SGA
LAW OFFICES

Issue 21
1st November 2016

"Inflation is the one form of taxation that can be imposed without legislation"

— Milton Friedman

NOMINAL INDEX

PUBLIC NOTICE AND ORDER

UT., CHANDIGARH

PUNJAB

HARYANA

NEWS OF YOUR INTEREST

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News From Court Rooms

CESTAT, CHANDIGARH : Central Excise : When all the units are having separate machinery, separate registration number, dealing separately, there is no financial flow back and there is no mutuality of interest between the units, their clearances cannot be clubbed together for denying SSI exemption. ***(National Conduit Pipes and others – August 23, 2016)***

P&H HC: Allows input tax credit (ITC) on machinery items such as 'Copper Wire, Taflon Tape, Gasket, Union, Socket and M.S. Angle', used in the process of manufacturing milk & milk products, under Haryana VAT Act; Notes that none of the lower authorities (including Tribunal) were clear about the issue as they had recorded vague findings – while Assessing Authority and Tribunal opined that same were related to infrastructure activities, First Appellate Authority was of the opinion that these were used in building / used in tax free sales / covered in job-work activities; Notes that as per Section 8, input tax in respect of any good purchased by VAT dealer shall be the amount of tax paid to State on sale of such good, except goods specified in Schedule E where ITC is 'Nil'; Perusing the general Entry 5 of Schedule E, which covers all goods not forming part of Entries 1 & 2, HC observes that assessee is not in business of telecommunication, mining or generation & distribution of electricity and hence, goods could not possibly be used for that purpose; Further, said goods had neither been exported out of State / disposed of otherwise than by way of sale, nor were they used in manufacture / packing of exempted goods nor were they in stock / sold to Canteen Store Dept, observes ***HC : Punjab & Haryana HC***

CESTAT, NEW DELHI : CENVAT Credit : The commission agent services have been used by the appellant for procurement of Turnkey orders from DISCOMS. Since part of such orders are for supply of goods manufactured by the appellant and the other part is for supply of services, such services quality as input service. ***(Genus Power Infrastructure Ltd. – September 14, 2016).***

MADRAS HC: TN VAT : There should have been a specific finding recorded by the AO that the turnover that has escaped in the first and initial round of assessment is the result of willful non-disclosure or suppression by the dealer. When there is no such finding recorded penalty cannot be imposed. Revenue's appeal dismissed. ***(Golden Homes P Ltd. – September 14, 2016)***.

CESTAT, NEW DELHI: Central Excise: Recovery of duties not levied or not paid or short levied or short paid or erroneously refunded is contained in Section 11A of CEA, 1944. Since assessee has intimated the Department regarding generation of waste material and disposal of same from factory premises, allegation of suppression in SCN and duty demand confirmed in adjudication order by invoking extended period of limitation is not proper and justified. Revenue's appeal dismissed. ***(Bhalla Chemical Works P Ltd.)***

GUJARAT HC: CST : Whether a declaration as per CST Act (Registration and Turnover) Rules, 1957 is mandatorily required to be provided in order to establish that sale of goods to exporters is penultimate sale in connection with export and is therefore exempt from tax, held yes. ***(Shakti Containers – September 9, 2016)***.

CCEST, NEW NELHI : Central Excise : Loading of business software into Bluetooth-enabled 'Nucleus Device' pre-embedded with basic input-output system for use as 'cashless currency transmitting apparatus' does not amount to manufacture under Central Excise law. ***(Nucleus Software Exports Ltd.)***.

MADRAS HC: TN VAT : Business of father carried on by son, when father died, without intimation to Department. Input credit taken by son need not be reversed as the mistake committed by the petitioner can be treated only as an illegality for which capital punishment cannot be imposed on the dealer. ***(Sri Kamatchi Gas Service – September 30, 2016)***.

GAUHATI HC: In a landmark judgment The divsion bench of the Gauhati High Court has considered the levy of electricity duty on cellular companes in the state of Assam as illegal. It has been declared that state is not legally competent to levy tax on cellular companies on self consumed and self produced electricity. The division bench judgment has been pronounced on 16.09.16 in case of ***Bharti Airtel Limited -Vs- The State of Assam and ors. W.P. (C) No. 710/2010***

CESTAT, NEW DELHI : Service Tax : If at all the service tax paid by a sub-contractor which becomes part of service further provided by the main contractor the scheme of credit as envisaged by the CENVAT Credit Rules, 2004 will come into play subject to fulfillment of conditions therein. It is nobody's case that the sub-contractors per-se are not liable to service tax. ***(Max Tech Oil and Gas Services P Ltd. – October 7, 2016)***

P&H HC : Central Excise : The assessee cannot be said to be at fault when he relied on the circular of the Board and earlier order of Tribunal in favour of the assessees. Hence the assessee was not at fault and the extended period of limitation cannot be invoked. Revenue's appeal dismissed.***(Emsons Organics P Ltd. – August 9, 2016)***.

SC: Central Excise : In case of shortage in stock-taking of inputs, if shortage is not explained by assessee, then : (a) for raising duty-demand, it may be presumed that inputs were probably used elsewhere, (b) but, if adjudication order does not show where said inputs were used, benefit of doubt must go to assessee and penalty must be set aside. Revenue's appeal dismissed. ***(Saraogi Paper Mills P Ltd. – April 1, 2016).***

GUJARAT HC: Sales Tax : Conversion of commercial grade Castor oil to First Special Grade after refining process cannot be treated as manufacturing process. Merely because some process is carried out on the substance the same is not to be treated as manufacturing process. Purchases made for export against Form H is valid. Revenu's appeal dismissed. ***(Ambica Agro Product – October 20, 2016)***

CESTAT, NEW DELHI: Service Tax : Just because the Nepalese suppliers had billed the appellants separately for expenses like transportation, clearance expenses, insurance charges, handling charges from Nepal border to factory premises they do not become the agents of the appellants and expenses which are part of the sale price are not liable for payment of service tax under RCM. ***(Radha Mohan Textiles P Ltd. – September 22, 2016).***

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SUPREME COURT OF INDIA

CIVIL APPEAL NOs. 4283-4284 OF 2013

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KAIL LTD.
Vs
STATE OF KERALA

SHIVA KIRTI SINGH AND R.K. AGRAWAL, JJ.

26th October, 2016

HF ▶ Revenue

Sale of Branded Goods by a company who is Brand Name Holder would amount to first sale under Section 5(2) of Kerala General Sales Tax Act and is liable to tax

SINGLE POINT TAX – FIRST STAGE GOODS – ASSESSEE SELLING THE GOODS UNDER THE BRAND NAME "SANSUI" - GOODS PURCHASED LOCALLY FROM ANOTHER COMPANY VIDEOCON INTERNATIONAL LTD WHO IS THE HOLDING COMPANY OF APPELLANT-ASSESSEE – UNDER THE KGST ACT 1963, THE SALE OF BRANDED GOODS BY A BRAND NAME HOLDER IS TAXABLE AS FIRST SALE – NO TAX PAID BY THE ASSESSEE CLAIMING IT IS NOT THE HOLDER OF BRAND NAME "SANSUI" AND IT IS HELD BY VIDEOCON INTERNATIONAL LTD. WHICH IS HOLDING COMPANY – CLAIM REJECTED UPTO HIGH COURT BASED UPON AN AFFIDAVIT OF DIRECTORS OF HOLDING COMPANY - ON APPEAL BEFORE THE SUPREME COURT – WHEN THE GOODS ARE MARKETED UNDER THE BRAND NAME, THE ASSESSING AUTHORITY IS ENTITLED TO ASSUME THAT THE SALE IS BY THE HOLDER OF BRAND NAME – BRAND IN THE PRESENT CASE BEING HELD BY HOLDING COMPANY WHO HAS 100% SHARES IN THE PRESENT APPELLANT – GOODS WERE SOLD BY HOLDING COMPANY TO THE APPELLANT WHO FURTHER SOLD IT AT UNUSUALLY HIGH MARGINS WITH A MOTIVE TO REDUCE TAX LIABILITY – ASSESSEE COMPANY HELD LIABLE TO PAY TAX UNDER SECTION 5(2) OF KGST ACT BEING THE BRAND NAME HOLDER OF "SANSUI" – APPEAL BEING DEVOID OF MERIT DISMISSED. - *SECTION 5(2) OF KGST ACT 1963*

Facts

Appellant company is a dealer of Home Appliances in the State of Kerala. The issue in the present case is with regard to the tax under Section 5(2) of Kerala General Sales Tax Act (KGST Act) and sales turnover of appellant company on the ground that it has sold the appliances under the Brand Name "SANSUI" and it being the Brand Name holder of "SANSUI" is liable to pay tax as it is deemed as first sale. On this premise, the appellant company was issued a show cause notice which was countered through detailed reply. Claim of the assessee was rejected and it was held that it is liable to pay tax being the Brand Name

Holder. Appeals filed by assessee failed first before the 1st appellate authority but were accepted by the Tribunal. The High Court on revision filed by Revenue, accepted the Revision holding that the appellant company is Brand Name Holder of "SANSUI" and therefore sale made by it is first sale under Section 5(2) and liable to tax. Feeling aggrieved the assessee filed appeals before the Supreme Court.

Held:

The Appellant Assessee has purchased the entire goods from Videocon International Ltd. (VIL) who has sold it after paying the tax under the KGST Act. The assessee being the second seller of the goods sought rebate of tax under Rule 32(13B) of KGST Rules 1963. It was contended that there is nothing on record to show that assessee is the Brand Name Holder of brand "SANSUI" in India. There is no denial to the fact that selling company namely M/s VIL is 100% holding company of appellant and both companies are being controlled by "Dhoot Family" and an affidavit to that effect had been filed by one of the members of "Dhoot Family" in the High Court. The letter heads used by appellant company also had the trade mark, logo and Brand Name of "SANSUI". When the goods are sold under a Brand Name, necessarily, it has to assume that the marketing company is the holder of the Brand Name and has the right to market the products in the Brand Name because it is the company introducing the products in the market. The objective of section 5(2) of the KGST Act is to assess the sale of branded goods by the Brand Name holder to the market and the inter-se sale between the Brand Name holders is not intended to be covered by Section 5(2) of the KGST Act. However, if the transactions between the holding company and the subsidiary company (both having the right to use the same Brand Name) is at realistic price and the marketing company charges only usual margins prevalent in the trade, then there is no scope for ignoring the first sale. However, the evidence on record shows that the margin charged by the appellant company while making the further sale of product is unusually high. The inter-se sale between the group companies under the control of same family was only with a view to reduce the tax liability and was rightly ignored by the Assessing Officer by levying tax under Section 5(2) of the KGST Act. Accordingly, it is held that appellant company is the Brand Name holder of "SANSUI" and the decision rendered by High Court in the Revision Petition and Review Petition calls for no interference. Accordingly, the Appeals are dismissed.

Cases referred:

- *Cryptm Confectioneries (P) Ltd. vs. State of Kerala (2015) 13 SCC 492*

Present: ***For Petitioner(s):***

Senior Advocate: *Mr. C.A. Sundaram*
Other Advocates: *Mr. Manu Nair, Mr. Tanuj Bhushan, Mr. S. S. Shroff, Mr. Ishan Gaur, Mr. Zafar Inayat, Ms. Rohini Musa and Mr. Abhishek Gupta*

For Respondent(s): ***Mr. K. Radhakrishnan***
Advocates: *Mr. Jogy Scaria, Mrs. Beena Victor and Mr. Reegans B.*

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R.K. AGRAWAL, J.

1. Challenge in the above said appeals is to the legality of the impugned judgments and orders dated 25.05.2010 and 16.08.2011 in ST REV No. 36 of 2007 and RP No. 337 of 2011 respectively rendered by a Division Bench of the High Court of Kerala at Ernakulam.

2. Factual position in a nutshell is as follows:-

a) The above said appeals relate to the assessment under the Kerala General Sales Tax Act, 1963 (in short 'the KGST Act') for the year 1999-2000. KAIL Ltd.-the appellant-Company is a dealer in home appliances at Ernakulam having registered office at Bangalore.

b) The issue is with regard to the tax under Section 5(2) of the KGST Act on sales turnover of home appliances for Rs. 27,27,20,230/- on the ground that the appellant-Company had sold the home appliances under the brand name "Sansui". To put it more clear, the Assessing Authority-the respondent-State, while scrutinizing the second sale exemption as claimed by the appellant-Company, found that it is the brand name holder of "Sansui" and hence the turnover of the items sold under "Sansui" brand name will be treated as first sale under Section 5(2) of the KGST Act.

c) The appellant-Company was served with a show cause notice dated 15.02.2004 by the Office of the Assistant Commissioner (Assmt.), Ernakulam against which a reply was filed on 15.03.2004 denying the averments of the notice stating that the appellant-Company is not the holder of the brand name "Sansui" indicating that the said brand name is owned by M/s Sansui Electric Co. Ltd. Japan. The Assessing Authority, vide order dated 22.03.2004, dismissed the claim of the appellant-Company with regard to the brand name holder. Aggrieved by the order dated 22.03.2004, the appellant-Company went in appeal before the Deputy Commissioner (Appeals), Ernakulam along with an application for stay. The Deputy Commissioner (Appeals), vide order dated 30.09.2004, dismissed the appeal filed by the appellant-Company being Sales Tax Appeal No. 530 of 2004.

d) Aggrieved by the order dated 30.09.2004, the appellant-Company approached the Kerala Sales Tax Appellate Tribunal (in short 'the Tribunal') by filing T.A. No. 736 of 2004 which was decided in favour of the appellant-Company vide order dated 12.04.2006.

e) The respondent-State, aggrieved by the abovesaid order, preferred a revision petition being ST REV No. 36 of 2007 before the Kerala High Court. A Division Bench of the High Court, vide order dated 25.05.2010, allowed the revision filed by the respondent-State holding that the appellant-Company is the brand name holder of "Sansui". Feeling aggrieved, the appellant-Company filed a Review Petition being No. 337 of 2011 before the High Court which was dismissed vide order dated 16.08.2011.

f) Aggrieved by the judgments and order dated 25.05.2010 and 16.08.2011, the appellant-Company has preferred these appeals by way of special leave before this Court.

3. We have heard learned counsel for the parties and perused the records.

4. Learned senior counsel for the appellant-Company contended before this Court that the appellant-Company purchased the entire goods from Videocon International Ltd., Kochi Branch, after paying tax under the KGST Act. The appellant-Company is only the second seller of the goods and the Assessing Authority ought to have noted that the appellant-Company is eligible for rebate of tax under Rule 32(13B) of the Kerala General Sales Tax Rules, 1963 (in short 'the Rules'). There is no material on record for the respondent-State to

contend that the appellant-Company has any brand name rights to treat them as the seller of the goods under the brand name "Sansui" in India. In other words, the short contention of learned senior counsel for the appellant-Company is that Videocon International Ltd. itself, which brought the manufactured goods to Kerala, was the brand name holder and their sale was the first sale as well as the sale falling under Section 5(2) and so much so the second sale exemption was rightly claimed by the appellant-Company.

5. Per contra, learned senior counsel for the respondent-State submitted that the appellant-Company could not produce any valid evidence to substantiate the contention that M/s Videocon International Ltd. is the brand name holder during the relevant year. The assessing authority has rightly established by giving legitimate reasoning that the appellant-Company is the brand name holder of "Sansui" goods. Also from the facts and materials on record and from the observations of the assessing authority, it could be easily gauged that during the relevant year, the appellant-Company has marketed the products under the brand name "Sansui".

6. The appellant-Company is a registered dealer under the KGST Act in Kerala, engaged in marketing products like television, washing machine etc. manufactured under the brand name "Sansui". The entire products are purchased by the appellant-Company from Videocon International Ltd. In fact, Videocon International Ltd., the holding company, brings the goods to Kerala on stock transfer and the entire goods were sold to its subsidiary, the appellant-Company, for marketing in Kerala. Even though Videocon International Ltd. returned the entire sales as first sales on which they have collected tax from the subsidiary company, the appellant-Company was assessed for sales tax by the Assessing Officer while scrutinizing the second sale exemption as claimed by the appellant-Company and found that the goods in respect of which second sale exemption was claimed by the appellant-Company were goods sold under brand name "Sansui" and so much so, tax under Section 5(2) is payable by the appellant-Company. The appellant-Company opposed the same by stating that the brand name "Sansui" is owned by Sansui Electric Ltd., Japan and is not at all related to the appellant-Company. During the course of proceedings, the Assessing Officer found that the correspondence sent to the Department was in the letter head with the trademark, logo and brand name of "Sansui". Since the products were sold under the brand name "Sansui", assessment was made under Section 5(2) of the KGST Act after disallowing second sale exemption as claimed by the appellant-Company.

7. For deciding the controversy in issue, it would be appropriate to reproduce Section 5(2) of the KGST Act (as it stood at the relevant time) which reads as under:-

> ***Levy of tax on sale of goods:-***
>
> *"Notwithstanding anything contained in this Act, in respect of manufactured goods other than tea, which are sold under a trade mark or brand name, the sale by the brand name holder or the trade mark holder within the State shall be the first sale for the purpose of the Act."*

However, what is opposed by the appellant-Company is that it is not the "holder" of the brand name in respect of the "Sansui" products sold by it.

8. Whether the appellant-Company is the holder of the brand name in respect of the "Sansui" products sold by it or not, it would be appropriate to quote certain paragraphs of the revision petition decided by the High Court which are as under:-

> *"Government Pleader produced before us the files, which show the respondent's correspondence even with the Department with letter head printed in the name of Sansui with their logo and trademark. He has further produced cuttings from Financial Express published on 25.1.2000 wherein, the*

newspaper has reported that Kitchen Appliances Ltd., a wholly owned subsidiary of Videocon International Ltd. has acquired manufacturing facility from Philips India Ltd., Calcutta. During the previous postings, we requested the company to produce annual report, memorandum of articles etc. only to verify whether the case of the State that respondent is a subsidiary of Videocon International Ltd. is correct or not. However, no document is produced to demolish the State's claim that respondent is a subsidiary of Videocon International Ltd. Going by the evidence on record, we have to only hold that the respondent is only a subsidiary of Videocon International Ltd., which marketed the entire products through the respondent in Kerala. Further, from the terms of the agreement between the respondent's holding company and Sansui Electric Ltd., Japan, extracted in Tribunal's order, we notice that Videocon International Ltd. and their subsidiary companies are allowed to use the trademark and brand name of Sansui in India. So much so, Videocon International Ltd., which made the first sales to the appellant, is also the holder of the brand name "Sansui" in India." **(emphasis supplied by us)**

9. As is clear from the language itself that in order to attract sub-Section (2) of Section 5, the following conditions are to be satisfied

(i) Sale of manufactured goods other than tea;

(ii) Sale of the said goods is under a trade mark or brand name; and

(iii) The sale is by the brand name holder or the trade mark holder within the State.

If all the aforesaid conditions are satisfied, the sale by the brand name holder or the trade mark holder shall be the first sale for the purposes of the KGST Act.

10. Applying the aforementioned conditions to the facts of the present case, it is an admitted fact that the goods sold by the appellant-Company are manufactured goods other than tea. The first condition is satisfied. The next condition to be satisfied is that the sale of goods is under a trade mark or brand name. It is an undisputed fact that the manufactured goods sold by the appellant-Company were home appliances under the brand name "Sansui". Thus the second condition is also satisfied. Now the last condition to be satisfied in order to attract section 5(2) of the KGST Act is that the sale is by the brand name holder or trade mark holder within the State and whether the appellant-Company is a holder of the brand name "SANSUI".

11. On 25.01.2000, a newspaper report was published in the Financial Express stating that Kitchen Appliances Ltd. now KAIL is a wholly owned subsidiary of Videocon International Ltd. and has acquired manufacturing facility from Phillips India Ltd., Calcutta. The position got more clear from the affidavit filed in the High Court by Shri Venugopal Dhoot, a family member of the Dhoot family, who holds a controlling interest in the appellant-Company as well as in M/s Videocon International Ltd., wherein he honestly admitted that Dhoot family, directly or indirectly, is having shareholding control in the appellant-Company and Dhoot brothers are also the promoters of Videocon International Ltd. The relevant paragraphs of the said affidavit are as under:-

"I, Venugopal S/o. Late Shri Nandlal Dhoot, Age 60 years, Occ. Industrialist, R/o. 221, Fort House, 2nd Floor, Dr. D.N. Road, Fort, Mumbai, do hereby state on solemn affirmation as follows:

1. That I am filing this affidavit as per directions of this Hon'ble Court as per order dated 24/06/2011. I have been director in the respondent company since 30/12/1998 till this date…

2. *This Hon'ble Court has directed any of the director member of Dhoot family to file an affidavit explaining relationship between Videocon International Ltd. and Kitchen Appliances (India) Ltd. and about control of Dhoot family over these two companies. Accordingly, I am clarifying the position. I say and submit that Kitchen Appliances (India) Ltd. now name changed to KAIL Ltd., is a public limited company and* ***Dhoot family, directly or indirectly, through various group companies are having shareholding control in respondent company*** *as per the facts and various filings with the Regulatory Authorities.* ***However, the powers of the management are vested with the Board of Directors "Director Board") of the company and I am one of the directors of the said respondent company…..***

3. *I respectfully say and submit that at that time, as per the facts and various filings,* ***Videocon International Ltd. was having 15.31% shareholding in the respondent company and various other companies of Videocon Group were holding remaining equity share capital of the respondent company. We, Dhoot Brothers are promoters of respondent company. It is closely held company.***

5. *I further say that* ***Dhoot Brothers are also promoters of Videocon International Ltd****. and based on the facts and the filings made by the company, from time to time, with the Stock Exchanges, the promoters together with various Videocon Group Companies were holding 35.11% of equity shares in Videocon International Ltd. as on 31/3/0000. Copy of shareholding pattern of Videocon International Ltd as on 31/3/2000 is produced herewith and marked as Annexure R-1 (G).*

6. *I respectfully further say and submit that at no point of time the respondent company was a subsidiary of Videocon International Limited. The same is evident from various filings made by Videocon International Limited and the respondent company. Videocon International Limited* ***and, KAIL Limited were/are part of Videocon Group. Affiliated Group***

   "The principal operating companies in the Wider Videocon Group outside the Videocon Group, including: Videocon Appliances Limited, Videocon Communication Limited, Applicomp India Limited, Kitchen Appliances India Limited, Millennium Appliances (India) Limited and their consolidated subsidiaries."

   In this context, other related/relevant definitions are:-

   Dhoot Family

   Mr. V.N. Dhoot, Mr. P.N. Dhoot, Mr. R.N. Dhoot and their blood and marital relations and companies or other entities outside the Wider Videocon Group owned and/or controlled directly or indirectly by all or any such persons.

   Wider Videocon Group

> *The affiliated Group and Videocon Group Videocon Group Videocon Industries Limited, and where the context permits, its subsidiaries…."*

12. Similarly, paragraph 6 of the same affidavit shows that Videocon International Ltd and KAIL Ltd are part of Videocon group. It also shows that during 1999-2000, the appellant-Company had manufactured 2057 colour television sets and 961 black and white television sets in SANSUI brand at Calcutta factory. Furthermore, at page Nos. 109-110 of the website publication produced by learned senior counsel for the appellant-Company in the High Court shows that as on 30.06.2006, 100% shares of Kitchen Appliances India Ltd. were held by Dhoot family. The given evidences are sufficient enough to show that the appellant-Company is a subsidiary and/or a group company of M/s Videocon International Ltd and hence, is also allowed to use the brand name SANSUI. Further, evidence on record shows that even the letter head used by the appellant-Company for correspondence is printed with the name of SANSUI with their logo and trademark.

13. In ***Cryptm Confectioneries (P) Ltd. vs. State of Kerala (2015) 13 SCC 492***, this Court while dealing with exactly similar incidence of tax held as under:-

> ***"9.*** *In order to attract Section 5(2) of the Act, the following conditions are to be satisfied:*
>
> *(i) Sale of manufactured goods other than tea;*
> *(ii) Sale of the said goods is under a trade mark/brand name; and*
> *(iii) The sale is by the brand name holder or the trade mark holder within the State.*
>
> *If the above three conditions are satisfied, the sale by the brand name holder or the trade mark holder shall be the first sale for the purpose of the Act.*
>
> ***10.*** *The aforesaid sub-section commences with a non obstante clause i.e. irrespective of Section 5(1) of the Act or any other provision under the Act. The said sub-section speaks of a sale made by a brand name holder or the trade mark holder within the State. The legislature deems that such a sale by the brand name holder or the trade mark holder shall be the first sale within the State. In our opinion this is the only possible construction that can be given to sub-section (2) of Section 5 of the Act."*

Further, we are of the view that when a product is marketed under a brand name, the Assessing Authority is entitled to assume that the sale is by the holder of the brand name or by a person, who is entitled to use the brand name in India. Apart from this, in this case, the marketing is actually done by fully owned subsidiary and/or a group company of the holding company, which was allowed to use the brand name "Sansui".

14. Brand name has no relevance when the products are manufactured and sold in bulk by the holding company to its subsidiary company for marketing. However, the brand name assumes significance when goods are marketed with publicity in the market. Moreover, when the goods are sold under the brand name, necessarily, it has to assume that the marketing company is the holder of the brand name or has the right to market the products in the brand name because, it is the first company introducing the products in the market. The objective of Sec 5(2) of KGST Act is to assess the sale of branded goods by the brand name holder to the market and the inter se sale between the brand name holders is not intended to be covered by Sec. 5(2) of the KGST Act.

15. However, if the sale between the holding company and the subsidiary company, both having the right to use the same brand name, is at realistic price and the marketing

company namely, the appellant-Company charged only usual margins in the trade, then there is no scope for ignoring the first sale, particularly, when the first seller was also the holder of the brand name and was free to market the products in the brand name. However, the evidence on record shows that the margin charged by the appellant-Company while making the further sale of product is unusually high. So the inter se sale between the groups of companies under the control of the same family was only to reduce tax liability and was rightly ignored by the assessing officer by levying tax under Section 5(2) of the KGST Act.

16. In view of the foregoing discussion, we are of the opinion that the tax invoking Section 5(2) of the KGST Act was rightly levied on the appellant-Company for the relevant period as it is proved beyond reasonable doubt that the appellant-Company is the brand name holder of "Sansui". We uphold the decisions rendered by the High Court in revision petition and review petition and no interference is warranted into it.

17. Above being the position, the appeals are dismissed with no order as to cost.

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 5913-5920 OF 2008

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COMMISSIONER OF COMMERCIAL TAXES & ORS.
Vs
BAJAJ AUTO LTD. & ANR.

SHIVA KIRTI SINGH AND R.K. AGRAWAL, JJ.

28th October, 2016

HF ▶ Revenue

Surcharge under the Orissa Sales Tax Act is payable on the Entire Tax Liability without deduction of Entry Tax paid under the Odisha Entry Tax Act, 1999.

SURCHARGE – CALCULATION – ENTRY TAX – TAX ON ENTRY OF GOODS BEING PAID BY THE ASSESSEE – DEDUCTION OF ENTRY TAX CLAIMED FROM THE TAX PAYABLE UNDER THE ORISSA SALES TAX ACT – SURCHARGE @10% PAYABLE ON THE TAX PAYABLE UNDER THE SALES TAX ACT – WHETHER DEDUCTION OF ENTRY TAX TO BE MADE BEFORE THE LEVY OF SURCHARGE – HELD NO – SURCHARGE IS ADDITIONAL TAX – ENTIRE TAX LIABILITY INCLUDING SURCHARGE TO BE CALCULATED BEFORE THE DEDUCTION OF ENTRY TAX PAID BY ASSESSEE - VIEW TO THE CONTRARY TAKEN BY THE HIGH COURT SET ASIDE – ASSESSEE LIABLE TO PAY SURCHARGE ON THE ENTIRE TAX PAYABLE UNDER THE ACT WITHOUT DEDUCTION OF ENTRY TAX – REVENUE APPEAL ALLOWED. - *SECTION 3(3), SECTION 4 OF ODISHA ENTRY TAX ACT 1999, SECTION 5 AND 5A OF ORISSA SALES TAX ACT, 1947, RULE 18 OF ODISHA ENTRY TAX RULES, 1999.*

Facts

The Respondent Assessees who were engaged in the sale and purchase of motor vehicles were paying Entry Tax on the goods when they were brought into the State of Odisha under Section 3(3) of the Orisha Entry Tax Act, 1999 (OET Act). The tax liability under the Orissa Sales Tax Act, 1947 (OST Act) was calculated and after deducting the Entry Tax , the surcharge was being calculated on the remaining amount which was payable @ 10% of tax payable. The assessees were served a demand notice by the Revenue Authorities who were of the opinion that surcharge has to be calculated first on the tax payable under the OST Act and deduction of Entry Tax paid is to be made afterwards. The assessees filed writ petitions before the High Court which were allowed. Feeling aggrieved, the Revenue filed appeal before the Supreme Court. Reversing the judgment, the Court:

Held:

On a conjoint reading of provisions of OST Act as well as OET Act and the Rules made thereunder it transpires that Section 5A of OST Act creates a charge and imposes liability on every dealer under the OST Act to pay surcharge @ 10% on the amount of tax payable by him under the OST Act. Section 4 of OET Act provides for reduction of tax paid by a dealer on

account of Entry Tax for the same articles for which the sales tax is payable. There is nothing in the Act and the Rules to indicate that this amount is to be deducted before the calculation of surcharge. The rules framed under the OET Act only lays down the modality of "Set off" and the same cannot be read into the OST Act to indicate any interference in the calculation of tax liability or surcharge under the OST Act. The amount of surcharge under Section 5A of OST Act is to be levied before deducting the amount of Entry Tax paid by a dealer. Order of the High Court being contrary to this view is liable to be set aside and all the appeals of the Revenue are allowed.

Cases referred:

- *Shambhu Nath Mehra vs. The State of Ajmer AIR 1956 SC 404*
- *Lalit Mohan Pandey vs. Pooran Singh and Others (2004) 6 SCC 626*
- *The Commissioner of Income Tax, Kerala vs. K. Srinivasan (1972) 4 SCC 526*
- *The Madurai District Central Co-operative Bank Ltd. vs. The Third Income Tax Officer, Madurai (1975) 2 SCC 454*
- *Hoechst Pharmaceuticals Ltd. and Others vs. State of Bihar and Others (1983) 4 SCC 45*
- *Ashok Service Centre and Others vs. State of Orissa (1983) 2 SCC 82*
- *Sarojini Tea Co. (P) Ltd. vs. Collector of Dibrugarh, Assam and Another (1992) 2 SCC 156*
- *State of Tamil Nadu vs. M.K. Kandaswami and Others (1975) 4 SCC 745*
- *Associated Cement Companies Ltd. vs. State of Bihar and Others (2004) 7 SCC 642*

Present:*For Appellant(s):*

Senior Advocate: Mr. Jaideep Gupta
Other Advocates: Mrs. Kirti Renu Mishra, AOR and Ms. Apurva Upmanyu

For Respondent(s):
Senior Advocate: Mr. Arvind P. Datar
Other Advocates: Mr. Pratap Venugopal, Ms. Surekha Raman, Mr. Purushottam Kumar Jha, for M/s. K. J. John & Co., Mr. Rajiv Shankar Roy, Mr. Avrojyoti Chatterjee, Mr. Abhijit S. Roy, Mr. Pranab Kumar Mullick, AOR, Mr. Sukumar, Mr. Aditya Mehrotra, Mr. Sebat Kumar Deuria, ***in CA5921/08*** Mr. M. P. Devanath, AOR, Mr. Vivek Sharma and Mr. Aditya Bhattacharya

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R.K. AGRAWAL, J.

