SGA
LAW OFFICES

Issue 5

1st March 2017

"Taxes, after all, are the dues that we pay for the privileges of membership in an organized society.."

— Franklin D. Roosevelt

NOMINAL INDEX

NOTIFICATION

HARYANA

NEWS OF YOUR INTEREST

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News From Court Rooms

CESTAT, CHENNAI: CENVAT credit: Although there is no direct nexus between medical insurance provided to employees and output, but such incentive is provided to carry on business keeping employees of software sector fit to render output. Accordingly, CENVAT credit in relation to medical insurance services is permissible. (***Laserwords P Ltd. – October 10, 2016***).

BOMBAY HC : CST: Assessee a joint venture between Russia and India that provided Brahmos cruise missiles to Indian Armed Forces would not be liable to pay sales tax to Maharashtra government as missile was manufactured bv assessee at its Hyderabad unit and there was merely branch transfer of missiles between Nagpur and Hyderabad for their warhead integration. (***Brahmos Aerospace P Ltd. – January 10, 2017***).

CESTAT, ALLAHABAD : CENVAT credit : Appellant engaged in manufacture of sugar and molasses. Cenvat Credit availed by the appellant on items was disallowed as it appeared to Revenue that these items do not appear eligible for Cenvat Credit as capital goods. Rule 2(k)(i) of CENVAT Credit Rules, 2004 provides input' means all goods used in or in relation to manufacture of final products which directly or indirectly and whether contained in final product or not and includes items like lubricating oils, grease and cutting oils in relation to manufacture of final product or for any other purpose within factory of production. Since most of the items in question have been indisputably utilized in factory of production of excisable goods and without the use of which the appellant could not have manufactured excisable goods, appeal allowed. (***Bajaj Hindustan Ltd. – August 11, 2016)***.

CESTAT, NEW DELHI: Service Tax : Exemption denied to the construction service in respect of dam only on the ground that the dam is part of the Hydroelectric Power Project. There is no justification to give a restrictive meaning to the term 'dam' stating that the exemption will not be available when it is part of Hydroelectric Power Project. Exemption allowed. (***MCM Services P Ltd. – January 9, 2017***).

GUJARAT HC : Central Excise : Where assessee had destroyed finished goods without prior permission of appropriate authority and without following procedure as required under Chapter 18 of CBEC's Central Excise Manual, not eligible for remission of duty on such goods. (***Sun Pharmaceuticals Industries Ltd. – December 7, 2016***).

CESTAT, MUMBAI: Service Tax : Where assessee, a manufacturer of computers, used products of 'I' and 'M' for such manufacture and it was entitled to some reimbursement of costs of publicity and advertisement from 'I' and 'M' subject to inclusion of their logos in his publicity copy or material, assessee was not covered under category of 'business auxiliary service'. (***Datamini Technologies India Ltd. – December 9, 2016***).

CESTAT, NEW DELHI: Central Excise - Assessee engaged in manufacture of TMT bars. Assessee took Cenvat credit in respect of certain steel items, viz,. MS plates, coils and channels, treating the same as inputs, for manufacture / fabrication/installation of supporting structure for capital goods Department views that the steel items in question have been used for fabrication / manufacture and erection of supporting structure for capital goods, which are ultimately fixed / embedded to the earth, and hence are not goods, as it becomes an immovable property. Majority of High Courts and Supreme Court in case of Jawahar Mills has already settled the issue in favour of the assessee. Impugned order is set aside and appeal allowed. (***Premier Bars P Ltd. – December 22, 2016***).

CESTAT, BANGALORE: CENVAT Credit : The ground on which CENVAT credit was denied is totally wrong because the change of name does not make the appellant ineligible to claim CENVAT credit and more so it has been informed to the Department well in time. (***RR Donnelley India Outsource P Ltd. – November 28, 2016***).

MADRAS HC : TN VAT : whatever be the effect of retrospective cancellation upon the selling dealer it can have no effect upon any person who has acted upon the strength of a registration certificate when such certificate was alive. ITC need not be reversed on purchases made during the period when RC was alive. (***Sakthi Steel Corporation – January 31, 2017***).

CESTAT, NEW DELHI: Service Tax - Appellants are engaged in providing cold storage services for milk chilling plants. Lower authorities demanded the service tax under the heading "Business Support Services". Milk comes under category of "agricultural produce" and storage of agricultural produce is exempted from service tax. Appellant is not processing/treating/ trading milk. It is just chilling the milk which was later supplied to consumer. Appeal allowed. (***Shriji Ice Factory – February 7, 2017***).

DELHI HC: DELHI VAT : Denial of Input Tax credit on the ground that the transactions were reflected in retail invoices and not tax invoices and therefore did not qualify for credit is not valid as the strict interpretation of Section 50(2) was unwarranted. Credit allowed. Revenue's appeal dismissed. (***J C Decaux Advertising I P Ltd. – January 9, 2017***).

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Issue 5
1st March 2017

SUBJECT INDEX

Issue 5
1st March 2017

SUPREME COURT OF INDIA

CIVIL APPEAL NO. 4507 OF 2004

Go to Index Page

THE COMMISSIONER OF CENTRAL EXCISE
Vs
STESALIT LIMITED

J. CHELAMESWAR AND ABHAY MANOHAR SAPRE, JJ.

15th February, 2017

HF ▶ Revenue

Reduction of Penalty by Tribunal ignoring Supreme Court judgment is not justified.

PENALTY TRIBUNAL – QUANTUM OF PENALTY – REDUCTION THEREOF – DUTY AND INTEREST LEVIED ALONG WITH IMPOSITION OF PENALTY FOR NON PAYMENT OF DUTY – CHALLENGE ONLY TO QUANTUM OF PENALTY WITHOUT CONTESTING LEVY OF DEMAND – APPEAL ACCEPTED BY TRIBUNAL THEREBY REDUCING QUANTUM OF PENALTY – ORDER CHALLENGED BY REVENUE – APPEAL ACCEPTED HOLDING NO JUSTIFIABLE REASON GIVEN FOR REDUCTION OF PENALTY – JUDGMENT PASSED BY SUPREME COURT ON SIMILAR MATTER NOT CONSIDERED BY TRIBUNAL – RELIANCE PLACED BY TRIBUNAL ON AN EARLIER ORDER PASSED BY ITSELF – IMPUGNED ORDER SET ASIDE – APPEAL ACCEPTED RESTORING THE ORDER OF ADJUDICATING AUTHORITY – *SECTION 11-AC OF CENTRAL EXCISE ACT, 1944, RULE 173Q CENTRAL EXCISE RULES, 1944.*

The respondent company is engaged in manufacturing of parts of railways and tramways as well as modification of old smoothing reactors received from railways. As the respondent had not paid duty on cooper coil used by them, a demand was raised alongwith interest and penalty.

Aggrieved by the order, an appeal was filed before Tribunal only challenging quantum of penalty and consequently the quantum was reduced from 2,06,000/- to Rs 50,000/- Thus revenue has challenged this order of Tribunal on grounds of jurisdiction of tribunal to reduce the amount of penalty.

Held:

The tribunal failed to take into consideration the law laid down in the case of Dharmendra Textile Processors and erred by relying on its own decision in an earlier case. No justifiable reasons were given by Tribunal to reduce penalty. Therefore, the order passed by Tribunal is set aside and order of the adjudicating authority is restored.

Cases referred:

- *Union of India & Ors. Vs. Dharamendra Textile Processors & Ors., (2008) 13 SCC 369*

- *Dilip N. Shroff vs. Joint Commissioner of Income Tax, Mumbai & Anr., (2007) 6 SCC 329*
- *Chairman, SEBI vs. Shriram Mutual Fund & Anr., (2006) 5 SCC 361*
- *Escorts JCB Ltd. vs CCE 2000 (118) ELT 650 (Tribunal)*

Present: **For Appellant(s):** Mr. K. Radhakrishnan, Sr. Advocate
Ms. Binu Tamta, Advocate
Mr. H.R. Rao, Advocate
Mr. B.K Prasad, Advocate
Mr. Shreekant N. Terdal, Advocate

For Respondent(s)

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ABHAY MANOHAR SAPRE, J.

1. This appeal is filed against the judgment and final order No. 123/2004-B dated 05.11.2003 passed in Appeal No. E/1122 of 2003-B by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi whereby the Tribunal partly allowed the appeal and reduced the amount of penalty from Rs.2,06,000/- to Rs.50,000/-.

2. We herein set out the facts, in brief, to appreciate the issue involved in this appeal.

3. The respondent-a Limited Company is engaged in the manufacture of parts of Railways and Tramways stock classifiable under Chapter 86 including smoothing Reactors falling under Chapter 85.04 of the Schedule to the Central Excise Tariff Act, 1985. The respondent also undertakes the activity of modification/up-gradation of old Smoothing Reactors received from the Railways.

4. During the course of modification, the weight of copper coil in the old smoothing reactors is increased by adding new copper coil to the existing old copper coil.

5. It was, however, observed by the authority concerned that the respondent manufactured copper coils from the copper strips and used them capatively in the up-gradation of smoothing reactors. The respondent, however, neither paid any duty on the copper coil used by them capatively in their modification activity undertaken at the relevant period nor did they submit the requisite declaration under Rule 173-C of the Central Excise Rules, 1944(hereinafter referred to as "the Rules").

6. Since no duty was paid by the respondent on upgraded reactors, they were not eligible for the benefit of exemption provided vide Notification No. 67/95-CE dated 16.03.1995. They were, therefore, required to pay duty on copper coils as an intermediate product which was meant for captive consumption.

7. This led to issuance of show cause notice dated 17.04.2001 to the respondent by the adjudicating authority proposing therein the demand of unpaid duty payable by the respondent on the aforementioned goods and also penalty. By order dated 25.02.2003, the adjudicating authority confirmed the demand of duty for Rs.2,05,291/- along with interest under Section 11-AB of the Central Excise Act, 1944 (hereinafter referred to as "the Act"). The authority also imposed a penalty of Rs.2,06,000/- under Section 11-AC of the Act read with Rule 173-Q of the Rules.

8. Felt aggrieved by the aforesaid order, the respondent(assessee) filed appeal before the Tribunal. The respondent, however, did not challenge the demand of duty but confined their challenge only to imposition of penalty and, in particular, its quantum. According to the respondent, having regard to the totality of the facts and circumstances of the case, at best, nominal amount of penalty could be levied on the respondent but not the one imposed.

9. By impugned order dated 05.11.2003, the Tribunal partly allowed the respondent's appeal and reduced the amount of penalty from Rs.2,06,000/- to Rs.50,000/-. It is against this order, the Revenue has filed this appeal by way of special leave before this Court.

10. Heard Mr. K. Radhakrishnan, learned senior counsel for the appellant. None appeared for the respondent.

11. Mr. Radhakrishnan, learned senior counsel appearing for the appellant(Revenue) while assailing the legality and correctness of the impugned order contended that keeping in view the law laid down by this Court in ***Union of India & Ors. Vs. Dharamendra Textile Processors & Ors., (2008) 13 SCC 369***, which unfortunately was not taken note of by the Tribunal though it has direct bearing over the issue in question, the impugned order cannot be said to be legally sustainable and is, therefore, liable to be set aside and that of the adjudicating authority restored.

12. It was his submission that the Tribunal had no jurisdiction to reduce the quantum of amount of the penalty imposed by the adjudicating authority on the respondent under Section 11-AC of the Act read with Rule 173-Q of the Rules in the light of the law laid down in ***Dharamendra Textile Processors's*** case (supra) and, more so, when in principle, neither the respondent questioned the grounds for its imposition and nor the Tribunal found any fault in the imposition. In other words, the submission was that in the light of the law laid down in the case of ***Dharamendra Textile Processors*** (supra), there was no discretion left with the Tribunal to reduce the quantum of penalty amount once it held that a case for penalty is made out.

13. Having heard the learned counsel for the appellant and on perusal of the record of the case, we are inclined to accept the submission of the learned counsel for the appellant.

14. As rightly argued by the learned counsel for the appellant, the issue urged herein was examined by three judge Bench of this Court in ***Union of India & Ors. Vs. Dharamendra Textile Processors & Ors***.(supra). It was a reference made to examine the correctness of the two earlier decisions of this Court rendered in ***Dilip N. Shroff vs. Joint Commissioner of Income Tax, Mumbai & Anr., (2007) 6 SCC 329*** and ***Chairman, SEBI vs. Shriram Mutual Fund & Anr., (2006) 5 SCC 361***. Their Lordships examined the issue in detail and held that the law laid down in the case of ***Dilip N. Shroff*** (supra) is not correct whereas the law laid down in the case of ***SEBI*** (supra) is correct. The following observations of Their Lordships are apposite which reads as under:

> *"15. The stand of learned counsel for the assessee is that the absence of specific reference to mens rea is a case of casus omissus. If the contention of learned counsel for the assessee is accepted that the use of the expression "assessee shall be liable" proves the existence of discretion, it would lead to a very absurd result. In fact in the same provision there is an expression used i.e. "liability to pay duty". It can by no stretch of imagination be said that the adjudicating authority has even a discretion to levy duty less than what is legally and statutorily leviable……."*
>
> *"19. In Union Budget of 1996-1997, Section 11-AC of the Act was introduced. It has made the position clear that there is no scope for any discretion. In Para 136 of the Union Budget reference has been made to the provision stating that the levy of penalty is a mandatory penalty. In the Notes on Clauses also the similar indication has been given. 20. Above being the position, the plea that Rules 96-ZQ and 96-ZO have a concept of discretion inbuilt cannot be sustained. Dilip Shroff case was not correctly decided but SEBI case has analysed the legal position in the correct perspectives. The reference is answered……."*

(emphasis supplied)

15. Applying the aforementioned law to the facts of this case, we are of the considered opinion that the Tribunal erred in reducing the amount of penalty from Rs.2,06,000/- to Rs.50,000/-. Indeed, the Tribunal, in our opinion, failed to take into consideration the law laid down in the case of ***Dharamendra Textile Processors*** (supra) which the Tribunal was bound to take while deciding the appeal and instead the Tribunal wrongly placed reliance on its own decision in the case of ***Escorts JCB Ltd. vs CCE 2000 (118) ELT 650 (Tribunal)***. We also find that the Tribunal gave no justifiable legal reasons for reducing the penalty amount.

16. In the light of foregoing discussion, we are unable to concur with the reasoning and the conclusion arrived at by the Tribunal. They are not legally sustainable and, therefore, deserve to be set aside. 17) The appeal thus succeeds and is accordingly allowed. Impugned order is set aside and that of the order passed by the adjudicating authority is restored. No costs.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 11769 OF 2015

Go to Index Page

RICELA HEALTH FOODS LIMITED
Vs
STATE OF PUNJAB AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SINDHU, JJ.

15th February, 2017

HF ▶ Assessee

Assessment Order passed in haste without observing principles of natural justice deserves to be set aside.

