SGA
LAW OFFICES

Issue 20
16th October 2016

"There is no worse tyranny than to force a man to pay for what he does not want merely because you think it would be good for him."

— Robert A. Heinlein

NOMINAL INDEX

ORDERS / DIRECTIONS & NOTIFICATION

PUNJAB

HARYANA

NEWS OF YOUR INTEREST

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SUPREME COURT OF INDIA

CIVIL APPEAL NO. 2806 OF 2009

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DUGAR TEA INDUSTRIES PVT. LTD
Vs
STATE OF ASSAM & ORS.

ANIL R. DAVE AND SHIVA KIRTI SINGH, JJ.

6th October, 2016

HF ▶ Revenue

Blending and Packing of tea does not amount to manufacturing so as to make it eligible for exemption under the Act.

EXEMPTION – ELIGIBILITY CERTIFICATE – PROMISSORY ESTOPPEL – MANUFACTURING - TEA – 'BLENDING AND PACKING' – ELIGIBILITY CERTIFICATE GRANTED TO APPELLANT-COMPANY ENGAGED IN BLENDING AND PACKING OF TEA UNDER THE INDUSTRIAL POLICY OF 1982 FRAMED BY GOVERNMENT – SUBSEQUENTLY, ACT ENACTED TO GIVE STATUTORY FORM TO THE SCHEME THEREBY EXEMPTING CERTAIN INDUSTRIES BUT EXCLUDING CERTAIN COMMODITIES- EXEMPTION DENIED TO APPELLANT UNDER THE ACT CONTENDING 'BLENDING AND PACKING' OF TEA DID NOT AMOUNT TO MANUFACTURING - WRIT DISMISSED BY HIGH COURT –PLEA OF ESTOPPEL RAISED BEFORE SUPREME COURT AND THAT EXEMPTION OUGHT TO BE GRANTED BY VIRTUE OF THE FACT THAT ELIGIBILITY CERTIFICATE STOOD GRANTED – HELD: PLEA OF PROMISSORY ESTOPPEL NOT TO APPLY AGAINST LEGAL PROVISIONS – NO 'CERTIFICATE OF AUTHORIZATION' ISSUED TO COMPANY TO CLAIM BENEFIT UNDER S. 4 OF THE ACT – RULE 2(f) MAKES IT CLEAR THAT TEA IS NOT A RAW MATERIAL SO AS TO BE ELIGIBLE FOR EXEMPTION WHEN BEING USED AS RAW MATERIAL FOR SALE AND PURCHASE – NO MANUFACTURING PROCESS INVOLVED – THOUGH ELIGIBILITY CERTIFICATE STOOD GRANTED UNDER THE SCHEME BUT IN SUBSEQUENT ACT FRAMED, TEA IS EXCLUDED FROM DEFINITION OF RAW MATERIAL- THEREFORE, IMPUGNED ORDERS OF HIGH COURT ARE UPHELD AND APPEAL FILED IS DISMISSED – *RULE 2(f) OF ASSAM INDUSTRIES (SALES TAX CONCESSION) RULES, 1986; SECTION 4 OF ASSAM INDUSTRIES (SALES TAX CONCESSION) ACT,*

Facts

The Appellant - Company is engaged in the business of blending and packing of 'Tea'. The State had notified its industrial policy in 1982 pursuant to which Assam Industries Act, 1987 had been enacted under which certain new industries were exempted from payment of Sales Tax but Exemption to certain commodities was not given. The unit commenced its production in 1988.

The Appellant was found eligible for certain concessions in pursuance to Industrial Policy of 1982 but the benefits were withdrawn under the Act contending that 'tea' was a raw material whereby no exemption could be given as the company was only packing it and not manufacturing it. The appellant challenged the denial of tax exemption which was rejected by the High court. Aggrieved by the order, an appeal is filed before the Supreme Court raising the following contentions:

1) *The Eligibility Certificate was granted in 1988 under the 1982 scheme by virtue of which the Appellant was to be given exemption.*
2) *The Respondent State is stopped from denying the benefit which had been assured under the Eligibility Certificate so granted and could not be withdrawn.*

Held:

1) *As per Rule 2(f) of the Assam Industries (Sales Tax Concession) Rules, 1986 it is clear that 'tea' is not to be included in 'raw material' and therefore no exemption could be claimed in respect of tea as a raw material for purchase and sale of tea.*
2) *To avail benefit as per Section 4 of the Act, Certificate of Authorisation is a must, which was never given to the company. Therefore, the appellant was not entitled to any exemption.*
3) *Regarding the plea of estoppel, it is held that there cannot be any estoppel against law. When there is legal provision to the effect that when tea is used as raw material, no tax exemption would be available under the provisions of the Act; none can claim exemption in respect of Sales Tax payable on sale and purchase of tea.*
4) *Though the Eligibility Certificate was given under the scheme but when the scheme was given a statutory form, tea is excluded from the definition of raw material and on the basis of scheme alone the appellant cannot claim benefit.*
5) *The authorities have rightly held that the company was packing and blending tea and not manufacturing it.*
6) *The impugned judgment is upheld and the appeal is dismissed.*

Cases referred:

- *Commissioner of Income Tax, Kerala v. Tara Agencies 2007 (6) SCC 429*

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

Senior Advocate: ***Mr. R. P. Bhatt***
Other Advocates: Mr. Manish Goswami, for Mr. Rameshwar Prasad Goyal

For Respondent(s):
Advocates: Mr. Avijit Roy, Ms. Kankana A. For M/s Corporate Law Group

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ANIL R. DAVE, J.

1. Being aggrieved by the common judgment delivered by the Gauhati High Court on 14th November, 2006, the appellants have approached this Court by way of these appeals.

2. The facts giving rise to the present litigation, in a nutshell, are as under: As the legal issues involved in all of the aforesaid appeals are same, for the purpose of convenience, we have taken facts from Civil Appeal No.2806 of 2009.

3. The appellant is a private limited company engaged in the business of blending and packing of tea. After some modernisation, it commenced its production in April, 1988. The case of the appellant-Company was with regard to availing sales tax concession declared by the respondent-State. Before going through the relevant provisions, we may record the fact that the respondent-State had notified its Industrial Policy in 1982, which had thereafter been revised in 1986. The said Policy had been framed so as to increase economic and industrial growth in the State.

4. In pursuance of the aforestated Policy, the respondent-State enacted Assam Industries (Sales Tax Concession) Act, 1987 (hereinafter referred to as "the Act"). By virtue of the provisions of the Act, certain new industries, subject to certain conditions, were to be given exemption from payment of sales tax but the exemption was not to be given in respect of certain commodities.

5. The case of the appellant-Company was that the Company was made eligible for certain concessions in pursuance of the Industrial Policy framed by the government, which had been declared in 1982, but ultimately the benefits had been denied to the company under the Act.

6. The reason for not giving the benefits under the Act, as stated by the respondent-Authorities, was that 'tea' was a raw material, in respect of which no exemption was to be given and the appellant-Company was merely blending and packing tea and was not having any manufacturing activity.

7. As the sales tax exemption had been denied to the appellant-Company, the appellant-Company filed petitions before the High Court challenging denial of the tax exemption but the petitions had been rejected by a common Judgment dated 9th September, 2003 and being aggrieved by the rejection of the petitions, the appellant-Company had also filed writ appeals, which have been dismissed by a common Judgment dated 14th November, 2006, and the said judgment has been challenged in these appeals.

8. The learned counsel appearing for the appellant-Company mainly submitted that the appellant-Company had been given an eligibility certificate dated 7th July, 1988 under the 1982 Incentive Scheme of Government of Assam as amended in 1986. By virtue of the said certificate dated 7th July, 1988, exemption in respect of payment of sales tax had been granted to the appellant-Company w.e.f. 14th April, 1988 to 13th April, 1993, as the appellant-Company was eligible to get the exemption from payment of sales tax under the 1986 Incentive Scheme of Government of Assam.

9. The learned counsel further submitted that as per the exemption granted under the eligibility certificate, the respondent-State and the Sales Tax Authorities of the respondent-State were bound to give exemption from payment of sales tax to the appellant, but the appellant had been denied the exemption, which was neither fair nor legal. He further submitted that as per the conditions incorporated in the scheme, the appellant-Company had already made investments and had already employed local persons of the State of Assam in service. Having complied with all the conditions, the eligibility certificate had been issued to the appellant-Company and therefore, the respondent-Authorities are estopped from denying the benefit which had been assured to it under the eligibility certificate dated 7th July, 1988. The learned counsel cited several judgments to substantiate his case that once an assurance was given to the appellant under the eligibility certificate that the appellant-Company would be enjoying exemption under the 1986 Incentive Scheme of Government of Assam, the exemption could not have been withdrawn by the respondent- Authorities.

10. On the other hand, the learned counsel appearing for the State Authorities supported the judgments delivered by the learned Single Judge as well as by the Division Bench of the High Court.

11. The learned counsel submitted that there cannot be any estoppel against legal provisions. He further submitted that as per Rule 2(f) of Assam Industries (Sales Tax Concession) Rules, 1988, 'tea' is not the raw material in respect of which exemption from payment of sales tax is to be granted. In view of the aforestated statutory provision and in view of the fact that tea was the 'raw material' which was being used by the appellant- Company for the purpose of blending and packing, the appellant was not entitled to any exemption.

12. Moreover, he submitted that the appellant- Company was not involved in any manufacturing activity. It was merely blending and packing tea and blending as well as packing of tea was not a manufacturing activity and therefore, also the appellant was not entitled to the benefit claimed by it.

13. The learned counsel thereafter submitted that according to the provisions of Section 4 of the Act, Certificate of Authorisation should have been procured by the appellant for availing the benefit under the Act. Such a Certificate of Authorisation had never been issued to the appellant- Company and therefore, the appellant was not entitled to the exemption in respect of payment of sales tax claimed by it.

14. For the aforestated reasons, the learned counsel submitted that the appeals deserved to be dismissed.

15. We have heard the learned counsel at length and have considered the relevant legal provisions and the judgments referred to by the learned counsel.

16. Upon perusal of the record and the law laid down by this Court in the light of the facts of the case, we are of the opinion that the view expressed by the Courts below cannot be said to be incorrect.

17. Rule 2(f) of the Assam Industries (Sales Tax Concession) Rules, 1986 reads as under:-

> *"2(f) 'Raw material' means any material or commodity capable of being used for manufacture of any other product specified in any authorisation certificate as intended by the holder for use by him as raw material in the manufacture of goods in the State for sale by him but shall not include the following commodities namely: tea, (b) coal, (c) liquefied petroleum gas, (d) plywood, (e) petrol, diesel oil and lubricants."*

In view of the aforestated Rule, it is crystal clear that tea is not to be included in "raw material" and therefore, no exemption could have been claimed by the Appellant Company in respect of 'tea' as a raw material for purchase as well as sale of tea. It is also pertinent to note that the appellant had earlier preferred Civil Rule No.4162 of 1991 before the High Court challenging validity of the aforestated Rule. The learned Single Judge, while rejecting the petition, vide order dated 17th August, 1988 held that Rule 2(f) of the 1988 Rules was legal and valid and the plea of promissory estoppel raised by the appellant was also not accepted. Against the said judgment, no appeal was filed by the appellant and therefore, the said issue had attained finality.

18. Another important thing is with regard to certificate of authorisation.

19. It is an admitted fact that so as to avail the benefit as per Section 4 of the Act, certificate of authorisation is a must. The said Section reads as under:

> *"4. Certificate of authorisation –*

(1) A person undertaking to manufacture in the State such goods, as may be prescribed, may make an application in the prescribed form to the prescribed authority and within the prescribed time for a certificate of authorisation for the purposes of sub-section (1) of section 3.

(2) If the authority to whom an application is made under sub-section (1) is satisfied that the application is in conformity with the provisions of the Act and the rules made there under it shall grant to the applicant a certificate of authorisation in the prescribed form which shall specify the class or classes of goods for purposes of sub-section (1) of section 3 and the period for which it shall remain valid.

(3) A certificate of authorisation granted under this section shall remain valid for a period of five years from the date of completion of effective steps for setting up the industrial unit in respect of which the certificate is granted.

(4) No certificate of authorisation shall be granted under sub-section (2) except in respect of such raw materials as may be prescribed.

(5) A certificate of authorisation granted under this section may:-

(a) be amended by the authority granting it if he is satisfied either on the application of the holder or, where no such application has been made, after due notice to the holder, that by reason of the holder having changed the name, place or nature of his business or the class or classes of goods bought, sold or manufactured by him or for any other reason the certificate of authorisation granted to him required to be amended; or

(b) be cancelled by the authority granting it, where he is satisfied after due notice to the holder that the holder has ceased to carry on business or for any other sufficient reason."

20. As stated hereinabove, it is an admitted fact that no certificate of authorisation, as provided under the Act, had ever been granted to the appellant-Company and therefore, in our opinion, the courts below were absolutely right to the effect that the appellant was not entitled to any sales tax exemption.

21. So far as the averments with regard to estoppel are concerned, it is a settled legal position that there cannot be any estoppel against law. When there is a legal provision to the effect that when tea is used as raw material, no tax exemption would be available under the provisions of the Act, none can claim tax exemption in respect of sales tax payable on purchase or sale of tea. It is true that an eligibility certificate had been issued to the appellant-Company in pursuance of the 1986 Incentive Scheme of Government of Assam but when the said Scheme was given a statutory form under the Act, 'tea' had been excluded from the definition of raw material and therefore, on the basis of the eligibility certificate issued under the 1986 Incentive Scheme of Government of Assam, the appellant cannot claim any benefit.

22. It is also pertinent to note that the respondent-Authorities have rightly held that the appellant was not in the business of 'manufacturing' tea but was merely blending and packing tea, which does not amount to 'manufacturing' of tea. We find substance in the said stand taken by the respondent-Authorities as the said view has been fortified by a decision of this Court in ***Commissioner of Income Tax, Kerala v. Tara Agencies 2007 (6) SCC 429.***

23. For the aforestated reasons assigned by the State in the impugned order passed as well as in the judgments delivered by the High Court, we cannot find fault with the impugned

judgment and therefore, these appeals deserve dismissal. 24. The appeals are accordingly dismissed. However, there shall be no order as to costs.

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PUNJAB & HARYANA HIGH COURT

GSTR NO. 35 OF 2006

BEETEL TELETECH LIMITED
Vs
STATE OF HARYANA

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

8th July, 2016

HF ▶ Assessee/Dealer

Exemption notification issued u/s 8(5) of CST Act, 1956 in question is relatable to goods and not dealer and hence exemption is available.

