Issue 4

16th February 2017

"The avoidance of taxes is the only intellectual pursuit that still carries any reward.."

— John Maynard Keynes

NOMINAL INDEX

NOTIFICATION

PUNJAB

HARYANA

NEWS OF YOUR INTEREST

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News From Court Rooms

P & H HC : Service Tax : Service tax was paid under pressure from the department. In that view of the same it cannot be said that the payments were made voluntarily and without protest. Period of limitation does not apply. Refund allowed. Revenue's appeal dismissed. (***Swift Lands Ltd. – January 23, 2017***)

CESTAT, Allahabad : Service Tax : Immovable property given on rent by 8 joint co-owners (respondents). Whether these 8 co-owners can be said to be AOP and whether each co-owner has to be denied exemption or not? Exemption to each individual is allowed as there has to be an association of individuals to become "person" under said Section 3(42) of the General Clauses Act, 1897. Revenue's appeal dismissed. (***Luxmi Chaurasia and others. – December 23, 2016***).

CESTAT, MUMBAI : Service Tax : Service tax with interest was paid before SCN. Revenue authorities have misdirected themselves by wrongly issuing notice and not following the provisions of Section 73(3) of the Finance Act, 1994 in this case. (***Capgemini India P Ltd. – January 8, 2017***).

SC : Service Tax : Commercial or Industrial Construction Service and Construction of Complex Service. Appellants registered with VAT Authorities and discharged VAT on 70% of the value of the works contract in terms of Karnataka VAT Act. Levy of service tax on the value on which State VAT is already paid contrary to principles of fiscal federalism adopted in the Constitution as exemption available under Notification 12/2003-ST for the value of goods consumed for provision of taxable service. Supreme Court Decision in Larsen and Toubro Limited does not require reconsideration. Revenue's appeal dismissed. (***Sobha Developers Ltd. – January 17, 2017***).

CESTAT, MUMBAI: Service tax: Where assessee had constructed commercial building for renting and had taken interest free security deposit from customers and forfeited amount of advance given by customers on relegation of contract by customer, interest free security deposit and forfeited amount were not liable to service tax under 'renting of immovable property'. (***Vikhroli Corporate Park – December 2, 2016***).

CESTAT, MUMBAI : Service Tax : Assessee was engaged in renting of earthmoving equipments and terms and conditions stipulated in agreement entered into between assessee and lessor led to conclusion that transaction envisaged in agreement was one of transfer of right to use goods, assessee's activity of giving equipments on hire did not fall under category of 'supply of tangible goods for use' and would attract VAT not service tax. (***Gimmco Ltd. – October 31, 2016***).

CESTAT, HYDERABAD : Service Tax : The amount was collected as service tax on the mistaken belief that the services were taxable. Appellant has adduced evidence to show that the amount collected is adjusted against other dues by the service receiver. Department's contention of unjust enrichment is rejected and refund allowed. (***APSRTC – January 2, 2017***).

SC: KARNATAKA VAT: Requirement of reference of discount in tax invoice or bill of sale to qualify it for deduction has to be construed in relation to transaction resulting in final sale/purchase price and not limited to original sale sans trade discount. However, transactions allowing discount have to be proved on basis of contemporaneous records and final sale price after deducting trade discount must mandatorily be reflected in accounts as stipulated under Rule 3(2)(c) of the Karnataka Value Added Tax Rules, 2005. The sale/purchase price has to be adjudged on a combined consideration of tax invoice or bill of sale as case may be along with accounts reflecting trade discount and actual price paid. (***Southern Motors – January, 18, 2017***).

SC: Karnataka VAT : Where SC, while considering assessee's application for stay of recovery of tax for period from April, 2005 to July, 2008, vide order dated 3-5-2010 observed that let AA proceed with assessment proceedings but no recovery would be made till further orders and in meantime AA completed assessment for subsequent period and HC did not accept assessee's plea that in view of order of SC no recovery could be made by AA for subsequent period and held that SC itself would clarify said aspect, SLP required to be granted. (***Antrix Corporation Ltd. – January 13, 2017***).

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SUBJECT INDEX

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PUNJAB & HARYANA HIGH COURT

CWP NO. 20788 OF 2015

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DHINGRA JARDINE INFRASTRUCTURE PVT. LTD.
Vs
STATE OF HARYANA AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

30th January, 2017

HF ▶ Assessee

1. *Extended period of limitation as per amendment made under HVAT Act 2003 would apply only to those cases where the limitation period has not expired before amendment.*
2. *Revisional Authority cannot take shelter of extended period of limitation on the basis of a later judgment where he could have revised the order even before that date on the basis of earlier judgment.*
3. *Instructions given by Department are binding on the departmental authorities except on the issue where any judgment to the contrary exists.*
4. *No levy can be enforced under HVAT Act up to 16.05.2010 in the absence of any Rules or instructions to provide for manner of calculation of taxable turnover in the cases of builders and developers.*

REVISION – LIMITATION – EXTENDED PERIOD APPLICABLE ONLY IN EXCEPTIONAL CIRCUMSTANCES – DECLARATION OF LAW BY HIGH COURT OR SUPREME COURT ONE OF THE EXCEPTIONS – EXISTING JUDGMENT OF SUPREME COURT IN K. RAHEJA CORPORATION CASE – MATTER REFERRED TO LARGER BENCH – K. RAHEJA CONTINUES TO BE LAW DECLARED BY THE SUPREME COURT – REITERATION OF SAID JUDGMENT BY LARGER BENCH IS NOT DECLARATION OF LAW – ACTION COULD HAVE BEEN TAKEN ON THE BASIS OF EARLIER JUDGMENT. *SECTION 34 OF HVAT ACT, 2003*

REVISION – LIMITATION – PERIOD EXTENDED BY AMENDMENT FROM THREE YEARS TO SIX YEARS – EXPIRY OF LIMITATION BEFORE AMENDMENT – EXTENDED PERIOD APPLICABLE ONLY IN CASES WHERE LIMITATION HAS NOT EXPIRED BEFORE AMENDMENT – AMENDMENT CANNOT PUT LIFE TO A DEAD CLAIM. *SECTION 34 OF HVAT ACT, 2003*

REVISION – SHOW CAUSE NOTICE – VALIDITY OF SHOW CAUSE NOTICES – REVISIONAL ORDER ALREADY PASSED – NO REQUIREMENT OF PASSING ANY ORDER BY HIGH COURT - FINAL ORDER HAVE ALREADY BEEN PASSED WHICH ARE UNDER CONSIDERATION. *SECTION 34 OF HVAT ACT, 2003*

REVISION – LIMITATION – NORMAL PERIOD – EXCEPTION CLAUSE – EXTENDED PERIOD

AVAILABLE IN THE EVENT OF HAPPENING OF EVENT – EVENT TAKING PLACE DURING THE NORMAL PERIOD PRESCRIBED IN THE ACT – WHETHER EXTENDED PERIOD IS AVAILABLE – HELD NO – REVISIONAL POWER HAS TO BE EXERCISED DURING NORMAL PERIOD – TO INVOKE EXTENDED PERIOD, THE EVENT SHOULD TAKE PLACE AFTER THE NORMAL PERIOD OF LIMITATION HAS ALREADY EXPIRED – IN EXCEPTIONAL CIRCUMSTANCES, IT CAN BE INVOKED WHERE THE EVENT OCCURRED JUST BEFORE THE PERIOD OF LIMITATION AND ACTION TAKEN WITHIN A REASONABLE PERIOD. *SECTION 34 OF HVAT ACT, 2003*

CIRCULAR – BINDING NATURE – CIRCULAR ISSUED BY COMMISSIONER UNDER SECTION 56 – BINDING ON DEPARTMENT EXCEPT ON THE ISSUE WHERE ANY JUDGMENT TO THE CONTRARY EXISTS – NOT BINDING ON THE COURT – CIRCULAR CONTRARY TO STATUTORY PROVISIONS HAS NO EXISTENCE IN LAW. *SECTION 56 OF HVAT ACT, 2003*.

SALE PRICE – EXPLANATION (1) TO SECTION 2(1)(*zg*) – VIRES OF PROVISION ALREADY UPHELD BY THE COURT – NO NEED TO RE-EXAMINE THE ISSUE. *SECTION 2(1)(zg) OF HVAT ACT 2003*.

WORKS CONTRACT – BUILDERS AND DEVELOPERS - MECHANISM UNDER THE ACT OR RULES – RULES ENACTED W.E.F. 17.05.2010 – NO RULES IN EXISTENCE UP TO 16.05.2010 – NO MECHANISM IN PLACE TO REDUCE THE VALUE OF IMMOVABLE PROPERTY TRANSFERRED – LEVY UNENFORCEABLE IN THE ABSENCE OF MACHINERY PROVISIONS – FROM 17.05.2010, RULES BEING IN EXISTENCE, LEVY IS SUSTAINABLE. *SECTION 2(1)(zg), SECTION 6 OF HVAT ACT, 2003*.

ASSESSMENT – AMALGAMATION OF COMPANY – MERGER – COMPANY MERGED INTO ANOTHER COMPANY AND LOST ITS ENTITY – ASSESSMENT FRAMED AGAINST MERGED COMPANY - NO ASSESSMENT CAN BE FRAMED AGAINST A COMPANY WHICH STOOD DISSOLVED – ORDER SET ASIDE – NO LIBERTY REQUIRED TO BE GRANTED AS DEPARTMENT IS FREE TO PASS ANY FRESH ORDER IF THE LAW PERMITS. *SECTION 15 OF HVAT ACT, 2003*.

The petitioners in the bunch of petitions are builders and developers who had challenged the Revisional orders passed by Revisional Authorities for different assessment years. The following arguments were raised by petitioners:

(a) Extended period of revision cannot be invoked on the basis of judgment of Larsen & Toubro vs State of Karnataka, wherein Larger Bench has reiterated the law laid down in the case of K. Raheja Development Corporation vs State of Karnataka in the year 2005. The limitation period can be extended only in case of declaration of law after the period of limitation has expired but in view of K. Raheja, the Supreme Court has not declared any law in the year 2013 by reiterating the law laid down in its earlier judgment of K. Raheja:

(b) Amendment dated 03.08.2015 enhancing the limitation period of three years to six years cannot be invoked in these cases as the limitation period had already expired.

(c) Even in case of invocation of extended period, the said power has to be exercised only within reasonable period.

(d) Instructions and circulars issued by the Department are binding in nature which provided for taking requisite action within limitation period as it existed at that time on the basis of judgment in the case of K. Raheja Development Corporation.

(e) Explanation (1) to Section 2(1)(zg) of the Act is ultravires the Constitution of India or in the alternative, cannot be applied to levy any tax upon the builders up to 16.05.2010 in absence of machinery provisions.

Based upon aforesaid contentions, the court framed the following questions to be determined by the Court:

(1) Whether Revisional power could be exercised on the basis of judgment of Hon'ble the Supreme Court in K. Raheja Development Corporation v. State of Karnataka, 2005 (141) STC 298, even if the matter had been referred to be considered by a larger Bench by Hon'ble the Supreme Court.

(2) Whether extended period of limitation for exercise of Revisional jurisdiction will apply even in cases where the period provided in the Act prior to the amendment had already expired?

(3) Whether a show cause notice issued to exercise Revisional jurisdiction is bad as it is lacking in basic facts to invoke exception clause and extended period of limitation?

(4) Whether exception clause enabling exercise of Revisional jurisdiction beyond the normal period of limitation prescribed in the Act, could be invoked even in cases where the event had taken place during the normal period prescribed in the Act?

(5) Whether the circulars issued by the Department are binding on the department and the assessee?

(6) Whether explanation (i) to Section 2(1)(zg) of the Act is ultravires?

(7) Whether levy of tax on builders can be sustained in the absence of machinery provisions? The period being upto 16.05.2010 and thereafter, when the Rules were framed

(8) Whether assessment could be framed in the name of a company which stood merged in another company and lost its entity by operation of law"

Answering the aforesaid questions, the Court held as under:

(1) The judgment of Hon'ble the Supreme Court in K. Raheja Development Corporation's case (supra) was a binding precedent declaring the law at that time on the subject to be followed by all courts and authorities below and action could have been taken by the authorities on the basis thereof, if considered appropriate.

(2) The extended period for exercise of Revisional jurisdiction will be applicable only in cases where period prescribed prior to the amendment had not expired and not where the period had earlier expired as the amendment cannot put life to a dead claim.

(3) The issue is not being examined as in pursuance to the show cause notices orders have already been passed and those are under consideration before this court.

(4) The question is answered in negative opining that for exercise of power of revision while invoking extended period of limitation as provided for in second proviso to Section 34(1) of the Act, in normal circumstances the event has to be after the normal period of limitation had already expired. However, there can be some exceptions such as where event occurred, just before expiry of period of limitation and the action was taken within reasonable time or the delay is satisfactorily explained. Exception clause is to be invoked only in exceptional circumstances. It is always required to be strictly interpreted even if there is hardship to any of the parties.

(5) *Any instructions issued by the Department are binding on the departmental authorities exception on the issue where any judgment to the contrary exists. These are not binding on the court. A circular which is contrary to statutory provisions has no existence in law.*

(6) *As the vires of the aforesaid provision has already been upheld by this court, we do not find any reason to re-examine the issue.*

(7) *For the period upto 16.05.2010, there were no Rules or instructions on the subject, to provide for manner of calculation of taxable turnover. In the absence of the machinery provisions specifying the details, though the levy as such cannot be disputed but it has become unenforceable upto 16.05.2010.*

From 17.05.2010 onwards, there being Rules in existence, having been amended in terms of judgment of this court in CHD Developers' case (supra) and observations made therein, we do not find that the levy cannot be sustained.

(8) *The issue is answered in negative. It is held that no assessment can be framed against a company, which stood dissolved after its merger with another company. As fairly stated by learned counsel for the State, the assessment order dated 8.3.2016 (Annexure P-8), passed against M/s Sukh Realtors Pvt. Ltd., the company which already stood dissolved after merger with M/s S.S. Group Pvt. Ltd., is set aside. There is no question of grant of specific liberty to the department to pass any fresh order, as if the law permits, it can always take action.*

Cases referred:

- *CHD Developers Limited, Kamal v. The State of Haryana and others, CWP No. 5730 of 2014 decided on 22.4.2015*
- *K. Raheia Development Corporatio n v. State of Karnataka, (2005) 5 SCC 162*
- *Collector of Central Excise v. H. M. M. Limited. 1995(76) ELT 497 (SC)*
- *Kaur & Singh v. Collector of Central Excise, New Delhi, 1997 (94) ELT 289 (SC)*
- *Aban Loyd Chiles Offshore Ltd. v. Commr. of Cus., Maharashtra, 2006 (200) ELT 370 (SC)*
- *Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur, 2013 (288) ELT 161 (SC)*
- *Larsen and Toubro Ltd. v. State of Karnataka, (2008) 17 SCC 199*
- *Larsen and Toubro Limited and another v. State of Karnataka and another, (2014) 1 SCC 708*
- *C. Golak Nath and others v. State of Punjab and another, (1967) 2 SCR 762*
- *Madhao v. The State of Maharashtra and others, 2009 SCC OnLine Bom 688*
- *Union of India and others v. Uttam Steel Ltd.. (2015) 319 ELT 598*
- *State of Punjab and others v. M/s Shrevans Inds Ltd. etc.. 2016 SCC OnLine SC 218*
- *The State of Gujarat v. Patil Raghav Natha and others, (1969) 2 SCC 187*
- *Sulochana Chandrakant Galande v. Pune Municipal Transport and others, (2010) 8 SCC 467*
- *Neeldhara Weav. Factory v. Dir. Gen. Of Foreign Trade, New Delhi, 2007(5) STR 404 (P&H)*
- *Teekov Rubbers (India) Ltd. v. Commissioner of Agricultural Income Tax, (1996) 219 ITR 615 (Ker.)*
- *Pratibha Svntex Ltd. v. Union of India, 2013(287) ELT 290 (Guj.)*
- *Sonex Auto Industries P. Ltd. v. State of Haryana, (2014) 74 VST 518*
- *Gannon Dunkerlev & Co. v. State of Rajasthan. (1993) 88 STC 204 (SC)*
- *Larsen & Toubro Ltd. v. The State of Bihar and others. (2004) 134 STC 354 (Patna)*
- *State of Jharkhand and others v. Voltas Ltd., (2007) 7 VST 317 (SC)*
- *Commissioner, Central Excise & Customs, Kerala v. M/s Larsen & Toubro Ltd., (2016) 1 SCC 170*
- *Suresh Kumar Bansal v. Union of India and others, 2016 SCC Online Del 3657*
- *Supreme Court in National Mineral Development Corporation Ltd. v. State of M. R. and another. (2004) 6 SCC 281*
- *Amamath Aggarwal Const. (Pvt.) Limited v. The State of Haryana. (2012) 42 PHT 109 (HTT)*
- *Cheeka Solvent (P) Ltd., Kaithal v. State of Haryana. [VST1 2013 ... C-391.]*
- *H. R. Steels P. Limited v. State of Haryana and others, decided on 19.8.2014 VATAP No. 132 of 2013*
- *State of Punjab and others v. Bhatinda District Coop. Milk P. Union Ltd.. (2007) 19 VST 180 (SC)*
- *Saraswati Industrial Syndicate Ltd. v. Commissioner of Income Tax. 1990 (Supp) SCC 675*

- *Spice Entertainment Ltd. v. Commissioner of Service Tax, 2012 (280) ELT 43 (Del).*
- *State of Haryana v. M/s Haryana State Warehousing Corporation and another VATAP No. 172 of 2012*
- *Commissioner of Central Excise Bolpur v, Ratan Melting & Wire Industries. (2008) 13 SCC 1*
- *The Tata Iron & Steel Co.. Ltd. v. The State of Bihar. AIR 1958 SC 452*
- *State of Rajasthan and another v. J. K. Udaipur Udyog Ltd. and another. (2004) 7 SCC 673*
- *Commissioner of Trade Tax. U. R and another v. Kaiaria Ceramics Ltd., (2005) 11 SCC 149*
- *Addl. Commissioner (Legal) and another v. Jyoti Traders and another, (1999) 2 SCC 77*
- *Indo Swiss Time Limited, Dundahera v. Umrao and others, AIR 1981 P&H 213*
- *Commissioner of Income-Tax v. Contimeters Electricals R Ltd., (2009) 317 ITR 249*
- *Food Corporation of India v. State of Punjab, (2009) 33 PHT 632 (P&H)*
- *K. Raheja Development Corporation v. State of Karnataka, 2005 (141) STC 298*
- *Sahara India Real estate Corporation Limited and others v. Securities and Exchange Board of India and another. (2012) 10 SCC 603*
- *State of Rajasthan v. M/s R. S. Sharma and Co., (1988) 4 SCC 353*
- *State of Orissa v. Dandasi Sahu, (1988)4 SCC 12*
- *State of Maharashtra v. Sant Joginder Singh, (1995 Supp (2) SCC 475)*
- *Gimar Traders v. State of Maharashtra, (2004) 8 SCC 505*
- *Gimar Traders v. State of Maharashtra, (2007) 7 SCC 555*
- *Denny Fernandez v. State of Kerala, 2003(1) KLT 280*
- *Indian Oil Corporation Limited. Barauni v. The Presiding Officer Central Government Industrial Tribunal and another, 1994 SCC OnLine Pat 277*
- *State of Maharashtra and another v. Sarva Shramik Sangh, Sangli and others, (2013) 16 SCC 16*
- *J. R Jani. Income Tax Officer v. Induprasad Devshanker Bhatt, AIR 1969 SC 778*
- *New India Insurance Co. Ltd. v. Shanti Misra, (1975) 2 SCC 840*
- *T. Kallamurthi v. Five Gori Thaikkal Wakf. (2008) 9 SCC 306*
- *Thirumalai Chemicals Ltd. v. Union of India and others, (2011) 6 SCC 739*

Present: Mr. Ashok Aggarwal, Senior Advocate with
Mr. Puneet Agrawal, Advocate;
Mr. Abhishek Boob, Advocate;
Mr. Rishabh Kapoor, Advocate;
Mr. Sandeep Goyal, Advocate;
Mr. Rishabh Singla, Advocate;
Mr. Amrinder Singh, Advocate;
Mr. Amar Pratap Singh, Advocate; and
Mr. Rajiv Agnihotri, Advocate for the petitioner(s).

Mr. Lokesh Sinhal, Additional Advocate General, Haryana.

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RAIESH BINDAL J.

1. This order will dispose of a bunch of petitions bearing CWP Nos. 20788, 23671, 23721, 24700, 24847, 24966, 25336, 25848, 26508, 26833, 27005, 27006, 27032, 27448, 27458, 27526 of 2015, 787, 788, 798, 1868, 2197, 3196, 3748, 3768, 6796, 8820, 18377 and 19413 of 2016, as the issues involved in all the petitions are identical.

FACTS OF THE CASES

CWP No. 20788 of 2015

2. The petitioner claims itself to be a registered dealer under the provisions of the Haryana Value Added Tax Act, 2003 (for short, 'the Act'). The assessment of the petitioner for the year 2011-12 was framed vide order dated 15.5.2013. Notice under Section 34 of the Act for revision of the assessment order was issued on 4.6.2015. The revisional authority passed the order on 3.7.2015. The revisional order has been challenged, inter-alia, on the ground that the same is without jurisdiction.

CWPNo. 23671 of 2015

3. Assessment of the petitioner for the year 2010-11 was framed vide order dated 30.4.2012 while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 14.5.2005. The same was challenged by filing CWP No. 37858 of 2015, which was disposed of on 29.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed order on 21.8.2015 and served upon the petitioner on 7.10.2015. In the writ petition, challenge has been made to the aforesaid order being in violation of the provisions of the Act.

CWP No. 23721 of 2015

4. Assessment of the petitioner for the year 2009-10 was framed vide order dated 29.4.2011 while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 18.5.2015. The same was challenged by filing CWP No. 17880 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed order on 22.7.2015 and served upon the petitioner on 30.10.2015. In the writ petition, challenge has been made to the aforesaid order being in violation of the provisions of the Act.

CWP No. 24700 of 2015

5. Assessment of the petitioner for the year 2008-09 was framed vide order dated 26.4.2010 while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 24.6.2015. The revisional order was passed on 15.7.2015. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP No. 24847 of 2015

6. Assessment of the petitioner for the year 2009-10 was framed vide order dated 28.4.2011. Notice under Section 34 of the Act for revision of the order was issued on 2.7.2015. The revisional order was passed on 15.7.2015. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP NO. 24966 OF 2015

7. Assessment of the petitioner for the year 2007-08 was framed vide order dated 11.2.2010 while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 17.7.2015. The same was challenged by filing CWP No. 16955 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 20.10.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction and vires of Explanation (i) to Section 2(1) (zg) of the Act.

CWP NO. 25336 OF 2015

8. Assessment of the petitioner for the year 2009-10 was framed vide order dated 29.2.2012, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the asssessment order was issued on 13.8.2015. The same was challenged by filing CWP No. 18119 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed order on 6.11.2015

dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP NO. 25848 OF 2015

9. Assessment of the petitioner for the year 2006-07 was framed vide order dated 4.3.2010, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the order was issued on 13.8.2015. The same was challenged by filing CWP No. 17766 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 9.11.0215 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP NO. 26508 OF 2015

10. Assessment of the petitioner for the year 2006-07 was framed vide order dated 20.1.2010, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act dated nil was issued for revision of the assessment order, which was received by the petitioner on 9.10.2015. The same was challenged by filing CWP No. 15654 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 16.11.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP NO. 26833 OF 2015

11. Assessment of the petitioner for the year 2009-10 was framed vide order dated 15.3.2013, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 22.4.2015. The revisional authority passed the order on 13.11.2015. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction, vires of Explanation (i) to Section 2(l)(zg) of the Act and competence to levy tax in the absence of machinery provision.

CWP NO. 27005 OF 2015

12. Assessment of the petitioner for the year 2008-09 was framed vide order dated 24.5.2010, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 18.6.2015. The same was challenged by filing CWP No. 14842 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 16.11.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP NO. 27006 OF 2015

13. Assessment of the petitioner for the year 2010-11 was framed vide order dated 17.4.2012, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 18.6.2015. The same was challenged by filing CWP No. 15494 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 16.11.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP NO. 27032 OF 2015

14. Assessment of the petitioner for the year 2007-08 was framed vide order dated 31.12.2009, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act dated nil was issued for revision of the assessment order, which was served upon the petitioner on 7.9.2015. The same was challenged by filing CWP No. 19417 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 16.11.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP NO. 27448 OF 2015

15. Assessment of the petitioner for the year 2009-10 was framed vide order dated 26.2.2013, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 18.6.2015. The same was challenged by filing CWP No. 16016 of 2015, which was disposed of on 29.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 20.11.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP NO. 27458 OF 2015

16. Assessment of the petitioner for the year 2008-09 was framed vide order dated 31.5.2010, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 18.6.2015. The same was challenged by filing CWP No. 15798 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 16.11.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP NO. 27526 OF 2015

17. Assessment of the petitioner for the year 2010-11 was framed vide order dated 29.11.2012, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 18.6.2015. The same was challenged by filing CWP No. 16010 of 2015, which was disposed of on 19.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 20.11.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP NO. 787 OF 2016

18. Assessment of the petitioner for the year 2007-08 was framed vide order dated 30.4.2009, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 2.7.2015. The same was challenged by filing CWP No. 15655 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 20.10.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction and vires of Explanation (i) to Section 2(1) (zg) of the Act.

CWP NO. 788 OF 2016

19. Assessment of the petitioner for the year 2007-08 was framed vide order dated 26.11.2009, while accepting the returns filed by the petitioner. Notice under Section 34 of the

Act for revision of the assessment order was issued on 13.8.2015. The same was challenged by filing CWP No. 17752 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 9.11.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction and vires of Explanation (i) to Section 2(1) (zg) of the Act. Quashing of exception to second proviso to Section 34 of the Act has also been prayed for.

CWP NO. 798 OF 2016

20. Assessment of the petitioner for the year 2008-09 was framed vide order dated 222.4.2010, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 2.7.2015. The same was challenged by filing CWP No. 15656 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 20.10.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction and vires of Explanation (i) to Section 2(1) (zg) of the Act.

CWP NO. 1868 OF 2016

21. Assessment of the petitioner for the year 2008-09 was framed vide order dated 20.8.2010, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 17.7.2015. The same was challenged by filing CWP No. 16916 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 20.10.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction and vires of Explanation (i) to Section 2(1) (zg) of the Act. Quashing of exception to second proviso to Section 34 of the Act has also been prayed for.

CWP NO. 2197 OF 2016

22. Assessment of the petitioner for the year 2005-06 was framed vide order dated 6.3.2009, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 7.10.2015. The revisional authority passed the order on 30.11.2015. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction and vires of Explanation (i) to Section 2(l)(zg) of the Act. Quashing of exception to second proviso to Section 34 of the Act has also been prayed for.

CWP NO. 3196 OF 2016

23. Assessment of the petitioner for the year 2007-08 was framed vide order dated 15.6.2009, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 23.6.2015. The same was challenged by filing CWP No. 14586 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 20.10.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction and vires of Explanation (i) to Section 2(1) (zg) of the Act.

CWP NO. 3748 OF 2016

24. Assessment of the petitioner for the year 2010-11 was framed vide order dated 18.4.2012, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 13.2.2014. The same was challenged by filing CWP No. 17755 of 2015, which was disposed of on 14.9.2015 directing the authority to

dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 16.11.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP NO. 3768 OF 2016

25. Assessment of the petitioner for the year 2009-10 was framed vide order dated 18.4.2011, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 13.2.2014. The same was challenged by filing CWP No. 4920 of 2015, which was disposed of in terms of the judgment of this Court in ***CWP No. 5730 of 2014—CHD Developers Limited, Kamal v. The State of Haryana and others***, decided on 22.4.2015. The revisional authority passed the order on 18.6.2015. The petitioner again challenged the same by filing CWP No. 17755 of 2015, which was disposed of on 14.9.2015 directing the authority to dispose of the objections raised by the petitioner for initiation of revisional proceedings before taking further action in the matter. The revisional authority passed the order on 16.11.2015 dismissing the objections. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction.

CWP NO. 6796 OF 2016

26. Assessment of the petitioner for the year 2006-07 was framed vide order dated 19.5.2008, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 1.10.2015. In the writ petition, challenge has been made to the aforesaid notice, vires of Explanation (i) to Section 2(l)(zg) of the Act, second proviso to Section 34 of the Act and competence to levy tax in the absence of machinery provisions.

CWP NO. 8820 OF 2016

27. Assessment of the petitioner for the year 2006-07 was framed vide order dated 30.3.2009, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 28.12.2015. The same was challenged by filing CWP No. 6795 of 2015. The revisional authority dismissed the objections of the petitioner vide order dated 12.4.2016. Thereafter, the petitioner withdrew the writ petition on 25.4.2016 with liberty to challenge the order disposing of the preliminary objection. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction and vires of Explanation (i) to Section 2(l)(zg) of the Act.

CWP NO.19413 OF 2016

28. Assessment of the petitioner for the year 2009-10 was framed vide order dated 29.9.2011, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 24.6.2015. Objections were filed by the petitioner on 7.7.2015. The revisional authority dismissed the objections of the petitioner vide order dated 30.11.2015. In the writ petition, challenge has been made to the aforesaid order being without jurisdiction and vires of Explanation (i) to Section 2(l)(zg) of the Act.