ASSESSMENT – NATURAL JUSTICE – REASONABLE OPPORTUNITY – ORDER PASSED IN HASTE – CROSS-EXAMINATION – ASSESSMENT PROCEEDINGS UNDERTAKEN – REQUEST FOR CROSS-EXAMINATION OF THIRD PARTIES – NOT DEALT WITH – UNSIGNED ORDER SERVED THROUGH E-MAIL – CERTIFIED COPY NOT SIGNED FOR OVER A MONTH – COPY SENT WHEN OFFICER NOT IN OFFICE –NO PROPER SERVICE OF ORDER AS RULE 86 PROVIDES FOR SERVICE THROUGH EMAIL ONLY OF NOTICE AND NOT ASSESSMENT ORDER – DESIGNATED OFFICER CONCLUDED THE ASSESSMENT PROCEEDINGS LOSING SIGHT OF THE PRINCIPLES OF NATURAL JUSTICE – STATUTORY AUTHORITY MUST ACT FAIRLY WITH AN OPEN MIND – FUNCTIONING OF QUASI JUDICIAL AUTHORITY HAS TO INSPIRE CONFIDENCE IN THE MINDS OF THOSE SUBJECTED TO ITS JURISDICTION – ORDER OF ASSESSMENT PASSED WITHOUT OBSERVING PRINCIPLES OF NATURAL JUSTICE – DESERVE TO BE SET ASIDE- OBSERVATION REGARDING IMPROPER MAINTENANCE OF RECORDS ESPECIALLY ORDER SHEETS MADE. *SECTION 29 PUNJAB VAT ACT, 2005. RULES 48 AND RULE 86 OF PUNJAB VAT RULES*

The case made out by the petitioner for the year 2009-10 is that the Assessment Order has been passed in haste by the Assessing Authority and while doing so, he has lost sight of principles of natural justice. No notice for imposition of penalty under the CST Act has been issued whereas in the final proceedings, penalty has been imposed. Similarly, the notice for penalty under Punjab VAT Act 2005 has been issued but those proceedings had never concluded. The copy of order has been sent by the officer through email which is not the recognised mode of service on 6.5.2015, when the case of assessee before the High Court was fixed for another year in which stay had been granted. The officer was not even in his office when he had purportedly sent the email as he had admitted that he was in Patiala alongwith official file. There was no urgency to pass the order especially when it was brought to the notice of officer that writ petition has been filed before the High Court. The assessee had been asking for supply of the material in possession of Designated Officer but neither that was supplied nor that issue has been dealt with. The signed copy of assessment order was not on file for over a month which shows that the sending of order by email was only an exercise in futile.

2010-11

For the year 2010-11, it was additionally submitted that the assessee had raised the Preliminary Objection regarding jurisdiction of State that case has not been transferred to Designated Officer but no decision had been taken on the said objection and the order has been passed. A request was also made to summon the parties regarding whom the verification of C-forms had been made. The assessee also claimed that the haste in which the order has been passed is apparent from the fact that the petitioner had made a claim of consignment sales only to the extent of Rs. 11.68 crores but the Assessing Officer rejected the consignment to the tune of Rs. 35 crores merely with a purpose of blocking the refund due to the petitioner.

The State, in response, has stated that the Notices had been issued to the assessee highlighting all the relevant issues on which the demand had been raised including penalty proceedings. The assessee was confronted with entire evidence and the matter has not been decided in haste as the proceedings are being conducted since the year 2013. Even the assessee had filed number of replies which show that enough opportunities were afforded to the petitioner.

After considering the submissions, the High Court,

HELD:

The assessment orders deserve to be set aside merely on the ground of violation of principles of natural justice. The matter was not dealt with properly. It was quite in haste towards the end. The officer communicated the order through email when the order on file was not signed by him whereas Rule 48 requires him to serve a certified copy of order and Demand Notice. He was not in the office on the day on which copy of order was served. Even the prayer of the petitioner for summoning the parties was not dealt with.

Admittedly, the officer was not in his office and is now trying to suggest that he was carrying official files with him while he was away to Patiala. The signed copy of assessment order was not even on the assessment file when the counsel for the petitioner had inspected the file on 25.05.2015 and 01.07.2015. All that is established is that there was in undue haste by Designated Officer in concluding the assessment proceedings and in that process, he lost sight of the fact that principles of natural justice are also to be observed.

Similarly, for the Assessment Year 2010-11, the request for summoning the witnesses was not considered even though petitioner had deposited the Diet Money. The order of jurisdiction is also not free from doubt as it does not contain any Despatch Number. A perusal of Order Sheet shows that though the order is dated 05.05.2015, but the same has been signed by the officer on 15.05.2015. The consignment sales have been rejected to the tune of Rs. 35 crores against a total claim of Rs. 11.68 crores.

It is well-settled that a quasi judicial authority while acting in exercise of statutory power must act fairly with an open mind. Justice is routed in confidence and justice is goal of a quasi judicial proceeding also. The authority must act with utmost fairness. In view of aforesaid discussion, the orders of assessment having been passed in haste without observing the principles of natural justice deserve to be set aside.

Before parting with the order, the Court is constrained to observe that maintenance of records, especially the Order Sheet showing the conduct of assessment proceedings is not proper. The quasi judicial authorities are required to follow a system while conducting the proceedings which inspire confidence.

Cases referred:

- *Kalra Glue Factory v. Sales Tax Tribunal and others, 66 STC 292 (SC)*
- *Mukand Singh and Sons v. Presiding Officer, Sales Tax Tribunal Haryana and others, 107 STC 300 (P&H)*

- *Anupam Agencies v. State of Punjab and others, 95 STC 338 (P&H)*
- *Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II Civil Appeal No. 4228 of 2006 order dated 2.9.2015 passed by Hon'ble the Supreme Court*
- *Commissioner of Income-Tax and others v. Chhabil Pass Agarwal, (2013) 357 ITR 357 (SC);*
- *Sumit Passi v. Assistant Commissioner of Income-Tax, (2016) 386 ITR 46 (P&H)*
- *Commissioner of Income-Tax v, T, O, Abraham and Co., (2011) 333 ITR 182 (Ker.)*
- *Oryx Fisheries Private Limited vs Union of India and others 2010 (13) SCC 427*

Present: Mr. Sandeep Goyal and Mr. Varun Chadha, Advocates for the petitioner(s).

Ms. Radhika Suri, Additional Advocate General, Punjab with
Mr. Dilsher Singh Mann, Assistant Advocate General, Punjab.

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RAJESH BINDAL, J.

1. This order will dispose of two petitions bearing CWP Nos. 11769 and 12029 of 2015, as common questions of law and facts are involved.

2. In CWP No. 11769 of 2015, challenge has been made to the order of assessment dated 6.5.2015 (Annexure P-17) for the assessment year 2009-10. In CWP No. 12029 of 2015, challenge has been made to the order of assessment dated 6.5.2015 (Annexure P-10) for the assessment year 2010-11.

Arguments in CWP No. 11769 of 2015

3. Learned counsel for the petitioner submitted that notice for the assessment year 2009-10 was issued by the Excise and Taxation Officer, Sangrur to the petitioner under Section 29(2) of the Punjab Value Added Tax Act, 2005 (for short, 'the VAT Act') for 9.3.2015. On 10.3.2015, the order was reserved, however, the petitioner was granted opportunity to give written submissions till 16.3.2015. The petitioner submitted written reply on 16.3.2015. On 20.3.2015, notice was issued to show cause as to why penal action be not taken under Section 56 of the VAT Act, which was issued for 26.3.2015.The notice was issued only under the VAT Act. No proceedings had taken place on 26.3.2015. As the assessment order had not been passed, the petitioner submitted his objections on 1.4.2015 and on the same day, vide separate letter filed reply to the penalty notice as well. There is no order sheet prepared for penalty proceedings. The petitioner had earlier filed CWP No. 9038 of 2015 on 5.5.2015 challenging the show cause notice. The petitioner was served with copy of the assessment order dated 5.5.2015 through e-mail on 6.5.2015. The order was not signed. Along with the assessment order, demand notice dated 6.5.2015 was received, which was also unsigned. He referred to the information (Annexure P-18) given regarding attendance of the Designated Officer in office, who framed the assessment. He was on leave from 11.00 AM to 5.00 PM on 6.5.2015. The order sheet prepared by him on that day states that the order is released today. The same be sent to the petitioner through e-mail along with demand notice. He further submitted that in any case, the transactions, on which the tax has been sought to be levied, were reported at the Information Collection Centres and the payments against these were received through banking channel.

4. Challenge to the order of assessment has been made by the petitioner on the ground of violation of the principles of natural justice, no penalty proceedings having been initiated under the Central Sales Tax Act, 1956 (for short, 'the Central Act'), despatch of order by e-mail without there being any enabling provision and allegation of mala fide has also been levelled against the officer concerned.

5. Referring to the discrepancies in the stand taken by the State in the official reply and

the officer concerned, learned counsel for the petitioner referred to para No. 18 of the official reply, wherein it was stated that the order of assessment was sent to the petitioner via mail at 10.25 AM on 6.5.2015, whereas in para No. 5 of the reply filed by the officer concerned, as he has been impleaded as respondent in person, it is stated that the order was dictated on 5.5.2015 and it was sent through e-mail to the petitioner from Patiala, where he was on official duty on that day. He further submitted that no penalty could be levied for the reason that order was reserved on 10.3.2015 only with reference to the assessment and not for levy of penalty, for which separate proceedings were initiated, which were not concluded. If order had been dictated on 5.5.2015, why it was not despatched by him on the same day when he was present in office, but sent on 6.5.2015 when admittedly he was not in office. In fact, the Designated Officer went to Sangrur on 6.5.2015. As claimed by him, he attended office till 11.00 AM. On that day, at 10.25 AM, he merely sent a word format copy to the petitioner through e-mail and not PDF file signed by him or digitally signed copy. While referring to the order dated 6.5.2015 passed by the Designated Officer, learned counsel for the petitioner submitted that though the officer claimed that he passed order at Sangrur, however, he was not present at Sangrur on that day. Order notices that copy of assessment order has been sent to the petitioner on his registered e-mail ID and proof of e¬mail sent is appended on the file, however, from the print out available on the file of the proof of e-mail sent to the petitioner, it is evident that the same was taken on 12.5.2015. Hence, wrong facts have been mentioned.

6. The conduct of the Designated Officer is in question. There was no urgency to pass order and send copy thereof to the petitioner on 6.5.2015 when he was not even in office, especially when there was stay in other case. No proceedings were pending for 6.5.2015. In fact, the whole object was to frustrate the writ petition already filed by the petitioner, which was scheduled for hearing on 7.5.2015. The intention was to raise demand so that the refund already due to the petitioner could be adjusted. There was an earlier order (Annexure P-10) passed by this court in CWP No. 2992 of 2015 directing the department to consider claim of the petitioner for refund within a period of two months.

7. During the course of assessment proceedings, the petitioner had been regularly raising the issue regarding supply of the material in possession of the Designated Officer so as to enable the petitioner to respond to the same, but till the assessment was framed, copies thereof were not supplied. The order has been passed in violation of the principles of natural justice. He further referred to Rule 86(l)(c) of the Punjab Value Added Tax Rules, 2005 (for short, 'the Rules'), which enables the authorities under the VAT Act to serve summons through e-mail. There is no enabling provision for service of order of assessment and the demand notice by e¬mail. Under Section 29 of the VAT Act, notice for assessment was issued and it was finally framed. Rule 48 of the Rules provides that the Designated Officer, after considering objections and documentary evidence, if any filed by the person, shall pass order of assessment in writing, which shall clearly state reasons for assessment. Certified copy of the assessment order along with demand notice is to be supplied free of cost to the party. Certified copy cannot possibly be sent through e-mail. That is the reason, there is no enabling provision in the Rules in this regard. The order takes its shape only after it is written/typed and is duly signed by the officer concerned, however, in the case in hand, on inspection by the counsel for the petitioner, of the assessment file, on 25.5.2015 and 1.7.2015, signed copy of the assessment order was not on file. Meaning thereby what was served upon the petitioner through e-mail was nothing more than a waste paper as on file, even upto 1.7.2015, there was no signed order available. In the absence of a signed order, there was no possibility of preparing a certified copy thereof to be sent to the person concerned in compliance to Rule 48(3) of the Rules. In support of his plea, reliance was placed upon ***Kalra Glue Factory v. Sales Tax Tribunal and others,*** 66 STC 292 (SC); ***Mukand Singh and Sons v. Presiding Officer, Sales Tax Tribunal Haryana and others,*** 107 STC 300 (P&H); ***Anupam Agencies v. State of Punjab and others,*** 95 STC 338 (P&H)

and order dated 2.9.2015 passed by Hon'ble the Supreme Court in Civil Appeal No. 4228 of 2006—***M/s Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II***. The petitioner is not concerned with what the purchasing dealer had shown in his books of account when he had issued 'C' form to the petitioner of the amount of bills raised by it.

Arguments in CWP No. 12029 of 2015

8. For the assessment year 2010-11, notice was issued on 14.5.2013, to which the petitioner filed reply dated 5.6.2013 praying for supply of the documents, on which reliance was sought to be placed. Further notice dated 19.3.2015 was issued by the Designated Officer, to which detailed reply dated 13.4.2015 was filed raising preliminary objection regarding jurisdiction, as the case was not transferred to him. On 20.4.2015, a request was made to decide the preliminary objection first before taking up the assessment proceedings. On 22.4.2015, detailed reply was filed, however, again with a request to summon the parties in case any further verification is required with reference to issuance of 'C' form. The petitioner filed CWP No. 8895 of 2015 on 4.5.2015, which was listed on 6.5.2015 and this Court directed that the Designated Officer shall decide the preliminary objection raised by the petitioner regarding jurisdiction and final decision shall not be taken. The order sheet, as recorded by the Assistant Excise and Taxation Officer on 5.5.2015 while reserving the order, notices that the cheque submitted by the petitioner as diet money to summon the witnesses was being returned. Counsel for the petitioner had put a note before signing the order-sheet, inter-alia, stating that the writ petition has been filed in this court, hence, the case be adjourned.

9. He further submitted that earlier the petitioner had filed CWP No. 2992 of 2015 in this Court, where expeditious issuance of refund was prayed for. This Court, vide order dated 20.2.2015, directed the authority to decide the claim of refund within a period of two months from the date of receipt of certified copy of the order. To avoid issuance of refund order, tax was sought to be levied. The assessment order was passed on 6.5.2015. The objection regarding jurisdiction was rejected and so the prayer for cross¬examination. No penalty was imposed, though notice was issued. All 'C' and 'F' forms were rejected. The petitioner had made a claim of consignment sales only to the extent of Rs. 11,68,22,576/-, but rejection was to the tune of Rs. 35 crores. That shows total non-application of mind, rather, the exercise was to ensure that some how or the other, the petitioner is not issued any refund, which was due to it. Though at that stage, the Excise & Taxation Officer was in a hurry to pass the assessment order without affording fair opportunity of hearing, but on 22.1.2016 suo-motu rectification was made therein. Demand was substantially reduced. As the Excise and Taxation Officer had been apprised about filing and listing of the petition in this court, he ensured that the writ petition becomes infructuous, as copy of the order was sent through e-mail on 6.5.2015 at 10.25 AM. The writ petition bearing CWP No. 8895 of 2015 was dismissed as withdrawn.

10. Regarding transfer of the case, the submission is that the communication dated 11.12.2014 is a created document. It refers to letter No. 2967 of even date, which was pertaining to the year 2009-10, whereas assessment year involved in the present case was 2010-11. Regarding non¬availability of the officer at Sangrur and sending of e-mail or order having not been signed or digitally signed, the contentions raised for the assessment year 2009-10 are reiterated. While referring to the conduct of the officer concerned in forging the record, the submission is that for the assessment year 2011-12, vide letter dated 8.5.2015, rejection of preliminary objection of jurisdiction was conveyed through e-mail with a scanned copy thereof. A fresh e-mail dated 13.5.2015 was received stating that there was typing error in the letter dated 8.5.2015. A fresh scanned copy was sent. In fact, that correction was made subsequently, otherwise there was no question of sending un-corrected scanned copy through e-mail. On 13.5.2015, when corrected copy was sent, that too at 6.33 PM, the concerned officer was on leave, which shows how much undue interest officer was taking in assessment of the petitioner

by giving good-bye to the procedure established by law. In fact, the properties of JPG file sent to the petitioner on 13.5.2015 by Excise & Taxation Officer shows his location at Patiala at the relevant time. The submission is that there being hurry in framing the assessment and the principles of natural justice having been violated, especially by not summoning the dealers, to whom the goods were sold or sent for consignment sales, prejudice has been caused to the petitioner, hence, order of assessment be set aside and the matter be remanded back.

