls in the exemption notification then it cannot be excluded from it by resorting to applying or construing such notification narrowly. Item 18 is an exemption notification."

12. In ***National Organic Chemical India Limited's*** case (supra), the Delhi High Court while dealing with identical situation observed that different types of pesticides are used in different ways. Merely because a chemical may not be recommended for spraying on crops, it

cannot be said that it cannot be used for plant protection as it could be added to seeds or to the soil. In the said case, Chemical Aldrex 30 EC was held to be the pesticide used for plant protection and therefore the same was covered by Entry 27 of the Third Schedule to the Delhi Sales Tax Act, 1975.

13. In view of the above, the Tribunal was right in concluding that the product of the respondent assessees was covered under Entry 38B of Schedule B of the HVAT Act. The substantial questions of law are answered against the State.

14. Further, we find that there is delay in filing the appeals ranging from 442 to 756 days. No satisfactory explanation has been given for the same. With regard to delay in filing the appeal, in ***Amalendu Kumar Bern's*** case (supra), the Apex Court held that merely because the respondent is the State, delay in filing the appeal or revision could not be and shall not be mechanically considered and in the absence of sufficient cause delay shall not be condoned. It was observed thus:-

> *"10 .....True it is, that courts should always take liberal approach in the matter of condonation of delay, particularly when the appellant is the State but in a case where there is serious laches and negligence on the part of the State in challenging the decree passed in the suit and affirmed in appeal, the State cannot be allowed to wait to file objection under Section 47 till the decree holder puts the decree in execution..."*

Accordingly, the appeals are dismissed on merits as well as on the ground of limitation.

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PUNJAB & HARYANA HIGH COURT

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CWP NO. 24253 OF 2015

J.K. ASSOCIATES
Vs
EXCISE AND TAXATION COMMISSIONER

A.K. MITTAL AND RAMENDRA JAIN, JJ.

19th November, 2015

HF ▶ Petitioner - assessee

The department is directed to consider the application for refund filed by the petitioner-assessee.

REFUND – INACTION ON PART OF DEPARTMENT – REFUND CLAIMED WITH RESPECT TO TAX CREDIT AVAILABLE ON ACCOUNT OF PURCHASES –APPLICATION FILED – REFUND NOT GIVEN ON THE DATE SPECIFIED AS COMMITTED BY DEPARTMENT– REMINDER GIVEN TO DEPARTMENT - NO REFUND GRANTED PURSUANT TO IT- WRIT FILED – RESPONDENT DIRECTED TO CONSIDER APPLICATION ALREADY FILED WITHIN ONE MONTH AND IF REFUND FOUND VALID, TO GRANT IT BY ANOTHER ONE MONTH – *S.39, RULE 52 OF PVAT ACT.*

Facts

The petitioner had filed its four quarterly returns for the year 2014-15. The petitioner claimed its provisional refund for all the four quarters vide an application on the basis deduction of tax at source and input tax, tax credit available to it on basis of purchase made. The respondents did not issue the refund as per Rule 52 and assured that it would be paid by last week of August 2015. However, another application was filed in October 2015 reminding them for refund but no refund was given. A writ is filed in this regard.

Held

The respondent is directed to consider the application and pass a speaking order within one month from the date of receipt of order. If amount is found refundable, the same shall be released within next one month as per law.

Cases followed:

Present: Mr. Manish Kumar Singla, Advocate for the petitioner.

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AJAY KUMAR MITTAL, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents to refund for all the four quarters of 2014-15 to it, as claimed vide applications dated 24.8.2015 (Annexure P-5) and dated 19.10.2015 (Annexure P-9) along with all

consequential benefits. As per the averments made in the writ petition, the petitioner is a partnership firm carrying on the business of construction etc. mainly of roads in the State of Punjab. It is a registered dealer under the Punjab Value Added Tax Act, 2005 (in short "the Act") having TIN No. 03591000720. The petitioner has filed all its statutory quarterly returns and also the annual return under the Act. Since the commencement of the Act, due to deduction of tax at source and input tax, credit tax available on the purchases made by the petitioner within the State of Punjab, the petitioner gets refund every quarter. The petitioner filed applications, Annexures P-1 to P-4, respectively, for issuance of provisional refund for the first three quarters, i.e. 1.4.2014 to 31.12.2014 and for the fourth quarter i.e. 1.1.2015 to 31.3.2015 on the basis of its quarterly VAT returns on Form VAT-29. As per Rule 52 of the Punjab Value Added Tax Rules, 2005 (hereinafter referred to as "the Rules"), the respondents did not issue the refund and assured the petitioner that the refund for the first quarter would be released in the last week of August, 2015. Accordingly, the petitioner submitted an application dated 24.8.2015 (Annexure P-5) for provisional refund of second, third and fourth quarters of 2014-15. However, respondent No.4 issued notices dated 24.8.2015 (Annexures P-6 to P-8, respectively) for the three quarters to the effect that the case for refund is under consideration and directed the petitioner to complete certain formalities. The petitioner had done the needful. Thereafter, the petitioner moved another application- cum-reminder dated 19.10.2015 (Annexure P-9) to respondent No.4 for issuance of provisional refund for all the four quarters of 2014-15. However, no refund was made to the petitioner within sixty days as prescribed in Rule 52(10) of the Rules. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has submitted an application dated 24.8.2015 (Annexure P-5) followed by another application-cum-reminder dated 19.10.2015 (Annexure P-9) to respondent No. 4, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.3 to decide the applications dated 24.8.2015 (Annexure P-5) and dated 19.10.2015 (Annexure P-9), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order. It is further directed that in case any amount is found payable to the petitioner, the same be released to it within next one month, in accordance with law.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 22991 OF 2015

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TAX BAR ASSOCIATION, HISAR
Vs
STATE OF HARYANA AND OTHERS

A.K. MITTAL AND SHEKHER DHAWAN, JJ.

29th October, 2015

HF ▶ None (General Direction issued)

Commissioner is directed to decide representation filed by Tax Bar regarding difficulty in filing e-returns.

E -RETURNS - DECLARATION FORMS - INACTION ON PART OF DEPARTMENT – FORMS VAT R-6 AND VAT R-8 GIVEN ON OFFICIAL WEBSITE FOR FILING OF RETURNS – WEBSITE PERMITTING PAYMENT OF TAX @ 5.25% FOR LUMPSUM WORKS CONTRACTOR BEING A SUBJECT MATTER OF DISPUTE – REPRESENTATION FILED FOR DELETION OF THIS MANDATORY REQUIREMENT – NO RESPONSE GIVEN BY RESPONDENT- WRIT FILED – RESPONDENT DIRECTED TO DECIDE THE REPRESENTATION WITHIN THE TIME SPECIFIED- WRIT DISPOSED OF -

Facts
A representation was submitted by the petitioner association to the respondent for deletion of one of the mandatory requirement as given in Form Vat R-6 and VAT R-8 for filing of returns on the official website. However, no response was given in this regard. A writ is thus filed.

Held
The respondent is directed to take a decision on the representation dated 26/8/2015 and pass a speaking order within a period of one month.

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

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AJAY KUMAR MITTAL, J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondent-Department to modify the return forms/tax utility form uploaded on the official website www.harvanatax.com fixing rate of tax of lumpsum payment by including surcharge for the lumpsum dealers.

