SGA
LAW OFFICES

Issue 6
16th March 2017

"Taxation is just a sophisticated way of demanding money with menaces."

— Terry Pratchett

NOMINAL INDEX

NOTIFICATION

HARYANA

NEWS OF YOUR INTEREST

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News From Court Rooms

GUJARAT HC : Composite penalty can be levied under Excise Act and Rules.

Central Excise : Where AA had levied upon assessee composite penalty both under section 11AC of Central Excise Act, 1944 and under rule 173Q of Central Excise Rules, 1944, Tribunal was not justified in setting aside it on ground that composite levy of penalty was not permissible. (***Shanoo Fashion P Ltd. – February 8, 2017***).

CESTAT, MUMBAI : Service Tax : When the appellants sold the cars and recovered the amount including the dealers margin, the intention was to sell the car but not to provide free after sales service. Free sale service is only to promote sale. No service tax can be levied on impugned amount on which sales tax has been already paid. (***Jaika Motors Ltd. – February 14, 2017***).

CESTAT, CHANDIGARH : CENVAT credit : Non maintenance of record of receipt of inputs by the dealer cannot be the ground for denial of CENVAT credit as there is one to one correlation with invoice issued by manufacture and the dealer. (***Swaraj Foundry Division – February 8, 2017***).

CESTAT, MUMBAI : Central Excise : The sale to or through an interconnected undertaking cannot be treated as sales made through related persons. Therefore the entire foundation of allegation stands demolished. The fact being a common Director do not establish the mutuality of interest. Revenue's appeal dismissed. (***APR Packaging Ltd. – February 27, 2017***).

SC : Rajasthan VAT : Where HC following judgment of Rajasthan HC upheld order of Tax Board to effect that battery plate and battery material was part of battery and same rate of tax should be applied as that of battery, SLP filed against order of HC was liable to be dismissed, but question of law deserved to be kept open. (***Everlast Battery Mfg. Co. – February 6, 2017***).

CESTAT, HYDERABAD: Service Tax: Appellant does not have any valid contention to establish that there was sufficient ground for non-payment of Service Tax. The ignorance of law cannot be considered as an excuse for non- payment of tax. (***Madhu Steels - 1st November, 2016***)

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 83, 254, 340 & 341 OF 2013

MODERN RICE MILLS
Vs
STATE OF PUNJAB

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

24th January, 2017

HF ▶ Revenue

Fee under Punjab Infrastructure (Development and Regulation) Act, 2002 can be recovered and penalty and interest can be imposed even in absence of any independent mechanism under the Act.

PUNJAB INFRASTRUCTURE (DEVELOPMENT AND REGULATION) ACT, 2002—COLLECTION OF CESS-- ABSENCE OF SEPARATE MECHANISM UNDER THE ACT—COLLECTION POSSIBLE ON THE BASIS OF ADOPTION OF PROVISIONS OF PUNJAB VAT ACT—NECESSARY REQUIREMENTS CONTAINED IN THE PIDR ACT AND IN THE FORMS PRESCRIBED UNDER PVAT ACT—ASSESSMENT ORDER PASSED TO RECOVER INFRASTRUCTURE FEES VALID—APPEAL DISMISSED. *SECTION 25(3) OF PIDR ACT, 2002*

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Facts

Appellants in the present case were assessed to fee payable under Punjab Infrastructure (Development and Regulation) Act, 2002 while framing Assessment under Section 25(3) of said Act. In addition interest U/s 25(3) of PIDR Act r/w Sec. 32(1) of Punjab VAT Act and penalty U/s 25(3) of PIDR Act r/w Sec.53 was also imposed.

In the appeal before Tribunal it was pleaded that no mechanism has been provided under PIDR Act as no rules have been framed for filing of returns and payment of tax. In the absence of any rules the levy cannot be enforced and the question of imposition of interest and penalty is totally unjustified. It was also pleaded that imposition of interest and penalty by invoking provisions of Punjab VAT Act is also wrong as there is no provisions under PIDR Act for this purpose Reliance was placed upon Supreme Court judgment in the case of Khemka and Co. vs. State of Maharashtra 35 STC 571 (SC). Repelling the said contention the Tribunal:

Held:

Sec.25 of PIDR Act specifically incorporates the use of machinery under Punjab VAT Act for implementing the provisions of PIDR Act. The provisions relating to returns, provisional assessment, assessment, reassessment, rectification, review and other provisions of Punjab VAT Act are applicable to PIDR Act also. Similarly the charging of interest and imposition of penalty as prescribed under Punjab VAT Act has also been specifically incorporated U/S 25(3) of PIDR Act. It cannot be therefore claimed that there is no machinery under the PIDR Act for imposition of cess, interest and penalty and in absence of rules the liability cannot be enforced.

Similarly the plea regarding non prescription of interest and penalty under PIDR Act is also misplaced as the ratio of Khemka and Co. (Supra) does not apply in the facts of present case since in the case in hand two State Acts are involved whereas in the case of Khemka and Co. (supra) a Central Act and Local Act was involved. Moreover authorities under Punjab VAT Act are duly empowered to impose penalty and interest in the similar manner as if the Cess is payable under the Punjab VAT Act.

Finding no merits in the appeals the same are dismissed.

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.

******

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

1. This order of mine shall dispose of five connected appeal Nos. 83, 254, 340, 341 of 2013 and 341 of 2015 against the order passed by the First Appellate Authority, dismissing the appeals against the orders passed by the Assessing Authority creating the additional demands. Since all the five appeals involve the common question of law, therefore, all are decided together.

2. The para wise facts are detailed as under:-

Appeal No.83 of 2013

3. The appellant/assessee (herein referred as the assessee) is registered under the Punjab Value Added Tax Act, 2005 as well as the Central Sales Tax Act, 1956 and running the business of Rice Sheller. The appellant filed the appeal for the assessment year 2008-09 but the same, on scrutiny, was found to be not correct in as much as the cess/tax under the Punjab Infrastructure (Development & Regulation) Act 2002 (For short PIDR Act) was not deposited. The notice U/s 29 (2) 32, 53 and 60 of the Punjab Value Added Tax Act read with section 25 (3) of PIDR Act 2002 has been given to the appellant, thereafter, on scrutiny of the assessment, the Designated Officer observed that the assessee had failed to deposit the cess/tax on purchase under Punjab Infrastructure Development &" Regulation) Act, 2002. He has also not made the reversal of the interstate sale and has not deposited the requisite tax of RDF and market fee on the purchase tax. Therefore, he created additional demand of Rs.9,29,101/- under the Punjab Value Added Tax Act, 2005, Rs.7,061/- under the Central Sale Tax Act and a sum of Rs,

17,04,826/- as tax, penalty and interest on account of non payment of the Punjab infrastructure development Fund. Since only this amount is disputed therefore, the details on this count is reproduced as under:-

PIDF applicable on net purchase	Tax assessed
25830700 T.T.O. @ 3%	774921
Paid	Nil
Due	774921
Penalty U/s 53 and interest U/s 32 @ 2.5% for 48 months	1704826

4. Issue TDN and challan of Rs.1704826 and copy of assessment order free of cost.

Announced No.95
Date: 27.9.2012

Sd/-
Satish Kumar
Excise and Taxation Officer-
Cum-Designated Officer,
Rajpura, District Patiala.

5. The appeal against the said order was dismissed on 18.12.2012.

Appeal No.254 of 2013

6. The case relates to the assessment year 2009-10. The assessee filed the annual statement for the year 2009-10 on time in Form VAT-20 which on scrutiny was found to be incorrect. Therefore, a notice U/s 29(2) 32, 53 and 60 of the Punjab Value Added Tax Act was given to the appellant/assessee. On the scrutiny of the documents, the Assessing Officer while observing that the appellant had not paid the tax under the Punjab Infrastructure (Development & Regulation) Act, 2002 as well as finding other defects in the assessment, created the following demand:-

1.	Under the Punjab Value Added Tax Act	Rs.5,000/- and Rs.92,216/-
2.	Under the Central Sales Tax Act	-Nil-
3.	Under the Punjab Infrastructure (Development & Regulation) Act	Rs.23,05,366/-

7. Since no dispute has been raised qua the other demands created under the Punjab Value Added Tax Act as well as Central Sales Tax Act, therefore, the details of those demands created need not be discussed. The relevant extract of the order creating additional demand is reproduced as under:-

Present:- Sh. Davinder Malik Partner of the firm. He has produced Account Books i.e. Cash Book, ledger, Sale and Purchase Voucher. The assessee failed to deposit the Cess/Tax on time, therefore, the Assessment of Cess is framed as under:-

Cess tax on Rs.42691959 @3%	Rs.1280759
Paid	Nil
Due	1280759
Penalty U/s S3 and interest U/s 32 @ 2.50% of 32 months	Rs.1024607

Total Cess Due	

Announced
Date: 18.05.2012

Sd/-
Satish Kumar
Excise and Taxation Officer-
Cum-Designated Officer,
Rajpura, District Patiala.

8. The appeal against the said order was dismissed on 22.2.2013.

Appeal No. 340 of 2013

9. The appellant assesses is engaged in the business of manufacturing of FMCG (Fast Moving Consumer Goods) through a chain of retail departmental stores. He is registered under the Punjab Value Added Tax Act. The appellant filed an annual statement for the assessment year 2007-08. On scrutiny, the return was not found to be containing correct particulars in as much the I.D. fee under the Punjab Infrastructure (Development and Regulation) Act, 2002 was not deposited though it was levied w.e.f. 1.4.2005. The fee was to be deposited on purchase of the goods specified in Schedule- III within the State of Punjab @ 1% upto 31.3.2008 and 2% w.e.f. 1.4.2007 to 31.3.2008 and @ 3% w.e.f. 24.9.2008 onwards. Accordingly, notice U/s 29 (2), 32, 53, & 56 under the Punjab Value Added Tax Act, 2005 was given. Ultimately after holding due enquiry, the assessment for the year 2007-08 was framed on 9.9.2010. The operative part of the order creating demand is reproduced as under:-

Assessment

10. (U/s 25(3) of the Punjab Infrastructure (Development and Regulation) Act, 2002 (as amended from time to time), Read with sections 29 (2), 32 and 53/56 of PVAT Act, 2005.

A. year	Purchase Value of the Paddy Purchased	I.D. Fee liability @ 3% of the value of paddy purchased	Interest u/s 25 (3) of PIDRA Act, 2002 read with Section 32 (1) of PVAT Act, @0.5% p.m. from 01.01.2008 till Sep, 2010	Penalty u/s 25 (3) of PIDRA Act, 2002 read with Sec-53 of PVAT Act, @ 2% p.m. from 01.01.2008 till Sep. 2010	Total I.D, Fee liability including interest & penalty
2007-08	65,35,30,056	65,35,301	10,78,325	43,13,300	1,19,26,926

11. Issue TDN and challan form to the dealer for Rs.1,19,26,926/- under the rules.

A copy of the assessment order be issued to the dealer under the rules.

Announced
Date: 09.09.2010

Sd/-
(S.K. Garg)
Excise and Taxation Officer-
Cum-Assessing Authority,
District S.A.S.Nagar (Mohali)"

12. The appeal filed by the appellant was dismissed on 7.8,2012 by the First Appellate Authority.

Appeal No. 341 of 2013

13. The case relates to the assessment year 2008-09. The assessee is engaged in the business of purchase of paddy and sale of rice manufactured therefrom and also in the trading of FMCG (Fast Moving Consumer Goods) like Confectionery goods, karyana goods, beverages, food products, juices and cosmetics etc. through a chain of retail departmental stores, known by the name of "Six-Ten Retail Stores". The assessee had filed the annual statement for the year 2008-09 without depositing the I.D. Fee liability (alongwith interest and penalty) as provided under the Punjab Infrastructure (Development & Regulation) Act, 2002, therefore, the assessee was proceeded against U/s 25 (3) of the Punjab Infrastructure (Development & Regulation) Act, 2002 on the issue of I.D. Fee payable on the purchase of paddy. During the proceedings, the vires of the PIDR Act was challenged and the Hon'ble Punjab and Haryana High Court had upheld the varies of the Act. Accordingly, vide order dated 9.9.2010 the Assessing Officer while creating the demand to the tune of Rs.11,14,86,719/- observed as under:-

> *"It may be mentioned that the Government of Punjab by amending the Punjab Infrastructure (Development and Regulation) Act, 2002, levied an infrastructure fees w.e.f. 01.04.2005, on the sale or purchase of the goods schedule-III, within the State of Punjab @ 1% up t0 31.03.2008 and @2% w.e.f. 01.04.2008 to 23.09.2008 and 3% w.e.f. 24.09.2008 onwards. Since it has purchased paddy from within the State of Punjab after 24.09.2008, therefore, the ID fee leviable is @ 3%."*

14. Accordingly the assessment under the provisions of section 25 (3) of the Punjab Infrastructure Development and Regulation Act, 2002 (as amended from time to time) read with section 29 (2), 32 and 53/56 of PVAT Act, 2005 for the financial year 2008-09, is framed as below, holding at the dealer has failed to discharge its obligation to pay the ID Fee liability on the purchase of paddy which falls at Serial No.l in the schedule III (Articles subject levy of Fee under the Act) of the PIDRA):

Assessment

15. (u/s 25(3) of the Punjab Infrastructure (Development and Regulation) Act, 2002 (as amended from time to time)

16. Read with sections 29 (2), 32 and 53/56 of PVAT Act, 2005.

A. year	Purchase Value of the Paddy Purchased	I.D. Fee liability @ 3% of the value of paddy purchased	Interest u/s 25 (3) of PIDRA Act, 2002 read with Section 32 (1) of PVAT Act, @ 0.5% p.m. from 01.01.2009 till Sep, 2010	Penalty u/s 25 (3) of PIDRA Act, 2002 read with Sec. 53 of PVAT Act, @ 2% p.m. from 01.01.2009 till Sep. 2010	Total I.D, Fee. liability including interest & penalty
2008-09	2436868127	73106044	7676135	30704540	111486719

17. Issue TDN and challan form to the dealer for Rs.l1,14,86,719/- under the rules.

A copy of the A.O. be issued to the dealer under the rules.

Announced No.
Date:9.9.2010

Sd/-
(S.K. Garg)
Excise and Taxation Officer
Cum-Assessing Authority,
District S.A.S.Nagar (Mohali)

18. The appeal filed by the appellant against the said order was dismissed on 7.8.2012 by the First Appellate Authority.

Appeal No. 341 of 2015

19. The case relates to the assessment year 2009-10. The assessee is registered under the Punjab Value Added Tax Act, 2005 and Central Sales Tax Act, 1956. He has been carrying on the business of Cotton and General Mills, he filed the annual statement in Form VAT-20 for the assessment year 2009-10, On scrutiny, it was noticed that the appellant had not filed the correct statement for the following reasons:-

1. The assessee had paid short purchase tax to the extent of Rs.l,10,883/-.
2. No PIDB cess paid on the purchase made U/s 19 of the Act.
3. The dealer is not entitled to TFC on closing stock which is lying pending at the end of the year i.e. 31.3.2010 out of the goods purchased U/s 19 of the Act.
4. The assessee had not accounted for the assets sold Le, truck for Rs. 1,70,000/- in gross turn over and no tax has been paid.
5. The purchase made within the State at different rate of tax i.e. @4%, 12.5% needs verification.