1. Challenge in the above said appeals is to the legality of the common judgment and order dated 05.01.2007 rendered by a Division Bench of the High Court of Orissa at Cuttack in Writ Petition (C) being No. 233 of 2002 and connected matters wherein the High Court allowed the petitions filed by the respondents herein.

2. Civil Appeal No. 5913 of 2008 is being treated as the leading case, hence, the facts of the said appeal are given below:-

a) The respondents are engaged in the sale and purchase of Motor Vehicles and are registered dealers under the Orissa Sales Tax Act, 1947 (in short 'the OST Act') as well as under the Central Sales Tax Act. The respondents had been paying entry tax on the goods when they were bought into the State of Orissa under Section 3(3) of the Orissa Entry Tax Act, 1999 (in short 'the OET Act'). However, they were paying surcharge on the balance amount after deduction of the entry tax paid on the motor vehicles.

b) The Finance Department, Government of Orissa, by letter dated 20.11.2001, stated that the surcharge under the OST Act shall be calculated on the payable amount of tax due on the taxable turnover (Section 5 & 5A) instead of on the reduced Sales Tax amount after setting off of entry tax.

c) On 30.03.2002, the Sales Tax Officer, Sambalpur-I Circle, passed an order under Section 12(4) of the OST Act wherein surcharge was levied under Section 5A of the OST Act on the gross sales tax payable by the respondent-Company.

d) Being aggrieved by the demand notice dated 30.03.2002 as well as the letter dated 20.11.2001 issued by the Finance Department of the Government of Orissa, the respondent-Company filed a writ petition being No. 233 of 2002 along with a set of other writ petitions filed by the respondents herein before the High Court of Orissa at Cuttack.

e) The Division Bench of the High Court, vide common judgment and order dated 05.01.2007, allowed the appeals filed by the respondents herein.

(f) Being aggrieved by the judgment and order dated 05.01.2007, the appellants have preferred these appeals before this Court by way of special leave.

3. Learned senior counsel for the appellants have taken the stand that there is nothing in the provisions of the OET Act or the Rules made thereunder which would alter the mode of computation prescribed in Section 5A of the OST Act. Section 4 of the OET Act provides for reduction of the liability of a dealer under the Sales Tax Act to the extent of entry tax paid under the OET Act. This provision only appertains to reduction of entry tax. It has nothing to do with the computation of the surcharge under the OST Act. In any event, in terms of Section 4 of the OET Act, reduction of entry tax paid by the dealers is from the liability under the Sales Tax Act. In substance, it means that the total liability under the Sales Tax Act having been determined would then be reduced by the extent of entry tax paid.

4. Learned senior counsel further submitted that the illustration given under Rule 18 of the Odisha Entry Tax Rule, 1999 (in short 'the Rules') neither curtails nor expands the ambit of the provisions of the Act for which he relied upon a decision of this Court in ***Shambhu Nath Mehra vs. The State of Ajmer AIR 1956 SC 404***, wherein it was held as under:-

> ***"11.*** *We recognise that an illustration does not exhaust the full content of the section which it illustrates but equally it can neither curtail nor expand its ambit;…."*

5. Learned senior counsel further relied upon ***Lalit Mohan Pandey vs. Pooran Singh and Others (2004) 6 SCC 626***, wherein this Court has held as under:-

> ***"75.*** *The illustration appended to the Rules does not envisage such a situation. Illustrations although are of relevance and have some value in the construction of the text of the sections but they cannot have the effect of modifying the language of the statute and they cannot either curtail or expand the ambit of the statute."*

6. Learned senior counsel further submitted that the levy of tax includes surcharge for which he relied upon the following judgments of this Court in:-

(i) In ***The Commissioner of Income Tax, Kerala vs. K. Srinivasan (1972) 4 SCC 526***, this Court has held as under:-

> ***"10.*** *The meaning of the word "surcharge" as given in the Webster's New International Dictionary includes among others "to charge (one) too much or in addition …" also "additional tax"."*

(ii) In ***The Madurai District Central Co-operative Bank Ltd. vs. The Third Income Tax Officer, Madurai (1975) 2 SCC 454***, it was held as under:-

> ***"18.*** *In CIT Kerala v. K. Srinivasan on which the appellant relies, this Court has traced the history of the concept of "surcharge" in the tax laws of our country. After considering the report of the Committee on India in Constitutional Reforms, the provisions of the Government of India Act, 1935, the provisions of Articles 269, 270 and 271 of the Constitution and the various Finance Acts, this Court held, differing from the High Court, that the word "income tax" in Section 2(2) of the Finance Act, 1964 includes surcharges and the additional surcharge."*

(iii) In ***M/s Hoechst Pharmaceuticals Ltd. and Others vs. State of Bihar and Others (1983) 4 SCC 45***, it was held as under:-

> ***"28.*** *It cannot be doubted that a surcharge partakes of the nature of sales tax and therefore it was within the competence of the State legislature to enact sub-section (1) of Section 5 of the Act for the purpose of levying surcharge on certain class of dealers in addition to the tax payable by them…..*
>
> ***79.*** *….A surcharge in its true nature and character is nothing but a higher rate of tax to raise revenue for general purposes…."*

(iv) In **M/s Ashok Service Centre and Others vs. State of Orissa (1983) 2 SCC 82**, this Court has held as under:-

> *"**17….**The Act only levied some extra sales tax in addition to what had been levied by the principal Act. The nature of the taxes levied under the Act and under the principal Act was the same and the legislature expressly made the provisions of the principal Act mutatis mutandis applicable to the levy under the Act….."*

(v) In ***Sarojini Tea Co. (P) Ltd. vs. Collector of Dibrugarh, Assam and Another (1992) 2 SCC 156***, it was held as under:-

> ***"16.*** *From the aforesaid decisions, it is amply clear that the expression 'surcharge' in the context of taxation means an additional imposition which results in enhancement of the tax and the nature of the additional imposition is the same as the tax on which it is imposed as surcharge. A surcharge on land revenue is an enhancement of the land revenue to the extent of the imposition of surcharge. The nature of such imposition is the same viz., land revenue on which it is a surcharge."*

7. On the other hand, learned senior counsel for the respondents submitted that in view of the clarification issued by the office of Commercial Tax through e-mail to one of the dealers

in motor vehicles, viz., TELCO, Bhubaneswar, the appellants were stopped from demanding surcharge on the entire amount of tax payable under the OST Act before deducting the amount payable under the OET Act. According to him, the clarification issued by the Commercial Tax Department to TELCO, Bhubaneswar, was in accordance with the illustration appended to Rule 18 of the Rules which did not take into consideration the amount of surcharge payable before deducting the entry tax paid while computing the amount of sales tax payable. He, thus, submitted that the amount of surcharge is to be levied only on the balance amount of sales tax payable on the sale price of the motor vehicle after deducting the entry tax paid. According to him, if two constructions are possible then the one which preserves the workability and efficacy has to be preferred for which he relied upon a decision of this Court in ***State of Tamil Nadu vs. M.K. Kandaswami and Others (1975) 4 SCC 745***, wherein it has been held as under:-

> ***"26.*** *It may be remembered that Section 7-A is at once a charging as well as a remedial provision. Its main object is to plug leakage and prevent evasion of tax. In interpreting such a provision, a construction which would defeat its purpose and, in effect, obliterate it from the statute book, should be eschewed. If more than one construction is possible, that which preserves its workability, and efficacy is to be preferred to the one which would render it otiose or sterile. The view taken by the High Court is repugnant to this cardinal canon of interpretation."*

8. Learned senior counsel also relied upon a decision of this Court in ***Associated Cement Companies Ltd. vs. State of Bihar and Others (2004) 7 SCC 642***, wherein this Court has held that a dealer is entitled to reduction in tax to the extent of tax paid under the Bihar Entry Tax Act while working out the tax payable by it under the Bihar Sales Tax Act.

9. Heard learned counsel for the parties and perused the records.

10. The sole question for consideration is whether the 'Surcharge' under Section 5A of the OST Act is to be computed on the gross amount of sales tax or on the net amount of sales tax after setting of or deducting the amount of entry tax?

11. Under Section 5 of the OST Act, Sales Tax is payable by a dealer on the taxable turnover at a prescribed rate. Under Section 5A, it is provided inter alia for payment of surcharge. Section 5A of the OST Act (as it stood at the relevant time) reads as under:

> *"5A Surcharge: (1) Every dealer whose gross turnover during any year exceeds rupees ten lakhs shall, in addition to the tax payable by him under this Act, also pay a surcharge at the rate of ten per centum of the total amount of tax payable by him:....."*

12. It would also be relevant to reproduce Section 4 of the OET Act (as it stood at the relevant time) which reads as under:-

> ***"(4) Reduction in Tax Liability:***
>
> *(1) where an importer of motor vehicle liable to pay tax under sub-section (3) of Section 3 being a Dealer in motor vehicles becomes liable to pay tax under the Sales Tax Act by virtue of sale of such motor vehicles then his liability under the Sales Tax Act shall be reduced to the extent of tax paid under this Act.*
>
> *Explanation: For the purpose of this sub section the chassis and the vehicle with body built on the chassis shall be treated as one and the same goods.*
>
> *(2) When an importer or manufacturer of goods specified in Part-III of the schedule except motor vehicles pays tax under sub-section (1) of section 3 or*

section 26 of this Act, being a Dealer under the Sales Tax Act becomes liable to pay tax under the said Act by virtue of Sale of such goods, then his liability under the Sales Tax Act shall be reduced to the extent of tax paid under this Act.

(3) The reduction in tax liability of an importer as provided in sub-section (1) or of an importer or manufacturer as provided in sub-section (2) shall not be allowed, unless the entry tax paid and tax payable under the Sales Tax Act are shown separately in the cash memo or the bill or invoice issued by him for the sale by virtue of which such liability accrues."

13. Rule 18 of the Odisha Entry Tax Rule, 1999 is reproduced hereunder:

"18. Set off of Entry Tax against Sales Tax: *(1) When the importer of a motor vehicle liable to pay tax under sub-section (2) of section 3 of this Act being a dealer in motor vehicles becomes liable to pay tax under the Sales Tax Act by virtue of sale of such motor vehicle, his tax liability under the Sales Tax Act shall be reduced to the extent of the tax paid under these rules.*

Illustration: Assuming Entry Tax Rate and Sales Tax Rate to be 10%

1)	*Purchase Value of Motor Vehicle*	*Rs. 2,00,000/-*
2)	*Entry Tax Payable @ 10%*	*Rs. 20,000/-*
	Total:-	***Rs. 2,20,000/-***
3)	*Sale Price of the Motor Vehicle*	*Rs. 2,20,000/-*
4)	*(a) Sales Tax due @ 10%*	*Rs. 22,000/-*
	Deduct Entry Tax paid	*Rs. 20,000/-*
	Sales Tax payable	*Rs. 2,000/-*
	Total:-	***Rs. 2,22,000/-***

Note: If the sales tax payable on such motor vehicle is less than the entry tax paid, then the sales tax payable will be nil.

(2) When an importer of goods specified in Part III of the Schedule to the Act other than motor vehicle, liable to pay tax under this Act is also a dealer liable to pay tax under the Sales Tax Act, then the Sales Tax payable on the sale of goods shall be reduced to the extent of entry tax paid in the same manner as illustrated under the sub-rule(1)."

In view of the statutory provision contained in Rule 18 of the Rules, the tax payable under the said Act was to be determined after deduction therefrom the entry tax paid by a dealer importing vehicle into the State of Orissa.

14. Since the determination of surcharge payable under the OET Act was relatable and/or linked to the tax payable under the OST Act, a clarification was sought for by one of the dealers in motor vehicles, namely, TELCO which is similarly situated as the Respondent No.1-company from the office of Commercial Tax, in view of the provision contained in Rule 18 of the Rules, which is as under:-

"Surcharge is payable on the amount of tax that becomes payable by a dealer after set off of entry tax paid at the time of purchase of such goods."

15. In accordance with the clarification issued to TELCO, Bhubaneswar, as aforesaid, which was also circulated to other dealers of motor vehicles, including the Respondent No.1-Company, surcharge was calculated and paid which was quantified after deducting therefrom the amount of entry tax paid by the Respondent No.1-Company while importing a motor vehicle into the State of Orissa.

16. On 20.11.2001, the Government of Orissa, in the Finance Department, wrote a letter to the Commissioner of Commercial Taxes, Orissa relating to the computation of tax payable on the motor vehicle for the purpose of levy of surcharge on an interpretation of the provisions of the OET Act, the OST Act and the Rules which is as under:-

"GOVERNMENT OF ORISSA
FINANCE DEPARTMENT

No. CTB-23/2001. 55863/F

From:
Shri K.C. Parija,
Deputy Secretary to Government

To
The Commissioner of Commercial Taxes,
Orissa, Cuttack

Sub: Computation of tax payable on Motor Vehicle for the purpose of levy of surcharge.

Ref: C.C.T.'s letter No. 15264/CT, dt. 12.7.2000
Bhubaneswar, the 19th November, 2001.

Sir,

In inviting a reference to the aforesaid letter, I am directed to say that surcharge under Orissa Sales Tax Act, 1947, shall be calculated on the payable amount of tax due on the taxable turnover (Section 5 & 5A) instead of on the reduced Sales Tax amount after setting off of entry tax. The position may kindly be clarified to the Field Officers and if such faulty procedure of charging surcharge is adopted by any of the Circle Officers, same should be discontinued forthwith and corrective measure as per the provisions of the statue may be taken up to make good the loss.

***2.** It may further be noted that the illustration in rule -18 of Orissa Entry Tax Rule, 1999 or provision of any other Finance Department notification have limited implication for that purpose only and they have no overriding effect on the statutory provisions of the OST Act.*

Yours faithfully
Sd/-
(K.C. Parija)

DEPUTY SECRETARY TO GOVERNMENT
OFFICE OF THE COMMISSIONER OF COMMERCIAL TAXES: ORISSA: CUTTACK

Dated: 20.11.01

Memo No. 24808/CT
III(I) 207/2000

Copy forwarded to all ACCTs/All CTOs/All Addl. CTOs of Assessment Units for information and necessary action. The CTOs are requested to circulate the above clarification of Finance Deptt. to all the Addl. CTOs of their respective circles.

Dd/-
Addl. Commissioner of Commercial
Taxes (Gen) Orissa, Cuttack"

In the said letter, it was inter alia intimated that surcharge shall be calculated on the payable amount of tax due on the taxable turnover (section 5 and 5A) instead of on the reduced sales tax amount after setting off of Entry Tax.

17. On 30.03.2002, the Sales Tax Officer, Sambalpur-I Circle, Sambalpur passed an order under section 12(4) of the OST Act wherein surcharge has been levied under Section 5A of the said Act on the gross sales tax payable, without deducting the entry tax as required under Section 4 of the OET Act. As a result of this, excess surcharge to the tune of Rs. 21,25,117.37/- has been levied by the Sales Tax Officer.

18. It is well settled that an illustration given under the Rules does not exhaust the full content of the section which it illustrates but equally it can neither curtails nor expands its ambit. Further, surcharge is nothing but an additional tax and is payable on the sale of goods in the manner laid down for levy of surcharge. In view of the provisions contained in the OET Act, a dealer is not entitled for reduction of the amount of entry tax from the amount of tax payable before the levy of surcharge under Section 5A of the OST Act.

19. On a plain reading of the provisions of the OST Act as well as the OET Act and the Rules, it can be seen that Section 5A of the OST Act creates a charge and imposes liability on every dealer under the OST Act to pay surcharge @ 10% on the amount of tax payable by him under the OST Act. Section 4(1) of the OET Act, in the same way, prescribes for reduction of the tax amount payable by the dealer to the extent of entry tax already paid for the same article for which sales tax is payable. The Section, does not specifically contemplate anything, which would indicate that the provisions of the OET Act or the Rules have to be taken into consideration while assessing the sales tax or surcharge. In essence, the provisions made in the Rules lay down the modality of 'set off'. It is important to mention here that OST Act was enacted in the year 1947 whereas OET Act was enacted in 1999. The provision of set off has been made in the OET Act and the Rules framed thereunder and not in the OST Act. The heading of Section 4 of the OET Act gives a broad idea regarding the provision of set off by way of "reduction in tax liability". Sub-Sections 1 and 2 of Section 4 of the OET Act provide for reduction of liability under the OST Act.

20. It is well settled that the objective of framing rules is to fill up the gaps in a statutory enactment so as to make the statutory provisions operative. Rules also clarify the provisions of an Act under which the same are framed. Section 4 of the OST Act is a charging Section attracting liability to pay Sales Tax "on sales and purchases effected". Section 5 of the OST Act provides for rate of Sales Tax. Section 5A of the OST Act levies surcharge on the dealer which is nothing but an additional tax. Therefore, on a plain reading of the provisions under the OST Act as well as under the OET Act, a dealer is not entitled for reduction of the amount of entry tax from the amount of tax payable before the levy of surcharge under Section 5A of the OST Act. A harmonious reading of Rule 18 of the Rules as well as Sections 4, 5, 5-A of the OST Act reveals no conflict or inconsistency. The Rules are to be construed to have been made for furtherance of the cause for which the Statute is enacted and not for the purpose of bringing inconsistencies.

21. Section 5A of the OST Act is a self-contained provision and the surcharge, as already seen above, is leviable at the specified per centum of tax payable under the OST Act. Tax payable under the OST Act is independent of the provisions of OET Act. The assessment or quantification or computation of surcharge shall have to be made in accordance with the provisions of the OST Act.

22. Thus, on a conjoint reading of Section 5 of the OST Act, Section 4 of the OET Act and Rule 18 of the Rules, we are of the considered opinion that the amount of surcharge under Section 5A of the OST Act is to be levied before deducting the amount of entry tax paid by a dealer.

23. In view of the forgoing discussion, the impugned judgment and order dated 05.01.2007 passed by the High Court cannot be sustained and is liable to be set aside. In the result, all the appeals are allowed; however, the parties shall bear their own cost.

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 10430 OF 2016

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COMMISSIONER OF COMMERCIAL TAX
Vs
OSWAL GREENTECH LTD

DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.

28th October, 2016

HF ▶ Assessee

No penalty imposable where conditions of Recognition Certificate are fulfilled regarding "intendmen"t of use of goods in manufacturing of goods for sale.

CONCESSIONAL RATE OF TAX – RECOGNITION CERTIFICATE – PURCHASE OF GOODS AGAINST PRESCRIBED FORM AT CONCESSIONAL RATE OF TAX – GOODS USED IN THE MANUFACTURING OF NOTIFIED GOODS AND STOCK TRANSFER OUTSIDE THE STATE – REVENUE IMPOSED PENALTY ON THE GROUND OF WRONG ISSUANCE OF DECLARATION – APPEAL FILED BY ASSESSEE BEFORE THE TRIBUNAL ACCEPTED – REVISION PETITION FILED BEFORE HIGH COURT DISMISSED – ON APPEAL BEFORE SUPREME COURT – SECTION 4B(2) CONTAINS A SPECIFIC PROVISION – IT DEALS WITH THE CONDITION WHERE NOTIFIED GOODS ARE PURCHASED AT CONCESSIONAL RATE BUT COULD NOT BE USED FOR SPECIFIED PURPOSES – SECTION 4B(2) ONLY REQUIRES THAT AT THE TIME OF PURCHASE, GOODS SHOULD BE "INTENDED" TO BE SOLD WITHIN THE STATE OR IN THE COURSE OF INTER-STATE TRADE OR COMMERCE OR IN THE COURSE OF EXPORTS OUT OF INDIA – FAILURE TO DO SO MAY REQUIRE THE ASSESSEE TO MAKE PAYMENT OF DIFFERENTIAL TAX REQUIRED UNDER SECTION 4B(6) BUT NO PENALTY IMPOSABLE UNDER SECTION 3B – SECTION 3B CANNOT BE INVOKED AS IT IS NOT THE CASE OF FURNISHING OF FALSE OR WRONG DECLARATION – APPEAL BEING DEVOID OF MERITS STANDS DISMISSED – *SECTION 3B & 4B OF U.P. TRADE TAX ACT, 1948*

Facts

Appellant is a manufacturer of Fertilizers which is one of the Notified Goods u/s 4B(2) of U.P. Trade Tax Act, 1948. For the manufacturing of fertilisers it has purchased Natural Gas against Form III-B at the concessional rate of tax. The manufactured goods were transferred outside the State which was considered to be a case of wrong issuance of Declaration by the assessee. Accordingly, a penalty was imposed upon the assessee for alleged violation. Appeal filed before the Tribunal was accepted against which the Revenue filed Revision Petition before the High court. The High Court following its decision in the case of ***Camphor and Allied Products Ltd. vs State of U.P. and others****, concluded that it has purchased the material and used it in the manufacturing and there was no violation of section 3B of the Act. On appeal by Revenue before the Supreme Court.*

Held:

On an analysis of statutory scheme and the judgment of High Court in the case of Camphor and Allied Products Ltd., it transpires that Section 4B(2) is applicable to the dealer who manufactures notified goods in the State. The said dealer is entitled to apply to the Assessing Authority for grant of recognition Certificate which, in turn, entitles him to purchase the goods at a concessional rate. Section 4B(2) requires that notified goods should be "intended" to be sold by the dealer within the State or in the course of Inter-State Trade or Commerce or in the course of Export out of India. Sub-section (6) of Section 4B, which is specific provision and deals with a situation where the goods have been purchased without payment of tax or at concessional rates but the manufactured goods have been disposed of otherwise than by way of sale in the State or in the course of inter-state trade or commerce or export out of India. It provides that the dealer is liable to pay the amount of difference on the amount of sale or purchase of such goods on which concessional or nil rate of tax was paid on account of issue of recognition certificate and the amount of tax calculated @ 4%. The sub-section is a particular and a specific section which deals with and specifies the consequences when the dealer is unable to meet and comply with the intendment. Sub-section (6) would be thus applicable. If the contention of the Revenue regarding application of section 3B is accepted, Section 4B(6) would be dead letter as any sort of violation or failure to abide with the "intendment" would attract section 3B and not section 4B(6). Section 3B would apply when a false and wrong Certificate or declaration is made. However, Section 4B(6) deals with the cases where the dealer is unable to comply with the "intendment". The "intendment" of said nature has not been treated as false or wrong declaration as consequences have been prescribed in sub-section (6). The view taken by the High Court is absolutely defensible and does not warrant any interference. Appeal being devoid of any merits, is dismissed.

Cases referred:

- *Camphor and Allied Products Ltd. v. State of U.P. & Ors. (2005) 139 STC 380 (All)*
- *CTT v. Manoharlal Heeralal Pvt. Ltd. 2006 NTN, Vol. 29 page 223*
- *CCE v. Gas Authority of India Ltd. 2008 (232) ELT 7 (SC)*
- *SACI Allied Products Ltd. v. CCE, Meerut 2005 (183) ELT 225 (SC)*
- *Commissioner of Trade Tax v. Spox India and Allied Industries 1999 UPTC 277*
- *Arora Steel Udyog (P) Ltd. v Commissioner of Trade Tax, U.P. 1988 UPTC 1197*

Present: ***For Petitioner(s):***
Advocates: Mr. Pawan Shree Agrawal, Mr. Rajeev Dubey and Mr. Ravi Prakash Mehrotra, AOR

For Respondent(s):
Advocates: Mr. Punit Dutt Tyagi, AOR, Mr. Ankit Parhar and Mr. Ambarish Pandey

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DIPAK MISRA, J.

1. Leave granted.

2. The respondent, a dealer registered under Section 8-A of the U.P. Trade Tax Act, 1948 (for brevity, "the Act"), is a holder of a recognition certificate as per provisions contained in Section 4-B of the Act. The respondent used to make purchases of raw material at the concessional rate of tax against Form III-B obtained by it from the office of the Trade Tax Officer. As per conditions prescribed under Section 4-B(2) of the Act, the notified goods manufactured out of the raw material produced at the concessional rate of tax against Form III-B is required to be sold by such manufacturer in the State or in the course of inter-State trade and commerce or in the course of export out of India. It is also provided in the said Section that

if a recognition certificate holder sells goods manufactured by it out of the raw material purchased at the concessional rate of tax against Form III-B in a manner otherwise than prescribed under Section 4-B(2), the said dealer shall be liable to penal action equal to three times of the tax, thus saved by the said dealer on purchase made against Form III-B.

3. At the time of scrutiny, the assessing authority noticed that the respondent had made purchases of natural gas against Form III-B at the concessional rate of tax, and after manufacture of the notified goods, that is, fertilizers, out of the said purchases of natural gas purchased against Form III-B, some of the finished goods were transferred outside the State of Uttar Pradesh. The Revenue issued show cause notice to the respondent for the assessment year 2005-06 and after considering the explanation offered, imposed penalty of Rs.10,46.98,335/- vide order dated 28.03.2009. Being aggrieved, the respondent preferred an appeal under Section 9 of the Act before the Joint Commissioner (Appeals)-1, Commercial Tax, Bareilly being Appeal No. 798 of 2009, and the appellate authority vide its order dated 12.11.2009 dismissed the appeal and confirmed the order of the assessing authority dated 28.03.2009 passed under Section 3-B of the Act.

4. The dismissal of appeal constrained the respondent to file a second appeal (Appeal No. 237 of 2009) before the Tribunal, Trade Tax, U.P. (for short, "tribunal"). Since there was difference of opinion in the Division Bench of the tribunal, the case was referred to the Chairman of the tribunal who nominated another Judicial Member for his opinion. The learned Judicial Member gave his opinion in favour of the respondent. On the basis of the opinion expressed by the nominated Judicial Member, the appeal stood allowed as a consequence of which the order imposing penalty was annulled.

5. Being aggrieved by the order of the tribunal, the Revenue filed Trade Tax Revision No. 579 of 2011 under Section 11 of the Act before the High Court. The question of law that arose for consideration before the High Court was as follows:-

> *"Whether under the facts and circumstances of the case, the Commercial Tax Tribunal were legally justified in granting the exemption on purchase of raw material against Form III-B whereas the dealer has made a stock transfer of finished goods which is not permissible under law?"*

6. The learned Single Judge took note of the fact that the tribunal had relied on a Division Bench decision of the High Court in ***Camphor and Allied Products Ltd. v. State of U.P. & Ors. (2005) 139 STC 380 (All)*** and on that basis had come to the conclusion that the assessee had purchased the material and used it in manufacture and there was no violation of Section 3-B of the Act and accordingly concurred with the view of the tribunal as a result of which the revision stood dismissed.

7. We have heard Mr. Pawanshree Agrawal and Mr. Rajeev Dubey, learned counsel for the appellant and Mr. Punit Dutt Tyagi for the respondent.

8. It is profitable to refer to the findings recorded by the assessing officer. It has been held by him that under Section 3-B and 4-B(2) of the Act, the finished product manufactured from the raw material purchased at a concessional rate can only be sold in U.P. or in the course of inter-State trade and commerce or can be exported out of country, but stock transfer is not permissible. According to the assessing officer, the trader had purchased natural gas at a concessional rate against Form III-B i.e. 20% minus 15% = 5%, availing the benefit at the rate of 15% and paying tax at the rate of 5%. The production of urea has been done by using the natural gas obtained at a concessional rate and the manufactured product, that is, urea has been sent by way of stock transfer outside the State in clear violation of Section 3-B and 4-B(2) of the Act. It has been further opined by him that the assessee had acted contrary to the provision of law by purchasing raw material at a concessional rate and thereafter sending the finished

goods as stock transfer outside the State which does not come under the term 'sale' and no revenue is generated by the State. Proceeding further, the assessing officer has held thus:-

> *"The trader without acting under the provisions of the Section 3B and 4B(2) of the Uttar Pradesh Trade Tax Act, had caused loss of revenue to the State. The State had lost revenue at the rate of 15% on the purchase of raw material used in the produced goods sent as stock transfer, which could have received had these were not purchased against Form 3B. Because the tax has been paid at the rate of 5% against form 3B. Had the trader not declared false declaration against Form 3B, and had acted as per the provision of Section 4B(2), then the State Government could have got 20% as Tax and 1% as development tax totaling 21%. The local purchase of natural gas could have been made without form 3B. But the trader had not acted under the provisions of Section 3B. The trader had not also acted u/s 4B (2) which he had declared to act when taking the forms 3B. Hence, the raw material purchased at a concessional rate were utilized in the manufacturing of the notified finished product (Urea), but instead of making any sale (within and outside the State) and without exporting those outside the country, had made stock transfers, thereby had violated Section 4B(2) of the Act. By making false declaration u/s 3B of the Act, the trader had only deposited tax on the purchase of raw material (Natural Gas) at the rate of 5% only and availed the benefit of 15%. On the other hand without taking any action u/s 4B (2) of the Act, had made stock transfer outside the State, as a result of which had saved tax @ 7.5% apart from the development tax on Urea. As such the trader was able to evade tax @ 22.5% in an illegal manner and thereby had caused double loss of revenue to the State."*

9. The appellate authority, as the order would reflect, has expressed the view that the assessee, after availing the benefit at the concessional rate, has violated the provisions contained in Section 4B(2) of the Act and has been making stock transfers quite often. The appellate authority has opined that the principle stated in the authorities in ***Camphor and Allied Products Ltd. (supra), Bareilly v. State of U.P. 2004 UPTC 331, CTT v. Manoharlal Heeralal Pvt. Ltd. 2006 NTN, Vol. 29 page 223*** are different and not applicable to the facts of the case.

