SGA
LAW OFFICES

Issue 4
February 2015

NOMINAL INDEX

STATUTES, CIRCULARS AND NOTIFICATIONS

Punjab

Chandigarh

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SUBJECT INDEX

Issue 4
February 2015

PUNJAB & HARYANA HIGH COURT

VATAP NO 57 of 2014

BOMBAY PLASTIC MACHINERY
Vs.
STATE OF PUNJAB AND ANOTHER

RAJIVE BHALLA AND AMIT RAWAL, JJ.

13th November, 2014

HF ▶ Partly dealer, partly revenue.

APPEAL - REMAND - TRIBUNAL – PENALTY IMPOSED – ON APPEAL MATTER REMANDED BY 1ST APPELLATE AUTHORITY TO ADJUDICATE REGARDING GENUINENESS OF INVOICE AND C-FORMS – APPEAL FILE BY DEALER BEFORE TRIBUNAL CHALLENGING REMAND ORDER – MATTER ADJUDICATED ON MERITS HOLDING THAT PENALTY HAS BEEN RIGHTLY IMPOSED – ON APPEAL HELD BY HIGH COURT THAT TRIBUNAL LOST SIGHT OF THE FACT THAT THE APPELLANT HAD ONLY CHALLENGED ORDER OF REMAND AND NOT LEGALITY OF ORDER OF REMAND - OBSERVATION MADE BY TRIBUNAL NOT TO BIND AETC WHILE DECIDING APPELLANT'S CASE ON MERITS – APPEAL DISMISSED.

In this case, penalty had been imposed by the AETC (Export) against which an appeal was made to the DETC. The First Appellate Authority had remanded the matter for adjudication regarding genuineness of invoice and C-Forms. The dealer appealed against the remand order before the Tribunal, which disregarded the documents and recorded an opinion on merits against the appellant instead of considering the legality of remand order. Aggrieved by the order, an appeal is made to Hon'ble High Court. Dismissing the appeal, it is held that the Tribunal lost sight of the fact that the appellant had only challenged order of remand and not legality of order of remand. It is clarified that no observation of Tribunal would be binding on AETC in this case while deciding the appellant's case on merits.

Present: Mr. Rohit Gupta, Advocate for the appellant.
Mr. Jagmohan Bansal, Additional Advocate General, Punjab.

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RAJIVE BHALLA, J

1. The appellant challenges order dated 26.4.2013 passed by the Value Added Tax Tribunal, Punjab dismissing his appeal.

2. Counsel for the appellant submits that as the facts on record clearly prove that the receipt is duly supported by an invoice and a C-form, the Deputy Excise & Taxation Commissioner (A) should have allowed the appeal instead of remanding it for adjudication afresh. The learned Tribunal disregard the invoice and C-form and proceeded to record an opinion on merits against the appellant unmindful of the fact that the matter had only been remanded to the AETC(Export).

3. Counsel for the State of Punjab submits that as the matter has only been remanded, the appellant would be free to raise all such pleas as may be available. It is further submitted that a perusal of the impugned order reveals that the appellant violated provisions of the Act and the Rules by submitting a hand written invoice which even otherwise appears to be suspicious. The Tribunal having decided the legality of the penalty on merits, the appellant cannot invoke the invoices and C-forms at this belated stage.

4. We have heard counsel for the parties and perused the impugned order. Admittedly vide order dated 5.11.2012 the DETC (A), Ludhiana Divison Ludhiana remanded the matter to the Assistant Excise and Taxation Commissioner (Export) to decide the case on merits after referring to certain judgments. The appellant for some odd reason filed an appeal. The learned VAT Tribunal, while dismissing the appeal has recorded an opinion on the legality of the penalty. The Tribunal apparently lost sight of the fact that the appellant had only challenged the order of remand and therefore, consideration before the tribunal was confined to legality of the order of remand.

5. Consequently, but without expressing any opinion on the merits of the controversy we dismiss the appeal, but clarify that any observation made by the Tribunal on merits shall not be binding on AETC (Export) while deciding the appellant's case on merits which, shall be decided within three months.

