Issue 19

1st October 2016

"The difference between tax avoidance and tax evasion is the thickness of a prison wall."

– Denis Healey

NOMINAL INDEX

A.G. FATS LTD. Vs STATE OF PUNJAB	(PB. TBNL.)	37
AMRIT BANASPATI CO. LTD. Vs STATE OF PUNJAB AND ANOTHER	(SC)	26
BHARTI TELEMEDIA LTD. Vs STATE OF PUNJAB	(PB. TBNL.)	40
HINDUSTAN LEVER LTD.Vs STATE OF KARNATAKA	(SC)	5
J.K. LAKSHMI CEMENT LTD. Vs COMMERCIAL TAX OFFICER	(SC)	16
MANJU SANITARY WARES Vs STATE OF PUNJAB AND ANOTHER	(PB. TBNL.)	28
S.K. STEELS CORPORATION Vs STATE OF PUNJAB	(PB. TBNL.)	31
SHIV BHOLE TRADING COMPANY Vs STATE OF PUNJAB	(PB. TBNL.)	43
VARDHMAN BARTAN STORE Vs STATE OF PUNJAB	(PB. TBNL.)	34

NOTIFICATION

HARYANA

DRAFT AMENDMENT- EXEMPTION FROM LEVY OF VAT ON SALE OF "TECHNETIUM 99M GENERATORS" USED IN DIAGNOSIS OF CANCER NO. WEB. 20/ST-1/H.A. 6/2003/S.59/2016	21.09.2016	47

NEWS OF YOUR INTEREST

VAT AMNESTY CLEARS TAX MUDDLE	17.09.2016	48
TRADERS DEMAND RELEASE OF RS 400 CRORE VAT REFUND	20.09.2016	51
CONSENSUS UNLIKELY ON TAX RATES AT GST COUNCIL MEET	21.09.2016	52
GST TO AFFECT FILM INDUSTRY BADLY	21.09.2016	54
PHONE COMPANIES WANT SOPS TO STAY UNDER GST	21.09.2016	55
SC RESERVES ORDER ON VALIDITY OF ENTRY TAXES IMPOSED BY STATES	21.09.2016	56
SWAMY WRITES TO PM MODI SEEKING 'STAY OF ALL OPERATIONS' OF GST'S IT BACKBONE	21.09.2016	57
GST COUNCIL APPROVES FIVE SETS OF DRAFT RULES	30.09.2016	59

Edited by

Aanchal Goyal, Advocate

Partner SGA Law Offices

#224, Sector 35-A, Chandigarh – 160022

Tele: +91-172-5016400, 2614017, 2608532, 4608532

Disclaimer:- While every effort has been made to ensure that this newsletter is free from errors or omissions, the authors/editors shall not be liable in any manner whatsoever for any action taken or omitted to be taken opinions expressed advice rendered or accepted based on any materials or information published in this newsletter. The information given in the present Newsletter is for the personal use of the intended recipient and should not be used in any commercial activity..

News From Court Rooms

ALLAHABAD HC: UP VAT : Whether best judgment assessment by rejecting books of accounts is justified when the material on the basis of which it is done are not sufficient to hold that the returns submitted are either incorrect or incomplete. Held no. (***Shanti Construction – July 26, 2016)***.

GUJARAT HC: Gujarat VAT : A public charitable trust running and maintaining a public hospital is not a dealer. Revenue's appeal dismissed. (***Saurashtra Kidney Research Institute – September 16, 2016***).

PATNA HIGH COURT: A division bench of the Patna High Court by Judgment dated 27.9.16 in Instakart Services Pvt Ltd has declared the provisions of Bihar Finance ACT amending the Bihar Entry Tax Act and the Rules framed there under as well as notification dated 20.1.16 to be ultra vires and has held that no tax can be levied on entry of goods in to the local areas made on e commerce portals6 for personal use and consumption.The court has held that the levy even though compensatory but the same is discriminatory as compensation cannot be demanded more from an outside dealer than a local dealer. The court has further held that the overall effect of tax on flow of goods from outside the State has to be taken into consideration

AUTHORITY FOR ADVANCE RULINGS (CE, C & ST): Service Tax : If, under a common agreement, a builder obtains necessary sanctions and then, builds an individual house, then, entire bundle would be eligible for exemption under Entry 14(b) of Notification No. 25/2012-ST; however, if sanction is obtained under a separate agreement, then, it would be a separate service liable to tax. (***Raghava Estates & Properties Ltd. – July 1, 2016***).