10. The opinion of the tribunal, as expressed by the judicial member, which is the final view of the tribunal, is that the trader was authorized to purchase the natural gas for the manufacture of urea and it is undisputed that it had manufactured urea by utilizing the natural gas purchased against the issue of Form III-B. He has proceeded to state that no action can be taken under Section 3-B on the ground that the products utilizing the natural gas purchased against the issue of Form III-B were sent through stock transfer without selling those directly, because Section 4-B of the Act cannot be extended to determine the responsibility under Section 3-B. The judicial member has arrived at the said conclusion on the foundation that Section 4-B has nothing to do with the fact that how the notified goods are to be disposed of because the provision of Section 3-B is not applicable in case the raw material is used for production of the notified goods mentioned in the recognition certificate. The learned member has expressed the view that the decisions in ***Camphor and Allied Products Ltd.*** (supra) and ***Bareilly*** (supra) are fully applicable and the case of the assessee is covered by the principles stated therein. He also took note of the fact that the decisions in ***Camphor and Allied Products Ltd.*** (supra), ***Bareilly*** (supra) and ***Manoharlal Heeralal*** (supra) have not been assailed before the Supreme Court and, therefore, they are binding precedents in the field. Eventually, the learned member came to hold thus:-

"In the present case it is established that the trader had utilized natural gas purchased against the Form 3B in the production of the 'Urea'. As such, in my opinion, proceeding u/s 3B should not have been initiated against the trader. The order which has been passed by the assessing officer u/s 3B of the Act and which has been confirmed by the first appellate court, are not justified."

11. To appreciate the controversy in proper perspective and to scrutinize the analysis of the departmental authorities on one hand and the tribunal and the High Court on the other, it is necessary to scan the statutory scheme and its real import. Section 3-B of the Act reads as follows:-

"Section 3-B. Liability on issuing false certificate, etc.-Notwithstanding anything to the contrary contained elsewhere in this Act, and without prejudice to the provisions of Sections 14 and 15-A, a person, who issues a false or wrong certificate or declaration, prescribed under any provision of this Act or the Rules framed thereunder, to another person by reason of which a tax leviable under this Act on the transaction of purchase or sale made with or by such other person ceases to be leviable or becomes leviable at a concessional rate, shall be liable to pay on such transaction an amount which would have been payable as tax on such transaction had such certificate or declaration not been issued:

Provided that before taking any action under this section, the person concerned shall be given an opportunity of being heard.

Explanation.-Where a person issuing a certificate or declaration discloses therein his intention to use the goods purchased by him for such purpose as will make the tax not leviable or leviable at a concessional rate but uses the same for a purpose other than such purpose, the certificate or declaration shall, for the purpose of this section, be deemed to be wrong."

[Emphasis supplied]

12. Section 4-B(2) and 4-B(6) of the Act which are relevant to the controversy at hand and further on which the Revenue has laid immense emphasis are extracted hereunder:-

"(2) Where a dealer requires any goods, referred to in sub-section (1) for use in the manufacture by him, in the State of any notified goods, or in the packing of such notified goods manufactured or processed by him, and such notified goods are intended to be sold by him in the State or in the course of inter-State trade or commerce or in the course of export out of India, he may apply to the assessing authority in such form and manner and within such period as may be prescribed, for the grant of a recognition certificate in respect thereof, and if the applicant satisfies such requirements including requirement of depositing late fee and conditions as may be prescribed, the assessing authority shall grant to him in respect of such goods a recognition certificate in such form and subject to such conditions, as may be prescribed.

Explanation.-For the purposes of this sub-section,-(a) goods required for use in the manufacture shall mean raw materials, processing materials, machinery, plant, equipment, consumable stores, spare parts, accessories, components, sub-assemblies, fuels or lubricants ; and

(b) 'notified goods' means such goods as may, from time to time, be notified by the State Government in that behalf.

xxxx xxxxx

> *(6) Where a dealer in whose favour a recognition certificate has been granted under sub-section (2) has purchased any goods after payment of tax at concessional rate under this section, or as the case may be, without payment of tax and the goods manufactured out of such raw materials or processing materials or manufactured goods after being packed with such packing material are sold or disposed of otherwise than by way of sale in the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India, such dealer shall be liable to pay an amount equal to the difference between the amount of tax on the sale or purchase of such goods payable under this section and the amount of tax calculated at the rate of four per cent, on the sale or purchase of such goods."*

13. It is submitted by Mr. Agrawal, learned counsel for the appellant that recognition certificate is granted where a dealer uses the goods (raw material) in the manufacture of notified goods by him in the State or in the course of inter-State trade and commerce or in the course of export outside India and the fulfillment of aforesaid two conditions is a pre- requisite for claiming exemption, but in the case at hand, the assessee though has purchased the goods at concessional rate by furnishing Form III-B under Rule 25-B(1) has engaged itself in stock transfer and, therefore, the penal provisions gets fully attracted. Relying on sub-section (6) of Section 4-B, it is urged by him as no differential tax has been paid by the assessee, certificate in Form III-B continues to be a false or a wrong certificate as regards the purchase of natural gas and used in the manufacture of urea, hence the penalty has been correctly levied. It is his further submission that decision in ***Camphor and Allied Products Ltd.*** (supra) is not applicable to the facts of the present case, for in the said case the camphor manufactured by the assessee was transferred by way of stock transfer outside the State of U.P. on which the differential tax was paid in accordance with Section 4-B(6) of the Act, but in the present case, no differential tax has been paid by the respondent, and such violation as a natural corollary leads to the inevitable conclusion that the certificate in Form III-B continues to be a false or wrong certificate. Lastly, it is contended by him that the Division Bench of the High Court has not correctly laid down the law in ***Camphor and Allied Products Ltd.*** (supra) inasmuch as it has confined its consideration to the first part of condition enshrined under Section 4-B(2) of the Act, whether the raw material has been used in the manufacture or not, but has not considered the second part, that is, the goods had been sold intra-State or inter-State or exported out of India.

14. Mr. Tyagi, learned counsel for the assessee, per contra, would contend that the respondent-assessee is engaged in the manufacture and sale of fertilizer and as per the recognition certificate, it is entitled to procure natural gas at a concessional rate and the respondent has procured natural gas from two sources (1) from GAIL at a concessional rate against Form III-B and (2) from outside the State from BPCL/GAIL at normal tax. Learned counsel would submit that the respondent has disposed of urea by local sale and has also transferred the stock to various States which have been pursuant to and in compliance of Movement Orders issued by the Government of India from time to time. He has referred to directions issued by the Ministry of Chemicals & Fertilizers under the Fertilizer (Movement Control) Order, 1973. It is urged by him that as per the Fertilizer (Movement Control) Order, 1973 unless the Government of India authorizes a manufacturer to make stock transfer of a particular quantity of urea in a particular month, no urea can be transferred/sold from one State to another. Learned counsel would put forth that the State never disputed the stock transfers made under Fertilizer (Movement Control) Order, 1973. Learned counsel would further propone that show cause notice was issued under Section 3-B for alleged violation of Form III-B and it cannot change the foundation to raise a fresh plea under Section 4-B(6) of the Act. It is further urged by Mr. Tyagi that the pronouncement in ***Camphor and Allied Products Ltd.***

(supra) is absolutely correct and, in fact, it has been holding the field for considerable length of time as far as the State of U.P. is concerned. To substantiate the contentions he has raised, he has placed reliance on ***CCE v. Gas Authority of India Ltd. 2008 (232) ELT 7 (SC)*** and ***SACI Allied Products Ltd. v. CCE, Meerut 2005 (183) ELT 225 (SC)***. Though Mr. Tyagi has contended with regard to limitation in exercise of revisional jurisdiction and the bar on the part of revenue to accept the judgment on the same question in the case of one assessee and question its correctness in the case of another assessee and in support of the same has cited certain authorities, we need not enter into the said arena, for what we are going to hold.

15. In ***Camphor and Allied Products Ltd.*** (supra) the High Court took note of the fact that the RFO and furnace oil was purchased against Form III-B and the same was used in the manufacture of camphor and other goods mentioned in the recognition certificate granted under Section 4-B of the Act. It took note of the two earlier decisions in ***Commissioner of Trade Tax v. Spox India and Allied Industries 1999 UPTC 277*** and ***Arora Steel Udyog (P) Ltd. v Commissioner of Trade Tax, U.P. 1988 UPTC 1197*** and quoted a passage from the latter authority, which is to the following effect:-

> *"It is well-settled that proceedings under Section 3-B shall be initiated only when the assessee issues a false or wrong certificate or declaration provided under any of the provisions under the Act or Rules framed thereunder. This view has been constantly taken by this* ***Court in Sahni Engineering Works v. Commissioner of Sales Tax 1994 UPTC 70****,* ***Commissioner of Sales Tax v. B.K. & Co. Engineering Works, Agra 1995 UPTC 502*** *and* ***S.G. Industries v. State of Uttar Pradesh [1998] 108 STC 328; 1997 UPTC 616*** *of this Court. Therefore, unless it was shown that the form III-B issued by the revisionist were false or wrong, or the declarations made therein was false or wrong, no proceedings under Section 3-B of the Act could have been initiated. It is also not the case of the department that the assessee did not use the goods purchased by him for the purpose for which exemption certificate was granted to him. Therefore, the assessee cannot be deemed to have issued a wrong certificate."*

It also took note of the decision relied upon by the Revenue in ***Puri Industries v. Commissioner of Sales Tax[8]***, which took a different view and thereafter came to hold as follows:-

> *"28. The petitioner purchased RFO/furnace oil against form III-B for manufacture of its final product, namely, camphor and other allied products. Section 3-B clearly shows that it is the user of the goods which is relevant for the purpose for which form III-B was given and not how the finished product or manufactured goods are sold. Admittedly form III-B was issued for use in manufacture of camphor and other allied products and RFO/furnace oil for which the recognition certificate was granted. Hence in our opinion the petitioner cannot be deemed to have issued any wrong or false certificate and tax cannot be legally charged under Section 3-B of the Act.*
>
> *xxxxx xxxxx*
>
> *31. In the present case RFO and furnace oil have admittedly been used in the manufacture of camphor and allied products for which recognition certificate was granted. Hence it cannot be deemed that the petitioner has issued any wrong or false certificate. It is evident from the facts that the petitioner has not issued any wrong or false certificate or declaration in form III-B inasmuch as both RFO and furnace oil have been used for the same purpose, namely, in the process of manufacture of goods, i.e., camphor, and another allied products."*

16. We have already analysed the statutory scheme and what has been dwelt with by the High Court in ***Camphor and Allied Products Ltd.*** (supra) and what has been pressed into service by Mr. Tyagi. Presently, text and context in detail. Section 4-B(2) is applicable to the dealer who manufactures notified goods in the State or engaged in packaging of such notified goods manufactured or processed by him. The said dealer can apply to the assessing authority in such form, manner and within the time prescribed for grant of the recognition certificate. The assessing authority can grant the recognition certificate to the dealer in respect of goods used in the manufacture of the notified goods or packing of the notified Goods. Explanation to the sub-section defines the word "Goods" which means raw materials, processing material, machinery, spare parts and also fuels. The expression "Notified Goods" means such goods as notified by the State government from time to time.

17. Sub-section (2) to Section 4-B also requires that the notified goods should be "intended" to be sold by the dealer within the State or in the course of inter-State trade or commerce or in the course of exports out of India. The expression "intended" is significant and important. It refers to the intention of the dealer after the goods are manufactured and packed. The expression "in the course inter-State trade or commerce" is quite broad and wide. An issue may arise as to whether the stock transfer outside the State in terms of directions issued by the Central Government can be considered as sale or transaction in the course of inter-State trade or commerce. In the case at hand, we would not decide the said issue or question, for it was not raised or argued before the authorities and can be examined in an appropriate case when raised and considered. Be it noted, sub-section (6) is a specific provision which deals with the case of the dealer who has been issued the recognition certificate and has purchased goods without payment of tax or at concessional rates, but has sold the manufactured goods or packaged goods otherwise than by way of sale in the State, or in the course of inter-State trade or commerce or export out of India. The provision specifically deals with cases where the dealer manufactures or packs the notified goods and has taken benefit of lower/concessional or nil rate of tax on the raw material but is unable to fulfill the intendment, i.e., he has not been able to sell the notified goods by way of sale within the State or in course of inter-State state or commerce or by way of export. In such cases, the dealer is liable to pay the amount of difference on the amount of sale or purchase of such goods on which concession or nil rate of tax was paid on account of issue of the requirement certificate and the amount of tax calculated @ 4%. The sub-section is a particular and a specific section which deals with and specifies the consequences when the dealer is unable to meet and comply with intendment. The sub-section (6) would, thus, be applicable.

18. Section 3-B undoubtedly commences with a non-obstante clause, but the provision has to be read harmoniously with sub-section (6) to Section 4-B. Any other interpretation would make sub-section (6) a dead letter, for if we accept the plea of the Revenue whenever there is violation or failure to abide with the "intendment", Section 3-B would be invoked and applied, not sub-section(6) to Section 4-B. Section 3-B would apply when a false and wrong certificate or declaration is made. Sub-section (6) on the other hand, deals with cases where the dealer is unable to comply with the intendment, i.e., for some reason he is unable to sell the goods within the State, export them or sell them in the course of inter-State trade or commerce. Intendment of the said nature has not been treated as false or wrong declaration as consequences have been prescribed in sub-section (6). It is essential to be stated that consistency and certainty in tax matters is necessary. In cases relating to "Indirect Taxation", this principle is even more important. Clarity in this regard is a necessity and the interpretative vision should be same.

19. In view of the aforesaid analysis, we find the view expressed by the tribunal which has been concurred by the High Court is absolutely defensible and does not warrant any

interference. Resultantly, the appeal, being devoid of merit, stands dismissed. There shall be no order as to costs.

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 1983-2039 OF 2016

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THE ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES
Vs
AYILI STONE INDUSTRIES ETC. ETC.

DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.

18th October, 2016

HF ▶ Remand/None

If the Polished Granite Stone is converted into Tile by different process and undertaking some other activities, the items would be different and to be taxed accordingly

SINGLE STAGE TAX – POLISHED GRANITE STONE – UNPOLISHED GRANITE STONE – TILE – SALE OF POLISHED GRANITE STONE – EXEMPTION GRANTED BY ASSESSING AUTHORITY – REVISIONAL AUTHORITY HOLDING TO THE CONTRARY CONSIDERING THE POLISHED GRANITE AS TILES– ON APPEAL, HIGH COURT HOLDING CUTTING OF GRANITE BLOCKS INTO SMALL SIZE AND POLISHING NOT AMOUNTING TO MANUFACTURE – TAX NOT ATTRACTED UNDER SECTION 5 – WHETHER TAX LEVIABLE UNDER SECTION 6B – TO BE CONSIDERED BY ASSESSING AUTHORITY – ON APPEAL BEFORE THE SUPREME COURT BY REVENUE – DISTINCTION BETWEEN POLISHED GRANITE STONE OR SLABS AND TILES – ASSESSING AUTHORITY REFERRED TO ENTRY 17(i) BUT NOT CONSIDERED ENTRY 8 DEALING WITH 'OTHER TILES' – IF TILES ARE MANUFACTURED OR PRODUCED AFTER UNDERTAKING SOME OTHER ACTIVITIES - DIFFERENT PRODUCT WOULD EMERGE – FINDING NEEDS TO BE RECORDED BEFORE FINAL CONCLUSION CAN BE REACHED – HIGH COURT ORDER SET ASIDE – MATTER REMITTED BACK TO ASSESSING OFFICER FOR READJUDICATION - *SECTION 5 AND SECTION 6B OF KARNATAKA SALES TAX ACT, 1957*

Facts

The Appellant is engaged in the business of Manufacture and Trading in Granite Stone. The Assessment of the dealer for certain assessment years was framed allowing exemption of Polished Granite Stone on the basis that Polished Granite Stones were produced from out of the tax suffered from rough granite blocks. The assessment was reopened by Assessing Authority observing that polished and unpolished granite stones are under separate Entries, the exemption on the ground that unpolished granite stone have already suffered tax was not correct. Appeal filed by the assessee was allowed and the order of Assessing Authority was set aside.

The Revisional Authority reversed the said decision holding that Rough Granite and Granite Tiles are separate and distinct commercial products, Granite Tiles obtained out of rough granite stones are liable to tax as first dealer.

On appeal, High Court observed that cutting of granite blocks into small sizes and polishing does not amount to manufacturing process to attract sales tax under Section 5 of the Act. However, the High Court observed whether the transaction attracted tax u/s 6B can be looked into and considered by Assessing Officer after giving opportunities to the party and consequently allowed the appeals. Revenue challenged the said order before the Supreme Court. The Supreme Court setting aside the order of High Court and remitting the case back to the Assessing Authority.

Held:

There is no distinction between polished Granite stone or slabs and tiles. If a polished granite stone is used in a building for any purpose, it will come under Entry 17 of Part-S of the Second Schedule, but if it is a tile, which comes into existence by different process, a new and distinct commodity emerges and it has different commercial identity in the market. The process involved is extremely relevant and has not been gone into by the Assessing Officer while framing assessment order. The Assessing Officer has referred to Entry 17(i) of Part-S but without any elaboration of Entry 8, which carves out 'tile' as a different commodity. If a polished granite which is a slab and used on the floor, it cannot be called as tile for the purpose of coming within the ambit and sweep of Entry 8. If tiles are manufactured or produced after undertaking some other activities, the position would be different. A finding has to be arrived at by carrying out due enquiry and for that purpose, appropriate exercise has to be undertaken. In view of this, the orders of High Court and all other authorities set aside and matter remitted back to the Assessing Authority to re-adjudicate the matter keeping in view the observations made hereinabove. Appeals disposed of.

Cases referred:

- *Vishwakarma Granites v. Commissioner of Commercial Taxes W.P. No. 13803/05 decided on 21st June, 2006 by Karnataka H.C.*
- *Poonam Stone Processing Industries v. Deputy Commissioner of Commercial Taxes, Gulbarga, STC Vol. 94 page 182*
- *Foredge Granite Pvt. Ltd. v. State of Karnataka, STRP No. 58/1991 decided on 12.12.1994*
- *State of Karnataka v. Goa Granites, 2006 (60) Kar.L.J. 110*
- *Chowgale and Company Pvt. Ltd. v. Union of India, AIR 1981 SC 1014*
- *Aman Marble Industries Pvt. Ltd. v. CCE, Jaipur (2005) 1 SCC 279*
- *Sterling Foods v. State of Karnataka [1986] 63 STC 239*
- *Delhi Cloth and General Mills Ltd., vs. State of Rajasthan (1980) 46 STC 256*
- *Rajasthan SEB v. Associated Stone Industries (2000) 6 SCC 141*
- *Union of India v. Delhi Cloth and General Mills Co. Ltd. AIR 1963 SC 791*
- *CCE v. Rajasthan State Chemical Works (1991) 4 SCC 473*
- *ITO, Udaipur v. Arihant Tiles & Marbles Pvt. Ltd. (2010) 2 SCC 699*
- *CIT v. N.C. Budharaja & Co. 1994 Supp (1) SCC 280*

Present: ***For Appellant (s):***

Senior Advocate: Mr. Basava Prabhu S. Patil
Other Advocates: Mr. V. N. Raghupathy, AOR, Mr. Anirudh Sanganeria, Mr. Chinmay Deshpande and Mr. Parikshit Angadi

For Respondent(s):
Advocates: Mr. Bhargava V. Desai, AOR and Ms. Saumya Mehrotra

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DIPAK MISRA, J.

1. These appeals, by special leave, assail the common judgment and order passed by the High Court of Karnataka in STA No. 574-575/2011 and other connected matters preferred

under Section 24(1) of the Karnataka Sales Tax Act, 1957 (for brevity, "the Act"), on 4th December, 2012 whereby it has overturned the order dated 25.02.2011 passed by the Additional Commissioner of Commercial Taxes, Zone-I, Bangalore in a batch of suo motu revisions under Section 12-A(1) of the Act whereby the revisional authority has opined that there had been an erroneous order in the appeal causing loss to the State exchequer and accordingly issued notices to the concerned assesses requiring them to participate in the revision petitions and file written objections and put forth their stand availing the opportunity of being heard. As the factual score in all the cases has the colour of similitude barring the numerical figures and the arithmetical computations, we shall advert to the facts in the appeal where "Ayili Stone Industries" is the respondent-assessee.

2.The respondent-assessee is a dealer under the Act as well as the Central Sales Tax Act, 1956 (for short, 'CST Act') and is engaged in the business of manufacturing and trading in granite stone. The assessing authority finalised the assessment for certain assessment years allowing exemption on polished granite stone on the basis that polished granite stones were produced from out of the tax suffered from rough granite blocks. Thereafter, the assessing authority reopened the assessment. While passing the order of reassessment, the Assessing Officer opined certain amount had been allowed exemption as second sale mentioning in the order of assessment that the granite stones sold within the State were polished out of unpolished granite blocks locally purchased on demand of sales tax. The said authority referred to Entry No. 17(1) of Part S of second schedule appended to the Act which relates to granite stones, namely, (a) polished, (b) unpolished and (c) chips. The Assessing Authority observed that the polished and unpolished granite stones are under separate entries in the said schedule and such being the case, treating of sale of polished granite sold within the State which are obtained out of unpolished granite stones as sales inasmuch as they are suffered sales tax was not correct and, therefore, the exemption had been granted erroneously. Being aggrieved by the aforesaid order, the assessee preferred an appeal before the appellate authority. After referring to the decision in ***M/s. Vishwakarma Granites v. Commissioner of Commercial Taxes W.P. No. 13803/05 decided on 21st June, 2006 by Karnataka H.C.***, it opined that the orders passed under Section 12A of the Act deserves to be set aside and accordingly allowed the appeals.

3. The revisional authority referred to the decision in ***Vishwakarma Granites*** (supra) wherein the High Court had considered the judgments rendered in ***Poonam Stone Processing Industries v. Deputy Commissioner of Commercial Taxes, Gulbarga, STC Vol. 94 page 182, Foredge Granite Pvt. Ltd. v. State of Karnataka, STRP No. 58/1991 decided on 12.12.1994, State of Karnataka v. Goa Granites, 2006 (60) Kar.L.J. 110, Chowgale and Company Pvt. Ltd. v. Union of India, AIR 1981 SC 1014*** and came to hold as follows:-

> *"8. In view of the clear dictum laid down by the Division Bench of this Court in the case of Foredge Granite Pvt. Ltd., this Court deems fit to hold that the activity of cutting and polishing of rough granite block will not amount to manufacturing activity and that the polished granite stones could be imposed Sales Tax for the second time prior to 1-4-2002 i.e., prior to amendment to Section 6B of KST Act. Thus, the circular in so far as it relates to clause-3(a) is concerned, as extracted above is just and proper. However, the impugned Circular in so far as it relates clause-3(b) is concerned, is not proper inasmuch as the same is opposed to the dictum laid down by the Division Bench of this Court in the case of M/s. Foredge Granite's case cited supra.*
>
> *9. The Commissioner has referred to Part-S entry No. 17 of II schedule to the Karnataka Sales Tax at 1957 to hold that the polished and unpolished granite stones are separate commodities. But he has failed to appreciate the fact that merely because entry No.17, para-5 to II Schedule refers to polished and*

unpolished granites under two separate heads, it cannot be said that the polished and unpolished granites are two separate commodities, as has been held by the Division Bench of this Court in the case of M/s. Foredge Granite Pvt. Ltd. As the granite block is already taxed at the time of its first sale and the subsequent sale of cut and polished granite stones derived from the original granite block cannot be treated as the first sale and that therefore, tax could not be levied on the polished granite stones u/s. 5-A and 5-B of the Act prior to amendment of Section 6B of KST Act.

10. It is not disputed that the assessment orders in these matters are prior to 01.04.2002, on which date, Section 6-B of the Act is amended and the provision relating to levy of re-sale tax is submitted. Thus, the provision of Section 6-B of the Act as introduced by Act No.5 of 2002 with effect from 01.04.2002 is not applicable to the matters on hand, inasmuch as, the transactions involved in the cases on hand are much prior to the said amendment."

4. After noting the said decision, the revisional authority opined, the question as to whether there is manufacturing activity involved in obtaining granite tiles out of raw granite or rough granite stone is not a relevant issue in the case at hand. Thereafter, he concluded thus:-

"The issue is whether granite tile obtained out of raw granite stone results in separate and distinct commercial product from raw granite stones which is liable to tax as first dealer. As rough granite and granite tiles are separate and distinct as well as different commercial products, granite tiles obtained out of rough granite stones are liable to tax as first dealer."

5. The said authority produced a passage from the judgment in ***Goa Granites*** (supra) which we shall refer to at a later stage. It has also reproduced passages from ***Foredge Granite*** (supra) and formed an opinion which is to the following effect:-

"The aforesaid discussions clearly establish that the appeal order is erroneous causing loss of revenue to the state exchequer. It is also clear that granite tiles cannot be classified under entry 17(1) of para S of second schedule to KST Act 1957 as observed by the learned re-assessing authority. This entry covers granite stones in the form of polished granite stones, unpolished granite stones and granite chips (Entry 17(i), (ii) and (iii)/part S/second schedule and it does not covers granite tiles all. There is separate entry in case of tiles located at entry 8 in part T of second schedule to KST Act 1957. At entry 8(iv), the granite tiles are covered. After classifying certain tiles under which granite tiles do not appear as per entry 8(i),(ii) & (iii) of part T of second schedule to KST Act 1957, all other tiles are classified as under.

"(iv) Other tiles not covered by items 1-4-88 to 31-3-96 Fifteen percent

(i), (ii) and (iii) above

1-4-96 to 31-3-98	*Twelve percent*
1-4-98 to 31-3-01	*Ten percent*
1-4-01 to 31-03-02	*Twelve percent*
1-4-02 to 31-5-03	*Fifteen percent*
From 1-6-2003	*(Sixteen percent)*

The granite tiles are covered under the aforesaid entry in entry 8(iv) of part T of second schedule to KST Act 1957. Thus, the rough granite stone and granite

tiles obtained out of rough granite stone or block are distinct and separate commercial products and are also separately classified in the respective entries explained above".

6. The High Court in appeal posed the question that arose for consideration in the following terms:-

"Whether the rough granite purchased by a dealer and the sale, the same after cutting and polishing into granite tiles, whether such a process amount to manufacture and that the said product constitute a different commodity to attract Sales Tax U/s.5 of the Sales Tax Act?"

7. As the impugned order would show, the High Court after passing the question referred to the authority in ***Aman Marble Industries Pvt. Ltd. v. CCE, Jaipur (2005) 1 SCC 279***, reproduced paragraph 4 of the said judgment and thereafter referred to a passage from ***Foredge Granite*** (supra) and opined that cutting the granite blocks into small sizes and polishing them does not amount to manufacturing process to attract sales tax under Section 5 of the Act. However, the High Court observed whether the transactions attract tax under Section 6B can be looked into and considered by the Assessing Officer after giving opportunity to the parties, and consequently allowed the appeals.

8. We have heard Mr. Basava Prabhu S. Patil, learned senior counsel for the appellants and Mr. Bhargava V. Desai, learned counsel for the respondents.

9. The factual matrix as noticeable is that the assessing authority has allowed the exemption on sale of polished granite stones on the foundation that the same is produced from out of granite slabs that had suffered tax as rough granite blocks. After the assessment, the concerned authority referred to Entry 17(i) of Part S of the Second Schedule, which is as follows:-

"Entry No.17(i) of Part "S" of the second Schedule, appended to the K.S.T. Act, 1957, which relates to granite stones reads as under

Sl. No. 17(i)
17(i)Granite stones
(a) Polished
(b) Unpolished
(c) Chips"

10. After reference to the said Entry, the assessing authority expressed the view that polished and unpolished granite stones have separate entries in the said schedule and, therefore, treating of said sale of polished granite stone within the State which is obtained out of unpolished granite stone as sales suffered would not be correct. The appellate authority, as noted earlier, has founded its opinion on the principle stated in ***Vishwakarma Granites*** (supra). In ***Vishwakarma Granites*** (supra), the challenge was to the circular No. 19/03-04 (KSA.CR.128/2000-01) dated 11.11.2003 issued by the Commissioner of Commercial Taxes in Karnataka Bangalore (hereinafter referred to 'Commissioner' for short) and consequent assessment orders and the orders levying penalty were called in question. The said circular was under Section 3-A(2) of the Act in pursuance of certain observations made in ***Poonam Stone Processing Industries*** (supra) which reads as follows:-

"Cuddaph, Shahabad and marble are stones of special value in the market and the marketable quality of these stones is enhanced by polishing and cutting. But the substance of the material is not altered. The article is made more presentable and attractive for the benefit of the users and it cannot be said that the activity is a manufacturing activity."