EXEMPTION NOTIFICATION – WHETHER APPLICABLE TO DEALER OR GOODS – GOODS (PUSHBUTTON TELEPHONES) PURCHASED BY APPELLANT COMPANY FOR FURTHER SALE WITHIN STATE AND INTERSTATE SALE – ASSESSMENT FRAMED – SALES EXEMPTED IN VIEW OF DECLARATION OF FORM ST 14-A- REVISION TAKEN UP – INTERPRETING THE EXEMPTION NOTIFICATION, SALES NOT EXEMPTED TO SUCH EXTENT AS MADE BY APPELLANT COMPANY WITHIN AND OUTSIDE STATE– FOLLOWING JUDGMENT PASSED BY SUPREME COURT IN A SIMILAR MATTER, PETITIONER COMPANY GIVEN BENEFIT HOLDING THAT NOTIFICATION IS RELATABLE TO GOODS AND NOT DEALER – *SECTION 8(5) OF CST ACT, 1956. RULE 28A OF HGST RULES, 1975*

Facts:
The appellant firm is engaged in trading of push button telephones manufactured by M/s Bharti Telecom limited. In 1995-96 the appellant company purchased these goods from Bharti Telecom Ltd. as exempted goods for sale. Assessment was framed whereby the sales made were treated as exempted sales under the provisions of Rule 28 A (4) © on the production of declaration form ST 14-A. However, the Revisional Authority taking up the matter suo moto held that exemption to the appellant on sale of such goods to the extent these were made by the Appellant Company in course of interstate trade and commerce was not allowed and accordingly imposed tax on such transactions. Appeal filed before Tribunal was dismissed. Thus, questioning whether the exemption notification was relatable to the goods or the person selling it, the case has been brought before the High court.

Held:
In view of a similar case brought before the Supreme Court and judgment given by it, the answer is given in favour of petitioner that the exemption notification is relatable to goods and not the dealer and Assessee is entitled to the exemption.

Present: Mr. Saurabh Gautam, Advocate for
Mr. Rohit Khanna, Advocate for the petitioner.
Mr. Ankur Mittal, Addl. A.G. Haryana.

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RAJESH BINDAL, J.

1. The following question of law was referred to this Court for its opinion in view of the directions issued by this Court vide order dated 23.1.2016 passed in STC No. 3 of 2003:-

> *"Whether the Notification, dated 4th September 1995, issued under Section 8(5) of the Central Sales Tax Act, 1956 is relatable to the exemption of goods or the person selling it?"*

2. The case pertains to the assessment year 1995-96. The facts as noticed in the statement of case are reproduced hereunder:

> *"M/s Siemens Telecom Limited, Now known as Bharti Systel Limited, Gurgaon is the registered dealer under the Haryana General Sales Tax Act, 1973 as well as Central Sales Tax Act, 1956. The firm is engaged in trading of Electronic Push Button Telephones manufactured by M/s Bharti Telecom Limited, Gurgaon. During the assessment year 1995-96 the appellant company purchased these goods from M/s Bharti Telecom Limited, Gurgaon as exempted goods and sold the same within the State of Haryana as well as in the course of inter state trade and commerce. The assessing authority while framing the assessment treated them as exempted sales under the provisions of Rule 28 A (4) (c) on the production of declaration form ST-14A. However, the revisional authority taking up the matter suo motu held that exemption to the appellant on sale of such goods to the extent these were made by the appellant company in the course of inter state trade and commerce was not allowed and accordingly imposed tax on such transactions and created an additional liability against the appellant. The dealer filed an appeal before Sales Tax Tribunal, Haryana which was dismissed."*

3. An identical issue came up for consideration before Hon'ble the Supreme Court in ***Civil Appeal No. 1410 of 2007, M/s CASIO India Co. Pvt. Ltd. Versus State of Haryana, decided on 29.3.2016***, wherein considering the same notification under similar circumstance it was opined that at all subsequent stages, the goods manufactured by an exempted unit shall be exempted. The opinion expressed in paras 19 to 22 by Hon'ble the Supreme Court in the aforesaid case is extracted below:

> *19. We have reproduced the exemption notification above and referred to the language employed. At this juncture, it is absolutely necessary to understand the language employed in the proviso to the notification. If there was no proviso to the notification there would have been no difficulty whatsoever in holding that the exemption is qua the goods manufactured and was not curtailed or restricted to the sales made by the manufacturer dealer and would not apply to the second or subsequent sales made by a trader, who buys the goods from the manufacturer-dealer and sells the same in the course of inter-state trade or commerce. It is pertinent to note that, clause (ii) of sub-rule (n) refers to sale of finished products in the course of inter-state trade or commerce where the finished products are manufactured by eligible industrial unit. There is no stipulation that only the first sale or the sale by the eligible industrial unit in Inter State or Trade would be exempt. The confusion arises, as it seems to us, in the proviso to the notification which states that the manufacturer-dealer should not have charged tax. It needs no special emphasis to mention that provisos can serve various purpose. The normal function is to qualify something enacted*

therein but for the said proviso would fall within the purview of the enactment. It is in the nature of exception. (See : Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Officer) Hidayatullah, J. (as his Lordship then was) in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v.Subhash Chandra Yograj Sinha had observed that a proviso is generally added to an enactment to qualify or create an exception to what is in the enactment, and the proviso is not interpreted as stating a general rule. Further, except for instances dealt with in the proviso, the same should not be used for interpreting the main provision/enactment, so as to exclude something by implication. It is by nature of an addendum or dealing with a subject matter which is foreign to the main enactment. (See : CIT, Mysore etc. v Indo Mercantile Bank Ltd). Proviso should not be normally construed as nullifying the enactment or as taking away completely a right conferred.

20. Read in this manner, we do not think the proviso should be given a greater or more significant role in interpretation of the main part of the notification, except as carving out an exception. It means and implies that the requirement of the proviso should be satisfied i.e. manufacturing dealer should not have charged the tax. The proviso would not scuttle or negate the main provision by holding that the first transaction by the eligible manufacturing dealer in the course by way of inter-state sale would be exempt but if the inter-state sale is made by trader/purchaser, the same would not be exempt. That will not be the correct understanding of the privies. Giving over due and extended implied interpretation to the proviso in the notification will nullify and unreasonably restrict the general and plain words of the main notification. Such construction is not warranted.

21. Quite apart from the above, Rule 28A(4) (c) supports the interpretation and does not counter it. The said rule exempts all intra-state sales including subsequent sales. The reason for enacting this clause is obvious. The intention is to exempt all subsequent stages in the State of Haryana and the eligible product can be sold a number of times, without payment of tax. Intrastate sales refer to sale between two parties within the State of Haryana. Inter-state transaction results in movement of goods from State of Haryana to another State. Thus, clause (ii) of sub-rule 2 (4) refers to interstate trade or commerce and the notification does not refer to subsequent sales as in case of Rule 28A (4) (c). Whether or not tax should be paid on subsequent sales/purchase in the other State cannot be made subject matter of Rule 28A or the notification. Inter-State sale from the State of Haryana will be only once or not a repeated one. Therefore, there is no requirement of reference to subsequent sale. In this context, it is rightly submitted by the assessee that there is only one inter-State sale from the State of Haryana and the interpretation as suggested by the revenue would tantamount to making the exempted goods chargeable to tax, and the said goods would cease to enjoy the competitive edge given to the manufacturer in the State of Haryana. It will be counter-productive.

22. In view of aforesaid analysis, we allow the appeals and set aside all the impugned orders and hold that the assesses shall reap the benefit of the notification dated 4.9.1995 as interpreted by us. There shall be no order as to costs.

4. As the question identical to one as referred to this Court by the Tribunal has already been answered by Hon'ble the Supreme Court, while following the same, we answer the

question opining that the exemption as envisaged vide notification dated 4.9.1995 is relatable to goods and not the dealer. The reference is answered in favour of the petitioner.

5. The reference stands disposed of.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 12888 OF 2015

GOODYEAR INDIA LTD.
Vs
UT, CHANDIGARH AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

8th August, 2016

HF ▶ Assessee

No interest is to be paid by assessee on account of error made by bank in crediting the account of the petitioner with the amount of tax deposited by it.

ASSESSMENT - INTEREST – CLERICAL MISTAKE OF BANK – ADDITIONAL DEMAND RAISED – AMOUNT DEPOSITED WITH BANK – PART OF AMOUNT DEPOSITED WRONGLY CREDITED TO ACCOUNT OF SOME OTHER FIRM BY BANK – ERROR MADE INTIMATED TO THE AETC BY BANK – WRIT FILED PRAYING THAT PETITIONER NOT TO BE MADE LIABLE FOR PAYMENT OF INTEREST ON ACCOUNT OF MISTAKE OF BANK – HELD : PETITIONER NOT TO PAY INTEREST AS THE AMOUNT OF ADDITIONAL DEMAND STOOD AID BY IT BEFORE DUE DATE – ASSESSMENT ORDER TO BE RECTIFIED WITHIN A PERIOD OF FOUR WEEKS – REFUND TO BE GRANTED , IF ANY, AFTER ADJUSTING THE AMOUNT DUE FROM THE PETITIONER – WRIT DISPOSED OF – *SECTION 32 OF PUNJAB VAT ACT, 2005.*

Facts

In this case, an assessment order was passed for the year 2011-12 raising a demand against the petitioner. It is contended that the petitioner had deposited a sum of Rs 15,63,097 in the account of the department with Axis Bank on 18.7.2011. The department gave credit of Rs 10, 80,183 only. If the credit of entire amount deposited is given, the petitioner would not be liable to pay for any additional demand. On the contrary it would be entitled to refund. The Bank has submitted that the bank had received the said amount but erroneously credited the balance amount of Rs 4,82,914 /-to the account of some other firm but had intimated to the AETC regarding the error vide letter dated 14.7.2012. Thus, the petitioner has prayed that it would not be liable to pay any interest merely on account of error of bank.

Held:

The department is directed to rectify the assessment order by giving credit of Rs 4,82,914/- to the petitioner which admittedly stood deposited by it and the bank. It should be done within a period of four weeks and the petitioner shall not be liable to pay any interest on the demand raised as the amount admittedly stood paid with the department before the due date. If the petitioner is found entitled to refund, the same shall be paid after adjusting any amount due from the petitioner.

Present: Mr. Rajiv Agnihotri, Advocate for the petitioner.

Mr. Daman Dhir, Advocate for
Mr. APS Gill, Advocate for respondents No. 1, 2 and 4.
Mr. Yogesh Goel, Advocate for respondent No. 3.

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RAJESH BINDAL, J.

1. The petitioner has approached this Court against the order dated 03.04.2015 (Annexure P-1) passed by the Excise & Taxation Officer-cum-Designated Officer-cum-Notified Authority, Ward-3, U.T., Chandigarh for the assessment year 2011-12, whereby demand of Rs.3,55,242/- was created.

2. The contention of learned counsel for the petitioner is that it had deposited a sum of Rs. 15, 63,097/- in the account of the Department with Axis Bank on 18.07.2011. However, the Department had given credit of Rs.10,80,183/- and not for the balance amount of Rs.4,82,914/-. If the credit of the entire amount deposited by the petitioner is given, there would be no additional demand against the petitioner, rather petitioner would be entitled to refund. The amount, credit of which has not been given is more than the demand raised.

3. Learned counsel for respondent No. 3-Bank submitted that, the bank had received a sum of Rs. 15,63,097/- from the petitioner. The entire amount was credited in the account of the Excise & Taxation Department on 23.07.2011 after the cheque given by the petitioner was encashed. He further submitted that due to clerical error, sum of Rs.10,80,183/- was credited in the account of the petitioner whereas balance amount of Rs.4,82,914 was credited in the account of Naresh Marble Company Ltd. When the error came to the notice of the bank, Assistant Excise and Taxation Commissioner, Chandigarh was informed vide letter dated 14.07.2012 and it was specifically mentioned that the petitioner had deposited a sum of Rs.15,63,097/- and deserves to be given credit thereof.

4. Learned counsel for the respondent-Department submitted that the aforesaid communication was received by the Department from the bank. He did not dispute the fact that the credit of amount which was shown by the bank in the account of Naresh Marble Company Ltd. was not given to that firm. He further submitted, on instructions from Ravi Kumar ETI, Excise and Taxation Department, U.T., Chandigarh, that once the bank has clarified that there was an error in mentioning the names against whom the amount was credited, the same shall be corrected by the Department and credit of additional amount of Rs.4,82,914/- will be granted in the petitioner's account and the assessment order passed on 03.04.2015 shall be rectified.

5. At this stage, learned counsel for the petitioner submitted that as admittedly the petitioner had deposited the amount of tax due from the petitioner on 23.07.2011, the petitioner shall not be liable to pay any interest merely because on account of an error by the bank the credit thereof is being given now.

6. To this contention, learned counsel for the Department fairly submitted that as there was error in the transaction as noticed above and the petitioner had deposited the amount well in time but the credit could not be given at the time of framing of the assessment, no interest shall be charged from the petitioner and to whatever refund the petitioner shall be entitled to after the order is rectified, the same shall be granted after adjusting any demand due from the petitioner.

7. After hearing learned counsel for the parties and considering their fair stand, the present petition is disposed of with a direction to respondent No. 2 to rectify the order of assessment dated 03.04.2015 by giving credit of Rs.4,82,914/- to the petitioner which admittedly stood deposited by it, credit of which was given by the bank in the account of the

Department on 23.07.2011. Needful shall be done within a period of four weeks from today. The petitioner shall not be liable to pay any interest on the demand raised by the Department in the assessment order dated 03.04.2015 as admittedly the amount stood deposited with the Department before the due date.

8. In case the petitioner is entitled for refund after the order of assessment is rectified, the same shall be granted to it after adjusting any amount due from the petitioner.

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PUNJAB & HARYANA HIGH COURT

VATAP NO. 65 OF 2012

MODERN DAIRIES LIMITED
Vs
STATE OF HARYANA AND ANOTHER

RAJESH BINDAL AND DARSHAN SINGH, JJ.

5th October, 2016

HF ▶ Assessee / Dealer

Input Tax Credit is allowed as the kind of items purchased are 'machinery items' to be used for 'manufacturing process' and are not 'infrastructure items'.

INPUT TAX CREDIT – ITC CLAIMED ON MACHINERY ITEMS PURCHASED FOR MANUFACTURING PROCESS – DENIAL OF ON THE GROUND THAT THE SAID ITEMS WERE INFRASTRUCTURE GOODS – APPEAL BEFORE HIGH COURT – HELD: TRIBUNAL ORDER SHOWS KIND OF ITEMS PURCHASED – SAID ITEMS DO NOT FORM INFRASTRUCTURE ITEMS BUT ARE PART OF MACHINERY – INPUT TAX CREDIT TO BE ALLOWED – CALCULATION OF SAME TO BE DONE AS PER PROVISO TO SECTION 8 AND CONDITIONS OF SCHEDULE E – APPEAL DISPOSED OF – *SECTION 8 OF HVAT ACT, 2005*

Facts

The Appellant – Assessee is engaged in manufacturing, sale and purchase of milk and milk products. The ITC for the assessment year 2005-06 was rejected which was claimed by petitioner as 'machinery items' to be used in manufacturing process. The claim was denied holding that those items were to be used as 'infrastructure goods' .Aggrieved by the orders of the authorities below, an appeal is filed before the High Court contending that the items listed in Schedule E whereby nil input tax is to be given, nowhere mentioned the items used by the appellant in this case.

Held:

A perusal of the order of Tribunal shows kind of goods purchased by appellant on which ITC has been declined. None of those items can be said to be of category, which are used for construction of building, rather these are part of machinery. Therefore, the appellant is entitled to ITC on the goods purchased by him. However, while calculating ITC, conditions in schedule E and Section 8(1) of the Act have to be kept in view. The appeal is disposed of.

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

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RAJESH BINDAL, J.