11. On the other hand, with reference to CWP No. 11769 of 2015, learned counsel for the State submitted that in the notice issued to the petitioner for assessment, issues regarding claim of input tax credit, inter-state sales and branch transfers were highlighted. Notice was also issued initiating penalty proceedings. All details were given. Entire evidence was confronted. The process started way back in the year 2013. The petitioner filed number of replies. He even admitted initiation of penalty proceedings. During the course of assessment proceedings, realising that there would be demand raised against the petitioner, he deposited a cheque of Rs. 12 crores on 10.6.2013 to be adjusted against the liability, which may be created. Order-sheet starting from 14.5.2013 clearly shows that enough opportunities were afforded to the petitioner. The request made by him for providing the documents was never pressed later on, hence, abandoned. Regarding jurisdiction, she referred to the letter dated 11.12.2014 from the Assistant Excise and Taxation Officer. In fact, the notice issued on 9.1.2015 mentions about the letter transferring the proceedings to the present Excise and Taxation Officer. The petitioner had appeared on the date fixed when new officer had conducted the proceedings. Even at that stage, no request was made for providing documents. In the writ petition filed by the petitioner seeking decision of its claim for grant of refund, order was passed by this court on 20.2.2015 to decide the same within two months from the date of receipt of certified copy of the order. She further submitted that vide letter dated 27.2.2015, the petitioner was informed that all future notices will be sent through e-mail only. The order was reserved on 10.3.2015. Principles of natural justice were fully complied with and the petitioner had been participating in the assessment proceedings. Separate show cause notice for penalty was issued under the VAT Act mentioning all details. To this notice, the petitioner had filed objections. Assessment order was passed on 5.5.2015. All the contentions raised by the petitioner were considered. Regarding service, it was submitted that the order passed on 5.5.2015 was communicated to the petitioner on 6.5.2015 at 10.25 AM through e-mail. On 8.6.2015, the petitioner had appeared. He was informed that adjustment of the demand will be made against the cheque deposited by him. Summing up the contentions, she submitted that there is no jurisdictional error. If the petitioner is aggrieved, remedy of appeal can be availed of. The writ petition deserves to be dismissed. In support of the plea, reliance was placed upon ***Commissioner of Income-Tax and others v. Chhabil Pass Agarwal,*** (2013) 357 ITR 357 (SC); ***Sumit Passi v. Assistant Commissioner of Income-Tax,*** (2016) 386 ITR 46 (P&H) and ***Commissioner of Income-Tax v, T, O, Abraham and Co.,*** (2011) 333 ITR 182 (Ker.).

12. With reference to assessment year 2010-11, learned State counsel did not dispute the fact that there was no further communication regarding transfer of jurisdiction of the assessment for the year in question after the letter dated 11.12.2014, which pertained to the year 2009-10. She submitted that prior to 5.5.2015, there was no request by the petitioner for summoning of record and it was only after the order was reserved. She accused the petitioner for placing on record forged documents regarding show cause notice for levy of penalty. She further submitted that there was no interim order passed on 5.5.2015, hence, no illegality in passing of assessment order. Any omission or procedural lapse can be condoned by this Court. The assessment order cannot be nullified on this ground.

13. In response, learned counsel for the petitioner submitted that the request for cross-examination was made much prior to the framing of assessment on 21.4.2015. Even cheque for diet money was deposited on 21.4.2015. There is no dispatch number in the order transferring

jurisdiction for the assessment year in question. The letter referred therein pertains to the year 2009-10. If the jurisdiction was being transferred for the year in question, either there could be a common communication or a separate communication with independent dispatch number. In fact, the contents of the letter are also wrong in the sense that the matter was never put up before the Excise and Taxation Officer for dealing with the objections raised by the petitioner. It was overact on the part of the department.

14. He further submitted that assessment order for the year 2011-12 was set aside by the Appellate Authority while finding the same to be without jurisdiction as there was no valid order of transfer of jurisdiction.

15. With reference to the assessment year 2009-10, it was submitted that the notice for penalty was issued only under the VAT Act. While issuing notice under the Central Act, there was no reference for initiation of penalty proceedings. The petitioner filed reply to the issues raised by the department. As there was no notice for penalty under the Central Act, the petitioner had no opportunity to respond to the same. Prayer for supply of documents made by the petitioner in the very beginning and was reiterated thereafter. It is not to be repeated on every date of hearing specially once the officer was apprised of the same and was conscious of the fact.

16. Heard learned counsel for the parties and perused the relevant referred records.

17. In our opinion, the assessment orders deserve to be set aside merely on the ground of violation of principles of natural justice. The matter was not dealt with properly. It was quite in haste towards the end. The assessment proceedings may have started earlier but the assessment was put on fast track after this Court directed the authorities to decide the claim of the petitioner for refund of the tax for the previous years. The officer communicated order through e-mail, when the order on file was not even signed by him. As per Rule 48 of the Rules, certified copy of the order and demand notice is required to be served. When the original order was not signed by the officer, there was no question of preparation of a certified copy thereof. Order communicated was neither scanned copy of a signed order nor digitally signed. Certified copy cannot possibly be sent through e¬mail, especially when the Rules do not permit the same. He was not even in office on the day on which copy of the order was served. The prayer made by the petitioner for summoning of the parties with whom the petitioner transacted and produced 'C' and 'F forms, was not dealt with. The case set up by the petitioner was that all the transactions were duly recorded at the Information Collection Centres and the payments had been received through banking channels.

18. This Court in CWP No. 2992 of 2015, vide order dated 20.2.2015, directed the authorities to consider the claim of the petitioner for grant of refund within a period of two months. Though assessment proceedings for the year 2009-10 started earlier, however, were pending with the authorities. Immediately after order for consideration of refund claim of the petitioner was received, the proceedings were fast tracked. On 10.3.2015, order was reserved. The strange fact is that after order was reserved, the petitioner was granted opportunity to file written submissions till 16.3.2015. If written submissions were still to be considered, the assessment proceedings could be kept pending and prayer of the petitioner for summoning of witnesses could be considered. The written submissions were filed within the time permitted. Thereafter on 20.3.2015 penalty notice was issued for 26.3.2015 under the VAT Act. The petitioner filed objections. In the office file, there is no order-sheet available showing conduct of penalty proceedings. As the intention of the officer was not very fair, the petitioner filed CWP No. 9038 of 2015, which was listed in this Court on 7.5.2015. Having come to know about the filing of Civil Writ Petition No. 8895 of 2015 for the assessment year 2010-11 on 4.5.2015, which was listed in Court on 6.5.2015, orders of assessment were dispatched through e-mail on 6.5.2015 before the case was taken up for hearing. He was not in office at that time.

Though in the leave record of Upinderjit Singh Sodhi, ETO, Sangrur, the Designated Officer produced as Annexure P-18, shows that on 6.5.2015 from 11.00 am to 5.00 pm, he was on casual leave for an urgent work, however, in his affidavit filed, he stated that the order was sent by him through e-mail from Patiala, where he was on official duty. It shows the haste.

19. Admittedly, officer was not in his office and is trying to suggest that he was carrying official files with him, while he was away to Patiala. The Designated Officer passed order of assessment on 5.5.2015 and sent copy thereof through e-mail on 6.5.2016. The assessment order is dated 5.5.2015 and demand notice is dated 6.5.2015. Order-sheet of 6.5.2015 shows that order was released on that day. The haste in which the Designated Officer acted is for the reason that CWP No. 9038 of 2015 filed by the petitioner challenging assessment proceedings, was to be listed on 7.5.2015. The petitioner made a request for summoning the dealers to whom the goods were sold or sent for consignment sales as the transactions were reported at the Information Collection Centres and the payments had been received through banking channels. The request was not considered. The officer very well knew that this Court had entertained earlier CWP No. 8895 of 2015 for the assessment year 2010-11 and stay had been granted. There is no satisfactory answer with reference to Rule 86 of the Rules, which enables authorities to serve summons through e-mails, but not assessment order and demand notice. The definite stand of the petitioner, which was not controverted, was that signed copy of the assessment order was not available even on the assessment file, as the counsel for the petitioner had inspected the file on 25.5.2015 and 1.7.2015. Meaning thereby what was served upon the petitioner through e-mail was a copy of the typed assessment order, which was not signed even for more than a month by the officer. Once order itself was not signed, there was no question of preparation of certified copy to be supplied to the dealer concerned. All what is established is that there was undue haste by the Designated Officer in concluding the assessment proceedings and in that process he lost sight of the fact that principles of natural justice are also to be observed. No notice for levy of penalty was issued under the Central Act, still the penalty was levied for the assessment year 2009-10.

20. Additional facts which are relevant for the assessment year 2010-11 are that the petitioner had even deposited the diet money for summoning the witnesses, still the prayer was not considered. The manner in which the order of transfer of jurisdiction was passed and conveyed also raises doubt as the letter does not contain any dispatch number, rather it refers to letter no. 2967 dated 11.12.2014, which was pertaining to transfer of jurisdiction for the assessment year 2009-10. Further in CWP No. 8895 of 2015 filed by the petitioner on 4.5.2015, which was listed on 6.5.2015, this Court directed that the Designated Officer shall decide the preliminary objection regarding jurisdiction and not take a final decision. However, that writ petition was frustrated as having come to know about the listing of the writ petition, the Assessing Authority precipitated his action and served the copy of the order by e-mail to the petitioner before the case was taken up for hearing. A perusal of copy of the order-sheet at Annexure P-11, shows that though the order is dated 5.5.2015, but it was signed by the officer on 15.5.2015. Haste in passing the order is evident from the fact that though the claim for consignment sales was only to the extent of Rs. 11,68,22,576/-, however, the rejection was for Rs. 35 crores. That shows that the officer was quite in a hurry to somehow pass order without even examining the records. Having noticed the blunder committed by him, he suo-moto passed rectification order on 22.1.2016.

21. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly with an open mind. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Reference can be made to ***Oryx Fisheries Private Limited vs Union of India and others*** 2010 (13) SCC 427.

22. In view of our aforesaid discussions, we are of the view that the orders of assessments having been passed in haste without observing the principles of natural justice, deserve to be set aside. Ordered accordingly. The petitioner though its counsel is directed to appear before the Designated Officer on March 3, 2017, for framing of assessments for the years in question afresh.

23. Before parting with the order, this Court is constrained to observe that the maintenance of records, especially the order-sheets showing conduct of assessment proceedings is not proper. The quasi judicial authorities are required to follow a system while conducting the proceedings, which inspires confidence. They are exercising vast powers and dealing with rights of the parties viz-a-viz State.

24. The writ petitions stand disposed of.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 207 OF 2016

Go to Index Page

SHREE HANUMAN SALES
Vs
STATE OF PUNJAB

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

22nd December, 2016

HF ▶ Assessee

Predeposit is waived off as the assessee has serious medical reason and poor financial condition.

PREDEPOSIT – WAIVER OF – DISMISSAL OF APPEAL BEFORE DETC DUE TO NON COMPLIANCE OF SECTION 62(5) – APPEAL FILED BEFORE TRIBUNAL PRAYING FOR ITS WAIVER ON MEDICAL GROUNDS AND POOR FINANCIAL CONDITION- MEDICAL REPORT PROVING SERIOUS DISEASE AND AFFIDAVIT REGARDING HIS FINANCIAL POSITION PRODUCED – APPEAL ACCEPTED AND REQUIREMENT OF PREDEPOSIT WAIVED OFF – DETC DIRECTED TO HEAR APPEAL ON MERITS- *S. 62(5) OF PVAT ACT, 2005*

Facts

Assessment for the year 2012-13 was framed against which an appeal was filed before DETC. The appeal was dismissed for non compliance of S 62(5) of the Act. Aggrieved by the order, an appeal is filed before Tribunal.

Held:

On examination of the medical report of the appellant – assessee it is clear that he is an old man of 74 years of age and suffering from cancer and is incapable of doing work. An affidavit of his poor financial position has been submitted. Considering it to be a case of exceptional hardship , protection u/s 62(5) of the Act is granted. The impugned order is set aside and the DETC is directed to hear the matter on merits without pressing for compliance of Section 62(5) of the Act.

Present: Mr. Deepak Bajaj, 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 appeal is directed against the order dated 23.8.2016 passed by the Deputy Excise and Taxation Commissioner, Jalandhar Division, Jalandhar, whereby the appeal against the order dated 7.4.2014 passed by the Excise and Taxation Officer-cum-Assessing authority,

Jalandhar-2 for the assessment year 2012-13 was dismissed on the ground of non-compliance of section 62(5) of the Act.

2. The facts in the background are the appellant has been running trading business in the year 2012-13. The assessment for the said year was framed to the tune of Rs. 69,74,049/-. The appeal filed by him was rejected for non-compliance of section 62(5) of the Act, 2005.

3. It has been contended by the counsel for the appellant that financial position of the appellant has been deteriorated, therefore, he has been unable to comply with the provisions of section 62(5) of the Act, therefore, he has sought protection under section 62(5) of the Act and seek relief on the basis of the judgment delivered in case of PSPCL Vs. The State of Punjab decided on 23.12.2015.

4. Heard, the report of the Excise and Taxation Officer was called for regarding the financial position of the appellant. The said report is reproduced as under:

> *"The premises of Mr. Som Parkash Jain, prop. M/s Hanuman Sales, TIN No. 03162091285 address N.S.195-A Lawan Street, Jalandhar, were visited on 20.12.2016. He is suffering from cancer and he is bed ridden, but he did not cooperate on facts about his financial condition. Hence, his financial condition cannot be ascertained."*

5. On examination of the report, it transpires that the appellant is an old man of 74 years has been suffering from prostrate malignancy, and is now rendered Incapable of doing any work. The appellant Mr. Som Parkash, who is proprietor of the firm has submitted his affidavit in support of his financial position, which is reproduced as under:

> *"I Som Parkash, son of Late Sh. Lakshman Dass, Proprietor of the firm M/s Shree Hanuman Sales situated at N-M95-A Lawan Street, Jalandhar do hereby solemnly affirm and state on oath as under:*
>
> 1. *That I am the proprietor of the above said firm and running the said firm for the last so many years and filing my sales tax returns regularly alongwith tax due if any, in the normal course of business.*
> 2. *That I am 74 years old man and also suffering from serious disease of cancer from the last four years and I have already dosed down my business from the last two years because of my ill health.*
> 3. *That my financial position is also very weak and I am getting my treatment of cancer after taking help from my relatives and friends.*
> 4. *That as regards the banking account, I was running one current account in my firm name Shree Hanuman Sates with the HDFC Bank Limited. Industrial Area, Branch, sodal chowk, Jalandhar also there is `nil' balance for the last two years copy of the bank statement is also enclosed herewith for your record and ready reference.*
> 5. *That except this one current account, I have no other saving or current amount in my name or in the name of my firm. So I request your goodself to kindly give a sympathetic consideration to my case in the interest of justice as I am not in a position to deposit any amount out of such a huge demand which had been created in arbitrary and hasteful manner.*
>
> *Deponent*
>
> *Verification: It is verified that the above statement of mine is true and correct to the best of my knowledge and belief.*

Deponent

6. Thus, on examination of the affidavit as well as the report submitted by the ETO, Jalandhar-2, it transpires that the financial position of the appellant is too poor to make compliance of section 62(5) of the Act could be granted to the appellant.

7. Resultantly, this appeal is accepted impugned order is set aside and the 1st Appellate Authority is directed to hear and decide the appeal on merits without pressing for compliance of Section 62(5) of the Act, 2005.

8. Pronounced in this open court.

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PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 21 OF 2014

GOURAV IMPERIAL CORPORATION
Vs
STATE OF PUNJAB

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

6th December, 2016

HF ▶ Revenue

Penalty u/s 51 is upheld on account of escape route taken and non payment of entry tax indicating clear evasion.