2. The State Government without making any amendment in the Haryana Value Added Tax Act, 2003 (in short "the Act") or in the Haryana Value Added Tax Rules, 2003 (hereinafter referred to as "the Rules") started insisting upon filing of e-returns on the official

website www.haryanatax.com of the Department. The petitioner filed CWP No. 15499 of 2015 and this Court vide order dated 30.7.2015 (Annexure P-1) disposed of the said writ petition allowing the manual returns to be filed for the quarter in question and the date for filing of returns through e- filing or manually was extended upto 10.8.2015. Thereafter, the members of the petitioner-Association started filing e-returns for the quarter ending 30.9.2015 wherein it was found that for filing of returns in Form VAT R-6 in terms of Rule 49(9) of the Rules relating to lumpsum works contractor, the website only allowed the payment of tax @ 5.25% which included surcharge levied under Section 7A @ 5%. Under Rule 49 of the Rules, it has been provided that the lumpsum rate of tax 5% w.e.f. 12.8.2014 only is payable in lieu of tax payable under the Act. The notification issued for levy of additional tax/surcharge under Section 7A of the Act is applicable only to the dealers who are not lumpsum dealer and the same is pending consideration before this Court in VATAP No. 59 of 2019 for 19.11.2015. The petitioner-Association submitted a representation dated 26.8.2015 (Annexure P-2) to respondent No.2 for deletion of mandatory requirement from the return in Form VAT R-6 and VAT R-8, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has moved a representation dated 26.8.2015 (Annexure P-2) to respondent No.2, but no action has so far been taken thereon.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.2 to take a decision on the representation dated 26.8.2015 (Annexure P-2), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of one month from the date of receipt of certified copy of the order.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 38 OF 2015

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SHREE GANESH ROLLER FLOUR MILLS
Vs
STATE OF PUNJAB

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

10th September, 2015

HF ▶ *Appellant*

Tribunal has directed the First Appellate Authority to consider the plea of appellant regarding bonafide mistake made by accountant in calculating reversal of Input tax credit

PENALTY – INPUT TAX CREDIT – MIS- CALCULATION OF REVERSED INPUT TAX CREDIT – NON SPEAKING ORDER – ANNUAL RETURNS FILED – DEMAND RAISED AND PENALTY IMPOSED DUE TO REVERSAL OF MISCALCULATED AMOUNT OF ITC – APPEAL BEFORE DETC – CONTENTION RAISED THAT MISTAKE WAS DUE TO BONAFIDE BELIEF THAT ASSESSEE'S ACCOUNTANT CORRECTLY CALCULATED THE AMOUNT – NO CONCEALMENT OF FACTS OR ANY MATERIAL ON PART OF APPELLANT – CONTENTIONS IGNORED AND NON SPEAKING ORDER PASSED UPHOLDING PENALTY U/S 56 – APPEAL BEFORE TRIBUNAL – HELD: APPELLANT NEVER DENIED TAX LIABILITY AND HIMSELF CAME FORWARD VOLUNTARILY TO REMOVE THE MISTAKE -MATTER REMITTED TO FIRST APPELLATE AUTHORITY TO PASS A SPEAKING ORDER AFTER CONSIDERING CONTENTIONS RAISED – APPEAL ACCEPTED –S. 13 AND S. 56 OF PVAT ACT.

Facts

The appellant had filed annual statement. The assessing authority raised an additional demand on account of wrongly calculated claim of ITC. Moreover, penalty was imposed/s 56 of the Act. On appeal before the DETC, it was contended that the mistake was bonafide at the time of calculation due to the change of the counsel. On dismissal of appeal, an appeal has been filed before Tribunal. It is contended that the appellant believed that his accountant made correct calculations at the time for filing of returns. He came to correct the mistake himself as a soon as he was made aware of the mistake. He has pleaded against the levy of penalty arguing that it did not conceal any purchases or suppressed any material fact. The only error was of wrong calculation of the reversal.

Held

That The first appellate authority has passed an order without giving any reason or considering contentions raised before it. The appellant has not denied his tax liability and never challenged it before the DETC. The order does not mention if the mistake made by the assessee was intentional on account of concealment of facts. The order being non-speaking is

set aside and matter is remitted back with a direction to consider all the contentions raised and pass a speaking order.

Present: Amit Bajaj, Advocate counsel for the appellant.
Mr. N.D.S. Mann, Addl. 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 23.12.2014 passed by Deputy Excise and Taxation commissioner, Jalandhar Division, Jalandhar, dismissing the appeal of the appellant against the order dated 29.1.2014 passed by the Excise and Taxation Officer-cum-Designated Officer, Jalandhar creating additional demand to the tune of Rs. 11,30,511/- under the Punjab Value Added Tax Act, 2005.

2. The appellant firm is engaged in the business of flour mills, the appellant filed annual statement VAT-20 for the year 2009-10. On scrutiny, it was transpired that the assessee had made gross sale of Rs. 18,18,48,545/- and out of gross sale, the dealer had made tax free sales of Rs. 15,64,76,871/- and made gross purchases to the tune of Rs. 15,13,85,232/- out of gross purchases, the apellant had made taxable purchase eligible for ITC to the tune of Rs.8,30,82 ,991- and claimed net ITC of Rs. 21,94,935/- after reversal of ITC on account of manufacturing tax free goods to the tune of Rs. 12,09,130/-, the dealer thus, reversed ITC of Rs. 1209130/- instead of Rs. 29,29,127/-.

3. After thorough examination, it was found that there was a difference of ITC reversal of Rs. 2,58,388/- and that of ITC carried forward to the next year is Rs. 2,58,722/-. Consequently on this amount, after imposing the penalty, the Excise and Taxation Officer-cum-Assessing Authority created additional demand of Rs. 11,30,511/-. On appeal the Deputy Excise and Taxation Commissioner dismissed the same while stating that "Arguments of the counsel of appellant against levy of penalty u/s 56 of the Act are not tenable."

4. The counsel for the appellant has vehemently contended that the order passed by the Deputy Excise and Taxation Commissioner is non speaking. He had raised the contentions regarding the bonafide mistake of the reversal of the ITC at the time of calculation due to the change of the counsel, yet the First Appellate Authority did not make note of the contentions and commented over the same before passing the impugned order. The appellant was actually under a bonafide belief that the reversal calculations made by his accountant at the time of filing his return were correct. The appellant was never aware of the mis-calculations in calculating reversals, but as soon as he came to know about the mistake, he himself came forward to accept the reversal. In such circumstances it was unjust for the Designated Officer to levy the penalty. The appellant being a layman was completely dependent on the person said to be expert in law and accounts The appellant should not suffer for the fault on the part of his counsel. He has also placed reliance on the judgment delivered in the case of M/s CIT Ahmedabad vs Reiiance Petroproducts (P) Ltd (2010) 189 TAXMAN 322 (SC) wherein the Apex Court observed as under:-

> *"The revenue contended that since the assessee had claimed excessive deductions knowing that they were incorrect, it amounted to concealment of income. It was argued that the falsehood in accounts can take either of the two forms: (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. Such contention could not be accepted as the assessee had furnished all the details of its expenditure as well as income in its return,*

> *which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that, by itself, would not attract the penalty under section 271(1)(c). If the contention of the revenue was accepted, then in case of every return where the claim made was not accepted by the Assessing Officer for any reason, the assessee would invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature. [Para 10].*
>
> *Therefore, the appeal filed by the revenue had no merits and was to be dismissed."*

5. The counsel for the appellant has urged that the law settled by supreme court in the above noted case equally applies to the facts of the present case. He has also urged that penalty should not be attracted as the appellant has not concealed any sale or purchase or suppressed any material facts from the returns filed by it. The only error was as to wrong calculation of the reversal. Hence the penalty imposed on the appellant deserves to be quashed. Lastly, it has been contended that the mistake in itc reversal was due to bonafide mistake, thus does not attract penalty as it does not fall in any of the parameters set out by Section 56 of the Act.

6. To the contrary, Mr. N.D.S.Mann, AAG has urged that the Act of the appellant amounts to concealment and suppression of facts resultlng into higher claim of the ITC therefore, the penalty imposed on the appellant is correct.

7. Having given my thoughtful consideration to the rival contentions, it may be observed that it is the case of the appellant from the very beginning that the appellant had changed the counsel who did not allow the correct ITC to be carried forward and did not make correct calculations. on coming to know about the mistake, the appellant voluntarily came forward for reversal of the correct ITC and to remove the mistake. The Designated officer has reversed input tax credit of Rs.3,76,8371- u/s 13(4) of the Act and has not allowed to carry forward the input tax credit on the same amount.

8. He had also taken the plea before the Deputy Excise and Taxation Commissioner in the grounds of appeal as under:-,

> *5. "That the dealer has voluntarily come forward and shown correct input tax to be reversed on manufacturing of tax free goods in vat -20 submitted at the time of assessment so no penal action is warranted under section-56."*

9. Having perused the grounds of appeal, it transpires that the First Appellate Authority did not take pains to ponder over the arguments as. Raised by the appellant before him, but dismissed the appeal with one line order (arguments of the counsel for the appellant against levy of penalty U/s 56 of the Act are not tenable). The First Appellate Authority has not passed a reasoned order after taking into consideration the contentions raised by the appellant that he does not deny the tax liability from the very beginning and did not challenge the same before the First Appellate Authority. Nothing has been discussed, if the mistake on the part of the counsel was intentienal and on account of concealment of facts. As such, the order passed by the Deputy Excise and Taxation commissioner being non speaking needs to be given a relook in the light of the discussions made above.