1. The assessee is in appeal before this Court, which was admitted for determination of the following substantial question of law arising out of the order dated 16.3.2010 passed by the Haryana Tax Tribunal (for short, 'the Tribunal') in STA No. 393 and 394 of 2009-10:

> *"Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in rejecting the claim of the assessee for the Input Tax Credit, even though such purchases are not disqualified as per Schedule-'E' attached to the Haryan VAT Act, 2003?"*

2. Learned counsel for the appellant submitted that the appellant is a registered dealer under the provisions of Haryana Value Added Tax Act, 2003 (for short, 'the Act'). It is engaged in the business of manufacture, sale and purchase of milk and milk products. For the assessment year in question, namely, 2005-06, the gross turnover of the appellant was Rs. 87,41,26,563/-. While framing the assessment vide order dated 30.1.2009, the Deputy Excise & Taxation Commissioner-cum-Assessing Authority, Karnal, rejected the input credit on purchases worth Rs.29,86,837/-, as claimed by the appellant for purchase of machinery items, which were used in the process of manufacturing. The Assessing Authority was wrong in opining that the goods were in the nature of 'infrastructure goods'. Aggrieved against the rejection of input tax credit, the appellant preferred appeal to the Joint Excise & Taxation Commissioner (Appeals), Ambala, where the order passed by the Assessing Authority was upheld. Still aggrieved, the appellant preferred appeal before the Tribunal. The Tribunal while even noticing the kind of goods purchased, on which input tax credit was claimed, rejected the appeal. It is the aforesaid order, which has been challenged before this Court.

3. Learned counsel for the appellant submitted that Section 8 the the Act provides for determination of Input Tax Credit. In terms of the aforesaid section, input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him, but shall not include tax paid in respect of goods specified in Schedule 'E' used or disposed of in the circumstances mentioned against such goods. Schedule 'E' appended to the Act provides for a list of goods where input tax is 'nil'. Serial No. 1 in the list will not be relevant as it provides for Petroleum products and natural gas. Serial No. 2 is also not relevant as it contains capital goods when intended to be used mainly in the manufacture of exempted goods or in the telecommunications, energy or mining or generation and distribution of electric energy or any other form of power or when it forms part of gross block on the date of cancellation of registration certificate. Items at Serial Nos. 3 and 4 were omitted with effect from 1.7.2005, hence, will not be relevant for the assessment year in question. Item at Serial No. 5 provides for all goods except those mentioned at Serial Nos. 1 and 2. None of the circumstances as enumerated in column 3 of the Schedule exists in the present case on the eventuality of which the input tax credit will not be admissible.

4. Learned counsel for the petitioner further submitted that the kind of goods as have been noticed in the order of the Tribunal itself shows that those were part of the machinery being utilized in the process for manufacturing. There was nothing to suggest that with the kind of goods infrastructure could be created. He further referred to an earlier order passed by the Tribunal in ***Amir Chand Jagdish Kumar, Gharaunda, Karnal vs State of Haryana (2009) 33 PHT 182 (HTT)***, where tax paid on purchase of machinery and its part in manufacture of rice exported out of India was held to be admissible as input tax credit. Despite the earlier order of the Tribunal on the issue being there still a different view was taken. Hence, the action of the authorities is totally contrary to the provisions of law. The substantial question of law deserves to be answered in favour of the assessee.

5. On the other hand, learned counsel for the State submitted that Section 2(1)(w) of the Act defines 'input tax', whereas Section 2(1)(zl) of the Act defines 'input invoice'. It clearly mentions that the goods must be used for manufacturing or processing of goods for sale. Section 8 of the Act and Schedule-'E' are not to be read in isolation, rather these are to be read together with Sections 2(1)(w) and 2(1)(zl) of the Act. Some of the goods in question were used by the appellant for construction of building, hence, input tax credit has rightly been declined by the authorities. The earlier order passed by the Tribunal in the case of Amir Chand Jagdish Kumar, Gharaunda, Karnal's case (supra) is distinguishable as in that case the tax was paid on purchase of machinery and its parts, which were used for manufacture of rice.

6. In response, learned counsel for the appellant submitted that even if the goods purchased by the appellant fall in the category of capital goods, still if Schedule-'E' is read, the appellant will be entitled to input tax credit on their purchase as none of the circumstance exists on account of which the input tax credit shall be 'nil'. 'Capital goods' have been defined in Section 2(1)(g) of the Act.

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

8. The relevant provisions of the Act are reproduced hereunder:-

> ***"2(1)(g) "capital goods"*** *means plant, machinery, dies, tools and equipment purchased for use in the State in manufacture or processing of goods for sale or in the telecommunication network or in mining or in the generation or distribution of electricity or other form of power, provided such purchase is capitalised;*
>
> *xxx* *xxx* *xxx*
>
> ***2(1)(w) "input tax"*** *means the amount of tax paid to the State in respect of goods sold to a VAT dealer, which such dealer is allowed to take credit of as payment of tax by him, calculated in accordance with the provisions of section 8;*
>
> *xxx* *xxx* *xxx*
>
> ***2(1)(zl) "tax invoice"*** *means an invoice required to be issued according to the provisions of sub-section (2) of section 28 by a VAT dealer for sale of taxable goods to another VAT dealer for resale by him or for use by him in manufacture or processing of goods for sale, and which entitles him to claim input tax in accordance with the provisions of section 8;*
>
> *xxx* *xxx* *xxx*
>
> ***Section 8.*** *(1) Input tax in respect of any goods purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such goods to him and shall, in case of a dealer who is liable to pay tax under sub-section(1) of section 3 or, as the case may be, makes an application for registration in time under sub-section(2) of section 11, include the tax paid under this Act and the Act of 1973 in respect of goods (except capital goods) held in stock by him on the day he becomes liable to pay tax but shall not include tax paid in respect of goods specified in Schedule E used or disposed of in the circumstances mentioned against such goods:*
>
> *Provided that where the goods purchased in the State are used or disposed of partly in the circumstances mentioned in Schedule E and partly otherwise, the input tax in respect of such goods shall be computed pro rata:*

Provided further that if input tax in respect of any goods purchased in the State has been availed of but such goods are subsequently used or disposed of in the circumstances mentioned in Schedule E, the input tax in respect of such goods shall be reversed.

(2) A tax invoice issued to a VAT dealer showing the tax charged to him on the sale of invoiced goods shall, subject to the provisions of sub-section (3), be sufficient proof of the tax paid on such goods for the purpose of subsection (1).

(3) Where any claim of input tax in respect of any goods sold to a dealer is called into question in any proceeding under this Act, the authority conducting such proceeding may require such dealer to produce before it in addition to the tax invoice issued to him by the selling dealer in respect of the sale of the goods, a certificate furnished to him in the prescribed form and manner by the selling dealer; and such authority shall allow the claim only if it is satisfied after making such inquiry as it may deem necessary that the particulars contained in the certificate produced before it are true and correct.

(4) The State Government may, from time to time, frame rules consistent with the provisions of this Act for computation of input tax and when such rules are framed, no input tax shall be computed except in accordance with such rules.

xxx *xxx* *xxx*

SCHEDULE – E

(Refer sub-section (1) of section 8)

Sr. No.	***Description of goods***	***Circumstances in which input tax shall be nil***
1	*2*	*3*
1	*Petroleum products and natural gas*	*(i) When used as fuel* *(ii) When exported out of State.*
2.	*Capital goods*	*(i) When intended to be used mainly in the manufacture of exempted goods or in the telecommunications network or mining or the generation and distribution of electric energy or other form of power; or* *(ii) When forming part of gross block on the date of cancellation of the registration certificate.*
3	*(x x x)*	
4	*(x x x)*	
5	*All goods except those mentioned at Serial Nos. 1 and 2*	*(i) When used telecommunications network, in mining, or the generation and distribution of electricity or other form of power;* *(ii) When exported out of State or disposed of*

		otherwise than by sale; *(iii) When used in the manufacture or packing of exempted goods except when such goods are sold in the course of export of goods out of the territory of India;* *(iv) When used in manufacture or packing of taxable goods which are exported out of State or disposed of otherwise than by sale;* *(v) When left in stock, whether in the form purchased or in manufactured or processed form, on the date of cancellation of the registration certificate.* *(vi) When sold by Canteen Store Department.*

9. The kind of goods purchased by the appellant, input tax credit on which has been declined, as noticed in the order passed by the Tribunal, are extracted below:-

> *"cooper wire, Taflon Tape, Gasket, Union, Socket etc. Fire Bricks or Boiler, G. I. Pipe, M.S. Angle, Flat, T. Iron, M.S. Flange, Drill, Shaft sleeve, Industrial Fan, M.S. Channel, Angle, Fire Bricks, Rubber Ring, Electric Cable, Wire Cold Rolled Strips, Tape Cutter, etc."*

10. A perusal of the aforesaid goods shows that none of them can be said to be of the category, which are used for construction of building, rather these are parts of machinery. In fact, none of the authorities were very clear on the issue as vague findings were recorded. The Assessing Authority opined that these were 'infrastructure goods'. The First Appellate Authority was again vague while opining that these were used in building, etc. or used in tax free sales or covered in job work activities, whereas the Tribunal again opined that these were related to infrastructure activities.

11. The term 'capital goods' has been defined in Section 2(1)(g) of the Act to mean plant, machinery, dies, tools and equipment purchased for use in the State in manufacture or processing of goods for sale. 'Input Tax' has been defined in Section 2(1)(w) of the Act to mean the amount of tax paid to the State in respect of goods sold to a VAT dealer, which such dealer is allowed to take credit of as payment of tax by him, calculated in accordance with the provisions of Section 8 of the Act. "Tax Invoice" has been defined in Section 2(1)(zl) of the Act to mean an invoice required to be issued as per Section 28 (2) of the Act for sale of taxable goods by a dealer to another dealer for resale by him or for use by him in manufacture or processing of goods for sale, and which entitles him to claim input tax as per provisions of Section 8 of the Act. Section 8(1) of the Act provides that input tax in respect of any good purchased by a VAT dealer shall be the amount of tax paid to the State on the sale of such good to him but shall not include tax paid in respect of goods specified in Schedule 'E' used or disposed of in the circumstances mentioned against such goods. Schedule-'E' at the relevant time provided for three different categories of goods wherein in the circumstances mentioned in column 3 thereof the input tax credit was 'nil'.

12. The goods purchased by the appellant do not fall in the categories described at Sr. Nos. 1 and 2. 13. Entry 5 in Schedule-'E' is general in nature. All goods which are not forming part of the goods mentioned at Sr. Nos. 1 and 2 will form part of this entry. If the goods purchased by the appellant were not in the category of capital goods, the same will fall in the goods mentioned at Sr. No. 5. Considering the conditions as provided in column no.3, the appellant is not in the business of telecommunication, mining or generation and distribution of electricity, hence, the goods could not possibly be used for that purpose. The goods have not

been exported out of State or disposed of otherwise than by way of sale. Clause (iii) in the circumstances mentioned in Column 5 provides that if the goods have been used in manufacture or packing of exempted goods then the benefit of input tax credit is notavailable. Conditions laid down in Clauses (iv) and (v), are also not applicable in the case in hand as neither the goods are in stock nor those have been sold to Canteen Store Department. First proviso to Section 8(1) of the Act provides that if the goods so purchased in the State are used or disposed of partly in the circumstance mentioned in Schedule "E' and partly otherwise the input tax credit in respect of such goods shall be computed on pro-rata basis.

13. Accordingly the appellant shall be entitled to input tax credit on the goods purchased by him. However, while calculating input tax credit conditions in Schedule 'E' and provisos to Section 8(1) of the Act have to be kept in view.

15. For the reasons mentioned above, the substantial question of law, as referred to above, is answered accordingly. The appeal is disposed of.

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PUNJAB & HARYANA HIGH COURT

CEA NO. 37 OF 2015

SHREEWOOD PRODUCTS PVT. LTD.
Vs
COMMISSIONER OF CENTRAL EXCISE

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

27th July, 2016

HF ▶ Assessee

Interest is to be paid after the expiry of prescribed period even if no formal application is made in that regard.

INTEREST – REFUND – PREDEPOSIT MADE FOR HEARING OF APPEAL BY TRIBUNAL – APPEAL ALLOWED BY TRIBUNAL – CLAIM OF REFUND OF AMOUNT DEPOSITED MADE BY ASSESSEE-APPELLANT - APPLICATION FILED IN THIS REGARD IN MAY 2008 – AMOUNT REFUNDED PARTIALLY IN JANUARY 2009 AND PARTIALLY IN APRIL 2009 - CLAIM OF INTEREST ON DELAYED PAYMENT OF REFUND DENIED TO APPELLANT CONTENDING THE AMOUNT STOOD REFUNDED WITHIN THREE MONTHS OF CLAIM OF REFUND MADE BY APPELLANT IN OCTOBER 2008 - APPEAL BEFORE HIGH COURT – DATE OF APPLICATION WRONGLY NOTICED BY AUTHORITIES – NO FORMAL APPLICATION IS REQUIRED TO BE MADE FOR CLAIM OF REFUND – APPELLANT HELD TO BE ENTITLED TO INTEREST @ 12% FOR THE PERIOD AFTER THREE MONTHS OF PASSING OF ORDER BY TRIBUNAL TILL REFUND WAS GRANTED APPEAL DISPOSED OF -

Facts

The appellant is engaged in manufacturing of plywood, block boards, flush doors and penal doors. The respondent department had levied excise duty, interest and penalty on the appellant which was duly deposited by it. The appeal was heard and allowed by Tribunal setting aside the demand. The appellant thus became entitled to refund of the amount deposited by it. It made an application on 22/5/2008. Partially the refund was granted to the Appellant in January 2009 and partially in April 2009. The appellant claimed interest on delayed payment of amount. The claim of appellant was declined on the ground that the amount was refunded within three months from claim of refund on 21.10.2008 and partially within three months after passing of order by commissioner. An appeal is filed before High court after dismissal of appeal before Tribunal.

Held:

The circular issued by Government of India, Ministry of Finance says that no formal application is required for claim of refund. It has to be made within three months of passing of order and assessee is entitled to interest. The application in this case is filed in May 2008 which is erroneously said to be done in October 2008 by the department. Therefore, the appellant is entitled to refund @12% per annum for the period after three months till the

refund was granted after passing of the order of Tribunal on 2.5.2008.

Case referred:

- *Commissioner of Central Excise, Hyderabad v. I.T.C. Ltd.. 2005 (179) ELT 15 (SC)*
- *LSE Securities Ltd, v. Assistant Commissioner, Service Tax Division, Chandigarh, CWP No. 22541 of 2012*
- *Haryana Vanaspati & General Mill v. The State of Haryana and another, CWP No. 16213 of 2014*

Present: Mr. Jagmohan Bansal, Advocate for the appellant.
Mr. Tajender K. Joshi, Advocate for the respondent.

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RAJESH BINDAL, J.