20. When confronted with the facts and the aforesaid circumstances, the assessee replied that the duties, cess i.e. market fees, P.LD.B. cess etc are not accounted for in the gross sales when the purchase tax was paid and admitted that tax was short deposited. As regards, the sale of truck, it was submitted that a truck bearing No. PB-10U-0313 was sold but no tax is leviable in view of the judgment delivered in case of Panacea Biotech Ltd. Vs Commissioner Trade Tax W.P. (C) No. 4717/2011 & C.M. No.9555/2011 dated December 14, 2012 and it was also pleaded that the assesses is not in the business of sale of truck but the same was used for the business activities. As regards, the payment of purchase tax, it was submitted that Section 19(4) of the Act, provides that the purchase tax paid by the taxable person shall not be admissible as ITC unless the goods are sold within the State or are used in the manufacture of the goods etc. As regards, the closing stock of cotton weighing 681.14 Qt is over which ITC of Rs. 92754 was wrongly claimed, it was explained that it was not binding to claim ITC on the closing the stock of Schedule TT goods. Regarding PIDB cess, the Counsel admitted that no cess has been deposited and the same was not required to be deposited.

21. After close scrutiny of the documents, the Designated Officer observed that the pleas raised by the appellant were not correct and vide order dated 29.4.2013 created additional demand to the tune of Rs,4,08,973/- including penalty and interest under the Punjab Value Added Tax Act and another demand of Rs.24,67,208/- was created under the Punjab infrastructure (Development and Regulation) Act, 2002.

22. The appeal filed by the appellant was dismissed by the First Appellate Authority on 24.9.2014, Actually, the appeal was partly accepted (wrongly mentioned as dismissed) with the modification that the demand was reduced to Rs.10,28,004/- with the following observations:-

"I have considered the whole case, it is dear that the DO had wrongly charged Cess @3% instead of 2% as per Notification No.7/1/11/2001-5FE4/59 dated 26,9.2008 applicable to 'Kapas-Narma' purchased by the appellant The appellant had not paid any Cess for the financial Year 2009-10. So, impugned order is modified/amended as under:-

Value of Kapas/Narma liable for Cess	*Rs. 8,22,40,297/-*
Cess assessed @2%	*Rs. 16,44,806/-*
Cess paid as prior deposit of 25%	*Rs. 6,16,802/-*
Cess due	*Rs. 10,28,004/-*

So, appeal is dismissed by partly modifying the impugned order and appellant is directed to deposit balance amount of Cess worth Rs.10,28,004/-.

Announced
Dated 24.9.2014

Sd/-
(G.S.Gill)
Deputy Excise and Taxation Commissioner (A),
Patiala Division, Patiala.

22. Still aggrieved, the appellants have filed these second appeals.

23. I have heard the Counsel for the parties and perused the record of the case, at the very outset counsel for the parties while conceding that all the five cases involve the only common question of law that whether the recovery of interest and penalty under the Punjab Infrastructure (Development & Regulation) Act 2002 was legal and valid. It is not in dispute that the question with regard to the chargeability of cess under the (Development & Regulation) Act 2002 has been settled against the appellants upto the Hon'ble High Court, there is no denying a fact that the issue with regard to levy of cess under the Punjab Infrastructure Development Ordinance/The Punjab Infrastructure Development Act 1998 Act (for short the 1998 act) and the Punjab Infrastructure Development Cess (Collection) Rules 1998 (for short The cess (Collection) Rules)' and fee under the Punjab Infrastructure (Development & Collection) Act, 2002 (for short1 the 2002 Act) was challenged before the Hon'ble High Court of Punjab and Haryana, The Division Bench of the Punjab and Haryana High Court vide their judgment dated 22.6.2009 had upheld the levy of cess/tax as imposed by the State Govt, under the Punjab Infrastructure Development & Regulation) Act, 1998 as well as 2002 so also the rules framed under the 1998 Act with the following observations:-

*"In the instant case, the Government of Punjab (Finance Department) was given ample powers under Section 11 of the 1998 Act to pass an order and make provisions for any adaptation or modification of any provision of the Act for the purpose of removing difficulty in- realizing the cess, thus, the Government was competent to issue the clarificatory notification dated 8.4*1999 when the word purchase had been inadvertently omitted in the 1998 Ordinance/Act as well as in the Rules as clarified in the affidavits filed by the State. Besides, in the affidavits filed on behalf of the PIDB and the State, the contention that originally there were 16 items in the schedule attached to the Ordinance has been denied. Moreover, the objects and reasons of the Ordinance as well as of the Acts clearly provide for utilization of funds only for the development of infrastructure essentially related the agriculture sector Thus, if the articles related to this sector have been selected for imposition of fee by adding purchase as aforesaid under the clarificatory modification, it cannot be said that the amendment in the Schedule suffers from dearth of legislative sanction. As such, this contention on*

behalf of the petitioners also does not find favour with the Court and is hence rejected."

24. In the present case, the counsel for the appellant have raised the issue to the effect that since no rules have been constructed regarding the deposit of cess, in such circumstances, in the absence of any rules, even if there is any liability to pay cess relating to returns and payment of tax the charging provisions relating to PIDR Act, no interest and penalty could be imposed. In this regard, he has placed reliance on the judgment of the Punjab and Haryana High Court in case of Laqshy Media Pvt. Ltd. Vs. State of Punjab and others (C.W.P. No.4215 of 2016 decided on 23.8.2016) wherein, It was observed that unless there are rules regarding filing of the returns the leviable, if any, cannot be assessed or recovered. It has been further urged that in the present case also in the absence of any Rules, Challan Forms prescribed under the Punjab Value Added Tax Act can't be used to deposit the cess. The PIDR Act payments cannot be got deposited in the Treasury. No challan Form has been prescribed for PIDR payments. It has also not been prescribed anywhere, where the payment should be made and in what manner. No notification has been issued as to where such money can be deposited. It is also not notified in which head the amount of cess/tax is to be deposited, if any, or in whose name(s) the cheque, if any, is to be issued, Therefore, the appellant is unable to comply with the orders with regard to deposit of cess tax, penalty or interest.

25. To the contrary, the State counsel has submitted that since validity of imposition of cess under PIDR Act has already be decided against the appellant. Now he is estopped to say that the cess is invalid for want to Rules or mode of deposit. This point ought to have been raised at the time when vires of section 25 (3) has been challenged. Section 25 (3) of the Act is clear with regard to deposit of tax, penalty and interest. As a matter of fact earlier, PIDR Act, 2002, there was another act covering such cess in the name of Punjab Infrastructure Development Act 1998 and the rules prevailing at that time were known as the Punjab Infrastructure Development (Cess) Collection Rules 1998 framed thereunder.

26. Heard, the issue with regard to the recovery of cess, penalty and interest has been set at rest by the pronouncement of the judgment delivered in case of Food Corporation of India Vs State of Punjab and another decided on 22.6.2009 wherein it was observed as under:-

"As regards the contention relating to recovery of cess by using the machinery under the PGST Act, in our view, this point would-be covered by the decision of a Constitution Bench of Hon'ble the Apex Court in Khyebari Tea Co, Ltd, case (supra). Para 23 thereof on reproduction reads as:-

"23. This question has been frequently considered by this Court and the power of the legislature to create appropriate machinery to recover a tax, or to prevent the evasion of payment of tax has been consistently recognized. In R.C. Tall vs. Union of India, (1962) Sup3 SCR 436, (AIR 1962 SC 1281), while dealing with the question about the power of legislature to decide at what stage and from whom excise duty should be recovered, this Court held that subject always to the legislative competence of the taxing authority, the tax can be levied at a convenient stage so long as the character of the impost is not lost. The method of collection does not affect the essence of the duty but only relate to the machinery of collection for administrative convenience. While enunciating this principle this court, however, took the precaution of adding that "Whether in a particular case the tax ceases to be in essence as excise duty and the rational collection between the duty and the person on whom it is imposed ceased to exist, is to be decided on a fair construction of the provision of the 1998 and 2002 Acts; the Cess

(Collection) Rules and the clarificatory notification dated 8.4.1998. Hence, this question also stands answered in negative."

27. In any case, the Punjab Infrastructure (Development and Regulation) Act, 2002 amended upto date clarifies the machinery to be used for the purpose of collection of tax, penalty and interest. Section 25 (1) of the Act reads as under:-

"25. (1) With effect from the date coming into force of this Act, and subject to the provisions of this chapter every person shall be liable to pay a fee levied under this Act on the sale or purchase of the goods specified in schedule III, on the value of consumption of electricity being supplied by the Punjab State Power Corporation Limited and purchase of immovable properties, one hundred rupees of the value of goods, electricity consumed and purchase of immovable property as the State Government may, by notification, direct.

(2) The fee shall be payable at the stage, mentioned in respect of goods in Schedule- III.

(3) Subject to the provisions of this Act and the rules made thereunder, the authorities for the time being empowered to assess, reassess, collect and enforce payment of tax under the Punjab Value Added Tax Act, 2005 shall, on behalf of the Punjab Infrastructure Development Board, assess, reassess, collect and enforce payment of fee, including any interest or penalty, payable by a person under this Act, as if such fee or penalty or interest payable by such a person ,is a tax or penalty or interest, payable under the Punjab Value Added Tax Act. 2005. and for this purpose, the aforesaid authorities may exercise all or any of the powers, exercisable by them under the Punjab Value Added Tax Act, 2005 and the rules framed there under and the provisions of the Punjab Value Added Tax Act, 2005 relating to the returns, provisional assessment, assessment, reassessment, rectification, review, advance payment of tax, registration of transferee of any business, imposition of the tax liability, carrying on the business on the transfer of successor to such business, transfer of any liability of any firm or Hindu Undivided Family to pay tax in the event of dissolutions of such firm or partition of such family, recovery of tax from third parties, appeals, reviews revisions, rectifications, references, refunds, rebates, interest or penalty, charging or payment of interest, compounding of offences and treatment of documents, furnished by a person as confidential, shall apply accordingly."

28. The unlike section 9 (2) of the Central Sales Tax Act, 1956, the State Act has specifically authorized the authorities under the Punjab Value Added Tax Act that the authorities as prescribed under the State Act would be competent to assess, reassess, collect and effect recovery of tax penalty and interest under the PIDR Act as if they were doing the same under the Punjab VAT Act. Regarding the procedure to be adopted for finalizing the recovery of cess/tax under the PIDR Act, it has been specifically mentioned in the section 25 (3) of the PIDR Act that the authorities under the Punjab Value Added Tax Act, 2005 may exercise all or any of the powers exercisable by them under the Punjab Value Added Tax Act, 2005 and the rules made therunder. It is also recorded that the provisions of Punjab Value Added Tax Act relating to the returns, provisional assessment, assessment, reassessment, rectification, review, advance payment of tax, registration of transferee of any business, imposition of the tax liability, carrying on the business on the transfer of successor to such business, transfer of any liability of any firm or Hindu Undivided Family to pay tax, would apply accordingly.

29. Section 25 (3) of the Act, 2002 further provides that the provisions of the Punjab Value Added Tax Act, 2005 with regard to appeals reviews revisions, rectifications, references, refunds, rebates, interest or penalty, charging or payment of interest compounding of offences and treatment of documents, furnished by a person as confidential shall also apply accordingly.

30. In the light of the fact that there were no specific provisions made in the Punjab Infrastructure Development and Regulation Act, 2002 for recovery of cess/tax and the Act only provided for penal provisions which made a defaulter punishable for non payment of tax, the legislature amended Section 25 of the Act in the year 2005. At that time, the Punjab VAT Act was inforce. As per amended Section 25 (3) of the Act, the authorities under the Punjab Value Added Tax Act were authorized to follow the procedure as laid down under the Punjab VAT Act for assessing, reassessing or recovery the tax penalty and interest and the Rules as framed under the Punjab Value Added Tax Act were made applicable for making such assessments. Consequently, the penal provisions made under the PIDR Act by way of 26 were deleted. It would also be mentioned here that since the Division Bench of the High Court has already held the validity of the cess/tax, then the appellant in the light of the section 25 of the PIDR Act, is estopped to challenge the recovery of cess, tax, penalty and interest.

31. As regards, the argument that no notice for penalty and interest has been given by the respondents before passing the orders of penalty, it may be noticed that on perusal of the file it transpires that the department had issued necessary notices to the appellant before framing the order of penalty and interest.

32. As regards, the contention that no stage has been prescribed for payment of cess, I would like to refer to sub section (2) of Section 25 of the PIDR Act which states that the fee shall be payable at the stage mentioned in respect of goods in schedule-III. Regarding the mode of deposit of cess penalty and interest, I would refer to sub-section 5 and 6 of Section 25 of the PIDR Act which reads as under:-

(5) The fee collected under sub-section (1), shall be deposited by the authorities, specified in sub-section (3) and sub-section (4) in the Development fund within a period of one week from the date of its collection.

(6) The person shall deposit the amount of fee due from him either in cash or by cheque in a specified bank account.

33. As regards, the column with regard to mentioning the amount of cess in the annual statement to be furnished by the appellant, I have gone through the form VAT-20 and it contains a column with regard to any other payments where the amount of cess could be mentioned, the forms also prescribe the name of the bank where the amount is to be deposited. Thus, the argument to the effect that there is no Rule and procedure for depositing cess stands repelled.

34. While arguing on the competence of the Assessing Authority to impose penalty, the counsel has challenged the competence of the Assessing Officer to impose penalty on the following grounds:-

(a) Section 25 of the PIDR Act are only procedural provisions and the absence provisions regarding penalty and interest under this Act, the authorities under the Punjab Value Added Tax Act can't invoke the provisions of that Act to impose penalty under the PIDR Act. The language of Section 25 (3) of the PIDR Act is similar to section 9 (2) of the Central Sales Tax Act, 1956.

(b) There is no substantive provision for penalty in the PIDR Act for providing penalty on non payment of cess/tax.

(c) It is not provided by the PIDR Act that the substantive provisions of the Punjab Value Added Tax Act will be applicable to PIDRA assessment. This issue was subject matter of discussion before the Apex Court in the case of Khemka & Co. Vs. State of Maharashtra reported in (1975) 35 STC 571 5C, wherein the Apex Court held that the provisions of Section 9 (2) of the Central Sales tax cannot be invoked to enforce substance provisions of General Sales Tax Law of the State. He has further submitted that this judgment was followed in case of India Carbon Ltd. Vs, State of Assam 106 STC 460 (SC). White placing much stress on the issue the counsel has reiterated that in the absence of any provision of penalty and interest in the PIDR Act, the machinery as provided under the Punjab Value Added Tax Act could not be pressed into service for imposing penalty under the PIDR Act.

35. To the contrary, the state counsel has countered the contention tooth and nail while arguing that in Khemka and Co. (S) (Supra) judgment as referred to above is not applicable to the facts of the present case. The said judgment relates to the procedural powers to be adopted by the authorities under the CST Act and the authorities under the Central Sales Tax Act could not exercise the powers to follow procedure as prescribed under the general tax law of that State. In the said judgment, the Apex Court laid down much stress upon the words and for this purpose "the authority may exercise all or any powers they have under the General Sales Tax Law of the State." By interpreting these words, the Apex Court observed that the provisions in the State Act for imposing penalty for non payment of income tax within the prescribed time are not attracted to impose penalty upon the dealers under the Central Sales Tax Act in respect of tax and penalty payable under the General Sales Tax Act. Meaning thereby, the Central Government wanted to adopt the procedure as prescribed under the State Act with regard to the imposition of penalty by exercising the powers U/s 9 (2) of the Central Act to which the Apex Court did not observe in favour of the State.

36. The Khemka's judgment is not applicable to the facts of present case for the following reasons:-

(a) In the present case two State Acts are involved one is Punjab VAT Act, 2005 and second is Punjab Infrastructure Development Regulation Act, 2002.

(b) Section 25(3) was introduced in the Act in 2005, in order to overcome to the difficulty with regard to non framing of Rules under the PIDR Act.

(c) Since both the Acts related to the procedure and recovery regarding imposition of tax, penalty and interest, therefore, with a view to adopt the procedure and the substantive provisions relating to the Punjab Value Added Tax Act. Section 25 (3) was introduced in the PIDR Act by way of amendment in 2005.