PENALTY – CHECKING POST/ ROAD SIDE CHECKING- ATTEMPT TO EVADE TAX – GOODS IN TRANSIT NOT REPORTED AT ICC – ADMISSION BY DRIVER REGARDING ESCAPE ROUTE TAKEN – PENALTY IMPOSED U/S 51 AS WELL AS FOR NON PAYMENT OF ENTRY TAX – NO APPEAL FILED AGAINST IMPOSITION OF ENTRY TAX THUS PROVING THE CASE TO CERTAIN EXTENT– APPEAL FILED BEFORE TRIBUNAL AGAINST PENALTY IMPOSED U/S 51 DISMISSED ON GROUNDS OF CLEAR INTENTION TO EVADE TAX AND FINDINGS REGARDING NON PAYMENT OF ENTRY TAX STANDING AS FINALIZED BEFORE FIRST APPELLATE AUTHORITY – APPEAL DISMISSED- *S 51 OF PVAT ACT, 2005*

Facts

The vehicle loaded with goods was intercepted. It was suspected that the driver had not generated form XXXVI while entering into Punjab. Admission by driver that he had adopted an escape route was considered. Penalty u/s 51 and under Punjab Tax on entry of goods Act was imposed. However, no appeal regarding penalty under Punjab Tax on Entry of goods Act has been made. An appeal is thus preferred before the Tribunal under PVAT Act only.

Held:

The form was not generated by driver at ICC. He had adopted an escape route. Entry tax was also not paid. This proves that the there was an intention to evade tax. Also, the order by DETC attained finality as it has not been challenged by the Appellant which proves the case. Penalty is thus upheld and appeal is dismissed.

Present: Mr. Udeyveer Singh Brar, 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. The Assistant Excise and Taxation Commissioner, Mobile Wing-cum-Deputy Director (Investigation), Patiala vide his order dated 19.8.2008 imposed penalty to the tune of Rs. 1,54,800/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005 and also directed to recover the penalty and the Entry Tax as per the Punjab Tax on Entry of the Goods Act, 2000.

2. Feeling aggrieved by the two orders one for penalty U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005 and the other qua the recovery of the penalty under the Punjab Tax on Entry of the Goods Act, 2000 (herein referred as the Entry Tax Act of 2000). The appellant preferred two appeals before the Deputy Excise and Taxation Commissioner who after scrutiny of the case, vide his order dated 26.10.2012, dismissed the appeal U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005. However, in the other appeal U/s 6 (1) of the Act of 2000, the appellate court while sustaining the entry tax to the tune of Rs.12,385/- waived penalty to the tune of Rs.24,768/- thereby, partly accepted the appeal.

3. The appellant did not file any appeal qua the order dated 19.10.2012 passed by the Deputy Excise and Taxation Commissioner sustaining penalty under the Punjab Tax on Entry of Goods Act, 2000. However, he prefer against the order dated 26.10.2012 passed by the Deputy Excise and Taxation Commissioner, Ludhiana Division, Ludhiana, whereby he had upheld the penalty to the tune of Rs.1,54,800/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005.

4. Briefly stated the facts of the case are that on 3.8.2008, the Excise and Taxation Officer-cum-Director (Investigation), Mobile Wing, Patiala on specific Information, intercepted vehicle No. HR-58-4859 at G.T. Road, Mandi Gobindgarh near Krishna Alloys and detected that the driver was carrying iron scrap. When confronted, he produced the following documents before him:-

1. *Retail invoice/bill No.120 dated 2.8.08 for Rs.2,63,160/- issued by M/s A S. Trading Co., 165, Abdual Fazzal, Enclave Okhla, Delhi in favour of the above dealer.*
2. *G.R.No.144, dated 2.8.08 Issued by M/s Siddarth Goods Carrier, Transport & Commission Agent B.O., L-70, Lajpat Nagar, New Delhi.*

5. On scrutiny of the documents, the Detaining Officer believed that the driver had failed to generate the goods in Form VAT-XXXVI while entering Into she State of Punjab from the statement of the driver Sh. Raju who made the statement that the goods were being transported from Delhi and their destination was Mandi Gobindgarh and that he had adopted an escape route i.e. Haryana-Ghanaur- Shamboo and did not generate the transaction at any ICC of the Punjab State and he then issued notice to the owner of the goods.

6. Since none appeared on behalf of the owner, therefore, the Detailing Officer forwarded the case to the Designated Officer who also issued notice to the owners. Ultimately, the Designated Officer after the careful examination of the record, imposed penalty as referred to above.

7. The appeal filed by the appellant was also dismissed.

8. I have heard the counsel for the parties and perused the record of the case. Since the appellant has not challenged the order passed by the Deputy Excise and Taxation Commissioner dismissing the appeal of the appellant qua the order of tax imposed under the Punjab Tax on Entry of the Goods Act, 2000, therefore; the appellant must have been satisfied with the order, therefore, he did not file any appeal before the Tribunal. As such, it would be inferred that the findings qua facts leading to the case stand proved.

9. Now coming to the appeal relating to the penalty U/ 51 (7) (c) of the Punjab Value Added Tax Act, 2005, the appellant admittedly had started with the goods from Abdul Fazzal, Enclave Okhla, Delhi and he was to reach Mandi Gobindgarh. The appellant did not generate form VAT-XXXVI at the ICC while entering into the State of Punjab. The driver's also admitted before the Detaining Officer that while transporting the goods from Delhi to Punjab he had adopted an escape route i.e. Haryana-Ghanaur-Shamboo. Thus, The intention of the appellant is clear that he wanted to evade the tax on the goods which were meant for trade. He did not generate the goods at the ICC with intention to keep the same away from the account books. He also did not pay toe entry tax. Later on the entry tax was imposed and recovered from toe appellant and he remained satisfied with toe order passed by the Deputy Excise and Taxation Commissioner, Patiala Division, Patiala In appeal, therefore, the inference would be drawn that toe order qua the detention of toe vehicle in the State of Punjab has become final. The admission of toe driver dearly proves that he came via escape route, did not report the goods at toe ICC and did not deposit the entry tax, therefore, toe case as setup the Designated Officer stands established from the evidence of the record. Consequently, it would have to be held that there is no reason to quash the penalty awarded by the Designated Officer.

10. Resultantly, tills appeal being devoid of any merit is dismissed Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 4 OF 2016

JUG LAL SAT NARAIN
Vs
STATE OF PUNJAB

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

31st January, 2017

HF ▶ Revenue

Penalty under Section 51 is upheld where there was mis-description of goods with intention to evade tax

PENALTY – ATTEMPT TO EVADE TAX- IRON AND STEEL – PIG IRON – IRON SCRAP – GOODS DETAINED ON THE GROUND OF BEING IRON SCRAP WHEREAS THE DOCUMENTS SHOW THE SAME AS PIG IRON – PENALTY IMPOSED FOR ATTEMPT TO MISUSE THE INVOICE – ON APPEAL BEFORE TRIBUNAL – GOODS ADMITTED TO BE IRON SCRAP – RATE OF TAX DIFFERENT ON BOTH ITEMS – DOCUMENTS COVERING THE GOODS NOT PROPER – CASE OF MIS-DESCRIPTION OF GOODS – PENALTY UPHELD – APPEAL DISMISSED – *SECTION 51 OF PVAT ACT, 2003.*

Goods and vehicles of the appellant were detained at ICC Dhabi Gujran when the documents produced showed the goods as 'pig iron' whereas the officer observed that goods are 'iron scrap'. Accordingly, the penalty was imposed on the ground that documents covering the goods were not proper and genuine as it related to pig iron whereas iron scrap was being carried in the vehicles. It was also alleged that it was being done with an intention to initiating a chain of bogus sale and purchase of pig iron and iron scrap. On appeal before Tribunal, HELD:

Invoices accompanying the goods were not for iron scrap but pig iron. The information at ICC was also regarding pig iron. The owner could not explain the serious discrepancy in the documents. The documents covering the goods were thus not proper and genuine and the intention to evade the tax is apparent. In the circumstances of the case, the findings recorded by both the authorities below appear to be well-founded and well-reasoned and do not call for any interference.

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

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

1. This order of mine shall dispose off two connected appeal Nos. 4 and 5 of 2016 against the orders dated 29.7.2015 passed by the First Appellate Authority, Jalandhar dismissing the appeal against the order dated 4.7.2014 whereby the following penalty was imposed in the aforesaid two cases:-

Sr.No.	Appeal No.	Dated of order passed by Designated Officer	Amount of penalty	Date of dismissal of appeal by the First Appellate Authority dismissed on
1.	4 of 2016	4.7.2014	Rs. 2,45,530/-	29.7.2015
2.	5 of 2016	4.7.2014	Rs. 2,38,875/-	29.7.2015

2. Since both the appeals involve the same set of facts and law therefore, both are decided together.

3. In brief, the facts are that on 18.6.2014, when the drivers alongwith vehicles bearing Nos. PB-08AX-9725 and Pb-11AD-1069 loaded with iron scrap reached ICC Dhabi Gujjran, the driver of the truck No. PB-08AX-9725 presented the following documents:-

1. Invoice No. 131, (book No.3) dated 16.6.2014 issued by M/s Raghav Enterprises, Delhi in respect of PIG Iron weighing 27280 Kgms worth Rs. 8,18,400/- @ Rs. 30 per Kg.
2. GR No. 577, dated 16.6.2014 of M/s Deepak Road Carriers, Sanjay Gandhi Transport Delhi.
3. Form VAT-XXXV containing the particulars of invoice and GR. The goods dispatched were shown as "PIG Iron" and driver was also carrying TEG-II receipt disclosing the payment of advance tax amounting to Rs. 20,260/-.

The driver of the truck No. PB-11D-1069 presented the following documents:-

1. Invoice No. 133, (book No.3) dated 17.6.2014 issued by M/s Raghav Enterprises, Delhi in respect of "PIG Iron" weighing 26475 Kgm worth Rs. 7,94,250/- @ Rs. 30 per Kg.
2. GR No. 581, dated 17.6.2014 of M/s Deepak Road Carriers, Sanjay Gandhi Transport Delhi.
3. Form VAT-XXXV containing the particulars of invoice and GR.

4. The goods dispatched over the documents in both the trucks were shown as of "PIG IRON" whereas in physical verification of the trucks, it came out that it was not "PIG Iron" but "iron scrap". It is worth while to mention here that the iron scrap, in the common parlance, is normal scrap of iron and steel whereas "PIG iron" is of specified quality used by the foundries in preparing specific goods through a mechanical process; it is easily identifiable and is quite different from iron scrap. The notice was given to the driver who appeared but failed to explain discrepancy between the goods physically loaded in the truck and the goods as mentioned in the documents. On failure to do so, the Detaining Officer detained the goods.

5. None appeared before the Detaining Officer during the 72 hours of detention on behalf of the owners, therefore, the latter forwarded the case to the Designated Officer who also issued notice to the owner of the goods for 23.6.2014. None appeared before the Designated Officer on the said date. However, Sh. Madan Lal, partner of the appellant firm appeared on 24.6.2014 instead of 26.6.2014 for which the case was fixed and on his request the case was

preponed. When the appellant was confronted with the facts of the case and the discrepancy occurring in the documents, he admitted that iron scrap was loaded in the vehicles whereas the invoices were relating to the PIG Iron and was unable to explain the discrepancy.

6.The Designated Officer, on close scrutiny of the record, observed that the appellant was carrying the goods i.e. iron scrap without any documents whereas the documents, which he was carrying, did not relate to the goods. The sample of the goods loaded in the trucks was also drawn. After providing due opportunity to the appellant of being heard, the Designated Officer also observed that the goods were intentionally shown as 'PIG Iron' in the invoices relating to the two trucks whereas he had actually brought the iron scrap with the intention to indulge in the activity of importing the goods for misusing the invoices and the appellant actually had initiated a chain of bogus sale and purchase of PIG Iron and iron scrap and observed as under:-

> *"I have perused the contents of the case starting from the detention of the vehicle. It is a fact that the dealer had made an attempt to evade the tax by furnishing an invoice of an item (pig iron) which was not loaded in the vehicle physically. As stated above, Iron Scrap of ordinary nature was loaded in the vehicle which fact had been duly admitted by the Partner of the firm on 24.6.2014 in the statement and orally when he got the vehicle-released against surety Bond. Further, the intentional violation is also confirmed from the willful avoidance to attend the proceedings and production of required documents. From the perusal of ICC data, it is confirmed that the dealer had been importing 'PIG Iron in the recent past also. By indulging into the activity of importing the goods other than disclosed in the invoice and GR, the dealer had initiated the chain of bogus sale and purchase of 'PIG Iron" and Iron Scrap. When the information as per ICC data had been generated as 'PIG Iron", the unaccounted Iron Scrap, loaded in the vehicle, will be disposed of in the market and entry of PIG Iron will be made in the account books without physical receipt of goods. This entry will further cover up the short stock of the dealer who had already disposed of the "Pig Iron" without its accounting for. Further as per prevailing scenario of the market, there is no demand of bills of iron Scrap whereas the bills of Pig Iron are in demand at stations like Jalandhar, Goraya and Batala where this item is used and demanded by the Foundries. By disclosing the item other than physically loaded in the vehicle, the dealer had not only an intention to evade the tax but to cover up the item i.e. Pig Iron which had already been sold out of account books, through the invoice No.133. Had the vehicle not checked, the dealer would have succeeded in accounting for the "Pig Iron" to the extent of 26475 Kg which had not actually moved. The dealer had intentionally avoided his presence and production of account books, as he was not able to establish the genuineness of the transaction or could not explain the modus operandi adopted by the dealer as discussed in detail in the foregoing paragraph of the order. The dealer was fully confident that the modus operandi adopted by him will not be noticed at the ICC and penalty would not be imposed by AETC, Mobile Wing. The order passed by the DETC in the case of M/s Manglam Steels India, Vs State of Punjab cited as (2012) 44 PHT 201 (PVT) is followed as from the facts of the case, mensrea is established. In the present case also, the mensrea is proved as genuineness of the transaction could not be established. From the above facts, it is also established that the intention to evade the tax was already in the mind of the dealer even prior to the start of the transaction in hand as a result of which the description of goods was wrongly and intentionally disclosed as 'PIG IRON' which was not being physically transported.*

7. Consequently he imposed penalty to the tune of Rs.2,45,520/-. In one case out of which appeal No. 4 of 2016 has arisen. The Designated Officer, vide order of even date, took the same view and imposed penalty to the tune of Rs. 2,38,875/- while making the similar observations in the other case from which appeal No. 5 of 2016 has arisen. The appeals filed by the appellant were also dismissed.

8. Arguments heard. Record perused.

9. The counsel for the appellant ahs urged that the goods in question were actually ' PIG Iron' and not iron scrap. The appellant had paid entry tax on the goods which would have been adjusted against the final tax liability. The PIG Iron does not come under the list of goods in which entry tax is mandatory. However, in order to avoid any adverse inference, the appellant still deposited the entry tax on the PIG Iron, consequently the counsel contended that the department had nothing to loose after the entry tax over the goods has been paid. The goods were accompanied by all the documents. The driver voluntarily appeared before the ICC authorities. In any case, when the advance tax has been paid, no question of evasion of tax arises. Since the entry tax on PIG Iron and iron scrap were the same, therefore, there was no question of any loss to the revenue. He has also cited the judgment delivered in the case of M/s Bharat Cables, Sangrur vs. State of Punjab decided on 21.5.2015 and Bhushan Power and Steel Ltd. vs. State of Punjab (2012) 43 PHT 321 has urged that mere mention of the wrong description of the goods in the invoice does not amount to proof of mensera for evading tax, therefore, in view of the fact that no tax was involved in the case, no penalty could be imposed.