CWP NO. 18377 OF 2016

29. Assessment of the petitioner for the year 2006-07 was framed vide order dated 30.3.2009, while accepting the returns filed by the petitioner. Notice under Section 34 of the Act for revision of the assessment order was issued on 28.12.2015. The same was challenged by filing CWP No. 6795 of 2015. The revisional authority dismissed the objections of the petitioner vide order dated 12.4.2016. Thereafter, the petitioner withdrew the writ petition on 25.4.2016 with liberty to challenge the order disposing of the preliminary objection. In the writ

petition, challenge has been made to the aforesaid order being without jurisdiction and vires of Explanation (i) to Section 2(l)(zg) of the Act.

ARGUMENTS ON BEHALF OF THE PETITIONERS

Reg. Invocation of extended period for revision

30. Mr. Ashok Aggarwal, learned senior counsel for the petitioners submitted that there is no justification for initiation of proceedings for revision of the order of assessment by invoking the extended period of limitation. Section 34 of the Act, under which notice for revision has been issued to the petitioner, provides that no order shall be revised after the expiry of a period of three years from the date of supply of the copy of such order to an assessee. Three exceptions have been carved out, namely, where order is sought to be revised as a result of retrospective change in law or on the basis of decision of the Tribunal in a similar case or on the basis of law declared by the High Court or the Supreme Court. For invoking the exception clause and the extended period of limitation for revision of the order, the base has to be made out in the show cause notice itself. In some of the cases, though second proviso to Section 34(1) of the Act has been mentioned in the notice, but without there being any factual basis showing how extended period of limitation is being invoked.

31. Fundamental facts have to be mentioned therein, namely, the ground for invocation of extended period of limitation. The reasons have to be assigned so as to enable the noticee to respond to the same. Even if any fact is mentioned in the notice, there is no question of inference as the words have to be specific as to which of the grounds has been invoked for extended period of limitation. In the case in hand, none of the grounds was available for invocation of extended period of limitation. There was no retrospective change in law; no decision of the Tribunal and there was no fresh statement of law declared by this court or Hon'ble the Supreme Court, as the legal position was existing even before the assessment orders were passed.

32. If the judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporatio n v. State of Karnataka, (2005) 5 SCC 162***, delivered on 5.5.2005, much prior to the framing of assessment, which was the law declared at that time, was not considered by the assessing authority at the time of framing of assessment, despite there being circular issued by the department, the revisional power could possibly be exercised within the period of three years from the date of service of assessment order and not beyond that. Even change of opinion is no ground for exercise of revisional jurisdiction. In some of the notices, judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's*** case (supra) has been mentioned, which was delivered much prior to the framing of assessment, still extended period is sought to be invoked.

33. In support of the plea, reliance was placed upon ***Collector of Central Excise v. H. M. M. Limited. 1995(76) ELT 497 (SC); Kaur & Singh v. Collector of Central Excise, New Delhi, 1997 (94) ELT 289 (SC); Aban Loyd Chiles Offshore Ltd. v. Commr. of Cus., Maharashtra, 2006 (200) ELT 370 (SC); Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur, 2013 (288) ELT 161 (SC)***.

34. It was further contended that taxability of works contracts with reference to the builders was examined by Hon'ble the Supreme Court in ***K. Raheja Development Corporation's*** case (supra) and it was so admitted and noticed by the Excise & Taxation Commissioner in the circular dated 7.5.2013, where specific words used by him were that the same is still a good law. Merely because subsequently in any judgment, the legal position is reiterated will not give cause of action to the authority to invoke extended period of limitation from that date onwards as the law declared is to be seen from the first judgment on the issue and not the subsequent one where the law is merely reiterated or approved.

35. He further submitted that in ***Larsen and Toubro Ltd. v. State of Karnataka, (2008) 17 SCC 199*** [hereinafter referred to as ***L&T's 1st case*** (supra)], the legal issue as decided in ***K. Raheja Development Corporation's case*** (supra) was referred to be considered by a larger Bench vide order dated 19.8.2008 and finally, Hon'ble the Supreme Court approved the law laid down in ***K. Raheja Development Corporation's case*** (supra) vide judgment dated 26.9.2013— ***Larsen and Toubro Limited and another v. State of Karnataka and another, (2014) 1 SCC 708*** (hereinafter referred to as L&T's 2nd case].

36. On the issue of declaration of law, learned counsel for the petitioner submitted that under Article 141 of the Constitution of India, Hon'ble the Supreme Court, while deciding lis between the parties, declares law, which is binding not only between the parties but is considered as law of the land. It has precedent value. In addition, under Article 142 of the Constitution of India, Hon'ble the Supreme Court can pass any order to do complete justice between the parties. Referring to the judgment of Hon'ble the Supreme Court in ***C. Golak Nath and others v. State of Punjab and another. (1967) 2 SCR 762***, it was submitted that declaration of law is when it is settled for the first time on any legal issue. Any subsequent judgment considering the same, either reiterates or approves the earlier one. That cannot be said to be declaration of law. In the case in hand, declaration of law was when Hon'ble the Supreme Court first opined on the issue in ***K. Raheja Development Corporation's*** case (supra), vide judgment dated 5.5.2005.

37. Further the argument is that even if legal issue decided in an earlier judgment is referred to be considered by a larger Bench, the same does not lose its precedent value or enforcement. It is binding till such time a different view is expressed by a larger Bench. In support, reliance was placed upon the judgment of Bombay High Court in ***Madhao v. The State of Maharashtra and others. 2009 SCC OnLine Bom 688***.

38. Learned counsel further argued that in some of the cases, even at the stage of assessment, in the show cause notices issued, the Assessing Authority had referred to the judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's case*** (supra). Meaning thereby he was conscious of the law laid down on the subject, but still at the time of assessment, the same was not referred to in the order passed. In some of the cases, even in the show cause notice under Section 34 of the Act, only judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's*** case (supra) was referred to, which was delivered on 5.5.2005, whereas in some of the cases, additionally judgment of Hon'ble the Supreme Court in ***L&T's 2nd case*** (supra) has also been referred to, which merely approved the earlier judgment in ***K. Raheja Development Corporation's case*** (supra). In all the cases, the petitioners cannot be said to be at fault. They had filed their returns regularly. The law declared by Hon'ble the Supreme Court in ***K. Raheja Development Corporation's case*** (supra) on 5.5.2005, was already available, which was well within the knowledge of the department, still the assessments were framed ignoring the same, hence, the provisions of Section 34 of the Act have to be given strict interpretation in these circumstances. We are concerned with indirect taxes, where the assessee has right to pass on the burden to the next buyer. A dealer merely acts as an agent of the State. The petitioner at this stage may neither be able to collect the tax nor pass on the burden to the next buyer on account of substantial period having passed.

Reg. Amendment dated 3.8.2015 enhancing period for revision

39. Learned counsel further argued that in reply filed by the State, a plea has been taken that vide Ordinance dated 3.8.2015, the period provided for revision of assessment order has been substituted as six years against three years provided earlier. Ordinance dated 3.8.2015 was replaced by Amending Act, which got assent of the Governor on 15.9.2015 and was published in the gazette on 21.9.2015. The issue will arise as to whether that amendment can be applied in the cases where period of three years provided in the provision before the amendment was

carried out, stood already expired. Can life be injected in a dead claim? He submitted that in most of the cases, the notices have been issued to the assessees beyond the period of three years and the amendment was notified later on. The contention is that once the period prescribed in the Act for exercising revisional power already stood expired, certain rights were vested in the assessees. The same could not be taken away. The period could possibly be extended only in the cases where three years had not yet expired. In support of the plea, reliance was placed upon judgment of Hon'ble the Supreme Court in ***Union of India and others v. Uttam Steel Ltd.. (2015) 319 ELT 598*** and ***State of Punjab and others v. M/s Shrevans Inds Ltd. etc., 2016 SCC OnLine SC 218***. He further argued that the language used in the amendment made in Section 34 of the Act is indicative of the fact that the same is prospective and not retrospective. Even the amending Act also does not suggest the same.

Reg. Reasonableness of period for exercise of revisional jurisdiction

40. The next contention raised by learned counsel for the petitioner was regarding reasonable period during which action under Section 34 of the Act can be taken by the authority. The submission is that Section 34(1) of the Act provides for normal period of three years before amendment and six years after amendment for exercise of power in terms of the conditions laid down in Section 34(1) of the Act. It is in normal circumstances. However, in case the exception as carved out under certain specified conditions is to be invoked, how much should be the reasonable period, as finality has to be accorded to the proceedings under the Act. It cannot be kept alive for infinity. If any of the event as narrated in the exception clause provided in second proviso to Section 34(1) of the Act takes place within the period of limitation provided for taking action for suo-motu revision, the action has to be taken within that period and in those circumstances, extended period of limitation cannot be invoked. If any of the events takes place just close to the expiry of the period of limitation for exercise of revisional jurisdiction, in a given fact situation, reasonableness of the period can be examined. However, in case the period of limitation expired and any of the situations, as enumerated in the exception clause, such as retrospective amendment, order of a Tribunal or declaration of law by Hon'ble the Supreme Court or the High Court takes place thereafter, then what is the reasonable time permitted to the authority for taking action for suo-motu revision, is the moot question. In case, the action is not taken immediately thereafter and the authority sleeps over the matter for years together, it needs to justify in¬action for that period. In the case in hand, even after the judgment of Hon'ble the Supreme Court in ***L&T's 2nd case*** (supra), which was delivered on 26.9.2013, notices under Section 34 of the Act were issued after 1-1/2 years thereafter, which is totally unreasonable.

41. Referring to the scheme of the Act, Mr. Ashok Aggarwal, learned senior counsel for the petitioner further contended that Section 15 of the Act provides for a period of three years for framing the assessment after the end of the assessment year. Section 17 of the Act provides period for framing re-assessment before the expiry of five years following the close of the year or before the expiry of two years following the date when the assessment for that year becomes final, whichever is later. It was further submitted that maximum period, as provided for under Section 29(2)(e) of the Act, for which books of accounts have to be retained by an assessee is eight years. Hence, any action thereafter would be barred. In support of the aforesaid plea, reliance was placed upon ***The State of Gujarat v. Patil Raghav Natha and others, (1969) 2 SCC 187; Sulochana Chandrakant Galande v. Pune Municipal Transport and others, (2010) 8 SCC 467; Neeldhara Weav. Factory v. Dir. Gen. Of Foreign Trade, New Delhi, 2007(5) STR 404 (P&H); Teekov Rubbers (India) Ltd. v. Commissioner of Agricultural Income Tax, (1996) 219 ITR 615 (Ker.);*** and ***Pratibha Svntex Ltd. v. Union of India, 2013(287) ELT 290 (Guj.)***.

Regarding instructions issued by the Department

42. Mr. Ashok Aggarwal, learned senior counsel for the petitioners submitted that Excise & Taxation Commissioner had issued a circular bearing Memo No. 6152/ST-4 dated 7.5.2013 on the subject of taxability of civil works contracts/builders and developers. It was specifically mentioned in the aforesaid circular that judgment of Hon'ble the Supreme Court in K***. Raheja Development Corporation's*** case (supra) is still a good law, hence, that needs to be followed for uniformity. The aforesaid instructions were followed by subsequent instructions issued vide Memo No. 1166/ST-4 dated 4.6.2013 in continuation to the earlier one, where the issue regarding limitation for taking up cases for revision was also specified. If both the instructions are read together, it was clear therefrom that under normal circumstances, the assessment orders upto the year 2006-07 had attained finality and assessment orders for the year 2007-08 could be revised by March, 2014. In the cases where the assessment orders are prior to year 2007-08, as per the instructions issued by the Excise & Taxation Commissioner, which are binding in nature under Section 56(2) of the Act, limitation to revise that assessment order had already expired, hence, the notices issued or the orders passed for revision of the assessment for those years being without jurisdiction, deserve to be set aside. He further submitted that the validity of the aforesaid circular issued by the department was upheld by this court in CWP No. 5730 of 2014— ***CHD Developers Limited. Karnal v. The State of Haryana and others***, decided on 22.4.2015.

43. In support of the plea that the instructions issued in exercise of powers conferred under Section 56(2) of the Act are binding on the department, reliance was placed upon a Division Bench judgment of this court in ***Sonex Auto Industries P. Ltd. v. State of Haryana, (2014) 74 VST 518***. The aforesaid case was under the provisions of the Act. In fact, clarification was required to be issued by the Excise & Taxation Commissioner, as different Assessing Officers or the revisional authorities, engaged in the administration of the Act, were taking different views.

Reg: Vires of Explanation (i) to Section 2(1)(zg) of the Act and levy in the absence of machinery provisions

44. The next contention raised by learned counsel for the petitioner is with reference to challenge to the vires of Explanation (i) to Section 2(1) (zg) of the Act, as existing upto 20.3.2009 and for the period from 20.3.2009 till 17.5.2010 or in the alternative non-application of the aforesaid provision with reference to the builders. As a fact, it was submitted that the State Government had notified the Rules for computation of taxable turnover in the case of builders on 17.5.2010, which were under consideration before a Division Bench of this Court in ***CHD Developers Limited's case*** (supra). In that case, the State Government was directed to bring necessary changes in the Rules in consonance with the observations made therein. The re-framed Rules were notified on 23.7.2015 having retrospective effect from 17.5.2010, hence, in the absence of machinery provision, no demand of tax can be raised from the builders with reference to composite contracts of builders.

45. Referring to the language of Section 2(l)(zg) of the Act, which defines 'sale price', it was submitted that normal definition is that it is the amount payable to a dealer as consideration for sale of any goods. The explanation attached to the definition defines the sale price with reference to works contract. As per the explanation, the sale price in case of transfer of property in goods involved in execution of a works contract shall mean total sale consideration received by him for execution of the works contract, reducing therefrom the amount representing labour and other service charges incurred for such execution. The submission is that Entry 54 in List-II of Seventh Schedule of the Constitution of India entitles the State Legislature to levy tax on sale of goods within the State. In case any other component is included for the purpose of taxation, the State Legislature will transgress its competence. In the case of a builder, the total sale consideration received does not include only the labour or certain service charges incurred

for execution of works contract but includes land cost, external development charges, internal development charges, change of land use charges and various other different types of charges/expenses. These expenses incurred by the dealer which form part of the total cost of the works contract cannot, in any manner, be subjected to levy of VAT on the transfer of property in goods in execution of a works contract. The State Legislature does not have the jurisdiction to levy VAT on transfer of land. In the case of sale of flat in a building, proportionate share of land is also transferred, the value of which is included in total cost.

46. In the alternative, the explanation provides that where such labour and other service charges are not quantifiable, the sale price shall be the cost of goods used in execution of works contract adding margin of profit thereon plus cost of transferring the property in goods and any other expenses incurred in relation thereto till the property is passed on to the contractee. The second part of the explanation includes even the service component for the purpose of taxation of the goods. To legislate on the subject, exclusive jurisdiction is with the Parliament in view of Entry 97 of List-I of Seventh Schedule of the Constitution of India. The alternate is applicable only where labour and other service charges are not quantifiable. In fact, the definition of 'sale price' does not provide for any direct method for calculation of the value of the goods, the property in which is transferred in execution of a works contract, which is the most appropriate method. Only indirect method has been provided which takes in its compass the amount which has no direct relation with value of goods used in works contract. As held by Hon'ble the Supreme Court in ***L&T's 2nd case*** (supra), it is only the property in goods transferred after agreement to sell is executed with the buyer, which can be considered for taxation, however, there is nothing in the section to provide for that. Any amount spent even on the goods used in works contract by the builder till such time the part of the property is sold cannot be taxed. No tax is to be charged in case the unit is sold after the construction is complete.

47. The only change in the provision w.e.f. 20.3.2009 is that where the amount representing labour and other service charges is not quantifiable, the same can be calculated at such percentage, as may be prescribed. The provision still does not provide as to how the cost of the land and other expenses are to be taken care of. In any taxing statute, four para-meters are important, namely, taxable event, taxable person, rate of tax and the machinery provision. Even if any one of them is missing, the levy cannot be upheld. In the case in hand, fourth para-meter is missing.

48. It was further submitted that Section 6 of the Act provides for determination of taxable turnover. It provides that no deductions shall be permissible except those provided in sub-section (1) thereof. No deduction on account of value of the land and other services provided by the builder has been provided at any stage. Meaning thereby even in terms of the definition of sale and the manner in which taxable turnover is to be determined, the value of land and other service charges will also be taxed under the Act, which is beyond the competence of the State Legislature. It was further submitted that a provision is bad if it includes something for the purpose of taxation, which cannot be taxed. It is also bad in case what is required to be excluded has not been excluded, such as cost of land and other service charges in the present case. In support of the plea, reliance was placed upon ***L&T's 2rd case*** (supra); ***CHD Developers Limited's case*** (supra) and ***Gannon Dunkerlev & Co. v. State of Rajasthan. (1993) 88 STC 204 (SC)***.

49. Learned counsel further submitted that details as to what is to be included and excluded for the purpose of taxation have to be provided either in the Act or at the most in the Rules, if the Act so permits. Mere statement in reply or the stand taken by counsel for the State in court is not sufficient for that purpose. Even administrative instructions also do not cure the mischief. In support of the plea, reliance was placed upon ***M/s Larsen & Toubro Ltd. v. The State of Bihar and others.*** (2004) 134 STC 354 (Patna) [hereinafter referred to as ***L&T's 3rd***

case (supra)]; ***State of Jharkhand and others v. Voltas Ltd.,*** (2007) 7 VST 317 (SC) and ***Commissioner, Central Excise & Customs, Kerala v. M/s Larsen & Toubro Ltd.,*** (2016) 1 SCC 170 (hereinafter referred to as ***L&T's 4th case*** (supra)].

50. In case detailed machinery provisions as to how taxable turnover is to be determined in the case of a builder is not provided either in the Act or in the Rules, it will be left to the assessing authorities to apply any formula according to their whims and fancies, which cannot be permitted. Transfer of property in goods in execution of works contract is a deeming fiction in taxation. It has to be strictly interpreted.

51. Another contention raised is that in the absence of machinery provisions, the levy is violative of Articles 14 and 19(l)(g) of the Constitution of India. Article 265 of the Constitution of India provides that no tax can be levied or collected without authority of law. Even if one of the factors is missing, the levy will be bad. Detailed machinery provisions are required for effectively calculating the taxable turnover and consequently the tax. Mode and manner of determination of tax have to be provided in the machinery provision. In support, reliance was placed upon L&T's 4th case (supra). A Division Bench judgment of Delhi High Court in ***Suresh Kumar Bansal v. Union of India and others,*** 2016 SCC Online Del 3657 was also relied upon. In the aforesaid judgment, Delhi High Court had struck down levy of service tax on the builders after the amendment carried out vide Finance Act, 2010, in the absence of explicit machinery provisions. Reference was also made to judgment of Hon'ble the ***Supreme Court in National Mineral Development Coporation Ltd. v. State of M, R and another.*** (2004) 6 SCC 281, wherein levy was set aside, even though the charging section provided for levy of tax, however, in the schedule, where rates were prescribed, nothing was mentioned regarding the commodity to be taxed.

ADDITIONAL ARGUMENTS

In CWP No. 25336 of 2015

52. Mr. Sandeep Goyal, learned counsel for the petitioner submitted that the petitioner in the present case had opted for payment of tax under composition scheme on the entire turnover as works contracts. The assessment for the assessment year 2009-10 was framed on 29.2.2012. He further submitted that judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's case*** (supra) was well within the knowledge of the department. Even in the circular issued by the Commissioner on 7.5.2013, after the assessment of the petitioner had been framed, it was so referred. It was specifically mentioned therein that cost of land forming part of the houses or flats constructed by the developer/builder has to be excluded. Vide circular dated 10.2.2014, clause in the earlier circular was substituted stating that value of the land is also to be added. He further submitted that in the public notice available on the website of the department even today on the subject in question, it is mentioned that value of the land is not to be included for the purpose of taxation in the works contracts. The petitioner was issued notice under Section 34 of the Act on 13.8.2015 not invoking the extended period of limitation, as none of the ingredients, which enables the authority to issue notice for revision beyond the period of limitation has been mentioned in the notice. He further submitted that if the department could have exercised the revisional jurisdiction within the period of limitation, it cannot be permitted to allow the period to lapse and thereafter invoke the exception clause.

53. While referring to Section 34 of the Act, learned counsel for the petitioner submitted that the exception as carved out enabling the authority to exercise suo-motu power beyond the period of limitation is available only if any of the events takes place after the normal period of limitation had already expired and not where it was within the period of limitation. Even if any of the events takes place just before the expiry of that period, at least the proceedings have to be initiated. There the question of reasonableness of period has to be considered. He cited an order passed by the Full Bench of the Haryana Tax Tribunal (for short, 'the Tribunal') in ***M/s***

Amamath Aggarwal Const. (Pvt.) Limited v. The State of Haryana. (2012) 42 PHT 109 (HTT), where the action by the State, invoking extended period of limitation on the basis of an order passed by the Tribunal within the normal period of limitation was held to be bad in law. The aforesaid order was subsequently followed in ***M/s Cheeka Solvent (P) Ltd., Kaithal v. State of Haryana.*** [VST1 2013 ... C-391.] The aforesaid orders have been accepted by the State and have attained finality as no further appeal was filed.

54. While citing the judgment of this court in ***VATAP No. 132 of 2013—M/s H. R. Steels P. Limited v. State of Haryana and others***, decided on 19.8.2014, it was submitted that if the return of an assessee is accepted under Section 15(1) of the Act, the period of limitation is to be counted from the last date of filing of return and not when any order of assessment is passed by the authority, as no order is required to be passed.

In CWP No. 26508 of 2015

55. Mr. Amar Pratap Singh, learned counsel for the petitioner submitted that even if the exception clause is to be invoked, it can be during reasonable period, which can be maximum five years from the date of assessment order, which will make it total eight years. It gives further period of two years after the expiry of normal period of limitation for exercise of power under Section 34 of the Act. It was so opined by Hon'ble the Supreme Court in ***State of Punjab and others v. Bhatinda District Coop. Milk P. Union Ltd.. (2007) 19 VST 180 (SC)***, while considering the scheme of Punjab General Sales Tax Act, 1948.

In CWP No. 18377 of 2016

56. Mr. Amar Pratap Singh, learned counsel for the petitioner in the present case raised additional arguments. He submitted that in the case in hand, assessment had been framed against the company, namely, M/s Sukh Realtors Pvt. Ltd., which already stood dissolved on its merger with the petitioner w.e.f. 1.4.2013. It was in terms of the order dated 30.9.2014 passed by this court in CP No. 203 of 2013—***In the matter of Amalgamation of Sukh Realtors Private Limited and M-Ganga Builders and Construction Pvt. Ltd. and others***, as corrected on 10.11.2014. The assessment in the present case is pertaining to the year 2009-10. Show cause notice for assessment was issued under Section 16 of the Act on 19.2.2016 in the name of M/s Sukh Realtors Pvt. Ltd., which already stood dissolved. In reply dated 29.2.2016 submitted by the petitioner, without prejudice, besides raising other pleas, it was submitted that the company, namely, M/s Sukh Realtors Pvt. Ltd., in whose name notice was issued, already stood dissolved, hence, assessment cannot be framed in its name. The particulars of the transferee company were furnished. Other issue raised in the reply was regarding the notice being time-barred. Despite reply filed by the petitioner, assessment was framed on 8.3.2016 in the name of M/s Sukh Realtors Pvt. Ltd., which already stood dissolved on 1.4.2013. The order was served upon the petitioner on 27.6.2016.

57. In support of the argument that no order of assessment could be passed against a non-existent company, reference was made to the judgment of Hon'ble the Supreme Court in ***Saraswati Industrial Syndicate Ltd. v. Commissioner of Income Tax. 1990 (Supp) SCC 675*** and Delhi High Court in ***Spice Entertainment Ltd. v. Commissioner of Service Tax, 2012 (280) ELT 43 (Del)***.

58. It was further submitted that assessment had been framed under Section 16 of the Act, which provides period of three years as outer limit for passing order after the close of the period in question. The assessment year being 2009-10, closed on 31.3.2010, hence, the assessment could be framed only upto 31.3.2013. The order of assessment having been passed on 8.3.2016 was clearly time barred. Though reference has been made to the amendment carried out in Section 16 of the Act enhancing the period for framing the assessment from three years to six years, however, that will not be applicable in the case of the petitioner, as the period

had already expired before the amendment was made on 3.8.2015. Despite the fact that the issue was specifically raised before the assessing authority, the same was not considered in the order of assessment. Delay in service of order has not been explained. If taken from the date of service of order on 27.6.2016, it was beyond even six years from the close of assessment year in question. In fact, the order has been ante-dated.

59. It was further argued that even if the transferee company joins proceedings, there is no estoppel to raise the issue that assessment could not be framed against the company, which had already been dissolved. Reference was made to the provisions of Rule 28(2) of the Rules, which provides for filing of objections in the assessment proceedings and Rule 28(3) of the Rules, which enjoins a duty on the assessing authority to decide those objections while recording reasons.

ARGUMENTS ON BEHALF OF THE STATE

60. On the other hand, Mr. Lokesh Sinhal, learned Additional Advocate General, Haryana submitted that Section 34 of the Act gives ample power to the Commissioner to call for the records of any pending case or the decided one, to examine the legality or the propriety of the proceedings or of any order made thereunder which, in his opinion, is prejudicial to the interest of the State. Second proviso to the aforesaid section provides that the order can be revised within three years from the date of supply of copy of the order sought to be revised. There are three exceptions carved out, under which the period of limitation is not applicable. As far as the first exception is concerned, the same has to be an event subsequent to the passing of the order sought to be revised, namely, retrospective change in law. As far as other two exceptions are concerned, namely, on the basis of a decision of the Tribunal or on the basis of law declared by the High Court or the Supreme Court, the order/judgment could be either before the order is sought to be revised or later. There is nothing in the language of the section, which specifies that judgment of the Tribunal, High Court or the Supreme Court has to be subsequent to the order sought to be revised. The object for which the section has been added is to correct the errors committed by the authorities or where the law on the subject had been violated, such as any judgment had not been followed. The moment it comes to the notice of the Commissioner, he can initiate proceedings and limitation of three years (now extended to six years) will not be applicable. No words can be added or declared surpluses in a statute. The judgment of Division Bench of this Court in VATAP No. 172 of 2012—***State of Haryana v. M/s Haryana State Warehousing Corporation and another***, decided on 22.8.2013 fully supports the case of the department. It has been opined in that judgment that a controversy is settled when it is final. In the case in hand, the matter was referred to a larger Bench and the issue was still pending before Hon'ble the Supreme Court. It was not final. The judgment in ***L&T's 2nd case*** (supra) was delivered on 26.9.2013. It was at that stage that law on the subject was declared. Thereafter there is no delay in issuance of notices.

61. In the light of earlier judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's case*** (supra), it was submitted that the assessing authority or the Commissioner had option either to follow the law laid down therein or wait for decision of the larger Bench in ***L&T's 2nd case*** (supra). In case the department had issued notices to the assessees referring to the judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's case*** (supra), the immediate response of the assessees would have been that the matter has been referred to a larger Bench and the correctness is in doubt, hence, no action should be taken.

62. Regarding the circular issued by the department, it was submitted that it was no where mentioned in the circular that exception clause cannot be invoked. It only provided the normal period during which power of revision could be exercised. Referring to judgment of Hon'ble the Supreme Court in ***Commissioner of Central Excise Bolpur v, Ratan Melting &***

Wire Industries. (2008) 13 SCC 1, it was submitted that the circulars issued by the department are not binding on the court as it is merely understanding of law of the department. He could not dispute the fact that in the circular dated 7.5.2013, the Commissioner mentioned that judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's case*** (supra) was still a good law, however, he tried to explain that those were merely guide-lines so that assessments could be framed in terms thereof. For taking up a case for revision, the law is different. The revisional authority could have initiated action on the basis of judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's case*** (supra). Even if that was earlier in point of time, still the case will fall in exception clause. Even in the absence of judgment of Hon'ble the Supreme Court in ***L&T's 2nd case*** (supra), the notices could have been issued beyond a period of three years under Section 34 of the Act. Mere non-mentioning of judgment of Hon'ble the Supreme Court in ***L&T's 2nd case*** (supra) in the notices issued to some of the parties will not make any difference.

63. As regards the contents in the notice, it was submitted that notice is not a condition precedent for assumption of jurisdiction. The Act only provides that reasonable opportunity has to be granted before passing an order, which merely implies issuance of notice. The same was given to the assessee. There are no reasons to be recorded or mentioned in the notice, especially regarding invocation of exception clause. A simple notice under Section 34 of the Act by the Commissioner intimating the party that the order is sought to be revised, is sufficient. After the notice is issued, the party can always reply to that and object to the notice raising all possible grounds available to him. In any case, the judgment, on the basis of which the orders are sought to be revised, has been mentioned, hence, none of the notices can be said to be bad merely on the ground that the contents mentioned therein are not to the liking of the petitioner.

64. With reference to additional contention raised by learned counsel for the petitioner in CWP No. 25336 of 2015, learned counsel for the State submitted that mere non-mentioning of any fact of the order/ judgment, on the basis of which revisional jurisdiction is sought to be invoked, is not fatal, as nothing as such is required to be mentioned in the notice.