6. Parties are directed to appear before the AETC (Export) Ludhiana on 16.12.2014.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 4 OF 2013

STANDARD STEELS, FARIDABAD
Vs.
STATE OF HARYANA AND OTHERS

AJAY KUMAR MITTAL AND JASPAL SINGH, JJ

25th April, 2014

HF ▶ Appellant

CONDONATION OF DELAY – APPEAL – ASSESSMENT ORDER PASSED RAISING DEMAND – DISMISSAL OF 1ST APPEAL ON THE GROUND OF LIMITATION – DELAY OF 17 DAYS OCCURRING DUE TO MISBEHAVIOUR OF COUNSEL NOT CONSIDERED SUFFICIENT CAUSE – COPY OF ORDER RECEIVED BY SOMEONE NOT AUTHORIZED BY APPELLANT – CONSEQUENT DELAY OF 30 DAYS IN FILING OF APPEAL BEFORE TRIBUNAL – DELAY NOT CONDONED – HELD BY HIGH COURT THAT EXPLANATIONS TENDERED WERE PLAUSIBLE – UNINTENTIONAL DELAY AS CIRCUMSTANCES STOOD BEYOND CONTROL – DELAY IN BOTH CASES CONDONED – MATTER REMITTED TO 1ST APPELLATE AUTHORITY TO ADJUDICATE ON MERITS – *SECTION 5 OF LIMITATION ACT, 1963.*

Assessment for the year 2006-07 was framed raising an additional demand. The delay of 17 days in filing of appeal was caused due to misbehaviour of counsel by not appearing in the matter on the date of hearing. An application under Section 5 was also filed alongwith the appeal before the 1st appellate authority. Being hit by limitation, the appeal was dismissed and application rejected. The copy of the order passed was received by someone not authorized by the appellant and in such circumstances, it led to delay of 30 days in filing of appeal before Tribunal. However, the Tribunal did not condone the delay and rejected the appeal of the appellant. Aggrieved by the order of the Tribunal, an appeal was filed before the Hon'ble High Court. Finding the explanations plausible, leading to conclusion that there was sufficient cause for delay in filing the appeal, the delay was condoned in both cases and matter remitted to 1st appellate authority to be heard on merits.

Present: Mr. Rajiv Agnihotri, Advocate for the appellant.
Ms. Tanisha Peshawaria, DAG Haryana

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AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the assessee under Section 36 of the Haryana Value

Added Tax Act, 2003 (in short 'the Act") against the orders dated 23.3.2010 (Annexure A01), dated 4.7.2011 (Annexure A-2) passed by the Joint Excise and Taxation Commissioner (Appeals) and dated 3.8.2012 (Annexure A-4) passed by the Haryana Tax Tribunal, Chandigarh (hereinafter referred to as "The Tribunal") in STA No.216 of 2011-12d for the assessment year 2006-07, claiming the following substantial questions of law :-

i) Whether the delay in filing appeal before the first appellate authority late by 17 days is so fatal to be dismissed as barred by limitation and particularly when apparently the counsel misbehaved by not appearing in the matter of the date of hearing ?

ii) Whether there is delay in filing appeal before the Haryana Tax Tribunal when admittedly the appeal was filed against certified copy of order applied and that appeal was filed within time from the receipt of the certified copy of the order ?

iii) Whether the Tribunal should not have given opportunity of being heard before concluding at the back of the assessee appellant that on certified copy some signature are there and whether those belong to the appellant or not ?

iv) Whether the Haryana Tax Tribunal should not have enquired from the record regarding the signature relied upon without making any enquiry?

v) Whether the Tribunal should not have given the appellant an opportunity of filing application when it concluded beyond the Grounds of appeal filed?

vi) Whether the Tribunal should have taken cognizance of decision of Hon'ble Punjab & Haryana High Court in case of Gheru Lal Bal Chand cited in CWP 6573 of 2007 dated 23.9.2011 keeping in view the merits of the case that the additional demand is only on account of input tax disallowing on the basis the seller did not discharge tax obligation ?