MADRAS HC: Works Contract : Supply of bill books, forms, registers etc., to the customers as per the specific orders placed, by utilizing its own paper by assessee should be treated as works contract. (North Arcot Printing and Stationery – July 20, 2016).

CESTAT, NEW DELHI : Central Excise : Fabrication of gates and gate parts for irrigation project using M.S. Sheets Plates Angles etc., as per the specifications of the project are not regularly traded items. Since test of marketability fails not liable to Excise Duty. (***Om Metal Infra Project Ltd. – September 1, 2016***)

CEC AND ST), NEW DELHI : Service Tax : It is not appropriate to determine the meaning of the Agreement on the basis of a phrase used in the Agreement. Applicant is required to supply and install the ESCIM System at the site of the customer, supply consumables, as also provide training and documentation with respect to the System and receives consideration based on its usage. The transaction in question qualifies as a transfer of right to use goods and consequently is outside the definition of service. (***Sicpa India P Ltd. – January 22, 2016***).

———

ISSUE 19
1st October 2016

SUBJECT INDEX

ASSESSMENT – INPUT TAX CREDIT – NATURAL JUSTICE – ASSESSMENTS FOR THE YEARS 2011-12 AND 2012-13 FRAMED REJECTING THE INPUT TAX CREDIT ON THE PURCHASES MADE FROM SAME SELLING DEALERS FOR NON-DEPOSIT OF TAX BY THEM – NAMES OF THOSE DEALERS CONFRONTED IN PROCEEDINGS OF ASSESSMENT – ASSESSMENT ORDER PASSED WITHOUT MENTIONING THE NAME OF THOSE SELLING DEALERS – NO REQUIREMENT TO MENTION THE NAMES OF SELLING DEALERS IN THE FINAL ORDER IF CONFRONTED DURING ASSESSMENT PROCEEDINGS – PROPER NOTICE ISSUED – NO REASON TO INTERFERE – APPEALS DISMISSED. - *SECTION 13, 29 OF PUNJAB VAT ACT, 2005* - **A.G. FATS LTD. VS STATE OF PUNJAB** 37

ATTEMPT TO EVADE TAX – PENALTY – CHECKPOST – GOODS REPORTED AT ICC BEING RETURNED AFTER REPAIRS – NOT ACCOMPANIED BY DOCUMENT SHOWING THE MOVEMENT OF GOODS FROM THE ASSESSEE TO JOB WORKER – EARLIER DOCUMENTS PRODUCED SHOWING MOVEMENT OF GOODS FROM ASSESSEE TO JOB WORKER ON PREVIOUS DAY – NOT POSSIBLE TO REPAIR GOODS I.E. SET TOP BOXES IN ONE SINGLE DAY – NO DOCUMENTS OR AGREEMENTS PRODUCED TO PROVE THE GENUINENESS OF TRANSACTION – PENALTY RIGHTLY IMPOSED – APPEAL DISMISSED – *SECTION 51 OF PVAT ACT, 2005* - **BHARTI TELEMEDIA LTD. VS STATE OF PUNJAB** 40

CONCESSIONAL RATE OF TAX—CENTRAL SALES TAX ACT—NOTIFICATION U/S 8(5)—STATE GOVERNMENT ISSUED NOTIFICATION DATED 6.5.1986 PROVIDING FOR REDUCTION OF CST RATE DEPENDENT UPON INCREASE IN TURNOVER FROM THE BASE YEAR I.E. 1984-85—ANOTHER NOTIFICATION ISSUED DATED 21.1.2000 PROVIDING FOR TAX @6% ON INTER-STATE SALE—ONE OF CONDITIONS PROVIDE FOR NON-AVAILMENT OF BENEFITS UNDER 1986 NOTIFICATION IF ELIGIBILITY CLAIMED UNDER 2000 NOTIFICATION—ASSESSEE CLAIMING BENEFIT OF 2000 NOTIFICATION ON THE TURNOVER NOT COVERED UNDER 1986 NOTIFICATION CLAIMING THERE IS NO DUAL BENEFIT—BENEFIT UNDER THE TWO NOTIFICATIONS CANNOT BE CLAIMED AT THE SAME TIME—RELIANCE PLACED UPON CIRCULAR DATED 1994 MISPLACED AS IT WAS ONLY FOR THE NOTIFICATION ISSUED IN THE YEAR 1994—BENEFIT CANNOT BE TAKEN BY APPLYING THE DOCTRINE OF *CONTEMPORANEA EXPOSITION*—APPEALS DISMISSED - *SECTION 8(5) OF CST ACT, 1956* - **J.K. LAKSHMI CEMENT LTD. VS COMMERCIAL TAX OFFICER** 16