65. Learned counsel for the State, while relying upon the judgments of Hon'ble the Supreme Court in ***The Tata Iron & Steel Co.. Ltd. v. The State of Bihar.*** AIR 1958 SC 452; ***State of Rajasthan and another v. J. K. Udaipur Udyog Ltd. and another***. (2004) 7 SCC 673 and ***Commissioner of Trade Tax. U. R and another v. Kaiaria Ceramics Ltd., (2005) 11 SCC 149***, submitted that it is the liability of the dealer to pay the tax and it is his option either to pass on the burden to the buyer or not, though in law he may be entitled to. Mere this fact will not debar the State from collecting due taxes.

66. Justifying the enhancement of period for revision from three years to six years and its applicability to all pending cases, while relying upon the judgment of Hon'ble the Supreme Court in ***Addl. Commissioner (Legal) and another v. Jyoti Traders and another,*** (1999) 2 SCC 77, it was submitted that the amendment, in fact, being procedural and as the language suggests is retrospective in nature, hence, will be applicable to all the cases, even where limitation of three years for passing the revisional order had expired before the amendment was notified. Even the amendment suggests that the words “three years” had been substituted with words “six years”. In support of the plea that if there is conflict in two judgments of Hon'ble the Supreme Court of equal number of Judges, which of the judgment is to be followed, reference was made to a Full Bench judgment of this Court in ***Indo Swiss Time Limited, Dundahera v. Umrao and others***, AIR 1981 P&H 213.

67. As regards reasonable time for passing the order, it was submitted that main reliance of the petitioner is on the judgment of Hon'ble the Supreme Court in Bhatinda District Coop. ***Milk R Union Ltd.'s*** case (supra), where no limitation was provided under the Punjab General Sales Tax Act, 1948. In the present case, normal period of limitation of three years was

provided, which now stands substituted with six years. However, for invocation of the exception clause under certain specified conditions, there is no period of limitation. In those eventualities, no time can be read in the provision. He further submitted that the department can issue notice at any time, as no prejudice as such is going to be caused to an assesee. Even if he is unable to produce the books of accounts, on the basis of proposition of law, order can be revised merely after seeing the returns or order of assessment. On a query of the court, as to what are the instructions of the department for preservation of records in office, he could not specifically answer. He further submitted that even if there is some delay in issuance of notice invoking any of the events in the exception clause, the reasons are not required to be given in the notice. The same have to form part of the order after considering the reply by the assessee. In the present case, the delay is well explained as the earlier judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's case*** (supra) was pending re¬consideration before a larger Bench in ***L&T's 1st case*** (supra). As the notice had been issued to the assessee immediately after the judgment in ***L&T's 2nd case*** (supra), there was no delay.

68. Learned counsel for the State further contended that even though challenge in the present petitions is to Explanation (i) to Section 2(l)(zg) of the Act providing for definition of 'sale price', however, from the petition it is not clear as to whether vires of the provision have been challenged, as existed prior to 20.3.2009 or after that. The provision, as existed before 20.3.2009, provided for two methods for calculation of sale price, first being deductive method and second being additive method. The second was applicable where quantifiable data regarding labour and service was not available. While referring to the Division Bench judgment of this court in ***CHD Developers Limited's case*** (supra), it was submitted that provisions of Explanation (i) to Section 2(l)(zg) of the Act, as existed after 20.3.2009, Sections 9 and 42 of the Act and Rules 25(2) and 49 of the Rules were also challenged and prayer was also for setting aside the assessment orders and the revisional orders. This court, while deciding the aforesaid cases, upheld the vires of Section 2(l)(zg) of the Act opining that it was not a charging section, rather, the provision merely provided for definition.

69. Analysing Explanation (i) to Section 2(l)(zg) of the Act, as existing prior to 20.3.2009, it was submitted that case of the petitioners before this court is that they are maintaining regular books of account, hence, the value of the property in goods, which is transferred in execution of works contract, can very well be calculated therefrom by applying deductive method. The provisions of the Act envisage levy of tax on sale of goods. The term “goods” has been defined and so the “gross turnover”. It also talks about the sale price of the goods. After deducting expenses incurred on account of labour and service charges, the gross turnover can be calculated and thereafter taxable turnover in terms of Section 6 of the Act. It is wrong to allege that tax is sought to be levied on the cost of the land, if any, included in the works contract. Section 2(zg) of the Act defines 'works contract'. The provision merely provides for levy of tax on sale of goods. Before the amendment was carried out in Section 2(l)(zg) of the Act w.e.f. 20.3.2009, in fact, no Rules were required. The necessity arose only after the amendment was carried out, which enabled the Government to provide for certain formulae for calculation of the sale price in the absence of quantifiable data. For the period prior to 20.3.2009, at this stage, there is no need to go into the validity thereof for the reason that admittedly, the petitioners have their books of accounts, which were maintained in normal course of business and from that taxable turnover can be determined and the case will not fall in second category, which shall be applicable only where quantifiable data of labour and service charges is not available. Whatever deductions are to be provided in terms of the law laid down by Hon'ble the Supreme Court or this Court will be taken care of by the authorities under the Act.

70. While referring to the judgment of Hon'ble the Supreme Court in ***Gannon Dunkerley and Co.'s case*** (supra), it was submitted that Hon'ble the Supreme Court has clearly

defined as to the kind of deductions, which are available for assessing the value of goods, property in which is passed on in a works contract. The assessment of the petitioners for that period can very well be framed keeping in view the statement of law on the subject. He further submitted that the petitioners have not been able to refer to any case where the assessing authority or the revisional authority had taken into consideration the value of land for the purpose of levy of tax. The judgments relied upon by learned counsel for the petitioners are distinguishable. Even for the period from 20.3.2009 to 16.5.2010, when Rule 25(2) was added in the Rules, in case the books of accounts are available, there is no problem in calculation of taxable turnover, as the section provides for all necessary ingredients.

71. Learned counsel for the State fairly submitted that no order could be passed against the company, which stood dissolved after being merged in another company, the order may be set aside, however, liberty be granted to the department to pass fresh order.

REPLY ON BEHALF OF THE PETITIONER

72. In response, learned counsel for the petitioner submitted that in ***Bhatinda District Coop. Milk P. Union Ltd.'s case*** (supra), Hon'ble the Supreme Court opined that even if there is no time limit prescribed in any Act for exercise of jurisdiction, the same has to be read in it. Wherever no limitation is provided, the concept of reasonable period steps in. As the stand of learned counsel for the State is that for invoking the exception clause there is no limitation, reasonable period has to be read therein. The department cannot be permitted to invoke exception clause at its own whims and fancies after the cause of action arose. It is the admitted case of the department that judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's case*** (supra) was a good law. It was in favour of the department. There was no reason to wait for the decision of reference in ***L&T's 1st case*** (supra). In fact, the proper course would have been, if required, to initiate action for revision on the basis of ***K. Raheja Development Corporation's case*** (supra) and pass the order within the period permitted under the Act. At the most if the department so felt, it could have kept the recovery in abeyance; to be fair to the assessee. It is not in dispute that the department could invoke jurisdiction under Section 34 of the Act on the basis of judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's case*** (supra). There were two eventualities possible in ***L&T's 2nd case*** (supra), where the matter was referred for re-consideration— one is reiteration of the same view and second is taking a different view. In these circumstances, the department was not going to gain anything by keeping the matter pending. No insurmountable difficulties have been pointed out by the State either in the notice or in the order passed explaining the reasons why the notice has been issued so late after the cause of action arose.

73. In the exception clause, three eventualities have been mentioned, namely, retrospective amendment of law, order passed by the Tribunal or law declared by the High Court or Hon'ble the Supreme Court. The provision has to be given purposive interpretation. Once it is admitted by the State that amendment in law has to be subsequent to the passing of the order by the assessing authority, the other two eventualities have also to be later in time if exception clause is to be invoked. However, if on account of any error the assessing authority has failed to take note of the existing law and the period of limitation is still available, the order could be revised during that period only.

74. Regarding binding nature of the circulars issued by the department, it was submitted that it is only if judgment of a court takes a view different than what has been stated in the circular, that the circular is not binding, otherwise the department cannot be permitted to raise a plea that the circular issued by it is not binding on it, especially when the department is empowered under the Act to issue circulars. In the case in hand, there is no judgment contrary to the view expressed in the circular, rather, the orders of the Tribunals are in consonance

therewith. Judgment of this Court in ***Sonex Auto Industries R Limited's case*** (supra) was referred to.

75. He further submitted that even after the judgment in ***L&T's 2nd*** case (supra), the circular issued by the department could have been amended, but nothing was done even though some amendment in the circular was made on 10.2.2014. Regarding contents of the notice, it was submitted that unless an assessee knows why the proceedings are sought to be initiated against him, especially invoking the extended period of limitation, he will not be able to file specific reply thereto. In support of the plea, reliance was placed upon ***Aban Loyd Chiles Offshore Ltd.'s case*** (supra) and ***Commissioner of Income-Tax v, Contimeters Electricals R Ltd.,*** (2009) 317 ITR 249.

76. The judgment of ***Jyoti Traders and another's case*** (supra) in support of the plea regarding substitution of period of limitation for passing the revisional order from three years to six years, as cited by learned counsel for the State, was distinguished by stating that in the facts of that case, while going through the language of amendment, Hon'ble the Supreme Court opined that intention was to amend the law with retrospective effect, otherwise the amendment could not be given true meaning. In the case in hand, neither from the language of the amendment nor from the Act, it can be opined that intention was to amend the Act with retrospective effect. The rights vested in an assessee on expiry of period of limitation cannot be taken away.

77. It was further submitted that there is no possibility of passing order under the Act merely on the basis of returns or order of assessment, as for that purpose, books of accounts will always have to be gone into to determine the factual aspects for calculation of the amount of tax, hence, the department cannot be granted liberty to issue notice at any time.

78. Mr. Sandeep Goyal, learned counsel for the petitioner submitted that in terms of Section 56(2) of the Act, the circulars issued by the department are binding on the authorities under the Act, except the appellate authority. The reasonable period for invoking revisional jurisdiction would start from 5.5.2005 when the judgment in ***K. Raheja Development Corporation's case*** (supra) was delivered by Hon'ble the Supreme Court.

79. The judgment of this court in ***M/s Haryana State Warehousing Corporation's*** case (supra) is distinguishable on facts as in that case, this court permitted invocation of extended period of limitation on the basis of a judgment delivered by the High Court. In that case, the assessment was framed on 15.3.2007. Copy was supplied to the assessee on 25.7.2007. The revisional jurisdiction was sought to be exercised in view of the judgment of this court delivered subsequent to the passing of the assessment order in ***M/s Food Corporation of India v. State of Punjab,*** (2009) 33 PHT 632 (P&H) on 19.3.2009. The contention raised by the assessee was that the department always had the view that incidental charges are part of the turn-over, hence, the extended period of limitation could not be invoked. The contention was rejected while opining that in terms of the provisions of the Act, it is the judgment of the court laying down the law, which is relevant, and not the view of the department.

80. Heard learned counsel for the parties and perused the paper book.

DISCUSSIONS

81. After hearing learned counsel for the parties, we find that the following legal issues require adjudication by this Court:

(1) Whether revisional power could be exercised on the basis of judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation v. State of Karnataka,*** 2005 (141) STC 298, even if the matter had been referred to be considered by a larger Bench by Hon'ble the Supreme Court ?

(2) Whether extended period of limitation for exercise of revisional jurisdiction will apply even in cases where the period provided in the Act prior to the amendment had already expired ?

(3) Whether a show cause notice issued to exercise revisional jurisdiction is bad as it is lacking in basic facts to invoke exception clause and extended period of limitation ?

(4) Whether exception clause enabling exercise of revisional jurisdiction beyond the normal period of limitation prescribed in the Act, could be invoked even in cases where the event had taken place during the normal period prescribed in the Act ?

(5) Whether the circulars issued by the Department are binding on the department and the assessees ?

(6) Whether explanation (i) to Section 2(l)(zg) of the Act is ultra vires ?

(7) Whether levy of tax on builders can be sustained in the absence of machinery provisions ? The period being upto 16.5.2010 and thereafter, when the Rules were framed.

(8) Whether assessment could be framed in the name of a company which stood merged in another company and lost its entity by operation of law ?

ISSUE NO. (1)

Whether revisional power could be exercised on the basis of judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation v. State of Karnataka. 2005(141) STC 298****, even if the matter had been referred to be considered by a larger Bench by Hon 'ble the Supreme Court ?*

82. The relevant provisions of Section 34 of the Act, as existing before the amendment, are reproduced hereunder:

34. (1) The Commissioner may, on his own motion, call for the record of any case pending before, or disposed of by, any taxing authority for the purposes of satisfying himself as to the legality or to the propriety of any proceeding or of any order made therein which is prejudicial to the interests of the State and may, after giving the persons concerned a reasonable opportunity of being heard, pass such order in relation thereto as he may think fit:

Provided that no order passed by a taxing authority shall be revised on an issue which on appeal or in any other proceeding from such order is pending before, or has been settled by, an appellate authority or the High Court or the Supreme Court, as the case may be:

Provided further that no order shall be revised after the expiry of a period of three years from the date of the supply of the copy of such order to the assessee except where the order is revised as a result of retrospective change in law or on the basis of a decision of the Tribunal in a similar case or on the basis of law declared by the High Court or the Supreme Court.

(2) The State Government may, by notification in the Official Gazette, confer on any officer not below the rank of Deputy Excise and Taxation Commissioner, the power of the Commissioner under sub-section (1) to be exercised subject to such exceptions, conditions and restrictions as may be specified in the notification and where an officer on whom such powers have been conferred passes an order

under this section, such order shall be deemed to have been passed by the Commissioner under sub-section (1).

83. Section 34 of the Act enables the Excise & Taxation Commissioner, on his own motion to call for the records of any case pending before, or disposed of by, any taxing authority or any appellate authority other than the Tribunal for the purpose of satisfying himself as to the legality or propriety of the proceedings or the order made, which in the opinion of the Excise and Taxation Commissioner is prejudicial to the interest of the State. Second proviso to Section 34 of the Act provides that no order shall be revised after the expiry of three years from the date of supply of copy of such order to the assessee. The proviso, however, carves out exceptions to the aforesaid period of limitation, where an order can be revised even beyond the period of three years, in case:

(i) there is retrospective change in law;

(ii) any decision of the Tribunal in a similar case; and

(iii) on the basis of law declared by the High Court or the Supreme Court.

84. In the case in hand, it is not in dispute that neither there is any retrospective change in law nor a decision of the Tribunal, on the basis of which the revisional jurisdiction has been exercised, that too by invoking the exception clause beyond the normal period of limitation.

85. The exception clause for invoking the extended period for exercise of revisional jurisdiction was analysed by learned counsel for the petitioner in two parts, first being "on the basis of" and second being "law declared by the High Court or the Supreme Court".

86. The basis of anything is that on which it stands. Meaning thereby, in the case in hand, the very basis, on which notice issued for revision of the assessment order by invoking the extended period of limitation, is sought to be justified is the law declared by Hon'ble the Supreme Court.

87. Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Here, we need to examine, what is the law declared ?

What is the law declared ?

88. Article 141 of the Constitution of India uses the phrase "law declared by the Supreme Court". It has been defined to mean law made while interpreting the statutes or the Constitution. It was held to be part of the judicial process.

89. The issue was considered by Hon'ble the Supreme Court in ***C. Golak Nath's case*** (supra) opining that to declare is to announce opinion. Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as law. The relevant lines therefrom are extracted below:

"51 Article 141 says that the law declared by the Supreme Court shall be binding on all courts; and Article 142 enables it in the exercise of its jurisdiction to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it. These articles are designedly made comprehensive to enable the Supreme Court to declare law and to give such directions or pass such orders as are necessary to do complete justice. The expression "declared" is wider than the words "found or made". To declare is to announce opinion. Indeed, the later involves the process, while the former expresses result. Interpretation, ascertainment and evolution are parts of the process, while that interpreted, ascertained or evolved is declared as law. The law declared by the Supreme Court is the law of the land. If so, we do not see

any acceptable reason why it, in declaring the law in supersession of the law declared by it earlier, could not restrict the operation of the law as declared to future and save the transactions, whether statutory or otherwise that were effected on the basis of the earlier law..... "

[Emphasis supplied]

90. The issue was later considered in ***Sahara India Real estate Corporation Limited and others v. Securities and Exchange Board of India and another***. (2012) 10 SCC 603, wherein Hon'ble the Supreme Court opined that the law declared by the Supreme Court means law made while interpreting the statutes or the Constitution.

91. In the case in hand, it cannot be disputed that the law was declared by Hon'ble the Supreme Court regarding taxation on the transactions of the type involved in the present petition vide judgment in K. Raheja Development Corporation's case (supra) on 5.5.2005. It was only vide order dated 19.8.2008 passed in ***L&T's 1st case*** (supra) that the matter was referred to be considered by a larger Bench, which was finally decided vide judgment dated 26.9.2013 in ***L&T's 2nd case*** (supra) approving the law as declared in ***K. Raheja Development Corporation's case*** (supra).

Binding nature of judgment even if issue refered to larger Bench

92. An ancillary issue, which arises for consideration in the facts of the present case, is as to whether the law declared by Hon'ble the Supreme Court is still a good law and a binding precedent, even if the issue is referred to be considered by a larger Bench. The question was considered by Hon'ble the Supreme Court in ***State of Rajasthan v, M/s R. S. Sharma and Co.***, (1988) 4 SCC 353. It was opined therein that final determination of a controversy cannot be kept pending only on the ground that the issue is pending adjudication by a larger Bench. The contention raised by the parties before Hon'ble the Supreme Court was that as the issue was pending consideration before a Constitution Bench, the case should not be decided. However, keeping in view the law, as existing, the matter was finally decided. The relevant paras thereof are extracted below:

"7. It was contended before us that the question whether on the ground of absence of reasons, the award is bad per se, is pending consideration by a Constitution Bench of this Court in C.A. Nos. 3137-39 of 1985, 3145 of 1985 - Jaipur Development Authority v. Firm Chhokhamal Contractor. It was, hence, urged that this should await adjudication on this point by the Constitution Bench. We are unable to accept this contention. In our opinion pendency of this question should not postpone all decisions by this Court. One of the cardinal principles of the administration of justice is to ensure quick disposal of disputes in accordance with law, justice and equity.....

8. The law it stands today is clear that unless there is an error of law apparent on the face of the award, the award cannot be challenged merely on the ground of absence of reasons. This is settled law by a long series of decisions. Interests of justice and administration of justice would not be served by keeping at bay final adjudication of the controversy in this case on the plea that the question whether an unreasoned award is bad or not, is pending adjudication by a larger bench. There have been a large number of sittings before the arbitrators. Parties have been heard. There was no mis-conduct in the proceedings. There has been no violation of the principles of natural justice. In such a situation it would be inappropriate to postpone the decision pending adjudication of this question by a larger bench of this Court. We do not know how long it would take to decide that question, and whether ultimately this Court would decide that unreasoned

> *awards per se are bad or whether the decision would have prospective application only in view of the long settled position of law on this aspect in this country or not. Justice between the parties in a particular case, should not be in suspended animation"*
>
> *[Emphasis supplied]*

Similar was the view in ***State of Orissa v. Dandasi Sahu***, (1988)4 SCC 12.

93. The issue was subsequently considered by a Division Bench of ***Bombay High Court*** in ***Madhao's case*** (supra). On the subject-matter involved therein, the legal issue was decided by Hon'ble the Supreme Court in ***State of Maharashtra v. Sant Joginder Singh,*** (1995 Supp (2) SCC 475), however, doubting the judgment delivered by two Hon'ble Judges in the aforesaid case, in ***Gimar Traders v. State of Maharashtra***, (2004) 8 SCC 505 (hereinafter referred to as "Gimar-I case"), the matter was referred to a larger Bench. The Bench consisting of three-Judges in ***Gimar Traders v. State of Maharashtra.*** (2007) 7 SCC 555 (hereinafter referred to as "Gimar- II case") referred the matter still to be heard by a larger Bench. The contention sought to be raised by the party before the Bombay High Court was that in view of the order passed by Hon'ble the Supreme Court in "Gimar-I and Girnar-II cases", the law laid down by Hon'ble the Supreme Court in Sant Joginder Singh's case (supra) no more holds the field, hence, cannot be relied upon, as the issue has not been finally decided by Hon'ble the Supreme Court after reference in "Girnar-II case" (supra). While referring to the judgment of Hon'ble the Supreme Court in R, S. Sharma and Co.'s case (supra) and other judgments on the issue, it was opined that pending decision of a reference to a larger Bench, any lis between the parties cannot be kept suspended. Any reference to a larger Bench does not make the law already laid down by the Apex Court not binding on the courts below till the issue is decided by a larger Bench. Relevant paragraph thereof is extracted below:

> *"56. In view of the above referred observations of the Apex Court and the Division benches of this Court, it is evident that justice between the parties should not be kept in suspended animation in view of pendency of reference for decision before the larger Bench. Similarly, the decision of the Apex Court referred to the larger Bench does not make the law already laid down by the Apex Court not binding on the High Court till the authoritative pronouncement is delivered by the larger Bench of the Apex Court. In the instant case, the land acquisition proceedings were initiated much prior to 2005 and the award came to be passed by the Special Land Acquisition Officer on 20.6.2008. There is no challenge to the land acquisition procedure adopted by the Authorities nor validity of the award is questioned except on the ground of applicability of provisions of Section 11-A of the Land Acquisition Act. The Apex Court in the case of Sant Joginder Singh has already declared the law on the subject by holding that Section 11-A of the Land Acquisition Act is not applicable to the proceedings under the MRTP Act. In the subsequent decision in the case of Girnar-I, the Apex Court by giving reasons referred the decision in Sant Joginder Singh's case for re-consideration to the three-Judges' Bench, which in turn, again referred the said issue to the five Judges' Bench without declaring the law on the subject, with the result the law declared by the Apex Court in Sant Joginder Singh's case continues to hold field and, therefore, for the reasons stated above, it is difficult for us to accept the contention canvassed by the learned counsel for the petitioner in this regard."*

94. In the aforesaid judgment, Division Bench of Bombay High Court had framed four issues, two of which relevant herein, are extracted below:

> *"(II) Whether the decisions of the Apex Court in Girnar-I and Girnar-II cases affect the binding nature of the law declared by the Apex Court in Sant Joginder Sxingh's case and whether it loses its efficacy ?*
>
> *(III) Whether the law declared by the Apex Court in the case of Sant Joginder Singh in regards to applicability of Section 11-A of Land Acquisition Act to the acquisition proceedings under the MRTP Act loses its binding nature under Article 141 of the Constitution in view of pendency of reference in this regard before the larger Bench of the Apex Court for decision ?"*

Both the aforesaid questions were answered in negative.

95. A Division Bench of Kerala High Court in ***Denny Fernandez v. State of Kerala.*** 2003(1) KLT 280 opined that the judgment pronounced by Hon'ble the Supreme Court continues to be the law of land under Article 141 of the Constitution of India and binding upon all the courts below till such time it is reversed or modified by a larger Bench. The observation made in ***Indian Oil Corporation Limited. Barauni v. The Presiding Officer Central Government Industrial Tribunal and another***, 1994 SCC OnLine Pat 277 in para No. 23 is also in same line. The relevant part thereof is extracted below:

> *"23. Counsel for the petitioner submitted that the correctness of the aforesaid Constitution Bench decisions of the Supreme Court is likely to be reconsidered by a larger Bench of the Supreme Court since a similar question arising in a batch of matters before the Supreme Court has been referred to a larger Bench. Assuming it to be so. the decision of the Supreme Court is nonetheless binding upon me as the law of the land declared, which I am bound to follow having regard to the mandate of Article 141 of the Constitution. The mere fact that the matter has been referred to a larger Bench does not denude the decision of its authority as a binding precedent"*
>
> *[Emphasis supplied]*

Similar was the view taken by Hon'ble the Supreme Court in ***State of Maharashtra and another v. Sarva Shramik Sangh, Sangli and others,*** (2013) 16 SCC 16.

Finding

96. In view of our aforesaid discussions, it can safely be opined that judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's*** case (supra) was a binding precedent declaring the law at that time on the subject to be followed by all courts and authorities below and action could have been taken by the authorities on the basis thereof, if considered appropriate.

> ***ISSUE NO. (2)***
>
> *Whether extended period of limitation for exercise of revisional jurisdiction will apply even in cases where the period provided in the Act prior to the amendment had already expired ?*

97. The State issued Ordinance on 3.8.2015, seeking to amend Section 34 of the Act by enlarging the period during which power of suo- motu revision could be exercised. The Ordinance was replaced by Amending Act, which got assent of the Governor on 15.9.2015 and was published in the gazette on 21.9.2015. Second proviso to Section 34(1) of the Act, as existed prior to the amendment, as has already been reproduced in para No. 82 of the judgment, provided that no order shall be revised after expiry of the period of three years from the date of supply of copy of such order to the assessee. This was the provision to be applied in normal circumstances. Vide amendment in second proviso to sub-section (1) of Section 34 of the Act,

for the words "three years", words "six years" were substituted. Meaning thereby, the normal period of limitation for revising an assessment order was now six years, as against three years.

98. The issue, which arises for consideration, is as to whether the period stood extended even in the cases where three years had already expired from the date of supply of copy of order to an assessee. The answer would be in negative, as a dead claim cannot be revived. Right to revise the order had extinguished, which could not be revived. Further life could be injected only in the cases where limitation for revising an assessment order was still existing.

99. Similar issue was considered by Hon'ble the Supreme Court in Uttam Steel Ltd.'s case (supra), where the claim for rebate on export shipment was made. The period prescribed under Section 11B of the Central Excise Act, 1944 at the relevant time for making such claim was six months, which was later on substituted by one year. The assessee therein did not prefer claim within the period of six months. The amendment enlarging the period came later on. Hon'ble the Supreme Court opined that where the claim under the existing provision was already time-barred before the enlargement of period by the amending Act, the same will not be available to the assessee. While referring to earlier judgments on the issue, namely, (i) ***J. R Jani. Income Tax Officer v. Induprasad Devshanker Bhatt.*** AIR 1969 SC 778; (ii) ***New India Insurance Co. Ltd. v. Shanti Misra,*** (1975) 2 SCC 840; (iii) ***T. Kallamurthi v. Five Gori Thaikkal Wakf.*** (2008) 9 SCC 306; and (iv) ***Thirumalai Chemicals Ltd. v. Union of India and others***, (2011) 6 SCC 739, Hon'ble the Supreme Court opined as under:

> *"10. We have heard learned counsel for the parties and Shri Bagaria, the learned Amicus Curiae at some length. There is no doubt whatsoever that a period of limitation being procedural or adjectival law would ordinarily be retrospective in nature. This, however, is with one proviso super added which is that the claim made under the amended provision should not itself have been a dead claim in the sense that it was time barred before an Amending Act with a larger period of limitation comes into force....."*
>
> *[Emphasis supplied]*

100. The issue was subsequently considered by Hon'ble the Supreme Court in ***M/s Shrevans Indus. Ltd.'s case*** (supra), where a judgment of this court dealing with similar proposition of law was upheld. In that case, normal period for framing assessment, as provided for in Section 11(10) of the Punjab General Sales Tax Act, 1948 was three years, however, the Commissioner was empowered to extend that period further after recording reasons in writing. The issue which arose for consideration before the court was whether any extension for framing the assessment could be granted by the Commissioner after the expiry of period of three years, as provided for in the Act. The view expressed by this court was that after expiry of period of limitation for framing the assessment, the right to make assessment gets extinguished. Thereafter, the Commissioner is debarred from exercising power to grant extension for the purpose of framing of assessment. The relevant paras thereof are extracted below:

> *"6. The assessee took up the matter further by filing appeals before the High Court. Here, the assessee has succeeded in its submission as the High Court of Punjab and Haryana vide impugned judgment dated September 26, 2008 has held that once the period of limitation expires, the immunity from subjecting itself to the assessment sets in an the right to make assessment gets extinguished. Therefore, when the period of limitation prescribed in the Act for passing the assessment order expires, thereafter, the Commissioner is debarred from exercising his powers under sub-section (1) of Section 11 of the Act and cannot extend the period of limitation for the purpose of assessment. This order is assailed by the Revenue in the instant appeals before us.*

xx xx xx

24. It was also observed that upon the lapse of the period of limitation prescribed, the right of the Department to assess an assessee gets extinguished and this extension confers a very valuable right on the assessee.

25.If one is to go by the aforesaid dicta, with which we entirely agree, the same shall apply in the instant cases as well. In the context of the Punjab Act, it can be said that extension of time for assessment has the effect of enlarging the period of limitation and, therefore, once the period of limitation expires, the immunity against being subject to assessment sets in and the right to make assessment gets extinguished. Therefore, there would be no question of extending the time for assessment when the assessment has already become time barred. A valuable right has also accrued in favour of the assessee when the period of limitation expires. If the Commissioner is permitted to grant the extension even after the expiry of original period of limitation prescribed under the Act, it will give him right to exercise such a power at any time even much after the last date of assessment in the instant appeals itself, when the last dates of assessment were 30th April, 2004."

[Emphasis supplied]

101. The judgment in ***Jyoti Traders and another's*** case (supra) is distinguishable as in the aforesaid judgment, while relying upon two earlier judgments, it was opined that language of the amendment suggested that it was with retrospective effect, hence, it was given its true meaning. The facts of the case in hand are different. There are later judgments of Hon'ble the Supreme Court in ***Uttam Steel Ltd.'s case*** (supra) and ***M/s Shrevans Indus Ltd's case*** (supra).