1. The present appeal was filed by the assessee arising out of Final Order No. A/50039/2015-EX (DB) dated 14.1.2015, passed by Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short, 'the Tribunal') raising the following substantial questions of law:

> *"(i) Whether the appellant is entitled to interest w.e.f. 21.8.2008 ?*
>
> *(ii) Whether the appellant is entitled to interest @ 12% or 6% in terms of Section 1 IBB of the Act ?*
>
> *(iii) Whether the findings of learned Tribunal are perverse and contrary to the record ?"*

2. Learned counsel for the appellant submitted that the appellant is engaged in the manufacture of plywood, block boards, flush doors and penal doors. The respondent issued show cause notice to the appellant on 24.2.1997 proposing to levy excise duty and penalty for the period from March, 1992 to March, 1996. The adjudicating authority, vide Order-in-Original dated 11.11.2005 confirmed the amount of duty amounting to Rs. 99.22 lacs. In addition, penalty of Rs. 98.72 lacs was also imposed. Aggrieved against the order, the appellant preferred appeal before the Tribunal along with application for exemption from pre-deposit. As the appellant could not comply with the stay order, the Tribunal vide order dated 20.7.2006 dismissed the appeal of the appellant. Thereafter, the appellant disposed of its factory and deposited the entire amount of duty, interest and penalty amounting to Rs. 1,92,95,372/-. On deposit thereof, the appeal of the appellant was restored by the Tribunal and heard on merits. Vide order dated 2.5.2008, the appeal preferred by the appellant was allowed by the Tribunal. The demand was set aside and the matter was remitted back to be disposed of in terms of the directions issued. As the order was set aside, the appellant became entitled to refund of the amount deposited by it. A request to that effect was made by the appellant vide letter dated 22.5.2008, however, the same was not acceded to. Even the reminders sent subsequently were also not responded to. Even though the remand proceedings were decided by the adjudicating authority vide order dated 17.10.2008 and finally demand of merely Rs. 11,89,303/- was confirmed against the appellant with equivalent penalty. Partially the refund was granted to the appellant on 13.1.2009, whereas partially the same was granted on 17.4.2009. The appellant claimed interest on delayed refund of the amount. The application for refund of the amount along with interest thereon was dealt with by the Assistant Commissioner by passing the Order-in-Appeal on 13.1.2009 after appropriating part of the amount against demand raised vide order dated 17.10.2008. Rs. 88,72,686/- were directed to be credited to Consumer Welfare Fund and refund of Rs. 76,44,080/- was directed. The appellant preferred appeal. The Commissioner (Appeals), vide order dated 17.3.2009 accepted the appeal filed by the appellant and directed even refund of Rs. 88,72,686/- opining that the same was not hit by bar of unjust enrichment. In pursuance thereof, the aforesaid amount was paid to the appellant on 17.4.2009. As the claim of

the appellant for payment of interest was declined on the ground that the amount was refunded within three months from the claim of refund on 21.10.2008 and partially the amount was refunded within three months of the passing of the order. Aggrieved against the order, the appellant preferred appeal before the Tribunal, which was dismissed vide order dated 14.1.2015 declining the relief of interest.

3. Learned counsel for the appellant submitted that the issue regarding entitlement of interest on the amount of pre-deposit made by the assessee after decision of the case came up for consideration before Hon'ble the Supreme Court in ***Commissioner of Central Excise, Hyderabad v. I.T.C. Ltd.. 2005 (179) ELT 15 (SC)***. The appeals were disposed of by Hon'ble the Supreme Court taking into consideration a circular issued by the Government of India, Ministry of Finance No. 275/37/2K-CX.8A dated 2.1.2002. However, in one of the cases before Hon'ble the Supreme Court, the rate of interest was reduced from 15% to 12% per annum. The circular of the Government of India provided that formal application for refund was not required. A simple letter from the person is sufficient along with copy of the order, on the basis of which the refund became due. He further relied upon a Division Bench judgment of this court in ***CWP No. 22541 of 2012— M/s LSE Securities Ltd. v. Assistant Commissioner, Service Tax Division, Chandigarh***, decided on 6.5.2014, where interest @ 15% per annum was directed to be paid for the period after three months from the date the refund became due. Reference was also made to another Division Bench judgment of this Court in ***CWP No. 16213 of 2014—Haryana Vanaspati & General Mill v. The State of Haryana and another***, decided on 7.8.2015, where under the Haryana General Sales Tax Act, 1973, this court directed for payment of interest @12% per annum on the amount deposited from the date the deposits were made as finally the assessee succeeded in litigation. The submission is that after the Tribunal set aside the demand against the appellant on 2.5.2008, it became entitled to the refund of amount deposited. The application for refund was made immediately thereafter on 22.5.2008. As the amount was refunded in January and April, 2009, the appellant was entitled to interest for the period beyond three months from the date of passing of the order of the Tribunal @ 12% per annum, as awarded by Hon'ble the Supreme Court in ***I.T.C. Ltd.'s*** case (supra).

4. On the other hand, learned counsel for the respondent submitted that as is evident from the order passed by the Tribunal, the application for refund was filed on 21.10.2008 and partially the amount was refunded within three months thereof, as for part of the amount there was dispute. When the same was settled, the amount was immediately refunded, hence, the appellant is not entitled to any interest. He further submitted that even if interest for any part of the period is to be paid, the same should not be at a rate more than 6% per annum.

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

6. The undisputed facts on record are that demand of duty of Rs. 99.22 lacs was raised against the appellant vide Order-in-Original dated 11.11.2005. In addition, penalty of Rs. 98.72 lacs was also imposed. The appellant deposited Rs. 1,92,95,372/-. The appeal was heard by the Tribunal, which was allowed vide order dated 2.5.2008 and the demand was set aside. Part of the amount, i.e., Rs. 76,44,080/- was refunded to the appellant in January, 2009, whereas remaining part of the amount, i.e., Rs. 88,72,686/- was refunded in April, 2009. As per the circular of the Government of India, Ministry of Finance, as referred to above, in case the amount is not refunded within three months from the date of passing of the order, the assessee is entitled to interest. No formal application is required to be filed. A simple letter is sufficient for the same. The application in the present case was filed by the appellant on 22.5.2008. There is error in the date noticed in the order passed by the authority for filing the application as 21.10.2008. Hon'ble the Supreme Court in ***I.T.C. Ltd.'s*** case (supra) allowed the refund along with interest @12% per annum.

7. Keeping in view the aforesaid facts and circumstances, in our opinion, the appellant herein is entitled to payment of interest @12% per annum for the period after three months till the refund was granted after passing of the order by the Tribunal on 2.5.2008. The questions, referred to above, are answered accordingly.

8. The appeal stands disposed of.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 15131 OF 2002

THE DOABA CO-OPERATIVE SUGAR MILLS LTD.
Vs
STATE OF PUNJAB AND OTHERS

RAJESH BINDAL AND HARINDER SINGH SIDHU, JJ.

10th August, 2016

HF ▶ Assessee

Tribunal needs to decide the matter on merits regarding delay before first appellate authority where it failed to do so.

APPEAL – TRIBUNAL – FIRST APPEAL FILED AFTER LONG DELAY – DISMISSED – APPEAL BEFORE TRIBUNAL – DISMISSED FOR DELAY – RECTIFICATION APPLICATION FILED TO CONTEND THE APPEAL WITHIN TIME – APPLICATION ACCEPTED – NO DECISION ON MERITS - MATTER REMITTED BACK TO TRIBUNAL TO DECIDE APPEAL AFRESH – *SECTION 20 OF PGST ACT, 1948*

Facts

Assessment was framed against which the petitioner filed appeals before First Appellate Authority after delay. The appeals were dismissed both by the Ld. Authority and Tribunal being barred by limitation. A Rectification application was filed before Tribunal which was accepted opining that the appeals were within limitation period. The Tribunal restored the appeal. However, the appeal was not heard on merits. A writ is filed contending that since the issue regarding delay in filing of appeal before First appellate authority was not considered on merits the matter be remitted back to Tribunal.

Held:

There being no specific finding recorded by Tribunal in passing its order whether the first appellate authority rightly refused to condone the delay in filing of appeal, the appeals are required to be considered afresh.

Present: Mr. G. R. Sethi, Advocate, for the petitioner.
Ms. Radhika Suri, Additional Advocate General, Punjab with
Mr. D. S. Malik, Assistant Advocate General, Punjab.

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RAJESH BINDAL, J.

1. The petitioner has approached this Court seeking quashing of orders framing assessments for the years 1975-76 to 1982-83; the orders passed by the Deputy Excise & Taxation Commissioner (Appeals), Jalandhar, dated 30.11.1995 dismissing the appeals against

assessment orders; the orders passed by the Sales Tax Tribunal, Punjab (for short, 'the Tribunal'), dated 9.12.1996; the orders dated 30.9.1997 passed by the Tribunal partly allowing the rectifying application; and the subsequent orders dated 23.5.2002 dismissing the reference petitions.

2. In the case in hand, against the different orders of assessment passed for the years, as noticed above, the petitioner filed appeals before the First Appellate Authority after huge delay. Those were dismissed by the First Appellate Authority while not condoning the delay in filing the appeals. Aggrieved against the orders passed by the First Appellate Authority, the petitioner preferred appeals before the Tribunal. The Tribunal vide order dated 9.12.1996 opined that the appeals before the Tribunal were barred by limitation and rejected the same. It was noticed that limitation to file appeal was 60 days and the appeals were filed by the petitioner after that time expired. Thereafter, the petitioner preferred rectification applications stating that the appeals filed before the Tribunal were within limitation from the date of receipt of copy of the order. The contention raised by the petitioner was accepted by the Tribunal and vide order dated 30.9.1997. The earlier order passed by the Tribunal on 9.12.1996 was rectified and it was opined that the appeals before the Tribunal were within limitation. The Tribunal restored the appeals, however, did not hear on merits and subsequently even dismissed the reference petitions.

3. Learned counsel for the State fairly submitted that as the issue regarding delay in filing of appeals by the petitioner before the First Appellate Authority was not considered on merits by the Tribunal in the first round of litigation and no finding as such was recorded, the matter deserves to be remitted back to the Tribunal for consideration afresh.

4. Considering the fair stand taken by learned counsel for the State, while setting aside the order dated 9.12.1996, in our opinion, the appeals filed by the petitioner are required to be considered afresh including the issue regarding delay in filing appeal before the First Appellate Authority, as there is no specific finding recorded in the order dated 9.12.1996 passed by the Tribunal whether the first Appellate Authority had rightly refused to condone the delay in filing the appeal.

5. For the reasons mentioned above, the matter is remitted back to the Tribunal for consideration of appeals filed against the order of the First Appellate Authority in accordance with law.

6. The parties are directed to appear before the Tribunal on 6.10.2016.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 15426 OF 2015

BHUSHAN POWER & STEEL LIMITED
Vs
STATE OF PUNJAB AND OTHERS

RAJESH BINDAL AND DARSHAN SINGH, JJ.

26th September, 2016

HF ▶ Assessee

Central Sales Tax Appellate Authority (CSTAA) directed to consider the issue with regard to refund or transfer of tax paid by assessee in the event of holding Branch Transfers as inter-state sale.

BRANCH TRANSFERS – INTER-STATE SALES – CENTRAL SALES TAX APPELLATE AUTHORITY – ASSESSEE MADE BRANCH TRANSFERS OF IRON AND STEEL GOODS TO ITS BRANCH AT PATNA FOR SALE TO GOVT. IN TERMS OF A TENDER FLOATED BY STATE OF BIHAR – THE TAX WAS PAID AS LOCAL SALES BY BRANCH IN THE STATE OF BIHAR – PUNJAB AUTHORITIES HELD THE TRANSACTION AS INTER-STATE SALE AND IMPOSED TAX HOLDING IT TO BE A CASE OF INTER-STATE SALE – APPEALS FILED BY THE ASSESSEE WERE REJECTED UPTO TRIBUNAL UNDER PUNJAB VAT ACT – ORDER CHALLENGED BEFORE CENTRAL SALES TAX APPELLATE AUTHORITY UNDER SECTION 20 OF CST ACT – ALTERNATIVE PRAYER WAS MADE TO SEEK REFUND OF TAX/TRANSFER OF MONEY BY BIHAR TO PUNJAB IN THE EVENT OF APPELLATE AUTHORITY HOLDING THE TRANSACTION TO BE INTER-STATE SALE – APPELLATE AUTHORITY HOLDING THE TRANSACTION TO BE INTER-STATE SALE BUT PLEA OF ASSESSEE REGARDING REFUND OR TRANSFER OF THE AMOUNT PAID TO THE STATE OF BIHAR WAS NOT DEALT WITH – MATTER DESERVES TO BE REMITTED BACK FOR DETERMINATION OF LEFT OUT ISSUE REGARDING REFUND OR TRANSFER OF MONEY BY STATE OF BIHAR - WRIT ALLOWED. MATTER REMITTED BACK TO CENTRAL SALES TAX APPELLATE AUTHORITY. *SECTION 6A, 20 AND 22(1B) OF CENTRAL SALES TAX ACT 1956.*

The assessee company had made certain Branch Transfers of Iron and Steel goods including galvanised steel pipes from Punjab to Bihar. The said pipes were supplied to the Govt. of Bihar against a tender floated by it. The tax was paid in the State of Bihar treating the transaction of sale by Branch as intra-state sale. The authorities in Punjab held the transfers made in pursuance to the tender as inter-state sales and accordingly, the additional tax demand of Rs. 95,80,793/- was created. Before the Tribunal, the tax and interest were upheld and penalty was deleted. The assessee filed further appeal under Section 20 of CST Act before the Central Sales Tax Appellate Authority contending that the transaction in question is a Branch Transfer and not an inter-state sale. An alternative plea was made that in the event of appellate authority holding the transaction to be inter-state sale, the State of Bihar may be directed to transfer the amount of tax paid by assessee to it in terms of section 22(1B). The Central Sales Tax

Appellate Authority held the Branch Transfers to be inter-state sales but no decision was taken with regard to alternative plea.

Feeling aggrieved, the assessee filed the writ petition. The High Court has

Held:

Though a specific plea was raised by the petitioner before the appellate authority that the transaction which was held to be inter-state sale from the State of Punjab and tax paid thereon, was treated to be local sale in the State of Bihar and tax was paid on the same, however, that aspect was not considered by the appellate authority with reference to the alternative claim made by the petitioner in terms of provisions of section 22(1B) of the Act, regarding refund or transfer of the tax from State of Bihar to the State of Punjab. Since the appellate authority has failed to exercise its jurisdiction on the plea raised by the petitioner, in our opinion, without even disturbing the findings recorded by Appellate Authority regarding transactions being in the course of inter-state sale from the State of Punjab, the matter deserves to be remitted back to the appellate authority for dealing with the alternative prayer made by the petitioner. The petition stand disposed of.

Cases referred:

- *Columbia Sportswear Company vs. Director of Income Tax, (2012) 346 ITR 161 (SC)*
- *Ashok Levland Ltd. vs. Union of India and others, (1997) 105 STC 152 (SC)*
- *Hindustan Zinc Limited vs. State of Andhra Pradesh and others, (2012) 47 VST 1 (CSTAA)*

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.
Mr. Jagmohan Bansal, Additional Advocate General, Punjab.
None for State of Bihar-respondent No.3.

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RAJESH BINDAL, J.

1. Challenge in the present petition is to the order dated 30.4.2015 passed by the Central Sales Tax Appellate Authority, New Delhi (for short 'the Appellate Authority') in appeal filed by the petitioner against the order dated 6.5.2010 passed by the Value Added Tax Tribunal, Punjab (for short, 'the Tribunal') in Appeal (VAT) No.621 of 2009.