10. Resultantly, I accept the appeal, set-aside the impugned order passed by the Deputy Excise and Taxation commissioner (A) on 23.12.2014 with a direction to pass a speaking order after taking into consideration all the contentions which may be raised by the appellant before him.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 267 OF 2005-06

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GURDASPUR COOPERATIVE SUGAR MILLS
Vs
STATE OF PUNJAB

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

21st September, 2015

HF ▶ Revenue

Purchase tax is leviable on sugarcane under the PGST Act as well as Sugarcane (Regulation of Purchase and Supply) Act.

PURCHASE TAX –SUGARCANE – WHETHER LEVIABLE UNDER PGST ACT – HELD: YES -IN VIEW OF JUDGMENT PASSED BY HIGH COURT IN THE CASE OF A.B. SUGAR MILLS, PURCHASE TAX IS LEVIABLE UNDER THE PGST ACT AS WELL AS UNDER THE SUGARCANE (REGULATION AND SUPPLY) ACT, 1953. *S. 4(1) & 4B OF PGST ACT, PUNJAB SUGARCANE (REGULATION AND SUPPLY) ACT, 1953*

Facts

The appellant filed returns for the assessment year 2001-02 without making payment of purchase tax under PGST Act on purchase of sugarcane. A notice was issued in this regard and a demand was raised. An appeal is filed before Tribunal whereby it was contended that no tax was leviable under the said Act as tax was already levied under the Sugarcane (Regulation of Purchase and Supply) Act, 1953 and also, no tax could be levied in view of judgment passed by Apex court in case of Gobind Sugar Mills .

Held

In view of judgment passed in the case of Jagatjit Sugar Mills Co. Ltd V/s State of Punjab and another 1995(I) SCC 67, it is observed that the Apex court has approved the validity of tax under the PGST Act on purchase of sugarcane.

Both the judgments passed in case of Gobind Sugar Mills and Jagatjit Sugar Mills were discussed by the High court while deciding the case of A.B. Sugar Mill Ltd. Whereby the writ petition was dismissed holding that the assessing authority was competent to impose tax under the PGST Act and raise the demand despite the enforceability of Sugarcane (Regulation of Purchase and Supply)Act, 1953. Thus in the light of the judgment passed in the case of AB Sugar Mills, the appeal is dismissed.

Case followed:

- *A.B. Sugar Mills Ltd, versus State of Punjab*
- *Jagatjit Sugar Mills Co. Ltd. versus State of Punjab and another 1995 (I) SCC 67: 96 STC 344*

- *Gobind Sugar Mills Ltd. Versus State of Bihar and others, 115 STC 358 (SC)*

Present: Mr. M.R. Sharma, Advocate Counsel for the appellant.
Mrs. Sudeepti Sharma, Dy. Advocate general for the State.

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

1. This order of mine shall dispose off four connected Appeals No. 183 & 184 of 2014, 266 & 267 of 2005-06. Since all these appeals involve the common question law, therefore these are decided together.

2. The facts of the cases as taken up from the appeal number 183 are recorded as under:-

> *The appellant is a sugar manufacturing unit and is registered under the provisions of the Punjab General Sales Tax Act 1948 with R.C. No.37970419. The appellant filed the returns for the assessment year 2001-02 without making payment of any tax under the Punjab General Sales Tax Act on the purchase of sugarcane in view of the judgment of the Hon'ble Supreme Court delivered in case of M/s Gobind Sugar Mills Ltd. Versus State of Bihar and others, 115 STC 358 (SC).*

3. The appellant was issued a notice for paying the purchase, tax on purchase of Sugarcane in response to which the appellants submitted that no tax was payable on the purchase of sugarcane under the Punjab General Sales Tax Act in the light of Sugarcane (Regulation of Purchase and Supply) Act, 1953 and in view of judgment of Hon'ble Supreme Court delivered in the case of Gobind Sugar Mills (Supra). It was also contended that no tax was liable on the purchase of Sugarcane as the Sugarcane (Regulation of Purchase and Supply) Act, 1953 (a Central Act) being in force and more so no double taxation could be made and special Act should be preferred over General Sales Tax Act.

4. After hearing the appellant, the demand of Rs.23,51,577/- was created by the Assessing Authority on the ground that the assessee had not paid the purchase tax on sugarcane under the Punjab Value Added Tax Act. It was also observed that the judgment cited as 96 STC 344 is not applicable to the facts of the case in the light of the judgment delivered by the Apex Court in case of Jagatjit Sugar Mills Vs. State of Punjab cited. Consequently, the plea set up by the appellant was rejected and the assessment was framed. The Deputy Excise and Taxation Commissioner also dismissed the appeal.

5. The counsel for the appellant has contended that the order passed by the assessing authority is illegal, wrong and unjust and has been passed while ignoring the judgment of the Apex Court in case of Gobind Sugar Mills (Supra). The said judgment is applicable to the facts of the present case also. In Punjab, the petitioner has been paying the tax under 1953 Act. The said Act is pari-materia to the Bihar Sugarcane Act. In Bihar, the assessees were paying tax on purchase of sugarcane under the said Act, therefore, it was held that they could not be imposed tax under any other Act. Since, Sugarcane Act is still in force and the tax is being paid accordingly, therefore, appellant can't be charged tax under the Punjab General Sales Tax Act and now under the Punjab Value Added Tax Act. The judgment passed in case cited as 96 STC 344 has not been considered while ignoring the application of 1953 Act. It was further contended that the tax is on the purchase of sugarcane under both the Acts, It is not the tax on sale. The rate of sugar is controlled by Central Government irrespective of expanses to be borne by or tax to be paid by that sugar Mill or any sale of sugar. It is also submitted that 1953 Act being a special enactment for levy of purchase tax exclusively on sugarcane also deals with regulation of production, supply and distribution of sugarcane. It would over ride the provisions of PGST Act 1948 or even the 2005 Act. Both the PGST Act, 1948 or Punjab VAT Act 2005

are General Acts which provide for collection of commercial taxes on sale and purchase of all goods whereas 1953 Act deals only with purchase of sugarcane. Both the Acts have been framed in exercise, of legislative powers derived from entry 54 of list II appended to the 7th Schedule and therefore, the 1953 Act would govern the levy of purchase tax as it is a special Act. No double taxation could be justified on the same commodity or by levying the same under different enactments without repealing the other.

6. On the other hand Mrs. Sudeepti Sharma, Dy. Advocate General for the State has opposed the contentions while urging that the question in issue is no more res-integra in the light of the judgment delivered in case of A.B. Sugar Mills Ltd, versus State of Punjab decided by the Hon'ble High Court on 15 July, 2015. Therefore, the appeal may be dismissed accordingly.

7. Having heard the rival contentions and having gone through the judgment passed by the Hon'ble High Court in case of A.B. Sugar Mills (Supra). The issues as raised by the appellant before the Tribunal stand answered.

8. The appellant has given much stress on the judgment delivered in case, of Gobind Sugar Mills Ltd. versus State of Bihar and others (1999) 7 Supreme court cases page/76 which refers to a notification issued by the Bihar Government. In this regard, it may be observed that the Apex Court has already approved validity of tax in the judgment delivered in case of Jagatjit Sugar Mills Co. Ltd. versus State of Punjab and another 1995 (I) SCC page/67 while holding, that the appellant is liable to pay tax on the purchase of sugarcane under , the provisions of PGST Act, 1948, Both the judgments as referred to above became the subject of discussion before the Division Bench of the Hon'ble High Court in case of A.B, Sugar Mills Ltd, (Supra) and the Hon'ble High Court observed as under:-

> *(9) "Keeping the doctrine of precedent in mind we are not entitled to take a different view on Mr. Goel's additional submission founded on the provisions of The Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1954. In Suganthi Suresh Kumar V. Jagdeeshan (2002) 2 Supreme Court Cases 420, the Supreme Court held that the High Court cannot question the correctness of the decision of the Supreme Court even though the point raised before the High Court was not considered by the Supreme Court. In Director of Settlements A.P. and others v. M.R. Apparao and Anr. (2002)-4 Supreme Court Cases 638, the Supreme Court held that the decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered by, or that relevant provisions were not brought to the notice of the Supreme Court. It was further observed that once the Supreme Court decides the principle it would be the duty of the High Court to follow the decision.*
>
> *(10) We, therefore, cannot take a view different from the one taken by the* ***Supreme Court in M/s Jagatjit Sugar Mills Co. Ltd. vs. S****tate of Punjab (Supra) on the ground that the Supreme Court .did not consider the provisions of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953, Nor we are entitled to ignore this judgment on the basis of the judgment of the Supreme Court in Gobind Sugar Mills Ltd. v. State of Bihar (supra) as in M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab (supra) the Supreme Court considered the very provisions that fall for our consideration. In Gobind Sugar Mills Ltd, v. State of Bihar (supra) different enactments fell for the consideration of the Supreme Court."*

9. Ultimately, the Hon'ble High Court dismissed the writ petition. While holding that the assessing authority was competent to impose the tax under the Punjab General Sales Tax Act and raise the demand despite the enforceability of sugarcane (Regulation of Purchase and

Supply) Act, 1953. I have also perused the order passed by the Assessing Authority as well as by First Appellate Authority, the same are well founded and well reasoned.