Finding

102. In view of our aforesaid discussions, it can safely be opined that extended period for exercise of revisional jurisdiction will be applicable only in cases where period prescribed prior to the amendment had not expired and not where the period had earlier expired as the amendment cannot put life to a dead claim.

ISSUE NO. (3)

Whether a show cause notice issued to exercise revisional jurisdiction is bad as it is lacking in basic facts to invoke exception clause and extended period of limitation ?

103. The petitioners in the bunch of petitions have also sought to challenge validity of the show cause notices issued to the petitioners invoking jurisdiction to revise orders of assessment, primarily taking the plea that basic ingredients required for invoking the jurisdiction were missing in the notices. Special reference was made to invocation of extended period of limitation. It was submitted that extended period could be invoked only in three specified circumstances. If the authority sought to initiate proceedings after the limitation as provided in Section 34 of the Act had already expired, it was required to be specifically mentioned in the notice itself. In the absence thereof, the notice as such was bad. In support, reliance was placed upon ***H. M. M. Limited; Kaur & Singh; Aban Loyd Chiles Offshore Ltd.; and Uniworth Textiles Ltd.'s cases*** (supra).

104. On the other hand, the contention was sought to be controverted by learned counsel for the State by raising the plea that a mere notice under Section 34 of the Act proposing to revise order of assessment was sufficient. No facts were required to be mentioned. The section envisages only opportunity of hearing before passing an order. There are no pre-requisites required to be fulfilled before jurisdiction is assumed by the Commissioner.

105. This court is not going into this aspect of the matter for the reason that at this stage, it has lost its significance, in terms of the earlier order passed by this court, the Commissioner has already disposed of the preliminary objections raised by the petitioner regarding assumption of jurisdiction. Once the order has already been passed, this court is examining the validity of the order as such. Though the order as such may be appealable before the Tribunal, but the unfortunate situation, as existed was that for the last about two years, till the arguments were heard, there was no functional Tribunal in the State of Haryana on account of non-appointment of Presiding Officer and the Members thereof.

106. The issue is not being examined as in pursuance to the show cause notices, orders have already been passed and those are under consideration before this court.

ISSUE NO. (4)

Whether exception clause enabling exercise of revisional jurisdiction beyond the normal period of limitation prescribed in the Act, could be invoked even in cases where the event had taken place during the normal period prescribed in the Act?

107. A perusal of Section 34(1) of the Act provides that for the purpose of satisfying himself as to the legality of an order and propriety of any proceedings which, in the opinion of the Commissioner, is prejudicial to the interest of the State, he may call for the record of that case except the cases, which are either pending or have been disposed of by an appellate authority, High Court or the Supreme Court. Second proviso to Section 34(1) of the Act provides that no order shall be revised after the expiry of three years from the date of supply of copy of the order of assessment, sought to be revised. This is the normal period of limitation. However, the limitation is not applicable in three eventualities, namely, (i) where there is a retrospective change in law; (ii) any decision of the Tribunal in a similar case; and (iii) on the basis of law declared by the High Court or the Supreme Court.

108. It is the conceded position by learned counsel for the State that to enable the Commissioner to invoke revisional jurisdiction after expiry of normal period, retrospective change in law has to be after the order had been passed by the assessing authority. However, with reference to the order passed by the Tribhunal or the judgments of High Court or the Supreme Court, the contention was that these can be even prior to the order passed by the assessing authority. Meaning thereby, the assessing authority at the stage of passing of assessment order had ignored certain binding precedents by the Tribunal or jurisdictional High Court or Hon'ble the Supreme Court. There cannot be any dispute in the proposition of law to the extent that if there is any error in the order passed by the assessing authority, who failed to take notice of a binding precedent in favour of the revenue, the order being prejudicial to the interest of the State can be revised. However, in those circumstances, it will be the normal period of limitation within which such a power is to be exercised. The exception clause cannot be permitted to be invoked in normal circumstances as the department had ample time as provided in the provision, namely, three years from the date of passing of order sought to be revised. If the exception clause is to be invoked, there have to be exceptional circumstances. Even if any amendment, order of the Tribunal or judgment of the High Court or Hon'ble the Supreme Court is subsequent to the passing of the order of assessment, in normal circumstances the exercise of revisional jurisdiction has to be during the period of limitation except in cases, where the amendment or the order/ judgment, on the basis of which revisional jurisdiction is sought to be exercised, had come into existence just before the limitation, as provided in Section 34 of the Act, was to expire. Those cases will depend on the facts of each case to be examined as to whether exception clause for exercise of power for revision beyond the period prescribed in that section can be allowed to be invoked or not.

109. However, in the cases, where the grounds, namely, three exceptions as carved out in second proviso to Section 34(1) of the Act were available much before even the passing of

the order of assessment, the exception clause providing extended period of limitation cannot possibly be permitted in those cases. In case permitted, that would amount to adding premium to in-action, incompetence of the authorities, which is clearly against the spirit of the Act. It cannot be said to be exceptional circumstance, which was beyond the control of the Commissioner for exercise of power within the period of limitation, as provided for under Section 34(1) of the Act. If interpretation, as is sought to be contended by learned counsel for the State is accepted, that would do away the period of limitation as provided for under the Act for exercise of revisional jurisdiction, as in all the cases the department would be at liberty to invoke the same at any time, without there being any distinction.

110. The law on the subject was laid down by Hon'ble the Supreme Court vide judgment delivered on 5.5.2005 in ***K. Raheja Development Corporation's case*** (supra), much prior to the assessment years involved herein. The details regarding assessment order; date on which order of assessment was passed; date of supply of copy of assessment order (wherever available); date on which normal period of limitation for revision had expired; date of issuance of notice under Section 34(1) of the Act; date on which the order was passed by the revisional authority finally or deciding the preliminary objection are given as under. The aforesaid information was furnished by the State in the form of a table attached as Annexure R-l/3 with reply in CWP No. 25336 of 2015.

Sr. No.	**CWP No.**	**Parties Name**	**Assessment year**	**Date of assessment order**	**Date of supply of assessment order**	**Limitation for passing order**	**Date of issuance of notice for revision**	**Date ofrevisional order**
1.	20788 of 2015	M/s Dhingra Jardine Infrastructure Pvt. Ltd. v. The State of Haryana and others	2011-12	15.5.2013	15.5.2013	14.5.2016	04.06.15	03.07.15
2	23671 of 2015	Omaxe Ltd. v. The State of Haryana and others	2010-11	30.4.2012	7.6.2012	06.06.2015	14.5.2015 30.6.2015	21.8.2015
3	23721 of 2015	Omaxe Ltd. v. The State of Haryana and others	2009-10	30.4.2012	29.4.2011 and date of rectification 27.9.2011	26.09.2014	18.5.2015	22.7.2015
4	24700 of 2015	M/s Dhingra Jardine Infrastructure Pvt. Ltd. v. The State of Haryana and others	2008-09	26.4.2010	26.4.2010	25.04.2013	24.6.2015	15.7.2015
5	24847 of 2015	M/s Dhingra Jardine Infrastructure Pvt. Ltd. v. The State of Haryana and others	2009-10	28.4.2011	04.10.11	03.10.2014	02.07.15	15.7.2015
6	24966 of 2015	M/s DLF Ltd. v. The State of Haryana and others	2007-08	11/02/2010	25.2.2010	24.02.2013	17.7.2015	31.5.2016
7	25336 of 2015	M/s Amarnath Aggarwal Investment Pvt. Ltd. v. State of Haryana & others	2009-10	29.2.2012	29.2.2012	28.02.2015	24.8.2015	Revision proceedings are in progres

8	25848 of 2015	M/s Raheja Developers Ltd. v. The State of Haryana and others	2006-07	04/03/10	—		13.8.2015	23.11.2015
9	26508 of 2015	M/s Vatika Limited v. State of Haryana and others	2006-07	20.1.2010	12.3.99	11/03/16	09.07.15	13.11.2015
10	26833 of 2015	Emaar MGF Land Limited v. State of Haryana and others	2009-10	15.3.2013	--		22.4.2015 9.10.2015	13.11.2015
11	27005 of 2015	Bestech India Pvt. Ltd. v. The State of Haryana and others	2008-09	24.5.2010		'	18.6.2015	16.11.2015
12	27006 of 2015	Bestech India Pvt. Ltd. v. The State of Haryana and others	2010-11	17.4.2012	--	-	18.6.2015	16.11.2015
13	27032 of 2015	Bestech India Pvt. Ltd. v. The State of Haryana and others	2007-08	31.12.2009	--	-	15.9.2015	16.11.2015
14	27448 of 2015	Ajay Enterprises Pvt. Ltd. v. The State of Haryana and others	2009-10	26.2.2013	26.2.2013	25.02.2016	18.6.2015	18.8.2015
15.	27458 of 2015	Ajay Enterprises Pvt. Ltd. v. The State of Haryana and others	2008-09	31.5.2010	-		18.6.2015	16.11.2015
16.	27526 of 2015	Ajay Enterprises Pvt. Ltd. v. The State of Haryana and others	2010-11	29.11.2012	-		18.6.2015	20.11.2015
17.	787 of 2016	M/s BPTP Ltd. v. The State of Haryana and others	2007-08	22.4.2010	22.4.2010	21.04.2013	2.7.2015	30.11.2015
18.	788 of 2016	M/s Raheja Developers Ltd. v. The State of Haryana and others	2007-08	26.11.2009			13.8.2015	23.11.2015
19.	798 of 2016	M/s BPTP Ltd. v. The State of Haryana and others	2007-08	30.4.2009	30.4.2009	29.4.2012	2.7.2015	30.11.2015
20.	1868 of 2016	M/s DLF Ltd. v. The State of Haryana and others	2008-09	20.8.2010	27.9.2010	28.9.2013	17.10.2015	31.5.2016
21.	2197 of 2016	M/s Raheja Developers Ltd.v. The State of Haryana and others	2005-06	6.3.2009	22.4.2009	21.4.2012	7.10.2015	23.11.2015
22.	3196 of	M/s DLF Home Developers Ltd. v.	2007-08	15.6.2009	25.6.2009	24.6.2012	26.6.2015	16.11.2015

	2016	The State of Haryana and others						
23.	3748 of 2016	M/s Parsvnath Developers Ltd. v. The State of Haryana and others	2010-11	18.4.2012	--	-	18.6.2015	16.11.2015
24.	3768 of 2016	M/s Parsavnath Developers Ltd. v. The State of Haryana and others	2009-10	18.4.2011	--	-	18.6.2015	16.11.2015
25.	6796 of 2016	M/s DLF Home Developers Ltd. v. The State of Haryana and others	2006-07	19.5.2008	--	-	1.10.2015	
26.	8820 of 2016	M/s DLF Ltd. v. The State of Haryana and others	2006-07	13.2.20009	-		28.12.2015	25.2.2016
27.	19413 of 2016	M/s S. P.R. Buildtech Ltd. v. The State of Haryana and others	2009-10	29.9.2011	-	-	24.6.2015	30.11.2015

111. Though any order passed by the Tribunal will not be a binding precedent for this court, however, it can certainly be referred to in the light of the fact that a view was taken by the Full Member Tribunal and the same was accepted by the State by not taking any proceeding further. However, it can be ignored if against settled principles of law. In ***M/s Cheeka Solvent (PI Ltd.'s case*** (supra), a three-Member Bench of the Tribunal dealing with an identical situation with reference to Section 40 of the Haryana General Sales Tax Act, 1973 read with the provisions of Act, as the action was initiated after the enactment of the Act, inter-alia opined that in case the order of the Tribunal on the basis of which revisional jurisdiction was sought to be invoked was already existing for a long time, the revisional power should have been exercised within the period of limitation. An earlier order passed by the Tribunal was referred to. It is not in dispute that the aforesaid two orders attained finality.

112. If considered in the light of the facts in the present case, binding precedent in the form of judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's case*** (supra) was delivered on 5.5.2005. Undisputedly, all the assessment orders were passed subsequent thereto ignoring that settled principle, for which there is no explanation available. Merely because the co-ordinate Bench of Hon'ble the Supreme Court had referred the matter to be considered by a larger Bench in ***L&T's 1st case*** (supra), vide order dated 19.8.2008, it did not take away its value of binding precedent till such time the matter was decided by the larger Bench. The judgment by the larger Bench in ***L&T's 2nd case*** (supra) was pronounced on 26.9.2013. The notices were issued for revision to the petitioners much after the judgment of Hon'ble the Supreme Court in ***L&T's 2nd case*** (supra).

Finding

113. The question posed deserves to be answered in negative opining that for exercise of power of revision while invoking extended period of limitation as provided for in second proviso to Section 34(1) of the Act, in normal circumstances, the event has to be after the normal period of limitation had already expired. However, there can be some exception where event occurred just before the expiry of period of limitation and the action was taken within reasonable time or the delay is satisfactorily explained. Exception clause is to be invoked only

in exceptional circumstances. It is always required to be strictly interpreted even if there is hardship to any of the parties.

ISSUE NO. (5)

Whether the circulars issued by the Department are binding on the department and the assessees ?

114. Relevant provisions of Sections 56(2)(3) and (4) of the Act are reproduced hereunder:

> *"**56. Tax administration.***
>
> ***xx xx xx***
>
> *(2) The State Government or the Commissioner may, from time to time, issue such orders, instructions and directions to all such persons who are employed in the administration of this Act as the State Government or the Commissioner may deem fit for such administration and all such persons shall observe and follow such orders, instructions and directions of the State Government and the Commissioner:*
>
> *PROVIDED that no such orders, instructions or directions shall be issued so as to interfere with the discretion of any appellate authority in the exercise of its appellate functions.*
>
> *(3) The State Government may, if it considers it necessary or expedient so to do, for the purpose of maintaining uniformity in the levy, assessment and collection of tax or for the removal of any doubt, suo motu, or on an application made to it in the prescribed form and manner on payment of the prescribed fee by a dealer or a body of dealers, issue an order clarifying any point relating to levy, assessment and collection of tax and all persons employed in the administration of this Act except an appellate authority, and all dealers affected thereby shall observe and follow such order.*
>
> *(4) Every order issued under sub-section (3) shall be publicised simultaneously by uploading on the website www.haryanatax.com under the head 'VAT orders'.*
>
> *xx xx xx"*

115. Section 56 of the Act enables the State Government or the Commissioner to issue orders, instructions or directions to all such persons, who are employed in the administration of the Act and they are bound to follow the same except in the case of the appellate authority. It further provides that the State Government may, if it considers necessary, for the purpose of maintaining uniformity in the levy, assessment and collection of tax or for removal of any doubt, suo motu, or on an application made by any affected party issue an order clarifying the points. Such a clarification shall be binding on all except the appellate authority. Any order passed under Section 56(3) of the Act is to be publicised by uploading on the website of the department.

116. In exercise of the aforesaid power, the Commissioner vide memo dated 7.5.2013, issued instructions to all the officers in the department on the subject "instructions regarding civil works contracts/ builders and developers- deductions allowable in computation of turnover and consideration liable to tax". Referring to the fact that there is some confusion regarding levy of tax on the works being executed by the developers/builders of flats and buildings, especially in the cases where there are agreements for sale of constructed buildings, while referring to the definition of "sale" and the "works contract" as provided for in the Act, it was specifically mentioned that judgment of Hon'ble the Supreme Court in ***K. Raheja***

Development Corporation's case (supra) was still a good law and had not been reversed by Hon'ble the Supreme Court in any subsequent judgment. The authorities were advised by the Commissioner to tax such transactions and reject all the claims made, which are contrary to the judgment of Hon'ble the Supreme Court in ***K. Raheja Development Corporation's case*** (supra). Guidance was also given regarding registration of such contractors/builders. The relevant paras of the aforesaid instructions are extracted below:

> *"It has come to the notice of this office that there is some confusion amongst the departmental officers in determining the gross turnover and deductions allowable therefrom and consideration liable to tax in civil works contract cases, especially in case of builders and developers of flats and buildings. It has led to lack of uniformity in assessment of tax in such cases and has also resulted into avoidable disputes. The matter has been examined and it has been considered necessary that suitable instructions should be issued in this regard correct assessment and recovery of tax in these cases. Accordingly, the following instructions are being issued:*
>
> ***1. Assessment of tax in case of building contracts (Agreement for sale of constructed building):***
>
> *1.1 It has been noticed that several builders and developers enter into agreements with prospective buyers for sale of constructed flats/apartments or other buildings and claim that their transaction of sale of constructed buildings do not amount to transfer of property in goods involved in the execution of a works contract. However, such claim is contrary to the provisions of the Haryana Value Added Tax Act, 2003 (in short, "HVAT Act") because the "sale" as defined under clause (ii) of Section 2(l)(ze) of the HVAT Act includes, "the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract." The term "works contract" has been defined under Section 2(l)(zt) which "includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the assembling, construction, building, altering, manufacturing, processing, fabrication, installation, fitting out, improvement, repair or commissioning of any movable or immovable property". As such agreements or contracts entered into by the developers or others with prospective customers for sale of fully constructed apartments or flats or other buildings before the commencement of actual construction or before completion of construction, should be treated as agreements or contracts for execution of works contract of construction of building as held by the Hon'ble Supreme Court in the case of K. Raheja Development Corporation v/s State of Karnataka (reported in 141 STC at page 298). It is still a good law and has not been reversed by the Hon'ble Supreme Court in any subsequent judgment. Claims to the contrary, if any, should be rejected.*
>
> *1.2 It has come to the notice of this office that many developers / promoters / builders are not registered and not paying any tax, except tax deducted at source of Works Contract Tax (WCT) while making payments to the contractors engaged by them for the construction of building. Even where they are registered they are not filing returns in form VAT R-l or VAT R-6, as the case may be. They are actually filing returns in form VAT R-4A as contractee. The correct interpretation of law in such cases is that the developers / promoters / builders are liable to pay tax as works contractors. They need to be registered under the HVAT Act and are required to file their returns in form VAT R-l or*

VAT R-6, as the case may be, disclosing the correct amount of total receipts, including the receipts from the prospective buyers of constructed residential/commercial properties/buildings.

xx xx xx"

117. In the aforesaid clarification, all the officers were specifically instructed to follow the instructions.

118. In addition to the aforesaid instructions, with a view to ensure that the orders passed by the authorities under the Act do not suffer from any illegality or impropriety, especially with reference to the issue of limitation in passing the orders, fresh instructions were issued on 4.6.2013. Para No. 1 of the aforesaid instructions provided for period of limitation to be observed by the authorities with reference to Section 15 of the Act providing for regular assessment, Section 16 of the Act provides for re-assessment of un¬registered dealers, whereas Section 17 thereof provides for re-assessment. The dates were specifically provided till such time the action can be taken or has to be finalised. The issue regarding exercise of revisional power under Section 34 of the Act was also specifically dealt with in the instructions in para No. 1.5 thereof. It was mentioned therein that assessment orders for the years 2007-08 can be revised by March, 2014, the normal period of limitation being three years. Relevant part thereof is extracted below:

"1.5 Revision is provided under Section 34 of the Act. It contains that no order shall be revised after the expiry of a period of 3 years from the date of supply of the copy of such order to the assessee. This implies that under normal circumstances assessment orders upto the AY 2006-07 have attained finality. Assessment orders for the AY 2007-08 can be revised by March, 2014."

119. It was directed that period of limitation as provided for in different sections of the Act have to be kept in view while initiating action. The instructions further provided for monitoring of the cases of developers/ builders/contractors on the issue including the cases, which require exercise of power of revision or re-assessment.

120. The validity of the aforesaid instructions was subject-matter of challenge in ***CHD Developers Limited's case*** (supra), wherein the same was upheld.

121. The instructions issued by the department clarifying any position under the Act are binding on the department, however, the same are not binding on the court, if there is a judgment to the contrary. No direction can be given to give effect to any instructions, which run contrary to the view expressed by the court. Relevant paragraph of the judgment in ***Ratan Melting & Wire Industries' case*** (supra), dealing with the issue, is extracted below:

"7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/ circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."

122. There are two aspects in the aforesaid instructions issued by the department— first being to apprise various authorities under the Act about the correct position of law laid down by

Hon'ble the Supreme Court and the second being the issue of limitation for passing order under the Act. As far as the second issue is concerned, in our opinion, the instructions do not specifically state that extended period of limitation can or cannot be invoked in the circumstances of the cases. It only provided for normal period during which the revisional power can be exercised. The issue as regards exercise of revisional jurisdiction by invoking exception clause has been dealt with in the present case, hence, to that extent it cannot be opined that action of the authorities below the Commissioner are in any way contrary to the instructions issued by the department.

123. However, one fact is clearly established from the instructions, i.e., acceptance of the fact that judgment of Hon'ble the Supreme Court in K. Raheja Development Corporation's case (supra) was the law of the land and should be meticulously followed by all the authorities. To this extent, the instructions were in consonance with the settled position.

Finding

124. Any instructions issued by the Department are binding on the departmental authorities except on the issue where any judgment to the contrary exists. These are not binding on the court. A circular which is contrary to statutory provisions has no existence in law.

ISSUE No. (6)

Whether explanation (i) to Section 2(1) (zg) of the Act is ultra vires ?

125. The issue regarding vires of explanation (i) to Section 2(l)(zg) of the Act was considered by a Division Bench of this Court in ***CHD Developers Limited's case*** (supra), where the prayer was for declaring Explanation (i) to Section 2(l)(zg) of the Act and Rule 25(2) of the Haryana Value Added Tax Rules, 2003 (for short, 'the Rules') to be ultra vires to the Constitution of India. Challenge was also made to validity of Section 42 of the Act. The vires of explanation (i) to Section 2(l)(zg) of the Act was upheld opining that it is not a charging section but merely a definition clause, however, Rule 25(2) of the Rules was held to be valid while reading it down to the extent mentioned in the affidavit filed by the State. The State was further directed to bring necessary changes in the Rules in consonance with the observations made in the judgment. It was further observed that any effort to levy tax on any amount other than value of goods transferred in the course of execution of works contract would be ultra vires. Relevant para thereof is extracted below:

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

Finding

126. As the vires of the aforesaid provision has already been upheld by this court, we do not find any reason to re-examine the issue.

ISSUE NO. (7)

Whether levy of tax on builders can be sustained in the absence of machinery provisions? The period being upto 16.5.2010 and thereafter, when the Rules were framed.

127. The relevant provisions of the Act are reproduced below:

"2. Definitions

(1) In this Act, unless the context otherwise requires,-

xx xx xx

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

xx xx xx

(zg) "sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed at the time of sale as cash or trade discount according to the practice, normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof and the expression "purchase price" shall be construed accordingly;

Explanation.-

(i) In relation to the transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract, 'sale price' shall mean such amount as is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour and other service charges incurred for such execution, and where such labour and other service charges are no quantifiable, the amount of such charges shall be calculated at such percentage as may be prescribed.

xx xx xx"

6. Determination of taxable turnover

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

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

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

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

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

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

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

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

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

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

xx xx xx"

128. 'Dealer' has been defined in Section 2(l)(m) of the Act. 'Goods' have been defined in Section 2(l)(r) of the Act. 'Sale' has been defined in Section 2(l)(ze) of the Act to include even transfer of property in goods involved in execution of works contract. Explanation (I) thereto provides that in relation to transfer of property in goods involved in execution of a works contract 'sale price' shall mean, amount arrived at by deducting from the amount of valuable consideration, the amount representing labour and other service charges. No details of other service charges have been provided. Cost of land cannot be said to be falling in the term service charges. No procedure was provided before notifying Rule 25 in the Rules w.e.f. 17.5.2010. 'Sale price' has been defined in Section 2(l)(zg) of the Act. Works contract has been defined in Section 2(1)(z) of the Act. 'Gross turnover' has been defined in Section 2(1)(u) of the Act to mean aggregate of sale prices received or receivable in respect of any goods sold and 'tax turnover' has been defined in Section 2(l)(zn) of the Act to mean the figure arrived at in terms of the provisions of Sections 6 and 3(3) of the Act. Levy of tax on the transfer of property in goods in a works contract is no more an issue. It is only the quantum for the purpose of taxation.

129. The definition of 'sale price', as existed upto 19.3.2009 and from 20.3.2009 onwards is extracted below:

From 20.3.2009 onwards

zg) "sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed at the time of sale as cash or trade discount according to the practice, normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof and the expression "purchase price" shall be construed accordingly;	(zg) "sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed at the time of sale as cash or trade discount according to the practice, normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof and the expression "purchase price" shall be construed accordingly;
Explanation.-	**Explanation.-**
(i) In relation to the transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract, 'sale price' shall mean such amount as is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour and other service charges incurred for such execution, and where such labour and other service charges are not quantifiable, the sale price shall be the cost of acquisition of the goods and the margin of profit on them prevalent in the trade plus the cost of transferring the property in the goods and all	(i) In relation to the transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract, 'sale price' shall mean such amount as is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour and other service charges incurred for such execution, and where such labour and other service charges are not quantifiable, the amount of such charges shall be calculated at such percentage as may be prescribed.

other expenses in relation thereto till the property in them, whether as such or in any other form, passes to the contractee and where the property passes in a different form shall include the cost of conversion.	

130. Rules 25(2) to (5) were added in the Rules vide notification dated 26.3.2010. These provide for method for calculation of taxable turnover in execution of a works contract. Certain deductions are provided. The issue was considered by this Court in earlier round of litigation between the parties in ***CHD Developers Ltd.'s case*** (supra). Finding that there were certain anomalies in the Rules, the matter was disposed of inter-alia with observation that the State will carry out amendment in the Rules in terms of the stand taken before the Court. Rules 25(2) to (5) were substituted vide notification dated 23.7.2015 with retrospective effect from 26.3.2010.

131. The levy being bad in the absence of machinery provision was considered by Hon'ble the Supreme Court in L&T's 4th case (supra). The issue under consideration before Hon'ble the Supreme Court was as to whether service tax can be levied on indivisble works contracts prior to its introduction on 1.6.2007 by Finance Act, 2007, which expressly made the works contracts liable to service tax. Hon'ble the Supreme Court traced entire history of the works contract. Service tax was levied with amendments carried out vide Finance Act, 1995. Section 65(105) of the Finance Act, 1994 defined taxable service. Clause (zzzh) thereof provides that service provided to any person, by any other person, in relation to construction of a complex, will be a taxable service. It was added in the year 2004. Section 67 of the Finance Act, 1994 provides for valuation of taxable services for charging service tax. It provides that value of any taxable service shall be the gross amount charged by the service provider for such service rendered by him. The provisions of the Finance Act, 1994 were amended vide Finance Act, 2007. Section 65(105)(zzzza) was added. It provides for levy of service tax in relation to execution of works contract. Works contract was also defined. Section 67 of the Finance Act, 1994 was also amended. It provides that in case where the provision for service is under consideration, which is not ascertainable, it shall be the amount as may be determined in the prescribed manner. Subsequent thereto, in Service Tax (Determination of Value) Rules, 2006, Rule 2-A was added. It provided for determination of value of service tax in execution of a works contract. The judgment of Hon'ble the Supreme Court in ***Gannon Dunkerlev and Co.'s case*** (supra) was considered. It provided for modalities of taxing composite indivisible works contracts. The enunciation of law in the aforesaid judgment of Hon'ble the

Supreme Court was summed up in the following paras:

> *"14. A reading of this judgment, on which counsel for the assessees heavily relied, would go to show that the separation of the value of goods contained in the execution of a works contract will have to be determined by working from the value of the entire works contract and deducting therefrom charges towards labour and services. Such deductions are stated by the Constitution Bench to be eight in number. What is important in particular is the deductions which are to be made under sub-paras (f), (g) and (h). Under each of these paras, a bifurcation has to be made by the charging Section itself so that the cost of establishment of the contractor is bifurcated into what is relatable to supply of labour and services. Similarly, all other expenses have also to be bifurcated insofar as they are relatable to supply of labour and services, and the same goes for the profit that is earned by the contractor. These deductions are ordinarily to be made from the contractor's accounts. However, if it is found that contractors have not maintained proper accounts, or their accounts are found to be not worthy of credence, it is left to the legislature to prescribe a formula on the basis*

of a fixed percentage of the value of the entire works contract as relatable to the labour and service element of it. This judgment, therefore, clearly and unmistakably holds that unless the splitting of an indivisible works contract is done taking into account the eight heads of deduction, the charge to tax that would be made would otherwise contain, apart from other things, the entire cost of establishment, other expenses, and profit earned by the contractor and would transgress into forbidden territory namely into such portion of such cost, expenses and profit as would be attributable in the works contract to the transfer of property in goods in such contract. This being the case, we feel that the learned counsel for the assessees are on firm ground when they state that the service tax charging section itself must lav down with specificity that the levy of service tax can only be on works contracts, and the measure of tax can only be on that portion of works contracts which contain a service element which is to be derived from the gross amount charged for the works contract less the value of property in goods transferred in the execution of the works contract. This not having been done by the Finance Act, 1994, it is clear that any charge to tax under the five heads in Section 65(105) noticed above would only be of service contracts simpliciter and not composite indivisible works contracts.