(d) It was specifically provided in the Act that the authorities under the Punjab Value Added Tax Act would be authorized on behalf of the Punjab Infrastructure Development Board to assess, reassess, collect and enforce payment of tax, penalty and interest under the Punjab Value Added Tax Act, 2005 and they on behalf of the Punjab Infrastructure Development Board, assess, reassess, collect and enforce payment of tax, penalty and interest by following the procedure as laid down under the Punjab Value Added Tax Act, 2005.

(e) *Section 25 (3) of the Act further provided that all the substantive provisions regarding assessment, reassessment, rectification, review, advance payment of tax, registration of transferee of any business, imposition of the tax, penalty and interest would be applicable to the proceedings under the PIDR Act. In other words all the substantive provisions relating to the recovery of penalty, tax and interest were adopted and the same were to be exercised by the authorities (under the Punjab Value Added Tax Act, 2005). It may be mentioned here that in the light of the adoption of all the provisions relating to the tax, penalty and interest of the Punjab Value Added Tax Act, the provisions of penalty U/s 26 PIDR Act were deleted.*

37. As such I am of the considered opinion that the judgment delivered by the Apex Court in Khemka case (Supra) is not applicable to the facts of the present case.

38. No other point has been pressed and no further argument has been raised.

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

40. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 101 OF 2013

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R.G. PLASTICS AND CHEMICALS
Vs
STATE OF PUNJAB

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

20th February, 2017

HF ▶ Revenue

Penalty imposed u/s 51 for adopting escape route upheld on the basis of admission by driver and patently wrong story set up by appellant.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – ESCAPE ROUTE -GOODS IN TRANSIT APPREHENDED AT BHAKRA BRIDGE, SAMANA– DETENTION ON BASIS OF NON PRODUCTION OF DOCUMENTS – PENALTY IMPOSED FOR ADOPTING ESCAPE ROUTE AND NON REPORTING AT ICC AS PER DRIVER'S ADMISSION- APPEAL BEFORE TRIBUNAL CONTENDING IT TO BE INTRASTATE TRANSACTION – HELD: ADMISSION BY DRIVER REGARDING ESCAPE ROUTE MADE AFTER TWO DAYS OF DETENTION COULD NOT BE RESULT OF COERCION – ESCAPE ROUTE TAKEN BY DRIVER AND DOCUMENTS HANDED OVER IN PUNJAB ADMITTEDLY - CONTENTION OF APPELLANT THAT VEHICLE WAS SENT FOR FUELING WHEN APPREHENDED NEAR BHAKRA BRIDGE FOUND INCORRECT AS PER SITE PLAN – APPELLANT'S INVOLVEMENT IN EVASION OF TAX IN OTHER CASES TAKEN INTO ACCOUNT – ATTEMPT TO EVADE TAX ESTABLISHED - APPEAL DISMISSED – *S. 51 OF PVAT ACT, 2005*

Facts

The goods were in transit and were apprehended near Bhakra Bridge, Samana. As the driver could not produce any documents, the goods were detained. The driver admitted that he had adopted escape route without generating goods at ICC. Penalty was imposed u/s 51 of the Act. An appeal is filed before Tribunal contending that the transaction was intrastate and that the driver had documents in his possession. Also, it is alleged that the vehicle was apprehended when it had gone for fuelling at nearby petrol pump.

Held:

On perusal of site plan, it is evident that the vehicle was apprehended on Bhakra Bridge while coming from escape route as the factory premises and petrol pump are very near and there would be no occasion for them to go to Bhakra Bridge as it is nowhere in between the two. The story set up by appellant shows his attempt to evade tax.

Admission by driver after two days of detention regarding escape route cannot be said to be result of pressure or coercion. It was admitted that he avoided ICC to avoid Punjab tax and

Entry tax. The documents were given to them in Punjab to convert it in to an intrastate transaction. The record establishes that the goods were brought from Haryana into Punjab.

The appellant has earlier been held guilty of evasion on four other cases. The appellant has thus made an attempt to evade tax by bringing goods without documents and without paying entry tax. The appeal is dismissed.

Present: Mr. K.L.Goyal, Sr. Advocate alongwith
Mr. Rohit Gupta, Advocate Counsel for the appellant.
Mr. B.S. Chahal, Deputy Advocate General for the State.

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

1. The Assistant Excise and Taxation Commissioner-cum-Designated Officer, Mobile Wing, Patiala vide his order dated 22.7.2011 imposed a penalty to the tune of Rs.2,20,500/- U/s 51 (7) (c) of the Punjab Value Added Tax Act, 2005, on account of bringing the goods from the State of Haryana to the State of Punjab without documents. The appeal filed by the appellant was dismissed on 26.11.2012.

2. The facts in brief are that on 13.7.2011, the officer of Mobile Wing, Patiala apprehended a vehicle bearing No.PB-11 (AT)-8617 loaded with plastic powder near Bhakhra Bridge, Samana. The driver failed to produce any documents in support of the transaction. He also came through an escape route without generating the information with regard to the goods at nearest ICC. The Detaining Officer recorded the statement of Sh. Rakesh Kumar S/o Sh. Hukam Chand, driver of truck No.PB-11 (AT)-8617 and Babu S/o Darshan Singh, driver of the appellant firm. Both of them admitted that they had brought the goods from Cheeka to Samana without generating the information at the ICC Ramnagar and they were not in possession of any documents in support of the transaction. Sh. Rakesh Kumar even appeared on 15.7.2011 and admitted his fault at that time also. Consequently, the Detaining Officer forwarded the case to the Designated Officer who also issued notice to the owner of the goods. After thorough enquiry, the Designated Officer vide his order dated 22.7.2011 imposed penalty to the tune of Rs.2,20,500/- against the appellant. The appeal filed by the appellant was also dismissed.

3. Hence this second regular appeal.

4. The counsel for the appellant has contended that the driver of the vehicle was carrying proper and genuine documents relating to the goods and the same were produced by him before the Detaining Officer, but he did not bring the same on record for the reasons best known to him. It has been further- urged that it was not an interstate sale but an intrastate sale and the statement of the driver as well as Sh. Rakesh Kumar can't be placed reliance as the Detaining Officer got his thumb impression on blank papers. To the contrary, Mr. B.S. Chahal, DAG for the State has submitted that the order of penalty passed by the Assistant Excise and Taxation Commissioner, Mobile Wing, Patiala in this case has been upheld by the First Appellate Authority. Mr. Rakesh Kumar as well as the Driver of the vehicle Sh. Babu S/o Darshan Singh both admitted that the goods had been brought from Cheeka to Samana. The driver had not produced any documents in support of the transaction, therefore, the order of penalty is well founded.

5. Arguments heard. Record perused.

6. The main essential feature for the imposition of penalty is proof of attempt to evade the tax. The case of the appellant is that he had dispatched the goods from his premises (M/s R.G. Plastics and Chemicals) situated at Kamaspur near Samana to Dhuri. When the vehicles had gone to take the fuel from the nearby Petrol Pump, the drivers were apprehended. Whereas

the case of the State is that the vehicles were apprehended on the Bhakhra Bridge when the same were coming from Cheeka i.e. Bibipur side of Samana Road.

7. On perusal of the site plan of the location of premises of the appellant at Kamaspur, the petrol pump, the Bhakhra Bridge and Cheeka it may be stated that direct road comes from Cheeka to Samana and another road comes via Bibipur while passing from the backside of ICC Ram Nagar.. The appellants appear to have come from Cheeka via Bibipur through escape route and he crossed the ICC to reach the road leading to Dhuri. Both the driver Sh. Babu S/o Darshan Singh and Sh. Rakesh Kumar admitted in their statements that the invoices as well as the GRs were given to them near Bibipur, in order to convert this interstate sale to intrastate sale. No record has been produced by the appellant in order to establish as to from where they had purchased the plastic resin. Notwithstanding, the allegation raised by the counsel for the appellant that the statements recorded by Sh. Babu and Sh. Rakesh Kumar on 13.7.2011 are the result of coercion and pressure. Yet Sh. Rakesh Kumar in his statement dated 15.7.2011 again admitted before the Detaining Officer that the goods were loaded from Cheeka (Haryana) and the driver was not in possession of any documents in support of the transaction. He had not generated the information relating to the goods at ICC Ramnagar. The driver adopted the escape route behind the ICC and entered into the State of Punjab so that the Punjab tax as well as entry tax could be avoided.. Lastly, he admitted his fault and agreed to pay the penalty as well as entry tax. This statement, having been made two days after the detention of the goods, can't be said to be the result of coercion and pressure.

8. In any case, the record amply establishes that the goods were brought from Cheeka (Haryana) to the state of Punjab, therefore, it was obligatory on the part of the appellant to generate information at the ICC Ramnagar which the appellant failed to do so.

9. The story setup by the appellant that the vehicles had gone to the petrol pump for taking fuel when they were apprehended. In this regard, it is observed that the HP Petrol Centre is quite near the factory premises of the appellant. The area of Bhakhra Bridge or Bibipur do not fall in the way from the factory premises of the appellant to the petrol pump located quite near the factory premises of the appellant. If the driver had gone to take fuel from the petrol pump, then there was no reason or occasion for them to go to Bhakhra Bridge but it is specific case of the authorities that they apprehended the goods when the drivers were coming from the side of Cheeka and reached near Bhakhra Bridge. All this goes to show that the story regarding the detention of the goods when the vehicles had gone to take the fuel at petrol pump is concocted and it is duly established that the goods entered into the State through an escape route and the appellant had made an attempt to evade the tax.

10. The State Counsel has further urged that the appellant was also earlier involved in bringing the goods without documents and was subjected to penalty in four other cases. Though, that may not be ground to uphold the penalty in this case, but that could add to the conduct of the appellant as well as grevament of the penalty. In this regard, it may be observed that this fact can't be denied that the appellant was involved in four cases earlier and was penalized by the authorities in the cases, but I need not go into this aspect the case and keep confine my opinion from the facts and circumstances of the present case.

11. The facts and circumstances as discussed above speak for themselves that the appellant made attempt to evade the tax while adopting the escape route and bringing the goods without documents and without payment of entry tax.

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

13. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 51 OF 2016

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PUNJAB STONE CRUSHER
Vs
STATE OF PUNJAB

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

13th February, 2017

HF ▶ Revenue

Penalty and interest is upheld for suppressing rental income received from hiring of trucks as it amounts to deemed sale.

SUPPRESSED TURNOVER – RENT – ASSESSMENT FRAMED – PENALTY AND INTEREST IMPOSED FOR SUPPRESSING SALE OF STONE DUST AND CRUSHED STONE – ALSO, INCOME RECEIVED ON ACCOUNT OF JCB AND TRUCKS GIVEN ON HIRE CONCEALED FROM GROSS TURNOVER – APPEAL FILED – HELD: ADMISSION BY APPELLANT REGARDING CONCEALMENT OF SALE OF STONE DUST AND CRUSHED STONE TAKEN INTO ACCOUNT – RENT RECEIVED FROM HIRERS FOR RENTING OUT TRUCKS AMOUNTS TO DEEMED SALE – APPEAL DISMISSED – *S. 2(zf) OF PVAT ACT, 2005.*

Facts

An Assessment was framed and penalty and interest was imposed for suppressing sale of crushed stone and stone dust and income received on JCB and trucks transferred to third parties for hire .The first appeal was dismissed. Hence an appeal is filed before Tribunal.

Held:

The appellant has admitted regarding not having added the income derived from sale of crushed stone and stone dust to its gross turnover. Also, trucks and JCB were given on hire and income received from it was not added. The goods remained control of hirers for certain period on a specific rate of rent and these are the specified goods. Such goods do not remain in hands of appellant so as to transfer to anyone else during that period. Therefore, the charges received by appellant would amount to 'deemed sale' as per S. 2(zf) of the Act as well as Article 366 (29-A) (d) of the Constitution. Thus, there has been suppressed turnover qua non payment of tax on crushed stone, stone dust, JCB and trucks. Hence, the appeal is dismissed.

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

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

1. The Assistant Excise and Taxation Commissioner-cum-Senior Auditor, District Ropar, vide order dated 19.10.2012, while framing the assessment for the year 2009-10 created additional demand to the tune of Rs.2,13,418/-. The appeal filed by the appellant was dismissed by the First Appellate Authority, Patiala Division, Patiala.

2. The observations made by the Assistant Excise and Taxation Commissioner-cum-Senior Auditor, District Roopnagar are as under :-

> *"The dealer has admitted to have suppressed the sale of stone dust and crushed stone worth Rs.5 lacs @4%. The perusal of manufacturing .and trading account of the dealer for the year 2009- 10 reveals JCB and Truck income worth Rs.2772537/- and as per his statement out of this JCB and truck income worth Rs.20,52,100/- is on account of trucks and JCB bought by the dealer on the strength of R.C. against 'C' Forms. This facility has been provided by the Act to aid and facilitate the business of the dealer which means that they are to be used for his personal business activities, income means that he has transferred the right to use of these tipper/trucks to a third party for a financial consideration. In the present situation, he has to pay a tax @ 4% on this carriage income. The facts have been confronted to the dealer. He has admitted to pay tax on sale of stone dust and crushed stone, JCB and truck income."*

3. Similarly, the First Appellate Authority while dismissing the appeal observed as under:-

> *"It is a fact that the stone dust is a by product and a big chunk of stone dust is produced by crushing the stones. The dealer had also erred in not reflecting the income raised from JCB and Trucks while filing the returns with a view to avoid the payment of due tax. The dealer had willfully avoided to include the sale of stone dust and income accrued as discussed above for which the Designated Officer had correctly made addition in the GTO. In view of the above facts and circumstances of the case, I do not find any force in the arguments put forth by the Ld. Counsel."*

4. Still aggrieved, the appellant has filed this second appeal.

5. The Counsel for the appellant has argued that the Designated Officer has assessed the amount of Rs.20,52,100/-, but the source of the amount has not been mentioned. Similarly, there are no plausible grounds for imposing penalty and interest. The Deputy Excise and Taxation Commissioner was not justified in holding that income derived from the truck, tipper and JCB Cranes is taxable in the hands of the appellant whereas there is no transfer of right to use such goods.

6. To the contrary, the State Counsel has urged; that the transfer of right to use the goods amounts to sale as such the income derived from JCB, tipper and truck is also taxable. Similarly, the appellant was also bound to pay the tax on the sale of stone dust but he was willfully avoided to add the income of the sale of stone dust and the income derived from JCB and trucks.