10. To the contrary, the State Counsel has urged that it is not a case of clerical mistake regarding mention of the contents in the vehicle, but the appellant was intentionally brining different goods than what was actually recorded in the invoices, therefore, since the invoices did not correspond to the contents of the vehicles. It would be presumed that the goods were not accompanying the genuine and proper documents. Consequently, the penalty u/s 51(7)(c) of the Act would be attracted.

11. Having heard the rival contentions and having gone through records of the case.

12. Admitted facts are that the appellant was bringing two truck loads of iron scrap on 18.6.2014, when he was apprehended. It is also not denied that the invoices accompanying the goods were not for iron scrap but of pig iron. It is also not denied that the report regarding "PIG IRON" was generated at the ICC. It has also been admitted by Mr. Madan Lal, partner of the appellant firm on 24.6.2014 when he appeared before the Excise and Taxation Officer, that the invoices No. 131 and 133, dated 16.6.2014 and 17.6.2014 related to the "PIG IRON" whereas the vehicles were physically loaded with iron scrap. However, Sh. Madan Lal could nto make any explanation regarding this serious discrepancy. He also did not state in his statement that the "PIG IRON" was in advertently mentioned in both the invoices. The statement made by the Sh. Madan Lal on 24.6.2014 can't be said to be made in haste or under pressure as the goods were apprehended on 18.6.2014 whereas he got recorded his statement after six days on 24.6.2014 and due consultation with is counsel. The driver also knew fully well that the contents in the trucks were that of iron scrap whereas he had generated the information about bringing "PIG IRON" at the ICC. The GR also relates to pig iron. It is also not denied that pig iron as well as iron scrap are not the same goods, they are different and distinct in their features and properties. The rate of tax on these two items also can't be said to the same as according to the notification dated 3rd October, 2013 No. S.O. 90/P.A.8/2005/S.6/2013 the tax on the iron and steel (including its scrap) is payable @ 3.5% whereas, the pig iron was taxable @ 1%. If the goods as brought under the invoices do not correspond to the invoices, then the presumption would be that those invoices did not relate to the goods as carried in the vehicle. The appellant can't be said to be under bonafide impression as he knew that he was brining iron scrap whereas he had represented at the ICC that he had brought the iron scrap. It is also not in

dispute that both the goods are taxable at a different rate. Therefore, the contention that the goods were mis-described under the bonafide mistake can't be accepted. I endorse the view as taken by the Designated Officer that the had brought the iron scrap without documents and, while brining the same under ingenuine documents relating to the pig iron, he wanted to use those documents against un-accounted sale of pig iron made by him.

13. Having gone through the judgment delivered by the Punjab Value Added Tax Tribunal in case of M/s Bhushan Power and Steel Ltd. (Supra) it may be observed that in that case, the invoices were containing the word "BLOOM" – Tarrif 72071920 whereas on physical verification, the goods were found to be "Tarrif 72071920 related to "Mild Steel Billet". In those circumstances since both the items were from the same category taxable at the same rate and related to same specie, therefore mensrea is not proved. It was also observed by the Tribunal that these are raw materials for different industries and when these are used by the industries, the assessee becomes entitled to MODVAT credit of Excise suffered by the goods. Since the Excise amount is much more than the tax amount , no prudent business man would do away with credit of almost 16% of excise for 4% of tax. The tax due, if any, was to be collected by the concerned authority of Orissa State from where the goods were moved. In those circumstances, the plea of the appellant was accepted and mensera was not held against the appellant but the facts of the present case are altogether different. The mensera to evade tax is writ large. In this case, the appellant had brought the goods without documents and the documents so brought related to a different category of goods which he wanted to use against unaccounted sale. As such the intention to evade the tax is proved.

14. As regards the judgment delivered in case of M/s Bharat Cables, it may be observed that since there was no difference regarding the value of the goods, the CST as well as Central Excise stood also paid on the goods being transported, the rate of tax chargeable on the Wire Coils and on PVC compound was the same. As such the Tribunal held that there was no mensera to evade the tax. In that case, the driver had voluntarily reported at the ICC and the consignor had prepared the manual bills carelessly. These elements were taken into consideration while holding the non presence of the mensera in favour of the appellant.

15. In the present case the intention to evade the tax is apparent. From the very beginning of the preparation of the invoices, the intention of the appellant was not bonafide. He not only got prepared wrong invoices but also got prepared the wrong GRs' misrepresented at the ICC that the goods were "PIG IRON" whereas, the appellant ahd admitted that the goods loaded in the truck were iron scrap. Therefore, the penalty appears to have been rightly imposed. Similar view was taken in case of K.C. Dhiman and Sons vs. State of Punjab decided on 10.3.2016 wherein, it was observed as under:-

> *It appears that the scrap so loaded in the vehicles was not covered by the genuine documents and the bills regarding the rolling material were procured with an intention to keep the goods out of the account books. It further transpires that the appellant knowingfully well that the bills were regarding the rolling material mis-represented to the authorities that the bills were related to scrap. Actually, this was also done with the intention to conceal the true facts and throw dust in eyes of the check post authorities that the goods attracting different rate of tax were being taken away on payment of that rate whereas PIG IRON attached different rate of tax. Thus, intention to evade the tax is clearly made out in the case.*

16. In the present case also, since the invoices and other documents do not relate to the goods actually loaded in the truck. The GR was also not related to the iron scrap. He also misinformed at the ICC that the goods were "PIG IRON", therefore, in these circumstances, the inference could be drawn that the drivers carrying the goods in the trucks bearing No. PB-

08AX-9725 and PB-11AD-1069 were bringing the goods without genuine documents to the State of Punjab with an intention to evade the tax. The findings recorded by both the authorities appear to be well founded and well reasoned, therefore, the same do not call for any interference at my end.

17. Resultantly, finding no merit in the appeals, the same are hereby dismissed.

18. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 92 OF 2012

SUPREME INDUSTRIES LTD.
Vs
STATE OF PUNJAB

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

29th November, 2016

HF ▶ Assessee

Withdrawal of Exemption Certificate on account of manufacturing of plastic crates is not justified when it had been included in Eligibility Certificate by Industries Department

EXEMPTION – EXEMPTED UNIT – EXEMPTION CERTIFICATE – WITHDRAWAL OF – UNIT ENGAGED IN MANUFACTURING OF PLASTIC GOODS – EXEMPTION CERTIFICATE ISSUED FOR FURNITURE & FIXTURE AND WIDE WIDTH PLASTIC FILMS AND PRODUCTS – PLASTIC CRATES NOT SPECIFICALLY MENTIONED – EXEMPTION CERTIFICATE CANCELLED FOR VIOLATION OF RULES FOR MANUFACTURING PLASTIC CRATES – CLARIFICATION SOUGHT FROM INDUSTRIES DEPARTMENT – LETTER ISSUED CLARIFYING THAT EXEMPTION IS FOR MANUFACTURING OF PLASTIC CRATES ALSO – NO REASON FOR AETC TO HAVE CANCELLED THE EXEMPTION CERTIFICATE – ORDER SET ASIDE – EXEMPTION CERTIFICATE RESTORED - *PGST (D&E) RULES, 1991*

EXEMPTION – EXEMPTED UNIT – JOB WORK – EXEMPTION CERTIFICATE WITHDRAWN ON ACCOUNT OF DOING JOB WORK FOR SISTER CONCERN OF APPELLANT – ONLY NEGLIGIBLE AMOUNT OF JOB WORK DONE AND THAT TOO FOR SISTER CONCERN – NOT A VIOLATION - DEPARTMENT FREE TO CHARGE TAX ON GOODS ON WHICH THERE IS NO EXEMPTION – NO VIOLATION OF RULES – CANCELLATION OF EXEMPTION CERTIFICATE SET ASIDE. - *PGST (D&E) RULES, 1991*

Appellant set up a unit for manufacturing of several plastic products under the brand name of 'Supreme'. Being eligible, it applied for exemption for manufacturing of furniture & fixtures of plastic, wide width plastic films and handling crates. The Department of Industries accepted the request and issued the Eligibility Certificate which did not specifically contain the name of item 'Handling Crates'. Based upon Eligibility Certificate, the exemption was also granted by the Department of Excise and Taxation.

Appellant was issued a Show Cause Notice for withdrawal of Exemption Certificate on account of two alleged contraventions of Rules:

(a) Unit is engaged in job work which is not permissible activity under the PGST (D&E) Rules, 1991 and job work also falls in the Negative List of activities;

(b) Exemption had been granted for products of furniture and fixture and wide width plastic films and products but the unit is manufacturing plastic crates also which is not a permissible item for availing exemption from payment of sales tax.

In reply, the assessee produced the Certificate from Industries Department showing that the omission of word 'material handling crates' was by mistake and the same should be deemed to have been included in the Eligibility Certificate. It was also contested that it is not doing any job work and hence has not violated any Rules. The AETC did not accept the submissions of assessee and cancelled the Exemption Certificate. On appeal before Tribunal, HELD:

The appellant had applied for grant of exemption from all items including material handling crates. The use of word 'products' in the certificate, itself would take into its ambit 'material plastic crates' also. In the application made to the Excise and Taxation Department also, the said item is specifically included and once that application is accepted, it should be taken as if Excise and Taxation Department has allowed the same in toto including plastic crates. The appellant even sought clarification from industries Department who issued the necessary letter clarifying that the exemption had been granted for manufacturing of plastic crates. The order of AETC cancelling the Exemption Certificate, therefore, cannot be justified in the face of these developments and is, therefore, set aside.

On the second objection regarding doing job work, the Entry in Negative List relates to job and repair made by shops and by no stretch of imagination, the appellant's work can be compared with the job and repair shop. Moreover, the appellant has not done job work for any other person except for its own branch and doing work for any branch cannot be termed as job work for others. Even if the assessee has conducted some small amount of job work, still the Department can charge tax only on that transaction for which the exemption is not available but the Exemption Certificate cannot be cancelled for that reason.

Interestingly, the Department had accepted the Returns of assessee as exempted unit even after the cancellation and those orders have become final since no revision has been made.

The impugned order passed by authorities do not appear to have been passed by taking all facts and circumstances into consideration and therefore the same deserve to be set aside.

Present: Mr. Sandeep Goyal, Advocate Counsel for the appellant.

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

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

1. This appeal has arisen out of the order dated 10.2.2010 passed by the Deputy Excise and Taxation Commissioner, Patiala Division, Patiala dismissing the appeal of the appellant against the order dated 11.12.2001 passed by the Assistant Excise arid Taxation Commissioner, Patiala whereby he had withdrawn/cancelled the exemption limit granted to the appellant under the Punjab General Sales Tax Act, (Deferment and Exemption) Rules 1991 to the appellant.

2. The appellant company is engaged in the manufacturing of several plastic products under the brand name of "Supreme". It is a manufacturing unit located at village Serseni, near Derabassi, District Patiala and is registered under the Punjab General Sales Tax Act, 1948 (now under the Punjab Value Added Tax Act, 2005) and the Central Sales Tax Act, 1956.

3. The appellant being the eligible unit for seeking exemption on tax under the Industrial Policy, 1996 as well as under the Punjab General Sales Tax Act (Deferment Exemption) Rules, 1991, applied for exemption from payments of tax, on Form TI (P4), before the Assistant Excise and Taxation Commissioner, Patiala on manufacturing of furniture and fixtures of

plastic, wide width plastic films and handling crates for the period from 23.10.2000 to 22.10.2.007. The Industrial Department also acceded to the request of the appellant and vide letter dated 13.3.2001, issued eligibility certificate for extending exemption of tax on production of furniture, fixtures of plastics, wide width plastic films and products. On the basis of the eligibility certificate granted on 16.4.2001, the respondent department granted exemption to the appellant from payment of tax w.e.f. 23.10.2000 to 22.10.2007 and limited the exemption of tax to the tune of Rs. 17,52,15,300/- which ever may be earlier.

4. To the surprise of the appellant, the Assistant Excise and Taxation Commissioner, Patiala issued notice dated 9.11.2004 for showing cause as to why the appellant company was not observing the terms and conditions as laid down under the Punjab General Sales Tax Act (Deferment Exemption) Rules, 1991 for enjoying the benefits as also misusing the facility in contravention of the Rules with the following contents:-

(a) *"The unit is engaged in job work which is not a permissible activity under the Punjab General Sales Tax (Deferment & Exemption) Rules, 1991 and also falls in the negative list of the activities as specified by the Industries Department vide entry No.40 of Annexure-II, entry No, 28 of Annexure-II-A and also entry No. 28 of Annexure II-B (latest list applicable to 'B' category units). You have done job work for your Noida (U.P.) unit from whom labour charges of Rs. 28,39,036/- have been received by you.*

(b) *The exemption has been granted for the products of furniture and fixtures and wide width plastic films and products, but the unit is manufacturing plastic crates which are not a permissible item for availing exemption from payment of sates tax during the financial year 2003-04. You have manufactured and sold such crates of the value of Rs.6,11,09,884/- on which un-lawful exemption from payment of sales tax has been availed by you."*

5. Reply to the show cause notice, was tiled by the appellant and ultimately the Assistant Excise and Taxation Commissioner, Patiala vide his order dated 11.12.2004 cancelled the exemption certificate under Rule 8 (vi) of the Rules and the exemption granted was withdrawn.

6. Feeling aggrieved, the appellant filed the appeal before the Deputy Excise and Taxation Commissioner which was also dismissed.

7. Hence this regular second appeal.

8. Arguments heard. Record perused.

9. I have thoroughly examined the submissions made by the parties the cancellation order passed by the Assistant Excise and Taxation Commissioner as well as impugned order passed by the First Appellate Authority and I observe that the order cancelling the exemption certificate is not justified. The cancellation of exemption, granted to the appellant, was made on twin grounds i.e.-

(i) *The appellant had been manufacturing the plastic crates in violation of the terms and conditions as provided in the exemption certificate as the manufacturing of plastic crates was not permissible item in the exemption certificate as issued by the Excise and Taxation Department.*

(ii) *The appellant firm was doing the job work for the other firms as such it could not enjoy the eligibility for exemption.*

10. Having deliberated over the issues, the around setup by the Assistant Excise and Taxation Commissioner appear to be flimsy and too little of withdraw the exemption limit. The exemption certificate was granted to the appellant on the basis of the application filed by the appellant before the Industrial Department for the eligibility certificate. The application indicates that the appellant had applied for issuing exemption of tax on production of plastic crates also besides other items. The eligibility certificate indicates that the appellant was made eligible for manufacturing of furniture and fixtures of plastic, wide width films arid "products". The use of the words "Products" could mean only plastic products and nothing more than that. The object of adding word "products" was to permit manufacturing of other plastic products also besides the items as mentioned in the certificate. It may be mentioned here that plastic crates were also eligible to the same rate of tax as such there was no reason to deny him manufacturing of other plastic products including the plastic crates. The application on the basis of which exemption certificate has been granted by the Department also contained a specific prayer for grant of exemption on manufacturing of plastic crates. The item material handling crates are duly mentioned at column 'F' of the said document.

11. Since the application has been accepted in toto and there is no order of communication to the appellant for denying manufacturing of plastic crates, therefore, it should be taken as if the Excise and Taxation Department allowed the application in toto i.e. for manufacturing of the furniture, plastic crates and other items as sought for.

12. It would also be worthwhile to highlight here that the appellant has been filing the returns since October 2000 continuously up till December 2004, showing the sale of 'plastic crates' without any objection from the departmental authorities during the period. The sale of these goods was duly mentioned in the returns thereof. Therefore, by no stretch of imagination, it can be said that the appellant was not allowed the manufacturing and sale of 'material handling crates'.