ENTRY TAX—PACKING MATERIAL—RAW MATERIAL—PACKING MATERIAL USED FOR TEA—WHETHER PACKING MATERIAL IS TO BE TREATED AS RAW MATERIAL USED IN THE MANUFACTURING OF TEA AND EXEMPT U/S 11A—HELD: NO—ACT CONSIDERS TWO ITEMS SEPARATELY IN THE SCHEDULE FOR LEVY OF TAX AND ALSO PROVIDES FOR DIFFERENT RATES OF TAX—AS PER SCHEME OF THE ACT BOTH ITEMS REQUIRED TO BE TREATED DIFFERENTLY—NO INTERFERENCE REQUIRED IN THE ORDER OF HIGH COURT—APPEAL DISMISSED. *SECTION 3, 11A OF KARNATAKA TAX OF ENTRY OF GOODS ACT, 1979* - **HINDUSTAN LEVER LTD. VS STATE OF KARNATAKA** 5

PENALTY – ATTEMPT TO EVADE TAX – COPPER SCRAP FOUND EXCESS IN VEHICLE – VALUE DETERMINED @ RS.280/- PER KG AND PENALTY IMPOSED – ANOTHER CONSIGNMENT OF SCRAP FOUND IN THE VEHICLE ALONGWITH INVOICE SHOWING THE VALUE @ RS. 77.45 PER KG – PENALTY IMPOSED MERELY ON THE BASIS OF STATEMENT OF DRIVER REGARDING PRICE – DRIVER NOT APPROPRIATE PERSON TO KNOW ABOUT THE PRICE OF GOODS – MATTER REMITTED BACK. - *SECTION 51 OF PUNJAB VAT ACT, 2005.* - **VARDHMAN BARTAN STORE VS STATE OF PUNJAB** 34

PENALTY—ATTEMPT TO EVADE TAX—INTRA STATE SALES—RULE 64A—GOOD REPORTED AT ICC WITH BILL—E-TRIP REQUIRED UNDER RULE 64A IS NOT PRODUCED—PENALTY IMPOSED—ON APPEAL BEFORE TRIBUNAL—CLAIM THAT RULE 64A IS DIRECTORY AND ITS VIOLATION CANNOT ATTRACT PENALTY U/S 51—

PROVISIONS MANDATORY IN NATURE—GOODS IN QUESTION ARE SPECIFIED GOODS AS PER DIRECTIONS OF COMMISSIONER—NON ADHERENCE TO THE CONDITION OF RULE ATTRACT PENALTY U/S 51—ATTEMPT TO EVADE TAX IS WRIT LARGE—PENALTY UPHELD—APPEAL DISMISSED.—*SECTION 51 OF PVAT ACT, 2005* **SHIV BHOLE TRADING COMPANY VS STATE OF PUNJAB** 43

PENALTY—ATTEMPT TO EVADE TAX—VEHICLE REPORTED AT ICC—CARRYING TWO CONSIGNMENTS—ONE CONSIGNMENT REPORTED BUT THE OTHER CONSIGNMENT WAS NOT RECORDED—GOODS DETAINED—PENALTY IMPOSED FOR NOT DECLARING ONE TRANSACTION—PENALTY UPHELD UPTO TRIBUNAL—APPEAL BEFORE HIGH COURT—ENTRY TAX DEPOSITED FOR ONE TRANSACTION BUT NOT FOR THE OTHER TRANSACTION—CLAIM OF DEPOSIT OF TAX IN BANK BEFORE DETENTION NOT PLAUSIBLE—PROCESS OF DEPOSIT OF MONEY STARTED ONLY AFTER GOODS WERE DETAINED—NO PERVERSITY IN ORDERS OF LOWER AUTHORITIES—NO INTERFERENCE REQUIRED--APPEAL DISMISSED. – *SECTION 51 OF PVAT ACT, 2005* - **MANJU SANITARY WARES VS STATE OF PUNJAB AND ANOTHER** 28