15. At this stage, it is important to note the scheme of taxation under our Constitution. In the lists contained in the 7th Schedule to the Constitution, taxation entries are to be found only in lists I and II. This is for the reason that in our Constitutional scheme, taxation powers of the Centre and the States are mutually exclusive. There is no concurrent power of taxation. This being the case, the moment the levy contained in a taxing statute transgresses into a prohibited exclusive field, it is liable to be struck down. In the present case, the dichotomy is between sales tax leviable by the States and service tax leviable by the Centre. When it comes to composite indivisible works contracts, such contracts can be taxed by Parliament as well as State legislatures. Parliament can only tax the service element contained in these contracts, and the States can only tax the transfer of property in goods element contained in these contracts. Thus, it becomes very important to segregate the two elements completely for if some element of transfer of property in goods remains when a service tax is levied, the said levy would be found to be constitutionally infirm. This position is well reflected in Bharat Sanchar Nigam Limited v. Union of India, (2006) 3 SCC 1, as follows:-

> *"88. No one denies the legislative competence of the States to levy sales tax on sales provided that the necessary concomitants of a sale are present in the transaction and the sale is distinctly discernible in the transaction. This does not however allow the State to entrench upon the Union List and tax services by including the cost of such service in the value of the goods. Even in those composite contracts which are by legal fiction deemed to be divisible under Article 366(29-A), the value of the goods involved in the execution of the whole transaction cannot be assessed to sales tax. As was said in Larsen & Toubro v. Union of India[(1993) 1 SCC 364] : (SCC p. 395, para 47) :-*
>
> > *"47....The cost of establishment of the contractor which is relatable to supply of labour and services cannot be included in the value of the goods involved in the execution of a contract and the cost of establishment which is relatable to supply of material*

> *involved in the execution of the works contract only can be included in the value of the goods."*

> *89. For the same reason the Centre cannot include the value of the SIM cards, if they are found ultimately to be goods, in the cost of the service. As was held by us in Gujarat Ambuja Cements Ltd. v. Union of India [(2005) 4 SCC 214], SCC at p. 228, para 23:-*

> > *" 23...This mutual exclusivity which has been reflected in Article 246(1) means that taxing entries must be construed so as to maintain exclusivity. Although generally speaking, a liberal interpretation must be given to taxing entries, this would not bring within its purview a tax on subject- matter which a fair reading of the entry does not cover. If in substance, the statute is not referable to a field given to the State, the court will not by any principle of interpretation allow a statute not covered by it to intrude upon this field."*

[Emphasis supplied]

132. Examining the provisions of the Finance Act, 1994, as amended vide Finance Act, 2006, with reference to levy of tax on the works contract, it was opined that for the first time with amendment in the Finance Act, 2006, provisions were made for ascertaining the amount of service component in a works contract. Relevant paras thereof are extracted below:

> *"23. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts . This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract,*
>
> *xx xx xx*
>
> *25. We have already seen that Rule 2(A) framed pursuant to this power has followed the second Gannon Dunkerley case in segregating the 'service' component of a works contract from the 'goods' component. It begins by working downwards from the gross amount charged for the entire works contract and minusing from it the value of the property in goods transferred in the execution of such works contract. This is done by adopting the value that is adopted for the purpose of payment of VAT. The rule goes on to say that the service component of the works contract*

is to include the eight elements laid down in the second Gannon Dunkerley case including apportionment of the cost of establishment, other expenses and profit earned by the service provider as is relatable only to supply of labour and services. And, where value is not determined having regard to the aforesaid parameters, (namely, in those cases where the books of account of the contractor are not looked into for any reason) by determining in different works contracts how much shall be the percentage of the total amount charged for the works contract, attributable to the service element in such contracts. It is this scheme and this scheme alone which complies with constitutional requirements in that it bifurcates a composite indivisible works contract and takes care to see that no element attributable to the property in goods transferred pursuant to such contract, enters into computation of service tax."

133. Thereafter, the issue was considered regarding leviability of service tax on the composite works contract in the absence of machinery provision prior to 1.6.2007. Relevant paras thereof, where the earlier judgments were discussed, are extracted below:

"33. The aforesaid finding is in fact contrary to a long line of decisions which have held that where there is no machinery for assessment, the law being vague, it would not be open to the assessing authority to arbitrarily assess to tax the subject. Various judgments of this Court have been referred to in the following passages from Heinz India (P) Ltd. v. State of U.P., (2012) 5 SCC 443. This Court said:-

"15. This Court has in a long line of decisions rendered from time to time, emphasised the importance of machinery provisions for assessment of taxes and fees recoverable under a taxing statute. In one of the earlier decisions on the subject a Constitution Bench of this Court in K.T. Moopil Nair v. State of Kerala [AIR 1961 SC 552] examined the constitutional validity of the Travancore-Cochin Land Tax Act (15 of 1955). While recognising what is now well-settled principle of law that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Article 14, this Court found that the enactment in question was violative of Article 14 of the Constitution for inequality was writ large on the Act and inherent in the very provisions under the taxing section thereof. Having said so, this Court also noticed that the Act was silent as to the machinery and the procedure to be followed in making the assessment. It was left to the executive to evolve the requisite machinery and procedure thereby making the whole thing, from beginning to end, purely administrative in character completely ignoring the legal position that the assessment of a tax on person or property is a quasi¬judicial exercise."

16. Speaking for the majority Sinha, C.J. said: (K.T. Moopil case [AIR 1961 SC 552] , AIR p. 559, para 9)

"9. ... Ordinarily, a taxing statute lays down a regular machinery for making assessment of the tax proposed to be imposed by the statute. It lays down detailed procedure as to notice to the proposed assessee to make a return in respect of property proposed to be taxed, prescribes the

authority and the procedure for hearing any objections to the liability for taxation or as to the extent of the tax proposed to be levied, and finally, as to the right to challenge the regularity of assessment made, by recourse to proceedings in a higher civil court. The Act merely declares the competence of the Government to make a provisional assessment, and by virtue of Section 3 of the Madras Revenue Recovery Act, 1864, the landholders may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the Executive to evolve the requisite machinery and procedure. The whole thing, from beginning to end, is treated as of a purely administrative character, completely ignoring the legal position that the assessment of a tax on person or property is at least of a quasi-judicial character."

17. In Rai Ramkrishna v. State of Bihar [AIR 1963 SC 1667] this Court was examining the constitutional validity of the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961. Reiterating the view taken in K.T. Moopil Nair [AIR 1961 SC 552] this Court held that a statute is not beyond the pale of limitations prescribed by Articles 14 and 19 of the Constitution and that the test of reasonableness prescribed by Article 304(b) is justiciable. However, in cases where the statute was completely discriminatory or provides no procedural machinery for assessment and levy of tax or where it was confiscatory, the Court would be justified in striking it down as unconstitutional. In such cases the character of the material provisions of the impugned statute may be such as may justify the Court taking the view that in substance the taxing statute is a cloak adopted by the legislature for achieving its confiscatory purpose.

18. In Jagannath Baksh Singh v. State of U.P. [AIR 1962 SC 1563] this Court was examining the constitutional validity of the U.R Large Land Holdings Tax Act (31 of 1957). Dealing with the argument that the Act did not make a specific provision about the machinery for assessment or recovery of tax, this Court held: (AIR pp. 1570-71, para 17)

"17. ... if a taxing statute makes no specific provision about the machinery to recover tax and the procedure to make the assessment of the tax and leaves it entirely to the executive to devise such machinery as it thinks fit and to prescribe such procedure as appears to it to be fair, an occasion may arise for the courts to consider whether the failure to provide for a machinery and to prescribe a procedure does not tend to make the imposition of the tax an unreasonable restriction within the meaning of Article 19(5).An imposition of tax which in the absence of a prescribed machinery and the prescribed procedure would partake of the character of a purely administrative

affair can, in a proper sense, be challenged as contravening Article 19(1)0)

19. In State of A.P. v. Nalla Raja Reddy [AIR 1967 SC 1458] this Court was examining the constitutional validity of the Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act, 1962 (22 of 1962) as amended by the Amendment Act (23 of 1962). Noticing the absence of machinery provisions in the impugned enactments this Court observed: (AIR p. 1468, para 22)

> *"22. ... if Section 6 is put aside, there is absolutely no provision in the Act prescribing the mode of assessment. Sections 3 and 4 are charging sections and they say in effect that a person will have to pay an additional assessment per acre in respect of both dry and wet lands. They do not lay down how the assessment should be levied. No notice has been prescribed, no opportunity is given to the person to question the assessment on his land. There is no procedure for him to agitate the correctness of the classification made by placing his land in a particular class with reference to ayacut, acreage or even taram. The Act does not even nominate the appropriate officer to make the assessment to deal with questions arising in respect of assessments and does not prescribe the procedure for assessment. The whole thing is left in a nebulous form. Briefly stated under the Act there is no procedure for assessment and however grievous the blunder made there is no way for the aggrieved party to get it corrected. This is a typical case where a taxing statute does not provide any machinery of assessment. "*

The appeals filed by the State against the judgment of the High Court striking down the enactment were on the above basis dismissed.

20. Reference may also be made to Vishnu Dayal Mahendra Pal v. State of U.P. [(1974) 2 SCC 306] and D.G. Gose and Co. (Agents) (P) Ltd. v. State of Kerala [(1980) 2 SCC 410] where this Court held that sufficient guidance was available from the Preamble and other provisions of the Act. The members of the committee owe a duty to be conversant with the same and discharge their functions in accordance with the provisions of the Act and the Rules and that in cases where the machinery for determining annual value has been provided in the Act and the rules of the local authority, there is no reason or necessity of providing the same or similar provisions in the other Act or Rules.

21. There is no gainsaying that a total absence of machinery provisions for assessment/recovery of the tax levied under an enactment, which has the effect of making the entire process of assessment and recovery of tax and adjudication of disputes relating thereto administrative in character, is open to challenge

before a writ court in appropriate proceedings. Whether or not the enactment levying the tax makes a machinery provision either by itself or in terms of the Rules that may be framed under it is, however, a matter that would have to be examined in each case."

34. In a recent judgment by one of us, namely, Shabina Abraham & Ors. v. Collector of Central Excise & Customs, judgment dated 29th July, 2015, in Civil Appeal No.5802 of 2005, this Court held:-

"27. It is clear on a reading of the aforesaid paragraph that what revenue is asking us to do is to stretch the machinery provisions of the Central Excise and Salt Act, 1944 on the basis of surmises and conjectures. This we are afraid is not possible. Before leaving the judgment in Murarilal's case (supra), we wish to add that so far as partnership firms are concerned, the Income Tax Act contains a specific provision in Section 189(1) which introduces a fiction qua dissolved firms. It states that where a firm is dissolved, the Assessing Officer shall make an assessment of the total income of the firm as if no such dissolution had taken place and all the provisions of the Income Tax Act would apply to assessment of such dissolved firm. Interestingly enough, this provision is referred to only in the minority judgment in M/s. Murarilahs case (supra).

xx xx xx

32. The impugned judgment in the present case has referred to Ellis C. Reid's case but has not extracted the real ratio contained therein. It then goes on to say that this is a case of short levy which has been noticed during the lifetime of the deceased and then goes on to state that equally therefore legal representatives of a manufacturer who had paid excess duty would not by the self-same reasoning be able to claim such excess amount paid by the deceased. Neither of these reasons are reasons which refer to any provision of law. Apart from this, the High Court went into morality and said that the moral principle of unlawful enrichment would also apply and since the law will not permit this, the Act needs to be interpreted accordingly. We wholly disapprove of the approach of the High Court. It flies in the face of first principle when it comes to taxing statutes. It is therefore necessary to reiterate the law as it stands. In Partington v. A.G., (1869) LR 4 HL 100 at 122, Lord Cairns stated:

".....If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable, construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute".

35. We find that the Patna, Madras and Orissa High Courts have, in fact, either struck down machinery provisions or held machinery provisions to bring indivisible works contracts into the service tax net, as inadequate.

The Patna High Court judgment was expressly approved by this Court in State of Jharkhand v. Voltas Ltd., East Singhbhum, (2007) 9 SCC 266. This Court held:-

> *"9. Section 21 of the Bihar Finance Act, 1981, as amended states:*
>
> > *"21.**Taxable turnover**.—(1) For the purpose of this part the taxable turnover of the dealer shall be that part of his gross turnover which remains after deducting therefrom—(a)(i) in the case of the works contract the amount of labour and any other charges in the manner and to the extent prescribed;"*
> >
> > *10. Rule 13-A of the Bihar Sales Tax Rules which was also amended by a notification dated 1-2-2000 reads as follows:*
> >
> > ***"13-A.Deduction in case of works contract on account of labour charges**.—If the dealer fails to produce any account or the accounts produced are unreliable deduction under sub-clause (i) of clause (a) of sub¬section (1) of Section 21 on account of labour charges in case of works contract from gross turnover shall be equal to the following percentages..."*
>
> *11. The aforesaid provisions have been adopted by the State of Jharkhand vide notification dated 15¬12-2000 and thus are applicable in the State of Jharkhand.*
>
> *12. Interpretation of the amended Section 21(1) and the newly substituted Rule 13-A fell for consideration of a Division Bench of the Patna High Court in Larsen & Toubro Ltd. v. State of Bihar [(2004) 134 STC 354] . The Patna High Court in the said decision observed as under:*
>
> > *"22. Rule 13-A unfortunately does not talk of 'any other charges'. Rule 13-A unfortunately does not take into consideration that under the Rules the deduction in relation to any other charges in the manner and to the extent were also to be prescribed. Rule 13-A cannot be said to be an absolute follow-up legislation to sub-clause (i) of clause (a) of Section 21(1). When the law provides that something is to be prescribed in the Rules then that thing must be prescribed in the Rules to make the provisions workable and constitutionally valid. In Gannon Dunkerley & Co. [(1993) 1 SCC 364 : (1993) 88 STC 204] the Supreme Court observed that as sub-section (3) of Section 5 and sub-rule (2) of Rule 29 of the Rajasthan Sales Tax Act and the Rules were not providing for particular deductions, the same were invalid. In the present matter the constitutional provision of law says that particular deductions would be provided but unfortunately nothing is provided in relation to the other charges either in Section 21 itself or in the Rules framed in exercise of the powers conferred by Section 58 of the Bihar Finance Act.*
> >
> > *xx xx xx*

31. In our considered opinion sub-clause (i) of clause (a) of Section 21(1) read with Rule 13-A of the Rules did not make sub-clause (1) fully workable because the manner and extent of deduction relating to any other charges has not been provided/prescribed by the State."

36. Similarly, the Madras High Court in Larsen and Toubro Ltd. v. State of Tamil Nadu and Ors., [1993] 88 STC 289, struck down Rules 6A and 6B of the Tamil Nadu General Sales Tax Rules as follows

"32 The eight principles are the criteria and the norms which every State legislation has to conform as per the decision of the Apex Court which has been already adverted to by us supra. In addition thereto, we have also referred to at considerable length the particular reasons assigned by the apex Court while striking down section of the Rajasthan Sales Tax Act and rule 29(2) of the Rules made thereunder. The impugned rules 6-A and 6-B of the Rules, in our view, do not pass the above vital and essential test and the basic requirements laid down by the ratio of the decision of the apex Court in Gannon Dunkerley's case supra; . The impugned rules are squarely opposed to the ratio of the said decision and particularly the ratio laid down in conclusion Nos. 1, 2, 3, 6 and 7 of the decision in Gannon Dunkerley's case [1993] 88 STC 204 supra; and also reiterated by the apex Court in the second Builders Association of India case [1993] 88 STC 248 (SC); [1992] 2 MTCR 542. In the light of the above, we see no merit in the stand taken for the respondents relying upon the decisions reported in [1957] 8 STC 561 (SC) (A. V. Fernandez v. State of Kerala) and [1969] 23 STC 447 (Mad.) (Kumarasamy Pathar v. State of Madras) that the omission to exclude certain items relating to non-taxable turnovers is of no consequence and does not affect or undermine the validity of the impugned proceedings. Consequently, applying the ratio of the above decisions, we hereby strike down rules 6-A and 6-B as illegal and unconstitutional, besides being violative of sections 3 to 6, 14 and 15 of the Central Sales Tax Act and consequently unenforceable.

33. The provisions of section 3-B merely levied the tax on the transfer of property in goods involved in the execution of the works contract. The assessment, determination of liability and recovery had to be under the provisions of the Act read with the relevant rules. In exercise of rule- making power conferred under section 53(1) and (2)(bb), rules 6-A and 6-B came to be made and published. The rules miserably failed to provide the procedure and principles for effectively determining the taxable turnover, after excluding the items of turnover relating to such works contract which could not be subjected to levy of tax by the State in exercise of its power of legislation under entry 64 of the State List. Rule 6 by its own operation had no application in the matter of determination of liability under section 3-B since it has been made applicable only in respect of determining the taxable turnover of a dealer under section 3, 3-A, 4 or 5. Consequently,

> *with our decision above striking down rules 6-A and 6-B of the Rules, there is no proper machinery provisions to determine the taxable turnover for purposes of section 3-B. The provisions of section 3-B, therefore, in the absence of the necessary rules for enforcing the same and determining the taxable turnover for the purposes of section 3-B is rendered dormant, ineffective and unenforceable. Such would be the position till sufficient provisions are made either in the Act itself or in the rules by virtue of the rule¬making power to ignite, activate and give life and force to section 3-B of the Act."*
>
> *37. And the Orissa High Court in Larsen & Turbo v. State of Orissa, (2008) 012 VST 0031, held that machinery provisions cannot be provided by circulars and held that therefore the statute in question, being unworkable, assessments thereunder would be of no effect."*
>
> *[Emphasis supplied]*

134. Finally, it was opined that no service tax was leviable prior to 1.6.2007.

135. In ***Suresh Kumar Bansal's case*** (supra), Division Bench of Delhi High Court, inter-alia, considered the issue regarding taxability of the service provided by the builders in the absence of machinery provision for computation of value of service, if any, involved in construction of a complex. Vide Section 65(105)(zzzh) of the Finance Act, 1994, service provided to any person by any other person in relation to construction of complex was defined to be taxable service. The term "construction of complex" was defined under Section 65 (30a) of the Finance Act, 1994. It was opined that service tax is essentially a tax on the value created by services as distinct from a tax on the value added by manufacturing goods. Construction of a complex essentially has three broad components, namely, land on which complex is constructed; (ii) goods which are used in construction; and (iii) various activities which are undertaken by the builder directly or through other contractors. The title of the unit (immoveable property) does not pass on to the prospective buyer at the stage of booking. No service tax is leviable for sale of a completed building as it would amount to sale of immoveable property. Examining the provisions of the Finance Act, 1994 and the relevant rules framed thereunder, the court found that there were no machinery provisions for ascertaining the service element involved in the composite contract. To ascertain levy of service tax on services, it is essential that machinery provisions provide for a mechanism for ascertaining the measure of tax, i.e., value of services which can be charged to service tax. Rule 2 A of the Service Tax (Determination of Value) Rules, 2006 providing for determination of value of taxable services involved in the execution of works contract provided that such value shall be the gross amount charged for the works contract less the value of transfer of property in goods involved in execution of works contract. However, the same was not held to be valid for the reason that in a composite contract in the case of builder, sale of land is also involved. The consideration charged by the builder from a buyer does not include only the services provided or the element of goods. Referring to various judgments dealing with the issue including the judgment of Hon'ble the Supreme Court in ***L&T's 2nd case*** (supra) and also dealing with the fact that vide notification of the circular, abatement to the extent of 75% was provided from the gross receipt for the purpose of determination of services rendered in a contract, the court opined that no service tax is chargeable on the composite contract and levy to that extent was set aside.

136. The issues, as involved therein, were summed up in para No. 4 thereof, which is extracted below:

> *"4. The controversy involved in these petition relates to the question whether the consideration paid by flat buyers to a builder/promoter/developer for acquiring*

a flat in a complex, which is under construction/development, could be subjected to levy of service tax. According to the Petitioners, the agreements entered into by them with the builder are for purchase of immovable property and the Parliament does not have the legislative competence to levy service tax on such transaction. The Petitioners further claim that the Act and the rules made thereunder do not provide any machinery for computation of value of services, if any, involved in construction of a complex and, therefore, no such tax can be imposed."

137. Analysing the provisions, as existed and referring to the judgment of Hon'ble the Supreme Court in L&T's 4th case (supra), considering the amendment as carried out in Finance Act, 1994 vide Finance Act, 2010 and in Service Tax (Determination of Value) Rules, 2006, w.e.f. 1.7.2012, it was opined that no service tax was chargeable in respect of composite contract as entered into by the builder. The relevant paras thereof are extracted below:

"53. As noticed earlier, in the present case, neither the Act nor the Rules framed therein provide for a machinery provision for excluding all components other than service components for ascertaining the measure of service tax. The abatement to the extent of 75% by a notification or a circular cannot substitute the lack of statutory machinery provisions to ascertain the value of services involved in a composite contract,

xx xx xx

55. In view of the above, we negate the challenge to insertion of clause (zzzzu) in sub-section 105 of Section 65 of the Act. However, we accept the Petitioners contention that no service tax under section 66 of the Act read with Section 65(105)(zzzh) of the Act could be charged in respect of composite contracts such as the ones entered into by the petitioners with the builder. The impugned explanation to the extent that it seeks to include composite contracts for purchase of units in a complex within the scope of taxable service is set aside."

138. The assessment years involved in the present bunch of petitions are from 2005-06 to 2011-12.

139. A combined reading of the provisions of the Act and the Rules, as added w.e.f. 17.5.2010, provides for the manner of calculation of taxable turnover. Prior to 17.5.2010, there were no machinery provisions in the Act or the Rules to calculate taxable turnover ensuring that only value of goods used in the works contracts are taxed. The issue was considered in the earlier round of litigation including Rule 25(2) of the Rules. Certain anomalies were found in the Rules added w.e.f. 17.5.2010. Affidavit was filed by the State. The matter was disposed of vide detailed judgment in ***CHD Developers Limited's case*** (supra) giving liberty to the State to amend the Rules in consonance with the affidavit filed in the court. Subsequent thereto, Rule 25 of the Rules was amended vide notification dated 23.7.2015 with retrospective effect from 17.5.2010. Relevant paras of the aforesaid judgment are extracted below:

"44. In case the provisions of law are seeking to charge sales tax on any amount other than the value of the goods transferred in course of execution of works contract, the provisions would be ultra vires to the Constitution of India. The tax is to be computed on a value not exceeding the value of transfer of property in goods on and after the date of entering into agreement for sale with the buyers. However, the 'deductive method' requires all the deductions to be made therefrom to be specifically provided for to ensure that tax is charged only on the value of transfer of property in goods on and after the date of entering into agreement for sale with the buyers. When 'deductive method' has been

prescribed under the rules for ascertaining the taxable turnover, ordinarily it should include a residuary clause in consonance with the mandate of law so as to cover all situations which can be envisaged.

45. In view of the above, essentially, the value of immovable property and any other thing done prior to the date of entering of the agreement of sale is to be excluded from the agreement value. The value of goods in a works contract in the case of a developer etc. on the basis of which VAT is levied would be the value of the goods at the time of incorporation in the works even where property in goods passes later. Further, VAT is to be directed on the value of the goods at the time of incorporation and it should not purport to tax the transfer of immovable property. Consequently. Rule 25(21 of the Rules is held to be valid by reading it down to the extent indicated hereinbefore and subject to the State Government remaining bound by its affidavit dated 24,4.2014. The State Government shall bring necessary changes in the Rules in consonance with the above observations."

140. Vires of the Rules is not in question in the present set of petitions. The stand of the petitioners was that to challenge the vires of the Rules, separate petitions have been filed, which are pending.

Finding

141. For the period upto 16.5.2010, there were no Rules or instructions on the subject, to provide for manner of calculation of taxable turnover. In the absence of the machinery provisions specifying the details, though the levy as such cannot be disputed but it has become unenforceable upto 16.5.2010.

142. From 17.5.2010 onwards, there being Rules in existence, having been amended in terms of judgment of this Court in CHD Developers' case (supra) and observations made therein, we do not find that the levy cannot be sustained.

ISSUE NO. (8)

Whether assessment could be framed in the name of a company which stood merged in another company and lost its entity by operation of law ?

143. In Saraswati Industrial Syndicate Ltd.'s case (supra), Hon'ble the Supreme Court, while considering the issue regarding existence of a company after it is dissolved having been merged in another company on account of re-construction or amalgamation, opined that after the amalgamation on the basis of the order passed by the High Court, the transferor-company ceases to exist in the eyes of law and it effaced itself for all practical purposes. It is not possible to treat two companies, namely, the transferor and transferee company as partners or jointly liable in respect of their liabilities and assets.

144. The issue was subsequently considered by a Division Bench of Delhi High Court in ***Spice Entertainment Ltd.'s case*** (supra), where challenge was to the order of assessment framed in the case of the company, which stood dissolved after amalgamation with the transferee company. As to whether it was merely procedural defect or fatal, was addressed. While referring to the judgment of Hon'ble the Supreme Court in ***Saraswati Industrial Syndicate Ltd.'s case*** (supra), it was opined that the company incorporated under the Companies Act is a juristic person. It takes its birth and gets life with the incorporation and dies with the dissolution. On amalgamation, the amalgamating company ceases to exist in the eyes of law. It was further opined that mere participation by the transferee company in assessment proceedings will be of no consequence as there is no estoppel against law. It is not a mere procedural defect. Relevant paras thereof are extracted below:

> *"8. A company incorporated under the Indian Companies Act is a juristic person. It takes its birth and gets life with the incorporation. It dies with the dissolution as per the provisions of the Companies Act. It is trite law that on amalgamation, the amalgamating company ceases to exist in the eyes of law. This position is even accepted by the Tribunal in para 14 of its order extracted above. Having regard this consequence provided in law, in number of cases, the Supreme Court held that assessment upon a dissolved company is impermissible as there is no provision in Income-Tax to make an assessment thereupon*
>
> *xx xx xx*
>
> *11. After the sanction of the scheme on 11th April, 2004, the Spice ceases to exist w.e.f. 1st July, 2003. Even if Spice had filed the returns, it become incumbent upon the Income tax authorities to substitute the successor in place of the said "dead person". When notice under Section 143(2) was sent, the Appellant/ amalgamated company appeared and brought this fact to the knowledge of the AO. He, however, did not substitute the name of the Appellant on record. Instead, the Assessing Officer made the assessment in the name of M/s Spice which was non existing entity on that day. In such proceedings and assessment order passed in the name of M/s Spice would clearly be void. Such a defect cannot be treated as procedural defect. Mere participation by the Appellant would be of no effect as there is no estoppel against law."*

Finding

145. The issue is answered in negative. It is held that no assessment can be framed against a company, which stood dissolved after its merger with another company. As fairly stated by learned counsel for the State, the assessment order dated 8.3.2016 (Annexure P-8), passed against ***M/s Sukh Realtors Pvt. Ltd.***, the company which already stood dissolved after merger with ***M/s S. S. Group Pvt. Ltd.***, is set aside. There is no question of grant of specific liberty to the department to pass any fresh order, as if the law permits, it can always take action.

RELIEF

146. For the reasons mentioned above, the legal issues, as framed in para No. 81 of the judgment, are answered as under:

(1) The judgment of Hon'ble the Supreme Court in K. Raheja Development Corporation's case (supra) was a binding precedent declaring the law at that time on the subject to be followed by all courts and authorities below and action could have been taken by the authorities on the basis thereof, if considered appropriate.

(2) The extended period for exercise of revisional jurisdiction will be applicable only in cases where period prescribed prior to the amendment had not expired and not where the period had earlier expired as the amendment cannot put life to a dead claim.

(3) The issue is not being examined as in pursuance to the show cause notices, orders have already been passed and those are under consideration before this court.

(4) The question is answered in negative opining that for exercise of power of revision while invoking extended period of limitation as provided for in second proviso to Section 34(1) of the Act, in normal circumstances, the event has to be after the normal period of limitation had already expired. However, there can be some exceptions such as where event occurred just before expiry of period of limitation and the action was taken within reasonable time or the delay is

satisfactorily explained. Exception clause is to be invoked only in exceptional circumstances. It is always required to be strictly interpreted even if there is hardship to any of the parties.

(5) Any instructions issued by the Department are binding on the departmental authorities except on the issue where any judgment to the contrary exists. These are not binding on the court. A circular which is contrary to statutory provisions has no existence in law.

(6) As the vires of the aforesaid provision has already been upheld by this court, we do not find any reason to re-examine the issue.

(7) For the period upto 16.5.2010, there were no Rules or instructions on the subject, to provide for manner of calculation of taxable turnover. In the absence of the machinery provisions specifying the details, though the levy as such cannot be disputed but it has become unenforceable upto 16.5.2010.

From 17.5.2010 onwards, there being Rules in existence, having been amended in terms of judgment of this Court in ***CHD Developers' case*** (supra) and observations made therein, we do not find that the levy cannot be sustained.

(8) The issue is answered in negative. It is held that no assessment can be framed against a company, which stood dissolved after its merger with another company. As fairly stated by learned counsel for the State, the assessment order dated 8.3.2016 (Annexure P-8), passed against M/s Sukh Realtors Pvt. Ltd., the company which already stood dissolved after merger with M/s S. S. Group Pvt. Ltd., is set aside. There is no question of grant of specific liberty to the department to pass any fresh order, as if the law permits, it can always take action.