13. It may further be observed that after the notice was issued to the appellant pointing out that there was no mention of permission for manufacturing of the plastic crates in the exemption certificate, the appellant sought clarification upon which the Industries Department issued clarificatory letter which clearly indicates the mistake of Industries Department and bonafide of the appellant.

14. The Industries Department vide letter dated 18.11.2004 had confirmed and clarified that it had granted exemption for manufacturing of plastic crates among other items also. The said letter dated 18.11.2004 which reads as under:-

> *"The above said party was issued the eligibility certificate vide letter under reference for the end product furniture and fixtures of plastic wide width plastic films and products are mentioned at that time in the certificate. The party is also engaged in the manufacturing of other plastic products material handling crates which may please be read as added in the above said certificate, which was left earlier at the time of issue, provided that the quantum of eligible amount and the time period shall remain unchanged.*
>
> *Sd/-*
> *General Manager,*
> *District Industries Centre,*
> *Patiala.*

15. Even the Manager Industries Centre vide his letter dated 4.10.2012 informed the Assistant Excise and Taxation Commissioner that the word material handling crates included the "plastic products" and the same correction may be treated as made w.e.f. the date of exemption.

16. After the clarificatory letter dated 18.11.2004, the matter should have been closed by the Excise & Taxation Department Assistant Excise and Taxation Commissioner arbitrarily cancelled this Exemption Certificate without mentioning as to how rule 8 (vi) of the Exemption Rules relating to cancellation of Exemption Certificate was applicable when no provision of the Act or Rule has been contravened by the dealer. The learned Assistant Excise and Taxation Commissioner has conveniently omitted to take notice of that clarification to justify the passing of arbitrary order. Therefore, the order passed by the learned Assistant Excise and Taxation Commissioner on this ground is liable to be quashed.

17. The learned Assistant Excise and Taxation Commissioner is also not justified to cancel the Exemption Certificate on the ground that the appellant had contravened the Exemption Rules for allegedly doing job work and it is one of the items, which is on the Negative List at item No.28. The observations made by the Assistant Excise and Taxation Commissioner appear to be frivolous viz. First that entry is relating to job and repair made by shops and by no stretch of imagination, the appellant's work where the plastic moulded furniture and crates are being manufactured, can be treated as job and repair shop secondly, the appellant has not done job work for any other person except for its own branch. Any activity done in the job of plastic manufacturing for another branch of the same party cannot be termed as doing job work done for others. The job work barred by the Exemption Rules can at .the maximum be attributed to the job work done for others as this List takes care of only such trade, where sales tax is to be charged on the sale of goods or goods used in works contracts. Here it is not the case of the department that this job work has been done for any other person on which any works contacts were involved or any job work was done on which sales tax was leviable. Therefore, the action taken by the respondent authority is not sustainable in the eyes of law.

18. Even if for the sake of arguments, it is taken that the appellant has done the job work, it will not make the appellant liable for cancellation of Exemption Certificate. In that situation, the Department, at the maximum, can charge tax on those goods which do not enjoy exemption. This item mentioned in the Negative List is meant for those manufacturing shops, which have been exclusively setup for doing job work for others.

19. It may further be observed that the department virtually ignored the cancellation orders passed by the Assistant Excise and Taxation Commissioner, Patiala obviously for the reason that it was with an ulterior motive and continued accepting the returns filed by the appellant as exempted unit. The order of cancellation was passed on 11.12.2004 which was challenged before the Hon'ble High Court and the stay was granted on 4.5.2005. However, the writ petition was withdrawn by the appellant on 12.11.2009. The department still ignored the cancellation order and continued accepting the assessments filed by the appellant while treating itself as an exempted unit for the years w.e.f. 2002-03 to 2007-08. Since the department had accepted the plea of the department with regard to the exemption of tax on the manufacturing of plastic products including crates upto 2007-08 and thereafter, it has been accepting the assessments for the remaining years as an ordinary unit and the department never revised/rectified the said assessments.

20. In the light of the aforesaid discussions, it would have to be held that the plastic crates are not the part of the negative, list and exemption is available to the appellant as per rectified eligible certificate. There was no reason to cancel the exemption certificate on this ground as well as on the ground that the firm/company which has been doing the job work for its own branch, therefore, it being stock transfer cannot be termed as sale, In these situations, the company cannot be said to have been doing job work for the third party. It may further be noticed that as per negative list, any sale made by way of job work is not allowed for exemption. However, the question of exemption would arise only if there is a sale. The entry regarding job works done for its Noida branch in Derabassi has not been accounted for against

the claim of exemption on payment of tax being exempted unit. It has also been observed in case of Commercial Tax. Officer and Others Vs. EMKAY Investments Pvt. Ltd. (1996) Sales Tax Cases page/455 wherein it was observed as under:-

> *"Clause (vi) of the Explanation is very' clear and unambiguous. It says that the said benefit of exemption from sales tax is available only to such newly setup small- scale industry which does not use the trade mark or the brand name of any product of an existing industrial unit. In this view of the matter, the respondent-industry cannot claim the benefit of exemption. But the question is whether it would be reasonable to read the said Explanation literally which would mean that if a manufacturer uses the brand name or trade mark of an existing' industrial unit even in respect of a small portion of its production. It would be totally deprived of the benefit of the said exemption. We are of .the opinion that having regard to the object and purpose underlying the said Rule, it would be reasonable to say that the respondent shall not be entitled to the benefit of the said exemption in respect of the goods, for which the trade mark or brand name of an existing industrial unit is used. But in so far as other products for which the brand name is not used are concerned, it will be entitled to claim the benefit of the aforesaid sub-rule. The burden of clearly establishing that in respect of certain goods manufactured by it, the trade mark or brand name of an existing industrial unit is not being used, shall be squarely upon the manufacturer".*

21. In the light of the above discussions, it may be observed that if the appellant had done any job work, then the exemption in respect of those goods would not be granted.

22. Having gone through the impugned orders passed by the authorities below, the same do not appear to have been passed without taking all facts and circumstances into consideration, therefore, the same deserve to be set aside.

23. Resultantly, this appeal is accepted, impugned orders are set- aside and the status of the appellant during the period w.e.f. 23.10.2000 to 22.10.2007 would remain as exempted unit provided he had not crossed the exemption limit.

24. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 115 OF 2016

SYNERGY TELECOMMOMUNICATIONS LTD.
Vs
STATE OF PUNJAB

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

21st November, 2016

HF ▶ Assessee

Assessment framed by Designated Officer not having jurisdiction over the Ward deserve to be set aside.

ASSESSMENT – JURISDICTION – ASSESSMENT FRAMED BY DESIGNATED OFFICER BEING IN-CHARGE OF ANOTHER WARD – NO ASSESSMENT FRAMED BY THE OFFICER WHO IS HAVING CONTROL OVER THE WARD IN WHICH ASSESSEE IS SITUATED – ASSESSMENT FRAMED ON ORAL INSTRUCTIONS OF AETC – NOT RECOGNISED UNDER LAW – ASSESSMENT DESERVES TO BE SET ASIDE – MATTER REMITTED BACK TO THE PROPER DESIGNATED OFFICER WHO HAS JURISDICTION OVER THE ASSESSEE - *SECTION 29 OF PUNJAB VAT ACT 2005.*

Appellant was assessed to tax by Mrs. Shivani Gupta, Designated Officer and the same was challenged on the ground of lack of territorial jurisdiction. It was alleged that she was holding the charge of Ward No. 1 at the relevant time whereas the assessee falls within the territorial jurisdiction of Ward No. 5. On perusal of record, it transpired that the said Ward was within the territorial jurisdiction of Smt. Jasmeet Kaur Sandhu, ETO and not Mrs. Shivani Gupta, ETO. Assessee is situated in Phase-I, Industrial Area, Mohali whereas the area under Mrs. Shivani Gupta was Kurali, Khizrabad, Chanalo Industrial Area, Mullanpur, Nayagaon, parol, Teera and Togan. Mrs. Shivani Gupta had no territorial jurisdiction to try the case of appellant. On being confronted, the State counsel had informed that order was passed by Mrs. Shivani Gupta on the oral direction of AETC, SAS Nagar, Mohali. The law does not recognise the oral instructions and, therefore, neither any such instructions should could have been issued nor could have been acted upon. The order in question is, therefore, void ab initio and is not sustainable in the eyes of law. Case is sent back to Assessing Authority of the area of jurisdiction to decide afresh after granting necessary opportunity of hearing.

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

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

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

1. This appeal has arisen out of the order dated 30.3.2016 passed by the Deputy Excise and Taxation Commissioner-cum-Designated Officer, S.A.S Nagar, Mohali dismissing the appeal of the appellant against the order dated 25.2.2015 passed by the Excise and Taxation Officer-cum-Notified Authority, S.A.S Nagar, Mohali on the ground of non compliance of Section 62 (5) of the Punjab Value Added Tax Act, 2005.

2. The prime contention raised by the appellant in the case is that the order dated 25.2.2015 passed by Mrs. Shivani Gupta, Designated Officer is bad and void in the eye of law on ground of lack of territorial Jurisdiction as 1 she was holding the charge of ward No.l at that time whereas the area of jurisdiction was falling within ward No.5, therefore, she did not enjoy the territorial jurisdiction of making the assessment against the appellant. It was further argued that the order is not properly drafted as on the head note of the order she records herself as Excise and Taxation Officer, Sector 17, Chandigarh whereas at the foot of the order, she records herself as Excise and Taxation Officer, Mohali, Punjab, therefore, she herself was confused about her jurisdiction to try the case. She has passed the order exceeding her jurisdiction even when the case was not transferred to her by any competent authority.

3. Heard. On perusal of the entire record, it transpires that the case pertains to the assessment year 2009-10 Mrs Shivani Gupta issued notice to 1 the assessee for 5.8.2014 and passed the order for framing the assessment on 25.2.2015. It is not denied that the area of jurisdiction where the property is situated and assessee is under control falls within ward No.5. The order dated 26.9.2014 passed by the Assistant Excise and Taxation Commissioner S.A.S Nagar Mohali reveals that on 26.9.2014 ward No.5 was within the territorial jurisdiction of Smt. Jasmeet Kaur Sandhu, Excise and Taxation Officer and not Mrs. Shivani Gupta. However, she alongwith Mrs. Amandeep Bhatti was made an incharge of ward No.5. On 10.7.2015 i.e. after the order was passed by her, it may further be clarified that as per the record, the case pertains to A-l, phase-1, Industrial Area, Mohali. The area under Shivani Gupta was Kurali, Khizrabad, Chanlon Industrial, Area, Mullanpur, Nayagoan, Parol, Tira, Togan, but area of phase-1 Industrial area Mohali was not within the jurisdiction of Mrs. Shivani Gupta. Thus, it transpires that Mrs. Shivani Gupta had no territorial jurisdiction to try the case.

4. When the State Counsel was confronted with the fact regarding lack of territorial jurisdiction of Mrs. Shivani Gupta to pass the order, he submitted with the assistance of the State Officials that she had passed the order on oral directions of the Assistant Excise and Taxation Commissioner, S.A.S. Nagar, Mohali, but to my mind, the law does not recognize the oral directions, therefore, the Assistant Excise and Taxation Commissioner, S.A.S. Nagar, Mohali should neither have issued any oral directions nor the Assessing Authority should have acted upon such oral directions. It was a only written order of transfer of case which could confer jurisdiction upon Mrs. Shivani Gupta to try the case.

5. In these circumstances, the order being void is not sustainable in the eye of law, consequently, the order passed by the Deputy Excise and Taxation Commissioner is also of no consequence.

6. Resultantly, this appeal is accepted, impugned order is set-aside and the case is sent back to the Assessing Authority of the area of jurisdiction, (who is competent to try the case) to decide the case a fresh after providing an opportunity to the appellant of being heard.

7. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 517 OF 2015

YOGENDRA FANCY YARNS
Vs
STATE OF PUNJAB

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

9th January, 2017

HF ▶ Assessee

Penalty under Section 51 cannot be imposed where the driver is yet to approach ICC

PENALTY – ATTEMPT TO EVADE TAX – VEHICLE APPREHENDED AT T-POINT TEPLA-BANUR ROAD – NO DEFECT FOUND IN THE DOCUMENTS – ONLY ALLEGATION REGARDING NON-GENERATION OF INFORMATION – DRIVER YET TO APPROACH ICC SHAMBHU (EXPORT) – SITE PLAN GIVEN IN THE COURT SHOWS THE DRIVER COULD HAVE STILL APPROACHED AS HE WAS APPREHENDED ON TEPLA ROAD ITSELF – CONCLUSION ARRIVED AT BY THE AUTHORITIES BELOW INCORRECT – APPEAL ACCEPTED – ORDER SET ASIDE – PENALTY QUASHED – *SECTION 51 OF PUNJAB VAT ACT, 2005*

Vehicle of The appellant was apprehended at Tepla-Banur road near T-Point touching G.T. Road near ICC Shambhu. The detention was made on the ground that appellant has not generated VAT-XXXVI with an intention to evade the tax. On appeal before Tribunal, HELD:

In this case, no defect or deficiency had been found in the documents and the main reason for imposing penalty is the non-generation of information at ICC. Vehicle was detained at T-Point on Banura-Tepla Road when it was still moving towards ICC (Export) which located at corner point of Banur-Tepla Road touching the G.T. Road. On a perusal of site plan produced in the Court, the driver is alleged to have been apprehended on the side road before it had reached G.T. Road. There is no compulsion on the driver to adopt Tepla road to reach G.T. Road to generate information at ICC Shambhu (Export). The driver did not cross T-Point and had not reached G.T. Road. It cannot be concluded that appellant had requisite intention to evade the tax and he never wanted to generate the information at ICC when there was no deficiency in the documents. Conclusion drawn by the lower authorities to affirm the penalty is wrong and, therefore, the same deserves to be set aside. Appeal allowed, order set aside.

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

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

1. The Assistant Excise and Taxation Commissioner, Information Collection Centre (Export) Shamboo at Mehamdpur imposed penalty to the tune of Rs.2,03,500/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005, on the ground that the appellants driver had not generated the goods at the ICC Shamboo (Export). The appeal filed by him also failed on 15.9.2015.

2. In nutshell, the allegations against the appellant are that on 28.1.2014 the driver loaded with the goods in truck bearing No.PB-07W-8064 reached T-point, Tepla Banur Road. On demand, the driver produced the following documents:-

1. *Invoice No.RB-13-0042, dated 27.1.2014 issued by M/s Yogendra Fancy Yarns, Bye-Pass Naloyan, Hoshiarpur for Rs.4,07,000/- (excluding tax) in favour of M/s Rajdhani furnishing (P) Ltd., Plot No.6, HSIDC Industrial Area Estate Barhi, GT Road Sonipat.*

3. The Detaining Officer detained the goods on the ground that the appellant had not generated VAT-XXXVI Form at the ICC with the intention to evade the tax and issued notice U/s 51 (6) (b) of the Punjab Valued Added Tax Act to the owner of the goods, in response to which Sh. Pankaj Anand Accountant of the Firm appeared before the Detaining Officer on 30.1.2014 but he failed to make any plausible explanation. He also could not produce the account books or other evidence to prove the genuineness of the transaction. Ultimately, the case was forwarded to the Designated Officer who also issued notice to the owner of the goods for 10.2.2014. Mr. Rajnish Sharma, Manager of the firm appeared on 20.2.2014, but failed to make any plausible explanation.

4. On scrutiny of the case as well as the report made by the Detaining Officer to the effect that the goods were checked on Tepla Banur Road and the driver did not generate the goods in Form VAT-XXXVI at the ICC, therefore, it was a case of attempt to evade the tax, the Designated Officer imposed a penalty to the tune of Rs,2,03,500/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005 against the appellant.