2. Learned counsel for the petitioner submitted that the petitioner is a company incorporated under the provisions of Companies Act, 1956. It is engaged in the business of manufacture and sale of iron and steel goods including galvanized steel pipes. It has branches in different States, one of which is situated at Patna in the State of Bihar. Tenders for purchase of galvanized steel pipes were floated by the State of Bihar in June, 2006. The petitioner participated in the tendering process and was successful. The material was transferred from the manufacturing unit of the petitioner located in the State of Punjab to its branch office at Patna and thereafter local sale was made in the State of Bihar. As a consequence, local sales tax was paid under the Bihar VAT Act, 2005.

3. The assessment of the petitioner for the year 2006-07 was framed by the Excise and Taxation Officer-cum-Designated Officer, Ludhiana-II under the Central Sales Tax Act, 1956 (for short, 'the Act') on 13.1.2009 and the stock transfer to the tune of Rs. 11,54,54,462/- was treated to be interstate sale, as on the goods transferred by the petitioner to its branch office at Patna for sale to Government of Bihar were having the engraving of 'GOB'. As a result, additional tax demand of Rs. 95,80,793/- was created. The assessing authority also imposed interest and penalty. The order was upheld in first appeal. The Tribunal set aside the penalty while upholding the demand of tax.

4. Still aggrieved against the order passed by the Tribunal, the petitioner preferred

appeal before the Appellate Authority under Section 20 of the Act. Vide impugned order dated 30.4.2015, the appeal was rejected, as the Appellate Authority also found that the transaction in question was in the course of inter-state sale and not a branch transfer. Alternative submission made by learned counsel for the petitioner before the Appellate Authority regarding refund of the amount of tax paid by the petitioner on the local sale in the State of Bihar on the same goods, was not considered, despite there being enabling provisions to that effect under Section 22 (1A) of the Act. Further relying upon judgment of Hon'ble the Supreme Court in ***Columbia Sportswear Company vs. Director of Income Tax, (2012) 346 ITR 161 (SC)***, it was submitted that this Court has power of judicial review of the orders passed by the Appellate Authority, which was constituted in terms of the directions issued by Hon'ble the Supreme Court in ***Ashok Levland Ltd. vs. Union of India and others, (1997) 105 STC 152 (SC)***. He further referred to the order passed by the Appellate Authority in ***Hindustan Zinc Limited vs. State of Andhra Pradesh and others, (2012) 47 VST 1 (CSTAA)***, where under similar circumstances, the Appellate Authority directed for transfer of refundable amount from the State, where it was paid on the local sale to the State from where sale in the course of inter-state sale, was affected. The prayer is that the Appellate Authority having failed to exercise the jurisdiction vested in it under Section 22 (1A) of the Act, the matter deserves to be remitted back to the Appellate Authority.

5. Learned counsel for the State of Punjab submitted that till such time the petitioner is not disputing the fact that the transaction in question was in the course of inter-state sale from the State of Punjab to the State of Bihar, the State of Punjab does not have any objection to the matter being remitted back to the Appellate Authority for consideration of the prayer made by the petitioner.

6. Despite service, no one has appeared for the State of Bihar though impleaded as respondent No.3 in the petition.

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

8. The petitioner in the present case participated in the tendering process for sale of galvanized steel pipes, as floated by the Government of Bihar. After being successful, the goods manufactured with the marking 'GOB", were dispatched by the petitioner from State of Punjab to its branch office at Patna in the State of Bihar for further local sale to the department concerned in the State of Bihar. It is claimed that the State sales tax in the shape of VAT was paid on that local sale transaction in the State of Bihar. As goods were already appropriated before dispatch thereof from the State of Punjab, at the time of assessment, the claim made by the petitioner that it was a transaction of branch transfer, was rejected and the same was treated as inter-state sale and tax was levied. It was upheld by the Tribunal.

9. In ***Ashok Levland Ltd.'s*** case (supra) dealing with a problem where initially the sale from State 'A' to State 'B' was treated as branch transfer. In State 'B', it was treated as a local sale. However, subsequently State 'A' sought to revise orders and treate the sale in the course of interstate trade instead of branch transfer already allowed, Hon'ble the Supreme Court observed that there is no mechanism to resolve these kinds of interstate issues, the Government was required to consider the same. As a consequence thereof, Chapter VI containing Sections 19 to 26 was added in the Act.

10. Section 19 of the Act provides for constitution of the Central Sales Tax Appellate Authority.

11. Section 20 of the Act provides that an appeal shall lie to the Appellate Authority against any order passed by the highest Appellate Authority of a State under the Act determining the issues relating to stock transfers or consignments of goods, in so far as these involve a dispute of inter-state nature.

12. Section 21 of the Act provides for procedure for filing of appeals. Whereas Section 22 provides for the powers of the Appellate Authority. Procedure to be followed by the Appellate Authority has been provided for in Section 23 thereof.

13. Section 24 of the Act provided that the Appellate Authority for Advance Rulings as constituted under the Income Tax Act, 1961 shall be notified as the Appellate Authority under this Act.

14. Section 25 of the Act provides for transfer of pending proceedings, whereas Section 26 thereof provides for binding nature of the orders passed by the Appellate Authority on all State Governments.

15. Section 22 (IB) of the Act, which is relevant for the controversy in dispute, is reproduced hereunder:-

> *"Section 22 (IB): The Authority may issue direction for refund of tax collected by a State which has been held by the Authority to be not due to that State, or alternatively, direct that State to transfer the refundable amount to the State to which central sales tax is due on the same transaction:*
>
> *Provided that the amount of tax directed to be refunded by a State shall not exceed the amount of central sales tax payable by the appellant on the same transaction."*

16. Section 22 (IB) of the Act clearly provides that the authority has power to issue direction for refund of the tax collected by a State, which has been held by the Appellate Authority to be not due to that State or alternatively direct the State to transfer the refundable amount to the State to which central sales tax is due on the same transaction. However, the amount of refund or transfer is limited to the amount of central sales tax payable on the transaction.

17. In the case in hand, highest Appellate Authority under the State Act had decided the issue vide order dated 30.4.2015. In terms of the provisions of Section 20 of the Act, the petitioner preferred appeal before the Appellate Authority while disputing the findings recorded by the Tribunal holding the transaction to be inter-state sale. Alternative plea was raised that the amount of tax paid in the State of Bihar treating the sale to be local sale there, be directed to be refunded to the appellant or transferred to the State of Punjab.

18. The Appellate Authority vide impugned order opined that the view expressed by the Tribunal opining the transaction to be inter-state sale from the State of Punjab, was correct. The State of Bihar was also party before the Appellate Authority. The alternative prayer made by the petitioner regarding refund or transfer thereof to the State of Punjab was not dealt with. With this grievance, the petitioner has approached this Court.

19. The issue regarding jurisdiction of this Court to go into the order passed by the Appellate Authority was considered by Hon'ble the Supreme Court in Columbia Sportswear Company's case (supra). Observations made by the Appellate Authority in order passed by it in ***Groupe Industrial Marcel Dassault, In re (2012) 340 ITR 353 (AAR)***, wherein it was opined that it would be appropriate if against the ruling of the Appellate Authority direct application for Special Leave to Appeal is entertained by Hon'ble the Supreme Court, were referred to. Rejecting the aforesaid view, it was opined that the order passed by the Appellate Authority can be challenged before the High Court under Article 226 and/or 227 of the Constitution of India. However, the petition challenging the same has to be heard by a Division Bench of the High Court and decided as expeditiously as possible. The appeals were disposed of while giving liberty to the parties therein to approach the High Court under Article 226 and/or 227 of the Constitution of India. Relevant paras thereof are extracted

below:-

> *"12. In a recent advance ruling in Groupe Industrial Marcel Dassault, In re [2012] 340 ITR 353 (AAR), the Authority has, however, observed:*
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> > *"But permitting a challenge in the High Court would become counter productive since writ petitions are likely to be pending in High Courts for years and in the case of some High Courts, even in Letters Patent Appeals and then again in the Supreme Court. It appears to be appropriate to point out that considering the object of giving an advance ruling expeditiously, it would be consistent with the object sought to be achieved, if the Supreme Court were to entertain an application for Special Leave to appeal directly from a ruling of this Authority, preliminary or final, and render a decision thereon rather than leaving the parties to approach the High Courts for such a challenge."*
>
> *We have considered the aforesaid observations of the Authority but we do not think that we can hold that an advance ruling of the Authority can only be challenged under Article 136 of the Constitution before this Court and not under Articles 226 and/or 227 of the Constitution before the High Court. In* L. Chandra Kumar *v.* Union of India *(supra), a Constitution Bench of this Court has held that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is part of the basic structure of the Constitution. Therefore, to hold that an advance ruling of the Authority should not be permitted to be challenged before the High Court under*
>
> *Articles 226 and/or 227 of the Constitution would be to negate a part of the basic structure of the Constitution. Nonetheless, we do understand the apprehension of the Authority that a writ petition may remain pending in the High Court for years, first before a learned Single Judge and thereafter in Letters Patent Appeal before the Division Bench and as a result the object of Chapter XIX-B of the Act which is to enable an applicant to get an advance ruling in respect of a transaction expeditiously would be defeated. We are, thus, of the opinion that when an advance ruling of the Authority is challenged before the High Court under Articles 226 and/or 227 of the Constitution, the same should be heard directly by a Division Bench of the High Court and decided as expeditiously as possible."*

20. Though, a specific plea was raised by the petitioner before the Appellate Authority that the transaction, which has been held to be interstate sale from the State of Punjab and tax paid thereon, was treated to be local sale in the State of Bihar and tax was paid on the same, however, that aspect was not considered by the Appellate Authority with reference to the alternative claim made by the petitioner in terms of the provisions of Section 22 (1B) of the Act, regarding refund or transfer of the tax from the State of Bihar to the State of Punjab.

21. As the Appellate Authority failed to exercise its jurisdiction on the plea raised by the petitioner, in our opinion, without even disturbing the findings recorded by the Appellate Authority regarding transaction being in the course of inter-state sale from the State of Punjab, the matter deserves to be remitted back to the Appellate Authority for dealing with the alternative prayer made by the petitioner.

22. With the aforesaid observations, the petition stands disposed of. The matter is remitted back to the Appellate Authority to consider and decide the leftout issue, as referred to above.

23. The date of hearing shall be fixed by the Appellate Authority with prior intimation to the parties concerned.

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PUNJAB & HARYANA HIGH COURT

CWP NO. 20878 OF 2016

BHAVIKA OVERSEAS
Vs
STATE OF PUNJAB AND ANOTHER

RAJESH BINDAL AND DARSHAN SINGH, JJ.

4th October, 2016

HF ▶ Assessee

No Bank Guarantee can be encashed for recovery where tax demand notice had not been issued while imposing penalty under Section 51.

STAY OF RECOVERY – ENCASHMENT OF BANK GUARANTEE – PENALTY – RECOVERY BY ENCASHMENT OF BANK GUARANTEE WITHOUT ISSUING DEMAND NOTICE – WRIT PETITION FILED BEFORE HIGH COURT – INSTRUCTIONS RECEIVED FROM COMMISSIONER- RECOVERY TO BE PURSUED ONLY AFTER ISSUANCE OF DEMAND NOTICE AND EXPIRY OF TIME GRANTED THEREIN – BANK GUARANTEE NOT TO BE ENCASHED TILL THE GRANT OF TIME IN THE DEMAND NOTICE OR THE DECISION IN APPLICATION FOR STAY. – *SECTION 29(11) , SECTION 51 OF THE PUNJAB VAT ACT, 2005; RULE 51 OF THE PUNJAB VAT RULES, 2005*

Petitioner approached the High Court to seek stay on encashment of Bank Guarantee, which had been furnished for the release of goods during roadside checking. The assessee contended that no demand notice had been issued and as such no recovery is due. The State Counsel on instructions from Excise and Taxation Commissioner, Punjab submitted that at present demand notice is being issued only in the cases of assessment order but future instructions would be issued to all the concerned authorities for issuance of demand notice for deposit of any amount due to the Department after an order is passed. Petition disposed of with the direction that a demand notice shall be issued to the petitioner in pursuance to the order levying penalty and recovery process would be started only after the period given in the said Notice expires or till the decision in the application for stay filed by the assessee before the appellate authority is decided.

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

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RAJESH BINDAL, J.

1. The grievance of the petitioner is that even though no demand notice for payment of the amount of penalty levied was issued, still the bank guarantee furnished by the petitioner at

the time of release of goods is sought to be encashed. The petitioner is not able to seek interim stay from the Appellate Authority in the absence of a demand notice.

2. Learned counsel for the State, on instructions from Mr. Rajat Agarwal, Excise and Taxation Commissioner, Punjab, who is present in Court, submitted that though presently the demand notice is being issued only in case the demand is raised in pursuance of the assessment order, however, in future instructions will be issued to all the concerned authorities for issuing demand notices for deposit of any amount due to the department after an order is passed. He further submitted that in the case in hand, a demand notice shall be issued to the petitioner in pursuance of the order levying penalty. Only after the time granted for payment thereof as per the notice will expire that the process shall be initiated for recovery of the amount. He further submitted that at present as the notice for demand has not been issued to the petitioner, the bank guarantee already submitted by the petitioner shall not be encashed, till such time, time granted in the demand notice expires or till such time, the application for stay filed by the assessee before the Appellate Authority is decided.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 506 OF 2016

ROPAR DISTRICT COOPERATIVE MILK
Vs
STATE OF PUNJAB

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

8th September, 2016

HF ▶ Revenue

Penalty and interest is upheld on account of furnishing of incorrect assessment by assessee.

ASSESSMENT - INPUT TAX CREDIT – PENALTY – INTEREST – ASSESSMENT FRAMED – APPORTIONMENT OF BRANCH TRANSFERS DONE BY AUTHORITIES – CONSEQUENTLY, ITC CLAIMED REDUCED TO SOME EXTENT – PENALTY AND INTEREST LEVIED – APPEAL BEFORE TRIBUNAL CONTENDING THAT SINCE CALCULATION IS NOT CORRECT , THE REPORT BE CALLED FOR REGARDING APPORTIONMENT OF BRANCH TRANSFER 'MONTHWISE' - HELD: ON BASIS OF REPORT PREPARED BY OFFICER THAT ITC IS ALLOWED TO THE SAME EXTENT AS ALLOWED BY ASSESSING AUTHORITY – PENALTY AND INTEREST ARE UPHELD ON ACCOUNT OF FURNISHING OF ASSESSMENT AGAINST STATUTORY PROVISIONS – MATTER REMITTED TO ASSESSING AUTHORITY TO FRAME FRESH ASSESSMENT IN VIEW OF REPORT PREPARED - *SECTION 13 AND 19 OF PVAT ACT, 2005.*

Facts

The Appellant – Assessee is a manufacturer of milk products. Assessment for the period was framed and an additional demand under the local Act as well as the CST Act was raised. It was alleged that the appellant had wrongly claimed ITC. The assessing authority apportioned some amount as ITC against branch transfer and allowed ITC on the remaining part. Penalty and interest were also levied. An appeal is filed before Tribunal contending that the calculation is not correct and that the report be called for regarding apportionment of the branch transfer monthwise.