11. Thereafter, the Division Bench referred to various aspects of the circular. It was contended before the High Court that the activity of the assessee in cutting and polishing of granite stone will not come within the meaning of manufacturing activity and the circular had been issued on an erroneous notion. The High Court in ***Vishwakarma Granites*** (supra) has noted that in ***Poonam Stone Processing Industries*** (supra) the issue as to whether the act of cutting and polishing of granite stone amounts to manufacturing activity was not considered as the Division Bench had held that the said question was unnecessary to be decided in the writ appeal. It is worthy to note what has been stated in ***Poonam Stone Processing Industries*** (supra):-

> *"3. On the question whether the petitioner was engaged in a manufacturing activity or not, the Tribunal has considered the same in great detail in para 13 of its order. The Tribunal has taken into consideration the nature of the business carried on. It is stated therein that the petitioner purchases rough granite blocks and with the help of the machines run by electrical energy in his unit, cut the granite into required sizes and thickness and polishes the same to the requirement of the customers and sells the same. In support of his case, the learned counsel for the petitioner pointed out the objections filed by him before the Revisional Authority and also produced a brochure before us indicating the nature of the activities carried on by him. Neither a perusal of the objections filed by the petitioner nor the very attractive brochure produced before us would convince us to come to a different conclusion from the finding given by the Tribunal. The Tribunal has looked into the material and correct perspective. The stones are larger granite blocks purchased by the petitioner, even when cut to the sizes to the requirement of the customers including as regards its thickness or polishing it continues to be granite block. May be a smaller or thinner size, but it would continue to be a granite block however polished it may be. Even though it may be used as a building material, the granite block does not cease to be a granite block. Therefore, no manufacturing activity is involved. The finding recorded in this regard is perfectly in order.*
>
> *5. Merely cutting a rough block of granite into different sizes to the requirement of the customers would not involve any manufacturing activity. In that view of the matter, we do not think the view taken by the Tribunal is wrong in any manner. In the view we have taken non-production of the valuation certificate in this case does not assumes any significance".*
>
> *[underlining is ours]*

12. The High Court in ***Vishwakarma Granites*** (supra) had referred to the authority in ***Goa Granites*** (supra). In ***Goa Granites'*** case the Division Bench of the High Court posed the following two questions which required determination by the High Court:-

> *"I. Whether the Tribunal was right in holding that the polished tiles obtained out of rough granite blocks are to be reckoned as the same goods or commercially new commodities for allowing exemption under Section 5(3) of the CST Act, 1956? II. Whether the ratio of the decision of this Hon'ble Court in the case of Foredge Granite v. State of Karnataka in STRP.No.58/1991 rendered with reference to Entry 17 of Part 'S' of the Second Schedule to Karnataka Sales Tax Act, as it stood prior to 1.4.1991 was applicable to the facts of the case of the assesses?"*

13. While discussing, the Court took note of the fact that what is sold or supplied by the dealer-assessee, registered both under the Act and CST Act, is rough granite block to an 100% export-oriented unit and it is also not in dispute that what is exported by the export-oriented

unit is polished and thin slices of tiles made out of big rough granite blocks supplied by the assessee. The Division Bench referred to ***Sterling Foods v. State of Karnataka [1986] 63 STC 239*** wherein it has been held thus:-

> *"The test which has to be applied for the purpose of determining, whether a commodity subjected to processing retains its original character and identity is as to whether the processed commodity is regarded in the trade by those who deal in it as distinct in identity from the original commodity or it is regarded, commercially and in the trade the same as the original commodity. It is necessary to point out that it is not every processing that brings about change in the character and identity of a commodity. The nature and extent of processing may vary from one case to another and indeed there may be several stages of processing and perhaps different kinds of processing at each stage, with each process suffered, the original commodity experiences change. But it is only when the change or a series of changes take the commodity to the point where commercially it can no longer be regarded as the original commodity, but instead is recognized as a new and distinct commodity that it can be said that a new commodity, distinct from the original has come into being. The test is, whether in the eyes of those dealing in the commodity or in commercial parlance the processed commodity is regarded as distinct in character and identity from the original commodity."*

14. While proceeding with the analysis, the Division Bench posed a question which we think it apt to reproduce:-

> *"In other words, whether the rough granite blocks, which were sold were the very goods, which were exported? To be further precise, the controversy in this revision petition is about the identity of the goods purchased and identity of the goods sold."*

15. Thereafter, the Court has referred to ***Delhi Cloth and General Mills Ltd., vs. State of Rajasthan (1980) 46 STC 256***, wherein the Court has stated, that "it was fairly well settled that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and consumer. It is they who are concerned with it and it is the sense in which they understand it that constitutes the definitive index of the legislative intention when the statute was enacted". Thereafter, the Division Bench observed:-

> *"The question for consideration is, whether this polished tiles obtained out of rough granite blocks would amount to export of "those goods", which had been sold by the assessee? It is the specific case of the assessee before all the authorities under the Act that what is sold in only rough granite blocks to an industrial unit, which is an 100% export oriented unit. It is also its case that the export unit by using heavy machinery, cut these rough granite blocks in to thin pieces and thereafter, they have been polished and exported not as granite blocks but as polished tiles. Under these circumstances, they are of the view that they are entitled to get exemption from payment of tax under the Act, since the commodity supplied and the commodity exported are one and the same, except for the diminishing size. In aid of their assertion, they had placed reliance on the observations made by this Court in the case of M/s Foredge Granite Pvt. Ltd. vs. The State of Karnataka and Another (STRP.No.58/1991). At the outset, we should notice in this case, firstly, that sub-section (3) of Sec. 5 of the CST Act did not fall for consideration of this Court. The issue that was raised in the said decision was, mere cutting a rough block of granite into different sizes to the requirement of the customer would involve any manufacturing activity? The*

facts which were noticed by the Court in that case was, that the petitioner had purchased rough granite blocks and with the help of the machines run by electrical energy in its unit, cuts the granites into required sizes and thickness and polishes the same to the requirement of the customers and sells the same.

The case of the assessee before the assessing authority was that the business activity of the petitioner is a manufacturing activity and therefore, would be entitled to the benefit of the notification dated 15/16.10.1981, which provided for exemption from payment of tax under the KST Act, 1956, in respect of goods manufactured and sold by new industrial unit. The assessing authority had allowed the claim of the dealer and had granted exemption from payment of sale tax, treating the business activity of the petitioner as a manufacturing activity and therefore, entitled to certain incentives and concession flowing from the notification. This order of the assessing authority was revised by the revisional authority by invoking the provisions of Section 21(2) of KST Act and the order so passed was confirmed by the Karnataka Appellate Tribunal, by rejecting the appeal filed by the assessee. It is the correctness or otherwise of this order was called in question by the assessee before this Court in Revision Petition 58/1991."

And again:-

"On these set of facts, this Court has stated that the stones are large granite blocks purchased by the petitioner and even when cut into the sizes to the requirement of the customers including as regards its thickness or polishing, it continues to be a granite block. May be a smaller or thinner size, but it would continue to be granite block however polished it may be. Even though it may be used as a building material, the granite block does not cease to be a granite block and therefore, no manufacturing activity is involved. The conclusion the Court has reached is, mere cutting a rough block of granite into different sizes to the requirement of the customers would not involve any manufacturing activity."

16. The Division Bench distinguished the finding recorded in ***Foredge Granite*** (supra) as the question that arose before it pertained to whether the export of polished granite tiles obtained out of rough granite blocks would amount to export of "those goods" which had been sold and supplied. The Court again referred to the principles stated in ***Sterling Foods*** (supra), applied the said test and proceeded to opine:-

"If this test is applied, neither in common parlance nor in commercial parlance, sliced, thin, polished tiles cannot be regarded as the rough granite blocks. When rough granite blocks are subjected to process of cutting, slicing into required size and polished and exported as tiles, the rough granite blocks ceased to be granite blocks and become a distinct and different commercial commodity from the original commodity. In the trade circle, they are not considered as one and the same commodity. If the purchaser goes to the market to buy the polished tiles, he will not be given the rough granite blocks. Converse of this is also an indication that they do not retain their identity as rough granite blocks when they are cut/sliced, polished as tiles and therefore, for the purpose of Section 5(3) of the CST Act, it cannot be said that the goods sold or supplied were those goods, which were exported. The granite stones are extracted from the quarry and they are cut into small and large blocks. If they are cut or sawn to very specific dimension and sold either as smaller blocks or cut sizes of granite blocks to the exporter and if that exporter exports those small cut sizes of granite

blocks, it can definitely be said, that what is sold and what is exported are one and the same commodity. But in the present case, the facts noticed by the fact finding authorities is that, the exporter before exporting the cut sizes of granite blocks, cuts them into slices to the actual size of tiles, polishes or effects honing process, which is similar to polishing and the end result is a tile that has a stain or patina finish or polish finish. If it was a case of mere cutting or sawing to a specific dimension and beveled edges are polished, it could be a case of export of the same goods and therefore, eligible for tax exemption under Sec. 5(3) of the Act. In our view, the 'tiles' are not simply cut or sawn of a granite blocks. They undergo further processing of cutting into thin slices, and process of polishing and emerge as 'tiles' and ready to be sold as 'tiles' and in commercial parlance, they are treated as different commodity altogether. Even if we have to adopt a value added test, then also, in our view, there is substantial transformation of the original commodity into different commercial commodity. Therefore, what is sold and what is exported is not "those goods" or the "same goods", which is eligible for exemption under Sec. 5(3) of the Act. While considering the issues involved in this revision petition, we are not considering whether any manufacturing activity is involved while rough granite blocks are cut/sliced into thin pieces as tiles and polished or honed."

17. Eventually, the Division Bench held:-

"Chemical composition of them may continue to remain as stones when they were supplied and cut into thin sizes, polished and sold as tiles, but in common parlance or in commercial parlance or in trade circles or in value added percentage test, in our view, they are not understood as one and the same commodity. The rough granites are processed to an extent that they no more remain as granites but as tiles ready to be used in building construction and other activities. By this process, there is value addition to the goods. There would be price variation between the rough granite block and cut and polished tiles. Even in the trade circles, when a customer asks for polished tiles of required size, the dealer shall not supply him with rough granites. The converse of this transaction is also an indicative factor how the trade circles understands the difference between rough granite blocks and polished granite tiles. Therefore, in our view, for the purpose of Sec. 5(3) of the CST Act, 1956, it cannot be said that what is supplied or sold are those goods which are exported. Accordingly, the assesses is not eligible to claim exemption from payment of tax under the Act, on the ground that the sale of granite blocks to an 100% exported unit is a sale in the course of export or deemed sale to be in the course of export."

18. The decision in ***Foredge Granite*** (supra) was distinguished by observing that:-

"We further add that the Apex Court in the case of Sterling Foods v. The State of Karnataka(1986) 63 STC 239 has observed that "the character or identity of the commodity has to be determined not on the basis of a distinction made by the State Legislature for the purpose of exigibility to state sales tax, because even where the commodity is the same in the eyes of the persons dealing in it, the State Legislature may make a classification determining liability to sales tax. This question for the purpose of the Central Sales Tax Act, has to be determined on the basis of what is commonly known or recognized in commercial parlance". Therefore, in our view, for deciding the issue raised in this revision

petition, reference to Entry 17 of Part 'S' of Second Schedule to the KST Act is wholly irrelevant."

19. In ***Vishwakarma Granites*** (supra) the High Court distinguished the Division Bench decision by opining that it was not specifically dealing with the issue of manufacture and further it was adverting to the exigibility of tax under Section 5(3) of the CST Act. The Court distinguished the two concepts, namely, the "manufacture" and the recognised test of "common parlance".

20. Now, we may look at what has been held in ***Aman Marble*** (supra). The two-Judge Bench was dealing with the issue whether the cutting of marble blocks into marble slabs amounts to manufacture for the purpose of the Central Excise Act. In that context, the Court referred to the authority in ***Rajasthan SEB v. Associated Stone Industries (2000) 6 SCC 141*** and reproduced a passage from the same which is as follows:-

"This apart, excavation of stones from a mine and thereafter cutting them and polishing them into slabs did not amount to manufacture of goods. The word 'manufacture' generally and in the ordinary parlance in the absence of its definition in the Act should be understood to mean bringing to existence a new and different article having a distinctive name, character or use after undergoing some transformation. When no new product as such comes into existence, there is no process of manufacture. Cutting and polishing stones into slabs is not a process of manufacture for the obvious and simple reason that no new and distinct commercial product came into existence as the end product still remained stone and thus its original identity continued."

and this position was further reiterated as follows: (SCC pp. 147-48, para 16)

"It is also not possible to accept that excavation of stones and thereafter cutting and polishing them into slabs resulted in any manufacture of goods."

21. At this juncture, it becomes imperative on our part to analyse what has been stated in ***Associated Stone Industries*** (supra). In the said case, the issue that arose for consideration was whether pumping out water from a mine comes within the meaning of manufacture, production, processing or repair of goods as to claim exemption from duty under notification issued under Section 3 of Rajasthan Electricity (Duty) Act, 1962. The Court referred to the authorities in ***Union of India v. Delhi Cloth and General Mills Co. Ltd. AIR 1963 SC 791, CCE v. Rajasthan State Chemical Works (1991) 4 SCC 473***, wherein it has been held that pumping of brine and lifting of raw material constituted processes in or in relation to the manufacture. In the said case, the Court adverted to the facts in ***Rajasthan State Chemical Works*** (supra) and ultimately concluded thus:-

"In conclusion, it is said that if any operation in the course of manufacture is so integrally connected with the further operations which result in the emergence of manufactured goods and such operation is carried on with the aid of power, the process in or in relation to the manufacture must be deemed to be one carried on with the aid of power. Pumping out water, excavation of stones and cutting and polishing them into slabs cannot be said to be integrally connected in the manufacturing of goods".

22. At this stage, we think it appropriate to refer to comparatively a recent pronouncement in ***ITO, Udaipur v. Arihant Tiles & Marbles Pvt. Ltd. (2010) 2 SCC 699*** In the said case, the assessee was engaged in the business of manufacture/production of polished slabs and tiles which the assessee exported (partly). The question that arose for consideration is whether conversion of marble blocks by sawing into slabs and tiles and polishing amounts to "manufacture or production of article or thing" so as to make the respondent assessee(s) entitled

to the benefit of Section 80-IA of the Income Tax Act, 1961, as it stood at the material time. Thus, manufacture or production was required to be understood within Section 80-IA of the Income Tax Act, 1961. The Court analysed the various steps that is undertaken to reproduce the details of step-wise activity undertaken by the assessee. The Court reproduced the same:-

> *"(i) Marble blocks excavated/extracted by the mine owners being in raw uneven shapes have to be properly sorted out and marked;*
>
> *(ii) Such blocks are then processed on single blade/wire saw machines using advanced technology to square them by separating waster material;*
>
> *(iii) Squared up blocks are sawed for making slabs by using the gang saw machine or single/multi-block cutter machine;*
>
> *(iv) The sawn slabs are further reinforced by way of filling cracks by epoxy resins and fibre netting;*
>
> *(v) The slabs are polished on polishing machine; the slabs are further edge cut into required dimensions/tiles as per market requirement in prefect angles by edge cutting machine and multi-disc cutter machines;*
>
> *(vi) Polished slabs and tiles are buffed by shiner."*

23. Thereafter, the three-Judge Bench analysed the distinction/difference between production and manufacture. We need not advert to the same. The Court, however, referred to the authority in ***Associated Stone Industries*** (supra). Analysing the same, the Court observed:-

> *"12. The basic controversy which arose for determination in Rajasthan SEB case was whether the activity of pumping out water from the mines came within the meaning of the words "manufacture", "production", "processing or repair of goods". While disposing of the matter, this Court, vide paras 1 and 10, stated that the specific case of the company was that the electrical energy was consumed for pumping out water from mines to make mines ready for mining activity. This aspect is very important. It needs to be highlighted that the case of the company was that pumping out water from mines to make the mines ready for mining activity came within the ambit of the term "manufacture". This argument was rejected by this Court, after examining various judgments of this Court on the connotation of the word "manufacture"."*

24. After so analysing, the Court observed the said decision had no application to the facts of the case, for only activity which came up for consideration in Rajasthan SEB case was the activity of pumping out water from a mine in order to make the mine functional. The Court opined that the controversy it was dealing with, the said activity was not required to be considered. Thereafter, the three-Judge Bench adverted to the principle stated in ***Aman Marble*** (supra). The Court distinguished the same by holding that the word "production" was not under consideration before the Court in the said case and thereafter noted that in the said case it had been held that cutting of marble blocks into slabs did not amount to manufacture. Explaining the dictum in the said case, the Court observed:-

> *"In our view, the judgment of this Court in Aman Marble Industries (P) Ltd. also has no application to the facts of the present case. One of the most important reasons for saying so is that in all such cases, particularly under the excise law, the Court has to go by the facts of each case. In each case one has to examine the nature of the activity undertaken by an assessee. Mere extraction of stones may not constitute manufacture. Similarly, after extraction, if marble blocks are cut into slabs per se will not amount to the activity of manufacture."*

25. Thereafter, the Court proceeded to deal with the process undertaken by the assessee and in that context stated:-

> *"In the present case, we are not concerned only with cutting of marble blocks into slabs. In the present case we are also concerned with the activity of polishing and ultimate conversion of blocks into polished slabs and tiles. What we find from the process indicated hereinabove is that there are various stages through which the blocks have to go through before they become polished slabs and tiles. In the circumstances, we are of the view that on the facts of the cases in hand, there is certainly an activity which will come in the category of "manufacture" or "production" under Section 80-IA of the Income Tax Act."*

26. The Court referred to the decision in ***CIT v. N.C. Budharaja & Co. 1994 Supp (1) SCC 280*** and ruled thus:-

> *"25. Applying the above tests laid down by this Court in Budharaja case to the facts of the present cases, we are of the view that blocks converted into polished slabs and tiles after undergoing the process indicated above certainly results in emergence of a new and distinct commodity. The original block does not remain the marble block, it becomes a slab or tile. In the circumstances, not only is there manufacture but also an activity which is something beyond manufacture and which brings a new product into existence and therefore, on the facts of these cases, we are of the view that the High Court was right in coming to the conclusion that the activity undertaken by the respondent assessees did constitute manufacture or production in terms of Section 80-IA of the Income Tax Act, 1961.*
>
> *26. Before concluding, we would like to make one observation. If the contention of the Department is to be accepted, namely, that the activity undertaken by the respondents herein is not manufacture, then, it would have serious revenue consequences. As stated above, each of the respondents is paying excise duty, some of the respondents are job-workers and the activity undertaken by them has been recognised by various government authorities as manufacture. To say that the activity will not amount to manufacture or production under Section 80-IA will have disastrous consequences, particularly in view of the fact that the assessees in all the cases would plead that they were not liable to pay excise duty, sales tax, etc. because the activity did not constitute manufacture."*

27. We have reproduced in extenso from the aforesaid authority, though the exposition of law arose under a different enactment. The three-Judge Bench has explained the principle stated in Rajasthan SEB's case as well as in ***Aman Marble*** (supra). In the case at hand, though the High Court in the impugned order posed the question correctly and placed reliance on ***Aman Marble*** (supra), yet it has not correctly applied the principle in the correct perspective. In ***Aman Marble*** (supra) the Court has held that it was not possible to accept that excavation of stones and thereafter cutting and polishing them into slabs resulted in a manufacture of goods. The decision in ***Foredge Granite*** (supra) had been restricted to the concept of polished granite block. The revisional authority, as we perceive, has applied the test of separate and distinct commercial product that comes into existence from granite stones and for the said purpose, it has relied on the pronouncement in ***Goa Granites*** (supra). We have copiously referred to ***Goa Granites*** (supra). It has drawn a distinction between the slabs and tiles. Entry 17(i) of Part S of the Act deals with polished granites, unpolished granites and chips. The tiles come under Entry 8 in part T of the second schedule to the Act. At Entry 8(iv), the tiles are covered. It is noticeable that in Entry 8, certain tiles have been classified under Entry 8(i) (ii) and (iii) of Part T. Under Entry 8(iv) further tiles are classified. It is as under:-

"(iv) Other tiles not covered by items 1-4-88 to 31-3-96 Fifteen percent (i), (ii) and (iii) above

1-4-96 to 31-3-98	Twelve percent
1-4-98 to 31-3-01	Ten percent
1-4-01 to 31-03-02	Twelve percent
1-4-02 to 31-5-03	Fifteen percent
From 1-6-2003	(Sixteen percent)"

28. There is a distinction between polished granite stone or slabs and tiles. If a polished granite stone is used in a building for any purpose, it will come under Entry 17(i) of Part S of the second schedule, but if it is a tile, which comes into existence by different process, a new and distinct commodity emerges and it has a different commercial identity in the market. The process involved is extremely relevant. That aspect has not been gone into. The Assessing Officer while framing the assessment order has referred to Entry 17(i) of Part S but without any elaboration on Entry 8. Entry 8 carves out tiles as a different commodity. It uses the words "other titles". A granite tile would come within the said Entry if involvement of certain activities is established. To elaborate, if a polished granite which is a slab and used on the floor, it cannot be called a tile for the purpose of coming within the ambit and sweep of Entry 8. Some other process has to be undertaken. If tiles are manufactured or produced after undertaking some other activities, the position would be different. A finding has to be arrived at by carrying out due enquiry and for that purpose appropriate exercise has to be undertaken. In the absence of that, a final conclusion cannot be reached.

29. In view of the aforesaid, we allow the appeals, set aside the orders passed by the High Court and all the authorities and remit the matter to the Assessing Officer to re-adjudicate the matter keeping in view the observations made hereinabove. There shall be no order as to costs.

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PUNJAB & HARYANA HIGH COURT

CWP 14277 OF 2014

MEHTA ENGINEERS LTD.
Vs
STATE OF HARYANA AND ORS.

RAJESH BINDAL AND DARSHAN SINGH, JJ.

21st October, 2016

HF ▶ Revenue

Assessee is liable to pay interest on Interest-Free Loan for the period during which it was used, if Eligibility Certificate is withdrawn from the first day of its validity.

DEFERMENT OF TAX – INDUSTRIAL POLICY – INTEREST-FREE LOAN – CONVERSION OF DEFERRED AMOUNT INTO INTEREST-FREE LOAN – UNIT CLOSING DOWN DURING THE CURRENCY OF EXEMPTION PERIOD – TAX DEFERRED PAID AS PER SCHEME – INTEREST DEMANDED BY SALES TAX DEPARTMENT FOR LATE PAYMENT OF TAX AS ELIGIBILITY CERTIFICATE STOOD WITHDRAWN FROM FIRST DATE – APPELLATE AUTHORITY REDUCED THE INTEREST UPTO THE DATE OF CONVERSION OF TAX INTO INTEREST-FREE LOAN – INDUSTRIES DEPARTMENT DEMANDED INTEREST FOR THE PERIOD DURING WHICH AMOUNT USED BY ASSESSEE – WRIT PETITION BEFORE HIGH COURT – SCHEME OF DEFERMENT AND INTEREST-FREE LOAN HAS TO BE READ TOGETHER – IF ASSESSEE NOT ELIGIBLE UNDER THE DEFERMENT RULES, THEN NOT ELIGIBLE FOR INTEREST-FREE LOAN – INTEREST ON INTEREST-FREE LOAN PAYABLE FOR THE PERIOD AMOUNT USED BY ASSESSEE – WRIT PETITION DISMISSED. - *RULE 28B OF HGST RULES AND INTEREST-FREE LOAN SCHEME DATED 16.12.1992*

Facts

The Assessee-Dealer being eligible for deferment of tax was issued an Eligibility Certificate for the period from 9.9.1997 to 8.9.2006 for an amount of Rs. 44.68 lacs. Since it could not continue its business as required under the Scheme during the currency of eligibility period, its Eligibility Certificate was withdrawn by Higher Level Screening Committee on 16.9.2006. During the period, the entire amount of tax deferred was converted into interest-free loan as per Scheme of Haryana Government dated 16.12.1992. By the time Eligibility Certificate was withdrawn, the entire amount of interest-free loan stood repaid by the assessee-petitioner. On withdrawal of Eligibility Certificate, the Sales Tax Department demanded interest on the late payment of tax as the Eligibility Certificate stood withdrawn from the first date. On Appeal, the Appellate Authority reduced the amount of interest finding it payable only upto the date when the amount was converted into interest-free loan.

Industries Department issued a Demand Notice asking the petitioner assessee to pay the amount of interest for the period during which the amount was used by assessee as it was not eligible from the first date since the Eligibility Certificate withdrawn. The assessee contended

that it has paid the entire amount within time prescribed under the 1992 Scheme and there is no default in repayment and as such interest cannot be demanded. The said contention was rejected and was upheld by the appellate authority. On a writ petition before the High Court.

Held:

The two Schemes viz. The Deferment Rules under the HGST Rules and the 1992 Order for Interest-free Loans have to be read together. Once an assessee is not found eligible for grant of any deferment under the HGST Rules, the question of availing interest-free loan does not arise. Similarly, once the Certificate has been withdrawn from the first date of its validity, the assessee would not be eligible for grant of interest-free loan in the first place. As such, the claim of assessee that there is no default in the payment of loan cannot be sustained. Since the Rules and the Scheme are inter-dependent, the view has to be taken for interpretation purposes seeing the nexus with the object to be achieved. Finding no merit in the petition, the writ petition is dismissed.

Cases referred:

- *India Carbon Limited vs State of Assam (1997) 106 STC 460*
- *Union of India vs A. L. Rallia Ram (1964) 3 SCR 164*
- *State of Haryana etc. vs Haryana Orsanics, LPA No. 412 of 2003*

Present: Mr. Sandeep Goyal and Mr. Varun Chadha, Advocates, for the petitioner.
Ms. Mamta Singla Talwar, Deputy Advocate General, Haryana.

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RAJESH BINDAL, J.

1. The petitioner has approached this Court impugning the order dated 24.12.2013 (Annexure P-11) passed by the Director of Industries and Commerce, Haryana, vide which the appeal filed by it against the order passed by the General Manager-cum-Joint Director, DIC, Rewari, dated 28.2.2013 (Annexure P-9), was dismissed. The issue is regarding demand of interest.

2. Learned counsel for the petitioner submitted that the petitioner set up a unit to manufacture Sheet Metal Components, Tubular, Components, Machined of Manufacture components at Dharuhera, District Rewari. It came into commercial production on 9.9.1997. In terms of provisions of Rule 28-B of the Haryana General Sales Tax Rules, 1975 (for short, 'the Rules'), the petitioner applied for issuance of eligibility certificate for availing benefit of deferment of payment of tax. The eligibility certificate was issued to the petitioner on 20.1.2000. The period of eligibility was from 9.9.1997 to 8.9.2006. The total amount for which the petitioner could avail benefit of deferment of tax was Rs. 44.68 lacs. As per the provisions of Rule 28-B(12)(iv) of the Rules, the amount of sales tax deferred was to be paid after the expiry of seven years from the date it was due.

3. The State of Haryana notified a scheme for conversion of deferred sales tax into interest free loan on 16.12.1992 (hereinafter to be referred as 'the Scheme'). It provided for eligibility, procedure for claiming benefit, repayment of loan and power of recovery in case of default. As per the scheme, repayment of interest free loan was to be done after a period of five years. The loan was sanctioned to the petitioner on 31.3.2000. Immediately thereafter the amount due upto that date was paid to the Sales Tax Department and thereafter it was regularly paid after raising loan. As for the reasons beyond its control, the petitioner could not continue in business, in terms of conditions laid down in Rule 28-B of the Rules, the eligibility certificate granted to the petitioner was withdrawn in the meeting of the Higher Level Screening Committee held on 16.2.2006. The order was conveyed to the petitioner vide letter dated 6.7.2006. However, by that time, entire amount of tax had already been paid to the Excise and Taxation Department and even the interest free loan had also been returned to the

Industries Department. As a consequent of withdrawal of eligibility certificate, the assessing authority vide order dated 28.6.2006, calculated the interest due from the petitioner. The amount was determined at Rs. 36,79,875/-. Aggrieved against the order, the petitioner preferred appeal. The Joint Excise & Taxation Commissioner (Appeals), Faridabad, vide order dated 20.5.2009, accepted the appeal and directed for re-calculation of interest, as the Excise & Taxation Department had received the amount of tax after the petitioner raised interest free loan from the Industries Department. Thereafter, vide order dated 16.6.2010, the Assessing Authority re-calculated interest due from the petitioner at Rs. 7,74,302/-. Vide communication dated 28.2.2013, the General Manager-cum-Joint Director, DIC, Rewari, directed the petitioner to pay the interest, which was difference of the amount earlier assessed by the Excise & Taxation Department and subsequently assessed. Aggrieved against the communication, the petitioner preferred appeal before the Director of Industries, Haryana, who vide order dated 24.12.2013, dismissed the same.

4. Learned counsel for the petitioner submitted that in the Scheme for interest free loan as notified by the Government of Haryana, clause 7 provides for power to recover the loan. In case of non-payment, it could be recovered as arrears of land revenue. In case of any default or delay in repayment of loan interest/penalty was chargeable as provided under the Haryana General Sales Tax Act, 1973 (for short, 'the Act') and the Rules framed thereunder. The provision does not in any manner provide for charging of interest in case the amount is paid on or before the due date. There is no default in repayment of loan in terms of Clause 5, which was due to be repaid after five years and was, in fact, paid within that period.

5. Clause 7 of the Scheme invokes the provisions of the Haryana Public Money Recovery Act for recovery of the loan, in case of default or delay in repayment of loan. For levy of interest and penalty, the provisions of the Act could be invoked.

6. The Scheme is an independent incentive scheme. The beneficiaries thereof have no concern with the provision of Rule 28-B of the Rules. The claim of the Sales Tax Department was satisfied, moment the amount of the tax was paid. There is no condition in the Scheme for a unit to remain in production as is envisaged in Rule 28-B (10) of the Rules. In support of his plea reliance was placed upon judgments of Hon'ble the Supreme Court in ***State of Punjab and others vs Atul Fasteners Limited (2007) 7 VST 278***, ***India Carbon Limited vs State of Assam (1997) 106 STC 460***, ***Union of India vs A. L. Rallia Ram (1964) 3 SCR 164*** and judgment of this Court in LPA No. 412 of 2003 - ***State of Haryana etc, vs M/s Haryana Orsanics***, decided on 3.3.2009.

7. On the other hand, learned counsel for the State submitted that as per eligibility certificate issued to the petitioner, he could avail of the benefit of deferment of payment of tax to the tune of Rs. 44.68 lacs. The period of entitlement was from 9.9.1997 to 8.9.2006. During the currency, the petitioner availed benefit to the tune of Rs. 43,90,396/- and thereafter partly sold the plant and partly it was leased out. As per the record, there was no production from 30.6.2000. She further referred to condition nos. 3, 5 and 6, as contained in the eligibility certificate, which provide for the period the unit is to remain in production and further the liability to pay interest. The reference was also made to Rule 28-B(10)(a) and (b) of the Rules providing for certain conditions under which the eligibility certificate granted to a unit could be withdrawn. Rule 28-B(12)(iv) of the Rules was also referred to submit that the payment of deferred amount was to be made after expiry of a period of seven years. In addition, while referring to Clauses 5 and 7 of the Scheme, it was submitted that the conditions contained in the Scheme and the object for which it was framed have to be read in conjunction with Rule 28-B of the Rules. The default has to be considered with reference to the conditions laid down in Rule 28-B of the Rules, without the aid of which the petitioner was not entitled to the benefit

of interest free loan. It is only an eligible industrial unit under Rules 28-A and 28-B of the Rules, which could avail of benefit of interest free loan.

8. Learned counsel for the State further submitted that Clause 7 of the Scheme provides that in case of default, the provisions of the Act and the Rules will be applicable. It is a case of default where the petitioner had closed down the manufacturing activity even during the currency of eligibility certificate. Once eligibility certificate is withdrawn, as a consequence right to avail benefit of interest free loan was taken away. In these circumstances, there is nothing wrong in rasing demand of interest from the petitioner. She further submitted that none of the judgments cited by learned counsel for the petitioner is relevant for the controversy in issue. The interest free loan was sanctioned to the petitioner from time to time in terms of the amount due under the Act. The conditions in the sanction letter clearly established that the provisions of the Rules and the Scheme cannot be de-linked as the amount of loan was to be debited from one account of the State to be credited to other account. It was not a loan raised from a third party.

9. In response, learned counsel for the petitioner submitted that Clause 7 of the Scheme has been invoked 11 years after the petitioner had admittedly gone out of production and three years after the proceedings under the Act concluded wherein it was opined that the interest for the period, the tax had been paid to the Excise and Taxation Department, may be after raising loan from the Industries Department, no interest was leviable under the Act.