2. The facts necessary for adjudication of the present appeal as narrated therein are that the appellant-M/s Standard Steels was engaged in the trading of iron and Steel etc. It had been filing its returns and discharging tax obligations. The assessment for the year 2006-07 was framed by the assessing authority vide order dated 23.3.2010. (Annexure A-1) making additional demand of Rs.2,51,927/-. Feeling aggrieved the appellant filed an appeal before respondent No.4-Joint Excise and Taxation Commissioner (Appeals). As the appeal was barred by limitation, an application under Section 5 of the Limitation Act was also filed for condonation of 17 days' delay. Respondent No.4 vide order dated 4.7.2011 (Annexure A-2) rejected the application for condonation of delay and dismissed the appeal being hit by limitation. Still dissatisfied with the order dated 4.7.2011 (Annexure A-2), the appellant filed an appeal (Annexure A-3) before the Tribunal who vide order dated 3.8.2012 (Annexure A-4) dismissed the appeal being barred by limitation. Hence, the present appeal.

3. We have heard learned counsel for the parties.

4. The primary question that arises for consideration in this appeal is whether the delay of 17 days in filing the appeal before the Joint Excise and Taxation Commissioner (Appeals) and the delay of about one month in filing the appeal before the Tribunal was liable to be condoned in the facts and circumstances of the present case.

5. Examining the legal position relating to condonation of delay under Section 5 of the

Limitation Act, 1963 (in short, the "1963 Act") it may be observed that the Hon'ble Supreme Court in **Oriental Aroma Chemical Industries Ltd v. Gujarat Industrial Development Corporation and another, (2010) 5 SCC 459** laying down the broad principles for adjudicating the issue of condonation of delay, in paras 14 & 15 observed as under :-

> *"14. We have considered the respective submissions. The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.*
>
> *15. The expression "sufficient cause" employed in Section 5 of the Indian Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which sub serves the ends of justice. Although, no hard and fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate-Collector (L.A.) v. Katiji N.Balakrishnan v. M.Krishnamurthy and Vedabai v. Shantaram Baburao Patil."*

6. It was further noticed by the Hon'ble Apex Court in **R.B. Ramlingam V.R..Bhavaneshwari 2009(1) RCR (Civil) 892** as under :-

> *"……. It is not necessary at this stage to discuss each and every judgment cited before us for the simple reason that Section 5 of the Limitation Act, 1963 does not lay down any standard or objective test. The test of "sufficient cause" is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of "sufficient cause" delightfully undefined, thereby leaving to the Court a well-intentioned discretion to decide the individual case whether circumstances exist establishing sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such."*

It was also recorded that :-

> *"For the aforesaid reasons, we hold that in each and every case the Court has to examine whether delay in filing the special leave petition stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition….."*

7. From the above, it emerges that the law of limitation has been enacted which is based on public policy so as to prescribe time limit for availing legal remedy for redressal of the injury caused. The purpose behind enacting law of limitation is not to destroy the rights of the parties but to see that the uncertainty should not prevail for unlimited period. Under Section 5 of the 1963 Act, the courts are empowered to condone the delay where a party approaching the courts belatedly shows sufficient cause for not availing the remedy within the prescribed period. The

meaning to be assigned to the expression "sufficient cause" occurring in Section 5 of the 1963 Act should be such so as to do substantial justice between the parties. The existence of sufficient cause depends upon facts of each case and no hard and fast rule can be applied in deciding such cases.

8. The Hon'ble Apex Court in **Oriental Aroma Chemical Industries Ltd. And R.B. Ramlingam's cases (supra)** noticed that the courts should adopt liberal approach where delay is of short period whereas the proof required should be strict where the delay is inordinate. Further, it was also observed that judgments dealing with the condonation of delay may not lay down any standard or objective test but is purely an individualistic test. The court is required to examine while adjudicating the matter relating to condonation of delay on exercising judicial discretion on individual facts involved thereon. There does not exist any exhaustive list constituting sufficient cause. The applicant/petitioner is required to establish that inspite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable.