7. Having heard the rival contentions and having gone through the record of the case, it transpires that the appellant admitted before the Assessing Authority regarding suppression of the sale of stone dust and crushed stone and he also admitted having not paid the tax on the income of JCB and the trucks, which he had given to the third parties on hire. This issue with regard to the income of the trucks and JCB was discussed in detail in the judgment delivered in

the case of M/s Saini Stone Crusher, Village Bharatgarh, District Ropar Vs State of Punjab decided by Punjab VAT Tribunal on 29.9.2016 wherein it was observed as under:-

> *"The Andhra Pradesh High Court in the landmark judgment Mr. Gursharan Singh Lamba Vs. State of Andhra Pradesh 012-TIOL-49- HC-AP-CT, dated 28.1.2011 also dealt with the issue in detail and after considering the whole law of the land and the pronouncements delivered from time to time by the Apex Court as well as the High Courts of different States observed and concluded the following principles:-*
>
> > *"26. At this stage, the following principles to the extent relevant may be summed up.*
> >
> > *(a) The Constitution (Forty-sixth) Amendment Act intends to rope in various economic activities by enlarging the scope of tax "on .sale or purchase of goods" so that it may include within its scope, the transfer, delivery or supply of goods that may take place under any of the transactions referred to in sub-clause (a) to (f) of Clause (29-A) of Article 366. The works contracts, hire purchase contracts, supply of food for human consumption, supply of goods by association and clubs, contract for transfer of the right to use any goods are some such economic activities.*
> >
> > *(b) The transfer of the right to use goods distinct from the transfer of goods, is yet another economic activity intended to be eligible to State tax.*
> >
> > *(c) There are clear distinguishing features between ordinary sales and deemed sales.*
> >
> > *(d) Article 366(29-A) (d) of the Constitution implies tax not on the delivery of the goods for use, but implies tax on the transfer of the right to use goods. The transfer of the 'right to use the goods' as contemplated in sub-clause (d) of clause (29-A) cannot be equated with that category of bailment where goods are left with the bailee to be used by him for hire.*
> >
> > *(e) In the case-of Article 366 (29-A) fan the goods are not required to be left with the transferee. All that is required is that there is a transfer of the right to use goods. In such a case taxable event occurs regardless of when or whether the goods are delivered for use. What is required is that the goods should be in existence so that they may be used.*
> >
> > *(f) The levy of tax under Article 366 (29-A) (d) is not on the use of goods. It is on the transfer of the right to use goods which accrues only on account of the transfer of the right. In other words, the right to use goods arises only on the transfer of such right to use goods.*
> >
> > *(g) The transfer of right is the sine qua non for the right to use any goods, and such transfer takes place when the contract is executed under which the right is vested in the lessee.*
> >
> > *(h) The agreement or the contract between the parties would determine the nature of the contract. Such agreement has to be read as a whole to determine the nature of the transaction. If the*

consensus ad idem as to identity of the goods is shown, the transaction is eligible to tax.

(i) The locus of the deemed sale, by transfer of the right to use goods, is the place where the relevant right to use goods is transferred. The place where the goods are situated or where the goods are delivered or used is not relevant.

8. While concluding, Hon'ble Andhra Pradesh High Court after scrutinizing the law of the land in para No. 45 of the aforesaid judgment further observed as under:-

45. Reading the recitals and various clauses, indeed there is a transfer of the right to use Transit Mixers. All the tests as indicated hereinabove exist in the contract between the petitioners and Grasim. The vehicles are maintained by the petitioners. They appoint the drivers and fix their roaster. The licenses, permits and insurances are taken in their names by the petitioners, which they themselves renew. The Transit Mixers go to Grasim's batching plants in Miyapur and Nacharam, where they are loaded with RMC and then proceed to the construction sites of customers. The product carried is manufactured by Grasim, which is delivered to the customers and the customers pay the cost of the RMC to Grasim and the petitioners nowhere figure in the process of putting the property in Transit Mixers to economic use. The entire use in the property in goods is to be exclusively utilized for a period of 42 months by Grasim. The existence of goods is identified and the Transit Mixers operate and are used for the business of Grasim. Therefore, conclusively it leads to the only conclusion that the petitioners had transferred the right to use goods to Grasim. For these reasons, we are not able to countenance any of the submissions made by the petitioners' counsel."

9. Thus, after examining the entire law on the point in issue, it would have to be held that the aforesaid judgment is applicable to the facts of the case on all fours. JCB, trucks and tippers are given to the customers on payment of higher charges for use in their works. The goods remain in the control of the hirers for certain period on a specific rate of rent and these are the specified goods. Such goods do not remain under exclusive control of the appellant so as to be transferred to anyone else during the said period, therefore, such hire charges received by the appellant would amount to be 'deemed sale' within the definition of 2 (zf) of the Act as well as under Article 366 (29-A) (d) of the Constitution. It is also not denied that stone dust is taxable and the appellant did not make the sale of stone dust as part of the gross turnover.

10. Consequently, this Tribunal also holds that it is clear cut case of suppressed turnover qua the non payment of tax on the crushed stone, stone dust, JCB and trucks.

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

12. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

APPEAL NO. 296 OF 2012

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SUPREME INDUSTRIES LTD.
Vs
STATE OF PUNJAB

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

20th February, 2017

HF ▶ Dealer

Penalty imposed for non charging of tax in invoice deleted as consignor unit is exempted unit.

EXEMPTED UNIT - PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – DEFICIENCY IN INVOICE – GOODS IN TRANSIT INTERCEPTED – CONSIGNOR BEING EXEMPTED UNIT , NO TAX CHARGED IN INVOICE DT. 27/1/2005 – EXEMPTION CONTENDED TO HAVE BEEN CANCELLED IN 2004 BY AETC - PENALTY U/S 14 B IMPOSED WITH A RIDER THAT THE ORDER WOULD NOT OPERATE TILL PENDENCY OF WRIT FILED BY APPELLANT IN YEAR 2005 CHALLENGING ORDER OF CANCELLATION – APPEAL BEFORE TRIBUNAL AGAINST ROADSIDE PENALTY –HELD: ORDER OF CANCELLATION FOUND TO BE ALREADY SET ASIDE BY TRIBUNAL IN YEAR 2016 THEREBY RESTORING EXEMPTION – IMPUGNED PENALTY ORDER INDICATES AWARENESS OF DEPARTMENT REGARDING BAR ON RECOVERY OF PENALTY TILL PENDENCY OF WRIT – APPELLANT UNIT STILL CONSIDERED EXEMPTED UNIT – MALICE ON PART OF AETC OBVIOUS – PENALTY DELETED CONSIDERING THE UNIT TO BE EXEMPTED ON THE DAY OF TRANSPORTATION OF GOODS – APPEAL ACCEPTED – *S. 14 – B (7)(II) OF PGST ACT, 1948*

Facts

A vehicle loaded with goods was intercepted. It was found that there was no tax added in invoice as consignor industry was exempted and could not recover tax on goods under transport. The proceedings officer contended that the unit was not enjoying exemption on the day of checking (2005) as AETC had withdrawn the exemption. Therefore, penalty was imposed u/s 14-B (7) (ii) of PGST Act, 1948 vide order dated 9/2/2005 with a rider that the order passed by him would not operate during pendency of the writ petition filed by the appellant against the cancellation of exemption by order passed in 2004. An appeal was filed before DETC. Aggrieved by the order, an appeal is filed before Tribunal.

Held:

It has been observed by Tribunal that the Tribunal had restored the order of exemption in 2016 which was once withdrawn in 2004 by AETC, Patiala.It would be deemed that the order dated 2004 never existed and appellant was exempted unit during that period.

Also, the rider in the AETC's order passed after checking the goods shows that the department was aware that though order of exemption was cancelled yet due to pendency of writ, penalty amount could not be recovered.

It is also seen that the order passed by AETC in 2004 was merely a paper transaction as the department never implemented it. Even after cancellation, the department has been treating the appellant firm as exempted unit accepting its returns being exempted unit. Thus, order of 2004 appears to be passed out of malice.

Hence, it cannot be said that the appellant firm was taking goods without proper and genuine documents. Consequently , no penalty could be imposed. The penalty is set aside and appeal is accepted.

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

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

1. Assailed in this appeal is the order dated 28.7.2010 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala dismissing the appeal against the order dated 9.2.2005 passed by the Assistant Excise and Taxation Commissioner, Patiala imposing a penalty of Rs. 53,000/- U/s 14-B (7) (ii) of the Punjab General Sales Tax Act, 1948.

2. On 27.1.2005, the driver while carrying the plastic furniture relating to the Supreme Industries, when reached near Rajpura, he was intercepted for checking. On demand, he produced the following documents:-

1. *Bill No.2863, dated 27.1.2005 for Rs. 1,79,151-19/- issued by M/s Supreme Industries Ltd. Village Sarsaini, Near Lalru, Tehsil Derabassi, District Patiala in favour of M/s Mehtab Traders Barnala.*

3. On scrutiny of the documents, it was brought to the notice of the checking officer that the owner had not added the tax in the invoice as the consignor industry was exempted from sales tax on the goods under transport, therefore, it could not recover tax from the consignee.

4. The case was forwarded to the Designated Officer who, after hearing the appellant observed that irrespective of the fact that the consignor firm was not enjoying exemption of tax on the manufacturing of the plastic furniture on the day of checking i.e. 27.1.2005 because the Assistant Excise and Taxation Commissioner, Patiala vide his order dated 11.12.2004 had withdrawn the exemption, consequently, he drew the inference that the goods were not accompanied the proper and genuine documents. He further observed that since the exemption was with drawn, therefore the appellant was required to add sales tax on the goods so sold to the consignee. Eventually, he imposed the penalty to the tune of Rs.53,000/- under Section 14 - B (7) (ii) of the Punjab General Sales Tax Act, 1948 against the appellant with a rider that the order dated 9.2.2005 passed by him would not operate during the pendency of the Writ Petition No. 1577 of 2005 in the Hon'ble Punjab and Haryana High Court at Chandigarh. The appeal filed by the appellant against the said order was dismissed by the First Appellate Authority on 28.7.2010.

5. Hence this second appeal.

6. The counsel for the appellant, in order to assail the findings returned by the authorities below, has argued that the Excise and Taxation Department had no jurisdiction to retain the vehicle merely on account of non charging of the tax on the invoice. The goods were

accompanying the proper invoice as required 14 -B (7) (ii) of the Punjab General Sales Tax Act, 1948. No penalty could be imposed on account of non payment of tax as the transaction in question could be verified and if the appellant was liable to pay any tax that could be examined by the Assessing Authority. It was further brought to my notice that the Tribunal vide order dated 29.11.2016 had accepted the appeal of the appellant and restored the exemption granted by the department which was once with drawn by the Assistant Excise and Taxation Commissioner, Patiala vide order dated 11.12.2004, therefore, after the order dated 11.12.2004 has been set-aside. It would have to be deemed that the order dated 11.12.2004 never existed and the appellants could dispatch the goods without charging tax being exempted unit.

7. To the contrary, the State Counsel has submitted that since vide order dated 11.12.2004, the exemption limit once granted to the appellant was with drawn by the department vide order dated 11.12.2004 therefore, no transaction could be made by the appellants without charging VAT, as such it would amount to evasion of tax.

8. Arguments heard. Record perused.

9. There is no doubt that the goods were accompanying the VAT invoice and the invoice did not reflect charging of tax by the appellant, it is not in dispute that vide order dated 11.12.2004 the respondents had withdrawn the exemption granted to the appellant under the Punjab General Sales Tax (Deferment and Exemption) Rules, 1991. It is also not denied that the appellants had preferred the Writ Petition No. 1577 of 2005 in the Hon'ble Punjab and Haryana High Court on 27.1.2005 challenging the order of cancellation of exemption. It is also apparent from the order dated 9.2.2005 passed by the Assistant Excise and Taxation Commissioner, Patiala that he stayed the operation of the order of penalty during the pendency of Writ Petition 1577 of 2005. Thus, the inference would be drawn that the department was convinced that though the order of exemption was cancelled yet since litigation was pending regarding the said cancellation order of exemption, recovery of the penalty cant be made.

10. It is also apparent from the record that the appellants had filed the appeal against the order dated 28.7.2010 passed by the Deputy Excise and Taxation Commissioner dismissing the appeal against the order dated 11.12.2004 passed by the Assistant Excise and Taxation Commissioner, Patiala cancelling the order of exemption which was decided by the Tribunal vide order dated 29.11.2016. The Tribunal while accepting the appeal of the appellant had set-aside the order dated 11.12.2004 and restored the exemption limit granted to the appellant earlier. Thus, the inference would be drawn that after the order dated 11.12.2004 was set-aside, this order of cancellation of exemption limit would be considered to be non existent and it would be deemed that the appellant firm was the exempted unit during that period.

11. It may further be observed, on perusal of the order passed by the Tribunal dated 29.11.2016, that the order of cancellation of exemption limit passed by the Assistant Excise and Taxation Commissioner was merely paper transaction as the department never tried to the implement the order of cancellation. Even after the passing of the order of the cancellation on 11.12.2004, the department has been treating the appellant firm to be an exempted unit and accepting its future returns being an exempted unit. The order dated 11.12.2004 appears to have been passed by the Assistant Excise and Taxation Commissioner, Patiala out of malice which was never implemented by the authorities.

12. As such while considering the case from all the angles, the appellant firm can't be said to be taking the goods without proper and genuine documents, consequently no penalty could be imposed.

13. As an up shot of the aforesaid discussion, this appeal is accepted, the orders passed by the authorities below are set-aside and the order of penalty is quashed.

14. Pronounced in the open court.

CLARIFICATION (PUNJAB)

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ORDER OF CLARIFICATIONA MADE BY SHRI RAJAT AGARWAL, IAS
EXCISE AND TAXATION COMMISSIONER, PUNJAB
UNDER SECTION 85 OF THE
PUNJAB VALUE ADDED TAX ACT, 2005

QUERIST: GENERAL MILLS INDIA PVT. LTD.

HF ▶ Revenue

Cake mix, Instant snack mix, Bread mixes etc. are classified under Entry 6 of Schedule E and are taxable @ 14.5%.

ENTRIES IN SCHEDULE – CAKE MIX, SNACK MIX, DONUT MIX – CONTENTION RAISED THAT THESE PRODUCTS ARE RAW MATERIAL – NOT TO BE INCLUDED IN ENTRY 6 OF SCHEDULE E AS THE ENTRY IS 'NOT INCLUSIVE' BUT COVERS PRODUCTS MENTIONED 'IN IT' – HELD: PRODUCTS ARE ADMITTEDLY USED TO MAKE MEALS – THUS PRODUCTS CAN BE CALLED 'MEAL MAKERS' FALLING SPECIFICALLY UNDER ENTRY 6 OF SCHEDULE E – TAXABLE @ 14.5% - *ENTRY 6 OF SCHEDULE 'E' OF PVAT ACT, 2005*

The applicant is engaged in trading of FMCG products such as cake mix, bread mixes, donut mixes snack mixes etc. A clarification has been sought whether these products are classified under schedule E of PVAT Act and the rate of tax applicable.

The applicant has contended that the products do not fall under schedule 'E' which deals with branded and packaged products. It has contended that the entry in schedule 'E' is 'Not Inclusive' but covers only products mentioned 'In It'.

It has been admitted that the products manufactured by applicant are used to prepare meal thus they clearly fall under Meal Makers which is specifically mentioned in entry 6 of schedule 'E'. Thus, they are taxable @ 14.5%

Present: Rishab Singla, Advocate
Shaman Jain, Advocate

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ORDER

1. The present application has been filed by M/S General Mills India Pvt. Ltd. Village Parbat, Zirakpur through Advocate Sh. Rishab Singla and Advocate Sh. Shaman Jain. The necessary fee has also been deposited. The applicant is a dealer registered in the State of Punjab wide TIN-03272186042.The applicant is engaged in the trading in the FMCG products such as Cake Mixes, Bread Mixes, Donut Mixes, Cookie Mix, Variety Snack Mix, Spice Gravy Mix, Masala Mix, Instant Mixes, food mixes etc. in order to ensure that the application is eligible u/s

85, the applicant has furnished a certificate that no proceedings pertaining to the subject question nave ever been initiated by the applicant nor any such proceedings are pending in any court of law and no assessment proceedings have been initiated against the applicant by the Designated Officer under Section 29 of the Punjab VAT Act, 2005.