10. I have also examined all other Issues as raised by the appellant, the authorities below have dealt with them in depth and as such those appear to have been correctly decided and as such, do not call for any correction.

11. Thus, in the light of the judgment delivered in case of A.B. Sugar Mills versus State of Punjab decided by the Division Bench of High Court on 15 July, 2015. These appeals being devoid of any merit are dismissed. The copy of the judgment is placed in each connected file.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 361 OF 2013

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SHIVANSH MOTORS PVT. LTD
Vs
STATE OF PUNJAB

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

27th July, 2015

HF ▶ Appellant

New car in transit cannot be presumed to be 'goods' meant for sale when there is no evidence in this regard.

PENALTY – CHECK POST / ROADSIDE CHECKING – ATTEMPT TO EVADE TAX –NEW CAR IN TRANSIT APPREHENDED – DOCUMENTS PRODUCED SHOWING TEMPORARY REGISTRATION , INSURANCE COVER, COPY INVOICE – DETENTION PRESUMING IT TO BE MEANT FOR SALE AND ABSENCE OF GENERATION OF VAT XXXVI – PENALTY LEVIED – APPEAL BEFORE TRIBUNAL – HELD: NO EVIDENCE TO SHOW CAR MEANT FOR SALE – NO ADMISSION ON PART OF DRIVER IN THIS REGARD – DOCUMENTS COMPLETE OTHERWISE – TAX OF PUNJAB STATE NOT INVOLVED – FORM VAT XXXVI NOT REQUIRED TO BE GENERATED AS CAR NOT MEANT FOR SALE – CHECKING OFFICER NOT SUPPOSED TO DECIDE NATURE OF TRANSACTION ON ROADSIDE ASSUMING POWER OF ASSESSING AUTHORITY – CAR NOT TO BE TREATED AS GOODS VEHICLE AS IT WAS NOT CARRYING ANY GOODS AND IF TREATED ITSELF AS GOODS, IT WAS ACCOMPANIED BY REQUIRED DOCUMENTS – PENALTY IMPOSED ON SURMISES – PENALTY DELETED – APPEAL ACCEPTED – *S 51(2), 51(4) , 51(6) , 51(7) OF PVAT ACT.*

Facts

The driver alongwith a new Santro car was apprehended .It was alleged that he tried to cross ICC without generating VAT XXXVI form. On demand he produced the insurance cover, temporary certificate of registration number. Fax copy of detailed invoice was shown. Suspecting the genuineness of the transaction, the vehicle was detained. The penalizing officer pointed out discrepancies in the invoice and observed that the car was meant for sale. Penalty was thus imposed. An appeal is filed before Tribunal.

Held

1) *The documents produced indicated that the vehicle was in the name of the company and it had not been transferred. Had it been a case of transfer to the state of Punjab, in that case also the appellant having already paid the tax to the selling dealer, Vat was to be paid by the dealer selling the same in the state of Punjab. Thus, no evasion of tax was involved and no tax was due to the state of Punjab.*

2) *There is no evidence to show that car was meant for sale in Punjab as concluded by the designated officer.*
3) *The car was apprehended under Section 51(6) (a) of the Act and goods could be detained under it only if goods are suspected for trade and not covered by proper documents. But in this case, the car was apparently not carrying any goods and the car itself was not goods vehicle. Even if it is treated as goods, it was carrying requisite documents.*
4) *The VAT XXXVI is to be furnished only if car is meant for sale. But here there is no such evidence. Therefore, S. 51(2) does not apply. On this basis even S. 51(4) does not apply as it applied only if case falls within ambit of S. 51(2).*
5) *The contention of the officer in charge that the car was meant for sale is not meritorious as it is not for him to decide on the roadside in the summary proceedings by assuming power of assessing authority.*
6) *There is no admission on part of driver regarding the goods being meant for sale. Therefore penalty being levied in the absence of any evidence, is set aside. The orders below are passed on basis of assumptions.*

Cases referred

- *J.K. Fuel solutions, 256 Khurana building, M.M. Malviya Road, Amritsar versus State of Punjab (2012) 41 PHT 194 (PVT)*

Present: For the Appellant: Mr. Shaman Jain, Advocate
For the State: Mr. N.D.S. Mann, Additional Advocate General

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

1. Assailed in this second appeal is the order dated 5.3.2013 passed by the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Patiala Division, Patiala dismissing the appeal against the order dated 17.11.2007 passed by the Excise and Taxation Officer-cum-Designated Officer, Information Collection Centre, Dehni, District Ropar imposing a penalty of Rs. 1,76,618/- under section 51 (7) (c) of the Punjab Value Added Tax Act, 2005.

2. On 01.11.2007, the driver along with a new Santro Car with temporary No. HP-33-9565 was got stopped at Information Collection Centre, Dehni when he tried to cross the check post without reporting at the ICC and getting Form VAT-XXXVI generated, and on demand, the driver produced one insurance cover dated 31.10.2007 issued by Reliance General Insurance Mandi with name of the insured was Shivansh Motors Pvt. Ltd. Gutkar. The driver also produced temporary certificate of registration No. 9565 recording the owner of the goods as Shri Shivansh Motors Pvt. Ltd. Gutkar. The value of the car was shown as 3,53,236/- which could also be detected from fax copy of the detailed invoice produced by the driver.

3. On suspicion, the Checking Officer suspected the genuineness ofthe transaction and ordered for detention of the vehicle under section 51 (7) (b) of the Punjab Value Added Tax Act, 2005. The notice was issued to the owner for 03.11.2007 which was also not received by the driver Shri Kamlesh Kumar who had also refused to sign his statement. Since none appeared before the Detaining Officer on the given date, therefore, he forwarded the case to the Excise and Taxation Officer, ICC, Dehni who also issued notice to the owner of the car under section 51 (7) (c) ofthe Punjab Value Added Tax Act, 2005 for appearance on 13.11.2007. He again issued a notice for 17.11.2007 in response to which Mr. Parveen Kumar, Accountant of the firm appeared and produced a retail invoice No. H200700167 dated 31.10.2007. He also submitted form No. 21 (self certificate). However, the appellant could not produce the account books and any other evidence. The Designated Officer while pointing some deficiencies in the invoice produced at the time of detention and produced later observed that the car was actually

sent for sale to the State of Punjab on fake documents and thus imposed a penalty to the tune of Rs. 1,76,618/- on 17.11.2007.

4.The appeal filed by the appellant against the said order was dismissed as such it is a second appeal.

5. The sale certificate issued on the letter pad of the company indicates that it was sold by M/s Shivansh Hyundai Ltd., to M/s Shivansh Motor Pvt. Ltd. on 31.07.2007. The other document produced at the time of detention is the retail invoice showing the price of the vehicle as well as the total tax paid @ of 12.50% by the company at the purchase of the vehicle from Hyundai Ltd. The total price including tax is shown as 3,53,236/-. The vehicle was also accompanied by an insurance policy issued by Reliance General Insurance.

6. The aforesaid documents indicate that the vehicle was in the name of the company and it has not so far been transferred. The appellant has also produced a retail invoice before me which reveals that the said car was sold to Roop Singh Koundal Village Ropa Post of Behna, Tehsil Sardar, District Mandi (Himachal Pradesh) on 10.01.2008. Had it been a case of transfer to the state of Punjab, in that case also the appellant having already paid the tax to the selling dealer, the VAT was to be paid by the dealer selling the same in the State of Punjab. Thus no evasion of tax was involved. There are two ways the car could be sold by the Himachal dealer in the State of Punjab which are reproduced as under:-

1. If sale was within the State of H.P. VAT was to be deposited in H.P.
2. If it was interstate sale from H.P. then CST was to be deposited in H.P.