REVISION – PENALTY – INTEREST – INPUT TAX CREDIT – ASSESSMENT FRAMED – CASE TAKEN UP IN REVISION ON THE GROUND OF WRONG AVAILMENT OF INPUT TAX CREDIT – REVISIONAL ORDER PASSED DEMANDING TAX ALONGWITH INTEREST AND PENALTY – ON APPEAL, LEVY OF INTEREST AND PENALTY CONTESTED – NO ORDER IMPOSING PENALTY OR INTEREST PASSED BY ASSESSING AUTHORITY – REVISIONAL AUTHORITY CANNOT REVISE ORDERS QUA PENALTY AND INTEREST – APPEAL PARTLY ALLOWED – DEMAND OF PENALTY AND INTEREST SET ASIDE – CASE REMITTED BACK TO ASSESSING AUTHORITY TO PASS FRESH ORDER QUA PENALTY AND INTEREST – *SECTION 65 OF PVAT ACT, 2005* - **S.K. STEELS CORPORATION VS STATE OF PUNJAB** 31

WRIT—ALTERNATIVE REMEDY—QUESTION OF LAW—HIGH COURT REFUSED TO ENTERTAIN WRIT PETITION—SLP FILED BEFORE SUPREME COURT—ENDS OF JUSTICE WOULD BE MET IN CASE THE JUDGMENT RENDERED BY THE HIGH COURT IS SET ASIDE AND MATTER IS REMITTED BACK TO DECIDE THE QUESTIONS OF LAW RAISED BY ASSESSEE—ASSESSEE REQUIRED TO DEPOSIT A SUM OF RS.15 CRORES BEFORE THE HIGH COURT WITHIN 6 WEEKS WHICH CAN BE WITHDRAWN BY THE REVENUE –HIGH COURT TO DECIDE WRIT PETITION WITHIN 6 MONTHS. – *ARTICLE 226 OF CONSTITUTION OF INDIA.* **AMRIT BANASPATI CO. LTD. VS STATE OF PUNJAB AND ANOTHER** 26

Issue 19
1st October 2016

SUPREME COURT OF INDIA

Go to Index Page

CIVIL APPEAL NO. 4003 OF 2007

HINDUSTAN LEVER LTD.
Vs
STATE OF KARNATAKA

A.K. SIKRI AND R.F. NARIMAN, JJ.

2nd September, 2016

HF ▶ Revenue

Packing Material cannot be considered as Raw Material under the Karnataka Tax of Entry of Goods Act, 1979

ENTRY TAX—PACKING MATERIAL—RAW MATERIAL—PACKING MATERIAL USED FOR TEA—WHETHER PACKING MATERIAL IS TO BE TREATED AS RAW MATERIAL USED IN THE MANUFACTURING OF TEA AND EXEMPT U/S 11A—HELD: NO—ACT CONSIDERS TWO ITEMS SEPARATELY IN THE SCHEDULE FOR LEVY OF TAX AND ALSO PROVIDES FOR DIFFERENT RATES OF TAX—AS PER SCHEME OF THE ACT BOTH ITEMS REQUIRED TO BE TREATED DIFFERENTLY—NO INTERFERENCE REQUIRED IN THE ORDER OF HIGH COURT—APPEAL DISMISSED. *SECTION 3, 11A OF KARNATAKA TAX OF ENTRY OF GOODS ACT, 1979*