9. The question regarding whether there is sufficient cause or not, depends upon each case and is to be decided taking totality of events which had taken place in a particular case. Learned counsel for the appellant submitted that the assessment order dated 23.3.2010 was received by the representative of the appellant on 4.6.2010 and the counsel engaged by him misbehaved with the assessee and filed the appeal late by 17 days after the expiry of limitation and thereafter did not appear before the appellate authority at the time of hearing of the appeal on 4.7.2011. The appellant applied for certified copy of the order on 10.10.2011. The appellant applied for certified copy of the order on 10.10.2011 on coming to know about the dismissal of the appeal as time barred which was received on 12.10.2011. The appellant filed the appeal before the Tribunal on 18.11.2011. According to the learned counsel for the appellant, the copy of the order of the first appellate authority was received by someone not authorized by the appellant and in such circumstances, delay, if any, in filing the appeal before the Tribunal could not be attributed to the appellant. It was urged that the delay, if any, has occurred in the aforesaid circumstances in filing the appeal before the Tribunal and also the first appellate authority. Learned counsel further argued that the delay was unintentional and due to the circumstances beyond the control of the appellant.

10. The explanation furnished by the appellant appears to be plausible and, therefore, leads to the conclusion that there was sufficient cause for delay in filing the appeal. Once that was so, the delay in filing the appeal before the first appellate authority and the Tribunal deserves condoned and appeal heard on merits by the first appellate authority.

11. This Court in **M/s. Aptech Engineers, Gurgaon v. State of Haryana and others, 2014 (2) PLR 102** while examining the legal position had condoned the delay of 70 days and remitted the matter to the Tribunal to adjudicate the dispute on merits in accordance with law.

12. In view of the above, it is held that the Joint Excise and Taxation Commissioner (Appeals) as well as the Tribunal had erred in refused to condone the delay in filing the appeals. The substantial questions of law are answered accordingly. As a sequel, the appeal is allowed and the orders dated 4.7.2011 (Annexure A-2) passed by the Joint Excise and Taxation Commissioner (Appeals) and dated 3.8.2012 (Annexure A-4) passed by the Tribunal are set aside. The matter is remitted to the Joint Excise and Taxation Commissioner (Appeals) to adjudicate the dispute on merits in accordance with law.

PUNJAB & HARYANA HIGH COURT

CWP-21410-2014

TARLOCHAN SINGH SETHI
Vs.
STATE OF PUNJAB AND OTHERS

ASHUTOSH MOHUNTA AND ANUPINDER SINGH GREWAL, JJ

16th October, 2014

HF ▶ None

PUBLIC INTEREST LITIGATION – MAINTAINABILITY OF – *LOCUS STANDI* – PIL FILED FOR ISSUANCE OF DIRECTIONS TO RESPONDENTS FOR VAT REFUNDS ETC. – NO CLAIM MADE BY VAT PAYERS THEMSELVES FOR REFUND – NO *LOCUS STANDI* TO FILE WRIT PETITION – HELD PIL NOT MAINTAINABLE AS CRITERION NOT FULFILLED AS PER MAINTAINABILITY OF PUBLIC INTEREST LITIGATION RULES, 2010.

A PIL was filed by the petitioner, who is an advocate, for issuance of directions to respondents for VAT Refund and to comply with the undertaking given by the then Chief Secretary to Government of Punjab to comply with the instructions in the case of M/s J.K. Tyres and Industries Ltd. It was observed that the petitioner had no locus standi to file this writ petition as none of the VAT payers had come forward with the petition to claim the refund of the VAT paid by them. Also the traders Association did not come forward. Therefore, it is held that this Public Interest Litigation is not maintainable as it does not meet the criterion enshrined in the Maintainability of Public Interest Litigation Rules, 2010

Present: Mr. Rajesh Gupta, Advocate, for the petitioner.

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ASHUTOSH MOHUNTA, A.C.J.

1. The petitioner, who is an advocate, has filed this petition in the public interest wherein he has prayed that directions be issued to the respondents to comply with the instructions dated 08.12.2008 issued by the office of Excise & Taxation Commissioner, Punjab with regard to issuance of VAT refunds and also to comply with the undertaking given by the then Chief Secretary to Government of Punjab to comply with these instructions in the case of M/s J.K. Tyres & Industries Ltd. **Vs** State of Punjab (CWP-9009-2008).

2. The petitioner has no locus standi to file this writ petition as none of the persons who paid the VAT have come forward with a petition to claim the refund of the VAT paid by them. Apart from that, the Traders Association has not come forward.

3. In view of the above, this public interest litigation is not maintainable as it does not meet the criterion enshrined in the Maintainability of Public Interest Litigation Rules, 2010.