2. The applicant has posed the following disputed questions:

1. *Whether cake mixes, Bread Mixes, Donut mix, Cookie Mix, Variety Snack mix, Spice gravy mix, Masala mix, Instant mix etc. is covered under Schedule F appended to the Punjab VAT Act 2005.*
2. *What is the rate of tax payable on "Cake Mix, Bread Mix, Donut mix, Variety Snack mix, Instant mix etc" under the provisions of the Punjab VAT Act 2005.*
3. *What is the rate of tax payable on Spice gravy mix, Masala Mix etc under the provisions of the Punjab VAT Act, 2005.*

3. A notice was issued to the above said applicant on 11-5-2016 for 24-5-2016.The applicants appeared on the date and submitted that they are manufacturing Cake mixes, bread mixes, Donut mixes, Variety snack mixes, food mixes etc. They also stated that their products are raw material for the final products i.e. cakes etc. According to them their products should fall within Schedule F of the Act rather than in item number 15 sub entry 6 of Schedule. The said Schedule states as under:

> *"All types of branded and packaged food products i.e. chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, Breakfast Cereals Muesli Flakes, pasta, macaroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby food coffee 9* ***???*** *namkeen], ketchups and spreads."*

4. The applicant has taken support of a citation by the Hon'ble Punjab and Haryana High Court in the case of M/s PEPSICO India Holdings Pvt. Ltd. vs. State of Punjab in appeal No.32 of 2008. The court observed "The terms "including" and "i.e. are entirely two different terms with different meanings. Prior to the amendment Entry 88 covered not only the items listed therein but also all other processed foods and vegetables such as potato chips, frozen peas, frozen mushrooms, dehydrated onions, dehydrated garlic in addition to the other items mentioned therein. However, after the amendment the government chose to specify a few specified items which it thought should be covered as processed foods and vegetables which are `fruit jams, jelly, pickle fruit squash paste, fruit drink and fruit juice'. Thus, the government decided to treat only these goods as processed foods and vegetable' and excluded the rest." The applicant have thus placed their reliance on the above said judgment which was interpreted the words' including "and "i.e." and held that the word "i.e." denote the specific products as mentioned in the entry and "including" entry is exhaustive one. The applicant has also attached wrappers of few products for clarification. They are as follows:

1. **Parampara Tawa Pulao: F**or making the concoction, you have to just and rice and garnish it with chopped coriander and it is ready to eat within 10 minutes.
2. **Chole Gravy (ready to cook gravy mis):** For making this dish, you have to just add channa, water and the gravy mix and let it cook for 8-10 minutes.
3. **Eggless Choca idli cake Mix:** The method of preparation of this product is also very simple and hassle free. Add the contents of the pack in a

bowl and add milk, vegetable oil to form batter and put it in idli mould. The idlis can then be added into the cooker and steamed.

4. **Pancake Mix:** Mix the content with water to make a paste and heat it in a pan to make pancakes.

5. **Choco Fudge (cake mix):** Just mix the cake mix, oil, egg, water in a bowl and beat it slowly. Bake the mixture at 180 degree. Product will be ready within 10 minutes

6. **High Fibre Bread Mix (Mixes for fine Bakery Wares)**: On the packing itself Baking Time and Baking Temperature has been clearly given.

5. The instant case was discussed at length. The case of the applicant is that the items mentioned by him do not fall under Schedule E rather they are taxable under the residual entry i.e. Schedule F. The entry in the Schedule E is "All types of branded and packaged food products i.e. Chips, wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, macaroni, biscuits, frozen desserts, frozen ready to eat products, meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder ice tea, coffee premix, tea premix, branded snacks and namkeens, ketchup and spreads". A bare perusal of this entry shows that it deals with branded and packaged food products. The contention of the applicant is that the Entry 6 of Schedule E is "Not Inclusive" but shall cover only products mentioned `IN IT'. By his own admission, the products mentioned/manufactured by the applicant are used to prepare food/meal. Thus these products clearly fall within the meaning of `Meal Makers' which is specifically mentioned in Sub-Entry 6 of Entry 15 of Schedule `E'. Needless to mention that the process of making food/meal out of applicants products is akin to processes used to make pasta, macaroni, instant noodles, soups etc. Moreover since the products are clearly covered in item `Meal Makers' they fall in the Sub-Entry 6 of Entry 15 of Schedule E appended to the VAT Act, 2005 and taxable @14.5%.

6. The questions are, therefore, determined accordingly.

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CLARIFICATION (PUNJAB)

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ORDER OF CLARIFICATIONA MADE BY SHRI RAJAT AGARWAL, IAS
EXCISE AND TAXATION COMMISSIONER, PUNJAB
UNDER SECTION 85 OF THE
PUNJAB VALUE ADDED TAX ACT, 2005

QUERIST: HARE KRISHNA ENTERPRISES

HF ▶ Assessee

Green tea is covered under schedule A in contrast to other teas which are classified under schedule B.

ENTRIES IN SCHEDULE – GREEN TEA – APPELLANT IS SELLING GREEN TEA TULSI FLAVOURED - TEA IS CLASSIFIED UNDER SCHEDULE B EXCLUDING GREEN TEA – GREEN TEA IS COVERED UNDER SCHEDULE A ENTRY 23 OF PVAT ACT – ADDING OF FLAVOR OF TULSI DOES NOT CHANGE THE CHARACTER OF GREEN TEA – *ENTRY 16 OF SCHEDULE 'B' OF PVAT ACT, 2005; ENTRY 23 OF SCHEDULE 'A' OF PVAT ACT, 2005*

A clarification has been sought regarding 'green tea' sold by appellant as to whether it is tax free or taxable.

The item number 16 of Schedule B speaks of Tea excluding Green tea and item no. 23 of Schedule 'A' speaks of Green tea. Thus, It can be said that Tea is a genus and Green tea is a species of that group and item no. 23 of Schedule A speaks of Green tea.

The product of appellant is Tulsi Green tea. Adding of tulsi, mint , neem are just to add flavor and do not change the character of the product. Product of appellant falls under Green Tea and is thus classified under 23 of schedule A and hence tax free.

Case referred:

- *Travancore Tea Estates v/s State of Kerala Civil Appeal No. 1698 of 1971*

Present: Sandeep Goyal Advocate

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ORDER

1. The present application has been filed M/S. Hare Krishna Enterprises, C-73, Industrial Area, Phase 6, Mohali on 07.11.2015 through Advocate Sandeep Goyal and others. The necessary fee has also been deposited. The applicant is the authorised dealer of Hindustan Unilever Ltd, and is engaged in the trading of Karyana goods including green tea. M/s

Hindustan Unilever Ltd. is manufacturing green tea. The applicant is a dealer registered in the State of Punjab vide TIN-03922177100.The Question that has been raised under Section 85 is:

> *"Whether Green tea being sold by the applicant (as per annexure A) is covered under item 23 of Schedule A and thus tax free and if the answer to the question is in negative, then what is the rate of tax on Green tea being sold by the applicant".*

2. In order to ensure the application is eligible u/s 85, the applicant has furnished a certificate that no proceedings pertaining to the subject question have ever been initiated by the applicant nor any such proceedings are pending in any court of law and no assessment proceedings have been initiated against the applicant by the Designated Officer under Section 29 of the Punjab VAT Act, 2005.

3. A notice was issued to the applicant on 11.05.2016 and the hearing was fixed for 27.05.2016. On 267.5.2016 the matter was adjourned to 07.06.2016. On 07.06.2016 the company submitted that the product Tulsi Green Tea should fall under item No.23 of Schedule "A". It also attached the envelope of the product mentioning the contents of the product.

4. The ingredients of tea under question is Green Tea as follows:-

1.	Tulsi (different types)	63%
2.	Green Tea	35%

5. Thus the product sold is primarily a tulsi based tea. As per the common parlance test also, the product is tulsi green tea. Schedule B item number 16 speaks of Tea excluding Green Tea and item no 23 of Schedule A speaks of Green Tea. Thus it can be said that Tea is a genus and Green tea is one of the species in the group. The item no 23 of Schedule A speaks of Green tea. The intention of the legislature is to tax all teas except green tea @ 6.05%.

6. The Hon.ble Supreme Court held in ***Travancore Tea Estates v/s State of Kerala Civil Appeal No. 1698 of 1971:***

> *"Black and green teas result from different manufacturing processes applied to the same kind of leaf. After plucking, the leaf is withered by being spread on bamboo trays in the sun, or on withering tats within doors. The process takes 18 to 24 hours. Next it is rolled by hand or by machines. The object of rolling is to break the leaf cells and liberate the juices and enzymes sealed within. The roll may last as long as three hours. Then it is taken to the roll breaker and green leaf sifting machine and after that fermented in baskets, on glass shelves or on cool cement floors under damp cloth for 4 or 41/2 hours. The firing process (drying) follows, in pans or baskets or in firing machines. It takes 30 to 40 min. The difference between black tea and green tea is the result of manipulation. Green tea is manufactured by steaming without fermentation in a perforated cylinder or boiler thus retaining some of the green colour. Black tea is allowed to ferment after being rolled and before firing. In the case of black tea the process of fermentation, or oxidation, reduces the astringency of the leaf and, it is claimed, develops the colour and aroma of the liquor. In making green tea, the fermentation process is arrested by steaming the leaf while it is green and by light rolling before drying".*

7. Thus the product of the applicant i.e. Tulsi Green Tea can also be treated as a part of Green tea since the addition of tulsi neem, mint are just meant to add flavour to the product. The addition of these products does not change the nature or character of the product. Thus Admittedly the product of the applicant fall under the item "Green tea" mentioned in the item number 23 of Schedule 'A'.

8. The questions are, therefore, determined accordingly.

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HARYANA TAX TRIBUNAL

STA NO. 02 OF 2013-14

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HAMDARD (WAKF) LABORATORIES
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

2nd March, 2017

HF ▶ Revenue

'Rooh Afza' cannot be classified under schedule C as it contains small quantity of fruits and vegetables.

ENTRIES IN SCHEDULE - ROOH AFZA – DRINKS MADE OF FRUITS AND VEGETABLES – CONTENTION RAISED THAT ROOH AFZA SHOULD BE CLASSIFIED UNDER SCHEDULE 'C' ENTRY 100D AS IT CONTAINS FRUITS AND VEGETABLES – QUANTUM OF FRUITS AND VEGETABLES ALLEGED TO BE IMMATERIAL AS PER THE LANGUAGE OF SAID ENTRY - APPEAL DISMISSED AS ROOH AFZA OUGHT TO BE SUBSTANTIALLY OR EXCLUSIVELY MADE OF FRUITS AND VEGETABLES TO QUALIFY THE SAID ENTRY WHEREAS IT COMPRISES SUBSTANTIALLY SUGAR SYRUP – SAID ENTRY SPEAKS OF 'MADE OF' WHICH SIGNIFIES SUBSTANTIAL AMOUNT TO BE PRESENT- HENCE, ROOH AFZA NOT CLASSIFIABLE UNDER ENTRY C , ENTRY 100

Facts

A clarification was sought as to whether 'Rooh Afza' falls under Entry 100D of Schedule C of HVAT Act. The state government answered that it does not fall under said entry but under residual entry. Thus, an appeal is filed before Tribunal in this regard contending that Rooh Afza is a drink made of fruits / vegetables and the quantity of such fruits and vegetables is not mentioned in the entry in question, so even if the drink has a small quantity of them it stands covered under the said entry. Also, it is contended that sugar syrup is only base of the product.

Held

The expression 'made of' is very significant. It signifies that the product to classify under the said entry should be atleast made substantially of fruits and vegetables. Here, in this case it is substantially made of sugar syrup. Rooh Afza is not made of fruits and vegetables exclusively or substantially. Therefore, Rooh Afza is not classified under Schedule C of HVAT Act.

Present: Sh. Mohinder Pal Singh, Deputy District Attorney for the State.
Mr. Pawan Upadhaya, Advocate and Pankaj Gupta, Advocate
counsel for the Appellant.

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. This is appeal by assessee M/s Hamdard Wakf laboratories, Gurgaon challenging order dated 01.03.2013 passed by State Government of Haryana under section 56(3) of the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act) on application of the assessee appellant seeking clarification on the issue as to whether 'Rooh Afza' falls under entry 100D of schedule C to the HVAT Act and is liable to tax accordingly or not. By the impugned order, State Government clarified that the product 'Rooh Afza' of the assessee-appellant does not fall under entry 100 D of Schedule C to the HVAT Act and hence is not liable to tax at rate applicable to Schedule C goods and rather is an unclassified item not falling in any of the Schedules to the HVAT Act and is, therefore, liable to tax at the rate of 12.5% + surcharge under the HVAT Act.

2. According to the assessee-appellant, 'Rooh Afza' is a summer drink and it contains some juices and is a distillate of the following products

i. Invert sugar base
ii. Pineapple Juice
iii. Daucus Carots
iv. Portulaca Oleaces
v. Citrullus Vulgeris
vi. Spinacle Oleraces
vii. Mentha arvensis
viii. Luffa Cylindrica
ix. Cichorium Intybus
x. Vitis Vinifera
xi. Santalum album
xii. Vetiveria Zizamodes
xiii. Parnelia Perlate
xiv. Nymphaca alba
xv. Onosma bracteatum
xvi. Keora

3. Entry 100D of Schedule C to the HVAT Act is reproduced as hereunder

100D "Processed or preserved fruits and vegetables including jam, jelly, pickle, squash, juice, drink, paste and powder, made of fruits/vegetables, whether sold in a sealed container or otherwise and wet dates"

4. The product label affixed on the bottle of Rooh Afza mentioned it as "natural goodness of herbs and fruit juices". It is also mentioned that each 100ml contains "invert sugar syrup 80ml, pineapple juice 8.0 ml, distilled extract of (Ful Nilofar, Dhania, Khas Hindi, Gulab, Kasni, Chharila, berg Gawzeban, Pudina, Sandal Sufed, Tukhm Gajar, Munaqqa, Hara Ghia, Palak) 4.5 ml, distillate of Keora 3.5 ml, Orange juice 2.0 ml, distillate of Citrus medica 0.8 ml, distillate of Rosa damascene 0.6 ml".

5. We have heard counsel for the appellant and Deputy District Attorney for the State and perused the case file.

6. Counsel for the appellant contended that Rooh Afza is a drink made of fruits/vegetables and is, therefore, covered by entry 100D in question. It was argued that quantum or quantity of fruits/vegetables required to be contained in such a drink is not mentioned in the entry in question and, therefore, even if Rooh Afza contains small quantity of fruits and vegetables, it is covered by the entry in question. Elaborating further, it was argued that except sugar and Keora, all other contents of Rooh Afza are made of fruits/vegetables and, therefore, requirement of the entry in question is met. In this context, it was pointed out that sugar content is only base of the product. It was also argued that resort to residuary or unclassified category should be had only when an item does not fall in any other entry of tariff classification even broadly. It was contended that meaning given to a product in common/commercial parlance / should be given and benefit of doubt should also be given to the tax payer. Reliance has been placed on various judgments; namely (1999) 6 SCC 617 M/s Hamdard (Wakf) Laboratories Vs. Collector of Central Excise, (2011) 40 PHT 247 (HTT) M/s Hari Om Trading Co. Vs. State of Haryana, (2007) 3 SCC 124 Commercial Taxation Officer Vs. Rajasthan Taxchem Ltd., (1990) 1 SCC 532 M/s Bharat Forge and Press Industries (P) Ltd. Vs. Collector of Central Excise, (1990) 4 SCC 680 Eskayef Limited Vs. Collector of Central Excise, 1985 (Supp.) SCC 392 Chiranjit Lal Anand Vs. State of Assam and another; and (1983) 52 STC 409 (P&H-FB) Punjab Khandsari Udyog and others Vs. Additional Excise and Taxation Officer.

7. On the other hand, Deputy District Attorney for the State defended the impugned order.

8. We have carefully considered the mater. The grounds now canvassed by counsel for the appellant have not even been raised in the grounds of present appeal. On the other hand, according to grounds of appeal, all types of drinks are covered by entry 100D in question and Rooh Afza also being a drink is, therefore, covered by the said entry. However, during the course of hearing counsel for the appellant conceded that all types of drinks are not covered by the entry in question and only drinks made of fruits/vegetables (besides other items) are covered by the entry in question.