7. So under the provisions of the Punjab Value Added Tax Act, the Punjab State was not involved. On repeated querry by the Tribunal to Mr. Mann AddI. Advocate General regarding the involvement of tax, he failed to answer the same.

8. There is no evidence on record in order to indicate that the car was meant for sale in Punjab and there was attempt to evade tax of Punjab State. As such the Designated Officer without, any evidence on the record could not jump to the conclusion that the car was meant for sale in Punjab.

9. The car was apprehended under Section 51 (6) (a) of the Punjab VAT Act. As per Section 51 (6) (a) of the goods or a goods vehicle could be detained only if the ICC Officer had reasons to suspect that the goods under transport are meant for trade and are not covered by proper and genuine documents as mentioned in Sub-Section (2) or (4) of that Act and that the person transporting the goods is attempting to evade payment of tax. Apparently the car was not carrying any goods and car itself was also not goods vehicle. In any case, even if the car itself is treated as goods even then the car was accompanied by required documents.

10. Section 51 (2) refers to the following documents which should accompany the goods L-

DOCUMENTS TO BE CARRIED WITH GOODS VEHICLE:

According to sub section 2 of section 51 the owner or person incharge of goods vehicle needs to carry with him the following documents:-

1) goods vehicle record,
2) goods receipt,
3) a trip sheet or a log-book
4) sale invoice or bill or cash memo a delivery challan containing particulars about goods where such goods are meant for business purpose. Such documents need to be produced at the Information Collection Centre or check post to the Officer in-charge of such centre or post checking the vehicle.

DOCUMENTS TO BE CARRIED WITH PRIVATE VEHICLE UNDER MOTOR VEHICLE ACT, 1988

According to Section 158. Production of certain certificates, license and permit in certain cases:-

1) Any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform authorized in this behalf of the State Government, produce-

a) the certificate of insurance;
b) the certificate of registration;
c) the driving license; and
d) in the case of a transport vehicle also the certificate of fitness referred to in section 56 and the permit, relating to the use of the vehicle.

11. On bare reading of the aforesaid provisions, it comes out that the car being not a goods or transport vehicle, was accompanying all the required documents. As regards the furnishing of VAT XXXVI, the car was not meant for sale inside the State of Punjab. There is no such invoice or any other evidence in order to establish that the car was being sent outside the State of H.P. for sale only. The VAT XXXVI was to be furnished only if the goods were being taken away for trade or business from the outside the State for sale to another State. But it is not a case where the goods were taken away for business or trade.

12. I also do not find merit in the contention that the goods were taken away to the Punjab State for sale but was not paying tax to his state because in that situation, the appellant was accountable to the assessing authority for the payment of tax to his State and it was not for the Officer incharge-cum-Excise and Taxation Officer to decide such matter on the road side in a summary manner by assuming power of assessing authority. Similar observations were made by the VAT Tribunal, Punjab in case of M/s J.K. Fuel solutions, 256 Khurana building, M.M. Malviya Road, Amritsar versus State of Punjab (2012) 41 PHT 194 (PVT) dated 03.11.2011 as under:-

"Here in this case, the movement of goods had taken place from Gujarat State. That being so, no tax was due under the Punjab Value Added Tax Act, 2005 while the goods were entering the State of Punjab. Once the documents produced by drivers of the vehicles were found in order, the rest of the issue, if any could be decided only by the Assessing Authority and not in summary proceedings at road side. The Officer Incharge-cum-ETO in his order dated 16.03.2010 says that" In the written reply, it has been stated that the owner of the goods has been filing regular returns and registered under the Punjab VAT Act, 2005 and a certificate dated 09.02.2010 to this effect has also been produced from the Designated Officer, Amritsar-II." This certificate is a clinture towards the fact that the appellant has been filling regular returns and is registered under the provisions of the Act, 2005. If the appellant had made huge imports, but no tax was paid, then it was for the concerned Assessing Authority of the appellant to look into these transactions and it was not for the Officer Incharge-cum-ETO to decide such a matter on roadside in a summary manner by assuming powers of the Assessing Authority. The authorities at the ICC also cannot decide the nature of subsequent transactions. Once the appellant voluntarily reported the transactions at the ICC, the same came into the computer record of the Department and there was no occasion for the appellant to keep such transactions out of the books of accounts. Whether it was an inter-state sale or intra-state sale has to be decided by the Assessing Authority being within exclusive domain. Statedly, the transaction in question

has been shown in the returns filed by the appellant and the certificate of ETO filed before the Detaining Officer also confirmed the sales by way of endorsement/transfer of goods receipts."

13. The Deputy Excise and Taxation Commissioner while dismissing the appeal made the following observation:-

"This vehicle was being brought into Punjab without any bill and was to be sold in the State of Punjab and delivery was to be given in Punjab. It was only when the vehicle was detained a new bill was raised by selling firm in his own name in order to dodge the taxing authority.

14. The observations made by the Deputy Excise and Taxation Commissioner are against facts. The driver was carrying retail invoice indicating that tax under the CST Act has been paid and no tax of Punjab was due. The vehicle could not be sold to a third person without a sale letter and other documents as sale letter was the only document for issuing the certificate of registration. In the instant case, the vehicle was in the name of the company itself. Nothing has come out from the documents as well as the statement of the driver and the owner of the company as to who was the proposed or actual transferee of the said vehicle. Therefore to say that the goods were taken away from the State of H.P. for sale is not correct.

15. The appellant was issued notice to the effect that the goods were not covered by proper and genuine documents as required under section 51 (2) & (4) of the Punjab Value Added Tax Act, 2005. The notice issued is not correct. At the cost of repetition 51 (2) & (4) of the Act are produced as under:-

"The owner or person Incharge of (the goods or) a goods vehicle shall carry with him a goods vehicle record, goods receipt, a trip sheet or a log-book, as the case may be, and a sale invoice or bill or cash memo, or delivery challan containing such particulars, as may be prescribed, in respect of such goods meant for the purpose of business, as are being carried in the goods vehicle (or by any other means) and produce a copy each of the aforesaid documents to an officer Incharge of a check post or Information Collection Centre, or any other officer not below the rank of an Excise and Taxation Officer checking the vehicle at any place.

PROVIDED THAT a person selling goods from within or outside the State in the course of (intrastate or) inter-State trade or commerce, shall also furnish or cause to be furnished a declaration with such particulars, as may be prescribed:

PROVIDED FURTHER THAT a taxable person, who sells or dispatches any goods from within the State to a place outside the State or Imports or brings any goods or otherwise receives goods from outside the State, shall furnish particulars of the goods in a specified form obtained from the designated officer, duly filled in and signed."

16. On bare reading of the second proviso to Section 51 (2) of the Act, it transpires that the goods must be carried taken away for the purpose of business. But there is no evidence to reveal that the appellant was carrying the car for the purpose of business. Be that it may, the driver who was incharge of the car was carrying the VAT invoice containing all the particulars as well as the insurance cover and also a registration book in respect of the vehicle. As regards, the proviso of sub-section 4(2) of Section 51 of the Act, the same would also not apply in case. The goods had not been sold from outside the State in the course of interstate trade or commerce. Since, it is not a case of interstate trade or commerce, therefore declaration was not

required to be furnished. Now coming to sub-section (4) of Section 51 of the Punjab Value Added Tax Act. Section 51(4) reads as under:-

> "The owner or person Incharge of (the goods and) a goods vehicle entering the limits or leaving the limits of the State, shall stop at the nearest check post or information collection centre, as the case may be, and shall furnish in triplicate a declaration mentioned in sub-section (2) along with the documents in respect of the goods carried in such vehicle before the officer Incharge of the check post or information collection centre. The officer incharge shall return a copy of the declaration duly verified by him to the owner or person incharge of (the goods and) the goods vehicle to enable him to produce the same at the time of subsequent checking, if any;
>
> PROVIDED THAT where a goods vehicle bound for any place outside the State passes through the State, the owner or person Incharge of such vehicle shall furnish, in duplicate, to the office Incharge of the check post or information collection centre, a declaration in respect of his entry into the State in the prescribed form and obtain from him a copy thereof duly verified. The owner or person incharge of the goods vehicle, shall deliver within forty eight hours the aforesaid copy to the officer Incharge of the check post or information collection centre at the point of its exit from the State, failing which, he shall be liable to pay a penalty to be imposed by the officer incharge of the check post or information collection centre equal to fifty percent of the value of the goods involved."
>
> The requirement of Section 51 (4) is that the owner of the goods entering limits of the State shall stop at the nearest check post or information collection centre and shall furnish in triplicate a declaration mentioned in sub-section (2) along with the documents in respect of the goods carried in such vehicle before the officer Incharge of the check post or information collection centre. The officer Incharge shall return a copy of the declaration duly verified by him to the owner or person Incharge of (the goods and) the goods vehicle to enable him to produce the same at the time of subsequent checking, if any."