The Assessee/Appellant being a manufacture of Tea brought certain Packing Material used in manufacturing of Tea inside State. It claimed that it is exempt from payment of Entry Tax under a notification issued under Sec.11A of Karnataka Tax of Entry of Goods Act, 1979 as it is one of the Raw Materials used in the manufacturing of intermediate or finished products manufactured by New Industrial Unit. The Act provides for levy of Tax on the Goods specified in First Schedule and as per Entry-66, Tax is leviable on Packing Materials and as per Entry-80, tax is payable on the Raw Materials. The State Government in exercise of powers to grant exemption U/s 11A of the Act has provided for exemption to the New Industrial Unit qua Raw Materials used in the manufacturing of finished products. The rate notification issued U/s 3 provides for different rates of tax for Packing Materials and Raw Materials. The scheme of Act, therefore, clearly provides for using different expressions for two items i.e. Packing Materials and Raw Materials. Accordingly the exemption granted U/s 11A of the Entry Tax Act would not be available on the Entry of Packing Material brought inside the State by claiming that it is one of the Raw Materials for manufacturing of Tea. Appeal dismissed.

Cases referred:

- *Government of Andhra Pradesh v. Guntur Tobaccos Ltd., [15 STC 240]*
- *Brooke Bond Lipton India Ltd. v. State of Karnataka, 109 STC 265*

- *Tata Engineering & Locomotive Co. Ltd. (TELCO) v. State of Bihar, (1994) 6 SCC 479*
- *J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. S.T.O., (1965) 1 SCR 900*
- *Star Paper Mills Ltd. v. CCE, Meerut, (1989) 4 SCC 724*
- *CCE v. Eastend Paper Industries Ltd., (1989) 4 SCC 244*
- *CCE v. Ballarpur Industries Limited, (1989) 4 SCC 566*
- *H.M.M. Ltd. V. CCE, (1994) 6 SCC 594*
- *J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur, (1965) 1 SCR 900*

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

Senior Advocates: Mr. Arvind Datar & Mr. Kavin Gulati
Advocates: Mr. R.N. Karanjawala, Ms. Ruby Singh Ahuja, Ms. Suman Yadav, Mr. Harsh Trivedi, Ms. Eesha Mohapatra, Mrs Manik Karanjawala

For Respondent(s):
Senior Advocates: Mr. Basavaprabhu S. Patil
Other Advocates: Mr. V. N. Raghupathy, Mr. Anirudh Sanganeria, Mr. Amjid Mazbool, Mr. Parikshit P. Angadi, Mr. Chinnay Deshpande

******

R.F. Nariman, J.

1.The appellant is a public limited company having a tea manufacturing unit at Dharwad and various other units which also manufacture tea. The tea manufactured by the appellant is of three types, namely, packet tea, tea in tea bags, and quick brewing black tea. It is claimed that the Dharwad Unit, as opposed to the other units manufacturing tea, is a new unit and is, therefore, exempt altogether from payment of entry tax on packing material of tea under a notification dated 31.3.1993 issued under Section 11A of the Karnataka Tax on Entry of Goods Act, 1979 (hereinafter referred to as the "Karnataka Entry Tax Act"). Insofar as the other units are concerned, it is the case of the appellant they are covered by Explanation II to a Notification dated 23.9.1998 issued under Section 3 of the said Act, and "packing material" being covered by the said Explanation would entitle them to pay entry tax at the rate of 1% and not 2%. In these appeals, we are concerned with three assessment years 1994-1995, 1995-1996 and 1996-1997.

2. The question that arises for decision in this appeal is whether "packing materials" which enter the local area for consumption therein, that is for packing tea that is manufactured by the appellant, can be said to be raw material, components, or inputs used in the manufacture of tea. In order to answer this question, it is necessary to first set out the relevant provisions of the Karnataka Entry Tax Act. They are as follows:

> *"2.* ***Definitions.****- (A) In this Act, unless the context otherwise requires,-*
>
> *(4a) goods means all kinds of moveable property (other than newspapers, actionable claims, stocks and shares and securities) and includes livestock;*
>
> *(7) "Schedule" means a schedule appended to this Act;*
>
> *(8) "tax" means tax leviable under this Act;*
>
> *(8a) 'Value of the goods' shall mean the purchase value of such goods that is to say, the purchase price at which a dealer has purchased the goods inclusive of charges borne by him as cost of transportation, packing, forwarding and handling charges, commission, insurance, taxes, duties and the like, or if such goods have not been purchased by him, the prevailing market price of such goods in the local area.*

(B) Words and expressions used in this Act, but not defined, shall have the meaning assigned to them in the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957.)