Held:

The Tribunal directed the officer to prepare a report including monthwise apportionment of branch transfers. On the basis of the report prepared the appellant is allowed ITC to the same extent as the Assessing Authority had allowed. The appellant has not been able to challenge the calculation apportionment report. Thus, the case is sent back to assessing authority to frame fresh assessment as per the report. Penalty and interest is upheld as the assessment furnished by appellant was incorrect.

Present: Mr. M.R. Sharma,, Advocate Counsel for the appellant.
Mr. N.K. Verma, Sr. Dy., Advocate General for the State.

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

1. The order of mine shall dispose off two connected appeal Nos. 506 of 2014 and 171 of 2015 against the order dated 26.9.2014 passed by the First Appellate Authority, Patiala Division, Patiala dismissing the appeals against a common order dated 14.10.2013 passed by the Designated Officer-cum-Excise and Taxation Officer, Mohali framing assessment to the tune of Rs. 12,09,720/- for the assessment year 2010-11 under the Punjab Value Added Tax Act and assessment to the tune of Rs.92.668/- for the same assessment year under the Central Sales Tax Act, 1956 against the appellant. Since both the appeals involve common question of law and facts, therefore both are decided together.

2. Brief facts of the case are that the appellant is a Cooperative Society duly registered under the Punjab Cooperative Societies Act, 1961 and is a taxable person under the state as well as the Central Law. The appellant is engaged in manufacturing of various milk products and is authorized to purchase various goods for use in manufacture of these goods. The milk being a raw material is being purchased by the appellant from its members duly registered under the Punjab Cooperative Societies Act as' well as farmers. The appellant filed all the quarterly statements "U/s 26 (1) of the Act and also the VAT 20 at the end of the year. The said case was taken up for scrutiny. After examination of the record, the Designated Officer created additional demand to the tune of Rs. 12,09,720/- under the Punjab Value Added Tax Act, 2005 and Rs.92,668/- under the Central Sales Tax Act, 1956. The appeals filed by the appellant against the said orders were dismissed.

3. Hence these second appeals.

4. The counsel for the appellant, while assailing the findings returned by the authorities below has urged that while filing the returns the appellant had calculated the TTC at Rs. 17,40,717/- and ITC against purchase tax has been worked out at Rs. 1,55,21,755/-. Thus, the total ITC available to the appellant has been worked out at Rs. 1,72,62,472/-. However, the Assessing Officer apportioned Rs.81,31,757/- as ITC against the branch transfer and consequently allowed ITC to the tune of Rs.91,30,715/-. But as a matter of fact the calculation is not correct as according to the appellant, the total transfer during the year 2010-11 was Rs.29,69,80,743/- and the gross sales were Rs.375,99,45,293/-. As such the calculation made by the Assessing Officer is not correct. He has also challenged the findings regarding penalty and interest.

5. During the course of arguments on 4.4.2016, the counsel for the appellant submitted that the calculations are not correct therefore, the report be called for regarding apportionment of the branch transfer monthwise.

6. In these circumstances, this Tribunal vide order dated 4.4.2016 directed Mrs Kiran Sharma, Excise and Taxation Officer, Mohali to submit the detailed report including month wise report of apportionment of the branch transfers. The Excise Taxation Officer submitted the report dated 25.4.2016 including the month wise report as annexure A and B. The Annexure A is relating to the calculation as well as the manner in which the Excise and Taxation Officer calculated the ITC. The relevant para No.2 of the observations reads as under:-

> *"The learned Counsel for the firm further raised the issue that in the assessment order, the firm has not been allowed ITC to the extent of CST paid on the Interstate sale and that no credit of CST paid during the said year has been given to him. Regarding this contention of the Counsel of the firm, it is submitted that as per the provisions of section 19 (5) of the PVAT Act, 2005 the*

input tax credit, on' goods (specified in schedule 'H' or products manufactured there-from), when sold in the course of interstate trade or commerce, shall be available only to the extent of CST, chargeable under the CST Act, 1956. As per the provisions of this section, if a taxable person sells goods in the course of interstate trade @ 2%, then the TTC on the purchase of such goods shall be available @ 2% only and if the interstate sales are made at the rate of tax as applicable in State then also the ITC shall be available at the rate at which interstate sales are made i.e. the local rate. In the case under consideration it is evident from the calculation of tax liability done under PVAT Act and CST Act that the firm made interstate sales at the rate as applicable in the state and thus has been allowed ITC on such goods at the local rate and out of the total ITC (on the local purchases and against the purchase tax paid) the only retention of ITC made is against branch transfer (i) as per the provisions of the Act and no other retention of ITC is made and ITC has been rightly allowed giving due credit of tax paid to the extent of CST paid. The credit of CST paid by the firm against its interstate sales has also been given by adjusting it against its CST liability (ii) under the CST Act"

7. Consequently, the Excise and Taxation Officer reported that the appellant could be allowed the ITC to the tune of Rs.91,30,715/-, under the Punjab Value Added Tax Act, 2005 and he was liable to pay the tax @ Rs.40,378/- under the Central Sales Tax Act, 1956. Annexure-B is calculation apportionment against the branch transfer month wise. The counsel for the appellant could not raise any substantial arguments to challenge this report. Therefore, it would be appropriate to send the case back to the Assessing Authority to frame the assessment in accordance with law in the terms of the report furnished by the Excise and Taxation Officer, Mohali. Since, the assessment furnished by the appellant was not correct and not in accordance with the statutory provisions therefore, the appellant was liable to pay penalty and interest accordingly.

8. Resultantly, these appeals are partly accepted and the cases are remitted back to the Assessing Authority to pass an order afresh in the terms of the report made by the Excise and Taxation Officer, Mohali on 25.4.2016. If the impugned order passed by him is already in consonance with the report, then there would be no necessity to frame fresh assessment.

9. Pronounce din the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 20 OF 2014

K.C.DHIMAN & SONS
Vs
STATE OF PUNJAB

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

10th March, 2016

HF ▶ Revenue

Penalty upheld on account of misdescription of goods in invoices.

PENALTY – CHECK POST/ ROAD SIDE CHECKING – ATTEMPT TO EVADE TAX – MISDESCRIPTION OF GOODS – GOODS CARRIED IN FOUR TRUCKS FROM DELHI TO MANDI GOBINDGARH – INVOICES REFLECTED GOODS TO BE AS 'ROLLING MATERIAL' AT THE ICC – ON VERIFICATION, GOODS FOUND TO BE 'MELTING IRON SCRAP' – GOODS DETAINED- CONTENTION RAISED THAT MERE MISDESCRIPTION DOES NOT ATTRACT PENALTY WHEN INTENTION TO EVADE TAX IS ABSENT – PENALTY IMPOSED - APPEAL BEFORE TRIBUNAL – HELD: APPELLANT FULLY AWARE OF GOODS LOADED IN TRUCKS AND REGARDING MISDESCRIPTION OF GOODS – GOODS MISDESCRIBED TO KEEP TRANSACTION OUT OF BOOKS - ATTEMPT TO EVADE TAX ESTABLISHED - APPEAL DISMISSED – *S. 51 OF PVAT ACT, 2005*

Facts

The vehicles carrying goods were brought from Delhi to Mandi Gobindgarh projecting them as "Rolling Material" in invoices. On scrutiny they were found to be 'melting iron scrap'. The goods were detained on account of misdescription. It was contended by the appellant that misdescription does not attract penalty when there is no intention to evade tax. Penalty u/s 51 was imposed. An appeal is filed before Tribunal.

Held:

The appellant fully knew that the goods carried did not tally with the invoices. If the dealer had sold scrap, he would have mentioned it in invoices. It appears, bills regarding rolling material were procured to keep the transaction out of books. All this is done with an intention to evade tax. Therefore, the appeal is dismissed.

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Present: Mr. Aakash Juneja, Advocate Counsel for the appellant.
Mr. N.D.S. Mann, Addl. Advocate General for the State.

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

1. On 13.4.2010, the appellant firm M/s K.C.Dhiman & Sons, Mandi Gobindgarh (herein referred as the appellant) had brought four trucks of scrap from Delhi covered by the following documents for use at Mandi Gobindgarh projecting the same to be "Rolling Material" in the invoices. When all the four trucks bearing No. HR-63C-3618, HR-38G-6651, PB-11V-9313 and HR-37A- 5351 reached the ICC shamboo import District Patiala. The drivers presented the following documents:-

(1) Bill No. 107, dated 12.4.2010 issued by M/s A.S. Trading Company Okhla Delhi in favour of the above dealer for Rs.3,79,950/- alongwith GR No. 108 dated the 12.4.2010 issued by Siddarth Goods Carrier, New Delhi for the transportation of goods from Delhi to Mandi Gobindgarh.

(2) Bill No.108, dated 12.4.2010 issued by M/s A.S. Trading Company Okhla Delhi in favour of the above dealer for Rs.3,01,920/- alongwith GR No. 109 dated the 12.4,2010 issued by Siddarth Goods Carrier, New Delhi for the transportation of goods from Delhi to Mandi Gobdindgarh.

(3) Bill No.110, dated 12.4.2010 issued by M/s A.S. Trading Company Okhla Delhi in favour of the above dealer for Rs.2,97,126/- alongwith GR No. 111 dated the 12.4.2010 issued by Siddarth Goods Carrier, New Delhi for the transportation of goods from Delhi to Mandi Gobindgarh.

(4) Bill No. 109, dated 12.4.2010 issued by M/s A.S. Trading Company Okhla Delhi in favour of the above dealer for Rs.3,56,694/- alongwith GR No. 110 dated the 12.4.2010 issued by Siddarth Goods Carrier, New Delhi for the transportation of goods from Delhi to Mandi Gobindgarh.

2. On scrutiny of the documents, the invoice as well as GRs were found to contain mis-description of goods as the documents were related to "Rolling Material" whereas the goods were actually found to be "melting iron scrap". When confronted with the discrepancy as per classification made U/s 14 of the Central Sale Tax Act 1956, the drivers failed to explain the same.

3. The Detaining Officer recorded the statement of the drivers; detained the goods and issued notice U/s 51 (6) (a) of the Punjab Value Added Tax Act read with Section 9 (2) of the Central Sales Tax Act, 1956. After concluding the formalities, the case was forwarded to the Designated Officer who also issued notice to the appellant, in response to which the appellant stated only that the mis-description of the goods does not attract the penalty and the appellant never intended to evade the tax. After thorough examination of the documents and the law of the land, the Designated Officer vide his order dated 17.5.2010 observed that the goods were not covered by proper and genuine documents and there was an attempt to evade the tax, consequently, the penalty to the tune of Rs.4,00,707/- was imposed upon the appellant.

4. The appeal filed by the appellant was dismissed by the First Appellate Authority, Patiala Division, Patiala on 11.2.2013. Hence this second appeal.

5. This appeal being delayed one was accompanied by an application for condonation of delay. The delay was condoned.

6. Arguments heard.

7. While assailing the impugned order, the counsel for the appellant urged that he is a registered dealer and has been transporting "Rolling Material" from New Delhi to Mandi Gobindgarh. The drivers accompanying the trucks had deposited the entry tax. The goods were not having any misdescription rather the same were covered by the genuine documents, but still the penalty was imposed. It was also argued that the judgment delivered in the case of

Bhilwara Spinners Ltd., Ludhiana Vs. State of Punjab (2004) 24 PHT 143 (STT Pb) observes that no penalty could be imposed in the absence of any intention to evade the tax, as such, since the appellant had no intention to evade tax, therefore, penalty could not be imposed.

8. To the contrary, the State Counsel has countered the contentions raised by the Counsel for the appellant tooth and nail by urging that the tax on the scrap was lesser than that on the rolling material. The goods were misdescribed in the bills with an intention to misuse the bills for the purpose of evading the tax. The drivers represented the goods to be scrap for payment of entry tax. This representation also did not tally with the invoices. Had the goods not been detained and checked then the appellant would have used the bills relating to the rolling material for the purposes of showing the bogus purchase and kept the scrap out of the account books.

9. Having heard the rival contentions, I do not find myself persuaded by the contentions raised by the counsel for the appellant. The appellant fully knew that the goods carried in the four trucks did not tally with invoice of the dealer had sold the scrap then he must have mentioned the same in the invoices, but that did not happen. It appears that the scrap so loaded in the vehicles was not covered by the genuine documents and the bills regarding the rolling material were procured with an intention to keep the goods out of the account books. It further transpires that the appellant knowing-fully well that the bills were regarding the rolling material mis-represented to the authorities that the bills related to scrap, Actually, this was-also done with the intention to conceal the true facts and throw dust in eyes of the check post authorities that the goods attracting lesser tax were being taken away on payment of higher tax. Thus, intention to evade the tax is clearly made out in the case.

10. Having gone through the orders passed by the authorities below, no such defect or illegality has been detected so as to call for any interference at my end.

11. Resultantly, finding no merit in the appeal, this same is dismissed.

12. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 474 & 475 OF 2015

BATRA PHARMACEUTICAL DISTRIBUTORS
Vs
STATE OF PUNJAB

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

26th April, 2016

HF ▶ Revenue

Penalty upheld where the goods were shown to have been consigned by a person other than the one to whom contract was awarded

PENALTY – ATTEMPT TO EVADE TAX – ROADSIDE CHECKING – PUNJAB HEALTH SYSTEMS CORPORATION PLACING ORDER UPON A COMPANY HINDUSTAN LABORATORIES, MUMBAI – INVOICE RAISED BY HINDUSTAN LABORATORIES, MUMBAI TO BATRA PHARMACEUTICALS, CHANDIGARH – RATE OF TAX CHARGED @ 2% IN THE INVOICE ISSUED BY HINDUSTAN LABORATORIES, MUMBAI – TRANSACTIONS CONTENDED TO BE TWO TRANSACTIONS : ONE FROM MUMBAI TO CHANDIGARH AND ANOTHER FROM CHANDIGARH TO PUNJAB – PENALTY IMPOSED HOLDING THE SECOND TRANSACTION TO BE INGENUINE – ON APPEAL BEFORE THE TRIBUNAL – WRONG TAX CHARGED AS THE CONTRACT INCLUDED TAX @ 5% BUT INVOICE SHOWS THE TAX CHARGED @ 2% - NAME OF APPELLANT NOWHERE IN THE PICTURE AT THE TIME OF AWARD OF CONTRACT – INVOICES IN QUESTION ARE NOT GENUINE – CLEAR INTENTION OF APPELLANT TO EVADE TAX LIABILITY – NO FAULT WITH THE IMPUGNED ORDERS – APPEAL DISMISSED - *SECTION 51 OF PUNJAB VAT ACT 2005*

On reaching ICC Kallarkhera, the following documents pertaining to two trucks were produced:

a) *Delivery Challan issued by Hindustan Laboratories, Mumbai in favour of Community Health Centre, Verka (Amritsar).*
b) *Duplicate tax invoice issued by Hindustan Laboratories, Mumbai to Batra Pharmaceuticals, Chandigarh.*
c) *Letter issued by Punjab Health System Corporation awarding contract to Hindustan Laboratories, Mumbai was also produced.*

Goods were detained on the ground that there is no there is no mention of Batra Pharmaceuticals, Chandigarh in the orders whereas the invoices have been raised by Hindustan Laboratories, Mumbai in fvour of Batra Pharmaceuticals, Chandigarh. It was concluded that there were two sales – One by Hindustan Laboratories, Mumbai to Batra Pharmaceuticals, Chandigarh and another from Batra Pharmaceuticals, Chandigarh to Punjab Health Systems Corporation. Since Batra Pharmaceuticals, Chandigarh took the delivery of goods in Punjab at ICC Kalarkhera against C-forms, the first transaction was genuine and

correct. However, second transaction involved levy of tax @ 6.25% between Batra Pharmaceuticals, Chandigarh and Punjab Health System Corporation. It was an intra-state sale and therefore documents were not genuine. Accordingly, concluding the evasion of tax, the penalty was imposed.