4. Dismissed.

PUNJAB & HARYANA HIGH COURT

CWP-12399 of 2014

KUMAR GLASS TRADERS
Vs.
STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL AND FATEH DEEP SINGH, JJ

9th September, 2014

HF ▶ Revenue

RECOVERY OF TAX – WRIT PETITION – INSPECTION OF BUSINESS PREMISES – NO BUSINESS OPERATION FOUND BEING CONDUCTED AT THE DECLARED PREMISES – NO INTIMATION TO DEPARTMENT IN THIS REGARD – NO BOOKS OF ACCOUNTS, SALES AND PURCHASE INVOICES PRODUCED DURING INSPECTION – CONSEQUENTLY, TIN LOCKED – PURPORTED SALES FOUND BOGUS – STOCK LYING IN PREMISES SOLD BY APPELLANT DESPITE DISALLOWED FROM ALIENATING – NO TAX DEPOSITED BY PETITIONER – NOTICE ISSUED PROPOSING TO IMPOSE PENALTY AND FOR AUCTION OF GOODS OF FIRM – WRIT FILED TO SET ASIDE SUCH NOTICES – FAILURE TO SUBSTANTIATE THE PLEA REGARDING GENUINENESS OF TRANSACTION BEFORE HIGH COURT, HIGH COURT REFRAINED FROM INTERFERING IN THE MATTER IN WRIT JURISDICTION UNDER ARTICLES 226 AND 227 – PETITION DISMISSED.

The business premises of the petitioner were inspected. It was found that no business operation was being conducted at the declared place. No intimation was given in this regard. No books of accounts, sales & purchase invoices were produced before the inspecting team. The TIN no. was thereby locked by the department. After detailed investigation it was found that the alleged purchasing firm had filed Nil return for the period and thus could not have purchased goods worth crores from the petitioner. Stock amounting to Rs. 1.79 crore was found which was alienated by the petitioner despite being prohibited to do so by the department. The entire activities were found bogus. Therefore, notice regarding imposition of penalty for evading tax and regarding auction of goods of the firm were served to the petitioner. A writ is filed under article 226/227 for setting aside the notices with a prayer to get the TIN no. unlocked. Due to failure to substantiate the plea regarding genuineness of transaction before High Court, the High Court has refrained from interfering in the matter in writ jurisdiction and has thus dismissed the petition.

Present: Mr. J.S.Bedi, Advocate for the petitioner.
Ms. Radhika Suri, Addl.A.G.Punjab.

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Ajay Kumar Mittal, J.

1. Prayer in this petition filed under Articles 226/227 of the Constitution of India is for setting aside the Show Cause Notice dated 23.6.2014, Annexure P.9 issued to the petitioner firm by respondent No.3 proposing to impose penalty of Rs. 1,63,47,404/- for evading tax of Rs. 81,73,702/- and notice dated 23.6.2014, Annexure P.11 regarding permission for auction of goods of the petitioner firm and constitution of auction committee. Further prayer has been made for a direction to conduct enquiry into the role attributed by respondent No.3 who by misusing his powers sold the goods of the petitioner after confiscating the same in illegal and arbitrary manner. Prayer has also been made for a direction to the respondents to unlock the TIN number of the petitioner firm as the same was locked again without any notice and adequate reason.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner firm is a wholesale distributor of all kinds of glasses and is situated in District Jalandhar. On 8.1.2014, respondent No.3 inspected the business premises of the petitioner firm and without any reason locked its TIN number. Initially the same was unlocked but again it was locked. During inspection, the goods of the petitioner were confiscated by the officers who were in civil uniform. It was nowhere stated that the goods were released to the petitioner and there was no order for releasing the same to it. According to the petitioner, respondent No.3 in order to harass it and without issuing any notice under section 29 of the Punjab Value Added Tax Act 2005, passed the assessment orders and created huge amount vide assessment orders dated 17.2.2014, Annexures P.3 and P.4. Aggrieved thereby, the petitioner filed appeals before the Deputy Excise and taxation Commissioner, Jalandhar Division Jalandhar, Annexures P.5 and P.6. The petitioner was shocked when it received notice from the office of the respondents demanding huge amount of Rs. 89,84,181/- and for initiation of criminal proceedings under sections 420/120-B IPC. It was alleged in the notice dated nil that the petitioner had sold the goods though the same were in the custody of the department since the date of the inspection and there was no reason or order for releasing the goods to the petitioner. According to the petitioner, it was only respondent No.3 who in connivance with other officers sold the confiscated goods. The petitioner also filed reply to the notice issued by the respondents. Hence the instant writ petition by the petitioner.