9. On careful consideration of the matter, we find ourselves unable to accept the contentions raised by counsel for the appellant. Admittedly Rooh Afza being marketed by the assessee-appellant contains fruits and vegetables to the extent of about 15% only. The product contains 80% invert sugar syrup and 3.5% distillate of keora which are admittedly not fruits/vegetables. Some other minor ingredients of Rooh Afza are also admittedly not fruits/vegetables.

10. Perusal of the entry in question as reproduced herein before reveals that drink made of fruits/vegetables is covered by the entry. The expression 'made of' is very significant. It will signify that a drink, in order to be covered by the said entry, should be made of fruits/vegetables exclusively or atleast substantially. In the instant case, Rooh Afza is neither exclusively nor substantially made of fruits/vegetables. It is substantially made of invert sugar syrup,' besides some other ingredients which are not fruits/vegetables. Consequently merely because Rooh Afza contains about 15% fruits/vegetables, it does not fall within the purview of entry 100D in question. If the entry had the expression 'drink containing fruits/vegetables' or the like expression, the matter would have been different. The entry, however, is regarding drink made of fruits/vegetables. Rooh Afza cannot be said to be made of fruits/vegetables although it does contain some- quantity of fruits/vegetables. It is correct that quantum or quantity of fruits/vegetables to be contained in a drink so as to be covered by the entry in question is not mentioned in the entry. However, the same was not required to be mentioned because the entry mentions 'drink.... made of fruits/vegetables'. It would denote that the drink should be made of

fruits/vegetables exclusively or atleast substantially so as to be covered by the entry in question. Rooh Afza, product of the assessee-appellant, does not fulfil the said criterion.

11. It is correct that Rooh Afza is also known as Sharbat in common parlance and it is a drink. However, neither Sarbat not every drink is covered by the entry in question. The contention that sugar is only base of the product does not help the assessee-appellant because sugar being 80% part of the product forms its major or substantial part and therefore, the product cannot be said to be made of fruits/vegetables so as to be covered by the entry in question.

12. Reference by counsel for the appellant to definition of 'fruit product' as given in clause 2 (d) of the Fruit Products Order, 1955.

13. For the reasons aforesaid3we find that the product Rooh Afza of the assessee-appellant is not covered by entry 100D of Schedule C to the HAVAT Act as rightly clarified in the impugned order. Hence the appeal is dismissed being bereft of any merit.

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HARYANA TAX TRIBUNAL

STA NO. 78 & 297 OF 2012-13

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LUXOTTICA INDIA EYE WEAR PVT. LTD
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

20th February, 2017

HF ▶ Revenue

Sunglasses cannot be included in spectacles to be classified under Entry 100E of Schedule C.

ENTRIES IN SCHEDULE – SUNGLASSES - SPECTACLES – WHETHER 'SPECTACLES' INCLUDES 'SUN GLASSES' – CLARIFICATION SOUGHT ANSWERED OPINING THAT SUNGLASSES ARE NOT INCLUDED IN SPECTACLES AND HENCE CANNOT BE CLASSIFIED UNDER ENTRY 100E OF SCHEDULE C – APPEAL FILED BEFORE TRIBUNAL CONTENDING THAT BOTH ARE PROTECTIVE GLASSES AND SPECTACLES DOES NOT EXCLUDE SUNGLASSES IN HVAT ACT – HELD: AS PER COMMON PARLANCE, SUNGLASSES ARE DIFFERENTLY UNDERSTOOD THAN SPECTACLES – EXCISE TARIFF, VAT ACTS OF FEW STATES AND ISI GLOSSARY OF WORDS, ALL SEPARATE THE TWO SPECIFICALLY – THOUGH IT IS NOT SPECIFICALLY EXCLUDED OR INCLUDED UNDER THE SAID ENTRY, THE SAID ENTRY DOES NOT RELATE TO SUNGLASSES – APPEAL DISMISSED – *ENTRY 100E OF SCHEDULE 'C' OF HVAT ACT 2003*

Facts

Before filing of this appeal, an application seeking clarification was sought whereby it was asked whether sunglasses and optical glasses both formed part of Entry 100E of schedule C in HVAT Act. The government had answered that only optical glasses were covered under the said entry and not Sunglasses. Thus, an appeal is filed before Tribunal.

Held:

In common parlance 'spectacles' means corrective spectacles and not sunglasses. Also, the sun glasses and spectacles are separately mentioned in Excise Tariff. Similarly in VAT Laws of some states, sun glasses are specifically excluded from spectacles. It means spectacles is quite different from sunglasses. Therefore, sunglasses cannot be reasonably be classified under Entry 100E relating to spectacles.

Glossary of words by ISI also supports the view that sunglasses is mentioned as separate word distinct from spectacles.

The fact that the word sunglasses is neither excluded nor included in spectacles would mean that the said entry does not relate to sunglasses. The appeals are dismissed.

Present: Mr. Munish Hirani and Mr. Neeraj Khana, Advocate counsel for the appellant.
Sh. Mohinder Pal Singh, Deputy District Attorney Counsel for the State.

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. By this common order, we are disposing of two appeals STA No. 297 of 2012-13 filed by M/s Rod Retail Pvt. Ltd., Gurgaon and STA No. 78 of 2013-14 filed by M/s Luxottica India Eye Wear Pvt. Ltd., Gurgaon because both these appeals have been filed against the same clarificatory order dated 9.8.2012 issued by the State Government under section 56(3) of the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act) and, therefore, common issue arises in both these appeals.

2. M/s Shoppers Stop Ltd., Gurgaon sought clarification from the Government under section 56(3) of the HVAT Act on the following issue :-

> *"Whether sun glassed and optical glasses both forms part of entry No. 100E of Schedule C as inserted on 29.12.2005 in the Haryana Value Added Tax Act, 2003 ?*"

3. Haryana Government vide impugned order dated 9.8.2012 clarified that only optical glasses are covered under entry 100E of Schedule C and sun glasses/goggles are not covered under this entry. Aforesaid entry 100E is reproduced hereunder in both Hindi and English for ready reference:-

> *"चश्मे, उनके पुर्जे तथा उपस्कर, कान्टैक्ट लेंस, लैंस क्लीनर"*
>
> *"Spectacles, parts and components thereof, contact lens and lens cleaner".*

4. It may be mentioned that item covered by the aforesaid entry carries concessional rate of tax whereas an item not falling under Schedule A, Schedule B or Schedule C carries higher rate of tax as residuary item.

5. We have heard counsel for the appellant and Deputy District Attorney for the State and perused the case files.

6. Counsel for the appellants vehemently contended that 'sun glasses' are also covered by the item 'spectacles' in aforesaid entry 100E because sunglasses are also protective lenses/ spectacles. Reference was also made to dictionary meaning of the word spectacles meaning glasses which in turn included corrective as well as protective glasses. Counsel for the appellants also cited 'Glossary of terms relating to ophthalmic lenses and spectacle frames' published by the Indian Standard Institution (ISI), New Delhi to contend that 'sun glasses' are covered in the generic term 'spectacles'. Counsel for the appellants also referred to Excise Tariff under the Central Excise Act to contend that 'sun glasses' are included in the term 'spectacles'. Reference was also made to corresponding law of some other States wherein 'sun glasses' have either been included in or excluded specifically from the term 'spectacles'. It was contended that in the HVAT Act 'sun glasses' have not been excluded from the aforesaid entry 100E relating to spectacles. It was contended that sun glasses are also made of frame and protective lenses whereas vision spectacles are made of frame and corrective lenses. It was submitted that the Hindi word 'चश्मे' used in aforesaid entry 100E includes all types including 'धूप का चश्मा' i.e. sun glasses. Counsel for the appellant in STA 78 of 2014-15 relying of Supreme Court Judgment in the case of Dunlop India Ltd. V/s Union of India and Others (1976) 2 Supreme

Court cases 241 contended that when an article has, by all standards, reasonable claim to be classified under an enumerated item in the Tariff/ Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause. On its basis, it was argued that the `sun glasses/goggles' are, by all standards, covered by the aforesaid entry 100E and, therefore, it cannot be said to be covered by the residuary clause.

7. On the other hand, Deputy District Attorney for the State defended the impugned order.

8. We have carefully considered the matter. In Dunlop India Ltd. (supra), Hon'ble Supreme Court held that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the trade and its popular meaning should commend itself to the authority. Meanings given to articles in a fiscal statues must be as people in trade and commence, conversant with the subject, generally treat and understand them in the usual course. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and came to be described and known in common parlance, the court should find no difficulty for statutory classification under a particular entry.

9. The instant cases have to be examined in the light of aforesaid principles interpretation enunciated authoritatively by Hon'ble Supreme Court. In common parlance as well as the meaning as understood in trade and commerce circles on the subject, 'spectacles' means corrective spectacles and not `sun glasses/goggles' This conclusion is fortified by the fact that the words 'spectacles' and 'sun glasses' have been used separately in Excise Tariff. Similarly, in VAT laws of some other States, 'sun glasses' have either been specifically included in or excluded from the item 'spectacles'. It would mean that 'sun glasses' is an article quite distinct and different from the article 'spectacles' meaning corrective vision aid. Consequently, it cannot be said that the article 'sunglasses', by all or any standards, has a reasonable claim to be classified under aforesaid entry 100E relating to 'spectacles'. Therefore, contention of counsel for the appellants based on the case of Dunlop India Ltd. (supra) does not help the appellants. On the other hand, meaning of the word 'spectacles' in common parlance as well as in trade and commerce circles rather goes against the appellants as per principles of interpretation laid down in the said case.

10. Glossary of words by ISI also supports the view we are taking. `Sun glasses' is mentioned as a separate word, distinct from the word 'spectacles'.

11. The fact that the word 'sun glasses' is neither included in nor excluded from the word 'spectacles' used in aforesaid entry 100E would also mean that the said entry does not relate to 'sun glasses'.

12. For the reasons aforesaid, we find that the impugned clarificatory order does not suffer from any illegality so as to warrant our interference therewith in exercise of appellate jurisdiction. Both the "Appeals are accordingly dismissed being bereft of merit.

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HARYANA TAX TRIBUNAL

STA NO. 1062 TO 1069 OF 2014-15

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FRIGO GLASS INDIA PVT. LTD.
Vs
STATE OF HARYANA

JUSTICE L.N. MITTAL (RETD.), CHAIRMAN

SUKHPAL SINGH KANG, MEMBER

SACHIN JAIN, MEMBER

13th February, 2017

HF ▶ Assessee

Assessment proceedings pending under the HGST Act prior to coming of HVAT Act in 2003 ought to have been completed by 2006 for being saved from the bar of limitation prescribed under the new Act.

LIMITATION – ASSESSMENT ORDER – ASSESSMENT PROCEEDINGS PENDING UNDER HGST ACT FOR YEARS 1999-2000 TO 2001-2002 – ASSESSMENT ORDER PASSED IN 2009 AFTER REPEAL OF HGST ACT AND COMING INTO FORCE OF HVAT ACT – ASSESSMENT ORDERS CHALLENGED ON GROUNDS OF LIMITATION – PLEA RAISED BY DEPARTMENT THAT DUE TO PENDENCY OF WRIT PETITION PERTAINING TO ASSESSMENT YEARS IN QUESTION, ASSESSMENT ORDER PASSED AT A LATER DATE – HELD: MATTERS PENDING UNDER HGST ACT TO BE DECIDED UNDER HVAT ACT IN VIEW OF S 61(2(a) OF HVAT ACT – SECTION 15(4) OF HVAT ACT CLEARLY LAYS DOWN THE PERIOD PRESCRIBED FOR BEST JUDGMENT CASES I.E. 3 YEARS – THEREFORE, ASSESSMENT ORDER OUGHT TO HAVE BEEN PASSED BY 2006 BUT ACTUALLY PASSED IN 2009 THEREBY BEING HIT BY LIMITATION – CONTENTION OF DEPARTMENT UNACCEPTABLE AS INTERIM ORDER PASSED DURING PENDENCY OF WRIT WAS TO STAY RECOVERY OF TAX AND NOT TO STAY ASSESSMENT PROCEEDINGS – ALSO, IMPUGNED ORDERS STOOD PASSED DURING PENDENCY OF WRIT IN 2009 AND NOT AFTER DECISION OF WRIT IN 2011- THEREFORE, IMPUGNED ORDERS ARE SET ASIDE BEING BARRED BY LIMITATION – APPEALS ALLOWED – *SECTION (12)(a) & 15 OF HVAT ACT, 2003.*

Facts

Assessment for the years 1999-2000 to 2002-03 was framed vide orders dated 26/3/2009. First appeal was dismissed. Second appeal is filed before tribunal challenging the said orders as being barred by limitation.

It is contended that as per HVAT Act, section 15(4), best judgment assessment had to be framed before the expiry of three years from the close of the year to which the returns relate and as HVAT act came into force in 2003, the period of limitation for assessment years prior to 2003 was three years i.e. from 2003 upto 2006.

The revenue has alleged that the assessment could not be framed due to pendency of writ in High court relating to the assessment years in question whereby the court had stayed recovery of tax as arrears of land revenue. After decision in 2011, the assessment orders were passed.

Held:

Section 61(2)(a) of HVAT Act lays down that proceedings pending under HGST Act were to be disposed of by the corresponding Authority under HVAT Act,. Section 15 of HVAT Act is applicable to the said proceedings. Thus, as per S .15(4) of HVAT Act limitation period for finalizing best judgment assessment is three years. In present case, the assessment years pertain to period prior to coming of HVAT act i.e. before 2003 and thus the limitation period would end in 2006. Assessment orders are passed in 2009. Therefore, the impugned orders are hit by limitation. Consequently, orders passed by First appellate authority are set aside.

The contention of department that pendency of writ was the cause of delay is unacceptable as the court had only stayed recovery of tax and not framing of assessment. Also, the impugned orders were passed during pendency of writ and not after decision of writ. The limitation period thus could not cease to operate merely due to pendency of writ. Therefore, appeals are allowed and impugned orders of both authorities below are set aside.

Cases referred:

- *Pawan Kumar Vijay Kumar, Narnaul V/s State of Haryana (2013) 45 PHT 566 (HTT)*
- *Allied Exports & Imports V/s State of Andhra Pradesh, 28 STC 175 (AP)*
- *Ballarpur Industries Limited V/s State of Punjab and Others (2010) 35 PHT 5 (P&H)*
- *State of Punjab and Others V/s M/s The Patiala Co-operative Sugar Mills Limited VAT AP No. 110 of 2013*

Present: Mr. Sandeep Goyal, Advocate counsel for the appellant.
Sh. Dinesh Bajaj, District Attorney Counsel for the State.

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JUSTICE L.N. MITTAL, (RETD.) CHAIRMAN

1. By this common order, we are disposing of eight second appeals STA nos. 1062 to 1069 of 2014-15 filed by the same assessee M/s Frigo Glass India Pvt. Ltd., Gurgaon for assessment years 1999-2000 to 2002-03. For each assessment year, there are two appeals - one under the local Act i.e. the Haryana General sales Tax Act, 1973 (in short, the HGST Act)/the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act) and the other under the Central Sales Tax Act, 1956 (in short, the CST Act).

2. Assessing Authority, Gurgaon (West) passed four separate orders dated 26.03.2009 for the four assessment years in question. The assessee filed eight first appeals against the same. First Appellate Authority, Faridabad vide common order dated 21.03.2014 dismissed the said appeals. Hence these second appeals.