On Appeal before Tribunal, it was contended that second sale made by Batra Pharmaceuticals, Chandigarh, i.e. appellant was also an inter-state sale and not an intra-state sale and, therefore, no tax of Punjab was involved. It was also contended that goods in question were not meant for trade by Punjab Health System Corporation and, therefore, no further tax liability in the State of Punjab was involved and thus, no evasion is possible. Rejecting the contentions, the Tribunal

Held:

The contract entered into between Punjab Health System Corporation and Hindustan Laboratories, Mumbai clearly mentions that rate per unit would be excluding tax @ 5%. The appellant was not in the picture at all and Hindustan Laboratories, Mumbai was supposed to supply the goods to Punjab Health Corporation by charging tax @ 5%. However, instead of charging tax @ 5%, the tax was charged @ 2% and nothing has been brought on record as to who would be responsible for making payment of VAT to the State of Punjab. The Delivery Challan accompanying the goods does not indicate the payment of CST or VAT under the Act. Since the goods were being sent to Punjab Health System Corporation, the tax should have been charged @ 5%. If the goods were to be despatched by appellant who is located at Chandigarh, then firstly the goods should have been despatched to appellant at Chandigarh and thereafter the appellant should have sent those goods as consignor to the consignee Corporation. In such a case also, the tax should have been charged @ 5%. The invoice produced by appellant on a later stage cannot be considered as genuine as it was only an after-thought. The documents were prepared wrongly in such a manner so as to evade the tax liability due to the State of Punjab. Had the goods not been checked, the tax would have been evaded by the appellant. No fault would be found with the orders so as to call for any interference. Appeals are accordingly dismissed.

Present: Mr. Raman Kumar Grover, 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. Two trucks of medicines were intercepted by the Officer Incharge-cum-Excise and Taxation Officer, Information Collection Centre, Kallerkhera qua which an enquiry was held and vide order dated 30.11.2014, the Designated Officer imposed penalties upon the appellant which were appealed before the Deputy Excise and Taxation Commissioner, Ferozepur Division, Headquarter at Bathinda who vide order dated 5.10.2015 refused interfere. Since both the appeals involve common question of law and facts, therefore, both are decided together.

2. The appeal wise facts are enumerated as under:-

Appeal No. 474 of 2016

3. The drugs branded Iron Folic Acid Drops loaded in vehicle No. PB-06F-9665 when reached at the ICC Kallerkhera on 16.10.2014, the Detaining Officer checked the vehicle regarding genuineness of the transaction, when confronted, the driver produced the following documents:-

(1) Delivery Challan No. 15721, dated 11.10.2014 issued by M/s Hindustan Laboratories, Mumbai in favour of Community Health Centre, Verka (Amritsar).

(2) Duplicate Tax Invoice No. 00889, issued by M/s Hindustan Laboratories, Mumbai to M/s Batra Pharmaceutical Distributors Chandigarh for Rs. 10,86,197/- (inclusive of taxes & duties).

(3) GR No. 331 dated 11.10.2014 of M/s SSC Logistics (I) Pvt. Ltd. Showing delivery from Palghar to Verka (Amritsar)

(4) Letter No. PHSC/Proc. N.O-NIPI Prog/2014/544-54 (hereinafter referred to as letter) dated 15.09.2014 issued by M/s Punjab Health Systems Corporation, Mohali intimating M/s Hindustan Laboratories about the award of contract.

4. On verification of the documents, the Detaining Officer observed that letter order dated 15.09.2014 does not find any mention of M/s Batra Pharmaceutical Distributors while the invoices have been raised by the consignor M/s Hindustan Laboratories in favour of M/s Batra Pharmaceutical Distributors.

5. Secondly the rate of tax charged was 2% while it should have been 5% as per letter. Thus, the Detaining officer, in order to further verify, the transaction issued notice on 16.10.2014 for 17.10.2014.

6. None appeared on 17.10.2014, therefore the case was adjourned to 20.10.2014.

7. After release of the goods, the case was forwarded to the Designated Officer who also heard the case at length. The proceedings were attended by Sh. Anil Kumar representative of M/s Batra Pharmaceutical Distributors. After giving full opportunity of being heard, the Designated Officer ICC Kallerkhera (Fazlika) vide his order dated 30.11.2014 observed that M/s Hindustan Laboratories Mumbai sold the taxable goods to M/s Batra Pharmaceutical Distributors Chandigarh who took the delivery of the same in Punjab at ICC Kallerkhera and further sold it to M/s Punjab Health System Corporation Amritsar. M/s Batra Pharmaceutical Distributors attempted to evade tax by not issuing the invoice in favour of Punjab Health System Corporation. There were two sale transactions one was interstate and the other was intrastate. The first transaction stood complete when M/s Hindustan laboratories sold the goods to M/s Batra Pharmaceutical Distributors who took the delivery of the same in Punjab against the "C" Form. No fault could be found with this interstate transaction. However, the second transaction which involved the tax @ 6.25% between M/s Batra Pharmaceutical Distributors and Health System Corporation Amritsar was not genuine. An effort to evade tax has been made.

8. The modus operandi adopted by the appellant stands proved from the series of documents produced during the course of proceedings. The delivery of the goods was received by the appellant and he made the payment to M/s Hindustan Laboratories Mumbai. The contract dated 15.09.2014 was between M/s Hindustan Laboratories Mumbai and M/s Punjab Health System Corporation and the appellant did not figure was party to the contract at that time. It was also observed that the appellant had made resale to the Punjab Health System Corporation therefore, it was required to collect the tax payable to the state Government. Thus, the transaction in hand was pre planned scheme to evade payment of tax.

9. This order dated 30.11.2014 was challenged by the appellant in appeal. Whereupon the First Appellate Authority vide order dated 5.10.2015 also refused to call for any interference on the following grounds:-

1. Since the contact does not contain any such terms that the appellant would supply of the goods on behalf of the Hindustan Laboratories, then how the appellant came into picture.

2. Secondly Hindustan Laboratories had supplied the medicines to un-registered person i.e. Punjab Health System Corporation against CST @ 2%. Whereas the consignor was required to charge full rate of tax i.e. 5% at the time of sale, (Punjab Health System Corporation being an unregistered person).

3. Thirdly, the appellant had taken the delivery of the goods at the ICC when the same entered into the State of Punjab. In such a situation, nature of the transaction had been changed from interstate sale to intrastate sale and it has not been explained by the appellant.

Appal No. 475 of 2015

10. On 16.10.2014, the driver, while carrying the Iron Folic Acid Drops in the Bottles, in vehicle No. PB-06F-8975 reached the ICC Kallerkhera. He was apprehended. When confronted, the driver produced the following documents:-

(1) Delivery Challan No. 15722, dated 11.10.2014 issued by M/s Hindustan Laboratories, Mumabi in favour of Community Health Centre, Verka (Amritsar).

(2) Duplicate Tax Invoice No. 00890, issued by M/s Hindustan Laboratories, Mumbai to M/s Batra Pharmaceutical Distributors Chandigarh for Rs. 10,88,088/- (inclusive of taxes & duties).

(3) GR No. 332 dated 11.10.2014 of M/s SSC Logistics (I) Pvt. Ltd. Showing delivery from Palghar to Verka (Amritsar).

(4) Letter No. PHSC/Proc. N.O-NIPI Prog/2014/544-54 (hereinafter referred to as letter) dated 15.09.2014 issued by M/s Punjab Health Systems Corporation, Mohali intimating M/s Hindustan Laboratories about award of contract.

11. On the verification of the documents, it was detected that tough the delivery challan indicated that it has been made through M/s Batra Pharmaceutical Distributors to M/s Punjab Health System Corporation Verka (Amritsar), yet the original contract as well as the order dated 15.09.2014 issued by the Punjab Health System Corporation did not mention the name of the appellant. Since the goods were being delivered by M/s Hindustan Laboratories to an unregistered person directly i.e. M/s Punjab Health System Corporation. Yet the tax charged was @ 2% whereas it should have been 5%. The letter also indicated that VAT @ 5% is to be charged but the delivery challan as well as the invoice did not disclose this fact. The Detaining Officer issued notices to the consignee but none appeared on their behalf whereas the appellant appeared and pleaded his case. Ultimately, while making the observations in the same manner as referred to above, the Designated Officer, vide order dated 30.11.2014, imposed a penalty to the tune of Rs. 3,93,400/- u/s 51(7)(b) of the Act. The appeal filed by the appellant against the said order was dismissed by the First Appellate Authority on 5.10.2015 on the same grounds as taken up in appeal No. 474 of 2015.

12. Still aggrieved, the appellants preferred these two appeals against the order of even date passed by the First Appellate Authority.

13. The counsel for the appellant, in order to assail the findings returned by the authorities below, has urged that the appellant produced all the documents which were

accepted by the Detaining Officer. The firm Hindustan Laboratories Mumbai charged CST @ 2% against "C" Form being the firm M/s Bartra Pharmaceutical was Distributor and a taxable person for the purposes of Central Sale Tax Act, 1956 and Punjab Value Added Tax Act, 2005 (as applicable to Union Territory Chandigarh). While explaining elaborately, it was submitted that Punjab Health System Corporation had authorized certain laboratories in India for supply of certain medicines to the corporation, as and when required. M/s Hindustan Laboratories was authorized to supply Iron Folic Acid Drops to the Punjab Health System Corporation and the latter had placed an order with the appellant. Accordingly the goods were dispatched by the Hindustan Laboratories Mumbai to M/s Batra Pharmaceutical Distributors Chandigarh against valid "C" Forms for onward supply to the Punjab Health System Corporation. However, the department apprehended the appellant by surprise and imposed penalty for no reasons. It was next contended that the appellant had preformed its obligation by the generating the goods at the ICC and the authorities at the ICC were supposed to see only genuineness of the documents and not the evasion of tax. Secondly, it was contended that the documents clearly indicated that the transaction in question was interstate sale and not intrastate sale, therefore, the Punjab tax was not involved. Thirdly, it was contended that the goods in question were not meant for trade by the Punjab Health System Corporation because the medicine to be supplied by the corporation was to be allocated for use to the various hospitals functioning in the State of Punjab. The appellant charged full rate of tax which is evident from the invoice issued by the appellant on 17.10.2013.

14. To the contrary, the State counsel has countered the arguments tooth and nail by submitting that since the contract was between Hindustan Laboratories and the Punjab Health System Corporation dated 3.3.2014 and as per order dated 15.09.2014, the goods were to be delivered to the consignee directly and not to the appellant. Since the goods were being delivered through the Chandigarh consignee, therefore it was with the intention to avoid the CST as well as the tax under the Punjab VAT Act, 2005. The interstate transaction was converted into intrastate transaction. Had the goods not been checked, then the tax would have been evaded by the appellant and the goods would have been delivered to the corporation (without payment of tax).

15. Arguments heard. Record perused.

16. The order passed by the Designated Officer is crystal clear in all aspects. The contract for supply of Iron Folic Acid, between M/s Hindustan Laboratories and M/s Punjab Health System Corporation, came into existence on 3.3.2014. It is clearly mentioned in the contract that the rate per unit would be excluding tax @ 5%. Pursuant to this contract dated 3.3.2014, the Punjab Health System Corporation rote of letter dated 15.09.2014 to M/s Hindustan Laboratories directing the latter to supply the Iron Folic Acid Drops (2305000 bottles) for a sum of Rs. 2,37,18,450/- + VAT @ 5% tax etc. 50% of the order was to be delivered within 45 days of the order dated 15.09.2014 and balance was to be supplied between 1.3.2015 to 20.3.2015. It is very much clear from the order that the supply was to be delivered at drugs Warehouse Bathinda and Verka Amritsar respectively. The information regarding the order was sent by the Punjab Health System Corporation to the company as well as warehouse at Verka. Upto that time, the appellant was not shown as distributor and he was not at all in the picture. The tax @ 5% was to be added by M/s Hindustan Laboratories at the time of supply to the warehouse to Verka. Admittedly, Punjab Health System Corporation is an unregistered person, therefore, CST @ 5% was to be added in the bill but it was added @ 2%. The appellant came into picture only on 1.10.2014 when M/s Hindustan Laboratories wrote a letter to the Punjab Health System Corporation that the supply would be made through the appellant. No contract between appellant and M/s Hindustan Laboratories Corporation has been brought on record in order to prove that who would be responsible for making payment of VAT to the State of Punjab. The delivery challan No. 15721 and 15722 dated 11.10.2014 accompanying

the goods do not indicate the payment of CST on VAT under the Act. The invoice also gives the names of the consignee as drug warehouse Verka (Amritsar) and CST is shown to have been charged @ 2%. Admittedly, the Punjab Health System Corporation is unregistered person therefore, if the goods had been sent to the said corporation then it must have charged CST @ 5%. In any case, the case of the appellant is that the goods were to be delivered through M/s Batra Pharmaceutical Distributors who is a registered person, therefore, the tax @ 2% was charged. If this theory is accepted, the again the appellant is in the dock. In that situation, the goods have to be dispatched to M/s Batra Pharmaceutical Distributors Punjab Chandigarh, and thereafter, M/s Batra Pharmaceutical Distributors becomes consignor and thereafter he would have charged tax @ 5% from the corporation and transfer the same to the consignee (corporation). The counsel for the appellant has placed reliance on invoice dated 17.10.2014 issued by the appellant in favour of Punjab Health System Corporation which shows that the tax @ 5% has been charged. The said invoice was not produced earlier before the Detaining Officer, therefore the same could be said to be an after thought. Even otherwise, the goods were directly consigned in favour of Punjab health System Corporation Verka (Amritsar) and not in favour of the appellant, thus the Designated Officer has rightly observed that the documents including the invoice dated 17.10.2014, were wrongly prepared in such a way that these reflect the clear intention of the appellant to evade his tax liability due to the State of Punjab. The delivery challan itself speaks to the volumes that the delivery was to be made directly to the Punjab Health System Corporation warehouse at Verka. Had the goods not been checked, then he tax would have been evaded by the appellant.

17. Having perused the orders passed by the authorities below, no fault could be found with the orders so as to call for any interference at my end.