17. The sub-section (4) of Section 51 would come into play only if the case falls within clause 51 (2) of the Act. As I have already observed that the Section 51 (2) of the Act is not attracted to the facts of the present case, therefore Section 51 (4) is also not attracted.

18. It is a case of single vehicle being driven by the driver along with documents and there was nothing to indicate that the said vehicle was taken away for sale business or trade in the State of Punjab. The appellant was otherwise carrying all the required documents with him, therefore, the appellant having not contravened the provisions of the Punjab Value Added Tax Act, can't be subjected to penalty under the Act. I have also gone through the statement of Kamlesh Kumar, driver dated 01.11.2007 to find out if he had made any admission regarding business or trade by involving the vehicle, but he has no where stated that he was taking away the vehicle for sale. In the absence of the evidence regarding any such transaction, the penalty could not be imposed.

19. The orders passed by the Authorities below being based on assumptions and presumptions, cannot be sustained. Resultantly, this appeal is accepted, impugned orders are set-aside and the penalty is quashed. The penalty if recovered may be refunded to the appellant.

20. Pronounced in the open court.

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NOTIFICATION (PUNJAB)

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AMENDMENT IN SCHEDULE-III OF THE PUNJAB INFRASTRUCTURE (DEVELOPMENT AND REGULATION) ACT, 2002

PUNJAB GOVT. GAZ. (EXTRA), NOVEMBER 10, 2015
(KRTK 19, 1937 SAKA)

PART III

GOVERNMENT OF PUNJAB

DEPARTMENT OF FINANCE
(Finance Expenditure-IV Branch)

NOTIFICATION

The 10th November, 2015

No. S.O.49/P.A.8/2002/S.53/2015.-In exercise of the powers conferred by section 53 of the Punjab Infrastructure (Development and Regulation) Act, 2002 (Punjab Act No. 8 of 2002), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following amendment in Schedule-III, appended to the said Act, namely: -

AMENDMENT

In the said Schedule-III, in Serial No. 1, item no. (viii) shall be omitted.

D.P. REDDY,
Principal Secretary to Government of Punjab,
Department of Finance.

NOTIFICATION (PUNJAB)

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AMENDMENT IN SCHEDULE-E APPENDED TO THE PUNJAB VALUE ADDED TAX ACT, 2005 (PUNJAB ACT NO. 8 OF 2005).

PUNJAB GOVT. GAZ. (EXTRA), NOVEMBER 18, 2015
(KRTK 27, 1937 SAKA)
PART III
GOVERNMENT OF PUNJAB

DEPARTMENT OF EXCISE AND TAXATION
(EXCISE AND TAXATION-II BRANCH)

NOTIFICATION

The 17th November, 2015

No. S.O.50/P.A.8/2005/S.8/2015.- Whereas the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

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

AMENDMENT

In the said Schedule-E, after Serial No. 26 and the entries relating thereto, the following shall be added, namely:-

"27.	All automobiles (i.e. commercial vehicles, passenger vehicles, three wheelers, two wheelers)	12%.".

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

NOTIFICATION (HARYANA)

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AMENDMENT IN SCHEDULE E UNDER THE HVAT ACT, 2003

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 24th November, 2015

No. 27 /ST-1/H.A. 6/2003/S.59/2015.- Whereas, the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 59 read with the proviso to said sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following amendment in Schedule E appended to the said Act, by dispensing with the condition of previous notice, namely:-

AMENDMENT

In the Haryana Value Added Tax Act, 2003 (Act 6 of 2003), in Schedule E, under column 1, 2, 3 and 4, for serial number 3(b) and entries thereagainst, the following serial numbers and entries thereagainst shall be substituted and shall be deemed to have been substituted with effect from the 7th September, 2015, namely:-

1	2	3	4
"3(b)	All goods except goods falling in Schedule „C" appended to the Haryana Value Added Tax Act, 2003 and goods of special importance mentioned in section 14 of the Central Sales Tax Act, 1956.	when the goods are sold as such in the course of inter-state trade or commerce.	Input Tax to the extent of the amount of tax actually paid on the purchase of such goods in the State under the Act or tax payable on sale of such goods under the Central Sales Tax Act, 1956, whichever is lower.
3(c)	All goods	when the goods are sold at a sale price lower than the purchase price.	To the extent of output tax liability, if any, on the sale of such goods;".

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

PUBLIC NOTICE (PUNJAB)

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DATE EXTENDED FOR E-FILING OF VAT-20

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION
PUBLIC NOTICE

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

This is to inform all the concerned that the last date of e-filing of VAT-20 for the year 2014-15 has been extended till 30th November, 2015.

Dated: 19th November, 2015 Excise & Taxation Commissioner, Punjab

PUBLIC NOTICE (U.T., CHANDIGARH)

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DATE EXTENDED FOR E-FILING OF VAT-20

EXCISE & TAXATION DEPARTMENT
UT, CHANDIGARH

PUBLIC NOTICE

ATTN.:- **Extension of date for furnishing of VAT-20 for the year 2014-15.**

In pursuance of provision under Section 26(7) of the Punjab VAT Act, 2005 as extended to U.T., Chandigarh r/w Rule 40(1) & (2) of the Chandigarh VAT Rules, the Department has extended the time limit for filing of VAT-20 (Annual Statement) for the year 2014-15 upto 30-11-2015.

By Order
Excise & Taxation Commissioner,
UT, Chandigarh

Dated: 19.11.2015

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JUSTICE T.S. THAKUR IS THE NEXT CHIEF JUSTICE OF INDIA

JUSTICE T.S. THAKUR has been appointed as the Chief Justice of India.

In a significant move signalling that seniority reigns supreme in the highest judiciary following the revival of the Collegium, Chief Justice of India H.L. Dattu had recommended the name of Justice Tirath Singh Thakur as his successor.

Justice Thakur, who is the seniormost judge after the Chief Justice, will take over after Chief Justice retires on December 2, 2015. It is a convention that the present CJI recommends to the government the name of his successor. After the Law Ministry clears his name, the file would travel to the Prime Minister's Office and finally reach the President. His Warrant of Appointment would be issued after the President gives his approval.

Though considered a formal routine and a courtesy from the incumbent to his successor, Chief Justice Dattu's recommendation this time gains significance as it comes shortly after a five-judge Constitution Bench on October 16 struck down the National Judicial Appointments Commission law and restored the Collegium system of judicial appointments.

Had the NJAC law been upheld in whole by the Bench, it would have been the six-member Commission, and not the CJI, who would have recommended the next Chief Justice of India.

Again, Chief Justice Dattu's recommendation comes even as the five-judge Bench led by Justice J.S. Khehar is in the process hearing suggestions to fix the eligibility criteria for judicial appointments in an effort to make the Collegium transparent. The Bench has fixed November 5 to debate and decide on the suggestions it received from various quarters to better the Collegium style of functioning.

Justice Thakur, who is known for his patient, detailed and fair hearings of cases, would be the 43rd Chief Justice of India. He would be in office till January 4, 2017.

Justice T.S. Thakur heralded the overhaul in the Indian cricket administration by holding that no office-bearer of the Board of Control of Cricket in India (BCCI) should have any commercial interests in the game. The judgment on January 22, 2015 demanded institutional integrity from the BCCI and classified the Board's administration of cricket in India as a public function.

Justice Thakur also heads the bench hearing the Sahara-SEBI dispute, which is steering the course for Sahara Group to return Rs. 36,000 crore back to its allegedly duped investors. He also heads the bench monitoring the Saradha chit fund scam and the multi-crore NRHM scam.

Known for his pithy observations in court, it was Justice Thakur who reminded the NDA government of its pre-election promise to clean up River Ganga. He had pulled up the government, saying it would probably take them another 200 years to do the job.

In another case, he had observed that meat bans cannot be "shoved down someone's throat" while refusing a Jain community organisation's plea to set aside the stay order issued by the Bombay High Court on a state government notification banning sale of meat and slaughter in Mumbai during the Paryurshan festival period. Advocating tolerance, he had rounded off the hearing by quoting an Urdu couplet by the poet Kabir, " why do you peek into the homes of those who use meat, let them do what they do, but why are you so bothered about them, brother'.