5. The appellant also remained unsuccessful before the First Appellate Authority.

6. Heard. Ld. Counsel for the appellant in order to assail the findings returned by the authorities below urged that the main criteria for imposing penalty U/s 51 of the Act was the proof of the element of mensera to evade the tax. In this case, no defect or the deficiency was found in the documents. The appellant never crossed the ICC, Shamboo (Export). Apparently the vehicle was detained at T-Point on Banur Tepla Road when vehicle was moving towards ICC export which is located at corner point of Banur Tapia Road touching the G.T. Road, Thus, in the absence of any intention to evade the tax and particularly when the appellant had not crossed the ICC, it could not be said that the appellant had any intention to evade the tax.

7. To the contrary, the State Counsel has urged that the appellant was coming from Hoshiarpur go to Sonipat. He was come direct from Zirakpur side to the main road, thereafter, he was to take left turn to reach the GT Road leading to Ambala and Sonipat, Before crossing the ICC export situated on the T-Point, he had to stop the vehicle for detaining the goods at ICC, Shamboo (Export). Whereas, the Driver, instead of going direct to the GT Road, took the turn towards Tepla Road for ignoring the ICC, Shamboo (Export) Barrier, therefore, the inference could be drawn that the appellant wanted to cross the ICC at Shamboo (Export) without generating the goods at the ICC.

8. The State Counsel has placed site plan of the Roads approaching ICC, Shamboo (Export) before me to facilitate the matter. The site plan is brought on record as an annexure-X.

9. On bare perusal of the site plan Annexure-X, it transpires that the ICC, Shamboo (Export) is shown on the corner of the T-point touching the G.T, Road and the driver is alleged to have been apprehended on the side road, before it reached G.T. Road, It may also be clarified that there was no restriction on the driver to adopt Tepla Road in order to reach G.T. Road and there was no compulsion for him to adopt straight road to reach the G.T, Road for heading towards the destination. Since ICC, Shamboo is on the corner of the T-Point, the driver could approach the ICC, Shamboo (Export) while coming from side of the Tepla Road or reach direct to the G.T. Road. The things would have been worse and against the appellant, if he had crossed Tepla Road and after crossing the T-Point had reached the GT Road, but he did not make any such effort and he was apprehended before he had crossed ICC, Shamboo (Export). No general direction was issued by the ICC authorities that the trucks coming from side of Punjab were restrained from adopting Tepla Road, therefore, it could not be said by any stretch of imagination that the appellant had requisite intention to evade the tax and he never wanted to generate the information at the ICC, particularly when there was no deficiency in the documents relating to the goods carried by him in the truck. The allegation of attempt to evade the tax could be attributed to him if he after crossing the T Point had reached G.T. Road and then started for destination, but i.e. not the case here. As such the appellant can't be attributed with allegation to make an1) attempt to evade the tax. Both the authorities below have not taken the aforesaid facts and circumstances of the case in view and have jumped the conclusion against the appellant without looking into the fact situation of the case and peculiar location of the ICC at the spot. Therefore, the order passed by the authorities being against facts need be reversed.

10. Resultantly, this appeal is accepted, impugned order is set-aside and the order of penalty imposed against the appellant is quashed.

11. Pronounced in the open court.

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SGA
LAW OFFICES

NOTIFICATION (Haryana)

Go to Index Page

NOTIFICATION REGARDING APNA BILL APNA VIKAS

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

Notification

The 27th February, 2017

No.05/F-368/ST-7/2017- The Government of Haryana introduces an award Scheme namely "Apna Bill Apna Vikas" for general public subject to the following terms and conditions:-

"Apna Bill Apna Vikas"

1. ***Objective of the Scheme***

Section 28 of the Haryana Value Added Tax Act 2003, read with Rule 54 of the rules framed thereunder, provides that every registered dealer who sells the goods for value exceeding Rs. 1000/- to any person on cash or credit shall issue the invoice/bill to the purchaser, however, the dealer shall be bound to issue bill/invoice even for value below Rs. 1000/- if the purchaser demands for the bill/invoice. In order to encourage and motivate the consumers to obtain bills from the sellers and to sensitise the public and create awareness amongst the consumers regarding importance of tax revenue for development of the State, the Excise and Taxation Department, Haryana, introduces a Scheme, for the general public, named "Apna Bill Apna Vikas".

2. Eligibility

(i) Any customer having a copy of original bill/cash memo/retail invoice for the purchases of goods from a registered dealer of Haryana will be eligible to participate in the draw of lots to be held under the Scheme.

(ii) The bill/invoice received for purchase of goods through e-commerce companies shall also be eligible to participate in the Scheme subject to the condition that selling dealer is registered dealer of Haryana.

(iii) The total amount of the Bill must be more than Rs. 500/- (Rupees Five Hundred) excluding the value of tax free goods.

(iv) The Scheme shall be available only for B2C (business to consumers) transactions within the state of Haryana. The Scheme shall not be available to registered dealers who purchase goods for resale or for use in manufacturing and processing of goods for sale. Sale bills/invoices for purchases made by State/Central Government Departments/ Agencies/ Boards/Corporations etc. and for purchases made by the Embassies/UN Organizations shall also be not eligible for participation in the Scheme.

(v) The employees of the Excise and Taxation Department and their family members shall not be eligible to participate in the Scheme.

(vi) The sale bills for purchase of all types of motor vehicles, petroleum products such as diesel, petrol, LPG, CNG etc. and purchases made from lump-sum dealers shall not be eligible for the Scheme.

3. Modalities of the Scheme

(i) A customer, in order to participate in the Scheme, shall download the mobile phone compatible application namely "Apna Bill Apna Vikas". After installation of this app the customer shall get himself registered. A one time unique ID will be issued to the customer on his registered mobile number. The customer shall upload a clearly visible and legible image of the original Bill/cash memo/retail invoice, along with details, through mobile phone compatible application. A unique reference number will be generated against each such upload and will be sent to the customers via SMS. The Bill /cash memo/retail invoice must be uploaded within 10 days of the purchase to be eligible for the draw.

(ii) The customer, in addition to uploading the Bill/cash memo/retail invoice, is required to submit the following details:

(a) TIN of the selling dealer

(b) Amount of the Bill/cash memo/invoice

(c) Date of purchase

(iii) The Scheme shall initially be launched for six months. The Government may extend the period of the Scheme on recommendation of the Commissioner. However, the Excise and Taxation Department reserves the right to withdraw the Scheme at any time without assigning any reason.

4. Prizes under the Scheme

(i) The number of prizes per month shall be 10 or 1% of the number of entries received during the month, whichever is higher, for Bills/Invoices for the value of Rs. 501/- to 5000/-. The number of prizes for Bills/Invoices for value of Rs. 5001/- and above shall be 1 or 1% (calculated by rounding off) of the number of entries received during the month, whichever is higher.

(ii) The prize money for Bills/Invoices for the value of Rs. 501/- to 5000/- shall be five times of the taxable value of goods purchased in the bill/cash memo/retail invoice, subject to a maximum of Rs. 10000/-.

(iii) The prize money for Bills/Invoices for the value of Rs. 5001/- and above shall be two times of the taxable value of goods purchased in the bill/cash memo/retail invoice, subject to a maximum of Rs.50000/-.

(iv) One customer shall be eligible for one prize only during a month. In case a customer gets more than one prize then, the higher of the prize money would be awarded.

(v) The prize money will be directly credited to the bank account of the winner.

(vi) The payment of the prize money shall be subject to the verification of the bill/cash memo/retail invoice by the department, within 25 days of the draw of lots.

(vii) In case the information uploaded and the contents of image of the bill do not match with the image of the bill in material particulars or is not readable, the uploaded bill shall not be eligible for prize.

5. Procedure for draw of lots

(i) A draw of lots will be held on a monthly basis to determine the prize winners. All the bills/cash memos/retail invoices received from the first day of the month to the last day of the month shall be included in the monthly draw of lots.

(ii) The computerized draw of lots for a month shall be held within 5 days of the following month under the supervision of the Committee constituted for this purpose.

(iii) After the draw of lots, the list of successful participants will be displayed on the website of the department.

(iv) A successful participant will be required to submit original copy of the bill/cash memo/retail invoice, the bank account number and IFSC code, in the office of the Deputy Excise and Taxation Commissioner (Sales Tax) of any district or in the office of Excise and Taxation Commissioner, Haryana, Panchkula to claim the prize, within 15 days of the draw of lots.

(v) A successful participant will also be required to submit self certified copy of any one of the following documents, as proof of identity, at the time of claiming the prize :

- Aadhaar card/passport/driving license/PAN card/any Government issued ID

(vi) No waiting list shall be maintained for award of prizes if any of the successful participants is/are found ineligible.

Disclaimer:- The Department reserves the right to deny the prize money without conveying the reasons to the winner.

6. Constitution of Committee

A Committee of the following officers shall be constituted for holding draw of lots:

(i)	An officer not below the rank of Joint Excise and Taxation Commissioner nominated by the Excise and Taxation Commissioner	Chairperson
(ii)	Chief Accounts Officer/senior most AO posted in the office of Excise and Taxation Commissioner	Member
(iii)	Representative of Trade and Industry, nominated by the Government.	Member

7. Dispute Resolution

In case of any dispute, the matter shall be referred to the Excise and Taxation Commissioner, Haryana. The decision of the Excise and Taxation Commissioner shall be final.

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

ORDER (Haryana)

Go to Index Page

EXEMPTION FROM ENTERTAINMENT DUTY FOR THE MOVIE "HIND KA NAPAK KO JAWAB-MSG LION HEART-2"

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 **"Hind Ka Napak ko Jawab-MSG Lion Heart-2**," from the liability to pay entertainment duty under the said Act, of its 200 prints for a period of one year in the State of Haryana, this film is due for release tomorrow i.e 10-2-2017. 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. This issues with the concurrence of the Finance Department conveyed vide their U.O. NO.9/2/2001-2FG-1 dated 9-2-2017.

Chandigarh, dated
The 9 February, 2017

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

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

GST COUNCIL MEETING: STATES ALLOWED TO TWEAK TAXPAYER DIVISION AFTER CONSULTING CENTRE

States have been given the leeway to tweak the criteria for division of taxpayers after "consultation with Centre" in respect of cross empowerment under the proposed Goods and Services Tax (GST).

The minutes of the ninth meeting of the GST Council, held on January 16, record that the states have been given this concession over and above the agreed upon 90:10 division of tax assessees below the annual turnover threshold of Rs 1.5 crore between states and Centre, respectively, and an equal division of assessees for a turnover above Rs 1.5 crore.

"…those states wanting a different basis of division could do so in consultation with the Centre; the division of taxpayers in each state shall be done by computer at the state level based in stratified random sampling and could also take into account the geographical location and type of the taxpayers, as may be mutually agreed," the minutes stated.

The division of taxpayers will be switched between the Centre and the states at regular intervals as per the decision of the Council. For new registrants, the Council has agreed to do equal division between the Centre and the states.

During the course of the discussions, states such as West Bengal and Kerala supported the demand for exclusive control by states on taxpayers below the Rs 1.5 crore turnover threshold, while Gujarat and Maharashtra stated their preference for vertical division with control of two-third taxpayers with states and one-third of the assessees with the Centre.

CBEC chairman Najib Shah was of the view that neither the Central nor state tax administration should be completely ousted from any part of the value chain in order to ensure proper checks and balances. During the discussions, he also stated that there could be cross empowerment for granting tax refund subject to agreement by the accounting authorities.

For the process of refund, the states and the Centre did not converge on cross empowerment as there were legal issues relating to Consolidated Fund of India being operated by a state government official and a central government official and the corresponding modalities of audit of such refunds. Also, after consultation with the law ministry, the GST Council agreed for cross empowerment of powers under the Integrated GST (IGST) Act in line with Central GST (CGST) and State GST (SGST) Acts, with the exception that the Centre alone will have the power to adjudicate a case where the disputed issue relates to place of supply, or issue relating to import/export of goods and services, or when an affected state requests that the case be adjudicated by the CGST authority.

The arrangement between the Centre and the states in the ninth GST Council meeting to break the deadlock on division of control has been seen as a compromise on part of the Centre, as it has lost out on the maximum share of taxpayers under the threshold of Rs 1.5 crore.

Currently, 93 per cent of service tax assessees and 85 per cent of the VAT taxpayers have a turnover below Rs 1.5 crore. Under the proposed GST, taxpayers having a turnover of over Rs 1.5 crore are estimated to contribute almost 90 per cent of the revenue.

The fine print pertaining to the division will be discussed in the tenth GST Council meeting on Saturday, wherein states and Centre will finalise the legally vetted draft GST bills, following which the Centre is likely to introduce them in the second half of the Budget session of the Parliament. The government intends to rollout the indirect tax regime from July 1 this year. The government is constitutionally mandated as per the Constitution (One Hundred and First Amendment) Act, 2016, passed by Parliament last year, to roll out the indirect tax regime by September 16 this year.

Courtesy: The Indian Express
17th February, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

GST COUNCIL TO FINALISE DRAFT MODEL GST LAW TOMORROW

The GST Council, which is meeting tomorrow, is likely to finalise the draft model GST law including final drafting of the anti-profiteering clause to ensure benefit of lower taxes gets shared with consumers.

The Council, headed by Finance Minister Arun Jaitley and comprising representatives of all states, is also likely to finalise the definition of 'agriculture' and 'agriculturist' as well as constitution of a 'National Goods and Services Tax Appellate Tribunal' to adjudicate disputes.

The Law Ministry has sent the approved language and draft of the model GST Law, which outlines how the new national sales tax will be levied on goods and services.

The law ministry-approved draft and the language have been discussed today by the Council's sub-committee comprising central and state officials. The vetted draft will then be put up before the Council at its 10th meeting scheduled to be held in Udaipur tomorrow.

The government intends to introduce the model GST law in Parliament in the second half of the current Budget Session beginning next month, officials said.

The government is keen to roll out the new regime from July 1 but for that, it will have to get two laws - the Central GST (CGST) Act and Integrated GST (IGST) Act -- approved by Parliament and each of the state legislatives have to pass the State GST (SGST) Act.

The model GST law provides a common draft of CGST Act, SGST Act. Besides, there is an IGST law and Compensation law.

Officials said that the government is keen to pass benefit of lower taxes to consumers and so an anti-profiteering measure has been incorporated in the draft law.

It provides for constituting an authority to examine whether input tax credits availed by any registered taxable person, or the reduction in the price on account of any reduction in the tax rate, have actually resulted in a commensurate reduction in the price of the said goods and/or services supplied by him.

For example, a good or service is to be levied with a GST of 5%. But in course of supply, a 20% tax is paid, whose input credit is taken. So, the final consumer will be levied only 5% tax and not 25%, as the input credit of 20% is already taken, an official explained.

"This has to be declared at the time of filing returns by the taxpayer," the official said.

The taxable event under GST is supply of goods and services. The place of supply of goods is the place where the goods are delivered, except in few cases.

Courtesy: Hindustan Times
17th February, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

GST TO DECREASE OPERATING COST OF WAREHOUSING, ENABLE CONSOLIDATION: SURVEY

About 45% feel that their cost of warehousing operations may decline once the GST comes into play, while around 25% were cautious and felt that it is too early to assess the actual impact.

NEW DELHI: Majority of the leading warehousing space occupiers feel implementation of the goods and service tax (GST) would decrease the operating costs and would be positive for their overall business operations in India, according to a survey by CBRE.

More than 63% of the respondents hope decrease in operating costs will enable them to consolidate their smaller facilities into larger ones and expand their footprint around major consumption centres.

About 45% feel that their cost of warehousing operations may decline once the GST comes into play, while around 25% were cautious and felt that it is too early to assess the actual impact.

Location is the most important factor for companies while leasing warehousing space, followed by the real estate cost of leasing space in a particular state/city, the survey revealed.