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

19. Pronounced in the open court.

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SGA
LAW OFFICES

OFFICE ORDER

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DIRECTIONS RELATING TO ENCASHMENT OF BANK GUARANTEES

To

1. Additional Excise & Taxation Commissioner-I, Punjab
2. Additional Excise & Taxation Commissioner-VAT-I and VAT-2
3. Director (Investigation) Punjab
4. All Joint Directors (Investigation)
5. All Deputy Excise & Taxation Commissioner, Heads of Divisions
6. All Deputy Excise & Taxation Commissioner (Appeals)
7. All Assistant Excise & Taxation Commissioners, Heads of Districts
8. All Assistant Excise & Taxation Commissioners, (Mobile Wings)

No. P.A.//2016/674 Dated:05.10.2016

Subject: Directions in view of the observations made by the Hon'ble Punjab & Haryana High Court in the case of M/s Bhavika Overseas vs. State of Punjab (CWP No. 20878 of 2016) and M/s Amar Singh Chawal Wala vs. State of Punjab (CWP No. 20879 of 2016)

Following Directions to be followed regarding the aforesaid subject in totality.

1. It has been specifically mentioned u/s 29(11) of the Punjab VAT Act that: when ever any demand (tax, interest and penalty) accrues under this act, the recovery of the same shall be initiated by issuing a tax demand notice. Section 29(11) of the Punjab VAT Act is as under:-

   "When any tax, interest, penalty or any other sum is payable in consequence of any order passed under this Act, the designated officer shall serve upon the person a notice of demand in the prescribed form specifying the sum so payable."

   If any demand accrues under any section or rule of the Punjab VAT Act, the recovery of the same shall be initiated by issuing a tax demand notice under VAT form 58 which is mentioned u/R 51 of the Punjab VAT Rules, 2005 which is as under:-

   "If any sum is payable by a person under the Act or these Rules, the Designated Officer shall serve a notice in Form VAT-56 upon him specifying the date, not less than 15 days and not more than 30 days from the date of service of the notice, on or before which, payment shall be made and he shall also fix a date on or before which, the person shall furnish the Treasury Challan in proof of such payment."

2. It has been also noticed that no reasonable opportunity of being heard is provided by the Designated, Detaining and Penalizing Officers before imposing penalties. Besides this copy of the orders is also not supplied to the dealers. Because of such loopholes, the orders in which legitimate tax and penalty have been imposed by the departmental officers do not withstand judicial scrutiny. Therefore, the principle of natural justice by providing reasonable opportunity of being heard shall be followed in its truest sense. Besides this it shall be assured that the orders regarding imposition of tax and penalties shall be duly served to the dealers within reasonable time.

   Because the phrase reasonable time 'has not been defined anywhere, it shall be assured that tax demand notice for 15 days shall be issued to the dealers and copy of the orders shall be served upon the dealer within a period of 1 month keeping in view normal prudence, rules of natural justice and rule 45 of the Punjab General Sales Tax Act, 1948.

Sd/-
Excise & Taxation Commissioner, Punjab

ORDER (Punjab)

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INSTRUCTIONS REGARDING TRANSPARENCY AND SMOOTH RUNNING OF OFFICE WORK

OFFICE OF EXCISE & TAXATION COMMISSIONER, PUNJAB

To,

1. Additional Excise & Taxation Commissioner-I, Punjab
2. Additional Excise & Taxation Commissioner-VAT-I and VAT-2
3. Director (Investigation) Punjab
4. All Deputy Excise & Taxation Commissioner, Heads of Divisions
5. All Deputy Excise & Taxation Commissioner (Appeals)
6. All Assistant Excise & Taxation Commissioners, Heads of Districts

No. 671 Dated 4.10.2016

Subject: Instructions regarding transparency and smooth running of office work

Re: In continuation of letter No. PA/ETC/2016/663 dated 14.09.2016 of this Office.

It has been decided that for the year 2016-17, statutory forms i.e. 'C', 'F', 'H', 'I', 'E-1' and 'E-2' will be issued manually according to rules of the CST Act, 1956 and as per requirement.

Sd/-
Excise & Taxation Commissioner, Punjab

ORDER (Punjab)

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AMENDMENT OF ASSESSMENT CRITERIA

From:

Additional Excise & Taxation Commissioner VAT-1, Punjab, Patiala.

To,

1. All Deputy Excise & Taxation Commissioner, Heads of Divisions
2. All Assistant Excise & Taxation Commissioners, Heads of Districts

No. PA/Addl. ETC (VAT)/2016/105-138 Dated: 12.10.2016

Subject: Amendment of Assessment criteria

The list of cases selected for assessment as per the assessment criteria approved by Govt. in view of new assessment policy was available on the website of the department. As per the letter No. 2/7/2015 E.T. 2(7)/3128 dated 17.02.2016 issued by the State Govt., the approval for inserting note mentioned below in assessment criteria was approved:

Note:1 "Assessment proceedings shall be initiated for the Financial year 2012-13 in the cases selected on the basis of above criteria. Cases for the years 2009-10, 2010-12 and 2011-12 shall be taken only if demand of more than Rs. One lac has been created in the year 2012-13. If the demand in the year 2012-13 is less than one lac and if the assessment for the previous years have been initiated, the same shall be dropped."

Note: 2 "In case the turnover of the dealer is less than Rs. 1 crore in any of the year from 2009-10 to 2014-15, that year shall not be taken up for assessment. If assessment proceedings have already been initiated, the same shall be dropped."

As the cases for the year 2009-10 will become time barred on 20.11.2016, therefore, a proposal has been made before the Government that the list of cases selected for the year 2009-10 may be approved. You are therefore directed to decide the cases for the year 2009-10 as per the list on merits and in accordance with law till the decision by the State Government.

Sd/-
Additional Excise & Taxation Commissioner VAT-1, Punjab, Patiala.

NOTIFICATION (Haryana)

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EXEMPTION OF HINDI FEATURE FILM 'MSG THE WARRIOR- LION HEART' FROM ENTERTAINMENT DUTY

HARYANA GOVXRNMENT
EXCISE AND TAXATION DEPARTMENT

ORDER

In supersession of this Department order dated 07.10.2016 issued vide order dated 07.10.2016 issued vide endst No. 24713-ET-4-2016/19975, dated 07.10.2016, in exercise of the powers conferred by sub section (3) of Section 11 of the Punjab Entertainment Duty Act, 1955 and all other powers enabling him in this behalf, the Governor of Haryana hereby exempts the Hindi Feature Film "MSG THE WARRIOR - LION HEART" from the liability to pay entertainment duty under the said Act, without any limit of number of prints w.e.f. 07.10.2016 for a period of one year in the State of Haryana subject to the condition that there will not be any refund or foregoing of past collection. The exemption shall have to be availed of by the producer within three months from the date of Government sanction conveyed to the producer of the film.

2.This is issued with the concurrence of the Finance Department conveyed vide their U.O.No. 09/02/2001-2FG-1, dated 10.10.2016.

Chandigarh, dated
The, 10th October, 2016

P. RAGHAVENDRA RAO
Additional Chief Secretary to Govt. Haryana
Excise & Taxation Department

Endst. No. 24713-ET-4-2016/20005 Chandigarh, dated the 10.10.2016

A copy is forwarded to the Excise & Taxation Commissioner, Haryana, Panchkula for information and necessary action.

Sd/- Superintendent
For Addl. Chief Secretary to Govt. Haryana
Excise & Taxation Department

A copy is forwarded to the Additional Chief Secretary to Govt. Haryana, Finance Department w.r.t. his U.O.No. 09/02/2001-2FG-1, dated 10.10.2016.

Sd/- Superintendent
For Addl. Chief Secretary to Govt. Haryana
Excise & Taxation Department

To

The Additional Chief Secretary to Govt. Haryana
Finance Department (in 2FG-I Br)

U.O.No. 24713-ET-4-2016/2653 Chandigarh, dated, the 10.10.2016

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HC SEEKS CENTRE, DELHI GOVT RESPONSES ON LEVY OF VAT BY RESTAURANTS

Petition claims many eateries in Delhi charge VAT on entire bill, not on portion deemed as 'service' under Service Tax Rules

The Delhi High Court sought responses from the Centre and the Delhi government on Monday, against a petition alleging a continuing practice of restaurants in the national capital overcharging patrons on the VAT (Value Added Tax) component in bills.

The bench of Chief Justice G Rohini and Justice Sangita Dhingra Sehgal were hearing a petition claiming that several restaurants in Delhi are charging VAT on the entire amount of a customer's bill, even though the Service Tax (Determination of Value) Rules 2006 (the Service Tax Rules) specifically determine the portion that is to be classified as a 'service'.

VAT is a tax on goods levied by state/union territory governments, whereas service tax amounts are imposed on by the central government alone.

The counsel for the petitioners alleged that the present conduct of the restaurants was a result of the Delhi government allowing the practice, which effectively renders 140 percent of the billed amount subject to taxes. The petitioners' contend that as Rule 2C of the Service Tax Rules already demarcates 40 percent of a restaurant bill as a service component, this amount cannot be subject to an additional VAT.

No such guidelines exist for the assessment of VAT under the Delhi Value Added Tax Act 2004 or rules framed thereunder.

The petition seek clarifications from the court regarding the portion of a restaurant bill that can be subject to VAT, as well as for appropriate action to be taken by the concerned authorities against restaurants indulging in over-taxation.

The bench has allowed the Union of India and Government of NCT of Delhi four weeks to file their replies, while listing the matter for further consideration on December 7

Courtesy: Business Standard
3rd October, 2016

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TAX CONSULTANT DUPES MANIMAJRA BIZMAN OF Rs.34.43 L

CHANDIGARH: The economic offences wing (EOW) of the Chandigarh police has arrested a city-based tax consultant for allegedly duping a businessmen of Rs 34.43 lakh by not depositing his tax amount with the authorities.

A P Sapra, a resident of Manimajra who runs a company that makes regulators, alleged he engaged Vivek Chauhan as a tax consultant for his company and assigned him to deposit the tax amount of Rs 34.43 lakh with Maharashtra sales tax authorities as VAT (value added tax).

He alleged Chauhan instead withdrew the amount for his personal use and issued forged bank receipts as proof of deposit.

VAT IN POCKET

AP Sapra, a resident of Manimajra, alleged he gave tax consultant Vivek Chauhan Rs. 34.43 lakh for depositing it with Maharashtra sales tax authorities as VAT. Instead, Chauhan withdrew the amount for his personal use and issued forged bank receipts as proof of deposit, Sapra alleged. The accused was absconding. Police suspect he could have uped others too in the past.

Investigation officer inspector Sukh winder Singh of economic offences wing said. "Chauhan provided a forged bank challan by claiming that the amount had been deposited. After the opinion of the legal department, a criminal case of cheating and forgery was registered. "

A local court has sent the accused in two-day police remand.

"We have also been check-ing the antecedents of the accused to find out if he had duped others too in the past," Singh added.

The case was registered under sections 406, 420, 467, 467 and 471 of the Indian Penal Code (IPC) was registered.

Courtesy: The Times of India

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GST RATE ON POLLUTING ITEMS MAY BE HIGHER

Union Finance Minister Arun Jaitely said, "Resources have to be mobilised from all sources for climate financing so that sustainable development goals can be achieved in a much more concrete manner".

Within days of India signing the Paris Climate Treaty, Finance Minister Arun Jaitley on Friday said tax on environment unfriendly products will be 'distinct' from others in the forthcoming GST regime so as to boost funds for climate financing. "The indirect tax regime that we are planning, the rate of taxation on such products which are going to be environmentally unfriendly would be distinct from the normal rate of taxation. This is one of the proposals being discussed," Jaitley said ahead of the two-day BRICS Summit beginning on Saturday.

The government is in the process of finalising rates for the Goods and Services Tax. The country has taxed coal and petroleum products in the past as well, Jaitley said, adding that "resources have to be mobilised from all sources for climate financing so that sustainable development goals can be achieved in a much more concrete manner".

He said large commitment from the developed countries to provide funding for climate change financing is not sufficient to meet the sustainable development goals and that the multilateral agencies also need to chip in.

"Even now there is a debate as to nature of the USD 100 billion (that the developed world has committed for the developing nations), to fund technology transfers we do hope there is no double counting as far as the fund is concerned," the minister added.

The minister said, last year New Delhi and Beijing raised the issue of USD 100 billion because more than the value of the money, it was also about the trust.

Though a report indicated that most of the money was already paid there are various forms in which money is spent like healthcare, which can help environment, as the money is counted towards healthcare and also environment protection, the minister said.

Speaking on the issue, Reserve Bank Governor Urjit Patel raised concerns about countries undermining objectives like climate finance.

"The USD 100-billion number has been talked about for the past 10 years and there is very little pressure from the domestic constituencies in the advanced economy countries, including the media. This is part of a grand bargain and if you keep on undermining this, I think people will walk away from the table at some point," Patel said.

Courtesy: The Indian Express
14th October, 2016

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GST MAY TRIGGER CONSOLIDATION IN WAREHOUSING SPACE

HYDERABAD: The goods and services tax (GST) regime could usher in consolidation in the Indian warehousing space, property consultants and analysts said.

With the government pushing for an April 2017 rollout of the single tax structure, many manufacturers who had built or leased warehouses in nearly every state to avoid duplication of taxes don't see the need to extend their lease arrangements, and can instead own or lease large warehouses in a few strategic locations.

Warehouses across the country mostly facilitate operations of ecommerce firms, automotive companies, and manufacturers of consumer electronics, pharmaceuticals and fast-moving consumer goods. These manufacturers are now looking at having fewer but larger warehouses at locations such as Mumbai, Delhi, Ahmedabad, Chennai, Bengaluru and Hyderabad.

"Instead of having warehouses in all the cities, we will look at a cluster of states where it will be easier to send goods across the country without having to make the customer wait," said Pravin Shah, chief executive (automotive) of Mahindra & Mahindra. However, he said that his company was waiting for the GST rates to be finalised to chalk out a strategy on consolidating warehousing space.

Amazon and Flipkart didn't respond to ET's queries, while ShopClues refused to comment.

Meanwhile, the looming shift in strategy is catching the attention of developers. Indospace, a joint venture between private equity firm Everstone Capital Advisors and Realterm Global, is planning to develop big projects at manufacturing clusters with an investment of over $1billion over the next fourfive years to more than double the project pipeline to about 50 million square feet from the current 20 million sq feet.

"There will be a consolidation in this market with the passage of GST, as there will be more focus on setting up warehouses in the manufacturing hubs. This will lead to cost efficiency with reduced cost on transportation, labour and real estate," said Indospace's partner Brian Oravec.

"Ecommerce companies in our network are already in the consolidation process with Amazon and Flipkart, and are moving into lar ge warehouses of around 350,000 sq ft from their earlier spaces measuring 50,000 sq ft on an average," said Mumbai-based Prakhhyat Infraprojects' proprietor Sumit Bhalotia.

"The warehouses that will become redundant will be bought out by smaller players or will make way for office or residential complexes, as it would not be viable to run with low demand and high rentals," says Samantak Das, chief economist at Knight Frank.
The government is setting up inter-state industrial corridors such as the Delhi-Mumbai industrial corridor and freight corridors such as the western and eastern dedicated freight

corridors. Analysts said that more manufacturing activities will be taken up along these routes, which in turn will increase warehousing demand.

The total warehousing space requirement in the top seven markets is expected to grow at a compounded annual growth rate (CAGR) of 8% -from 621 million sq ft in 2016 to 839 million sq ft by 2020 -estimated the Indian Warehousing Market Report 2016 by property consultant Knight Frank.

Courtesy: The Economic Times
14th October, 2016