3. A short reply by way of affidavit has been filed by Shri Amit Sareen ETO, AETC office, BMC Chowk, Jalandhar - respondent No.3, wherein it has been inter alia stated that when the inspecting team visited the principal place of business of the petitioner i.e. near Pathankot Bye Pass, Jalandhar, it came to notice that the dealer was not conducting any business operation at that address for which the petitioner did not give any intimation to the department. Respondent No.3 apprehending huge loss of revenue in view of the suspicious nature of the activities of the petitioner, locked the TIN number of the petitioner. The new whereabouts of the petitioner were managed and inspection was conducted there. The dealer could not produce any books of account, sale and purchase invoices to the inspecting team at the time of inspection. Stock amounting to Rs. 1.79 crores of glassware was found and no books of account alongwith retail invoices/VAT invoices showing the sale or purchase were

produced by the petitioner. The petitioner was allowed to carry on its business operations upto 21st January 2014 but again the TIN number was locked on 22.1.2014 for non compliance of orders issued on 9.1.2014 as per order sheet records for not submitting trading account for the period 2013-14, statutory forms, sale invoices, goods receipts of vehicles used for transporting goods to Jaipur. Hence due to non submission of all these documents, all the transactions of the petitioner firm were suspected to be bogus. The petitioner was confronted with the fact that the firms to whom it had shown sale of glassware of Rs.7.18 crores i.e. M/s Jagdamba Sales Corporation and M/s Asian Traders of Jaipur, had filed nil returns. The entire activities of the petitioner were bogus and not even single C form was produced and the transaction of Rs. 7 crores was in cash. It was also found that the petitioner had already sold more than half of the stock lying in its premises despite the fact that it was restrained from alienating the stock and its TIN number stood locked. The petitioner neither filed any return nor deposited any tax for the sale of the stock. On these premises, it has been prayed that the writ petition may be dismissed

3. Replication has been filed by the petitioner to the reply filed by respondent No.3 controverting the averments made therein. Rejoinder to the replication has also been filed by respondent No.3 reiterating the averments made therein.

4. After hearing learned counsel for the parties, we do not find any merit in the petition.

5. A perusal of the record shows that at the time of inspection at the business premises of the petitioner, it was found that no business operation was being conducted at the declared place. The petitioner did not give any intimation in this regard to the department. The petitioner could not produce any books of account, sales and purchase invoices to the inspecting team at the time of inspection. The TIN number of the petitioner was locked. Detailed investigation was conducted by the Assistant Excise and Taxation Commissioner, Jaipur, inter alia, stating that the alleged purchasing firms had filed nil returns for the relevant period and thus could not have purchased goods worth Rs. 7.18 crores from the petitioner. Stock amounting to Rs. 1.79 crores of glassware was found and no books of account were produced by the petitioner. The petitioner produced purchase invoices but could not produce sale invoices. The entire activities of the petitioner were found to be bogus and not even a single C form was produced. Learned counsel for the petitioner has not been able to substantiate that there was any genuine transactions with M/s Jagdamba Sales Corporation and M/s Asian Traders of Jaipur. In the light of these factual aspects, we refrain from interfering in the matter in writ jurisdiction under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the petition, the same stands dismissed.