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

11. Relevant paras of the interest free loan scheme are extracted below:-

"HARYANA GOVERNMENT

INDUSTRIES DEPARTMENT

ORDER

To give relief to industries, the Governor of Haryana is pleased to formulate a new scheme for conversion of deferred sales tax into interest free loan. The salient features of this scheme are as under:-

OBJECTIVE

With a view to promote industry at an accelerated pace, the State Government has formulated an industrial policy which provides a number of fmancial8 fiscal incentives to the new as well as existing entrepreneurs. One such incentive is the grant of sales tax exemption 1 deferment. Under the existing policy/ Notification of the Excise and Taxation Department, an industrial unit is eligible for tax exemption/ deferment as under:-

	Small scale	***Medium Scale/ Large Scale***	***Time Limit***
Zone A : Comprising centrally and state identified backward areas.	*150% of fixed capital investment.*	*125% of fixed capital investment but not exceeding Rs. 6 crores.*	*9 years.*
Zone B : Comprising centrally areas, other than zones A&C.	*125% of fixed investment.*	*100% of fixed capital investment but not exceeding Rs. 4.5 crores.*	*7 years.*
Zone C : Comprising Faridabad, Ballabgarh Complex Administration.	*100% of fixed capital investment.*	*90% of fixed capital investment but not exceeding Rs. 3 crores.*	*5 years.*

In case of electronics Industry, the tax benefit is uniform for 7 years upto 500% of fixed capital investment.

Zone	*Small scale*	*Medium /Large Scale*	*Time Limit*
A	100% of additional fixed capital investment.	90% of additional fixed capital investment but not exceeding Rs. 5 crores.	9 years.
B		90% of additional fixed	
C	100% of additional fixed capital investment.	90% of additional fixed capital investment but not exceeding Rs. 2 crores.	5 years.

The procedure for claiming sales tax exemption/ deferment has been laid down in the State Government, Excise and Taxation Department Notification No. GSR46/H.A.20/73/S-64/89, dated 17.5.89 State Government has amended the notification from time to time to make the procedure simpler.

It has been brought to the notice of Government that deferred tax which is recoverable after the period of five years is being considered as income of the assessee for the purpose of computing his income tax liability under section 43-B of the Income Tax Act. The State Government has, therefore, decided to provide interest free loan through this scheme, to the extent of sales tax liabilities of an Industrial Unit which has opted for its deferred payment under the industrial policy of the State Government.

2. Eligibility

i) Industrial units in whose favour eligibility certificate has been issued by the Industries Department.

ii) Industrial units in whose favour Entitlement Certificate has been issued by the concerned DETC, will be eligible to avail themselves of this scheme.

EXPLANATION: The eligible industrial units holding eligibility and entitlement certificates can avail themselves of the benefit of the scheme by opting to convert the tax deferred for the previous years into Interest Free Loan provided assessment under the Income Tax Act for those years has not been finalized.

3. PROCEDURE

Industrial units opting for conversion of deferential amount of sales tax into Interest Free Loan shall give their option at the time of applying for grant / renewal of entitlement certificate to the concerned Deputy Excise and Taxation Commissioner. The option once exercised will be final. The Deputy Excise and Taxation Commissioner concerned shall forward the consent of the industrial unit alongwith a copy of the entitlement certificate to the General Manager District Industries Centre concerned and inform the unit about the same. Deputy Excise and Taxation Commissioner shall not (sic) for any bank guarantee/ personal sureties/ mortgage/ hypothecation of assets agreement etc. as provided in the scheme of Sales Tax Deferment of the Excise and Taxation Department from such entrepreneurs.

The General Manager District Industries Centre will sanction the interest free loan equivalent to the estimated tax liabilities of the year, if it is being issued for the first year. For subsequent years, the loan will be sanctioned after taking into account the difference in the actual and the estimated tax liability of the previous year, the total entitlement and the period, as indicated in the eligibility certificate. This process will be completed within one week of receipt of consent and entitlement/ renewal certificate. He will simultaneously

ask the industrial unit to furnish the security as provided in this scheme and the agreement deed for execution.

Industrial units which are availing themselves of the benefit of the scheme sales tax deferment and are now desirous of getting the same converted into interest free loan, for the whole of the year or industrial units which have availed the sales tax deferment but their Income Tax return have not been finalized so far, can also apply to the General Manager, District Industries Centre concerned for conversion of Sales Tax into interest free loan for the whole of the year or for the earlier period if they furnish fresh agreement deed and transfer the securities in favour of the General Manager, District Industries Centre concerned. However, in such cases the date of repayments shall remain the same as decided and agreed by the Excise a Taxation Department and as provided in the Haryana General Sales Tax Act and rules made thereunder.

Taking into account the quarterly return filed by the Industrial unit duly certified by the assessing authorities and within the ceiling of the sanctioned loan, General Manager, District Industries Centre will raise a bill on the treasury every quarter for the said amount for crediting under receipt head '0040-Sales Tax-800 Other receipts", and debiting the same amount to the Major Head "6851-Loans for Village & Small Industries -000-Other Loans, in lieu of deferred sales tax payment.

As there will be no cash inflow / outgo on receipt/ expenditure sides, deduct entries will be made under the receipt Head as well as expenditure head as under :-

a) "0040-Sales Tax-SOO-Other receipts, Deduct amount transferred to Major Head "6851-Loans for Village & Small Industries for granting interest free loan in lieu of deferred sales tax.

b) "6851 -Loans for Village & Small Industries-800-Other Loans. Deduct amount met from Major Head "0040-Sales Tax provided for deferred payment of sales tax.

4. <u>SECURITIES</u>

Eligible Industrial unit will furnish anyone of the following securities :-

i) 1st charge / Pari-passu charge on the assets on which the deferred tax/loan is being secured;
ii) 1st charge on the collectral assets having value equivalent to the loan amount.
iii) 2nd charge in the case the unit is financed by the Central/Sales Financial Institutions. Nationalized/ Scheduled Bank provided sufficient margin is available on the assets.
iv) 15% of the loan amount in the form of bank guarantee / and 85% in the form of personal sureties.

5. <u>REPAYMENT</u>

The interest free loan in lieu of deferred amount of sales tax will be recoverable after a period of five years as provided by the Excise & Taxation Department in Rule 28-A of the Haryana General Sales Tax Act.

The industrial unit has to deposit the amount on or before the due date in the Treasury under the head "6851-Loans for Village and Small Industries-Small Scale Industries Grant of Interest Free Loan in lieu of deferred Sales Tax."

6. POWER TO SANCTION

General Manager of the District Industries centre of the concerned district will have full power to sanction loan in lieu of amount of deferred tax to the extent the eligibility entitlement certificate has been issued in favour of the industrial units.

7. POWER TO RECOVER THE LOAN

General Manager of the District Industries Centre of the concerned district will be fully empowered to recover loan in the case of default as arrears of land revenue under the provision of the Haryana Public Money Recovery Act. In cases of any default or delay in repayment of loan interest / penalty will be charged as provided under the Haryana General Sales Tax Act and the Rules made thereunder However for proceeding under the Act ibid, a show cause notice and personal hearing will be granted to the industrial unit.

8. MONITORING

To assess the financial health of industrial unit the eligible industrial unit will send financial statements every year during the currency of the loan to the General Manager, District Industries Centre within 6 months of the close of the Financial year. The financial statements will include the balance sheet, trading account and the profit and loss statement of the unit.

9. APPEAL

Appeal against the decision of General Manager, District Industries Centre regarding sanctioning of the loan or recovery thereof shall lie to the Director of Industries, Haryana."

Rule 28-B(10) of the Rules

"Rule 28-B

Class Of Industries, Period And Other Conditions For Exemption/ Deferment From Payment Of Tax *(Sections 13-B and 25-A)*

xx *xx* *xx*

10(a) The eligibility certificate granted to an industrial unit shall be liable to be withdrawn at any time during its currency by the appropriate Screening Committee in the following circumstances

- *(i) If it is discovered that it has been obtained by fraud, deceit misrepresentation, mis-statement or concealment of material facts;*
- *(ii) discontinuance of its business by the unit or closing down of its business for a continuous period exceeding six months except in case of fire, flood and other natural calamities, riots, strike or lockout which in the opinion of the committee concerned is beyond the control of the unit;*
- *(iii) disposal or transfer by the unit of any of its fixed assets adversely affecting its manufacturing or production capacity;*

(b) When the eligibility certificate is withdrawn, the exemption/entitlement certificate shall be deemed to have been withdrawn from the 1st day of its validity and the unit shall be liable to payment of tax, interest or penalty under the Act as if no exemption/entitlement certificate had even been granted to it.

(c) In case of sale/transfer of unit, balance amount of benefit of sales tax exemption/deferment shall be passed on to the purchaser/transferee if it continues with the same/higher level of production without disposing of any assets of the unit which would adversely affect manufacturing or production capacity of the unit for the remaining period subject to fulfilment of all the conditions of these rules :

Provided that no order of withdrawal of the eligibility certificate shall be made without affording a reasonable opportunity of being heard to the affected unit;"

12. A perusal of the Scheme shows that it was framed with a view to give relief to the industries, which were already entitled to get the benefit of deferment of payment of sale tax. The amount of deferred sales tax was to be converted into interest free loan. In fact, the scheme was notified on 16.12.1992, much prior to even addition of Rule 28-B in the Rules, which was added vide amendment dated 18.5.1999. Vide this notification Rule 28-A was added in the Rules effective from 1.4.1987 to 31.3.1997. The need to frame the scheme arose on account of provisions of Section 43-B of the Income Tax Act, whereby the unpaid sales tax was treated as income of the assessee. With the framing of the scheme, entire amount of deferment of tax was converted into interest free loan to be advanced by the Industries Department to the eligible industrial units, which in turn was to be transferred to the Excise & Taxation Department. There was no cash transaction. As a consequence, the industrial units were able to claim deduction under the Income Tax Act.

13. Clause 2 of the scheme defines eligibility. Only the units in whose favour eligibility certificate had been issued by the Industries Department and entitlement certificate had been issued by the concerned Deputy Excise & Taxation Commissioner, were eligible to avail the benefit of the scheme. Clause 3 provides for procedure for applying for interest free loan. Clause 4 provided that interest free loan granted in lieu of deferred amount of sales tax was to be recoverable after a period of five years. It may be added that in the scheme for deferment of sales tax under Rule 28-A of the Act, the repayment was to be made after five years, whereas in terms of Rule 28-B (12)(iv) of the Rules, the deferred amount of tax was to be paid after a period of seven years. Though the scheme was not providing specifically for grant of interest free loan for the amount of tax deferred under Rule 28-B, but still benefit thereof was being granted. The beneficiaries were happy even for returning the amount of interest free loan after a period of five years. Clause 7 of the Scheme provided for powers to the General Manager of the District Industries Centre to recover the loan as arrears of land revenue, in case there is any default. In that eventuality, interest/ penalty was also chargeable as provided for under the Act and the Rules.

14. Rule 28-B of the Rules provided for class of industries, period and other conditions for exemption/ deferment from payment of tax. The operative period was from 1.8.1997 ending on the date on which the policy for incentives to industries is terminated/ revised by the Government of Haryana in Industries Department. The benefits are either for exemption from payment of tax or deferment for payment of tax to eligible industrial units for the period and the extent of amount as mentioned in Sub-Rule 5 thereof. The benefit and time had relevance with the area where the industry was located.

15. As per Rule 28-B(10) of the Rules, the eligibility certificate granted to an industrial unit was liable to be withdrawn at any time during its currency by the appropriate screening committee in case it is found that the same was obtained by fraud, deceit, misrepresentation, mis-statement or concealment of material facts; or the unit had discontinued its business or closed down the same for a continuous period of six months except in certain specified circumstances or disposal or transfer of its assets by the unit adversely affecting its manufacturing capacity.

16. In case of withdrawal of eligibility certificate, exemption/ entitlement certificate is deemed to have been withdrawn from the first day of its validity and the unit was liable to pay interest and penalty under the Act as if no entitlement certificate had ever been granted. As per Rule 28-B (12)(iv) of the Rules, deferred amount of tax was to be paid after expiry of seven years from the date it was due.

17. In the case in hand, as the facts are on record, the validity of the eligibility certificate of the petitioner was from 9.9.1997 to 8.9.2006. The total amount of admissible benefit to the petitioner was Rs.44.68 lacs, out of which Rs. 43,90,396/- was availed of by the petitioner upto 30.6.2000. Thereafter, the plant and machinery was partly sold and partly it was leased out. From 30.6.2000, the unit is not in production. As the petitioner violated the conditions of eligibility certificate, the matter was put up in 92nd meeting of the Higher Level Screening Committee on 16.2.2006 and finding violation of the conditions laid down in Rule 28-B of the Rules, the committee decided to withdraw the eligibility certificate. As a consequence, the petitioner became liable to pay the entire amount of tax, interest and penalty in terms of Rule 28-B (10)(b) of the Rules, as if the benefit of deferment of tax/ exemption was not available to the petitioner. As the petitioner had raised loan from the Industries Department to pay the amount of tax to Excise & Taxation Department, the benefit on that account had been availed of. The amount of interest was calculated by the Assessing Authority. Aggrieved against that order, the petitioner preferred appeal claiming that the amount of tax was paid to the department immediately after it became due after raising interest free loan from the Industries Department, hence, no interest was payable. As per provisions of the Act, in case of delayed payment of tax, interest is chargeable under Section 25(5) and the penalty is chargeable under Section 48 of the Act.

18. The primary contention raised by learned counsel for the petitioner is that there is no default in repayment of interest free loan and there is no provision for levy of interest. Under the Scheme, the demand of interest is totally uncalled for. However, we do not find any substance in the contention raised. The provisions of Rule 28-B of the Rules and the Scheme are, in fact, to be read together. The benefit of deferment of payment of tax is available to an industrial unit, in whose favour eligibility and entitlement certificates have been issued under the provisions of Rule 28-B of the Rules. There are certain conditions attached. Any unit availing the benefit has to fulfill those conditions. On failure, the eligibility certificate could be withdrawn during its currency in terms of Rule 28-B(10) of the Rules. As a consequence, the unit was liable to pay tax, interest and penalty thereon, as if eligibility/ entitlement certificate was never issued.

19. As has already been noticed above, in terms of Section 43-B of the Income Tax Act, deductions on account of taxes were admissible in a particular year only if those were actually paid and not on accrual basis. As the amount of sale tax was not being paid by the units availing benefit of deferment of payment of tax, the amount was being added in their income resulting in levy of income tax. In these circumstances, coming to the aid of the units claiming such benefits, the State frame Scheme for converting the amount of deferred tax into interest free loan. As even the letter sanctioned by the Industries Department suggests that it was merely a book entry from one State department to another. The relevant lines being 'The

expenditure so involved shall be credited under receipt Head "0049-Sales Tax-800-Other Receipts," and debiting the same amount to the Major Head "6851-Loans for Village & Small Industries-800-other loans, in lieu of deferred sales tax payment.' There was no third party involved.

20. A perusal of the Scheme shows that the benefit of interest free loan could be availed of only by an industrial unit in whose favour eligibility/ entitlement certificate had been issued in terms of the incentive scheme as notified on 17.5.1989 (Rule 28-A of the Rules), however, it is not in dispute that the Scheme was made applicable even to the beneficiaries under Rule 28-B of the Rules. In case a unit is not in possession of the eligibility certificate, he could not claim the benefit of interest free loan under the Scheme. Moment the eligibility certificate is withdrawn, the entire clock has to be put back, namely, that the petitioner availed of certain benefits to which he was not entitled to. The Scheme is not as such independent as it was inter-woven with the Rules 28-A and 28-B of the Rules.

21. If the contention raised by learned counsel for the petitioner is accepted, that the Scheme is independent, that would mean that even in the cases where the eligibility certificate granted to a unit is withdrawn even before the period for repayment of interest free loan had expired, the amount could not be recovered from such a unit, what to talk of interest, even though unit was not entitled to claim any benefit of interest free loan in the Scheme. Such an interpretation would be totally absurd. We need to see totality of the scheme of interest free loan, the circumstances and the object with which it was framed. If the Scheme is interpreted in the manner the petitioner suggests, it would mean interest free loan even to the units, who are not entitled for availing that benefits. If the book entries in the Government accounts are reversed stating that the petitioner was not entitled to claim benefit of interest free loan from day one, it would be liable to pay interest. No doubt, technically the petitioner having settled the liability of the sale tax department by raising loan from the Industries Department, he would certainly become liable to pay interest at the rate as provided for under the Act for the period the loan amount was utilised by it.

22. The judgments referred to by the petitioner may not of help as the issues dealt with therein were not similar to the facts of the case in hand. If independently the facts of a case are seen, the position may be different. But where two schemes, namely, the provisions of the Rules and the Scheme are inter-dependent, then holistic view has to be taken for interpretation purposes, seeing the nexus with the object to be achieved.

23. For the reasons mentioned above, we do not find any merit the present petition. The same is accordingly dismissed.

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PUNJAB & HARYANA HIGH COURT

CEA NO. 9 OF 2016

COMMISSIONER OF CENTRAL EXCISE DELHI-III
Vs
MARUTI SUZUKI INDIA LTD.

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

21st October, 2016

HF ▶ Assessee

Rent a Cab service and Mandap Keeper Services are input services and are eligible for Cenvat Credit as per Cenvat Credit Rules 2004 during year 2009-10 & 2010-11.

INPUT SERVICE – CENVAT CREDIT – SERVICE TAX – MANDAP KEEPER SERVICE – RENT A CAB SERVICE – WHETHER CENVAT CREDIT AVAILABLE ON THESE SERVICES – PERIOD FROM 2009-10 AND 2010-11 – MANDAP KEEPER SERVICE USED TO ORGANISE MEETINGS AND EVENTS FOR PROMOTION OF PRODUCT – CONNECTED TO THE BUSINESS OF MANUFACTURE OF RESPONDENTS - ENTITLED TO AVAIL CENVAT CREDIT – RENT A CAB SERVICE USED BY EXECUTIVES OF THE COMPANY FOR TRAVELLING REQUIRED FOR BUSINESS MEETINGS ETC – EXPENDITURE IS IN RELATION TO THE BUSINESS BEING INCURRED BY RESPONDENTS IN ORDER TO PROMOTE SALES – ENTITLED TO AVAIL CENVAT CREDIT – COST OF SERVICES OF RENT A CAB AND MANDAP KEEPER ALSO INCLUDED IN THE ASSESSABLE VALUE OF FINAL PRODUCT – AMENDMENT TO THE RULE 2(I) MADE IN THE YEAR 2011- PRIOR TO AMENDMENT, RENT A CAB SERVICE COVERED BY DEFINITION OF INPUT SERVICE – NO SUBSTANTIAL QUESTION OF LAW ARISES – APPEALS DISMISSED - *CENVAT CREDIT RULES, 2004*

Facts

The respondent assessee is engaged in the manufacturing of Motor Vehicles and parts thereof. Whereas the goods so manufactured are removed on the payment of the Central Excise Duty, the Cenvat Credit is taken of the duty paid of Inputs, Services and capital goods used in the manufacturing of motor vehicles as per Cenvat Credit Rules, 2004.

For the financial year 2009-10 and 2010-11, the assessee had availed Cenvat Credit on Mandap Keeper service and Rent a Cab Service for its Gurgaon and Manesar plants. It was contended that Mandap Keeper services were used by the assessee to organise meetings and events for promotion of their products such as launch of new vehicle, business needs, conferences etc. Similarly, the Rent a Cab service was used for the purpose of travelling required for business meets, visit to dealers, vender sites, dealers meets and business promotion activities etc. It was contended by assessee that these are integral part of its business and therefore covered under the definition of "Input Service" as it was prevalent during the relevant time and therefore was entitled for Cenvat Credit. The said contention was rejected and it was directed to pay the amount wrongly availed by the assessee. The assessee

filed appeal before the CESTAT who set aside the order and allowed the appeal. On appeal before the High Court.

Held:

The term "Input Service" has been interpreted very widely and the Mandap Keeper service used to organise meetings and events for promotion of products such as new vehicle launch, sales promotion events and also for business dealers meets etc. which is for the promotion of sale of vehicles are connected to the business of manufacture of respondent for which they are entitled to avail Cenvat Credit especially when the expense so mentioned is part of cost on which excise duty is paid.

Similarly, the Rent a Cab service used by executives of respondent for the purpose of travelling required for business meetings, visits to dealerships, visits to the vendor sites, dealers meet, business promotion activities, vehicles launch, conference etc. is an expenditure in relation to business being incurred by the respondent in order to promote the sales and for the efficient running of the business for which they are entitled to avail Cenvat Credit.

Moreover, the Rent a Cab service has been excluded from the definition of "Inward Service" by the 2011 Amendment w.e.f. 1.4.2011 and since the assessment years in the issue in the present case are 2009-10 and 2010-11, both prior to the amendment, the respondent is entitled to Cenvat Credit on this service. This aspect has also been clarified by the circular dated 29.4.2011 issued by the Govt. of India in which it has been clarified that credit on such service shall be available if its provision has been completed before 1.4.2011.

Finding no substantial questions of law, the appeals are accordingly dismissed.

Cases referred:

- *CCE Vs. Stanzen Tovotetsu India (PI Ltd. 2011 (23) STR 444 (Kar.)*
- *Commr. Of C.Ex., Delhi-Ill vs. Bellsonica Auto Components India P. Ltd.. 2015(40) S.T.R.41 (P&H)*
- *Coca Cola India Pvt. Ltd. Vs. Commissioner of C. Ex., Pune-III, 2009 (15) STR 657 (Bom.)*
- *Commissioner of C. Ex. Nagpur v. Ultratech Cement Ltd., 2010 (260) E.L.T. 369 (Bom.)*
- *Commissioner of C.Ex., Bangalore-III vs. TATA Auto Comp. Systems Ltd., 2012(277) E.L.T. 315 (Kar.)*
- *Commissioner of Central Excise. Bangalore-I vs. Graphite India Ltd., 2012(27) S.T.R. 130 (Kar.)*
- *Commissioner of Central Excise, Bangalore-I vs. Bell Ceramics Ltd., 2012(25) S.T.R. 428 (Kar.)*
- *Endurance Technologies Pvt. Ltd. Vs. Commr of C.Ex., Aurangabad, 2013(32) S.T.R. 95 (Tri. – Mumbai)*
- *Idea Cellular Ltd. Vs. Commissioner of C.Ex. Meerut-I, 2011(22) S.T.R. 450 (Tri. – Del.)*
- *Tradex Polymers Pvt. Ltd. Vs. Commissioner of C.Ex. Ahmedabad, 2011(24) S.T.R. 82 (Tri. – Ahmd.)*

Present: Mr. Ish Puneet Singh and Mr.Tajender K. Joshi, Advocate for the appellant-revenue.

Mr.Amrinder Singh Advocate for the respondent.

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HARINDER SINGH SIDHU, J.

1. This order shall dispose of above mentioned two appeals bearing Nos.CEA 9 of 2016 and CEA 73 of 2015 as identical issues of fact and law are involved therein. However, the facts are being taken from CEA No.9 of 2016.

2. The appeal was admitted for consideration of the following substantial questions of law arising out of the order dated 14.05.2015 passed by the Customs Excise & Service Tax Appellate Tribunal, Principal Bench, New Delhi (for the short 'the Tribunal') in Excise Appeal Nos.3614-3615 of 2012 pertaining to the assessment years 2009-10 and 2010-11.

"(i) Whether the respondent can avail CENVAT credit on account of Service Tax paid on Mandap Keeping Services and Rent-a-Cab Services by treating the same as input services?

(ii) Whether the respondent has contravened the provisions of sub-Rule (1) of Rule 3 CENVAT Credit Rules, 2004?

(iii) Whether the CENVAT credit availed by the respondent is liable to be recovered from them under Rule 14 of the CCR-2004 read with proviso to Section 11A (1) & Section 11AB of the Central Excise Act, 1944?

(iv) Whether the respondent has rendered themselves liable to penalty under Rule 15(2) of the CENVAT Credit Rule, 2004 read with Section 11 AC of the Central Excise Act, 1944?

(v) Whether Interest leviable at the appropriate rate is also recoverable from them on the inadmissible CENVAT credit under Rule 14 of the CENVAT credit, 2004 read with section 11AA of the Central Excise Act, 1944?"

3. The facts relevant for the present appeals are that the respondent-assessee is engaged in the manufacture of motor vehicles and parts thereof falling under Chapter Heading 87 of Central Excise Tariff Act, 1985. It is also availing CENVAT credit of the duty paid on inputs, input services and capital goods used in the manufacture of motor vehicles under CENVAT Credit Rules, 2004 (for short "the 2004 Rules").

The case of the Revenue is that during the course of local audit conducted by the office of Accountant General, Haryana Chandigarh from 18.12.2008 to 05.01.2009, it was noticed that the respondent-assessee had paid service tax of Rs.22,84,560/- on account of Mandap Keeper Service during 2007-08 and availed CENVAT credit for the same. It was also noticed that the respondent assessee had paid service tax of Rs.6,07,104/- on account of Rent-a-Cab service during the period 2007-08 and availed CENVAT credit for the same. In total the respondent had availed CENVAT credit amounting to Rs.82,86,163/- on both the aforementioned services during the period December, 2004 to March, 2009 which was not admissible to them as these services were not 'input services' in relation to the manufacture of the final product. Accordingly, periodical demands were issued to the respondent M/s MSIL for each financial year.

5. In the financial years 2009-10 and 2010-11, to which the present appeals pertain, respondent-assessee had availed CENVAT credit amounting to Rs.15,40,628/- (Rs.4,82,197.83 + Rs.10,58,430.19) & Rs.41,49,437/- (Rs.33,82,845/- + Rs.7,66,592/-) on Mandap Keeper Service and Rent-a-Cab Service for its Gurgaon and Manesar Plants. The Commissioner, Central Excise, Delhi-Ill was of the opinion that the Mandap Keeper Service used by the assessee to organize meetings and events for promotion of their product such as launch of new vehicles, business needs, conferences, etc. had no nexus with the manufacture of final product and accordingly, it was not 'input service'. Similarly, the Rent-a-Cab service used for the purpose of travelling required for business meetings, visit to dealers, vender sites, dealers' meets, business promotion activities etc. had no nexus with the manufacture of the final product. It was accordingly held vide Order- in-Original dated 16.08.2012 (Annexure A-3) that the credit of service tax in respect of Mandap Keeper Service and Rent-a-Cab service was not admissible to the assessee. Additionally, the assesse was also ordered to pay interest and penalty. The respondent filed appeal before CESTAT and the Learned the Tribunal vide final order dated 14.05.2016 (Annexure A-4) set aside the orders and allowed the appeals.

6. Learned counsel for the appellant has argued that Ld. The Tribunal has failed to appreciate that the very nature of Mandap Keeper and Rent-a-Cab services reveals that these

services have been utilized after clearance of the goods upto the place of removal. These services have not been used by the respondents, whether directly or indirectly, in or in relation to manufacture of final product, and clearance of final product upto the place of removal. Hence, these services cannot be termed as 'input services' by the respondent for manufacture of final product. He has argued that the benefit is admissible only if an integral connection could be shown between the service and the business of manufacturing of motor vehicle. He has further argued that neither the activities of Mandap Keeper or Rent-a-Cab service is mentioned in the list of activities enumerated in the definition of 'input service'.

7. Learned counsel for the respondent on the other hand contended that it had availed the Mandap Keeper Services to organize meetings and events for promotion of their products such as a new vehicle launches, sales promotion events and also for business dealer meets, conferences, Executive Level Meetings etc. These services are important for the respondent to promote the sale of vehicles and therefore, are integrally connected to the business of manufacture of the respondent.

8. It was further submitted that the 'Rent-a-Cab' service was used for business meetings, visits to the dealerships, visits to the vendor sites, dealers meet, business promotion activities, vehicles launches, conferences etc. Therefore, it is clear that expenditure incurred on Rent-a-Cab service is a business expenditure incurred by the respondent in order to promote the sales and for efficient running of the business. The Karnataka High Court in the case of ***CCE Vs. Stanzen Tovotetsu India (PI Ltd. 2011 (23) STR 444 (Kar.)*** held that the manufacturer is eligible to take credit on Rent-a-Cab services used for transporting employees and the said services is integrally connected with the business of the manufacturer.

9. He further argued that the cost of services of Rent-a-Cab and Mandap Keeper received, become a part of the assessable value of the final product, on which excise duty is paid, therefore, the respondent is entitled to avail the CENVAT credit on the service tax paid on such services. He argued that this ground was specifically pleaded before the Tribunal and there is no rebuttal thereof by the appellant.

10. With respect to Rent-a-Cab service, it was additionally argued that it was only in the definition of 'input service' as incorporated by the CENVAT Credit (Amendment) Rules, 2011 which came into force w.e.f. 01.04.2011 that a Rent-a-Cab service was specifically excluded from the definition of 'input service'. He accordingly contended, that the necessary implication is that before this amendment, CENVAT credit was admissible in respect of Rent-a-Cab service. In this regard, he pointedly made a reference to circular dated 29.04.2011 issued by the Government of India to clarify certain issues relating to CENVAT Credit Rules. At Sr.No.12 of the said Circular, the question for clarification was: 'Is the credit available on services received before 01.04.2011 on which credit is not allowed now, example, Rent-a-Cab service?'. It was clarified that: 'The credit on such service shall be available if its provision had been completed before 01.04.2011'. Ld. Counsel further referred to a decision of this Court in ***Commr. Of C.Ex., Delhi-Ill vs. Bellsonica Auto Components India P. Ltd.. 2015(40) S.T.R.41 (P&H)*** wherein, construing the same amendment of 2011 to Rule 2(1), whereby, the construction services were also excluded from the definition of 'input service', it was held that this implied that prior to this amendment, the said activity was covered by Rule 2(1). This Court had observed that if the said service was not covered by Rule 2(1), it would not have been necessary to introduce the amendment. It was also observed that the amendment not being retrospective, would not retrospectively exclude this activity from the said definition. For the same reasons, it has been contended that Rent-a-Cab service fell within the definition of 'input services' before its specific exclusion vide amendment of the 2011 w.e.f. 01.04.2011.

11. We have heard Learned counsel for the parties and gone through the paper-book.

Relevant Rules and statutory provisions

12. The relevant Rule 2(1) of the CENVAT Credit Rules, 2004 (as amended by CENVAT Credit (Amendment) Rules, 2008), which defines the term 'input service' is as under:-

"2(1) "input service" means any service,-

(i) used by a provider of taxable service for providing an output service; or
(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal; "

13. Vide the CENVAT Credit (Amendment) Rules, 2008, which came into effect on 01.04.2008, Clause (1) of Rule 2 was amended, whereby, for the words 'clearance of final product from the place of removal' the words 'clearance of final product upto the place of removal' were substituted.)