*3. **Levy of tax.**- (1) There shall be levied and collected a tax on entry of any goods specified in the FIRST SCHEDULE into a local area for consumption, use or sale therein, at such rates not exceeding five percent of the value of the goods as may be specified retrospectively or prospectively by the State Government by notification and different dates and different rates may be specified in respect of different goods or different classes of goods or different local areas.*

*11A. **Power of State Government to exempt or reduce tax.-***

(1) The State Government may, if in its opinion it is necessary in public interest so to do, by notification and subject to such restrictions and conditions and for such period as may be specified in the notification, exempt or reduce either prospectively or retrospectively the tax payable under this Act,-

(i) by any specified class of persons or class of dealers or in respect of any goods or class of goods; or

(ii) on entry of all or any goods or class of goods into any specified local area.

(2) The State Government may, by notification cancel or vary any notification issued under sub-section (1).

(3) Where any restriction or condition specified under sub- section (1) is contravened or is not observed by a dealer or a declaration furnished under the said sub-section is found to be wrong, then such dealer shall be liable to pay by way of penalty an amount equal to twice the difference between the tax payable at the rates specified by or under the Act and the tax paid at the rates specified under the notification on the value of such goods in respect of which such contravention or non-observance has taken place or a wrong declaration is furnished:

Provided that before taking action under the sub-section the dealer shall be given a reasonable opportunity of being heard.

FIRST SCHEDULE

(See Section 3 (1))

66. Packing materials namely:-

(i) fibre board cases, paper boxes, folding cartons, paper bags, carrier bags and card board boxes, corrugated board boxes and the like.

(ii) tin plate containers (cans, tins and boxes) tin sheets, aluminium foil, aluminium tubes, collapsible tubes, aluminium or steel drums, barrels and crates and the like ;

(iii) plastic, poly-vinyl chloride and polyethylene films bottles, pots, jars, boxes, crates, cans, carboys, drums, bags and cushion materials and the like ;

(iv) wooden boxes, crates, casks and containers and the like;

(v) gunny bags, bardan (including batars), hessian cloth, and the like;

(vi) glass bottles, jars and carboys and the like ;

(vii) laminated pacing materials such as bitumanised paper and hessian based paper and the like;

80. Raw materials component parts and inputs which are used in the manufacture of an intermediate or finished product."

3. Under Section 11A of the Act, a Notification dated 31.3.1993, exempting raw materials, component parts, and inputs entering a local area for use in the manufacture of an intermediate or finished product, was promulgated. It reads as under:

"Entry tax on raw materials, etc. for use in manufacture of goods by new industrial units – Exemption (Karnataka)

Notification III No.FD.11.CET 93 dated the 31st March,1993

[Public in Karnataka Gazette, Extraordinary No. 201, Part 4- C(ii) dated 31st March, 1993]

In exercise of the powers conferred by section 11-A of the Karnataka Tax on Entry of Goods Act, 1979 the Government of Karnataka being of the opinion that it is necessary in the public interest so to do, hereby exempts with effect from the first day of April, 1993 the tax payable under the said act, on the entry of raw materials, component parts and inputs and machinery and its parts into a local area for use in the manufacture of an intermediate or finished product by the new industrial units mentioned in column (2) of the Table below located in the zones specified in column (3) and for the period mentioned in Column (4) thereof.

TABLE

Sl.No.	Type of Industry	Location of Industry	Period of exemption
1	2	3	4
1.	Tiny/Small/medium and large scale industrial units	Situated in Zone-III specified in annexure-I to Government Order No. CI/138 SPC/90, dated 27.9.1990	4 years from the date of commencement of commercial production OR 4 years from the date of commencement of this notification whichever is later.
2.	Tiny/small/medium and large scale industrial units	Situated in Zone-IV specified in annexure I to Government Order No. CI/138/SPC/90, dated 27.9.1990	5 years from the date of commencement of commercial production OR 5 years from the date of commencement of this notification whichever is later.
3.	Tiny/small scale/ Medium and large scale industrial units in the thrust sector as defined in annexure-II to G.O. No. CI.138/SPC/90, dated 27.9.1990	Situated in Zone-III ^specified in annexure I to Government Order No. CI/138/SPC/90, dated 27.9.1990	5 years from the date of commencement of commercial production OR 5 years from the date of commencement of this notification whichever is later.