Born on January 4, 1952, he is the son of D.D. Thakur, an eminent advocate who became judge in the Jammu and Kashmir High Cour and later union minister.

Justice Thakur started his legal practice in his father's chambers in the Jammu and Kashmir High Court and went on to represent as Pleader in a variety of cases cutting across all branches of law.

He was designated a senior advocate in 1990 and was invited to the Bench as an additional judge of the J&K High Court.

He served as judge in the High Courts of Karnataka and Delhi, before being appointed as acting Chief Justice of Delhi High Court in 2008.

He was serving as Chief Justice of the Punjab and Haryana High Court at the time of his elevation to the Supreme Court in November 2009.

Courtesy: The Hindu
18th November, 2015

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LUDHIANA TAXATION BAR HAILS EXTENSION OF DATE OF E-FILING OF VAT ANNUAL RETURN

LUDHIANA: The Ludhiana Taxation Bar has hailed the decision of the excise and taxation department regarding the extension of the last date of e-filing of VAT annual return in Form No. 20.

Excise and taxation commissioner (ETC) Punjab Anurag Verma has extended the last date of E-filing of VAT annual return in Form No. 20 for the Year 2014-15 for 10 days from November 20, 2015 to November 2015.

Ashok Kumar Juneja, president Punjab Tax Bar Association and secretary general BR Kaushal (PTBA) said that various tax bars of Punjab state asked the PTBA to represent the ETC that there are various logical reasons for extension of said date since apart from other causes this year the date of audit by the chartered accountants has been extended by the Central Board of Direct Taxes up to October 31, 2015 as the form for filing of income tax returns was made available on August 7th. With this result professional were busy in filing of audit reports and income tax returns and quarterly returns (Form VAT-15) upto October 31, 2015.

Arun Kanwal, president andf Vivek Sharma, general secretary, District Taxation Bar Association (DTBA) Ludhiana, the biggest tax bar of Punjab, pleaded that Form 20 were made available in the month of August 2015 which should have been made available on April 1st 2015 in spite of repeated requests and In Form 20 the feeding of trading account also has been added first time.

Varidner Sharma, finance secretary, PTBA also represented to ETC that due to festivals seasons and farmer's agitations the date should be extended upto December 15, 2015. ETC (Punjab) considering the above said reasons logical amd valid have extended the date upto November 30th 2015.

Courtesy: The Times of India
20th November, 2015

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1,200 DEALERS PUT ON NOTICE FOR NOT FILING TAX RETURNS

JHAJJAR:The Excise and Taxation Department, Haryana, has served notices on 1,200 dealers in the district for not filing sales tax returns for the second quarter (from July 1 to September 30) of the current assessment year. The department has also warned that a penalty would be imposed if the defaulters failed to file the returns within the next 10 days.

Sources said 6,250 dealers are registered with the Excise and Taxation Department in the district. Besides 500 brick-kiln owners all others are required to file their online sales tax returns quarterly but 1,200 dealers failed to do so causing loss of revenue to the department, the sources said.

"Ward-wise list of defaulters has been prepared to slap a penalty on them. Teams have been constituted to verify their establishments as it's learnt some of them have been closed," said SP Chauhan, DETC.

Courtesy: The Tribune
22nd, November, 2015

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JUDGES WILL CONTINUE TO BE SHIFTED, SAYS CJI-DESIGNATE

CHANDIGARH: The scales of justice are clearly not tilted against the transfers of judicial officers and judges. In his first interview after being designated as the Chief Justice of India, Justice Tirath Singh Thakur today said that there was no declared policy on transfers, and that the same would continue.

Justice Thakur, who takes over as the CJI on December 3, told The Tribune that judges were transferred "wherever we felt it was in public interest", for administrative reasons, or "to inspire confidence in

people". Usually, the transfers were carried out wherever and whenever necessary, he said.

The CJI-designate's remarks came at a time when almost half-a-dozen Punjab and Haryana High Court judges are serving in different states, reducing their number here to a mere 50 against the sanctioned strength of 85. It has kindled the hope for return of at least some, as the High Court is reeling under pendency of more than two lakh cases due to shortage of judges.

Justice Thakur also made it clear that the process of logging on to the ambitious programme of digitisation of courts would go on, though it may take up to two decades for the courts to become fully paperless.

Some of the judges were not too comfortable with the small screen on the Bench, said Justice Thakur.

A techno-savvy judge himself, Justice Thakur said the process of digitisation was inevitable. It would get a boost as the young judges who can work on computers take over.

Known as the "judge with a humane touch" in the judicial circles, Justice Thakur also indicated that the judiciary during his tenure would work to provide justice to its own staff also by improving their working conditions.

Justice Thakur will be the 43rd Chief Justice of India. He is expected to take crucial decisions on new judicial appointments in the high courts across the country and the apex

court during his short tenure of one year and a month as the CJI.

In Chandigarh for the inauguration of Punjab and Haryana High Court's newly constructed "Centralised Judicial Record Building", Justice Thakur said transfers of judges, wherever necessary, were provided for in the Constitution.

"The provision is there, though no such policy is currently in existence," he said.

Hailing from a small village bordering Jammu, Justice Thakur, 63, has himself been on the Bench from North to South. He as an Additional Judge in the Jammu and Kashmir High Court, before being transferred as a judge of the Karnataka High Court. He was appointed as Acting Chief Justice of the Delhi High Court, before taking over as the Chief Justice of the Punjab and Haryana High Court in August 2008. He was then elevated as a Judge of Supreme Court.

Courtesy: The Tribune
22nd, November, 2015

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'DIFFERENCE IN VAT KILLING INDUSTRY'

LUDHIANA: Spinning mill owners of Ludhiana have held Punjab government responsible for pushing them in a crisis by not reducing rates of value added tax (VAT) on yarn that they manufacture.

In a meeting chaired by industries minister Madan Mohan Mittal, held to address issues of ailing industry on Saturday, industrialists also apprised the minister of how 10 spinning mills worth close to Rs 800 crore have already shut down in the state. They alleged that this has happened only due to the huge difference between VAT rates of Punjab and other states.

Demanding a level-playing field with their counterparts in other states, Akhil Malhotra, MD Shiva Texfabs, said, "Spinning industry of Punjab is dying and already in huge debts, units are closing down owing to losses on account of lack of orders. Ten mills and 1.5 lakh spindles have already closed down due to huge difference between VAT rates of Punjab and other states".

He also went on to say, "Because of this difference our cost of production is very high as compared to other states. The only solution of this problem is reducing the VAT rate to 3%."

Another yarn manufacturer Sanjiv Garg of Garg Acrylics brought to notice of industries minister the growing problem of influx of yarn made in other states in Punjab.

He said, "Close to Rs 10,000 crore of yarn has been imported to Punjab last year from states like Uttar Pradesh, Himachal Pradesh, Delhi etc where VAT is nil." Garg also claimed that if the government decides to cut down VAT rates for their industry, the excise and taxation department would earn extra revenue of Rs 300 crores as department will not have to pay VAT refunds to the garment industry.

Coming down heavily against the government and its policies, various industry representatives present in the meeting accused chief minister Parkash Singh Badal and deputy chief minister Sukhbir Badal of having indifferent attitude towards industrialists, despite being aware of the depleting condition of the industry in the state.

State general secretary of Punjab Pradesh Beopar Mandal, Sunil Mehra urged Mittal to take a decision on VAT rates on the spot, but the latter refused. Mehra also said, "Existing industry is on a ventilator and government is busy showering incentives on new investors who are yet to invest. More than 18,000 units have already closed down and 5,000 have been declared NPA by the banks, but the government is doing nothing and has given free hand to its officers, who are harassing industrialists by using tools such as CLU, VAT etc.

Others present in this meeting included Shakti Sharma, chairman of Punjab Small Industries and Export Corporation Limited (PSIEC), former health minister Satpal Gosain, Sanjay Longia, Radhe Shyam Ahuja, Vinod Bharti, Pran Bhatia, Gurdev Sharma Debi, Parveen Bansal, Anil Sareen.

Interestingly no officials from government departments barring general manager, district industries centre, Mahesh Khanna were present in this meeting.

When TOI spoke to the industries minister about by when Punjab government will take a decision on this matter, Mittal remained evasive and replied by saying "Soon."