146. The writ petitions stand disposed of accordingly.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 450, 451, 523 & 524 OF 2014

KARTAR AGRO INDUSTRIES PVT. LTD.
Vs
STATE OF PUNJAB

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

6th December, 2016

HF ▶ Revenue

Non-payment of tax by a unit availing the exemption even after exhausting the limit would attract interest and penalty.

EXEMPTED UNIT – ASSESSMENT – EXEMPTION LIMIT – PENALTY – INTEREST - DEALER LEFT WITH A SMALL AMOUNT OF EXEMPTION AT THE BEGINNING OF YEAR 2005-06 – AVAILED THE SAME DURING THE YEAR 2005-06 – CLAIMED EXEMPTION EVEN DURING THE YEAR 2006-07 – ADDITIONAL DEMAND OF TAX, INTEREST AND PENALTY RAISED – NO BONAFIDE BELIEF IN CLAIMING EXEMPTION AFTER EXHAUSTING THE LIMIT – NOT RECTIFIED IN THE RETURNS – NO EXPLANATION OFFERED – INTEREST, PENALTY RIGHTLY IMPOSED. *SECTIONS 32 AND 56 OF PUNJAB VAT ACT, 2005.*

ITC – OIL AND LUBRICANTS – INADMISSIBLE CLAIM – INTEREST – PENALTY – IMPOSITION OF PENALTY AND INTEREST – RETURN FILED WITH ASSISTANCE OF LEGAL EXPERTS – CLAIM NOT BONAFIDE – PENALTY AND INTEREST RIGHTLY IMPOSED.

Petitioner was an exempted unit having exemption limit of Rs. 103,44,000/-. The period of exemption was from 17.03.2000 to 16.03.2007. It had availed the exemption of Rs. 87,82,289/- up to 31.03.2005 when VAT Act came into force. Thereafter, an Entitlement Certificate was issued on 27.05.2005 reflecting the balance exemption amount of Rs. 16,01,711/-. The said exemption limit was exhausted during the year 2005-06. Still the assessee claimed the exemption of sales tax during the year 2006-07 resulting into a short payment of Rs. 12,94,537/-. In addition, there was demand on account of short C-forms and inadmissibility of ITC on purchase of Gas and Oil and Lubricants.

For the year 2009-10, the demand was raised on account of wrong availment of ITC on purchase of diesel, building material and lubricants. Certain C-Forms were also short which resulted into raising of an additional tax demand. The Assessing Authority calculated the tax and also imposed interest and penalty for wrong filing of Return. The orders having been confirmed in appeals, the assessee filed appeals before the Tribunal.

HELD:

Claim of exemption during the year 2006-07.-

The assessee was issued an Entitlement Certificate showing the balance amount of exemption available to it on 1.04.2005 to the tune of Rs. 16,01,711/-. The said limit was exhausted in the year 2005-06 but the assessee claimed the exemption during the year 2006-07 also. This cannot be considered as bonafide error as if that was the case, then assessee could have rectified the same but it did not opt to do so. The wrong particulars were mentioned deliberately and therefore, the assessee cannot claim that it held a bonafide belief that tax is not payable during the year 2006-07. Accordingly, the imposition of penalty and interest on the said amount is fully justified as it not only claimed wrong exemption but also failed to pay tax in accordance with its Returns.

***Rejection of ITC*.-**

The assessee claimed ITC on Oil and Lubricants and claimed it to be a bonafide mistake since it was entitled to claim ITC on purchase of Oil and Lubricants prior to 31.03.2005. The mistake was not bonafide as after the enforcement of Punjab VAT Act, the assessee did not make any claim during the first year i.e. 2005-06 but made this claim in the subsequent year, which cannot be justified in any manner. The Returns were filed with the assistance of legal experts which cannot be termed as bonafide in any manner. Accordingly, the imposition of penalty and interest to this extent is also upheld. The appeal being devoid of any merit was dismissed.

Present: Mr. K.L. Goyal, Sr. Advocate alongwith
Mr. Navdeep Monga, Advocate Counsel for the appellant.
Mr. N.K. Verma, Sr. Dy. Advocate General for the State.

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

1. This order of mine shall dispose off four connected appeals No.450, 451 of 2014 relating to the assessment year 2006-07 and Appeals No.523 and 524 of 2014 relating to the assessment year 2009-10. Since all the four appeals involve the common questions of law and facts, therefore these are being decided together.

For the Assessment Year 2006-07

2. The appeals for the assessment year 2006-07 have arisen out of the order dated 28.8.2014 passed by the First Appellate Authority, Patiala Division, Patiala, dismissing the appeals of the appellant against the order dated 25.2.2014 creating additional demand as under:-

Under the Punjab Value Added Tax Act, 2005	-	Rs.56,69,530/- including penalty and interest U/s 56, 32 and 60 of the Act respectively
Under the Central Sales Tax Act, 1948	-	Rs.27,70,374/- including penalty and interest U/s 53 and 32 of the Act respectively

For the Assessment year 2009-2010

3. This appeal has arisen out of the order dated 26.9.2013 passed by the First Appellate Authority, Patiala Division, Patiala dismissing the appeal against the order dated 26.9.2013 passed the Excise and Taxation Officer cum-Designated Officer, Nabha creating additional demand as under:-

Under the Punjab Value Added Tax Act, 2005	-	Rs.17,30,656/-including penalty and interest U/s 56, 32 & 60 of the Act respectively.

Under the Central Sales Tax Act, 1948	-	Rs.6,18,552/-including penalty and interest U/s 53 and 32 of the Act respectively.

In all the four cases, the payment of tax liability has not been disputed but the party disputes only the penalty and interest.

Factual background

4. The appellant is a dealer duly registered under the provisions of Punjab Value Added Tax Act, 2005 as well as the Central Sales Tax Act, 1956 having TIN No.03841Q33514. He is engaged in the business of manufacturing and trading of combine and other agricultural implements. The appellant was an exempted unit for the period w.e.f. 17.3.2000 to 16.3.2007 or till the exemption of tax exceeds to Rs. 1,03,44,000/- or whichever is earlier.

5. Admittedly, the appellant availed the exemption amount upto the tune of Rs.87,42,289/- upto 31.3.2005. Thereafter, the taxable person Issued entitlement certificate vide No. Exemp./30-A/2-2001/514, dated 27.5.2005 for Rs. 16,01,711/- as on 1.4.2005. This amount of exemption was availed by the taxable person during the year 2005-06 (as per assessment order for the year 2005-06 dated 22.2.2010). On the issuance of the certificate dated 27.5.2005 and after the assessment year 2005-06 the appellant well knew about his liability to the pay the tax for the assessment year 2006-07. However, while filing the annual statement for the year 2006-07, the appellant still declared/claimed the sales as an exempted unit and sought deduction of tax on the sale amounting to Rs.3,23,63,933/- out of gross sales resulting into short payment of output tax to the tune of Rs.12,94,537/-.

6. Having detected that the appellant had filed incorrect return, notice to the appellant was issued for 20.1.2011 to produce the account books and other relevant documents for verification of FTC; thereafter another notice was issued on 18.5.2011. However, the Designated Officer failed to frame the assessment and dropped the proceedings on the objection raised by the appellant that the case became time barred. Actually, law of limitation prevailing at the relevant time was three years for framing assessment, but the notice could not be issued within time. However, on account of the amendment in the Punjab Value Added Tax Act vide notification dated 15.11.2013, the limitation for filing the assessment was extended upto 20 November, 2014. The relevant extract of the previous law and law after the amendment is reproduced as under:-

> *Section 29 (4) 1.4.2005 to 14.11.201.*
>
> *An assessment under sub-section (2) or sub-section (3), may be made within three years after the date when the annual statement was filed or due to be filed, whichever is later:*
>
> *Provided that where circumstances so warrant, the Commissioner may, by an order in writing, allow assessment of a taxable person or of a registered person after three years, but not later than six years from the date, when annual statement was filed or due to be filed by such person, whichever is later. The Section 29 (4) w.e.f. the amendment 15.11.2013 onwards reads as under:-*
>
> *(4) An Assessment under sub-section (2) or sub-section (3), may be made within a period of six years after the date when the annual statement was filed or due to be filed, whichever is later:*
>
> *Provided that the assessment under sub-section (2) or sub-section (3), in respect of which annual statement for the assessment year 2006-07 has already been filed, can be made till the 20th day of November, 2014.*

Explanations: (1) the limitation period of six years for an assessment under sub-section (2) or sub-section (3), shall also apply to those cases in which the aforesaid period of six years has vet not expired.

(2) It is clarified that prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, the Commissioner was not required to issue any notice to the concerned person before extending the limitation period of assessment.

The assessment for the year 2006-07

7. On account of the aforesaid amendment, the Assessing Authority again issued the notice U/s 32 53, 56 and 60 of the Act for showing cause about the following discrepancies:-

1. Short "C" Forms amounting to Rs.70,181/-
2. In admissibility of TTC on purchase of gas amounting to Rs. 1,00,373/- and of oil and lubricants amounting Rs.2,83,000/- U/s 13 of PVAT Act 2005.
3. The taxable person was an exempted unit and was granted exemption from 17.03.2000 to 16.03.2007 amounting Rs. 1,03,44,000/- out of which he had availed exemption amounting to 87,42,289/- upto 31.03.2005 and the taxable person was issued entitlement certificate vide No. Exempt/3C- A/2000-2001/514 dated 27.05.2005 for Rs. 16.01,711/ as on 01.04.2005. This amount of exemption had been invalid by the taxable person during 2005-06 (as per assessment order for the year 2005-06 dated 22.02.10) leaving "NIL" exemption available in hand to be availed during the year 2006-07. However while calculating the output tax during 2006-07/ they have deducted the sales as an exempted unit amounting Rs.3,23,63,933/- from Gross Sales resulting into short payment of output tax to the : tune of Rs. 12/94,537/-.

8. In continuation of the discrepancies as pointed out earlier and disclosed above/ two more discrepancies were detected later on and were also confronted to them:-

(a) Output tax not paid on Interstate sales i.e. Rs.1/67/25,674/-.

(b) The taxable person had shown brought forward ITC of Rs. 25/04/809/- in their VAT 20 of 2006-07. However, as per assessment orders of 2005-06 dated 22.02.10, they had excess ITC of Rs. 13,71,629/-.

9. In response to the notice, Sh. Bhupinder Singh, Accounts Manager and Sh. Tara Chand, Accountant, submitted written reply in which they admitted that they could not collect the short WC" Forms and did not restrict the ITC on oil and lubricants and also not paid output tax on the sales shown wrongly as exempted sale. After providing full opportunity to the appellant of being heard, the Designated Officer created tax demand on account of the only following discrepancies in the annual statement filed by the appellant for the year 2006-07:-

1. Tax not paid on sales amounting to Rs.3,23,63,933/- by wrongly showing it as an exempted sales.
2. Output tax not paid on interstate sale of Rs.1,67,25,674/-
3. Non detention of ITC as per Section 13 of the PVAT Act, 2005 on purchases of oil and lubricants amounting to Rs.2,83,000/-
4. Short “C” Forms of Rs.70,181/-.

10. Feeling aggrieved against the order dated 25.2.2014 passed by the Assessing Authority, the appellant filed the appeal. Whereupon, during the course of arguments before the

First Appellate Authority, the appellant had nothing to say about the discrepancies, rather he offered to deposit the amount of tax but contested the plea regarding levy of penalty and interest. The appellants' plea against the levy of penalty and interest was not accepted as the appellant concealed the material facts, filed the incorrect returns and did not maintain the proper accounts which resulted into evasion of huge tax due to the State. The First Appellate Authority further observed that the interest U/s 32 (3) of the Act was rightly levied as due date for payment of tax in the normal course was from the date on which due tax under the Act ibid was payable to the State.

Appeal No.523 and 524 of 2014.

11. The present case relates to assessment year 2009-10 filed by the appellant which was taken up for audit. The audit had furnished a detailed report whereby they pointed out certain discrepancies on the basis of mismatch of the ICC data and the annual return in the Form of VAT 20 filed by the dealer. As a consequence of which, the Designated Officer issued notice U/s 29, 53, 56, 32 and 60 of the Punjab Value Added Tax Act, 2005 to explain the following discrepancies-

1. Wrong availment of ITC on purchase of diesel Rs. 1,47,102/-.
2. Wrong availment of ITC on purchase of building material Rs. 28,075/-.
3. Non detention of ITC on purchase of lubricants to the tune of Rs.2,88,707/-
4. Short "C" Forms.

12. Pursuant to the aforesaid notice, the appellant failed to submit any reply. However, he agreed to pay the tax on the basis of aforesaid discrepancies. Consequently the demand was created against the appellant.

13. Feeling aggrieved, the appellant filed the appeal against the order dated 26.9.2013. However, during the course of the arguments, the appellant did not. contest the tax part of the additional demand, however, it contested the liability of penalty U/s 56 and interest Section 32 (3) of the Act The First Appellate Authority however, did not accept the plea of bonafide mistake in non payment of tax on the part of the appellant and observed that since the appellant filed the Incorrect return; concealed the material facts; did not deposit the tax due to the State and wrongly availed the input tax credit for which he was not entitled, therefore, the appellant was liable to pay the penalty. Since, the assessee has avoided the payment of tax which should have been paid in the normal course on the due date for payment, therefore, the appellant was liable to pay the interest from the date it became due to him.

14. Eventually, the First Appellate Authority dismissed both the appeals under the Punjab Value Added Tax Act as well as the Central Sales Tax Act, 1956. Hence these second appeals have been filed.

15. The counsel for the appellant, while assailing the findings on the issue of limitation, has admitted that the Punjab and Haryana High Court in case of Amrit Banaspati Company Ltd. Vs State of Punjab and others reported in (2015) 1NTR 2004 (P & H) upheld the constitutional validity of amendment made on 15.11.2013 in Section 29 (4). However, he has referred me to para No. 15, 16 and 17 which read as under:-

> *15. The submission is unsustainable as it would render the words `the aforesaid period of six years in explanation (1) meaningless. There was no period of six years in Section 29 (4) as it originally stood. The period of six years is mentioned only in' the amendment Section 29 (4). The word "aforesaid" is usually a reference to something named or referred to in an earlier part of the*

same document. In this case, it is a reference to the period of six years mentioned in the same section.

It can hardly be suggested that the six years period refers to the combined period under the main part of the unamended section and the extension provided therein. The extended period under the unamended section was not as of right. It was dependent upon the exercise of discretion by the Commissioner and in the manner provided therein. More important, the word "aforesaid' can only refer to the section in which it is used which is the amended section. It is inconsistent with anything but the section in which it is used.

16. In support of the contention that the amendment to Section 29 (4) operates only prospectively, learned counsel for the petitioners then relied upon Section 1 of the Amendment Act which reads as under:-

"1. (1) This Act may be called the Punjab Value Added Tax (Second Amendment) Act, 2013.

(2) It shall come into force on and with effect from the date of its publication in the Official Gazette;

It was contended that Section I itself made the amendment prospective and not retrospective as sub section (2) of Section 1 expressly stated that it shall come into force on and with effect from the date of its publication in the official gazette Le. 15.11.2013.

17. This argument is misconceived. It confuses the date on which the Amendment Act comes into force for the date with effect from which it comes into force. It confuses the date of the enactment or the date of the commencement of the enactment with the date of the operation thereof. Sub-section (2) of Section 1 of the Amendment Act only specifies the date the Amendment Act come into force. It does not deal with the question as to whether the amendment is to operate prospectively or retrospectively. Even a retrospective amendment must come into force on the date on which the amending act comes into force but as stipulated in the amending Act. That is an entirely different thing From the date on which the amendment takes effect or operates. The date on which an Act or an amending Act is enacted is different from the date from which it operates. Thus, the Punjab Value Added Tax (Second Amendment) Act, 2013 came into force from the date it was enacted on 15.11.2013 but with retrospective effect The extent to which it is retrospective must be determined in terms of the provisions of the Amendment Act.

16. While interpreting the aforesaid observations, he has argued that Hon'ble High Court has not upheld the validity of the assessment made on the basis of notices issued between 21.11.2010 to 14.11,2013. Whereas, in the present case the notice was issued on 20.1.2011 for the first time, therefore the assessment made on the basis of that notice on 25.2.2014 is without jurisdiction.

17. To the contrary, the State Counsel has argued that Section 29 (4) has been amended with retrospective effect, wherein, it was specifically mediated that the assessment for the year 2006-07 could be finalized upto 20.11.2014, therefore, the assessment in the present case has been finalized on 25.2.2014 was quite within time and the Constitutionality of this amendment with retrospective effect has been up held by the Hon'ble High Court in Para No. 18 of the judgment delivered in case of Amrit Banaspati (Supra) wherein, it has been specifically held that the date of commencement does not control its retrospective operation when the amendments specifically prescribe the date and period during which the assessment could be

finalized. The amendment specifically provides that the assessment for the period 2006-07 could be finalized upto 20.11.2014, therefore, now it cannot be said that it had no retrospective effect. I agree with the contentions raised by the Counsel for the appellant in this regard and observe that the Division Bench of the Punjab and Haryana High Court in case of Amrit Banaspati Company Ltd., specifically held that amendment made by the legislature on 15.11.2013 is constitutionally valid and has retrospective effect. Now the appellant cannot say that the notice issued on 25.2.2014 was not valid and the assessment was not framed within time.

Rejection of the ITC

18. It is argued that the wrong ITC was claimed on oil and lubricants but the mistake was bonafide as prior to 31.3.2005, the appellant was entitled to claim ITC on purchase of oil and lubricants under the Punjab General Sales Tax Act, 1948. However, this being a small amount, he does not want to contest the levy of tax on purchase of oil and lubricants. I do not agree with: the contention that the mistake was bonafide as after the enforcement of the ordinance and thereafter on enforcement of the Act w.e.f. 1.4.2004, the assessment year 2004-05 was over. Even thereafter the assessment year 2005-06 was also over. During the year 2004-05, no claim of UC on the purchase of oil and lubricant was made. The present case relates to the year 2006-07 where the ITC was claimed on account of these commodities. The appellant filed the return with the assistance of catena of legal experts who were at his disposal to help and assist Thus, the assessment having been filed with the assistance of the legal experts cannot said to be bonafidely filed.

Penalty U/s 56

19. While assailing the penalty imposed U/s 56 of the Punjab Value Added Tax Act to the tune of Rs.26,11,548/-. It has been argued that since the assessee was an exempted unit for the period w.e.f. 17.3.2000 to 16.3.2007 or for the amount exemption upto Rs. 1,03,44,000/- whichever is earlier. This exemption stood exhausted by the year ending 2005-06, but, the contention is being made that under a bonafide belief that it was still an exempted unit upto 16.2.2007, filed its returns claiming itself to be an exempted unit and did not pay the tax to the tune of Rs.35,59,009/- and after deduction of the UC, tax payable came to Rs. 13,05,744/-. As such, the appellant neither concealed any fact nor filed incorrect particulars in the annual statement; consequently, no penalty is imposable. In this regard, he has placed reliance on the judgment delivered by Apex Court in case of CIT, Ahmadabad Vs. Reliance Petroproducts, reported in (2010) 11SCC page 762.

20. Having perused the aforesaid contentions and gone through the case law as relied upon by the counsel for the appellant, I do not find any merit in the contentions. Since the legislature, by introducing Section 26 in the Punjab Value Added Tax Act has placed a serious responsibility upon the assessee to file the quarterly and annual returns on time by filing correct particulars therefore the violation of the provisions could invite adverse inference against the appellant Sub-Section (1), (2) and (7) of Section 26 provide for making self assessment and as per Sub Section (3) of Section 26, the assessee had to furnish correct amount of tax due from him and was obliged to deposit the due tax under the receipt of the payment, which was to be furnished along with the return. Sub-Section (4) lays down the manner of rectification regarding any error or omission in the return, meaning thereby, if an assessee comes across a bonafide error or omission in return filed by him, he has been provided an opportunity to rectify the same within the time prescribed and it was further added that no such rectification shall, however, be allowed after the end of the financial year immediately following the year to which the rectification relates or issue of a notice for audit or assessment, whichever, is earlier. Thus, it was a legal obligation of the assessee not to conceal any fact with regard to any particulars

i.e. availment of exemption limit and detention of ITC and with holding of tax with reasons thereof.

21. Thereafter, the role of Designated Officer comes into play. He would scrutinize every return filed as per procedure detailed in Rule 43 and Section 29 (1) of the Act. If any under or over payment of tax is found during the scrutiny, the Designated Officer would inform the assessee accordingly by sending any Intimation which would be deemed as a demand, notice. If upon the receipt of the notice, the assessee complies with the direction and furnishes the proof of compliance, the officer would make record of this and dose the scrutiny. On failure to do so, the Designated Officer would refer the matter for :-

(a) Audit U/s 28 of the Art or

(b) making the assessment under Sub-Section (2) of Section 29 of the Act or

(c) making provisional assessment U/s 30 of the Act or

(d) the Designated Officer may require such person for production and inspection of accounts etc. U/s 46 of the Act.

22. In the present case, the full procedure has been followed by the Assessing Authority, the appellant did not disclose that he had already exhausted limit of exemption in the year 2005-06 and a specific certificate in this regard was issued to him, therefore, he can't claim to have no knowledge to the effect that he had ceased to be an exempted unit at the end of the year 2005-06. The following facts were in the knowledge of the appellant:-

1. *The exemption was w.e.f. 17.3.2000 to 16.3.2007 or upto the amount of tax of Rs. 1,03,44,000/- whichever is earlier. He had exhausted the limit in 2005-06 and had also obtained a certificate from the department that the exemption limit for the year 2005-06 was only to the extent of Rs.16.01,711/-. The appellant, according to his own accounts and admissions, had exhausted the limit in the year 2005-06 for which he had filed the assessment for the year 2005-06 on time. At the time of filing the assessment for the year 2005-06, it was known to him that he could not claim exemption any further. But still the appellant, while filing the return for the year 2006-07, claimed deduction on account of being an exempted unit for the said year also. Be that it may, the appellant committed bonafide mistake, but in that case, the appellant would have opted for removing the error from the assessment by way of filing rectified assessment on time but he did not do so. He also did not respond to the notice by way of submitting an explanation that the wrong particulars were mentioned on account of a bonafide mistake. He even did not voluntarily deposit the tax due against him on account of filing the wrong return.*

23. As such, in these circumstances of the case, the appellant can't seek protection of the judgment delivered in case of State of Rajasthan Vs. Ghasi Lal (1965) to SCR. Having gone through this judgment, it transpires that in that case, the tax could not be deposited for the stay granted by the Hon'ble High Court therefore, it was held that Section 72 and 16 (1) (b) of the Rajasthan Sales Tax Act were not attracted. The judgment delivered in case of Commissioner of Income Tax Ahmedabad Vs. Reliance Petroproducts Pvt. Ltd. (2010) 11 Supreme Court cases 762 is also not applicable to the facts of the present case. The said judgment is U/s 271 (i) (c) of the Income Tax Act and it defines the words "accurate particulars", but in the present case, the issue is whether the appellant concealed the true particulars and filed the incorrect return?" to which the answer would surely be in positive.

24. The appellant should have disclosed in his return, the actual amount of exemption and to what extent he enjoyed the exemption. He should also have not claimed ITC on the lubricants which have been specifically prohibited under the statue. It was also obligatory on the part of the assessee to file the annual return and pay the tax due "in accordance with the Provisions of the Act" But the appellant having not so done would be liable to pay the penalty as directed U/s 56 of the Act for which a due notice has also been given to him.

25. As regards the penalty U/s 60 of the Act, there is no denying c; fact that the appellant could not file the correct return. The notice U/s 60 was duly given to him. The intention of the legislature to impose the penalty under Section 60 could be traced to the fault of the assessee who had filed the incorrect return, as such penalty U/s 60 also can't be challenged. The other fact which goes against the plea of bonafide raised by the appellant is that the appellant instead of showing his bonafides at the time when a notice U/s 29 (2) was given to him on 20.11.2010 by depositing the amount of tax, he contested it on the ground that the assessment was time barred.

26. Now coming to the question of interest U/s 32 of the Act apparently the counsel for the appellant has argued that interest could not be awarded from the date of assessment but from the date, the assessment Is f framed. Section 32 (3) governs the facts of the present case and it reads as under:-

> *32 (3) "If the person fails to declare the amount of tax in a return, which should have been declared, such a person shall be liable to pay simple interest at the rate of one and half percent per month on such amount of tax from the due date for payment till the date, he actually pays such amount of tax."*

27. The appellant admittedly was an exempted unit and the said exemption limited stood expired in the year 2005-06. The present case relates to the assessment year 2006-07 and 2009-10. There was no exemption exiting during those years. On expiry of the period of exemption in the year 2005, the appellant was bound to declare the amount of the actual tax payable in the return. However, he did not perform his obligation and concealed material fact regarding the expiry of exemption limit. The appellant fully knew that he had already exhausted the exemption limit and could not claim exemption after 2005-06, but he still continued filing the return for the year 2006-07 and 2009-10 as an exempted unit and wrong fully claimed deduction in tax on account of being an exempted unit. Even after he was asked to explain through the notice regarding the wrong declaration, he did not deposit the amount of tax rather he contested the levy of tax on the ground that the assessment was time barred; therefore, the appellant having failed to deposit the tax due against him. Rule 36 (1) enacted under Section 26 and 27 of the Act provide for due dates for the payment of tax, the said Rule is reproduced as under:-

> *Rule 36. RETURNS {Section 26 and 27}:*
>
> *(1) Every taxable person shall file quarterly self-assessed return in Form VAT-15 within a period of thirty days from the date of expiry of each quarter alongwith the proof of the payment made into the appropriate Government Treasury and the Tax Deductions at Source (hereinafter referred to as the TDS) certificates, if any:*
>
> ***PROVIDED THAT** where a person opts to make the payment of tax through crossed cheque or bank draft, he shall enclose the crossed cheque or the bank draft, as the case may be, drawn on local scheduled Bank in favour of the designated officer/Excise and Taxation*

Officer/Assessing Authority, alongwith the return, which shall be filed within a period of twenty days from the date of the expiry of the quarter:

***PROVIDED FURTHER THAT** a person, whose annual gross turnover exceeds rupees one crore in the previous year, shall determine his tax liability for every month and shall pay tax by the 20th day of the month, if paid through the crossed cheque or draft and by the 30Ul day of the month, if paid through the treasury receipt and shall submit the same to the designated officer, alongwith the information in Form VAT-16; and payment for the last month of each quarter shall be made on the 20th day or 30th day of the close of quarter, as the case may, be alongwith the quarterly return. The return in FormVAT 15, shall be accompanied by photocopies of the treasury receipt evidencing the payment of tax for the previous two months also.*

***PROVIDED FURTHER THAT** a person making sales in the course of inter-State trade or export out of India may, by making an application to the designated officer, opt to file self-assessed return on monthly basis in Form VAT-15 within a period of twenty days, if payment of tax is made by a crossed cheque or draft and within a period of thirty days, if payment is made through a treasury receipt.*

Section 33, Section 27 and Rule 35 (1) of the Rules framed under the Punjab Value Added Tax Act codify the due date of payments of tax in different circumstances. As per these provisions the due dates of payment of tax are detailed as under:-

(i) *in the case of a taxable person whose turnover is less than one crore, within thirty days from the date of expiry of each quarter. If payment made through cheque or draft, within twenty days from the date of expiry of each quarter.*
in the case of a taxable person whose annual tax liability during the previous year was rupees two lakh or more, on monthly basis by the 20th day (for cheque/draft) and by the 30th day (for cash) of the month.

(ii) *in the case of a taxable person whose gross turnover exceeds rupees one crore, on monthly basis by the 20th day (for cheque/draft) and by the 30th day (for case) of the month.*

(iii) *in case of tax due as per assessment made, by the date specified in notice of demand or within thirty days of the order, whichever is earlier.*

(iv) *in the case of a registered person, within thirty days from the date of expiry of each quarter. If payment made through cheque or draft, within twenty days from the date of expiry of each quarter.*

(v) *in the case of a casual trader, on conclusion of the casual business; on weekly basis (on first working day of the week) if casual business exceeds seven days.*

(vi) *in any other case, payable by the date as specified by the designated officer.*

28. It is not the case where the appellant was not informed about tile filing of wrong particulars of the return and liability to pay interest. The appellant was duly given notice U/s 50

and 60 alongwith the other Sections, therefore, the appellant can't make any excuse that no notice was given to him. Consequently, if would be held that the appellant is bound to pay the interest from the date he filed the wrong return.

29. Resultantly, these appeals being devoid of any merit are hereby dismissed.

30. Pronounced in the open court.

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NOTIFICATION (PUNJAB)

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AMENDMENT OF SECTION 68 OF PUNJAB VAT ACT, 2005

PART I
GOVERNMENT OF PUNJAB

DEPARTMENT OF LEGAL AND LEGISLATIVE AFFAIRS, PUNJAB

NOTIFICATION

The 23rd December, 2016

No. 56-Leg./2016.-The following Act of the Legislature of the State of Punjab received the assent of the Governor of Punjab on the 6th day of December, 2016, is hereby published for general information:-

THE PUNJAB VALUE ADDED TAX (AMENDMENT) ACT, 2016
(Punjab Act No. 49 of 2016)

AN

ACT

further to amend the Punjab Value Added Tax Act, 2005.

BE it enacted by the Legislature of the State of Punjab in the Sixtyseventh Year of the Republic of India as follows:-

1. (1) This Act may be called the Punjab Value Added Tax (Amendment) Act, 2016.