PUNJAB & HARYANA HIGH COURT

CWP-14594 of 2014

JAI BHARAT GUM AND CHEMICALS LTD
Vs.
STATE OF HARYANA AND OTHERS

K. KANNAN, J

2nd February, 2015

HF ▶ Petitioner

EXPORT SUBSIDY – EXPORT UNIT – APPLICATION FOR TRANSPORT SUBSIDY BY PETITIONER UNITS - SUBSIDY GIVEN TO BOTH UNITS FOR THE YEAR 2005-06 – SUBSIDY WITHDRAWN FOR ONE UNIT IN YEAR 2006-07 ON INTERPRETATION THAT BOTH UNITS BEING UNDER SAME MANAGEMENT SUBSIDY TO BE GRANTED FOR ONE UNIT – ACTUAL DECISION REGARDING EXTENDING SUBSIDY TO ONE UNIT ONLY TAKEN IN 2009 - WRIT FILED CHALLENGING THE WITHDRAWAL WHITTLING THE SCHEME AS ORIGINALLY PROVIDED – HELD RESTRICTION TO APPLY FROM THE TIME DECISION TAKEN FOR SUCH RESTRICTION I.E. AFTER 2009 – SUBSIDY NOT TO BE WITHDRAWN WHEN ALREADY ACCRUED BEFORE THE DATE WHEN ALTERED INTERPRETATION WAS MADE – ACTION FOR WITHDRAWAL OF SUBSIDY PRIOR TO YEAR 2009 QUASHED – DIRECTED TO RELEASE SUBSIDY WITHIN 8 WEEKS- WRIT PETITION ALLOWED.

The petitioner (export unit) is registered with the Ministry of Commerce and industry, Government of India as large and medium unit. It has another unit registered as SSI with the District Industries Centre. It had applied for transport subsidy notified in a scheme. For year 2005 the petitioner was given subsidy at the rates mentioned for each one of the respective unit. For 2006-07 the subsidy for one unit was withdrawn on interpretation of the scheme that if both units operate under the same management, subsidy will be extended only to one of them. A writ is filed challenging the withdrawal as being against the expressed terms of the scheme. It is held that if a scheme is floated to encourage exports and in the manner of its application there cannot be a whimsical limitation during his operation. The restriction ought to operate from the time when they decide to make such restrictive application on subsidy. Therefore if the decision was made in year 2009 restricting is operation only to one unit under the same management, it should operative only when such decision was taken in the year 2009. It cannot be withdrawn for any date when the subsidy had already accrued before the date when an altered interpretation was made. Therefore, the respondents are directed to extend the subsidy mentioned in the scheme and release the same within a period of 8 weeks. The writ is allowed.

Present: Mr.Sandeep Goyal, Advocate for petitioner.
Mr. Keshav Gupta, Asstt. A. G. Haryana

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K.KANNAN, J

CM-1340-2015

CM is allowed, as prayed for.

Written statement on behalf of respondent's no.1 to 3 is taken on record, subject to all just exceptions.

CWP-14594-2014

1. The petitioner (export unit) is registered with the Ministry of Commerce and Industry, Government of India as large and medium unit. It has another unit registered as SSI with the District Industries Centre. The petitioner had applied for transport subsidy notified through a scheme dated 21.01.2006. The scheme provides *inter alia* as under:-

> *"In order to enhance competitiveness of exporting units, freight assistance to the extent of 1% of Free on Board (FOB) value of exports subject to maximum of Rs.10.00 lacs per unit per annum will be provided for export of goods manufactured in the exporting units of State."*

The export in unit itself is defined in clause 2.3 as under:-

> "*2.3 Exporting Unit" means a unit registered as SSI with District Industries Center or with Ministry of Industry and Commerce, Govt. of India as Large & Medium Unit."*

2. Admittedly, for the year 2005, the petitioner claimed subsidy at the rates mentioned for each one of the respective units. For 2006-07 the subsidy for one unit was sought to be withdrawn on an interpretation of the scheme that if both units operate under the same management, subsidy will be extended only to one of them. The petitioner brought a challenge in CWP-465-2010, that was disposed of on 21.01.2011 taking note of the submissions made by the petitioner that the practice followed by the State to extend the facility only to one unit if more than one unit is under the same management cannot be applied for the accrual of subsidy for the period earlier to the date of the order. The Court left it to be decided by the State in its discretion without requiring the Court to decide the issue. Against this decision, the petitioner has preferred LPA No. 330 of 2012, by which time a fresh decision had been taken reiterating its earlier decision and referring to the fact that the subsidy would be available only to one of the units under the same management.