3. We have heard counsel for the appellant and District Attorney for the State and perused the case files.

4. Counsel for the appellant contended that assessment orders passed by the Assessing Authority are barred by limitation and, therefore, liable to the set-aside. It was contended that Section 61 of the HVAT Act repealed the HGST Act subject to certain exceptions. It was submitted that proceedings pending under the HGST Act were to be disposed of under the HVAT Act and, therefore, provisions of the HVAT Act relating to limitation period for finalising the assessment proceedings also became applicable. In support of this contention, reliance has been placed on Full Bench judgment of Hon'ble High Court of Andhra Pradesh in the case of ***Allied Exports & Imports V/s State of Andhra Pradesh, 28 STC 175 (AP)***, Division Bench judgments of Hon'ble High Court of ***Punjab and Haryana in Ballarpur Industries Limited V/s State of Punjab and Others (2010) 35 PHT 5 (P&H)*** and ***State of Punjab and***

Others V/s M/s The Patiala Co-operative Sugar Mills Limited VAT AP No. 110 of 2013 decided on 26-02-2014. According to these judgments, law of limitation being procedural law, amended or new provision of law relating to limitation shall apply to the pending proceedings. Counsel for the appellant contented that according to section 15(4) of the HVAT Act, best judgment assessment, as in the instance cases, had to be framed before the expiry of three years from the close of the year to which the returns relate. It was submitted that the HVAT Act came into force on 01.04.2003 and, therefore, the period of limitation for assessment years prior to 01.04.2003, as involved in the instant cases, was three years from 01.04.2003 i.e. upto 31.03.2006 for passing assessment orders, but in the instance cases, ail the impugned assessment orders have been passed on 26.03,2009 and the same are, therefore, barred by limitation. In support of this contention, reliance has been placed on decision of this tribunal in ***Pawan Kumar Vijay Kumar, Narnaul V/s State of Haryana (2013) 45 PHT 566 (HTT)***.

5. On the other hand, District Attorney for the State contended that the assessee had applied for sales tax concession under rule 28B of the Haryana General Sales Tax Rules, 1975 (in short, the HGST Rules) vide application dated 01.03.2000 showing 25.1.2000 as the date of commercial production. However, rule 28B had lapsed on 14.11.1999 and so the said application could not be considered under the said rule. The assessee applied fresh for grant of concession vide application dated 15.09.2000. High Level Screening Committee (HLSC) vide order dated 5.12.2000 approved the case of the assessee for grant of concession under rule 28C of the HGST Rules. However, necessary entitlement certificate was not issued by Deputy Excise and Taxation Commissioner as the assessee had defaulted in making payment of due voluntary tax since inception which was a condition precedent for the said concession. The assessee filed CWP No. 12880 of 2001 in Hon'ble High Court of Punjab and Haryana. Hon'ble High Court vide interim order dated 27.08.2001 stayed the recovery of tax as arrears of land revenue. The said writ petition was decided vide order dated 10.05.2011 and HLSC has been directed to pass appropriate order in accordance with law after giving personal hearing to the assessee. It was thus contended that due to pendency of said writ petition, there was delay in passing Impugned assessment orders and the same are, therefore, not barred by limitation.

6. We have carefully considered that matter. According to section 61(2)(a) of the HVAT Act, notwithstanding the repeal of the HGST Act, all proceedings including appeals and revisions pending under HGST Act at the commencement of the HVAT Act were to be disposed of by the corresponding Authority under the HVAT Act. In the instant cases, the assessment proceedings in question under the HGST Act were pending when the HVAT Act came into force and, therefore, under the HVAT Act, limitation period prescribed section 15 of the HVAT Act became applicable to the said assessment proceedings. The new law of HVAT Act regarding limitation being procedural law also otherwise became applicable to the proceedings pending under the HGST Act. In this view, we are supported by the cases of ***Allied Exports & Imports*** (supra), ***Ballarpur Industries Ltd.*** (supra) and the ***Patiala Cooperative Sugar Mills Ltd.*** (supra). According to Section 15(4) of the HVAT Act, limitation period for finalizing best judgment assessment is three years. The HVAT Act came into force on 01.04.2003 and, therefore, the said limitation period of three years is to be computed from that date for all assessment years prior to 1.4.2003 as in the instance cases. Consequently the limitation period for the assessment in the instance cases ended on 31.03.2006. However, the impugned assessment orders in all the cases were passed by the Assessing Authority on 26.03.2009 i.e. long after the expiry of limitation period. Consequently, the impugned orders are hit by the bar of limitation. This issue is fully covered in favour of the assessee by the case of ***Pawan Kumar Vijay Kumar*** (supra). When the impugned orders of the Assessing Authority are hit by limitation, impugned order of the first Appellate Authority automatically goes.

7. The impugned assessment orders are not saved from the bar of limitation due to pendency of writ petition filed by the assessee in Hon'ble High Court in the matter of grant of

tax concession Contention of behalf of the State in this regard is not tenable. Admittedly, in the writ petition, Hon'ble High Court by interim order had stayed only the recovery of tax as arrears of land revenue but had not stayed the assessment proceedings. On the other hand, the impugned assessment orders were also passed during the pendency of said writ petition and not after its decision. Both the Authorities below have rather themselves observed in the impugned orders that the assessment or appellate proceedings had not been stayed by the Hon'ble High Court and the same could, therefore, be finalised/disposed of. Thus it cannot be said that pendency of the writ petition was an obstacle in passing the impugned assessment orders. In the absence of any stay against the passing of final assessment order, limitation period for passing the assessment orders did not cease to operate or get extended merely due to pendency of the aforesaid writ petition. The impugned assessment orders were passed long after the expiry of limitation period as already discussed. Contention raised on behalf of the State to save the said orders from the bar of limitation is completely unacceptable.

8. Counsel for the appellant did not advance any argument on merits of the appeals except the bar of limitation qua the impugned assessment orders.

9. For the reasons aforesaid, all these eight appeals are allowed and impugned orders of both the Authorities below are set-aside.

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SGA
LAW OFFICES

NOTIFICATION (Haryana)

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NOTIFICATION REGARDING EXEMPTION FROM LEVY OF VAT ON BIO-DIESEL IN THE STATE

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 10th March, 2017

No. 06 /ST-1 /H.A. 6/2003/S.59/2017. - In exercise of the powers conferred by sub-section (1) of section 59 of the Haryana Value Added Tax Act, 2003 (6 of 2003) and with reference to Haryana Government, Excise and Taxation Department, notification No. Web No. 4/ST-1/H.A.6/2003/S.59/2017, dated the 8th February, 2017, the Governor of Haryana hereby makes the following amendment in Schedule B appended to the said Act with immediate effect, namely:-

AMENDMENT

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

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

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

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

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INFORMATION TECHNOLOGY MAY REMAIN ONE OF THE BIGGEST CHALLENGES FOR GST IMPLEMENTATION

MUMBAI: Many Indian companies including some of the largest ones are struggling to update their tech infrastructure to implement the GST (goods and services tax), say industry experts.

The biggest hurdle is the co-ordination between tax experts and the technology teams in introducing and tweaking the IT systems. In many cases some of the ERP software that were provided by the IT majors has to be redesigned as the GST rules keep updating.

Companies are mainly upgrading their enterprise resource planning (ERP) — a category of business-management software — so as to accommodate the complexities of calculating GST. ERP helps companies manage and monitor everything in the organisation, including supply chain, finance and even human resource functions. SAP and Oracle are the big players in the Indian ERP space. Many companies will have to move from their current system, where every transaction is recorded separately, to an upgraded system where there is a correlation between every entry, according to industry executives.

Many companies are also setting up teams that would include a tech expert from their vendors, an indirect tax expert and a finance department executive.

Several Indian companies have again begun discussions with their IT vendors and tax advisors to upgrade their systems to enable tracking of goods and analysis of tax and other cost implications once the GST regime comes into force.

ERP systems BSE -4.99 % are extensively used by goods manufacturers, especially for supply-chain management. For instance, many retailers use the ERP systems to check movement of goods from the warehouse to the retailer. So if a soap manufactured in Himachal Pradesh reaches a mall in New Delhi, the ERP records every stage of the movement, including the goods carrier's passage through check points.

Courtesy: The Economic Times
4th March, 2017

NEWS OF YOUR INTEREST

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EASING TAX BURDEN TO INDUSTRY BENEFITS: TEN THINGS YOU NEED TO KNOW ABOUT GST

The Centre and states agreed on Saturday on two bills crucial to triggering a Goods and Services Tax, virtually clearing the path for a July 1 rollout of the country's biggest tax reforms since independence.

After the 11th GST Council meeting, finance minister Arun Jaitley said the GST council has approved the two legislation -- the Central GST and Integrated GST bills –- to replace excise duty and service tax with the GST. The council now has to approve the State GST Bill. The CGST and IGST Bills will have to be approved by the Parliament now and ratified by states.

Here are the 10 things that you need to know about the GST regime:

1) Constitution amended for GST

The government amended the Constitution, which requires approval from two-third of members in both the Lok Sabha and Rajya Sabha, to switch over to GST from the present tax regime at the Centre and states.

The Lok Sabha passed the Constitution (One Hundred Twenty Second Amendment) Bill on May 6, 2015.

The Bharatiya Janata Party-led National Democratic Alliance government took months to bring all opposition parties on board so and move the Bill in Rajya Sabha where the ruling party does not enjoy a majority.

On August 3, 2016, the Rajya Sabha approved the Bill after a marathon debate and with some changes. On August 8, the Lok Sabha approved the amended bill.

2) India as a common market with one tax

The GST will unify India into a common market with one tax across all states, which will eliminate the present cascading impact of a plethora of central taxes.

Central taxes such as Central Excise Duty, Additional Excise Duty, Additional Customs Duty and Service Tax will all be merged into one CGST.

State levies such as VAT, sales tax, entertainment tax, purchase tax, mandi tax, luxury tax, octroi and entry tax, will be subsumed into SGST.

The Centre will levy the Central GST and Integrated GST, while states will impose the SGST.

3) Four-slab GST structure

The new regime will have a four-slab structure of 5%, 12%, 18% and 28%.

There will be no tax on several items including rice, wheat and other essential items, which constitutes 50% of CPI inflation basket.

The lowest tax rate of 5% is proposed for items of mass consumption used by common people such as spices, tea and mustard oil.

There will be two "standard" rates of 12% and 18% covering most manufactured items and services.

The highest tax rate of 28% will be imposed on items like luxury cars, pan masala, tobacco and aerated drinks. These items are currently attracting a tax of 27-31%.

4) States to get compensation if there is revenue loss

The Compensation Bill will ensure states will get fully compensated for the first five years if there is a revenue loss after GST is rolled out.

There could an enabling provision in the GST Bills that highest slab could be raised up to 40% to make up for the loss in revenues coming from other items.

5) Dual control on assessing taxpayers

The Centre and states will both assess taxpayers having a turnover of over Rs 1.5 crore in turnover annually.

States will the power to assess taxpayers below Rs 1.5 crore in turnover.

At present, 90% of taxpayers have turnover below Rs 1.5 crore annually and they will be assessed by states.

6) How GST will lower tax burden

GST will be a single tax on the supply of goods and services, right from the manufacturer to the consumer. Credits of input taxes paid at each stage will be available in the subsequent stage of value addition.

The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

7) How will consumers benefit

Consumers now pay higher taxes as multiple levies are imposed --- one over the other --- at various stages starting from production to the retail sales.

GST will be a single and transparent tax proportionate to the value of goods and services.

GST will eliminate the cascading impact of multiple indirect taxes being levied by the Centre and states, with incomplete or no input tax credits available at progressive stages of value addition. Under GST, there would be only one tax from the manufacturer to the consumer, leading to transparency of taxes paid to the final consumer.

8) Will industry benefit from GST

For India Inc, GST will ensure easier compliance through the GST Network (GSTN) platform. A seamless tax-credit system throughout the value chain and across states will ensure that there is minimal cascading of taxes. This would reduce hidden costs of doing business.

All services such as registrations, returns and payments will be available to the taxpayers online, which would make compliance easy and transparent.

GST will help India improve its ranking in the ease of doing business.

9) GST impact on inflation

Initially, GST may lead to a higher inflation as many services and manufactured products get costlier and as compliance improves.

However, GST will help moderate inflation in the medium to long term as the cascading impact of taxes goes.

10) Will GST help the economy

The GST is widely perceived to help in accelerating economic growth by 1-2 percentage points as it shores up revenues of Centre and states, which can be invested in infrastructure and social schemes.

Industry will be able to invest more money in ramping up capacity as the tax burden is reduced, which will propel growth and employment.

Courtesy: Hindustan Times
4th March, 2017

NEWS OF YOUR INTEREST

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QUASI-JUDICIAL BODY LIKELY TO CURB PROFITEERING POST GST

NEW DELHI: The all-powerful GST Council may set up a quasi-judicial authority or rope in an existing body to protect consumers from profiteering by business entities under the Goods and Services Tax (GST) regime.

The model draft GST law, unveiled in November last year, had proposed an anti-profiteering mechanism to ensure benefit of lower taxes is shared with consumers.

A senior finance ministry official said GST being one- nation-one-tax will lead to doing away with current system of tax-on-tax and any reduction in tax rate will have to be passed down to consumer.

As of now, central excise is levied on a produce manufactured at a factory. When it is sold, a VAT is levied on not the ex-factory price but on the rate arrived at after including the cost of manufacture and excise duty. With GST, this practice will go away.

The GST bill, the official said, provides for giving the power to protect consumer interest to either an existing authority or creating a new one.

The GST Council, headed by Union Finance Minister Arun Jaitley and comprising all state representatives, may decide to refer complaints of profiteering to the consumer forum, or set up a new body or a quasi-judicial authority, he said.

"We won't be sending inspector to trading or manufacturing establishments," the official said. "The anti- profiteering clause is an enabling provision and an authority can be set up if the Council feels there is a need."

A full-fledged authority can be created if profiteering is rampant and there are complaints from public, he said.

As per the draft, an authority can be constituted or an existing one entrusted with the task to examine that the input tax credits or reduction in tax rates are passed by registered tax payers to consumers.

The official, however, said there is not going to be a drastic reduction in tax rates as the effort would be put fit a good or service in the nearest tax slab of the four-tier structure of 5, 12, 18 and 28 per cent approved by the Council.

Tax rules, he said, will come to the GST Council meeting sometime later this month or early next month.

Under the new GST regime, which is likely to kick in from July 1, all traders and industries will have to get register with the GST network to pay taxes, file return and claim refunds.

The official said 75 per cent of the registration is finished in states.

E-Permit will be issued by GST-Network at the time of departure if someone is sending goods overseas, he said, adding the commodities, goods and services which are to be exempt from GST will be taken up at the meeting of the Council later.

Courtesy: The Economic Times
5th March, 2017

NEWS OF YOUR INTEREST

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GSTN MAY STEAL THUNDER FROM GST-APP MAKERS

BENGALURU: As several companies are budgeting crores of rupees to rollout software services and mobile apps to help 8-million tax-paying entities file returns for the Goods and Services Tax (GST), one major concern for several of them is losing market share to a new offline tool to be launched by the Goods and Services Tax Network (GSTN). The GSTN is the nodal agency in charge of laying down the IT infrastructure for the new tax system.

The GSTN is currently building an offline application tool to help taxpayers, especially those with limited internet connectivity , upload their invoices and file their returns. The tool will be developed in a way to enable small and medium tax payers to convert their invoice data formats into the format compatible with the GST system.

While this is a big blessing for small businesses and other entities looking for a free and simple solution to comply with GST, there has been disgruntlement among some companies offering services under the GST Suvidha Providers (GSPs) and Application Service Providers (ASPs) labels, who claim that the government's tool could create conflict for market share.

"The offline tool can eat into almost 20-30% of the market share we had projected while building our GST tools," said Himanshu Jain, founder of legal services provider LegalRaasta, which is an ASP and is investing Rs 10-15 crore for the opportunity. Jain said that the company is in the process of raising a new round of funding mainly aimed at boosting its GST offering.