   (2) It shall come into force on and with effect from the date of its publication in the Official Gazette.

2. In the Punjab Value Added Tax Act, 2005, in section 68, in subsection (7), for the words "shall not be stayed", the words and signs "may be stayed, for the reasons to be recorded in writing after hearing the State," shall be substituted.

3. (1) The Punjab Value Added tax (Amendment) Ordinance, 2016 (Punjab Ordinance No. 5 of 2016) is hereby repealed.

   (2) Notwithstanding such repeal, anything done or any action taken under the Ordinance referred to in sub-section (1), shall be deemed to have been done or taken under this Act.

VIVEK PURI,
Secretary to Government of Punjab,
Department of Legal and Legislative Affairs.

OFFICE ORDER (HARYANA)

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EXEMPTION OF HINDI FEATURE FILE 'DANGAL' FROM ENTERTAINMENT DUTY

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

ORDER

In exercise of the powers conferred by sub section (3) of Section 11 of the Punjab Entertainment Duty Act, 1955 and all other powers enabling him in this behalf the Governor of Haryana hereby exempts the Film "DANGAL" from the liability to pay entertainment duty under the said Act of its 150 prints per week for a period of ten weeks in the State of Haryana subject to the condition that there will not be any refund or foregoing of past collection. The exemption shall have to be availed of by the producer within three months from the date of Government sanction conveyed to the producer of the film.

2. The ex post facto approval of the Finance Department will be taken later on.

Chandigarh, dated
The 26th December, 2016

SANJEEV KAUSHAL
Additional Chief Secretary to Govt. Haryana
Excise & Taxation Department

NOTIFICATION (HARYANA)

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AMENDMENT IN HARYANA TAX ON LUXURIES RULES, 2008

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 27th January, 2017

No. 2/ST-2/H.A.23/2007/S.40/2017. - In exercise of the powers conferred by sub-section (1) of section 40 of the Haryana Tax on Luxuries Act, 2007 (23 of 2007), the Governor of Haryana hereby makes the following rules further to amend the Haryana Tax on Luxuries Rules, 2008, namely:-

1. (1) These rules may be called the Haryana Tax on Luxuries (Amendment) Rules, 2017.

   (2) These rules shall be deemed to have come into force with effect from 26th September, 2016.

2. In the Haryana Tax on Luxuries Rules, 2008 (hereinafter called the said rules), in rule 2,-

   (i) in clause (b), for the word "office", the word "officer" shall be substituted;

   (ii) for clause (j), the following clause shall be substituted, namely:-

   "(j) "Inspector" means the Taxation Inspector posted to assist the Commissioner";

3. In the said rules, for rule 3, the following rule shall be substituted, namely:-

   "3. Registration. section 11,-(1) Every proprietor liable to pay tax under the Act shall, for the purpose of registration under sub-section (1) of section 11 make an online application within a period of thirty days of the publication of the rules or his becoming liable for payment of tax under the Act to the assessing authority in Form LT-1. It shall be signed digitally or manually by the proprietor or in the case of a firm, by a partner or in the case of a Hindu Undivided Family business, by the Manager or Karta of the Hindu Undivided Family or in the case of a company incorporated under the Companies Act, 2013 (Central Act 18.01.2013) or under any other law, but the principal officer managing the business or in the case of Government department or a public sector undertaking by the head of the Department or by Head of Public Sector Undertaking, as the case may be, or any other officer duly authorized by such Head of the Department or the Undertaking.

(2) An application, referred to in sub-rule (1), shall be accompanied by a treasury challans vide which a sum of five hundred rupees has been deposited in the appropriate Government treasury as registration fee under the Head "0040-102 (State Sales tax)-sub minor head 96 (other Receipts). The amount of five hundred rupees on account of registration fee may be deposited in the appropriate Government treasury through e-payment.

(3) When the assessing authority, after making any enquiry that it may think necessary, is satisfied that the applicant is a bona-fide proprietor and has correctly given all the requisite information that he has deposited the required registration fee into the appropriate Government treasury and that the application is in order, it shall register the proprietor and shall issue a certificate of registration in Form LT-2:

Provided that the assessing authority shall dispose of the application for registration within fifteen days from the date of receipt of the said application in the office concerned. Further, in case any deficiency is noticed by the assessing authority, a notice shall be issued within five days from the receipt of application to remove the deficiency within a further period of five days. In case the applicant fails to remove the deficiency within the stipulated period, the application shall be liable to be rejected.

(4) Every certificate of registration shall bear a unique number to be known as LTIN. (Luxury Tax Payer's Identification Number).

(5) The appropriate assessing authority shall give to the proprietor an attested copy of the registration certificate, free of cost, for every additional hotel/banquet hall enumerated therein.

(6) The name of every proprietor to whom a registration certificate has been granted under this rule shall be entered alongwith other particulars of his business in a register in form LT-2A.

4. In the said rules, after rule 3, the following rules shall be inserted, namely:-

" 3A. Amendment in registration certificate. (section 11).- The information required to be furnished under section 24 by a proprietor or by legal heir of a proprietor on his death, shall be submitted online in Form LT-1A to the appropriate assessing authority within thirty days of the arising of the contingency necessitating the furnishing of the information and shall be accompanied with the certificate of registration required to be amended. On receipt of the information, the assessing authority shall, if so required, amend the certificate of registration and other relevant records after making such enquiry, as he may consider necessary. The amendment made shall, unless ordered otherwise by the assessing authority, take affect from the date of receipt of the information:

Provided that the assessing authority shall dispose of the application for amendment within fifteen days from the date of receipt of the said application in the office concerned. Further, in case any deficiency is noticed by the assessing authority, a notice shall be issued within five days from the receipt of application to remove the deficiency within a further period of five days. In case the applicant fails to remove the deficiency within the stipulated period, the application shall be liable to be rejected.

3B. Cancellation of registration certificate. (Section 11).- (1) Where a proprietor who has closed down his business, makes an online application in Form LT-1C to the appropriate assessing authority for cancellation of his certificate of registration and surrenders the same, the assessing authority shall, if satisfied after making such enquiry as he may consider necessary that the information furnished to him is correct, he shall cancel the certificate of registration and such cancellation shall take effect, in case of closure of the business, from the date of closure, otherwise, from the date of the receipt of the application for cancellation by the assessing authority:

Provided that the assessing authority shall dispose of the application for cancellation of registration certificate within fifteen days of the date of receipt of the said application in the office concerned. Further, in case any deficiency is noticed by the assessing authority, a notice shall be issued within five days from the receipt of application to remove the deficiency within a further period of five days. In case the applicant fails to remove the deficiency within the stipulated period, the application shall be liable to be rejected.

(2) Where a proprietor who has closed down his business, fails to make an application to the appropriate assessing authority for cancellation of his certificate of registration, or fails to surrender his certificate of registration, the assessing authority shall, after giving such proprietor a reasonable opportunity of being heard, cancel the certificate of registration issued to him from the date he is issued with a notice for cancellation of the same, or where he intimates the date of closure of his business, from such date.

(3) An order of cancellation of certificate of registration of a proprietor under sub-section (9) of section 11 shall be passed by a Deputy Excise and Taxation Commissioner who is incharge of a district and the cancellation shall take effect from the date of the order of the cancellation.

(4) Every certificate of registration cancelled under sub-rule (2) or sub-rule (3) shall be surrendered by the proprietor to the assessing authority immediately on receipt of the order of the cancellation.

(5) The assessing authority shall make necessary entries in the register in Form LT-2A in respect of a proprietor whose registration certificate has been cancelled under the Act.".

5. In the said rules, for rule 5, the following rule shall be substituted, namely:-

"5. Payment of Luxury Tax.(Section 14).- The amount of luxury tax, falling due under the Act, shall be paid into appropriate Government Treasury by means of e-payment/challan in Form LT-3 or manual payment through e-challan and the proprietor shall furnish a copy of the challans to the appropriate assessing authority along with the declaration/return to which the payment relates.".

6. In the said rules, in rule 7, for clause (d), the following clause shall be substituted, namely:-

"(d) daily account of occupation of a banquet hall and collection of luxury tax therefor;".

7. In the said rules, in rule 9, for sub-rule (1), the following sub-rule shall be substituted, namely:-

"(1) Every proprietor liable to pay tax under the Act or such proprietor, as may be required so to do by the assessing authority by notice, shall furnish an online statement in respect of a month in Form LT-S or in Form LT-SU, as the case may be latest by the 15th day of the subsequent month showing clearly the receipts from the guest (s) and the amount of luxury tax due therein.".

8. In the said rules, for rule 10, the following rules shall be substituted, namely:-

"10. Filing of return. (section 13).- (1) Every proprietor required to file return under sub-section (1) of section 13 shall submit a complete and correct return for the year in Form LT-4 or in Form LT-4U, as the case may be latest by the 31st May to the appropriate assessing authority.

(2) Every proprietor, who submits a return under sub-rule (1) shall submit along with the return, receipt from the appropriate government treasury for the full amount payable under the Act.

(3) Every return filed under sub-rule (1) shall have a declaration at the end thereof as to the correctness of its contents.".

9. In the said rules, for rule 13, the following rule shall be substituted, namely:-

"13. Disposal register. section 40.- Every assessing authority shall maintain a register called disposal register in Form LT-6A where he shall enter the details of each case of the assessment, penalty etc.".

10. In the said rule, after rule 14, the following rule shall be inserted, namely:-

"14A Refund. section 34.- (1) Where a refund of any amount actually paid by any proprietor or other person becomes payable as a result of the order of an assessing authority or appellate authority or revising authority or any court and the same is not the subject matter of any further proceeding, such proprietor or person shall make an online application in Form LT-10 to the appropriate assessing authority along with original copy of the order which constitutes the bases for refund.

(2) The assessing authority shall, on receiving an application under sub-rule (1), examine the same and pass an order either to allow the refund in full or in part or to disallow the same for reasons to be communicated in writing and where the refund is allowed it shall issue refund payment order in Form STR-34 prescribed under the Punjab Subsidiary/Treasury or refund adjustment order in Form LT-11.

(3) The following authorities shall be competent to allow refund, arising from a single order of the amount mentioned against each:-

1	Committee comprising of three senior most Additional Excise and Taxation Commissioners from department posted at the Head Quarter and an officer to be nominated by the Commissioner, as its Member Secretary. The senior most amongst these Additional Excise and Taxation Commissioners shall be the Chairman.	Above ten lakh rupees
2	Committee comprising of the concerned Joint Excise and Taxation Commissioner (Range) as the Chairman; the other two members being one- the senior most Deputy Excise and Taxation Commissioner posted in any district	Above five lakh and upto ten lakh

	falling in the range (DETC may be from either wing i.e. Sales Tax or Excise or Inspection or Passenger and Goods Tax etc from any of the districts falling in the range); second- the Deputy Excise and Taxation Commissioner (Sales Tax) of the district concerned. The Excise and Taxation Officer working as Nodal Officer (Refund) in the district concerned shall work as Member-Secretary.	rupees
3	Committee comprising of the Deputy Excise and Taxation Commissioner (Sales Tax) of the district concerned as the Chairman; other two members being two senior most Excise and Taxation Officers posted in the district (the Excise and Taxation Officers may be from either wing i.e. Sales Tax or Excise or Inspection or Passenger Goods Tax etc). The Excise and Taxation Officer working as Nodal Officer (Refund) in the district shall work as Member-Secretary.	Upto Five lakh rupees

The lower authority/ authorities shall submit the record of the case along with its recommendation(s) to the concerned committee at the appropriate level at least thirty days before the time prescribed for issuing refund without interest lapses and the concerned committee shall intimate its decision to the lower authority/authorities before such prescribed period. It may, by order in writing, increase or decrease the amount of refund or may order that no refund is due but no adverse order shall be passed without giving the affected person a reasonable opportunity of being heard.

The Committees constituted for the purpose of sanction of refund shall meet at least once in a fortnight to decide the cases of refund sent to them for approval.

The Commissioner shall be competent to decide the eligibility of an officer with regard to his seniority about membership of any committee and to issue instructions for smooth functioning of the committees.

11. In the said rules, in rule 16,-

(i) in sub-rule (1), for clause (a), the following clause shall be substituted, namely:-

"(a) be written on the standard water marked judicial paper, **along with proof of payment of fee of five hundred rupees into the Government treasury**;";

(ii) for sub-rule (2), the following sub-rule shall be substituted, namely:-

"(2) Every memorandum of appeal referred to in sub-rule (1) made to the appellate authority shall be in Form LT-MA and shall be submitted online by the appellant or his agent or be presented personally to the said authority.".

12. In the said rules, for rule 17, the following rule shall be substituted, namely:-

"17. Summary rejection, section 31.-

The appeal shall be summarily rejected if the appellant fails to comply with any requirements of rule 16 or any other ground which the appellate authority may consider sufficient and which shall be reduced into writing by the appellate authority:

Provided that no appeal shall be summarily rejected under this rule unless the appellant or his agent has been given reasonable opportunity of amending the memorandum of appeal or of being heard.".

13. In the said rules, in rule 18,-

(i) in the marginal heading, for the words, figures and sign **"Rejection of appeal for want of sufficient particulars. section 31."**, the words, figures and sign **"Hearing and disposal of appeal (section 31)"** shall be substituted ; and

(ii) in sub-rule (1), after the words "registered post", existing at the end, the words "or through e-mail" shall be inserted.

14. In the said rules, in rule 21, for sub-rules (1) and (2), the following sub-rules shall be substituted, namely:-

"(1) The Deputy Excise and Taxation Commissioner (Sales Tax) incharge of the district, may suo motu or an application made to him in this behalf, **by an order** in writing transfer any case or proceedings or class of proceedings to any other assessing authority working under his control and may likewise transfer any such case (including a case already transferred) from one such officer to another.

(2) The Joint Excise and Taxation Commissioner (Range) may, suo motu or an application made to him in this behalf, transfer any case **by an order in writing** from the one district to another district in the area of his jurisdiction.".

15. In the said rules, for rule 22, the following rule shall be substituted, namely:-

"22. Delegation of powers, section 37.- (1) The Commissioner may under section 37 delegate, in writing, any of his powers to any officer not below the rank of a Deputy Excise and Taxation Commissioner.

(2) **The Deputy Excise and Taxation Commissioner or** any assessing authority may by an order in writing authorize generally or in any particular case any official subordinate to and working under its administrative control to exercise the powers conferred upon such authority under these rules to prepare and sign receipts, notices, challans and other documents and registers required to be drawn up, maintained or issued under the Act or the rules.".

16. In the said rules, after rule 22, the following rules shall be added, namely:-

"23. Method of service of notice and supply of copy of order sections 15, 16, 17, 21 and 22.- (1) A notice under the Act or these rules shall be served by one of the following methods, namely;-

(a) by delivery by hand a copy of the notice to the addressee or to his agent or to a person regularly employed by him in connection with the business in respect of which he is registered as a

proprietor or to any adult member of his family residing with the proprietor;

(b) by registered post; or

(c) by speed post or by any other means of transmission of documents including fax message or electronic mail service or by such- courier services as are approved by the Commissioner:

Provided that if upon an attempt having been made to serve any such notice by either of the above said methods, the authority concerned has reasonable grounds to believe that the addressee is evading service of notice or that for any other reason which in the opinion of such authority is sufficient that notice cannot be served by any of the above mentioned methods, the said authority shall after recording the reasons thereof cause the notice to be served by affixing a copy thereof :-

(i) if the addressee is a registered proprietor of the business, on some conspicuous parts of his office or the building in which his office is located or upon some conspicuous part of the place of his business last intimated to the said authority by him or the place where he is known to have last carried on business; or

(ii) if the addressee is not a sole owner of the business, on some conspicuous part of his residence or office or the building in which his residence or office is located and such service shall be deemed to be as effectual as if it has been made on the addressee personally:

Provided that where the officer at whose instance the notice is to be served is, on enquiry, satisfied that the said office, business place or residence is known not to exist or is not traceable, such officer may by order in writing, dispense with the requirement of service of the notice under the last preceding proviso.

(2) When the officer serving a notice delivers or tenders a copy of the notice to the proprietor or addressee personally or to his agent or to any of the persons referred to in clause (a) of sub-rule (1), he shall require the signatures of the person to whom the copy is so delivered or tendered in token of an acknowledgement of service endorsed on the original notice. When the notice is served by affixing a copy thereof in accordance with the first proviso to sub-rule (1), the officer serving it shall return the original to the authority which issued the notice with a report endorsed thereon or annexed thereto stating that he so affixed the copy, the circumstances under which he did so and the name and address of the person if any, by whom the addressee's office or residence or the building in which his office or residence is located or his place of business was identified and in whose presence the copy was affixed. The said officer shall also obtain the signature or thumb impression of the person identifying the addressee's residence or office or building or place of business to his report.

(3) When service is made by post, the service shall be deemed to be effected by properly addressing or preparing the notice and posting by registered post or by speed post or by courier and unless the contrary is proved the service shall be deemed to have been effected at the time which the

notice would be delivered in ordinary course of post. In case of service by fax or electronic mail, the service shall be deemed to be effected when transmission report is generated automatically by the appropriate mode.

(4) The provisions of the foregoing sub-rules shall be followed in respect of supply of notice of demand or copy of an order passed under the Act or these rules.

24. **Fee section 31.-** The following fee shall be payable in the form of court fee stamps or through e-payment or payment through e-challan, namely –

(i)	On a memorandum of appeal.	Five hundred rupees
(ii)	On an application for obtaining copies of record.	Twenty five rupees
(iii)	On any other application including application for adjournment	Twenty five rupees".

17. **In the said rules, after Form LT-1, the following Forms shall be inserted.**

"LT-1A

[See rule 3A]

Application for amendment of Registration under section 11(7) of the Haryana Tax on Luxuries Act, 2007

LTIN		**Business Name**	

Name of Applicant		**Status**	

Reason for Amendment

	Change in Name of Business
	Change in Place of Business
	Change in Constitution of Business
	Change in Class of Business
	Change in Hotel/Banquet Details
	Change in Proprietor/Partner(s)/Directors(s)/Karta Details
	Change in Bank Account Details
	Change in Authorized Representative
	Change in Additional Place of Business
	Change in Security/Surety

1 **(In case of change in Name of Business, below form would appear)**

Existing Business Details				
Name of Business/Organisation/Body			Display/Brand Name	
PAN of Business				
New Business Details				
Name of Business/Organisation/Body			Display/Brand Name	
PAN of Business *				

Details of New Security/Surity		
Security Type		

2 (In case of Change in Place of Business, below form would appear)

Existing Business Address Details				
SCO/Booth/Shop/Building/ Flat/Floor/Door No. *			Building Name/Mohalla/Colony/Market Place/ Street/Lane*	
Sector/Area			City/Town/Village *	
Post Office			District *	
State*			Country *	
PIN Code*			E-mail Address *	
FAX No.			Telephone No.	
Mobile No. *				

New Business Address Details				
SCO/Booth/Shop/Building/ Flat/Floor/Door No. *			Building Name/Mohalla/Colony/Market Place/ Street/Lane*	
Sector/Area			City/Town/Village *	
Post Office			District *	
State*			Country *	
PIN Code*			E-mail Address *	
FAX No.			Telephone No.	
Mobile No. *				
Whether New Business Premises is Self Owned of Leased	Self Owned/Leased			
(To be filled in case new business premises is on lease)				
Details of Landlord of New Business Premises				
Individual		Firm		
In case of Individual				
Name *		Father's Name		
Date of Birth*				

In case of firm					
Name of Firm*			Date of Incorporation *		
Permanent Address Details					
SCO/Booth/Shop/Building/ Flat/Floor/Door No. *			Building Name/Mohalla/Colony/ Market Place/ Street/Lane*		
Sector/Area			City/Town/Village*		
Post Office			District *		
State*			Country *		
PIN Code*			E-mail Address *		
FAX No.			Telephone No.		
Mobile No. *					

3 **(In case of Change in Constitution of Business, below form would appear)**

Existing Business Details					
Constitution of the business *			No. of Partners/Directors/ Trustees/Members *		
Details of each of Existing Partners/Directors					
New Business Details					
New Constitution of the business *			No. of Partners/Directors/ Trustees/Members*		
Details of each of New Partners/Directors					
Name*			Father's Name*		
Date of Birth*			PAN *		
Status*					
Present Address					
SCO/Booth/Shop/Build ing/Flat/Floor/Door No. *			Building Name/Mohalla/Colony/Mar ket Place/ Street/Lane*		
Sector/Area			City/Town/Village*		
Post Office			District *		
State*			Country *		
PIN Code*			E-mail Address *		

FAX No.		Telephone No.	
Mobile No. *			

Permanent Address			
SCO/Booth/Shop/Building/Flat/Floor/Door No. *		Building Name/Mohalla/ Colony/Market Place/ Street/Lane*	
Sector/Area		City/Town/Village*	
Post Office		District *	
State*		Country *	
PIN Code*		E-mail Address *	
FAX No.		Telephone No.	
Mobile No. *			

Details of All Immovable Properties Owned			
Sr. No.	Address Where Property is Situated*	Approximate Value*	Extent of Share (in %)*
Details of New Security/Security			
Security Type			

4 (In case of Change in Class of Business, below form would appear)

Existing Class of Business Details				
Class of Business *	Hotel/Banquet/Hotel with Banquet			
Details relevant to existing class of business shall be displayed				
New Class of Business Details				
Class of Business *	Hotel/Banquet/Hotel with Banquet			
(Corresponding Boxes for Capturing Details of Hotel/Hotel with Banquet/Banquet will also appear as per the new class of business selected by dealer.)				
New Detail of Hotel				
Class of Hotel*	Ordinary, Star Rating		Number of Rooms *	
In Case of Star Rating, Please select Rating	1/2/3/4/5/7			
Rates Fixed for Luxury (Form LT-D)				
Serial No.	Category/Type of Accommodation		Normal Rate	Number of

			Rooms*
Other Luxuries in Hotel			
Hotel Club		Beauty Parlour	
Swimming Pool		Lawn	
Conference Hall		Others	

Banquet Available in Hotel*	Yes/No		Number of Banquet *		
Serial No.	Area (Sq. Ft.)	Seating Capacity	Normal Rate Per Occasion	Type of Structure	Air Conditioning Facility
				Permanent Temporary	Yes/No.

Details of Banquet					
Multiple Banquets at single Locations*	Yes/No.		Number of Banquet *		
Size of Banquet (Sq Mtr)	Seating Capacity		Normal Rate Per Occasion	Type of Structure	
				Permanent Temporary	Yes/No.

5 **(In case of Change in Hotel/Banquet Details, below form would appear)**

Existing Hotel/Banquet Details			
Details relevant to existing hotel/banquet/hotel with banquet shall be displayed			
New Details of Hotel			
Class of Hotel *	Ordinay, Star Rating	Number of Rooms	
In Case of Star Rating, Please select Rating	1/2/3/4/5/7		
Rates Fixed for Luxury (Form LT-D)			

Serial No.	Category/Type of Accommodation	Normal Rate	Number of Rooms*
Other Luxuries in Hotel			

Hotel Club		Beauty Parlour	
Swimming Pool		Lawn	
Conference Hall		Others	Please Specify

Banquet Available in Hotel*	Yes/No		Number of Banquet *		
Serial No.	Area (Sq. Ft.)	Seating Capacity	Normal Rate Per Occasion	Type of Structure	Air Conditioning Facility
				Permanent Temporary	Yes/No.
Details of Banquet					

Multiple Banquets at Single Locations*	Yes/No.		Number of Banquet *		
Size of Banquet (Sq Mtr)	Seating Capacity		Normal Rate Per Occasion	Type of Structure	Air Conditioning Facility
				Permanent Temporary	Yes/No.

6 **(In case of Change in Proprietor/Partner(s)/Director(s)/Karta Details, below form would appear)**

Existing Details of Proprietor/Partner/Director/Karta/Authorized Person				
Existing Details relevant to Proprietor/Partner/Director/Karta shall be displayed				
New Details of Proprietor/Partner/Director/Karta/Authorized Person				
Name *			Status *	
New Present Address Details (In case of Change in Present Address)				
SCO/Booth/Shop/ Building/Flat/Floor/Door No. *			Building Name/Mohalla/ Colony/Market Place/Street/Lane*	
Sector/Area			City/Town/Village*	
Post Office			District *	
State*			Country *	
PIN Code*			E-mail Address *	
FAX No.			Telephone No.	
Mobile No. *				
New Permanent Address Details (In Case of change in Permanent Address)				
SCO/Booth/Shop/ Building/Flat/Floor/Door No. *			Building Name/Mohalla/Colony/ Market Place/Street/Lane*	
Sector/Area			City/Town/Village*	
Post Office			District *	
State*			Country *	
PIN Code*			E-mail Address *	
FAX No.			Telephone No.	
Mobile No. *				
Details of All Immovable Properties Owned				
Sr. No.	Address Where Property is Situated	Approximate Value	Extent of Share	

7 **(In case of Change in Bank Account Details, below form would appear)**

Existing Bank Account Details

Name of Bank	Address of Bank	Account Number
New Bank Account Details		
Name of Bank	Address of Bank	Account Number

8 (In case of Change in Authorized Representative, below form would appear)

Details of Existing Authorized Representative				
Details relevant to existing Authorized Representative shall be displayed				
Details of New Authorized Representative				
Name *			Designation *	
Father's Name *			Date of Birth *	
Present Address Details				
SCO/Booth/Shop/ Building/Flat/ Floor/ Door No. *			Building Name/Mohalla/ Colony/Market Place/Street/Lane*	
Sector/Area			City/Town/Village*	
Post Office			District *	
State*			Country *	
PIN Code*			E-mail Address *	
FAX No.			Telephone No.	
Mobile No. *				
Permanent Address Details				
SCO/Booth/Shop/ Building/Flat/Floor/ Door No. *			Building Name/Mohalla/ Colony/ Market Place/Street/Lane*	
Sector/Area			City/Town/Village*	
Post Office			District *	
State*			Country *	
PIN Code*			E-mail Address *	
FAX No.			Telephone No.	
Mobile No. *				

9 (In case of Change in Additional Place of Business, below form would appear)

Change	Name of Business	Tax Type under which registered	Style of Business	Full Address of Additional Place of Business	Registration Certificate No.	Date of Issue	Service Tax Number
Addition/Closure							
Addition/Closure							

10 (In case of Change in Security/Surety, below form would appear)

Details of Existing Security/Surety				
Details relevant to existing Security/Surety shall be displayed				
Details of Existing Security/Surety				
Business Name *			**Security Type ***	
(First option:- In case the dealer selects cash security, below form would appear)			(Cash Security, Bank Guarantee, Surety Bond)	
Amount *			**TR No. ***	
Bank Name*			**TR Date***	
(Second option:- In case the dealer selects bank guarantee, below form would appear)				
Amount *			**Bank Guarantee No.***	
Issue on Date*			**Expiry Date***	
Bank Name*			**Branch Name & Address***	
Branch Phone No.			**Branch Email ID**	

(Third option:- In case the dealer selects surety bond, below form would appear)				
Amount *			**Name of Security Firm***	
TIN *				
Address Details of Security Firm				
Building No.*			**Area***	
City*			**District***	
State*			**Pincode***	
Email ID*			**Fax No.**	
Telephone No. (With STD code)*			**Mobile No.***	
(Fourth option:- In case the dealer selects national savings certificate, below form would appear)				
National Saving Certificate No.*			Amount *	

Issued on Date*			Maturity Date*	
(Fifth option:- In case the dealer selects post office account, below form would appear)				
Name of Post Office			**Address**	
Post Office Account Number			**Account opening Date**	

Date _____ Signature _____

Place _____ Status _____

Form LT-1C
[see rule 3B,]

Application for Cancellation of Registration under The Haryana Tax on Luxuries Act, 2007				
1	**LTIN**			
2	**Applicant Details**			
	Name of Applicant *		Status	
3	**BELOW SHADED DETAILS WILL BE AUTOPOPULATED**			
	Business Details			
	Name of Business/ Organization/Body *		Display/Brand Name	
	Constitution of the Business *		No. of Partners/Directors/Trustees*	
	Class of Business *		PAN of Business *	
4	**Business Address Details**			
	SCO/Booth/Shop/Building/ Flat/ Floor/Door No. *		Building Name/Mohalla/Colony/Market Place/Street/Lane*	
	Sector/Area		City/Town/Village*	
	Post Office		District *	
	State*		Country *	
	PIN Code*		E-mail Address *	
	FAX No.		Telephone No.	
	Mobile No. *			
5	Whether Business Premises is Self Owned or Leased *		**Lease Period**	**(In Years and Months)**
6	Additional place of Business in Haryana			

(If there are any additional places of business, there details would appear below)				
7	**Address for Correspondence**			
	SCO/Booth/Shop/Building/Flat Floor/Door No. *		Building Name/Mohalla/ Colony/Market Place/Street/Lane*	
	Sector/Area		City/Town/Village*	
	Post Office		District *	
	State*		Country *	
	PIN Code*		E-mail Address *	
	FAX No.		Telephone No.	
	Mobile No. *			
8	Date from which cancellation is sought*	Date picker		
9	**Reason for cancellation of Business ***			
	Discontinuance of Business			
	Disposal of Business			
	Transfer of Business			
	Others			

10 Declaration

I do hereby solemnly and declare that the information contained in this application, is true and correct to the best of my knowledge and belief and nothing has been concealed therein.

Date Signature
Place Status.".