"While currently location decisions may also be influenced by tax-incidence, however, post the implementation of the GST, most warehousing occupiers are expected to take decisions purely on the basis of reach to market, quality and size requirements," said Jasmine Singh, head - industrial and logistics services, India, CBRE.

About 65% of respondents believe that they will need a minimum of 3 to 12 months to align their existing business strategies with the new tax structure.

Consolidation of warehousing portfolios will be the most important strategy for companies in the post GST era, with about to 28% of respondents voting for it, while 23% of companies plan to further expand their operations across the country.

"This will result in increased demand for larger, better quality warehouses thereby providing an ideal platform for the emergence of large scale nationwide players," Singh said.

The concept of a mother warehousing hub for a region supplemented by spokes is expected to become more popular in the post-GST scenario, with around 11% of companies preferring to adopt the hub and spoke approach, compared to only 6% now.

Due to the multiple tax rates at the state and city level, goods often spend a substantial amount of time in transit. This increases the overall cost of transport and makes the system inefficient.

The removal of various federal tax barriers and creation of a common market will improve supply chain efficiency and attract more foreign direct investment (FDI).

"While some may argue that the reform may prove to be detrimental for the smaller players, in our opinion it is likely to allow these smaller players to develop better quality assets or enter into joint ventures with larger players," Singh said.

Survey respondents included leading corporates in sectors such as third party logistics (3PLs), e-commerce, engineering & manufacturing, fast moving consumer durables and non-durables, pharmaceuticals and retail. Approximately 63% of respondents were domestic corporates, while the rest were headquartered abroad.

Courtesy: ET Realty
17th February, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

GST: NO RESPITE FOR FLIPKART, AMAZON, ON TAX COLLECTION AT SOURCE

Online retailers such as Flipkart and Amazon have been lobbying against tax collection at source, saying it will encourage sellers to choose offline channels

The tax that e-commerce marketplaces have to collect from sellers on their platform will likely be retained in the final draft of the Goods and Services Tax (GST) law to be vetted by the GST council on Saturday, a government officer familiar with the development said.

E-commerce companies have been lobbying against this, and argued that this will encourage more sellers to choose offline channels instead of the online one, and that it will increase the costs of compliance as well as doing business.

The draft GST law proposes that the e-commerce company, at the time of payment to a supplier for the goods supplied, collect up to 2% tax on the total payment made and deposit it with the government on behalf of the supplier.

"The provision will stay. E-commerce companies have flagged their concerns saying how these provisions are difficult to implement. But they also concede that it is doable," added the officer.

GST aims to remove tax barriers across states and create a unified market in India. The government hopes to implement GST from 1 July. To facilitate this, it aims to pass the supporting legislation for roll-out of this tax in the second half of the budget session starting 9 March. The government is hopeful that the GST council meeting in Udaipur on 18 February will give approve all the legislation—Central GST (CGST), state GST (SGST) and integrated GST (IGST).

Last week, in a press conference organized by industry lobby body Federation of Indian Chambers of Commerce and Industry (FICCI), Flipkart India, Amazon Seller Services and Jasper Infotech (which runs Snapdeal) came together to oppose the provision, Mint reported on 9 February (bit.ly/2lu4SfQ).

The marketplaces argued that the tax would block much needed capital for 25-50 days besides further squeezing small sellers by placing an additional burden on their working capital. They added that the tax discriminates between online and offline market places. And they protested the cumbersome reporting provisions.

Snapdeal, Paytm and Shopclues did not respond to emailed queries seeking comment.

According to provisions of the law, e-commerce companies have been mandated to deposit the TCS with the government within 10 days from the end of the month in which the tax has been collected on behalf of the suppliers. The companies also have to furnish an electronic statement

containing details of the tax collected at source from their various suppliers with a detailed break up of the tax pertaining to CGST, SGST and IGST.

These entries have to match with the returns filed by the suppliers to enable the supplier to claim credit for the tax payment made.

The draft GST law had specially carved out a separate chapter to deal with taxation in the e-commerce sector after states expressed concern over loss of revenue arising from some small suppliers staying out of the tax net.

"TCS will create a lot of issues; it is a disincentive for people to trade online. A lot of money will get stuck in the system which will hurt the industry . The same purpose can be served by getting all the details of the suppliers from the e-commerce companies without levying TCS," said Bipin Sapra, tax partner at audit and consulting firm EY.

Courtesy: Live Mint
18th February, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

GST ADOPTION COULD RAISE INDIA'S GDP TO OVER 8%: IMF

WASHINGTON: The adoption of the GST could help raise India's medium-term GDP growth to over eight per cent and create a single national market for enhancing the efficiency of the movement of goods and services, the IMF said today.

At the same time, the International Monetary Fund (IMF) also expressed concerns over the implementation of the Goods and Service Tax (GST).

"Although some uncertainties remain around the design and pace of implementation of the GST, its adoption is poised to help raise India's medium-term GDP growth to above 8 per cent as it will create a single national market and enhance the efficiency of intra-Indian movement of goods and services," the IMF said in its annual country report on India.

The IMF said larger than expected gains from the GST and further structural reforms could lead to significantly stronger growth, while a sustained period of continued low global energy prices would also be beneficial to India.

Noting that India's tax revenue-to-GDP ratio (at around 17 and a half per cent) remains considerably below than its emerging market peers, the IMF said the implementation of a robust GST should be a key priority given its growth-enhancing effects.

"The GST should have minimal exemptions, uniform cross-state rates, and as few tax rate tiers as possible," it said.

Key production inputs, such as energy and real estate, should be kept within the tax base to enable greater output gains and reduce the tax burden across sectors, the IMF said.

Efforts to improve tax administration should be stepped up as the scope for revenue gains is large.

According to the IMF report, Indian authorities were confident that the outstanding issues related to GST implementation could be settled promptly.

"The GST would provide for a significant improvement over the current indirect tax system. Tax reform priorities going forward include continuing the phased reduction of the corporate income tax rate from 30 to 25 per cent over four years, coupled with a simultaneous reduction in tax deductions," it said.

The GST replaces a plethora of cascading center, state, interstate and local taxes with a single, nationwide, value-added tax on goods and services.

IMF said the destination-based GST will create, for the first time, a single Indian market, and will greatly enhance India as an investment destination.

By subsuming most of the existing indirect taxes, such as excise, sales and services levies, the indirect tax structure of the country will become less complex and the cost of doing business will decline.

The Indian government expects to roll out GST by July 1 after it could not meet the April 1, 2016, target.

Courtesy: The Economic Times
22nd February, 2017

NEWS OF YOUR INTEREST

Go to Index Page

SETBACK FOR GST: NEED FOR E-PERMIT TO BE FLASHED AT INTER-STATE BORDERS

NEW DELHI: The revolution the proposed goods and services tax (GST) promised might not be all that rosy because it would be hobbled by the need for an e-permit to be flashed at inter-state borders as the states insisted the old analogue practises continue.

The states seem to have gotten their way and will continue with the old 'permit raj' system, undermining one the biggest gains of GST. Though the paper permit may become an e-permit, those transporting goods within or outside states will still have to queue up at border checkposts where their e-permits will be checked.

The centre resisted the move as its indirect tax administration moved away from the inspector raj era, but yielded to states' insistence on inclusion of this clause in the final GST law in order to build consensus and get the reform bill rolling.

State tax authorities wanted this provision to keep a tab on quantum of supply of goods and pushed for its inclusion. Experts fear this would not help in cutting long queues of trucks at check posts as also breed corruption.

GST is from July 1

The GST Council, the apex decision body for GST that has state finance ministers as members and union finance minister as chairman, will take up the GST Law at its next meeting in March.

"The central or a state government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding .`50,000 to carry with him such documents as may be prescribed in this behalf…," says the draft model GST law.

"Where any vehicle referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said vehicle to produce such documents for verification and the said person shall be liable to produce the documents."

States have such a provision in their value added tax laws where various forms are prescribed. This condition had dissuaded ecommerce players and they restricted delivery of goods exceeding.`5000 to a number of states.

Experts say any document checking at state borders does not go with the spirit of GST.

"The law provides for ample monitoring through the credit matching and compliance requirements under GST…. Any document checking at state borders is archaic and defeats the purpose of GST and the free market it purports to be," said Bipin Sapra, partner, EY

"An e-permit system, if considered under GST, would significantly dilute the fundamental principles of GST relating to seamless movement of goods across states. It would adversely affect businesses who are preparing for GST on the understanding that trade barriers erected by

states under the present VAT laws would be demolished under GST," said M.S. Mani, Senior Director, Deloitte Haskins & Sells LLP

The centre was against the provision as it goes against the spirit of ease of doing business and encourages inspector raj.

"One of the stated promises of GST was to reduce associated documentation and related hassles. E-permits for movement of goods is therefore a retrograde step in the short term," said Smita Roy, partner – Indirect Tax, BDO India, adding that it should be removed.

Courtesy: The Economic Times
23rd February, 2017

NEWS OF YOUR INTEREST

Go to Index Page

STATES AGREE TO ROLL OUT GST BY JULY: SHAKTIKANTA DAS

NEW DELHI: India's decade-long wait for a national sales tax that will create one of the world's biggest single markets could be almost over by July 1. As per economic affairs secretary Shaktikanta Das the Goods and Services Tax (GST) will be implemented by July 1 and not later as feared earlier on.

"GST implementation is a huge one and that is going to be implemented by July 1. Both central and state governments are working on this," Das said.

After the last GST meet, however, it was told that GST cannot be implemented by July 1. Many state governments earlier opposed various proposals under GST due to both economic and political reasons.

The GST will replace a plethora of cascading central, state, interstate and local taxes with a single, nationwide, value-added tax on goods and services.

Things to know about GST :

Q: What is the GST?

The GST will replace at least 17 state and federal levies, making the movement of goods cheaper and seamless across a market holding 1.3 billion consumers, about four times the U.S. population. It would be far simpler than the current system, where a good is taxed multiple times at different rates. The underlying principle is to tax goods at the point of consumption rather than production.

Q: What economic impact will it have?

GST can boost economic growth by as much as 2 percentage points, according to Finance Minister Arun Jaitley. Greater tax compliance has the potential to boost revenues for the government, helping narrow Asia's widest budget deficit and allowing more funds to be allocated to schools and highways.

Q: What is the tax rate?

The GST Council has finalised a four-tier GST tax structure of 5 per cent, 12 per cent, 18 per cent and 28 per cent, with lower rates for essential items and the highest for luxury and de-merits goods, including luxury cars, SUVs and tobacco products, that would also attract an additional cess. Moreover, with a view to keeping inflation under check, essential items including food, which presently constitute roughly half of the consumer inflation ..

Q: Why didn't India's founders implement a national sales tax?

The constitution laid out the method of taxation in 1950, soon after several so-called princely states -- territories ruled by a native monarch under the British Emperor -- agreed to join the

Dominion of India. Different levels of economic development and local sensitivities necessitated a two-tier system at the time.

Q: Are all goods and services covered under the GST?

Some state have been pushing to exempt chief revenue-generating products such as alcohol, petroleum and real estate. Tax on certain luxuries -- such as a flat-screen TV, for example -- may see a far higher rate than food staples.

Q: How will the GST affect companies?

Companies will have to overhaul their accounting systems, which may involve one-time investment costs. There may also be chaos in the short term as the government gets the computer software up and running. The tech "backbone" is at a "fairly advanced stage," Jaitley told NDTVBSE 0.94 % on Wednesday.

Q: Will the GST affect inflation?

Prepare for a short-term spike in prices. Citigroup Inc.'s economists say countries like Canada, Australia and New Zealand saw a one-time increase in inflation after GST implementation, which normalized in a year. Modi's advisers say the impact on India's consumer prices will be negligible if the GST rate is capped at 18 percent.

Q: What sectors will benefit?

Logistics companies stand to gain as it becomes easier to ferry goods across India. Other sectors largely depend on the fine print of the GST, including exemptions.

Courtesy:The Economic Times
28th February, 2017

NEWS OF YOUR INTEREST

Go to Index Page

GST FINAL DRAFT TO RETAIN CLAUSE ON SERVICES SECTOR

Instead of a single centralized registration system for paying service tax, service providers across India will have to obtain more than 30 separate registrations

New Delhi: The goods and services tax (GST) council is likely to retain a clause in the law that will require service providers to register in every state where they operate, despite recent representations from various Union ministries and telcos, banks, and insurance firms for a single registration system.

At present, service providers benefit from a single centralized registration system for paying service tax—a tax levied and collected by the Union government.

However, under the GST regime, even states will get the powers to collect tax on services and the service providers will have to register in every state where they have operations.

As per the provisions of draft GST laws that will be finalized in the 11th meeting of the GST council on 4, and 5 March, service providers operating across India will have to obtain more than 30 separate registrations. Companies have highlighted the procedural hassles of such a move but states, concerned about their revenue, are not willing to agree to a centralized registration.

"States have not agreed for a centralized registration system as they are worried this will lead to revenue losses because the tax will have to be apportioned between the various states," said a government official seeking anonymity.

In a letter addressed to the Prime Minister last week, even the association representing the central Indian revenue service officers had highlighted the negative impact of the provision on the ease of doing business pointing out that a company providing services across India will have to file almost 2,000 returns per year under GST.

"Service providers in the banking, insurance, logistics, IT (information technology) & IT-enabled services and aviation sectors are operating under a single centralised registration of service tax at present. That means, at present, they have to file three service tax returns in one year. In GST era, they will have to file 61 returns per state, per year, after taking registration in each state in which they have presence," the letter said.

Bishakha Bhattacharya, senior director at Nasscom, said the IT industry has been pushing for a single registration to minimize the impact on business operations.

"In the IT sector, clients are serviced at multiple locations under the same contract. Now, as per the provisions of the law, we may require to bifurcate billing based on place of supply rules. Export competitiveness will also be hit as overseas clients may be uncomfortable on presentation of multiple invoices for the same service," she said. "Even if the laws do not make a provision for single registration, we are hoping for some leeway subsequently," she added.

Courtesy: live Mint
28th February, 2017

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

GST COUNCIL TO FINALISE SUPPLEMENTARY LEGISLATIONS TOMORROW

NEW DELHI: The GST Council will meet tomorrow to finalise supplementary legislations headed for Parliament, which reconvenes next week, so that the new regime is rolled out from July 1.

The 11th meeting of the Council, which comprises the Union finance minister and state representatives, will discuss central GST (CGST), state GST (SGST), integrated GST (IGST) laws and finalise them.

The officers committee from states and the Centre met today to discuss views of the law ministry, officials said, adding that a view on the Union Territory GST (UTGST) may come in just in time for tomorrow's Council meeting.

The Council meeting is scheduled for two days -- March 4 and 5 -- but it may not stretch beyond tomorrow if all issues get resolved.

"Although the SGST will mirror the CGST Bill, the Council will read out all the provisions of the SGST Bill to clarify any doubts of states with regard to provisions," the official said.

The GST Council in its meeting last month had approved a law to compensate states for any loss of revenue from implementation of the new national sales tax. But legal language of half-a-dozen provisions of CGST, SGST, IGST held up their approval.

Parallely, the Council will get down to fixing rates of taxes for different goods and services by fitting them into the four approved slabs of 5, 12, 18 and 28 per cent.

After the CGST law is approved by Parliament, the SGST law will have to be cleared by respective state legislatures.

GST, which will replace a plethora of central and state taxes, is a consumption-based tax levied on sale, manufacturing and consumption on goods and services at the national level.

Under it, CGST will be levied by the Centre, SGST by states and IGST on inter-state supply of goods and services.

Different indirect taxes like excise duty, sales tax, CST and service tax are to be merged with CGST while SGST will subsume state sales tax, VAT, luxury and entertainment levies.

The second leg of the Budget session of Parliament convenes on March 9.

Courtesy: The Economic Times
3rd March, 2017