14. By the CENVAT Credit (Amendment) Rules, 2011, which came into effect from 01.04.2011, the CENVAT Credit Rules, 2004 were again amended. Thereafter, the definition of 'input service' reads as under:-

"(l) "input service" means any service, -

(i) used by a provider of taxable service for providing an output service; or
(ii) used by a manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products upto the place of removal,

and includes services used in relation to modernisation, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-

(A) specified in sub-clauses (p), (zn), (zzl), (zzm), (zzq), (zzzh) and (zzzza) of clause (105) of section 65 of the Finance Act (hereinafter referred as specified services), in so far as they are used for-
(a) construction of a building or a civil structure or a part thereof; or
(b) laying of foundation or making of structures for support of capital goods, except for the provision of one or more of the specified services; or

(B) specified in sub-clauses (d), (o), (zo) and (zzzzj) of clause (105) of section 65 of the Finance Act, in so far as they relate to a motor

vehicle except when used for the provision of taxable services for which the credit on motor vehicle is available as capital goods; or

(C) such as those provided in relation to outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as Leave or Home Travel Concession, when such services are used primarily for personal use or consumption of any employee; "

15. Clause (105)(o) of Section 65 of the Finance Act, 1994 reads as under:-

"(105) "taxable service" means any service provided (or to be provided)-

xx xx xx

(o) to any person, by a rent-a-cab scheme operator in relation to the renting of a cab; "

16. Vide Circular No.943/4/2011.CX., dated 29-4-2011, the Government of India, Ministry of Finance (Department of Personnel) Central Board of Excise & Customs, New Delhi issued a clarification on the issues relating to CENVAT Credit Rules, 2004, relevant part of which is extracted below:-

"The CENVAT Credit Rules, 2004 were amended along with the Budget 2011 announcements vide Notification 3/2011-C.E. (N.T.) dt. 1-3-2011. A few changes were further effected vide Notification 13/2011-C.E.- (N.T.), dt. 31-3-2011. On a few issues trade has requested for clarity. Accordingly the following clarifications are presented issue wise in a tabular format.

1 to 11	*xxx*	*xxx*
12.	*Is the credit available on services received before 1-4-2011 on which credit is not allowed now? e.g. Rent-a-service?*	*The credit on such service shall be available if its provision has been completed before 1-4-2011*

Scope of definition of 'input service'

17. The scope of the definition of 'input services' was considered in detail by a Division Bench of Bombay High Court in ***Coca Cola India Pvt. Ltd. Vs. Commissioner of C. Ex., Pune-III, 2009 (15) STR 657 (Bom.)***The appellants therein manufactured non-alcoholic beverage bases also known as concentrates. These concentrates were sold under the respective brand names such as Coca Cola, Fanta etc. The concentrate was sold by the appellants to bottling companies who in turn sold the aerated beverages manufactured from the concentrates to distributors who in turn sold it to retailers for ultimate sale to the customers. The question for consideration was whether the Appellants therein, were eligible to avail credit of the service tax paid on advertising services, sales promotion, market research and the like availed by them and utilize such credit towards payment of excise duty on the concentrate. Credit had been denied on the ground that the advertisements did not relate to concentrates manufactured by the Appellants. The Court held that from the use of the expression 'means' and 'includes' in Rule 2(1) it is clear that the definition is meant to be exhaustive. By the word 'includes' services which may otherwise not come within the ambit of the definition clause are included and by the word 'means' these are made exhaustive.

18. Analysing the definition of 'input service' the Court held that it could be effectively divided into the following five categories, in so far as a manufacturer is concerned:

"(i) Any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products

(ii) Any service used by the manufacturer whether directly or indirectly, in or in relation to clearance of final products from the place of removal

(iii) Services used in relation to setting up, modernization, renovation or repairs of a factory, or an office relating to such factory.

(iv) Services used in relation to advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,

(v) Services used in relation to activities relating to business and outward transportation upto the place of removal. "

19. The Court held that the expression business being an integrated/continuous activity, it could not be merely restricted to the manufacture of the product. In the absence of any qualifying words before the term 'activities in relation to business', it had to be construed widely and would cover all activities which were related to the functioning of the business.

> ***"25.*** *The expression Business is an integrated/continuous activity and is not confined restricted to mere manufacture of the product. Therefore, activities in relation to business can cover all the activities that are related to the functioning of a business. The term business therefore, in our opinion cannot be given a restricted definition to say that business of a manufacturer is to manufacture final products only. In a case like the present, business of assessee being an integrated activity comprising of manufacture of concentrate, entering into franchise agreement with bottlers permitting use of brand name by bottlers promotion of brand name, etc. the expression will have to be seen in that context See (i) Pepsi Foods Ltd. v. Collector, 1996 (82) E.L.T. 33, (ii) Pepsi Foods Ltd. v. Collector, 2003 (158) E.L.T. 552 (S.C.).*
>
> ***27.*** *Similarly, the use of the word activities in the phrase activities relating to business further signifies the wide import of the phrase "activities relating to business. The Rule making authority has not employed any qualifying words before the word activities, like main activities or essential activities etc. Therefore, it must follow that all and any activity relating to business falls within the definition of input service provided there is a relation between the manufacturer of concentrate and the activity. Therefore, the phrase "activities relating to business" are words of wide import."*

20. Further, in view of the fact that the advertisement and sales promotion expenses of the bottled product formed part of the sales price of the concentrate on which duty was charged and paid it was held the Revenue could not contend that availing credit of service tax was not allowable. The Court emphasized that where any input service forms a part of the value of the final product, it should, both conceptually and as a matter of policy, be eligible for the benefit of Cenvat Credit.

> ***"34.*** *It is therefore, clear that the burden of service tax must be borne by the ultimate consumer and not by any intermediary i.e. manufacturer or service provider. In order to avoid the cascading effect, the benefit of cenvat credit on input stage goods and services must be ordinarily allowed as long as a connection between the input stage goods and services is established. Conceptually, as well as a matter of policy, any input service that forms a part of the value of the final product should be eligible for the benefit of Cenvat Credit. "*

> ***38.*** *Service tax therefore, paid on expenditure incurred by the assessee on advertisements sales promotion, market research will have to be allowed as input stage credit more particularly if the same forms a part of the price of final product of the assessee on which excise duty is paid. In other words, credit of input service must be allowed on expenditure incurred by the assessee which form a part of the assessable value of the final product. If the above is not done, as sought to be done by the department in the present case, it will defeat the very basis and genesis Cenvat i.e. value added tax."*

21. The Court held that it was not necessary that the contents of the advertisement must be that of the final product manufactured by the person advertising. As long as the manufacturer can demonstrate that the advertisement services availed have an effect or impact on the manufacture of the final product and establish the relationship between the input service and the manufacture of the final product, the manufacturer could avail the credit of the service tax paid by him. Once the cost incurred by the service has to be added to the cost, and is so assessed, it is a recognition by Revenue of the advertisement services having a connection with the manufacture of the final product. It was held that these tests would also apply in the case of sales promotion.

22. This judgment was followed in ***Commissioner of C. Ex. Nagpur v. Ultratech Cement Ltd., 2010 (260) E.L.T. 369 (Bom.)*** where the question was whether outdoor catering services are covered under the inclusive part of the definition of "input service". Answering in the affirmative it was held definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, whether, prior to the manufacture of final products or after the manufacture of final products. It was observed as under:

> ***"28.*** *In the present case the question is whether outdoor catering services are covered under the inclusive part of the definition of "input service" The services covered under the inclusive part of the definition of input service are services which are rendered prior to the commencement of manufacturing activity (such as services for setting up, modernization, renovation or repairs of a factory) as well as services rendered after the manufacture of final products (such as advertisement, sales promotion, market research etc.) and includes services rendered in relation to business such as auditing, financing etc. Thus, the substantive part of the definition "input service" covers services used directly or indirectly in or in relation to the manufacture of final products, whereas the inclusive part of the definition of "input service " covers various services used in relation to the business of manufacturing the final products. In other words, the definition of "input service" is very wide and covers not only services, which are directly or indirectly used in or in relation to the manufacture of final products but also includes various services used in relation to the business of manufacture of final products, be it prior to the manufacture of final products or after the manufacture of final products. To put it differently, the definition of input service is not restricted to services used in or in relation to manufacture of final products, but extends to all services used in relation to the business of manufacturing the final product. "*
>
> ***34.*** *Therefore, the definition of input service read as a whole makes it clear that the said definition not only covers services, which are used directly or indirectly in or in relation to the manufacture of final product, but also includes other services, which have direct nexus or which are integrally connected with the*

business of manufacturing the final product. In the facts of the present case, use of the outdoor catering services is integrally connected with the business of manufacturing cement and therefore, credit of service tax paid on outdoor catering services would be allowable.

35. *The argument of the Revenue, that the expression "such as" in the definition of input service is exhaustive and is restricted to the services named therein, is also devoid of any merit, because, the substantive part of the definition of "input service" as well as the inclusive part of the definition of "input service " putport to cover not only services used prior to the manufacture of final products, subsequent to the manufacture of final products but also services relating to the business such as accounting, auditing.... etc. Thus, the definition of input service seeks to cover every conceivable service used in the business of manufacturing the final products. Moreover, the categories of services enumerated after the expression 'such as ' in the definition of 'input service' do not relate to any particular class or category of services, but refer to variety of services used in the business of manufacturing the final products. There is, nothing in the definition of 'input service' to suggest that the Legislature intended to define that expression restrictively.*

Therefore, in the absence of any intention of the Legislature to restrict the definition of 'input service' to any particular class or category of services used in the business, it would be reasonable to construe that the expression 'such as' in the inclusive part of the definition of input service is only illustrative and not exhaustive. Accordingly, we hold that all services used in relation to the business of manufacture of cement, credit of service tax paid out on catering services has been rightly allowed by the Tribunal.

36. *The argument of the Revenue that the expression 'such as ' in Rule 2(1) of 2004 Rules is restricted to the categories specified therein, runs counter to the C.B.E.C. Circular No.97 dated 23rd August, 2007. In that circular, the C.B.E.C. (vide para 8.3) has held that the credit of service tax paid in respect of mobile phone service is admissible provided the mobile phone is used for providing output service or used in or in relation to manufacture of finished goods. Mobile phone service is neither used in the manufacture of final product nor it is specifically included in the definition of input service. Even then, the C.B.E.C. has construed the definition of input service widely so as to cover not only the services specifically enumerated in the definition of 'input service ' but also cover all services which are used in relation to the business of manufacturing the final products. Therefore, the argument of the revenue which runs counter to stand taken by the C.B.E.C. cannot be accepted. "*

23. In view of the aforesaid wide and expansive interpretation of the term 'input service' we find the Mandap Keeper Services used to organize meetings and events for promotion of their products such as a new vehicle launch, sales promotion events and also for business dealer meets, conferences, Executive Level Meetings etc. which activities being important for the respondent to promote the sale of vehicles are connected to the business of manufacture of the respondent for which they are entitled to avail CENVAT credit, especially when the expense so mentioned is part of cost on which excise duty is paid.

24. Similarly, the Rent-a-Cab services used by the executives of the respondent for the purpose of travelling required for business meetings, visits to the dealerships, visits to the vendor sites, dealers meet, business promotion activities, vehicles launch, conferences etc. is a an expenditure in relation to business being incurred by the respondent in order to promote the

sales and for efficient running of the business for which they are entitled to avail CENVAT credit.

25. Further, as argued by the Ld. Counsel for the respondent, as the cost of services of Rent-a-Cab and Mandap Keeper received, were included in the assessable value of the final product, on which excise duty is paid, which fact has not been disputed by the appellants, the respondent is entitled to avail the CENVAT credit on the service tax paid on such services on the ratio of the decision in ***Coca Cola India*** (supra).

26. The aforesaid view is further supported by decisions of different High Courts as also by different Benches of the Tribunal on these specific services.

Rent-a-Cab:

27. In ***Commr. of C.Ex., Chandigarh-II vs. Federal Mogul Goetze (India) Ltd.. 2015(391 S.T.R. 735 (P&H)*** the question was whether the CESTAT was correct in holding that the service of transportation of employees of the factory to the factory was an input service within the definition of input service in Rule 2(1) of the 2004 Rules. This Court affirmed the finding of the Tribunal that the transportation of the employees from their residence to the factory premises is related to their manufacturing activities and without coming to the factory, the production cannot be started. The provision of transportation facilities increases efficiency and increases the production capacity of the manufacturing unit itself.

28. In ***Commr. of C. Ex., Bangalore-III vs. Stanzen Tovotetsu India (PI Ltd., 2011(23) S.T.R. 444 (Kar.)*** the Karnataka High Court held that Rent-a-Cab service provided by the assessee to the workers to reach the factory premises constituted input service for availing CENVAT Credit. It observed:-

> ***"****10. As is clear from the definition any service used by the manufacturer whether directly or indirectly in or in relation to the manufacture of final products constitutes input service. Various services are set out in the definition expressly, as constituting input service. It also includes transportation of inputs or capital goods and outward transportation upto the place of removal. Therefore, the test is whether the service utilized by the assessee is for the manufacture of final product. Such service may be utilized directly or indirectly. Such may be in the nature of transportation of inputs or capital goods, upto the factory premises or if the final product is removed from the factory premises for outwards transportation upto the place of removal. It is an inclusive definition. The services mentioned in the Section are only illustrative and it is not exhaustive. Therefore, when a particular service not mentioned in the definition clause is utilized by the assessee/ manufacturer and service tax paid on such service is claimed as Cenvat Credit, the question is what are the ingredients that are to be satisfied for availing such credit. If the credit is availed by the manufacturer, then the said service should have been utilized by the manufacturer directly or indirectly in or in relation to the manufacture of final products or used in relation to activities relating to business. If any one of these two tests is satisfied, then such a service falls within the definition of "input service" and the manufacturer is eligible to avail Cenvat credit of the service tax paid on such service.*
>
> *13. Rent-a-Cab service is provided by the assessee to these workers to reach the factory premises in time which has a direct bearing on the manufacturing activity. In fact, the employee is also entitled to conveyance allowance. It also would form part of a condition of service and the amounts spent on the conveyance of the employees is also a factory which will be taken into*

> *consideration by the employees in fixing the price of the final product. By no stretch of imagination can it be construed as a welfare measure. It is a basic necessity. To ensure that the work force comes on time at the work place, the employers have taken this measure which has a direct bearing on the manufacturing activity. At any rate it is an activity relating to business. "*

This judgment has been followed in ***Commissioner of C.Ex., Bangalore-III vs. TATA Auto Comp. Systems Ltd., 2012(277) E.L.T. 315 (Kar.), Commissioner of Central Excise. Bangalore-I vs. Graphite India Ltd., 2012(27) S.T.R. 130 (Kar.) and Commissioner of Central Excise, Bangalore-I vs. Bell Ceramics Ltd., 2012(25) S.T.R. 428 (Kar.)***.

Significance of 2011 amendment specifically excluding rent-a-cab service from the definition of input service :

29. In the case of Bellsonica Auto Components India (supra), the question was whether civil construction can be defined as an input service under Rule 2(1) of the CENVAT Credit Rules, 2004, though such service had no relation to the manufacturing process or any business activity of the assessees who were manufactures of metal sheets components for motor vehicles. They had availed CENVAT credit for service tax paid on civil work of constructing a plant/factory in the premises, namely for the manufacturing and for rental value of the immovable property leased by them on which the plant was erected. The Revenue contended that though the definition of input service was wide, it did not cover services that remotely or in a roundabout way contribute to the manufacture of the final product. It was contended that each and every connection, however remote and indirect, could not be contemplated by the definition of 'input service' and that a line had to be drawn somewhere to avoid undue extension of the phrases 'directly or indirectly' and 'in or in relation to' by adopting a common sense approach. Immovable property, being neither service nor goods, input credit thereof could not be taken. Although civil construction work is a taxable service under the Finance Act, 1994, it is basically civil in nature relatable to the immovable property not chargeable to Central Excise Duty.

30. The aforesaid contentions did not find favour with the Court, which, on the other hand agreed, with the submissions of the assessee that CENVAT credit taken on the tax paid in respect of the said input services could be utilized by the assessee in accordance with the CENVAT Credit Rules. It agreed with the assessee that the case would fall within both the 'means' and 'includes' part of Section 2(1) as the phraseology was wide enough to cover the said services, the same being directly or indirectly or in any event, being in relation to the manufacture to the assessee's final product. The Court held:-

> *"8. The land was take on lease to construct the factory. The factory was constructed to manufacture the final product. The land and the factory were required directly and in any event indirectly in or in relation to the manufacture of the final product and for the clearance thereof up to the place of removal. But for the factory the final product could not have been manufactured and the factory needed to be constructed on land. The land and the factory are used by the manufacturer in any event indirectly in or in relation to the manufacture of the final product, namely, metal-sheets. The respondents' case, therefore, falls within the first part of Rule 2(1) aptly referred to by Mr. Amrinder Singh as the 'means part. "*

31. Taking note of the fact that by amendment to the Rule 2(1) in the year 2011, which was enforced w.e.f., 1.4.2011, whereby, construction services were excluded from the definition of 'input service', the Hon'ble Court held that if the said services were not covered by Rule (1), there was no necessity to introduce the said amendment. This made it clear that prior to the amendment, setting up of a factory premises of a provider for input service relating

to such a factory fell within the definition of 'input service'. As the amendment was not retrospective, it was held not to cover the case of the assessee, which related to the period 2007-08 to 2009-10, prior to the amendment. The question was thus answered against the revenue and availing of CENVAT credit was upheld.

32. For the same reason, as the rent-a-cab service has been excluded from the definition of 'input service' by the 2011 amendment w.e.f., 1.4.2011, it has to be held that prior to the amendment, rent-a-cab service came within the definition of input service. As the assessment years in issue in the present case are 2009-10 and 2010-11, both prior to the amendment, the respondent is entitled to CENVAT credit on this service.

33. This aspect has also been clarified by circular dated 29.04.2011 issued by the Government of India, where at Sr.No.12 the question was :'Is the credit available on services received before 0E04.2011 on which credit is not allowed now, example, Rent-a-Cab service?'. It was clarified that 'The credit on such service shall be available if its provision had been completed before 01.04.2011'

Mandap Keeper Services :

34. In ***Endurance Technologies Pvt. Ltd. Vs. Commr of C.Ex., Aurangabad, 2013(32) S.T.R. 95 (Tri. – Mumbai)*** CESTAT, (Western Zonal Bench Mumbai), the Mandap keeper services availed by the assessee to celebrate the annual day function of the Company, which was attended by employees and their family members as well as their sister units were held entitled to input service credit as the annual day function is an integral part of the business activity of the company.

35. In ***Idea Cellular Ltd. Vs. Commissioner of C.Ex. Meerut-I, 2011(22) S.T.R. 450 (Tri. – Del.)*** the question, whether service of Mandap Keeper availed by hiring of conference rooms, hotels for training of staff can be termed as input service, was answered in favour of assessee.

36. In ***Tradex Polymers Pvt. Ltd. Vs. Commissioner of C.Ex. Ahmedabad, 2011(24) S.T.R. 82 (Tri. – Ahmd.)***, the assessee which was a registered service provider and a Del Credere Consignment agent, during the course of advertising and publicizing its product enlisted the services of a Mandap keeper which was held to be an input service.

Conclusion:

37. No substantial question of law arises, accordingly, the appeals are dismissed.

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PUNJAB & HARYANA HIGH COURT

CWP No. 12922 OF 2014

MARUTI SUZUKI INDIA LIMITED
Vs
UNION OF INDIA AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

27th October, 2016

HF ▶ Assessee

Condition of pre-deposit to file an appeal under Section 45AA of ESI Act 1948 is not mandatory as held by Punjab and Haryana High Court in the case of Punjab VAT Act, 2005

APPEAL – PRE-DEPOSIT – ESI ACT 1948 – SECTION45AA – APPEAL TO BE ENTERTAINED BY THE APPELLATE AUTHORITY ONLY AFTER DEPOSIT OF 25% OF THE CONTRIBUTION ORDERED BY DEPUTY DIRECTOR – SIMILAR PROVISION UNDER PUNJAB VAT ACT HELD TO BE DIRECTORY BY A DIVISION BENCH OF PUNJAB AND HARYANA HIGH COURT – FOLLOWING THE SAME DICTUM, THE PROVISION OF SECTION 45AA UNDER THE ESI ACT HELD TO BE DIRECTORY – APPELLATE AUTHORITY IN DESERVING CASES CAN GRANT WAIVER DEPENDING UPON FACTS OF EACH CASE – WRIT PETITION DISPOSED OF – APPELLATE AUTHORITY DIRECTED TO CONSIDER THE APPLICATION FOR INTERIM PROTECTION BEFORE THE APPEALS ARE TAKEN UP FOR HEARING - *SECTION 45AA OF ESI ACT 1948 AND SECTION 62(5) OF PUNJAB VAT ACT, 2005*

Facts

The petitioner company was directed to make a contribution of Rs.48,38,844/- by Deputy Director, ESI Corporation Gurgaon denying exemption being sought by the petitioner. Feeling aggrieved, an appeal was filed under section 45AA of the ESTI act 1948, who declined to entertain the appeal as 25% amount of the claim was not deposited. The matter was referred to Recovery Officer of the ESI Corporation who sent a Demand Notice of Rs.53,10,470/-. Feeling aggrieved, a writ petition was filed before the High Court. The High Court, following the judgment of PSPCL given in the case of Punjab VAT Act 2005.

Held:

The provisions of Section 62(5) of Punjab VAT Act and Section 45AA of ESI Act are pari materia and there is no reason to take a view contrary to that as all the judgments have been considered in the said Division Bench judgment of the Punjab and Haryana High Court. It has been unequivocally concluded in the case of PSPCL that provisions of Section 62(5) of Punjab VAT Act are directory in nature and 1st appellate authority is empowered to partially or completely waive the condition of pre-deposit by necessary implication and intendment and in the interest of justice. Following the said dictum, it is held that requirement of pre-deposit under Section 45AA is not mandatory and appellate authority is empowered to waive either partially or completely the requirement of pre-deposit in the same circumstances and condition

as explained in detailed in the PSPCL case. Accordingly, the order passed by appellate authority declining to entertain the appeal is quashed and the matter is remitted to the 1st appellate authority where the petitioner may file an application for interim injunction/protection before appeals are taken up for hearing by the 1st appellate authority who shall adjudicate the application for grant of interim injunction/protection to the petitioner in the light of principles set out above.

Cases referred:

- *Govt of A.P. v. P. Laxmi Devi, (2008) 4 SCC 720*
- *Har Devi Asnani v. State of Rajasthan, (2011) 14 SCC 160*
- *Punjab State Power Corporation Limited Vs. State of Punjab and others, CWP No.26920 of 2013*
- *Narain Chander Ghosh vs UCO Bank and others (2011) 4 SCC 548*

Present: Mr. A.S.Narang, Advocate for the petitioner.
Mr.Ankur Mittal, Addl. AG, Haryana for respondents No.2 to 4.
Mr.Vikas Suri, Sr. Standing Counsel ESIC for respondents No.5 and 6.

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HARINDER SINGH SIDHU, J.

1. This petition has been filed praying for quashing Section 45-AA of the Employees State Insurance Act, 1948 (hereinafter referred to as the 'ESI Act') in so far as it imposes a condition of pre-deposit of 25% of the demanded amount for entertaining the appeal. The petitioner has further prayed for quashing the order dt 30.12.2013 and demand notice dated 05.06.2014 (Annexures P-18 and P-21 respectively) demanding contribution for the period from October, 2009 to August 2010. Also impugned is the order dated 21.02.2014 of the Appellate Authority (Annexure P-20) declining to entertain the appeal for non deposit of 25% of the amount.

2. The petitioner has also prayed that the respondent authorities be directed to take a decision on the request of the petitioner - Company for grant of exemption from 01.10.2008 to 22.08.2010.

3. Briefly, the facts are that the petitioner Company which is in the business of manufacturing automobiles was initially set up as a Public Sector Undertaking in collaboration with M/s Suzuki Motors Corporation, Japan.

4. Vide notification dated 25.11.1986 issued by the Government of India, Ministry of Labour (respondent No. 1), the petitioner company was exempted from the operation of the ESI Act, retrospectively w.e.f., 01.08.1986 till 31st July, 1987. The exemption was regularly extended and continued till September 30, 2008. Before the expiry of the exemption period, the petitioner applied for extension for another year. This request was declined by respondent No. 1 on 23.01.2009 on the ground that the petitioner being no longer a Public Sector Undertaking/ Government Company, the 'appropriate government' for grant of exemption would be the State of Haryana (respondent No.2)

5. The petitioner company thereafter immediately applied to respondent No. 2 on 16.02.2009 seeking exemption from 01.10.2008. After a long delay the exemption was granted for one year from the date of publication of the notification i.e., 23.08.2010. As the period from 01.10.2008 to 22.08.2010 remained uncovered, the petitioner requested that the exemption be extended for this period as well. On the matter being referred to it for opinion, the Central Government initially opined that after the amendment of Section 91-A of the ESI Act on 1.6.2010, exemption could only be granted prospectively. Respondent no.2 accordingly, vide letter dated 29.11.2011 rejected the case of the petitioner company for grant of exemption from 1.10.2008 to 22.8.2010. Thereafter the petitioner-company received a notice dated 14.8.2014

from respondent No.5 demanding contribution to the tune of Rs.48, 81,884/- for the period from 1.10.2009 to 22.8.2010.

6. Meanwhile, on a representation from the petitioner the Central Government re-examined its earlier opinion and opined that as the case of the petitioner pertained to grant of exemption from 1.10.2008 to 22.8.2010, and the request, therefor, was made prior to the amendment of ESI Act on 1.6.2010, the State Govt, could grant exemption retrospectively. Based on this opinion, the petitioner company again requested the State Govt for reconsideration of grant of exemption from E10.2008 to 22.8.2010. It is the case of the petitioner, that no decision on the said request has been taken or communicated to the petitioner.

7. Without waiting for the decision on exemption, the Deputy Director, ESIC, Sub-Regional office of the Employees State Insurance Corporation, Gurgaon (respondent No.5) passed order dated 30.12.2013 (Annexure P-18) demanding contribution of Rs.48,38,844/- for the period October 2009 to August 2010.

8. Aggrieved against that order, the petitioner-company preferred appeal under Section 45-AA of the ESI Act. The Appellate Authority declined to entertain the appeal of the petitioner since 25% of the amount claimed was not deposited. The matter was referred to respondent No.5 i.e. Recovery Officer of ESI Corporation, who sent a demand notice dated 5.6.2014 (Annexure P-21) claiming amount of Rs.53,10,470/- from the petitioner company.

9. Hence, this writ petition.

10. On an application for stay moved by the petitioner, order dated 16.7.2014 was passed and it was directed that the Recovery Officer may attach only the amount in dispute. The petitioner would be allowed to operate the account, if it is more than the disputed amount.

11. Ld. Counsel for the petitioner while assailing the requirement of deposit of 25% of the claimed amount, has argued that this condition is not to be treated as mandatory but the Appellate Authority has inherent power to pass interim order in appropriate cases dispensing with the pre-deposit. He states that this proposition has been settled by a Division Bench of this Court in ***CWP No.26920 of 2013 Punjab State Power Corporation Limited Vs. State of Punjab and others*** decided on December 23, 2015 (for short PSPCL case) and this petition is liable to be disposed of in the same terms.

12. Ld. Counsel for the respondents on the other hand argued that the aforesaid decision would not be applicable in the present case. He has argued that in the PSPCL case the Court was construing Section 62(5) of the Punjab Value Added Tax Act, 2005 (for short "VAT Act"). The Court interpreted the word 'shall' in Section 62(5) in the VAT Act to be directory. He argued that there is a distinct difference in terminology of Section 62(5) of the VAT Act and 45-AA of the ESI Act which would make a material difference to the interpretation. He argued that as per Section 45-AA of the ESI Act, the employer dissatisfied with the order under Section 45-A may prefer an appeal 'after depositing 25% of the contribution so ordered'. As distinct from this, in Section 62(5) of the VAT Act, it has been provided that 'no appeal shall be entertained unless such appeal is accompanied by proof of prior payment of 25%'. Further, he states that as per the proviso to Section 45-AA, if the employer succeeds in the appeal, the Corporation is required to return such deposit together with such interest as may be specified in the Regulation. He argued that in no other Statute or in any of the cases relied on in the PSPCL case there is any provision for return of the amount deposited with interest. In sum, he argued that in Section 62(5) of the VAT Act, as per the language of the Statute, first an appeal is provided and then the condition of pre-deposit is incorporated in the proviso. By contrast, in the ESI Act, the right of appeal is plainly conditional on deposit of 25% amount. Hence, the ratio of the PSPCL case is not attracted in the present case.

13. He further argued that in the PSPCL case, this Court has not considered the decision of Hon'ble the Supreme Court in ***Narain Chander Ghosh vs UCO Bank and others (2011) 4 SCC 548*** in which, it was held that the condition of pre-deposit for entertaining appeal under Section 18(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 is mandatory.

14. Ld. Counsel for the petitioner responded by contending that the argument of the respondent lacks substance. It is nothing more than quibbling about words and an exercise in semantics. He argued that the consistent view of the Courts has been that any condition of pre-deposit has to be read down to incorporate within it inherent power of the appellate forum to grant interim relief regarding the pre-deposit in appropriate cases.

15. Heard Ld. Counsel for the parties and perused the records.

16. Section 45 AA of the ESI Act is reproduced below:-

> ***"45-AA. Appellate Authority*** - If an employer is not satisfied with the order referred to in Section 45-A, he may prefer an appeal to an appellate authority as maybe provided by regulation, within sixty days of the date of such order after depositing twenty five per cent of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the Corporation.
>
> Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as maybe specified in the regulation. "

Section 62 of the VAT Act, which was being considered in the PSPCL case is as under:

> *62. (1) An appeal against every original order passed under this Act or the rules made thereunder shall lie,*
>
> *(a) if the order is made by a Excise and Taxation Officer or by an officer-Incharge of the information collection centre or check post or any other officer below the rank of Deputy Excise and Taxation Commissioner, to the Deputy Excise and Taxation Commissioner; or*
>
> *(b) if the order is made by the Deputy Excise and Taxation Commissioner, to the Commissioner; or*
>
> *(c) if the order is made by the Commissioner or any officer exercising the powers of the Commissioner, to the Tribunal.*
>
> *(2) An order passed in appeal by a Deputy Excise and Taxation Commissioner or by the Commissioner or any officer on whom the powers of the Commissioner are conferred, shall be further appealable to the Tribunal.*
>
> *(3) Every order of the Tribunal and subject only to such order, the order of the Commissioner or any officer exercising the powers of the Commissioner or the order of the Deputy Excise and Taxation Commissioner or of the designated officer, if it was not challenged in appeal or revision, shall be final.*
>
> *(4) No appeal shall be entertained, unless it is filed within a period of thirty days from the date of communication of the order appealed against.*
>
> *(5) No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of tax, penalty and interest, if any.*

(6) In deciding an appeal, the appellate authority, after affording an opportunity of being heard to the parties, shall make an order –

(a) affirming or amending or canceling the assessment or the order under appeal;

or (b) may pass such order, as it deems to be just and proper.