Box - 100 spinning mills in Punjab

There are around 100 large spinning mills in Punjab, out of which 45 belong to Ludhiana businessmen. Each of these mills employs approximately 5,000 to 10,000 workers. While Ludhiana's Shiva Tex Fab is the largest synthetic yarn producer among these units, Trident, SEL, Vardhman & Nahar are the largest producers of cotton yarn. Owner of one of the mills has disclosed that he has suffered a loss of close to Rs 350 crore just due to this VAT difference and his net worth has vanished.

VAT on yarn in Punjab among highest in the country

VAT on yarn in many states is either nil or 2% whereas for manufacturers in Punjab, it is at 6.05%. Due to this the cost of production of local manufacturers is higher by almost 6% as compared to the manufacturers of other states. Thus the selling price of outstation yarn being less, the garment, knitwear and textile products manufacturers of the state have started preferring it rather than using the costly Punjab-made yarn. The association of spinning mill owners of the state, Punjab Spinners Association (PSA), has been demanding reduction of VAT from quite some time now. They have met deputy chief minister Sukhbir Badal and the excise and taxation commissioner (ETC) Punjab many a times demanding the same. But this issue has remain unsolved.

Courtesy: The Times of India
22nd, November, 2015

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GOVT. OPEN TO 'TWEAKING' GST TO GET IT PASSED

NEW DELHI: The government is reaching out to the opposition on the much delayed goods and services tax (GST) – even looking at the possibility of incorporating some of the changes proposed by Congress – as it seeks to ensure passage of the Constitution amendment bill during the winter session of Parliament.

Sources said there was a meeting on GST, mainly focused on the tax neutral rate, in North Block on Monday to explore if there was room for heading some of the seven demands raised by Congress without undercutting the core of the landmark legislation. The issue will be discussed by senior government ministers on Tuesday.

Courtesy: The Times of India
24th, November, 2015

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GOVT MAY GO WITH MORE THAN ONE GST RATE

NEW DELHI: In a bid to get Congress on board for one of the biggest tax reform moves, the Centre may back more than one GST rate — targeted mainly at luxury and sin goods — amid indications that it could drop the proposal allowing manufacturing states to levy up to 1% additional tax.

Instead, the government will compensate manufacturing states such as Gujarat, Maharashtra and Tamil Nadu directly, which will increase the burden on the exchequer during the first two years.

'Cong will back GST bill if 3-4 issues addressed'

Though it is trying to meet Congress's demand midway, tment bill and setting up of a dispute resolution panel comprising judges, on the grounds that it would create a flawed structure.

Sources in the government argued that the proposal on setting up a panel of judges was not acceptable to the state governments, which feared erosion of their legislative powers.

Similarly, they argued that the proposal to specify an 18% cap would introduce inflexibility into the system as it would mean that any increase by a handful of states necessitated by a natural calamity would require an amendment to the Constitution. Similarly, to pass on the benefits of higher collections by reducing the rate may also need an amendment that would be a long-drawn affair.

GST will be implemented from next fiscal: Venkaiah Naidu

"When tariff rate has to be mentioned in the Constitution itself, (then it) is a flawed architecture... Because the GST with flawed architecture can actually damage the system much more than it can benefit," finance minister Arun Jaitely had said at an industry event last week.

While a committee headed by chief economic adviser Arvind Subramanian is finalizing the revenue neutral rate for goods and services, sources indicated that the same could not be applied to all products.

"You can't have the same rate for BMW or other luxury cars. Similarly, when alcohol, which is a sin good, comes into GST, the rate has to be different for a premium brand," said a source, who suggested that the way out could be to have more than one GST rate.

Govt hopeful of GST Bill passage: Jayant Sinha

Congress, however, is unwilling to settle for any dilution so far. The Congress has blocked the bill to amend the Constitution for rolling out GST by April and is insisting on amendments to the legislation introduced by the government.

Congress is firm that the GST rate should be specified in the Constitution amendment bill. "Even when you have to make changes in the finance bill, you have to come to Parliament. So why can't you have a rate mentioned in the Constitution amendment bill?" asked a leader.

He also said a dispute resolution entity compromising state and central government members could not decide on disputes and there was a need for a much broader entity on the lines of TRAI and others.

Although PM Narendra Modi Modi and Jaitley met Congress president Sonia Gandhi and former PM Manmohan Singh on Friday, a consensus is yet to emerge, something that the BJP government is now keen to achieve.

"We want the GST bill to be passed with a broad consensus rather than majority. We want to see that issues are dealt with by consensus," parliamentary affairs minister Venkaiah Naidu said on Sunday. Naidu was part of the consultations that Modi had with the Congress brass.

Courtesy: The Times of India
30th, November, 2015

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CONG BACKS GST BUT SAYS CENTRE MUST FIRST RESPOND TO ITS DEMANDS

NEW DELHI: Congress vice-president Rahul Gandhi on Thursday made it clear that his party was in favour of the proposed Goods and Services Tax (GST) but maintained that the central government must respond to the Congress' demands for further progress in negotiations.

"Do we want the GST? Are we ready to compromise on GST? Are we ready to talk on GST? Absolutely. Are we going to accept just being thrown aside, no," NDTV quoted Gandhi saying on Thursday.

But the Congress vice-president also said "unless the government responds on this we will not compromise" on three key amendments proposed by his party'.

The Congress wants a cap on the GST rate at 1896, abolishment of the 1% entry tax and an independent grievance redressal mechanism to tackle GST disputes.

Congress sources, however, said the party' may agree to a cap of 2096 on the GST.

The Congress on Thursday also announced its readiness to engage with the government in negotiations over the GST bill — that aims to pave the way for a pan-Indian uniform tax on goods and sendees replacing the local levies.

Meanwhile, parliamentary affairs minister Venkaiah Naidu claimed that 30 out of 32 parties in the Parliament were in favour of the new indirect tax regime, indicating a near consensus on the bill.

"We are making efforts for its passage. The public mood is almost onesided in favour of the GST," parliamentary affairs minister Venkaiah Naidu said.

Courtesy: The Hindustan Times
27th, November, 2015

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GOVT WARMS UP TO OPPN, WILL DISCUSS INTOLERANCE, GST

AT ALL-PARTY MEET, PM SEEKS SUPPORT FOR CRUCIAL BILLS

NEW DELHI: The BJP-led NDA Government and the multi-party Opposition today strapped up for the winter session of Parliament getting underway tomorrow. The ruling combine is hoping the fury of the past fades away while the opponents plan to put 'Modi Sarkar' on the mat.

The government's expression of willingness at the all-party meet here to accommodate opposition came amid concerns mounting on the "growing climate of intolerance". The ruling combine intent appears to firewall its ambitious legislative agenda that melts otherwise under political heat on the issue.

Attending the meet, Prime Minister Narendra Modi sought cooperation from parties across the political spectrum underscoring the priority of his government in getting parliamentary approval for the Goods and Service Tax Bill.

During his brief presence, PM Modi said the government's outreach on GST will be undertaken. A broad consensus for its passage appears to be a possibility, provided the opposition's concerns find a reflection.

"We have genuine concerns [on GST]... we are open for discussions," Ghulam Nabi Azad, Leader of the Opposition in Rajya Sabha said.

Aware of the combative mood among the opposition parties on contentious issues, especially intolerance, the government grudgingly conceded it is ready for a debate, "even though it falls in the domain of states".

The reiteration of the promises came after the NDA leaders met in the evening, with Parliamentary Affairs Minister M Venkaiah Naidu stating the government will reach out to the Congress and others in the opposition on GST and other Bills. "We are ready for a debate on intolerance. The government has nothing to feel shy about it," he said.

Congress leaders Azad and Mallikarjun Kharge said the party would like to support each and every Bill on merit.

"Our concerns should be taken on board. For us, each legislation is important," they said.

The Congress and others parties in the opposition would start testing the waters during the two-day special session starting tomorrow when both the Houses will devote time to discuss "Commitment to India's Constitution", as part of the 125th birth anniversary of BR Ambekdar, whose resolution on the document was passed on November 26, 1949.

While the BJP and its allies would seek to point the number of times parties such as the Congress slighted the Constitution, the thrust of the opposition would be that commitment to the document is an everyday occurrence and not a stand-along event.

Hemmed by the inability to push through key economic legislations on account of stalemate in Parliament, at the all-party meeting here the government conveyed to opposition it is aware of their concerns and it neither supports nor condones incidents such as Dadri.

Courtesy: The Hindustan Times
26th, November, 2015