A similar tone had been adopted by private ewallet and payment companies following the launch of the government's BHIM app in December and the incentives announced for the use of the app in the Budget last month. The GSTN has shortlisted 34 companies, including EY, Tally Solutions and Alankit among others, to serve as GSPs and get direct access to its technology infrastructure, while ASPs can also offer tax return-filing tools and services in collaboration with the GSPs.

Tax-filing platform ClearTax has already invested $3.3 million in buil ding its offerings for GST compliance, founder Archit Gupta said.

"The GSTN tool is likely to be a credible threat in the MSME segment. However, it will also educate the market. Eventually, the market will clear out for those who have the most innovative offering," Gupta said, adding that ClearTax's charges for its GST platform, which also includes an offline service, will start from Rs 100 a month.

Some GSPs ET spoke to said they did not see a conflict from the GSTN offline utility.

"We are catering to the mid-sized and large enterprises, while the offline tool will mainly help small taxpayers. There is no conflict," said Bipin Sapra, tax partner, EY India. Alankit, which is building a point-of-sale hardware device to help businesses in tax compliance, says it expects 70% of revenue from the small and informal businesses. However, managing director Ankit

Agarwal said that its value-added services will ensure that the GSTN tool does not eat into its share.

"As a GSP, we do not see any threat from the GSTN filing facility. The requirement for GST compliance services is massive and we will offer value added services to extend our dominance in income tax compliance to GST compliance as well," Agarwal said.

Prakash Kumar, CEO at GSTN said the agency is mandated to provide a free service for GST compliance.

"The concern was raised in our first meeting in January last year in which we made clear that we will offer a service to minimise costs for tax payers. However, specialised and customised solutions are still needed which the GSPs can offer," Kumar told ET.

Courtesy: The Economic Times
7th March, 2017

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GST SET TO COMPLICATE OPERATIONS FOR BANKS

MUMBAI: Many banks and financial institutions may be in for a lot of trouble as they could just see the complexity in paying taxes increase under the incoming goods and services tax (GST).

As GST stands today, transactions between two branches of same bank is set to trigger a tax, which could prove to be cumbersome. Indian banks have also approached the government to amend the rules regarding this.

ET had in January written that most of the major banks, both private and public sector ones, have approached the government to modify the GST framework involving self-supply of services, say people in the know. In a written communication to the GST committee, banks have claimed that they would not be able to comply with such a regulation as it's impossible to value such services.

Experts point out that GST being levied on branch transactions could be cumbersome because of the enormous number of financial transactions being carried out and because it will be impossible for banks and finance institutions to value services provided by one branch to another and then pay GST on that. Banks have written to the government to amend the GST law involving such 'self-supply' of services.

Last week on Saturday, the consensus between states and the Centre would mean that the July 1 deadline looks achievable. The sales tax officers across India are being trained in different locations and are being prepared for the upcoming centralised tax law. About 20 lakh tax officers are already being trained.

Though change in the peak rate will not alter the four-slab rate structure of 5%, 12%, 18% and 28% agreed upon last year, but is only a provision being built into the model law to take care of contingencies in future. This means the central GST and state GST can be up to 20% each, leaving the scope for a maximum levy at 40%, say experts.

The GST Council has proposed to raise the peak tax rate to 20 per cent, from the current 14 per cent, in the model goods and services tax Bill to preclude the requirement of approaching Parliament for any change in rates in future.

Courtesy: The Economic Times
7th March, 2017

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COMPANIES WANT THEIR VENDORS TO CUT PRICE BY 10% DUE TO GST BENEFITS

MUMBAI: Some of the biggest manufactuerers in the country have moved to level the playing field even before GST is put in place demanding that their vendors cut prices of goods supplied to comply with the anti-profiteering clause in the new tax regime.

The companies have already calculated the exact jump in the vendors' margins and want that they pass it on to them. Most automobile companies and a handful of petroleum companies have started communicating to their vendors about this from early February, industry sources said.

"Many big companies have already calculated the exact impact GST would have on their operations and have even reached out to their vendors.

These companies are demanding that the vendors must reduce their price by anywhere between 2-10% as GST would benefit them and then pass it to the company," said Srikant Jilla, managing partner, SKP Business Consulting.

The anti-profiteering clause in the revised model GST law is to ensure that the GST benefits/credits are passed on by the companies/vendors to the customers. However, this might prompt a turf war among suppliers along the manufacturing chain. While the GST framework cautions companies to maximise profits through "anti-profiteering" clause, the details of the same are sketchy.

"As per the current regulations no company can profit from lower rate of GST as opposed to the current indirect taxes and will be required to pass on the benefits to the customers.

While anti-profiteering provision is present in GST law, there is no clarity around which authority will implement this law and what would be the rules and regulation including the rate of penalty," said Sachin Menon, national head, indirect tax, KPMG India.

Experts said there is insufficient clarity on the penalties levied by the government in case if a company does not pass on the benefits to end customers.

Also, there is ambiguity around which of the tax authorities would collect these penalties.

GST rules also do not distinguish between cost benefits from pure taxation and jump in margins due to change on company strategy, like change in logistics planning.

"Many larger companies would consolidate their warehousing and hence would see their margins go up. But can government claim that this is anti-profiteering?" asks an industry insider. There is a view that such non taxation related increase in margins may not be passed on to the customer.

"However, large companies are demanding that their vendors reduce costs in such a situation. Some vendors may choose to move away from such a company, but most are set to give in to demands," added the industry expert.

Courtesy: The Economic Times
7th March, 2017

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DELHI CUTS VAT ON ATF TO 1% FOR REGIONAL FLIGHTS; OTHER STATES TO ANNOUNCE THE SAME SOON

NEW DELHI: The Delhi government today announced reduction in Value Added Tax (VAT) on jet fuel for regional flights flying out of Delhi airport.

Delhi's deputy chief minister and finance minister Manish Sisodia announced that VAT on ATF for regional flights will now be charged at the rate of 1 per cent from earlier 25 per cent in Delhi.

The request for reduction was made by the aviation ministry in February this year. According to Centre's directive under regional connectivity scheme, other state governments will also have to reduce the VAT to 1 per cent on jet fuel

The reduction has been announced after Union civil aviation minister Ashok Gajapati Raju had written to the Delhi government and Lieutenant General for a reduction in VAT for regional flights.

"The government of NCT of Delhi has imposed a VAT of 25 per cent from November 16, 2015, which is one of the highest in the country, whereas state governments are required to reduce VAT to 1 per cent or less for a period of ten years under RCS (Regional Connectivity Scheme). It is appropriate to indicate here that revenue loss on account of VAT on ATF will be notional, as there is no RCS flight touching Delhi at present... I request for your favourable consideration for reduction of VAT on ATF for 1 per cent or less for the RCS flights to and from Delhi," Raju had said in his February 9, 2017 letter to lieutenant government, which was seen by ET.

Under RCS, announced by the Union government, airlines will offer flights at a fare of Rs 2,500 for per hour of flight.

Airlines welcome this reduction, as it would provide an impetus to regional connectivity scheme.

"I understand that this relief is only for the Regional Connectivity Routes. While this is a welcome move and will provide the much needed impetus to the RCS, we do request that this tax break is broadened to all air travel out of Delhi as it will allow IndiGo to provide even more affordable air travel to millions of our customers out of Delhi, which is our biggest base of airplanes," Aditya Ghosh, president and whole-time director, IndiGo, said in a statement.

Courtesy: The Economic Times
8th March, 2017

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PM HOPES FOR A BREAKTHROUGH IN GST

As the second leg of the Budget session commenced on Thursday, Prime Minister Narendra Modi said he expects a breakthrough on Goods and Services Tax (GST) before the session concludes next month.

Modi was talking to reporters at Parliament House just before the commencement of proceedings in both the Houses.

GST is billed as the biggest-ever tax reform undertaken by the country and is expected to add at least one percentage point to its GDP growth.

The Centre is widely expected to introduce the Bills on Central GST and iGST during the second leg of Budget session.

It may be recalled that the GST Council had few days back given its formal approval to the Central GST (CGST) and Inter-State GST (IGST) laws, with the Compensation Law already having been approved during the previous meeting on February 18.

The Council is expected to meet again on March 16 to deliberate on the final versions of the remaining two laws — the State GST law and the Union Territories GST Law.

The Modi-led government is looking to introduce dual GST in the country from July 1 this year.

The Constitutional amendment that paved the introduction of GST is due to lapse in mid-September this year.

Modi said all the States and political parties have shown a positive approach towards GST implementation. Expressing hope that the second leg would be a fruitful one for conduct of government business, Modi said there would be detailed discussions on the Budget. “I am sure the level of discussion and debate will be of a good quality,” he said.

Modi also said issues that would benefit the poor would be discussed during the second leg of the Budget session.

Courtesy: Business Line
9th March, 2017

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SELECT FARM GOODS TO BE TAXED UNDER REVAMPED GST

NEW DELHI: India has incorporated a new definition of 'agriculturalist' in the goods and services tax law to enable select farm items to be brought under the tax net nationwide. While farmers won't have to register to pay the tax, registered buyers may need to collect the levy on a 'reverse charge' basis, similar to the purchase tax principle adopted in Punjab and Haryana.

Most farm produce will likely be exempted from the new tax and some cash crops are expected to attract the threshold rate. As per the latest definition, an agriculturalist is a person or a Hindu undivided family undertaking cultivation of land by own labour or labour of the family or by servants paid wages in cash or kind or by hired labour under personal supervision or supervision by any family member.

The draft central and integrated GST laws, which were approved by the GST Council, have incorporated the new definition. The Bills are expected to be introduced in the budget session of Parliament. The budget session resumed on Thursday after a recess.

"It was felt that the earlier definition was vague and open to interpretation," a senior government official privy to the development told ET.

The earlier draft contained a generic definition — agriculturalists are those who cultivate land personally for the purpose of agriculture. Agriculture itself was defined separately in the earlier draft. It said that agriculture, with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood o ..

"Expansion of the definition of agriculturalist would ensure that the entire activity of agriculture would get consistent GST treatment, irrespective of the manner in which cultivation is done," said Pratik Jain, indirect tax leader at PwC.

Jain said anyone other than an agriculturalist and dealing with agri-commodities, such as a trader, could still be subject to GST if the government so chooses. Purchasers of these commodities could be subject to GST under a 'reverse charge' enabling provision in the draft GST laws.

As of now, the understanding is that raw agricommodities such as wheat and grains may be exempt from GST while processed commodities such as packed rice would attract the tax, although at a lower rate. GST, which replaces multiple central taxes including excise duty, service tax, countervailing duty and state taxes such as value-added tax, entry tax, octroi and purchase tax with a single levy, is proposed to be implemented from July 1.

Courtesy: The Economic Times
10th March, 2017

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GST: NEW RULES WILL HAVE IMPACT ON RETAIL CHAINS, RESTAURANTS AND CONTRACTUAL FARMING

MUMBAI: Even as the government recently brought some parts of agriculture under goods and services tax (GST) gamut, some big retail chains and quick service restaurants (QSRs) may see the impact. This is mainly because contractual farming will now be under the purview of GST.

Many big retail chains give contracts to farmers for growing certain agricultural products which are then directly sold in the malls. Industry trackers say that such contractual farming would now attract GST. Also some of the multinational QSRs including some renowned burger chains give contracts for potato farming. That too would now attract GST, say industry experts.

Additionally some of the middle men that trade in agricultural commodities would also be included under GST. Industry experts say that some of the smaller retailers who sell different products including agricultural products too would come under the purview of GST.

As for traditional farmers, they would not be required to get themselves registered to pay GST. However, those buying products from the farmers may be required pay GST.

The government came out with the clarification on agriculture products recently. The government is looking to iron out issues before the centralised tax is rolled out in next couple of months.

Some of the sectors however are still concerned how the GST would impact them. Like many banks and financial institutions may be in for a lot of trouble as they could just see the complexity in paying taxes increase under the incoming goods and services tax (GST). Due to the place of supply regulations in GST framework transactions between two branches of a bank is set to trigger a tax, which could prove to be cumbersome. Indian banks have also approached the government to amend the rules regard this.

Courtesy: The Economic Times
13th March, 2017

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TAXES UNDER GST 'TO INCREASE A BIT', SAYS CBEC CHAIRMAN

NEW DELHI: While the effective rate of indirect taxes under the new Goods and Services Tax (GST) regime still remains unclear, as fitment in tax slabs is under way, the Central Board of Excise and Customs (CBEC) has said that taxes were likely to "increase a bit" from the current level.

"That is our belief (that the current level of taxation will not lessen at least for first five years. It will be the same, that's our belief, and it will increase a bit," CBEC Chairman Najib Shah told IANS in an interview here.

Shah said that the fitment of goods and services in the four tax slabs -- 5 per cent, 12 per cent, 18 per cent and 28 per cent -- is a work in progress.

Apart from the tax rates, there will also be a cess on top of it, which will form the corpus to compensate the states for any revenue loss for the first five years of implementation of GST.

"The Council will determine the commodities which will have the cess. We will suggest, but all decisions will be taken by the Council because, after all, it is a question of revenue for the states and the Centre," Shah told IANS.

"Rates is an issue that is sensitive and will be determined only by the Council," he said.

Revenue Secretary Hasmukh Adhia recently announced that the Council has increased the cGST (central GST) and sGST (state GST) peak tax rate from 14 per cent to 20 per cent each, amounting to a peak rate of 40 per cent.

Though the current tax slabs will remain the same, the peak rate has been increased for future contingencies, Adhia had said.

CBEC Chairman also said that GST is being looked upon as bringing about a possible 1-2 per cent increase in GDP.

"Whenever we talk of GST, we talk of a possible increase in GDP by 1-2 per cent. That's the sort of belief we have got, he said.

Where is that GDP going to come from?

He said that with the implementation of GST, tax evasion should come down as all filings will be IT driven and evasion will get difficult.

He also said the GST regime is likely to be rolled out by July 1.

The Chairman said that it will ensure that the laws regarding the new indirect tax regime are finalised by April 1, so that the industry has three months to prepare for the transition.

"That should give everybody time to adjust to the new requirements. We have trained 49,000 officers of the states and the Centre till last week. Goods and Services Tax Network (GSTN) --

GST's IT infrastructure arm -- and CBEC together will now conduct trainings, so that people know how to file their returns," he said.

"Outreach programmes from April 1 are going to be massive. We are targeting all major towns. We will first create a group of master trainers and then ask them to train the trade and industry," he added.

Shah said that he hoped the GSTN portal is able to handle the massive rush that it will see post July 1.

"Existing VAT dealers, central excise assessees and service tax assessees are approximately over six million. The total number of assessees (under GST) will be lesser than that as there is some overlap. Instead of filing three returns, they would be filing one return now. When the final migration takes place, then only we will know the exact number of assessees," he said.

Though any new change will have hiccups because of the existing legacy issues, the Central Board of Excise and Customs is trying to ensure the transition is smooth, he said.

"It's a new law, all the states and the Centre are moving to a new taxation regime. So there are going to be challenges because not only the trade and industry but the administration also has to change. All existing legacy issues may continue for some time," Shah said.

One of the hurdles before CBEC seems to be the concern of officials that their work load will reduce drastically, as 90 per cent of assessees below Rs 1.5 crore turnover will be assessed by the states.

"There is a certain section of officers that is concerned that perhaps they would be having lesser work under the GST. We have flagged the concerns, but the government will take a final call. The 90 per cent assessees below Rs 1.5 crore turnover to be assessed by states is a decision taken by government. That is an administrative arrangement," he said.

"We believe there would be enough work. Apart from the work, there are other concerns as well. We will be addressing those concerns as well," he added.

Shah said they will not require any additional staff as of now. "We will manage with the existing staff. As we go ahead, we will see how the workload is," he said.

Courtesy: The Economic Times
14th March, 2017