(5) The appellate authority shall pass a speaking order while deciding an appeal and send copies of the order to the appellant and the officer whose order was a subject matter of appeal. "

In **PSPCL's** case (supra), this Court had framed the following questions for consideration:

"4. From the submissions made by learned counsel for the parties, the following questions emerge for our consideration: -

(a) Whether the State is empowered to enact Section 62(5) of the PVATAct?

(b) Whether the condition of 25% pre-deposit for hearing first appeal is onerous, harsh, unreasonable and, therefore, violative of Article 14 of the Constitution of India?

(c) Whether the first appellate authority in its right to hear appeal has inherent powers to grant interim protection against imposition of such a condition for hearing of appeals on merits? "

17. The Court considered a large number of decisions of Hon'ble the Supreme Court and different High Courts and relying on the same it was concluded that as the right to appeal is a creature of a statute it can be conditional or qualified. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal does not nullify the right of appeal and cannot be considered to be unconstitutional.

18. Among the decisions of the Hon'ble Supreme Court considered were ***Govt of A.P. v. P. Laxmi Devi, (2008) 4 SCC 720*** and ***Har Devi Asnani v. State of Rajasthan, (2011) 14 SCC 160***. Relevant extracts therefrom are being reproduced below:

19. In ***P. Laxmi Devi's case*** (supra), there is a reference to earlier decisions in the point as under:

"22. *In this connection we may also mention that just as the reference under Section 47-A has been made subject to deposit of 50% of the deficit duty, similarly there are provisions in various statutes in which the right to appeal has been given subject to some conditions. The constitutional validity of these provisions has been upheld by this Court in various decisions which are noted below.*

23. *In Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [(1999) 4 SCC 468] this Court referred to its earlier decision in Vijay Prakash D. Mehta v. Collector of Customs [(1988) 4 SCC 402] wherein this Court observed: (Vijay Prakash case [(1999) 4 SCC 468], SCC p. 406, para 9)*

"9. Right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial and quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant. "

24. *In Anant Mills Co. Ltd. v. State of Gujarat [(1975) 2 SCC 175] this Court held that the right of appeal is a creature of the statute and it is for the legislature to decide whether the right of appeal should be unconditionally given to an aggrieved party or it should be conditionally given. The right to appeal which is a statutory right can be conditional or qualified.*

25. *In Elora Construction Co. v. Municipal Corpn. of Gr. Bombay [AIR 1980 Bom 162] the question before the Bombay High Court was as to the validity of Section 217 of the Bombay Municipal Act which required pre-deposit of the disputed tax for the entertainment of the appeal. The Bombay High Court upheld the said provision and its judgment has been referred to with approval in the decision of this Court in Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [AIR 1968 SC 623] . This Court has also referred to its decision in Shyam Kishore v.Municipal Corpn. of Delhi [(1993) 1 SCC 22] in which a similar provision was upheld.*

26. *It may be noted that in Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad [AIR 1968 SC 623] the appellant had challenged the constitutional validity of Section 406(e) of the Bombay Municipal Corporation Act which required the deposit of the tax as a precondition for entertaining the appeal. The proviso to that provision permitted waiver of only 25% of the tax. In other words a minimum of 75% of the tax had to be deposited before the appeal could be entertained. The Supreme Court held that the provision did not violate Article 14 of the Constitution.*

27. *In view of the above, we are clearly of the opinion that Section 47-A of the Stamp Act as amended by A.P. Act 8 of 1998 is constitutionally valid and the judgment of the High Court declaring it unconstitutional is not correct. "*

The relevant observations in ***Har Devi Asnani's case*** (supra) are as under:

"9. *The ground taken by the appellant in the writ petition before the High Court was that unless the appellant deposited fifty per cent of the total amount of Rs 15,70,000 towards deficit stamp duty, registration charges and penalty, the revision petition of the appellant would not be entertained and the appellant was not in a position to deposit such a huge amount as a condition for filing the revision. The appellant accordingly contended before the High Court that the precondition of payment of fifty per cent of the recoverable amount for entertaining a revision petition was arbitrary, unreasonable and unconstitutional.*

12. *For appreciating the contentions of the learned counsel for the parties, we must refer to Section 65 of the Act. Section 65 of the Act is quoted herein below:*

*"**65. Revision by the Chief Controlling Revenue Authority.**—(1) Any person aggrieved by an order made by the Collector under Chapters IV and V and under clause (a) of the first proviso to Section 29 and under Section 35 of the Act, may within 90 days from the date of order, apply to the Chief Controlling Revenue Authority for revision of such order:*

Provided that no revision application shall be entertained unless it is accompanied by a satisfactory proof of the payment of fifty per cent of the recoverable amount.

(2) The Chief Controlling Revenue Authority may suo motu or on information received from the registering officer or otherwise call for

and examine the record of any case decided in proceeding held by the Collector for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of the proceedings and pass such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter. "

13. *The learned counsel for the appellant submitted that al-though sub-section (1) of Section 65 of the Act confers a right on a person to file a revision against the order of the Collector, the proviso to Section 65(1) of the Act renders this right illusory by insisting that the revision application shall not be entertained unless it is accompanied by a satisfactory proof of the payment of fifty per cent of the recoverable amount. He submitted that the proviso to Section 65(1) of the Act is therefore unreasonable and arbitrary and violative of Article 14 of the Constitution and should be declared constitutionally invalid.*

14. *The learned counsel for the appellant cited the decision of this Court in Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311] in which the provision requiring pre-deposit of 75% of the demand made by the bank or the financial institution in Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 has been held to be onerous and oppressive rendering the remedy illusory and nugatory and constitutionally invalid.*

15. *The learned counsel for the appellant submitted that assuming that the proviso to Section 65(1) of the Act is constitutionally valid where the valuation adopted by the Additional Collector or Collector and the consequent demand of additional stamp duty are unreasonable and exorbitant, the alternative remedy of revision after deposit of 50% of the exorbitant demand is not efficacious, and affected party should be able to move the High Court under Article 226 of the Constitution. In support of this submission, he cited the decision of this Court in Govt, of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720] .*

16. *The learned counsel for the respondents, on the other hand, submitted that a revision or an appeal is a right conferred by the statute and the legislature while conferring this statutory right can lay down conditions subject to which the appeal or revision can be entertained and that there is nothing unreasonable or arbitrary in the proviso to Section 65(1) of the Act requiring deposit of 50% of the recoverable amount before the revision application is entertained. He argued that the pro-viso to Section 65(1) of the Act is in no way illusory and is only a provision to ensure that the stamp duty demanded is recovered in time and is not held up because of the pendency of the revision.*

17. *In support of his submission, the learned counsel for the respondent relied on the decisions of this Court in Anant Mills Co. Ltd. v. State of Gujarat [(1975) 2 SCC 175] ; Seth Nand Lai v. State of Haryana [1980 Supp SCC 574] ; Vi]ay Prakash D. Mehta v. Collector of Customs [(1988) 4 SCC 402] and Gujarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City ofAhmedabad [(1999) 4 SCC 468] .*

18. *The learned counsel for the respondents submitted that the decision of this Court in Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311] declaring the provision of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, requiring*

deposit of 75% of the demand as constitutionally invalid does not apply to the facts of the present case. He submitted that in Mardia Chemicals Ltd. [(2004) 4 SCC 311] this Court clearly held that the amount of deposit of 75% of the demand is at the (sic stage of) initial proceedings itself when the bank or the financial institution makes its demand on the borrower and the requirement of deposit of such a heavy amount on the basis of one-sided claim of the bank or the financial institution at this stage, before the start of the adjudication of the dispute, cannot be said to be a reasonable condition.

19. *The learned counsel for the respondents submitted that in the instant case, the first adjudicatory authority is the Collector and only after the Collector determines the amount of stamp duty payable on the documents, the affected party has a right of revision under Section 65(1) of the Act. He further submitted that the requirement of 50% of the amount determined by the Collector at the stage of filing of the revision is therefore not a requirement at the initial stage but a requirement at the revisional stage and the decision of this Court in Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311] is distinguishable from the facts of the present case.*

20. *We need not refer to all the decisions cited by the learned counsel for the parties because we find that in Govt, of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720] this Court has examined a similar provision of Section 47-A of the Stamp Act, 1899, introduced by A.P. Amendment Act 8 of 1998. Sub-section (1) of Section 47-A, introduced by Andhra Pradesh Act 8 of 1998 in the Stamp Act, is extracted herein below:*

> ***"47-A.Instruments of conveyance, etc. how to be dealt with.****—(1) Where the registering officer appointed under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition, settlement, release, agreement relating to construction, development or sale of any immovable property or power of attorney given for sale, development of immovable property, has reason to believe that the market value of the property which is the subject-matter of such instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties, he may keep pending such instrument and refer the matter to the Collector for determination of the market value of the property and the proper duty payable thereon:*
>
> > *Provided that no reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party concerned. "*

21. *Under sub-section (1) of Section 47-A quoted above, a reference can be made to the Collector for determination of the market value of property and the proper duty payable thereon where the registering officer has reason to believe that the market value of the property which is the subject-matter of the instrument has not been truly set forth in the instrument, or that the value arrived at by him as per the guidelines prepared or caused to be prepared by the Government from time to time has not been adopted by the parties. The proviso to sub-section (1) of Section 47-A, however, states that no such reference shall be made by the registering officer unless an amount equal to fifty per cent of the deficit duty arrived at by him is deposited by the party*

concerned. This proviso to sub-section (1) of Section 47- A was challenged before the Andhra Pradesh High Court by P. Laxmi Devi and the Andhra Pradesh High Court held that this proviso was arbitrary and violative of Article 14 of the Constitution and was unconstitutional. The Government of Andhra Pradesh, however, filed an appeal by special leave before this Court against the judgment of the Andhra Pradesh High Court and this Court held in para 18 at p. 735 oj Govt, of A.P. v. P. Laxmi Devi [(2008) 4 SCC 720] that there was no violation of Articles 14, 19 or any other provision of the Constitution by the enactment of Section 47-A as amended by Andhra Pradesh Amendment Act 8 of1998 and that the amendment was only for plugging the loopholes and for quick realisation of the stamp duty and was within the power of the State Legislature vide List II Entry 63 read with List III Entry 44 of Schedule VII to the Constitution.

***22.** While coming to the aforesaid conclusions, this Court in P. Laxmi Devi case[(2008) 4 SCC 720] has relied onAnant Mills Co. Ltd. v. State of Gujarat [(1975) 2 SCC 175], Vijay Prakash D. Mehta v. Collector of Customs [(1988) 4 SCC 402] andGu- jarat Agro Industries Co. Ltd. v. Municipal Corpn. of the City of Ahmedabad[(1999) 4 SCC 468] in which this Court has taken a consistent view that the right of appeal or right of revision is not an absolute right and it is a statutory right which can be circumscribed by the conditions in the grant made by the statute. Following this consistent view of this Court, we hold that the proviso to Section 65(1) of the Act, requiring deposit of 50% of the demand before a revision is entertained against the demand is only a condition for the grant of the right of revision and the proviso does not render the right of revision illusory and is within the legislative power of the State Legislature.*

***23.** We also find that in the impugned order the High Court has relied on an earlier Division Bench judgment of the High Court in Choksi Heraeus (P) Ltd. v. State [AIR 2008 Raj 61] for rejecting the challenge to the proviso to Section 65(1) of the Act. We have perused the decision of the Division Bench of the High Court in Choksi Heraeus (P) Ltd. v. State [AIR 2008 Raj 61] and we find that the Division Bench has rightly taken the view that the decision of this Court in Mardia Chemicals Ltd. v. Union of India [(2004) 4 SCC 311] is not applicable to the challenge to the proviso to Section 65(1) of the Act inasmuch as the provision of sub-section (2) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, requiring deposit of 75% of the demand related to deposit at the stage of first adjudication of the demand and was therefore held to be onerous and oppressive, whereas the proviso to Section 65(1) of the Act in the present case requiring deposit of 50% of the demand is at the stage of revision against the order of first adjudication made by the Collector and cannot by the same reasoning held to be onerous and oppressive.*

***24.** In our considered opinion, therefore, the proviso to Section 65(1) of the Act is constitutionally valid and we are therefore not inclined to interfere with the order dated 16-11-2009 [Har Devi Asnani v. State of Rajasthan, Civil Writ Petition No. 14220 of 2009, order dated 16-11-2009 (Raj)] in DB CWP No. 14220 of 2009. The civil appeal arising out of SLP (C) No. 20964 of 2010 is, therefore, dismissed."*

20. On the issue of constitutionality of the requirement of pre-deposit, this Court concluded as under:

> *"24. From the reading of the judicial pronouncements noticed above, the inevitable conclusion is that right of appeal is a creature of a statute and it being a statutory right can be conditional or qualified. If the statute does not create any right of appeal, no appeal can be filed. Right to appeal is neither an absolute right nor an ingredient of natural justice, the principles of which must be followed in all judicial and quasi judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the conditions in the grant. In other words, while granting this right, the legislature can impose conditions for exercise of such right and there is no constitutional or legal impediment to imposition of such a condition. The requirement about the deposit of the amount claimed as a condition precedent to the entertainment of an appeal does not nullify the right of appeal. All that the statutory provision seeks to do is to regulate the exercise of the right of appeal. The object of the provision is to keep balance between the right of appeal and the right of the revenue to speedy recovery of the amount. The conditions imposed including prescription of a pre-deposit are meant to regulate the right of appeal and the same cannot be held to be violative of Article 14 of the Constitution of India unless demonstrated to be onerous or unreasonable. To put it differently, right of appeal being a statutory right, it is for the legislature to decide whether to make the right subject to any condition or not. In the light of the above enunciation, we proceed to examine Section 62(5) of the PVAT Act. A perusal of sub section (5) of Section 62 of the PVAT Act shows that pre-deposit of twenty five percent of the total amount of tax, interest and penalty is a condition precedent for hearing an appeal before the first appellate authority. Any challenge to the constitutional validity of this provision for pre-deposit before entertaining an appeal on the ground that onerous condition has been imposed and right to appeal has become illusory must be negatived and such a provision cannot be said to be ultra vires Article 14 of the Constitution of India. The object of the provision is to keep in balance the right of appeal conferred upon a person aggrieved with a demand of tax and the right of the revenue to speedy recovery of the tax. It is, thus, concluded that the State is empowered to enact Section 62(5) of the Act and the said provision is legal and valid. The condition of 25% pre-deposit for hearing first appeal is not onerous, harsh, unreasonable and violative of the provisions of Article 14 of the Constitution of India".*

This Court then considered question (c) as to whether the requirement of pre-deposit for entertaining the appeal, is a mandatory requirement or it should be read as directory, with an inherent power in the appellate authority to waive or reduce the amount where considered necessary. In this regard the relevant discussion is as under:

> *"25. Now question (c) remains to be answered. With regard to the said question whether the first appellate authority in its right to hear appeal has powers to grant interim protection against imposition of such a condition for hearing of appeals on merits, the following facets of the argument would arise for our consideration:- (a) Inherent powers of the Court to grant interim protection; (b) Whether the expression "shall" used in Section 62(5) of the PVAT Act is mandatory or by implication would be read as directory meaning thereby whether the first appellate authority can grant partial or complete waiver of condition of pre-deposit; The legal position in this regard is being discussed hereinafter.*
>
> *26. Taking up the issue of 'inherent powers of the Court', it may be observed that Constitution of India and the statutes confer different jurisdiction on the*

Court whereas "inherent powers" of the court are those necessary for ordinary and efficient exercise of jurisdiction already conferred. They are as such result of the very nature of its organization and are essential to its existence and protection and for the due administration of justice. The inherent power of a court is the power to do all things that are reasonably necessary for administration of justice within the scope of court's jurisdiction. The basic principal is to be found in Maxwell On Interpretation of Statutes, eleventh Edition at page 350. The statement contained therein is that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means as are essentially necessary to its execution. " Learned counsel for the petitioners vehemently argued that the provision has to be read down to include the right to waive the condition by the appellate authority in an appropriate case. Main emphasis was laid by the learned counsel for the petitioners on the judgment of the Apex Court in Income Tax Officer, Cannanore vs. M.K. Mohamad Kunhi, AIR 1969 SC 430, wherein the question was whether the Income Tax Appellate Tribunal had the power under the relevant provisions of the Income Tax Act, 1961 to stay recovery of the realization of the penalty imposed by the departmental authorities on an assessee during the pendency of an appeal before it. After considering the matter, the Apex court held that the Appellate Tribunal has power to grant stay as incidental or ancillary to its appellate jurisdiction subject to there being a strong prima facie case and satisfaction that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the recovery proceedings to continue during the pendency of the appeal. ... ...

30. Adverting to the second facet of the argument as to whether a statute is mandatory or directory, the same depends upon the intent of the legislature and not upon the language in which the intent is clothed. The issue has been considered by a Full Bench of this Court in CIT vs. Punjab Financial Corporation, (2002) 254 ITR 6 wherein it was noticed that the meaning and intention of the legislature must govern and these are to be ascertained not only from the phraseology of the provision but also by considering its nature, design and the consequences which would follow from construing it one way or the other. The use of the word "shall" in a statutory provision, though generally taken in a mandatory sense does not necessarily mean that in every case it shall have that effect, that is to say, unless the words of the statute are punctiliously followed, the proceeding or the outcome of the proceeding would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non compliance with those provisions will not render the proceedings invalid. The relevant portion reads thus:- "6. Before proceeding further, we may notice some of the principles of interpretation of the statutes. These are : (1) The question as to whether a statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which the intent is clothed. The meaning and intention of the Legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it one way or the other—Crawford on Statutory Construction (Edition 1940, art. 261, page 516). (2) The use of the word "shall" in a statutory provision, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceeding or the outcome

of the proceeding, would be invalid. On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissible or directory in the sense that non-compliance with those provisions will not render the proceedings invalid—State of U. P. v. Manbodhan Lai Srivastava, AIR 1957 SC 912 (headnote). (3) All the parts of a statute or sections must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction put to be on a particular provision makes consistent enactment of the whole statute. This would be more so if a literal construction of a particular clause leads to manifestly absurd and anomalous results which could not have been intended by the Legislature. (4) The principle that a fiscal statute should be construed strictly is applicable only to taxing provisions such as a charging provision or a provision imposing penalty and not to those parts of the statute which contain machinery provisions—CIT v. National Taj Traders [1980] 121ITR 535 (SC) (headnote). "

32. Before we record our conclusion on question No.(c), noticed hereinbefore, it would also be apposite to refer to a five Judges Full Bench of this Court in Ranjit Singh vs. State of Haryana and others, (2012) 2 RCR (Civil) 353 to which one of us (Ajay Kumar Mittal, J.) was a member which was dealing with similar provision i.e. Section 13B of the Punjab Village Common Lands (Regulation) 1961 wherein entertainment of appeal was subject to deposit of amount of penalty imposed under sub section (2) of Section 7 of the said Act with the Collector. This court after considering the entire case law on the point and by reading down the provision held that Section 13B of the said Act would be read down to incorporate within it the power in appellate authority to grant interim relief in an appropriate case by passing a speaking order even while normally insistence may be made on pre-deposit of the penalty. In such a case, the appellate authority would have to give reasons for granting interim relief of stay.

33. It is, thus, concluded that even when no express power has been conferred on the first appellate authority to pass an order of interim injunction/protection, in our opinion, by necessary implication and intendment in view of various pronouncements and legal proposition expounded above and in the interest of justice, it would essentially be held that the power to grant interim injunction/protection is embedded in Section 62(5) of the PVAT Act. Instead of rushing to the High Court under Article 226 of the Constitution of India, the grievance can be remedied at the stage of first appellate authority. As a sequel, it would follow that the provisions of Section 62(5) of the PVAT Act are directory in nature meaning thereby that the first appellate authority is empowered to partially or completely waive the condition of pre-deposit contained therein in the given facts and circumstances. It is not to be exercised in a routine way or as a matter of course in view of the special nature of taxation and revenue laws. Only when a strong prima facie case is made out will the first appellate authority consider whether to grant interim protection/injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the first appellate authority is satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of the appeal before it. Therefore, the power to grant interim protection/injunction by the first appellate authority in appropriate cases in

case of undue hardship is legal and valid. As a result, question (c) posed is answered accordingly. "

21. It was clearly and unequivocally concluded that provisions of Section 62(5) of the VAT Act were directory in nature and that the first appellate authority was empowered to partially or completely waive the condition of pre-deposit by necessary implication and intendment and in the interest of justice. But this power was not to be exercised in routine but only on a strong prima facie case being made out and the first appellate authority being satisfied that the entire purpose of the appeal will be frustrated or rendered nugatory by allowing the condition of pre-deposit to continue as a condition precedent to the hearing of the appeal before it.

22. In our view, the ratio of this decision is squarely applicable to the present case as well. We also agree with the Ld. Counsel for the petitioner that there is no substance in the argument of the Ld. Counsel for the respondent that the judgment is distinguishable merely because Section 45-AA is not similarly worded as Section 62(5) of the Punjab VAT Act. The principle settled by various decisions relied on in the PSPCL case is that the requirement of pre-deposit for entertaining the appeal cannot be read to be mandatory and that the appellate forum would have inherent power to waive, completely or partially, this requirement of pre-deposit. Different statutes may be differently worded, but that does not affect the applicability of the above principle.

23. The other argument of the Ld. Counsel for the respondent that the decision of Hon'ble the Supreme Court in ***Narayan Chandra Ghosh's case*** (supra) having not been considered in PSPCL case, hence that judgment in PCPL case is per incuriam also does not appear to be well founded. In ***Narayan Chandra Ghosh's case*** (supra) the vires of the provisions regarding pre-deposit was not in issue. Also the argument that in an appropriate case, on strong prima facie case being shown, the Appellate Forum may reduce or waive the pre-deposit amount was neither raised nor considered. Hence, that case cannot be relied on for the proposition that was canvassed and decided in the PSPCL case.

24. Thus, it is held and declared that the requirement of pre-deposit under Section 45-AA is not mandatory and the Appellate Authority is empowered to waive, either partially or completely, the requirement of predeposit in the same circumstances and conditions as explained in detail in the ***PSPCL case*** (supra). To summarize, the Appellate Authority is empowered to partially or completely waive the condition of pre-deposit in given facts and circumstances. It is, however, not to be exercised in a routine manner or as a matter of course. Only when a strong prima facie case is made out, will the Appellate Authority consider, whether to grant interim protection/ injunction or not. Partial or complete waiver will be granted only in deserving and appropriate cases where the Appellate Authority is satisfied that the entire purpose of the appeal would be frustrated or rendered nugatory because of the condition of pre-deposit for hearing the appeal and a reasoned order would require to be passed.

25. Accordingly, the order dated 21.02.2014 (Annexure P-20) passed by the Appellate Authority is quashed. The matter is remitted to the first appellate authority where the petitioners may file an application for interim injunction/protection before the appeals are taken up for hearing by the first appellate authority who shall adjudicate the application for grant of interim injunction/protection to the petitioner in the light of the principles set out above.

26. The interim order dated 16.7.2014 to continue till the decision of the application for interim injunction/ protection.

27. This case is disposed of in the above terms.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 7 OF 2011

STATE OF PUNJAB AND ANOTHER
Vs
PANCHVATI MOTORS PVT. LTD.

RAJESH BINDAL AND SNEH PRASHAR, JJ.

7th October, 2016

HF ▶ None

No useful purpose would be served by deciding the appeal where the assets of respondent company have already been taken over by the Department and sold out and the company is no more in existence.

APPEAL – HIGH COURT – APPEAL BY REVENUE – ASSESSEE COMPANY WOUND UP – ASSETS SOLD OFF BY DEPARTMENT FOR RECOVERY – NAME OF COMPANY STRUCK OFF FROM RECORDS OF REGISTRAR OF COMPANIES – NO RECOVERY CAN BE MADE EVEN IF APPEAL IS DECIDED IN FAVOUR OF REVENUE – NOT APPROPRIATE TO GO INTO THE ISSUES IN THE APPEALS FILED BY REVENUE AS COMPANY IS NO MORE IN EXISTENCE – APPEALS DISMISSED LEAVING THE QUESTION OF LAW OPEN – LIBERTY GRANTED TO REVIVE THE APPEAL IN CASE THE RESPONDENT COMPANY RE-STARTS ITS BUSINESS OR SEEKS REFUND OF THE AMOUNT ALREADY RECOVERED. - *SECTION 68 OF PUNJAB VAT ACT 2005*

Revenue filed appeals against the orders of Tribunal before the High Court. At the time of hearing, it transpired that assets of the respondent company have been taken over by the Department for Partial recovery of sales tax dues and those have been sold off. The name of company has been struck off from the records of the Registrar of Companies as per information available on the Website of Ministry of Corporate Affairs. Even if the appeals of Revenue are accepted, no recovery is possible at this stage. It is not appropriate to go into the issues raised by the Revenue in the present set of appeals as the assets of the respondent company have already been taken over by the Department and sold out and the company is no more in existence. Appeals are dismissed leaving the questions of law open. The Revenue would be entitled to get the appeals revived in case the respondent company re-starts its business or seeks refund of amount already recovered.

Cases referred:

- *Commissioner of Central Excise, Nagpur v. M/s Vidarbha Veneer Industries Ltd. and others, CA NOs. 4479-4488 of 2008*

Present: Mr. Jagmohan Bansal, Addl. AG, Punjab.
None for the respondent.

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RAJESH BINDAL, J.

1. This order will dispose of four VAT Appeals bearing VATAP Nos. 7, 8, 9 and 19 of 2011, as the issue involved in all the writ petitions is common.

2. At the very outset, learned counsel for the State, on instructions from Kali Chandra, Excise and Taxation Officer, submitted that the assets of the respondent-company were taken over by the department for recovery of the sales tax dues and those were sold off. Partially the recovery was made. At present, respondent-company is not in business. As per the information available on the website of Ministry of Corporate Affairs, the name of respondent-company has been struck off from the records of the Registrar of Companies. While referring to the order passed by Hon'ble the Supreme Court in Civil Appeal Nos. 4479-4488 of 2008- ***Commissioner of Central Excise, Nagpur v. M/s Vidarbha Veneer Industries Ltd. and others***, decided on 18.7.2016, he submitted that when nothing is available with the respondent-company now, even if the appeal filed by the revenue is deiced in its favour, recovery will not be possible, hence, there is no need to go into the merits of the case at this stage. The same may be disposed of as such, however, giving liberty to the department to get these revived if circumstances change.

3. After hearing learned counsel for the appellants and considering the submissions made by learned counsel for the appellants, we do not find it appropriate to go into the issue raised by the revenue in the present set of appeals, as the assets of the respondent-company have already been taken over by the department and sold out and the company is no more in existence.

4. Accordingly, the appeals are dismissed, leaving the question of law open. However, the revenue shall be entitled to get the present set of appeals restored in case the respondent-company restarts its business or seeks refund of the amount already recovered.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 16749 OF 2011

LARSEN & TOUBRO LTD.
Vs
STATE OF PUNJAB AND ANOTHER

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

24th October, 2016

HF ▶ Assessee

Assessment framed beyond period of three years is barred by limitation for the year 2005-06 as provided under Section 29(4A) of the Punjab VAT Act 2005

ASSESSMENT – LIMITATION – ASSESSMENT YEAR 2005-06 – ASSESSMENT FRAMED ON 23.06.2011 – PERIOD OF THREE YEARS PRESCRIBED UNDER SECTION 29(4A) – ISSUE SETTLED BY EARLIER JUDGMENT OF PUNJAB AND HARYANA HIGH COURT – ASSESSMENT ORDER PASSED BEYOND THE PERIOD OF LIMITATION IS SET ASIDE – WRIT PETITION ALLOWED. - *SECTION 29(4A) OF PUNJAB VAT ACT 2005.*

Assessment of the dealer for 2005-06 was framed on 23.06.2011. Section 29(4A) of Punjab VAT Act 2005 provides for framing of assessment for the year 2005-06 upto 20.11.2009. Issue in this regard stands settled by Division Bench of High Court in the case of State of Punjab and another vs Desh Raj Bhim Sain, (2012) 43 PHT 1 (P&H). Assessment order having been passed beyond the period of limitation as prescribed under the Act is set aside and the writ petition is disposed of.

Cases referred:

- *State of Punjab and another v. Des Raj Bhim Sain, (2012) 43 PHT 1 (P&H)*

Present: Mr. Sandeep Goyal, Advocate for the petitioner.
Mr. Jagmohan Bansal, Addl. Advocate General, Punjab.

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RAJESH BINDAL, J.

1. Challenge in the present petition is to the order of assessment dated 23.6.2011, passed by respondent No.2 for the assessment year 2005-06.

2. The only ground raised is that the aforesaid order was passed beyond the period of limitation, as prescribed under Section 29(4A) of the Punjab Value Added Tax Act, 2005. In support of the plea, reliance was placed upon a Division Bench judgment of this court in ***State of Punjab and another v. M/s Des Raj Bhim Sain, (2012) 43 PHT 1 (P&H)***.

3. Learned counsel for the State did not dispute the aforesaid proposition, as suggested by learned counsel for the petitioner.

4. After hearing learned counsel for the parties and considering the stand, as noticed above, the impugned order of assessment dated 23.6.2011 having been passed beyond the period of limitation, as prescribed in the Act, is set aside.

5. The writ petition stands disposed of accordingly.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 388 OF 2013

ANSAL HOUSING CONSTRUCTION LTD
Vs
STATE OF PUNJAB

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

26th August, 2016

HF ▶ Revenue

Sale of goods to an unregistered dealer for construction of housing complex in the garb of stock transfer is an attempt to evade tax and penalty is imposable

PENALTY – ATTEMPT TO EVADE TAX – CHECK POST – ROADSIDE CHECKING – TRANSFER OF GOODS BY APPELLANT COMPANY TO A HOUSING PROJECT IN PUNJAB – CONSIGNEE DEALER IS UNREGISTERED IN THE STATE OF PUNJAB – NO EVIDENCE LED TO PROVE THAT IT IS PART OF THE APPELLANT COMPANY- NO STOCK TRANSFER POSSIBLE – REGISTRATION OBTAINED AFTER DETENTION OF GOODS NOT MATERIAL – CASE OF EVASION OF TAX SHOWING SALE AS STOCK TRANSFER – PENALTY UPHELD – APPEAL DISMISSED - *SECTION 51 OF PUNJAB VAT ACT, 2005*

The appellant who is an unregistered dealer at Zirakpur had been selling goods to M/s Ansal Woodbury Apartments Pabhat prior to the present transaction. When one of the consignments reached ICC Jharmari, the documents were produced showing the transaction to be stock transfer to M/s Ansal Woodbury Apartments. On enquiry, it was found that company is unregistered but is constructing 150 flats at Zirakpur and goods in question have been imported as stock transfer for use and construction in said flats. Despite repeated opportunities given to the appellant, he failed to show that transaction in question is a stock transfer as the constitution of Zirakpur firm was not proved to be same as that of appellant firm. Accordingly, penalty u/s 51(7)(b) was imposed against which appeal was filed before the Tribunal. Dismissing the appeal, it was HELD: The appellant-assessee has failed to produce the documents that consignee firm is a sister concern of the appellant as the documents produced pertained to the period from 2011 to 2015, whereas the transaction in question took place in the year 2009. The consignee firm was unregistered in the State of Punjab and it has not been denied that it had been bringing goods earlier also and therefore it was obligatory on the part of the appellant to get itself registered. The application for registration made after a month of detention would not have any implication on the present penalty as the goods had already been apprehended. The necessary conclusion which can be drawn is that the appellant was engaged in transferring the goods to the Housing Project at Zirakpur which was an unregistered dealer and the goods were being imported in the garb of stock transfer with an intention to evade the tax.