18. In the said rules, after Form LT-2 the following Form shall be inserted, namely:-

"Form LT-2A
[(see rule 3B(5)]

List of registered proprietors of ..... District

Sr. No.	Name and Address	Name and address of prop./partners
1	2	3

Address of branches	Particulars of LTIN (Luxury Tax identification Number)				
	Number	Date of issue	Date of Liability	Date of validity	Date of Cancelation
4	5	6	7	8	9

Details of Security		
Amount	Name & address of sureties with TIN/LTIN, if connected with any business registered under VAT Act/Luxuries Tax	Signature of Assessing Authority

	Act	
10	11	12
		"

19. In the said rules, after Form LT-4, the following Form shall be inserted, namely:-

"Form-LT-4U

(See rule 10(1))

E-Return (Annual)

Return of Tax Payable by a Hotelier/Banquet Hall Owner Under The Haryana Tax on Luxuries Act, 2007

1.	Return Period	

2.	Name of Person Filing Return*			Status*	
3.	**Business Details**				
	Name of Business/ Organization/Body*			Display/Brand Name	
	Class of Business*			PAN of Business *	

4.	**Business Address Details**			
	SCO/Booth/Shop/Building/ Flat/Floor/Door No*		Building Name/ Mohalla/Colony/Market Place/Street/Lane *	
	Sector/Area		City/Town/Village Name *	
	Post Office		District *	
	Pin Code		State*	
	Country*		Fax No.	
	Telephone No.		Mobile No. *	
	E-mail*			

Part I (Computation of Turnover of Receipts Liable to Tax)

5.	Total Turnover of Receipts During the Period Deductions	

6A.	Turnover of Receipts where the charges provided in hotel are less than Rs 2000/Day/Room and In Banquet Hall less than Rs 20000/Occasion.	
6B.	Turnover of Receipts on which Tax is not Payable (Other than 6(A))	

7.	Net Turnover of Receipt Liable to Tax [5-{6(A)+6(B)}]	

8 **Part II (Calculation of Tax)**

Categories of Receipts which are Constituent of Turnover at Item No. 7	Tax Rate	Net Turnover of Receipts Liable to Tax	Tax Payable
Category of Receipts from Hotel / Category of Receipts from Banquet			
Category of Receipts from Hotel / Category of Receipts from Banquet			

9.	Total Tax Payable	

Part III (Amount Payable/Excess As per the Return)

10.	Total Tax Payable (As Per Part II)	
	Deductions	
11 A.	Amount Credited Under RAO	
11 B.	Excess Due as Per Previous Return Period	
11 C.	Tax Already Paid	
12.	Net Amount Payable [10-{11(A)+11(B)+11(C)}]	

ANNEXURE-1

Summary Sheet of Monthly Statements Filed During the Year (LT-S) under the Haryana Tax on Luxuries Act

Serial Number	Year	Month	Gross Receipts	Deductions	Net Receipt of Turnover Liable to Tax	Tax Payable	Interest (If Payable)	Penalty (If Payable)	Total Payment on a/c of Tax, Interest & Penalty	Excess/ Shortfall
		April								
		May								
		June								
		July								
		August								
		September								
		October								
		November								
		December								
		January								
		February								
		March								
Total										"

13.	Net Amount Refundable	
14.	Interest	
15.	Penalty	
16	Amount Payable as Per the Return	

17. Amount Excess as Per the Return

18.

Tax Payment Details							
Mode of Payment	Amount	Name of Bank	Date of Payment	GRN	CIN	TR/DD No.	TR/DD Date

Declaration

The Above Statement is True to the Best of My Knowledge and Belief.

Date
Place

Signature
Status

20. In the said rules, after Form LT-6, the following Form may be inserted, namely:-

"Form LT-6A"

(see rule 13)

Disposal Register

Demand Number	Type of case	Name and complete address of assesses	LTIN	Tax/Interest paid		
1	2	3	4	5	6	7

Tax/Interest/Penalty assessed	Demand created/refund allowed	Date of order	Initial of the Taxing Authority	Details of service of order	Details of recovery with DCR No. and date, RAO Number and date.	Initials of officials making entry at Serial Numbers. 12 and 13	Gross turn over/Taxable Turnover
8	9	10	11	12	13	14	15

21. After Form LT-S, the following Form shall be added namely:-

"Form LT-10

(see rule 14A)

Application for Refund under The Haryana Tax on Luxuries Act, 2007

Proprietor Details			
LTIN*		Name of Business/ Organization/Body*	
Name of Applicant*		Status*	

Business Address Details			
SCO/Booth/Shop/Building/Flat/ Floor/ Door No.*		Building Name/Mohalla/Colony/Market Place/Street/Lane *	
Sector/Area		City/Town/Village*	
Post Office		District*	
Pin Code*		State*	

Country*			Telephone Number	
Fax Number			E-mail*	
Mobile Number *				

Reason for Refund				
Through Assessment Order			Any Order by Higher Authority	
Order Number			Order Date	

Returns Details				
Filing Period	Annual/Monthly		Date of Filing Return	
Return Acknowledgement Number				
Financial Year				
Month				

Tax Payment Details				
GRN			Mode of Payment	
Amount			Name of Bank	
TR/DD Number			TR/DD Date	

Refund Calculation	

Excess Amount Quantified	

Excess Carry Forward Claimed if any	Yes/No
Amount	

Outstanding dues (if Any)	Yes/No
Amount	

Whether this amount has accrued as a result of collection of tax from customer	Yes/No
Amount	

Whether this amount has accrued as a result of excess deposit voluntarily	Yes/No
Amount	

Net Eligible Refund	

Refund Amount Claimed	

Refund Adjustment Through				
Excess Carry Forward			Credit to Bank Account	

(In case of credit to bank account)

Bank Account Details				
Account No.			Bank Name	
IFSC Code				

Declaration

I hereby declare that the information contained herein true and correct to the best of my knowledge/ belief and nothing has been concealed.

Date Signature
Place Status

Form LT-11
(See section 34, rule 14A)
Duplicate for Office Record Original for the Dealer

REFUND ADJUSTMENT ORDER

Voucher No._____ Date_____

1. Name of dealer or person to whom issued _____
2. TIN(in case of dealer registered under the Act) _____
3. Amount of refund due _____
4. Date of order quantifying the refund amount _____
5. Details of amount deducted, if any on Account of any demand outstanding Against the applicant

Amount	Demand No. and date	Voluntary Tax for period

6. Net refundable amount in figures and words (3-5) In words _____

In figures_____

Signature and stamp of receiving Dealer
Date_____

Signature and stamp of issuing Officer
Date_____

Form-LT-SU
[see rules 9(1) and 10(1)]

Monthly Statement of Gross/Taxable Receipt by a Hotelier/Banquet Hall Owner Under The Haryana Tax on Luxuries Act.

1.	**Name of Person Filing Statement ***			**Status ***	
2.	**Business Details**				
	Name of Business/Organization/Body *			**Display/Brand Name**	
	Class of Business *			**PAN of Business ***	
3.	**Business Address Details**				
	SCO/Booth/Shop/Building/ Flat/Floor/Door No*			Building Name/Mohalla/Colony/Market Place/Street/Lane *	
	Sector/Area			City/Town/Village*	
	Post Office			District*	
	Pin Code			State*	
	Country*			Fax No	
	Telephone No.			Mobile No.	
	E-mail*				

4.	Statement Filing Period	Year		Month	

5.	Gross Receipts from Hotel	
6.	Gross Receipts from Banquet	
7.	Total Gross Receipts	
8.	Receipt Non Taxable	
9.	Taxable Receipt (6-7)	
10.	Tax	
11.	Interest (if Any)	
12.	Total Tax Payable (9+10)	

13.	Deductions	
14.	Amount Credited Under RAO	
15.	Excess Due as per Previous Return Period	
16.	Net Tax Payable (11-12)	

Tax Payment Details

Mode of Payment	Amount	Name of Bank	Date of Payment	GRN	CIN	TR /DD No.	TR/DD Date

Declaration

The Above Statement is True to the Best of My Knowledge and Belief.

Date
Place

Signature
Status

(In Case of Class of Business as Banquet, Hotel with Banquet – Below Table Needs to be Mandatorily Filled by the Proprietor)

Annexure

Sr No.	Invoice No.	Invoice Date	Name of Occupant and Address	Banquet/Lawn Name	Normal Rate	Event Time		Invoiced Amount	Tax Paid	Gross Receipt
						From Date& Time	To Date & Time			
1.										
2.										
3.										
4.										

Form-LT-MA

[see rule 16(2)]

Luxury Tax – Memorandum Appeal

Business Details				
LTIN *			Name of Business *	

Business Address Details			
SCO/Booth/Shop/Building/ Flat/Floor/Door No*		Building Name/Mohalla/Colony/Market Place/Street/Lane *	
Sector/Area		City/Town/Village*	
Post Office		District*	
Pin Code		State*	
Country*		Fax No	
Telephone No.		Mobile No.	
SCO/Booth/Shop/Building/ Flat/Floor/Door No*		Building Name/Mohalla/Colony/Market Place/Street/Lane *	

Impugned Order Details			
Assessment Year		Authority passing the order appealed against	
Order No.		Date of the order appealed against	
Date of the communication of the order appealed against			
Relief Claimed in Appeal			
Turnover determined by Assessing Authority			
Disputed Turnover			
Tax Due on the Disputed Turnover			
Any other relief claimed			

The Appellant has paid the tax assessed, interest levied and penalty imposed under the order appealed against as					
	Amount Paid Before Assessment	Paid After Assessment			Balance due, if any, at the time of filing of appeal
		Amount	GRN	Date	
(i) Out of Admitted Tax & Interest					
(ii) Out of disputed Tax, Interest & Penalty.					
Ground's of Appeal					

Appeal Check List			
Memorandum of Appeal		Copy of Original Order	
Proof of Deposit of Admitted Tax			
Others		Security for Disputed Amount	

Payment Details

Mode of Payment			GRN Number	
GRN Date			CIN Number	
CIN Date			Total Fee Paid	

Verification

I/We hereby declare that what is stated herein is true and correct to the best of my/our knowledge and belief.

Date Signature
Place Status *

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

NOTIFICATION (HARYANA)

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NOTIFICATION REGARDING EXEMPTION FROM LEVY OF VAT ON BIO-DIESEL

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 8th February, 2017

No. Web.4/ST-1/H.A. 6/2003/S.59/2017. – The following draft of amendment which the Governor of Haryana proposes to make in exercise of the powers conferred by sub-section (1) of section 59 of the Haryana Value Added Tax Act, 2003 (6 of 2003), in Schedule, B appended to said Act, is published below for the information of persons likely to be affected thereby.

Notice is hereby given that the draft of amendment shall be taken into consideration by the Government on or after the expiry of a period of ten days from the date of uploading of this notification on the official website www.haryanatax.gov.in together with objections and suggestions, if any, which may be received by the Additional Chief Secretary to Government, Haryana, Excise and Taxation Department, Chandigarh from any person with respect to the draft of amendment before the expiry of the period so specified and shall take effect with effect from date of final notification:-

DRAFT AMENDMENT

In the Haryana Value Added Tax Act, 2003 (6 of 2003), in Schedule B, under columns 1 and 2, after serial number 8 and entry thereagainst, the following serial number and entries thereagainst shall be inserted, namely:-

"8A Bio-diesel (B-100)".

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

NOTIFICATION (HARYANA)

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AMENDMENT IN RULE 3 OF THE HARYANA VALUE ADDED TAX RULES,2003 TO PROVIDE FOR NEW TAX RANGES

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 8th February, 2017

No. 3 /ST-1/H.A.6/2003/S.60/2017:- 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 60 read with the proviso to the said sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following rules to further amend the Haryana Value Added Tax Rules, 2003 by dispensing with the condition of previous notice, namely:-

1. (1) These rules may be called the Haryana Value Added Tax (Amendment) Rules, 2017.

(2) They shall be deemed to have come into force with effect from the 1st January, 2017.

2. In the Haryana Value Added Tax Rules, 2003 for rule 3, the following rule shall be substituted, namely :-

"3. Superintendence and control. (sections 55 and 60).- The Commissioner shall superintend the administration and the collection of tax leviable under the Act and shall control all persons appointed to assist him thereunder. The State for the purpose of tax administration, shall be divided into the following five ranges comprising the districts as mentioned against each, namely –

Serial Number	Range	Name of the districts comprising the range
1	2	3
1	Ambala	Panchkula, Ambala, Yamunanagar, Kaithal, Kurukshetra and Karnal.
2	Faridabad	Faridabad (East), Faridabad (West), Faridabad (North), Faridabad (South) and Palwal.
3	Gurugram	Gurugram (East), Gurugram (West), Gurugram (North), Gurugram (South) and Mewat.

4	Hisar	Hisar, Jind, Fatehabad, Sirsa and Bhiwani.
5	Rohtak	Rohtak, Panipat, Sonipat, Rewari, Narnaul and Jhajjar.

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

NEWS OF YOUR INTEREST

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ECONOMIC SURVEY PITCHES FOR BRINGING LAND, REAL ESTATE UNDER GST

NEW DELHI: Calling Goods and Services Tax (GST) a bold new experiment, the pre-Budget Economic Survey today pitched for including land and other immovable property — the key source of black money creation — in the indirect tax regime to help propel GDP growth to 8-10%.

"The GST will create a common Indian market, improve tax compliance and governance, and boost investment and growth; it is also a bold new experiment in the governance of India's cooperative federalism," the Survey said.

It went on to term the constitutional bill that enabled GST as "transformational" but rued that there was not enough pressure from the states to keep the GST rates low and simple to make the indirect tax regime efficient and effective.

"It appears that the GST will probably be implemented later in the fiscal year," the pre-Budget document said. "The transition to the GST is so complicated from an administrative and technology perspective that revenue collection will take some time to reach full potential."

Combined with the government's commitment to compensating the states for any shortfall in their own GST collections (relative to a baseline of 14 per cent increase), the outlook must be cautious with respect to revenue collections.

"The fiscal gains from implementing the GST and demonetisation, while almost certain to occur, will probably take time to be fully realised," it said.

Also, concerns about ensuring low tax rates for essentials risks creating an unduly complicated structure with multiple and excessively high peak rates, thereby foregoing large services efficiency gains, it said.

"Over the medium run, the implementation of the GST, follow-up to demonetisation, and enacting other structural reforms should take the economy towards its potential real GDP growth of 8 per cent to 10 per cent," the document said.

The Survey said, "A GST with broad coverage to include activities that are sources of black money creation -- land and other immovable property -- should be implemented."

Also, the introduction of GST offers an excellent opportunity to rationalise domestic indirect taxes so that they do not discriminate in the case of apparels against the production of clothing that uses man-made fibers, and in the case of footwear against the production of non-leather based footwear (if there is such a discrimination).

"While strictly not an instrument of redistribution, even the design of the GST reveals the underlying tensions," it said, adding the political pressures from the states to keep rates low and simple --- resulting in an efficient and effective GST --- were minimal.

EXperience shows that all discussions , survey before budget normally fails badly before the respective Finance Minister when the budget is presented in the parliament and made pu... Read More

Apart from the general desire to ensure that the future structure of rates would mimic the complicated status quo, much of the focus was on ensuring that rates on essentials were kept low and on luxuries kept sufficiently high with insufficient concern for the implied consequences for efficiency and simplification.

"The lack of such pressures especially from the states was surprising since they were guaranteed compensation by the Centre," it said. "Evidently, even a dream combination of being able to trumpet low taxes without suffering revenue losses was not considered politically attractive."

Courtesy: The Times of India
31st January, 2017

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BANKS ASK GOVT TO AMEND DRAFT GST LAW

MUMBAI: Under the current structure, transactions between two branches of same bank will trigger a tax, which could prove to be cumbersome. Indian banks have approached the government to amend the draft Goods and Services Tax (GST) law under which transactions between two branches of a bank will trigger a tax.

This tax could be cumbersome because of the enormous number of financial transactions being carried out and because it will be impossible for banks and finance institutions to value services provided by one branch to another and then pay GST on that. Banks have written to the government to amend the GST law involving such `self-supply' of services. According to people in the know, the government may be looking to make this change within a month.

The problem is this: if a bank branch located currently in Mumbai provides a service, or is perceived to provide a service to another branch in New Delhi, GST will be applicable on such a service. So, if a Mumbai resident withdraws money from a New Delhi ATM, the bank would first be required to value this service and then pay GST on that. This, will be impossible to comply with.

"The valuation of supply of services can trigger dispute, prone to misinterpretation and promote corruption. If the provision remains, branch to branch transactions in banks or similar transactions in other sectors need to be valued and should be taxed," says Sachin Menon, national head, indirect tax, KPMG India.

Experts point out that the support provided by the head office to a regional office or a branch and vice versa or sales and after sales support will have to be valued first. GST will be have to paid on this value.

It is impossible to identify intra company transactions and value them and then carry out compliances, say experts.

"There are thousands of branches and sales offices in case of some of these service providers and the interaction between establishments is numerous," said Uday Pimprikar, partner, tax & regulatory services, EY India. Industry experts point out that the current GST law suggests that supplies between two registrations of the same entity should be liable to GST.

"There is no need to levy GST on inter-branch supply of services. To distribute credit, there is already a simpler concept of input service distributor," says Dharmesh Panchal, India West Indirect Tax leader, PwC.

Banks including, SBI, ICICI and HDFC, have approached the government to modify the GST framework involving self-supply of services, say people in the know. In a written communication to the GST committee, banks have claimed that they would not be able to comply with such a regulation as it's impossible to value such services.

Courtesy: The Economic Times
31st January, 2017

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WILL REACH OUT TO INDUSTRY FROM APRIL 1 ON GST AWARENESS: FM ARUN JAITLEY

NEW DELHI: Finance Minister Arun Jaitley on Wednesday said the government was ready for implementation of the Goods and Services Tax (GST) and will begin reaching out to the industry from April 1 to make them aware of the new tax regime.

Jaitley however did not spell out the likely date for implementation of the new indirect tax regime.

"GST Council has finalised recommendations on all issues, the preparedness of IT is on schedule. On April 1, the reaching out to the industry will begin to make them aware of the new tax system, as per schedule," the Finance Minister said while presenting the Union Budget 2017-18 in the Lok Sabha.

"Preparatory work on GST is top priority of the government. Several teams of the Centre and states are working towards it," he added.

He said he was not making too many changes in the excise and customs as they will be soon replaced by GST.

He further said the implementation of GST will bring in increased revenues to the Centre and states and spur competitiveness.

The GST Council held nine meetings to discuss the tax rate, threshold exemptions, compensation to the states, draft laws and administrative mechanism, among others.

The Finance Minister had earlier said that July 1, 2017, appeared to be a realistic option for implementing GST. The earlier implementation date was April 1, which is fairly out of the question after the GST Council resolved all its issues only by January 16 this year.

The Centre and the states agreed on a formula to resolve the issue of cross-empowerment and dual control under the Goods and Services Tax regime.

Courtesy:The Economic Times

1st February

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HIMACHAL SLAPS 5 % ENTRY TAX ON ONLINE PURCHASES

Online shopping in Himachal Pradesh has become expensive with the Congress Government imposing an additional 5 percent entry tax on goods purchased through online shopping.

The tax will be levied on delivery providers, like courier or postage service providers, for the good purchased through online.

The decision to levy tax on online shopping was notified by the government on Tuesday. The bill was brought in the state assembly in last monsoon session and the Governor had ratified it recently.

The tax was conceived around 3 years back, when the government received reports of major tax evasion through online shopping, as the goods were delivered to the consumers without being taxed in the state.

The state assembly had amended the Himachal Pradesh Value Added Tax Rules, 2005, and a new section (59-A) was inserted, under which the application for registration has to be submitted by the carrier of goods (courier agent or any other person in-charge of the goods) electronically, through the official website.

State Additional secretary for Finance, Shrikant Baldi said the tax has been implemented from Feb 1, 2017. Answering a query on expected projection of revenue from the new tax, Baldi said that at present no targets had been fixed under the head but the new tax would definitely be an addition to the revenue of the state.

He said that notification proposes registration procedure and process of submission of returns by carrier of goods and agent of transport companies under the VAT Rules, 2005 and levying five percent uniform cess on e-commerce which will cover online purchases by inserting new forms.

Talking on the revenue receipts of the state, Pradeep Chauhan, Economic Advisor, Himachal Pradesh said that the state government gets around Rs 3644 from the VAT or sales tax, while the total revenue of the state is around Rs5200 crore per annum.

Baldi said online shopping has a share of around 6 to 7 percent of the total sales in Himachal Prdesh, which is likely to gain boon in the times to come. And the online purchase is causing a dent of around 360 crore in the VAT or sales tax collection in the state. He said that the new tax would compensate this loss to some extent. The state excise contributes around Rs1044.14 Crore while the state earns Rs360 Cr from Octroi and 110 from transport tax .

Courtesy: The Pioneer
2nd February, 2017

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GST LAWS, RULES TO BE FINALISED BY MARCH-END, SAYS REVENUE SECY

Revenue Secretary Hasmukh Adhia, on Friday said that the Goods and Services Tax (GST) laws and rules will be finalised by the end of March but the GST rates may be decided by month of May or June.

Finance Minister Arun Jaitley said today that the draft bills on GST will be introduced in the Budget Session.

Nine meetings were held by GST Council to discuss the tax rates, threshold exemption, compensation to the states, draft laws and administrative mechanism.

The earlier implementation date was April 1 but Finance Minister Jaitley said that July 1, 2017 seemed more realistic option for the implementation.

The GST Council held nine meetings to discuss the tax rate, threshold exemptions, compensation to the states, draft laws and administrative mechanism, among others.

Courtesy: TIMES NOW
3rd February, 2017

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REVENUE DEPARTMENT PREPARES DRAFT RECOMMENDATIONS FOR GST RATES: REPORT

The Revenue Department has prepared draft recommendations for GST rates on services. According to the draft, GST on telecom, banking, financial services, aviation is proposed to be pegged at 18%, according to a report.

The Revenue Department has prepared draft recommendations for GST rates on services. According to the draft, GST on telecom, banking, financial services, aviation is proposed to be pegged at 18%, sources told ET Now. DTH, restaurant dining are also placed in the 18% bracket, they said. "Education, healthcare are the only major sectors which will see lower service tax rate of 12%. Construction of affordable housing will also remain in the 12% bracket," the sources further added.

Meanwhile, talking about the roadmap for implementation of the Goods and Services Tax (GST), Hasmukh Adhia expressed optimism that the government is on track to make the indirect tax reform a reality soon. "We are well on track for GST, nobody needs to worry about its implementation," he said. "On February 18, we have the next meeting of the GST Council. We hope to finalise the law in that meeting," he said, adding that the broad rates of GST have already been indicated and further calamity will emerge as the government moves forward on implementation.

GST is being touted as the biggest indirect tax reform since Independence. With its implementation, India will have a system of 'one country, one tax, one market'.

Analysts widely expect that once GST comes into force, most of the services will get expensive, but for goods it will be a mixed bag. Essential goods will not form a part of GST.

Courtesy:The Financial Express
6th February, 2017

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FLIPKART, AMAZON & SNAPDEAL COME TOGETHER TO OPPOSE GST PROVISION

NEW DELHI: The bigwigs of ecommerce, including Amazon India Head Amit Agarwal, Flipkart Cofounder Sachin Bansal and Snapdeal Cofounder Kunal Bahl joined hands to seek modifications in the draft version of the GST (goods and services tax) law. Ecommerce companies are worried about the tax collection at source (TCS) provision in the GST.

The proposed GST model makes these companies responsible for the collection of taxes on behalf of its sellers and merchants. With GST expected to be finalised by this month, ecommerce rivals for the first time presented a joint front to put pressure on the government.

"The proposal of tax collection at source, directed only at ecommerce marketplaces, in the Draft Model GST Law, will hurt lakhs of small sellers by making online sales expensive and cumbersome for them," said Bahl of Snapdeal.

"The proposal, while adding needless complexity for the sellers, provides no benefit to the tax authorities and will lead to duplication of information followed by the need for its reconciliation. It is a measure, which goes against the spirit of making India digital and improving the ease of doing business in the country."

"We remain concerned about the tax collection at source provision which we believe will negatively impact the growth of marketplaces at a stage when the industry is still in its infancy," said Amit Agarwal, country head for Amazon India. "There is an urgent need to re-evaluate such an onerous requirement, we are working with the government on this and hope for a favourable resolution."

Each ecommerce major has more than a lakh of merchants on its platform and they are worried that being in charge of tax collection for these increasing number of sellers is going to be time consuming and cost amplifying process for them. However, tax experts are not convinced by the reasoning of these ecommerce companies.

"It is going to be difficult for the government to keep track of all these vendors and on the other hand, these ecommerce companies are strategically placed in the marketplace, so the onus falls on them," says Agarwal Singhania &Co, Partner, Ankur Agarwal.

"While it may increase compliance for these companies, this is a way forward to a transparent economy. These companies are at the forefront of development and it should not be difficult for them to create software for easy compliance."

Courtesy:The Economic Times
10th February, 2017

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4-TIER GST RATE MAY LEAD TO CLASSIFICATION DISPUTES: STUDY

NEW DELHI: The four-tier GST rate structure will open up floodgates of classification disputes with tendency among businesses to demand lower rate for their goods or services, says a research paper.

Four tax rates have been proposed under the Goods and Services Tax regime that is to introduced later this year.

"Present discussion on two standard GST rates (12 per cent and 18 per cent), a lower rate (5 per cent) and a higher rate (28 per cent) in addition to exemptions will make the design of GST complicated and increase the cost of compliance as well as cost of tax administration," said NIPFP associate professor Sacchidananda Mukherjee.

"It is expected that, if accepted, the proposal will open up floodgates of classification disputes and there will be always be a tendency among businesses to demand lower rate for their good or service," he said in the paper posted on NIPFP website.

Voices are being raised already to put plantation crops, labour intensive manufacturing, infrastructure inputs and air fares under lower tax bracket, he said.

"It is expected that the higher the differences among the tax rates the larger will be the scope for litigation. The benefits of removal of cascading of taxes will be balanced by higher cost of compliance, as a result the expected benefits of introduction of GST may not be achieved," Mukherjee noted.

The National Institute of Public Finance and Policy (NIPFP) economist pointed out there is discussion in the GST Council that there will be a separate cess on demerit goods and environmentally harmful goods.

"The objective behind imposition of cess is to generate revenue to compensate the states on account of any revenue loss due to introduction of GST during first five years of implementation of GST. It is not clear whether the cess will be imposed with a sunset clause or it will continue as an additional source of revenue for the Central Government," Mukherjee said.

The imposition of cess without provision for input tax credit (like Swachh Bharat Cess) will result in cascading of taxes and it will go against the fundamental advantage of introducing GST, he added.

"Earlier, opposition parties in the Parliament opposed imposition of 1 per cent additional CST-type tax on inter-state movement of goods, as it would have resulted in substantial cascading of taxes.

"It is expected that the proposal to levy cess will receive similar opposition in the Parliament when the recommendations of the Council are taken up for approval," Mukherjee said.

Last month, Centre and states had reached consensus on GST rollout from July 1, 2017.

Courtesy:The Economic Times
13th February, 2017

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SELLER ASSOCIATIONS DO NOT CONCUR WITH ECOMMERCE GIANTS' RESERVATIONS ON GST PROVISION

BENGALURU: The top bosses of rival ecommerce platforms Flipkart, Amazon India and Snapdeal found themselves on the same page last week -more specifically on the page in the draft GST law that relates to collection of tax at source (TCS) - but even while they cited the negative impact on sellers, many online merchants are making another argument.

The TCS clause mandates online marketplaces to deduct 2% per transaction and hand it over as collection towards GST to the government under the Act. This does not apply to retail sellers offline.

Seller associations such as the All India Online Vendors Association (AIOVA), which represents 1,800 sellers, say that TCS will only hit sellers evading taxes, and said that the issue of capital blocking on online platforms is already a problem for them.

"The TCS clause will remove the problem of tax evasion among many sellers and the 'unnatural' competition emerging from it. Secondly, since the ecommerce companies are already holding seller money, TCS will not affect our liquidity," said a spokesperson of AIOVA. The e-Commerce Sellers Association of India, which was earlier known as eSellerSuraksha, says the clause will create a level-playing field among sellers. "Merchants without proper registration will be forced to move out.This makes a lev ..

However, sellers do have some concerns over TCS. "Product returns in apparel ecommerce range between 15-20%. We will be requi red to claim the TCS from the department directly which is a cumbersome process," said Dhiraj Agarwal, cofounder Campus Sutra, an online-first apparel brand.

Associations such as AIOVA have also made certain recommendations to the GST Council on keeping a threshold limit for TCS based on the business of the online seller, especially if the current VAT liability for the merchant is less than the TCS amount.

Ecommerce companies have said that TCS will deter merchants from selling online and will badly hit the digital ecommerce industry holding up working capital. "Working capital will be hit. Also compliance is an added burden for ecommerce companies. Majority of the products carry a return date of 30 days and given 15-20 million transactions per month and the returns, refunds to sellers have to be done with utmost care," said a spokesperson for public policy at Amazon India.

"With TCS, capital will be locked away for periods between 20-50 days depending on the transaction date. The significant impact on the cash flow will force smaller firms to seek additional working capital or ignore the ecommerce marketplace altogether, as it may not offer envisaged convenience and benefits," said a spokeswoman for Snapdeal.

Courtesy: The Economic Times
14th February, 2017