3. The writ petition challenges the decision that it is against the expressed terms of the scheme and on instructions subsequently made restricting it to only one unit cannot be done to whittle the scheme as originally provided.

4. The counsel appearing for the State supports the decision on the ground that subsidy itself is not a vested right for somebody to claim and it is literally a matter of State policy. If the policy dictated that the benefit will be restricted to one unit under the same management, the same cannot be extended merely referring to some past practice.

5. I would agree with the contention that subsidy itself cannot create a vested right in that no person can direct a State to extend a subsidy to a particular unit but if a scheme is floated to encourage exports and in the manner of its application there cannot be a whimsical limitation during its operation. If the benefit of subsidy itself is sought to be restricted, that again cannot be a matter of challenge but that restriction ought to operate from the time when they decide to make such restrictive application on subsidy. If the decision was, therefore, made in the year 2009 restricting its operation only to one unit under the same management, I would find that it should operate only when such decision was taken in the year 2009.

6. Counsel for the State points out that the untenability of retrospective effect of the decision has not even been pleaded. I would not fetter the Court's jurisdiction to interpret a scheme to be subjected to a mere issue on pleadings. The parties know what they contend for. If the petitioner's contention was that the benefit of scheme could not have been withdrawn, subsequently that pleading must, in my view, support what is tenable, namely, that it cannot be withdrawn for any date when the subsidy had already accrued before the date when an altered interpretation was made.

7. I quash the action of the respondents, withdrawing the subsidy for the year prior to 2009 to the petitioner and direct the subsidy percentage mentioned in the scheme to be extended to the petitioner and release the same within a period of eight weeks.

8. The petition is allowed on the above terms.

ETC ORDER U/R 64A EXEMPTING CERTAIN ITEMS FROM E-TRIP

OFFICE OF EXCISE & TAXATION COMMISSIONER PUNJAB PATIALA

ORDER

In continuation of my order dated 17th July, 2013 and order dated 2nd September, 2014, under Rule 2(hh) for the purposes of Rule 64A of Punjab Value Added Tax Rules 2005, read with section 3 A of the PVAT Act, I hereby exempt the following items from the list of specified goods:

a. Iron and Steel
b. Yarn
c. Sarson
d. Cotton
e. Vegetable Oils
f. Paper Board

Dated: 31st, January, 2015

Anurag Verma
Excise & Taxation Commissioner,
Punjab.

PUBLIC NOTICE REGARDING CLARIFICATION ABOUT CHANGE IN RATE OF TAX

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
PUBLIC NOTICE

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

It is clarified that on 30-01-2015, Hon'ble Deputy Chief Minister had announced change in rate of VAT on Iron & Steel only. Change in rate of VAT on any other item was **NOT** announced.

Dated: 2-2-2015 Excise & Taxation Commissioner, Punjab

SGA
LAW OFFICES

PUBLIC NOTICE REGARDING CLARIFICATION ABOUT CHANGE IN RATE OF TAX OF IRON AND STEEL

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
PUBLIC NOTICE

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

In continuation to Public Notice dated 2-2-15, it is further clarified that the hike in the rate of VAT on iron and steel has only been announced. It will come into effect only once it is duly notified. Further, no change in rate of VAT on any other item has been announced or notified.

Dated: 3-2-2015 Excise & Taxation Commissioner, Punjab

SGA
LAW OFFICES

PUBLIC NOTICE REGARDING CLARIFICATION ABOUT RATE OF TAX ON YARN

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE AND TAXATION
PUBLIC NOTICE

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

It has been reported in some sections of media that rate of tax on yarn has been reduced. In this regard it is clarified that the rate of tax on yarn has **NOT** been reduced.

Dated: 31-1-12015 Excise & Taxation Commissioner, Punjab

SGA
LAW OFFICES

PUBLIC NOTICE REGARDING EXTENTION OF E-FILING OF VAT-15 IN U.T. CHANDIGARH

CHANDIGARH ADMINISTRATION
DEPARTMENT OF EXCISE & TAXATION
PUBLIC NOTICE

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

This is to inform all the concerned that the last date of e-filing of VAT-15 for the 3rd Quarter of 2014-15 has been extended till 5th February, 2015.

Excise & Taxation Commissioner,
Chandigarh.

Dated 30.01.2015