Present: Mr. Chetan Jain, Advocate counsel for the appellant.
Mr. B.S. Chahal, Dy. Advocate General for the State.

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

1. The appellant M/s Ansal Housing Construction Ltd., Zirakpur is an unregistered dealer, he has been selling the goods to M/s Ansal Woodbury Apartments, Bhabat for construction of project since prior to 2.5.2009.

2. On 2.5.2009, the driver while carrying the T-Steel in vehicle No.HR-47A-7703 reached ICC Jharmari, he was stopped. When confronted with the transaction, he produced the following documents:-

1. Gate pass Nb.2800, dated 1.5.2009 issued by M/s Ansal Housing and Construction Ltd., Rewari in favour of M/s Ansal Woodbury apartments, Zirakpur.
2. Challan No.905, dated 1.5.2009 issued by M/s Ansal Housing and Construction Ltd., Rewari in favour of M/s Ansal Woodbury apartments, Zirakpur.
3. GR. No.358, dated 1.5.2009 of New Super Fast Road Lines, Rewari.
4. Certificate dated 1.5.2009 from M/s Ansal Housing and Construction Ltd., Rewari. showing value of goods as Rs.3,70,000/- and showing the transaction as stock transfer form Rewari to Zirakpur.

3. On checking the documents, the Detaining Officer observed that the goods were being brought from Rewari (State of Haryana) in to the State of Punjab. The consignee company is not registered under the Punjab Value Added Tax Act, thus, doubting the validity of the transaction, he issued notice U/s 51 (6) (a) of the Punjab Value Added Tax Act, 2005. In response to which on 4.5.009, Shri Manish Ahuja, project Engineer of the consignee company appeared before the Detaining Officer and admitted that the company has been constructing 150 flats at Zirakpur and the goods in question have been imported from State of Haryana by way of stock transfer and were meant for use in the construction of the said flats. He also admitted that the consignee company was unregistered in the State of Punjab. After receiving the explanation, the case was forwarded to the Designated Officer who also issued notice,- in the response to which, on 15.5.2009 Shri Ashok Sharma, Assistant General Manager Accounts and Shri Manish Ahuja, Project Engineer of M/s Ansal Housing and Construction Ltd., Delhi appeared before the Designated Officer and submitted that it was a stock transfer arid not sale and that company would apply for registration. Ultimately, after hearing both the parties, the Designated Officer observed that the consignee company is unregistered and is neither ancillary nor sister concern of the consignor therefore it was a purchase and not a stock transfer. The consignee company had not paid the tax, therefore, the Designated Officer imposed penalty of Rs. 1,11,000/- upon the appellant U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

4. The appeal filed by the appellant was dismissed on 17.5.2013.

5. Arguments heard. Record perused.

6. The prime argument raised by the counsel for the appellant is that the goods were sent by Ansal Housing and construction Ltd., New Delhi to Ansal Woodbury Apartments, Zirakpur by way of stock transfer and not by the way of sale in connection with the construction of the flats, therefore, no tax was payable. In this connection the appellant was

directed to produce the memorandum of association and articles of association and some other documents in order to prove that the Ansal Woodbury Apartments is the sister concern of the appellant but despite sufficient opportunity given to him he has failed to produce any document in that regard. The appellant produced the following documents in- support of this plea which are reproduced as under:-

1. Copy of Sale deed issued from the Office of Joint Sub Registrar, Zirakpur, Punjab.

   In this regard counsel argued that on relevant page No.3 of the Copy of Registered deed issued by the Govt, of Punjab which clearly says that Ansai Housing Construction, out of its own resources and expenses, has constructed residential group housing Apartments complex known as "Ansai Woodbury Apartments."

2. Letter of Allotment issued to one of the prospective buyer:-

   In this regard it was argued that letter of Allotment of Residential Apartment in Woodbury Apartments, Zirakpur Punjab issued by M/s Ansal Housing Construction Ltd.,- thereby establishes the fact Ansai Woodbury Apartment is a property of the Appellant i.e. M/s Ansai Housing Construction Ltd.

3. Letter from Office of the Municipal Council, Zirakpur i.r.o. covered area:-

   In this regard it was contended that this letter establishes the fact Ansal Woodbury Apartment is a property/Project of the Appellant i.e. M/s Ansal Housing Construction Ltd.

4. Letter from Punjab Pollution Control Board i.r.o. Verification of the Built UP area:-

   It was contended that this letter establishes the fact that Ansal Woodbury Apartment is a property/Project of the Appellant i.e. M/s Ansal Housing Construction Ltd.

5. Clearance Certificate for the partial overload of 450 KW issued by Punjab Pollution Roktham Board Patiala:-

   The counsel has urged that this certificate establishes the fact that Ansal Woodbury Apartment is a property/project of the appellant i.e.. M/s Ansal Housing Construction Ltd.

6. Letter issued from the Office of Fire Station, Derabassi:-

   The counsel has urged that this letter proves the fact Ansal Woodbury Apartment is a property/Project of the Appellant i.e. M/s Ansal Housing Construction Ltd.

7. Sewerage Plan of the Project:- It is contended that the plan establishes the fact that Ansal Woodbury Apartments is a property/Project of the Appellant i.e. M/s Ansal Housing Construction Ltd.

8. Copy of Excise Invoice dated 17.12.2012 issued by the Appellant:- According to the appellant this plan establishes the fact that Ansal Woodbury Apartments is a property/Project of the Appellant i.e. M/s Ansal Housing Construction Ltd.

9. Annual Report i.e. Balance Sheet of the Appellant Company M/s Ansal Housing / Construction Ltd, for FY 2013-14 (also accessible on internet):-

   According to the company appellant, annual report proves the fact that Ansal Woodbury Apartments is a property/Project of the Appellant i.e. M/s Ansal Housing Construction Ltd.

10. Affidavit of the Authorized signatory of the Appellant Company:-

    The appellant wants to prove through this affidavit that Ansal Woodbury Apartments is a property/Project of the Appellant i.e. M/s Ansal Housing Construction Ltd.

7. Having gone through the aforesaid documents, I do not find myself convinced that these documents are sufficient to establish that the consignee firm is a sister concern of the consignor. The documents so produced relate to' the period from 2011 to 2015 and none of the documents relates to the year 2009, when the transaction took place. No documents relating to the project and its constitution and the list of the sister concerns as on 2.5.2009, has been produced. Even no agreement regarding consignment sale between the parties has been produced, therefore it would be difficult to reach the conclusion that on the basis of the documents so produced, the consignee firm could be termed as the sister concern of the consignors.

8. It may further be observed that the consignee firm was unregistered in the State of Punjab and it has been bringing the goods in to the State of Punjab, since earlier also, therefore, it was obligatory on the part of the appellant to get itself registered.

9. The counsel for the appellant has submitted that the consignee firm had applied for registration on 2.6.2009, therefore, no penalty could be imposed. In this regard, it may be observed that the goods were apprehended on 2.5.2009 and it was not appellant's first transaction. In any case, even if it was a first transaction, then also the application for registration having been given beyond 30 days from the date the tax liability arises, can't be of any help to the appellant. In this case, the goods were apprehended on 2.5.2009, therefore the tax liability arose against the appellant on that day however, the application was given on 2.6.2009. Hence, such registration would not have any effect upon the imposition of the penalty. The counsel for the appellant has placed on record the following judgments:-

1. Aasra Projects Pvt. Ltd., Amritsar Vs State of Punjab (2015) 1 NTR 385 (PVT) decided on 13.8.2015
2. Orbit Traderx Pvt. Ltd. Vs. State of Punjab Appeal No.288 of 2012 decided on 21.2.2013.
3. Citadel Architectural Solutions Pvt. Ltd., Office No.300, RR Roality, RR Paint Compound, LBS Marg, Bhandup, Mumbai Vs, State of Punjab, Appeal (VAT) No. 479 of 2009, decided on 15.10.2009.
4. Shree Bhairav Hosiery Mills Vs State of Punjab Appeal NO.330 of 2013 decided on 16.12.2013.
5. Sharma & Gangahar Builders & Colonizers Pvt. Ltd., Amritsar Vs. State of Punjab Appeal No.247 of 2012 decided on 21.3.2013.

10. Having gone through the judgments, the same are not applicable to the facts of the present case. In the case of M/s Aasra Project, Pvt. Ltd., through the firm was unregistered at the time of transaction yet it had applied for registration within time and necessary fee had already been deposited. In those circumstances, it was observed that their menserea to evade

the tax can't be made out as he had already applied for registration and the goods were accompanied by all the documents. In the present case, the goods were being moved from the State of Haryana to the State of Punjab on false grounds of stock transfer which was not actually correct, therefore, the goods cannot be ; said to be accompanying the proper and genuine documents.

11. In case of ***M/s Orbit Traderx Pvt. Ltd.*** (Supra), the goods were ; accompanied by the genuine documents as prescribed U/s 51 of the Punjab Value Added Tax Act and the goods were brought by the- dealer for works. contract at Panipat.

12. In case of ***M/s Citadel Architectural Solutions Pvt. Ltd.***(Supra), the appellant was a dealer in Mumbai and the goods were being brought in the course of interstate trade and the vehicle had reported at the ICC, Madhopur before entering the State of Punjab and the goods were accompanied by the genuine documents. The goods were sold against 'C' Forms and were going to be delivered at Jalandhar at the site of Municipal Corporation for executing some works contract. Similarly, the judgment of M/s Shree Bhairav Hosiery Mills and Sharma & Gangahar Builders & Colonizers Pvt. Ltd., Amritsar were also passed ; on their own facts and as such cannot be replied to the facts of the case.

13. In nut shell, the necessary conclusion which could be drawn is that the appellant was engaged in the transferring the goods to Ansal Housing and Constructions Ltd. The consignee was an unregistered dealer and was importing the goods in the garb stock transfer with an intention to evade the tax.

14. Having perused the orders passed by the authorities below the same appear to be well founded and well reasoned. No interference would be called for at my end.

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

16. Pronounced in the open court.

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PUBLIC NOTICE (U.T. OF CHANDIGARH)

EXTENSION IN THE DATE FOR FILING RETURNS FOR THE 2ND QUARTER OF 2016-17

EXCISE & TAXATION DEPARTMENT
ADDITIONAL TOWN HALL BUILDING, 1ST FLOOR
SEC 17C, CHANDIGARH (CONTACT NO. 0172-2702928)

PUBLIC NOTICE

ATTN.:- All Taxable Persons, Advocates, C.A.s and Stakeholders.

Extension in the date for filing returns for the 2nd quarter of 2016-17

Whereas in view of the representations from the Tax bar association, Chandigarh, the last date for filing the returns for the quarter ending 30.09.2016 has been extended upto 07.11.2016. However, the last date for payment of tax remains unchanged and the same shall be paid on or before 30.10.2016.

Dated:24.10.2016

Sd/-

Excise and Taxation Commissioner,

U.T., Chandigarh.

PUBLIC NOTICE (PUNJAB)

PUBLIC NOTICE REGARDING EXTENSION FOR Q-2 OF 2016-17

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION
PUBLIC NOTICE

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

This is to inform all the concerned that the last date of e-filing of VAT-15 for the 2nd Quarter of 2016-17 has been extended till 7th November, 2016.

Dated: 27th October, 2016

Excise & Taxation Commissioner,
Punjab

OFFICE ORDER (PUNJAB)

OFFICE ORDER REGARDING EXEMPTION OF THE SHOWS OF HINDI FEATURE FILM 31ST OCTOBER FROM THE PAYMENT OF ENTERTAINMENT TAX

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION
(EXCISE AND TAXATION-II-BRANCH)

ORDER

In exercise of the powers conferred by sub-section (20 of Section 6 of the Punjab Entertainments Tax (Cinematographs) Act, 1954 (Punjab Act No. VIII of 1954) and all other powers enabling in this behalf, the Governor of Punjab is pleased to exempt, the shows of Hindi Feature Film "31st October" from the payment of Entertainment Tax is the State of Punjab with effect from 21st October, 2016.

Chandigarh, dated
the 27th October 2016

D.P. REDDY
Additional Chief Secretary (Taxation)
Government of Punjab,
Department of Excise and Taxation.

Endst. No. 07/09/2016 ET.II(9)/22203 Chandigarh, dated the 27/10/16

A copy is forwarded to the Excise and Taxation Commissioner, Punjab, Patiala with reference to his No. PA/ETC/3290 dated 25-10-2016 for information and necessary action.

Sd/-
Superintendent Grade-I

Endst. No. 07/09/2016 ET.II(9)/22204 Chandigarh, dated the 27/10/16

A copy is forwarded to Director, Magical Dreams Productions Pvt. Ltd. H.O.: 301, Standford Plaza, Near Morya House, Opp. City Mall, Andheri (W) Mumbai – 400053 for information and necessary action.

Sd/-
Superintendent Grade-I

OFFICE ORDER (PUNJAB)

OFFICE ORDER DIRECTIONS RELATING TO THE ASSESSMENT OF CASES SELECTED UNDER THE NEW ASSESSMENT POLICY FOR THE YEAR 2009-10

To

(a) All the Deputy Excise & Taxation Commissioners,
Heads of Divisions.
(b) All Assistant Excise & Taxation Commissioners,
Heads of Districts.

Memo: PA/ETC/2016/703 Dated: 21.10.2016

Subject: Directions relating to the assessment of cases selected under the new assessment policy for the year 2009-10.

In reference to the aforesaid you are directed that keeping in view the interest of the Govt. revenue, it shall be ensured that all the cases selected under the new assessment policy for the assessment year 2009-10 shall be assessed on priority basis by 20.11.2016. All the directions in consonance with letter no 2/7-2015 ET 2(7)/3128 shall be complied with effect from 01.04.2017 meaning thereby only those cases in which demand for the year 2012-13 exceeds Rs. 1 Lakh shall be taken up for assessment for the years 2010-11 and 2011-12.

It is pertinent to mention here, that cases pertaining to assessment year 2010-11 will become time barred on 20.11.2017 and in order to assess the cases for the year 2010-11, the cases for the year 2012-13 shall be taken up first. Therefore, the assessment of the cases for the year 2012-13 shall be made at the earliest and the cases in which the demand exceeds Rs. 1 Lakh, those cases shall be taken up for assessment for the years 2010-11, 2011-12 on priority basis. In case, the assessment of cases selected for the year 2009-10 under the new assessment policy is not framed by 20.11.2016, you would be personally liable for the same.

Sd/-
Addl. Excise & Taxation Commissioner (VAT-I)
For Excise & Taxation Commissioner, Punjab

OFFICE ORDER (HARYANA)

OFFICE ORDER REGARDING EXTENSION OF FILING ONLINE QUARTERLY RETURNS FOR THE PERIOD ENDING 30.09.2016.

ORDER

Consequent upon implementation of electronic governance under sub section (1) of Section 54-A of the Haryana Value Added Tax Act, 2003 vide order dated 05.08.2015, I am satisfied that circumstances exist for extension of period prescribed for furnishing of online quarterly returns. Therefore, in exercise of powers conferred upon me under sub section (3) of Section 54-A of the Haryana Value Added Tax Act, 2003, I, Shyamal Misra, IAS, Excise & Taxation Commissioner, Haryana, do hereby extend the period for filing online quarterly returns for the quarter ending 30.09.2016, upto 07.11.2016.

Panchkula
Dated: 28.10.2016

(SHYAMAL MISRA)
Excise & Taxation Commissioner,
Haryana, Panchkula.

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

CENTRE, STATES FAIL TO AGREE ON GST ROLLOUT, DECISION ON TAX RATE NEXT MONTH

A decision on the goods and services tax (GST) rate will be taken next month, Union finance minister Arun Jaitley said on Wednesday after the Centre and states failed to arrive at a consensus despite discussions over two days.

Jaitley, however, sounded confident about rolling out by April the single nationwide tax to replace a string of local levies, hailed as one of the biggest tax reforms in the country.

The discussions were initially planned for three days.

"We will finalise the tax structure at the next meeting," Jaitley said, adding the GST council, that includes representatives of all states, will meet again on November 3-4.

Officials said the discussions on Wednesday centred around a cess on "ultra-luxury and sin goods" that would be used to compensate states for any loss of revenue they may suffer in the first five years of introducing GST.

"The states could not come to a conclusion on whether a cess should be levied over and above GST. We have to come to a consensus on how the central government will garner the money to compensate the states," revenue secretary Hasmukh Adhia told HT.

Before this is decided, GST rates or its structure cannot be fixed, he added.

This extra levy will come to around Rs 50,000 crore, ministry sources said.

Officials said the states sought more time to study the impact of the compensation formula and its impact on their exchequer.

The landmark tax reforms secured Parliament's approval earlier this year after months of hard bargain between the BJP-led government and Opposition parties over the tax rate. The Congress had demanded a cap on the GST rate at 18%.

On Tuesday, the finance ministry had proposed a four-slab structure with two standard rates of 12% and 18%. Food items and other necessities would be taxed at 6% while luxury products would be taxed at 26%.

The Centre has set a November 22 deadline for finalising the GST structure.

"We know it's a daunting task to finish this in the next meeting (to fix GST rates with full consensus of states), but we will accomplish it," Adhia said.

Courtesy: Hindustan Times
19th October, 2016

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

JEWELLERY INDUSTRY SEEKS LOWER TAX UNDER GST

India's gems and jewellery industry wants the Goods and Services Tax (GST) on finished jewellery to be capped at 1.25%. It also demanded there be no GST on raw, cut and polished diamonds and coloured gem stones since most of these are exported.

"There is only 1% VAT on finished jewellery today. The status quo has to be maintained. On excise, there was an exemption limit of Rs 10 crore, which roughly covers 75% of the jewellers in India. So, we believe 1.25% is the right tax as it will be revenue neutral and the government won't lose money on excise and VAT," said Praveenshankar Pandya, chairman of Gems and Jewellery Export Promotion Council.

Currently, there is no duty on the import of diamonds with cut and polished diamonds being under zero-duty regime. Most states also charge value added tax (VAT) at 1% of the final sale price.

"India exports 93% of the diamond products. Any adverse tax on the import of diamonds or the trading of cut and polished diamonds will hurt India," said Pandya.

Between April and August, India's export of gems and jewellery rose 11% from $13 billion to $14.43 billion compared to last year. Exports of cut and polished diamonds rose from $8.64 billion to $9.19 billion during the same period, according to earlier data published by the council.

The industry is estimated to employ around 1 million people directly and 4.6 million semi-skilled workers in various areas. A higher taxation on the gems and jewellery sector may also hurt employment, he said.

In the GST Council meeting on Tuesday, a four slab structure – 6%, 12%, 18%, 24% and additional cess for luxury and demerit goods – was proposed. Gold is proposed to be taxed at 4%.

The All-India Gems and Jewellery Trade Federation has also proposed a minimal GST rate of 1.25% on gold and jewellery.

"The proposed rate of 4% will hamper the growth of the industry. It will also result in a drop in tax compliances and will encourage smuggling," said Sreedhar GV, chairman, GJF.

The federation plans to send a representation to the finance minister on GST this week, he added.

Courtesy: Hindustan Times
20th October, 2016

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

NEXT STEPS FOR THE GOODS AND SERVICES TAX

Unless the GST council, which has to take a final view, modifies the finance ministry's proposals, we will be stuck with a flawed GST

The goods and services tax (GST) has been much awaited as a game-changing reform which, if done properly, could add up to 2 percentage points to the growth rate. Unfortunately, the initial enthusiasm has been dampened greatly by the specific proposals put forward by the finance ministry. Unless the GST council, which has to take a final view, modifies these proposals, we will be stuck with what this paper editorially described on Monday as a "flawed GST".

This article focuses on how the council could retrieve the situation.

Flaws in the present proposal

The proposal before the council departs significantly from what experts regard as an the ideal GST: one with a single rate with very few exemptions. Instead, we have a multiple-rate structure in which about 100 items will be completely exempted (mainly food and other items, broadly those currently exempted from state VAT) while all others will be grouped into four categories attracting GST at 6%, 12%, 18% and 26%, respectively, with a separate cess on the items in the 26% slab to meet the expected cost of compensating states for any revenue loss. Petroleum products, alcohol, electricity and real estate are excluded, though petroleum products are expected to be included within five years.

Multiple rates present problems because a low rate for some goods forces a much higher rate for other goods to ensure overall revenue neutrality. This creates the possibility of misdeclaration of goods to benefit from the lower rate. This problem can be minimized if all items that are similar are taxed at the same rate. However, a second problem remains: High rates of duty encourage evasion. Experts favour a moderate common rate applied on all goods precisely because it is expected to encourage compliance, which is a major reason for moving to a GST.

International experience is relevant in this context. About 50 countries, including many developing countries, have switched to some form of value-added taxation in the past two decades and 80% of them have introduced only one rate, with some having two or more. The European Union has multiple rates, but they have recently released a Green Paper for discussion on how to converge to a single rate. Should we not leapfrog to best practice instead of trudging laboriously through paths others have trudged and then abandoned?

Policymakers like to have low rates on some commodities because they want the tax system to be progressive. But progressivity does not require different tax rates for too many commodities. If the exempted category forms a large proportion of the consumption of lower income groups, it will ensure that the total tax paid as a percentage of total consumption will be much lower for lower income groups. Besides, this approach to evaluating the impact of the GST on the poor is

incomplete because it gives no weight to the efficiency gains which are expected to produce higher growth, higher employment and higher wages.

This is not to suggest that there will be no gains at all from what is being proposed. The fact that the Centre and the states will both be levying taxes on the same base across the whole country, with both going up to the retail level, is clearly a gain in terms of broadening the base and making tax administration simpler. So is the abolition of the central sales tax (CST) in terms of unifying the market. The levy of a countervailing duty (CVD) on the import of a commodity at the same rate as the GST is also an important gain that will give domestic producers a level-playing field versus imported goods, something that has been missing for many years. The real problem is that the departure from an ideal GST will mean that productivity gains for the economy will be much less.

Vijay Kelkar, former chairman of the Thirteenth Finance Commission, which recommended how we might move to a GST, has recently stated (see his V. Sankar Aiyar lecture in Chennai) that the multiple-rate structure proposed, with numerous exemptions, will reduce the growth gains to one-fourth of what they might otherwise have been! In other words, instead of the extra 2 percentage points in GDP growth that has been talked about, we might gain only half a percentage point. The GST council must ponder whether we can throw away 1.5 percentage points of growth.

What can we do?

The first best solution is to follow the advice of Kelkar, Satya Poddar and V. Bhaskar, in their article published in this newspaper on 19 October, in which they recommended a common rate with an effort to offset the adverse impact on the poor through a direct benefit transfer (DBT). They estimate that a transfer of Rs2,000 per person per year would more than suffice to offset any increase in post-tax prices and would cost only Rs50,000 crore per year, which is a small price for a perfect tax. This is a neat solution which will have the added advantage that it will test out the effectiveness of DBTs, which could then be used more broadly to phase out other subsidies.

However, the best must not become the enemy of the good and the GST council may not be able to deliver the best. It may have to settle for the good, but in that case it must ensure that the good is good enough. If a single rate is not possible, the GST council could at least improve the proposal by reducing the number of rates immediately and announcing the intention to converge to a two-rate structure in the near future. This can be done as follows.

We should do away with the proposed 6% rate and move all these items into the 12% rate slab. The present list of items could bear a higher rate. If it is felt some of the items in the list are too sensitive, they could even be exempted in exchange for all the others going into the 12% group.

At the upper end we should do away with the proposed cess on items attracting 26%, which in any case violates the basic principle that all cesses would be subsumed in the GST. Instead, we should add an element of “sin tax” to the 18% rate to reflect a higher rate on “luxury consumption” and undesirable consumption (e.g. tobacco and also fossil fuels) and provide that this additional tax should not get credit in the GST chain.

This would give a three-rate structure: 12%, 18% and a third rate which is 18% plus sin tax. Many of the items in the present 26% slab should be included in the 18% rate slab while others that are in the nature of luxury items could be in the 18% plus sin tax slab.

The GST council could further announce that it envisages a convergence to two rates in future, with the manner of convergence to be decided later on the basis of experience in the first three years. The process of convergence could begin on 1 April 2020, after the general election.

Experience shows that small adjustments in prices are more easily accepted than large increases and we should capitalize on this in designing the convergence formula. For example, if experience in the next three years is positive, and states realize more revenue than they currently expect, one can imagine the GST council endorsing a proposal for convergence over three years by raising the 12% rate by 1 percentage point a year and similarly lowering the 18% rate by 1 percentage point. If this process begins in 2020, we would end up with a single standard rate around 15% by 2023, with a second higher rate including sin tax. Hopefully by then petroleum products will also be included in the GST, and real estate too.

The GST council is an important new institution of governance in our federal system. A recommendation from this body is perhaps the only way of depoliticizing the process of tax reforms, which is essential if the Centre and the states are to take bold decisions in this area.

An independent secretariat for the GST council

To accomplish this ambitious task, the GST council needs to be supported by an independent secretariat with technical expertise. State governments have a two-thirds vote share in the council and are therefore critical partners in decision making. However, most state governments lack the technical capacity to evaluate complex issues related to the design of indirect tax structures, especially since we have to consider the impact on the country as a whole and not just on individual states. The finance ministry is much better placed in this respect, and it can also draw on the expertise of the National Institute of Public Finance and Policy. However, the states are unlikely to accept finance ministry inputs as being sufficiently independent.

It is, therefore, necessary to set up a high-quality independent technical secretariat to service the council. The secretariat should be separate from the finance ministry and should report to the chairman of the council (i.e., the finance minister, but in his capacity as chairman and not as the finance minister). The unit should respond to concerns of state governments on the impact on the states of specific proposals. If the finance ministry wishes to make submissions to the council, these should be evaluated by the independent secretariat and the evaluation circulated to all members. The secretariat should also produce or commission technical papers that can guide future evolution of the rate structure and these should be put in the public domain. This would also enable business and industry groups to lobby their point of view with both the Central government and state governments.

The GST council has very limited time given the 1 April deadline. It cannot sort out all the problems in the short time available, which means that whatever is approved now will have some flaws. However, these flaws will attract less criticism if the council clearly states a longer-term objective of converging to two rates and establishes a mechanism for considering ways of getting there. This will certainly restore confidence in the seriousness of our commitment to reforms.

Courtesy: livemint
27th October, 2016

NEWS OF YOUR INTEREST

GST RATES: TRUST DEFICIT BETWEEN CENTRE, STATES WIDENS

With both the Centre and states hardening their stance, time is fast running out for the GST council to finalize the rates amid govt's bid to implement the tax reform from 1 April

New Delhi: In an indication of the growing trust deficit between the Centre and the states ahead of the crucial meeting of the Goods and Services Tax council on 3-4 November, both sides are hardening their stand on the tax rates and structure under this ambitious tax reform.

Over the past one week, both sides have sparred in the media to reiterate their rigid stance on the tax rates and slabs.

While last week Union finance minister Arun Jaitley met editors of prominent publications and television channels on GST over a cup of tea and followed it up with a Facebook post last week defending the government's proposal of a multi-tiered rate structure and a cess, Kerala finance minister Thomas Isaac wrote about his misgivings on the Centre's proposal in a column in the Indian Express

The Centre has proposed a multi-rate structure wherein gold will be taxed at 4% and the rest of the items at a tax rate of 6%, 12%, 18% and 26%. It has also proposed to levy an additional cess over and above 26% on demerit items like tobacco, luxury cars and aerated drinks and use these proceeds to pay compensation to states for the revenue losses arising due to GST, if any.

Jaitley in his post batted for "continuation of existing levies as cess for a period of five years before subsuming them as tax. This would include clean energy cess and cesses on luxury items and tobacco products, which in any case, presently also pay levy higher than 26%. This would ensure no additional burden on the tax payer and yet be able to compensate the losing states."

It is this cess as well as the highest slab of 26% that has emerged as the point of contention between the centre and the states. States are opposing the levy of cess arguing that the centre cannot deprive states of their rightful share of GST revenues and then use that amount to pay them compensation. They are also favouring a higher slab of around 28-30% arguing that items like consumer durable are already taxed at 27-34%.

"The most controversial is the upper rate of 26%. The commodities included in the higher bracket currently suffer 14.5% VAT (value added tax) and it makes no sense to reduce the SGST (state GST) to 13%. Besides, these commodities suffer Central excise duty of 16% and above; commodities such as SUVs attract excise rate as high as 34%. There are other taxes currently subsumed under the GST such as octroi, entry tax, cesses and service tax. Besides, one has also got to account for the cascading impact of tax prevalent in the existing system. The logic of reducing the tax incidence on consumer durables and demerit goods to 26% makes the GST severely regressive," Isaac wrote in the Indian Express voting for the 26% rate to be increased to 28%.

"The chief economic adviser's report had recommended the demerit goods rate of 40 per cent. It should be reintroduced in the structure and the states should be given flexibility in determining the demerit goods," he added.

Isaac also strongly opposed the Centre's proposal to levy a cess compensate states.

"The upper rate has been pegged at a lower rate so that the Central government has the option to impose the cess as and when necessary — of course, with the concurrence of the GST Council. This is not acceptable to the states. They are being deprived of their legitimate revenue so that compensation can be mobilized by the Centre," he said.

The sharing of administrative powers between the centre and the states is also back on the drawing board with both sides unable to arrive at a consensus on how to share dealers.

With both sides maintaining their hard stance, it will now be a race against time for the GST council to finalize the tax rates as well as the supporting legislations within the next three weeks. The government is targeting to implement GST from 1 April 2017 but for that has to get the central GST law and the integrated GST law passed in the upcoming winter session of Parliament.

Courtesy: livemint
30th October, 2016