4.	*Tiny/small scale/ Medium and large scale industrial units in the thrust sector as defined in Annexure II to G.O. No. CI.138/SPC/90, dated 27.9.1990*	*Situated in Zone-IV specified in annexure-I to Government Order No. CI/138/SPC/90, dated 27.9.1990*	*6 years from the date of commencement of commercial production,* *OR* *6 years from the date of commencement of this notification whichever is later.*

Explanation – (1) For the purpose of this notification "a new industrial unit" shall have the same meaning assigned to it in Notification No. FD 239 CSL 90(1) dated 19th June, 1991, issued under Section 8-A of the Karnataka Sales Tax Act, 1957.

(2) The provisions of the notification shall not apply to a unit to which the provisions of Notification No. FD 239 CSL 90(1) dated 19th June, 1991 issued under Section 8-A of the Karnataka Salex Tax Act, 1957 shall not apply.

(3) The procedure specified in Notification No. FD 239 CSL 90(1), dated 19th June, 1991 issued under Section 8-A of the Karnataka Sales Tax Act, 1957 for claiming exemption under that notification shall mutates mutandis apply to a industrial unit claiming exemption under this notification."

4. By a notification dated 31.3.1994, various goods which entered a local area were charged at different rates of entry tax. This notification was struck down by the High Court as violating Article 301 of the Constitution, and hence, the State Government came out with notification dated 23.9.1998 to cure the defects pointed out by the High Court, and was for the period dated 1.4.1994 to 6.1.1998. The aforesaid notification reads as follows:

"SI No.104

No. FD 112 CET 98, Bangalore, dated 23rd September, 1998

In exercise of the powers conferred by sub-section (1) of Section 3 of the Karnataka Tax on Entry of Goods Act, 1979 (Karnataka Act 27 of 1979), the Government of Karnataka, hereby specify that with effect from the First day of April, 1994 and upto 6th day of January, 1998, tax shall be levied and collected under the said Act on the entry of goods specified in column (2) of the table below into a local area from any place outside the State of consumption or use therein, at the rates specified in the corresponding entries in column ; (3), thereof:-

TABLE

Sl. No.	*Commodity*	*Rate of tax*
1	*2*	*3*
3.	*Packing material namely:*	
	(i) Fibre board cases, paper boxes, Folding cartons, paper bags, carrier bags and card board boxes, corrugated board boxes and the like;	*2%*
	(ii) Tin plate containers (cans, tins and boxes), tin sheets, aluminium foil, aluminium	*2%*

tubes, collapsible tubes, aluminium or steel drums, barrels and crates and the like:

(iii) Plastic, polyvinyl chloride and polyethylene 2% firms, bottles, pots, jars, boxes, crates, cans, carboys, drums, bags and cushion materials and the like;

(iv) Wooden boxes, crates, casks and containers 2% and the like;

(v) Gunny bags, bardan (including batars) hessian 2% cloth and the like;

(vi) Glass bottles, jars and carboys and the like; 2%

(vii) Laminated packing materials, such as bluminised 2% paper and hessian-based paper and the like;

4. Raw materials, component parts and inputs 1% are used in the manufacture of an intermediate of finished product.

Explanation I – The words "raw materials, component parts and any other inputs" do not include exempted goods which are specified in the Schedule, horticultural produce, cereals, pulses, oil seeds including copra and cotton seeds, timber or wood of any species, newsprint, silk cocoons, raw, thrown or twisted silk, tobacco (whether raw or cured) and blended yarn, man-made filament yarn, man-made fibre yarn, man-made fibre, woolen yarn and woolen blended yarn, washed cotton seed oil, non- refined edible oil, rice bran and oil cake and such other goods as may be notified by the State Government from time to time.

Explanation II – If any of the goods liable to tax under this Act are brought into a local area for use or consumption as raw materials, component parts and inputs in the manufacture of an intermediate or finished product, the tax payable on such goods shall be at the rate of one percent."

5. All the authorities under the Entry Tax Act i.e. the Assessing Authority, the First Appellate Authority and the Karnataka Appellate Tribunal have held that packing material cannot be regarded as raw material, component parts or inputs used in the manufacture of finished goods and, therefore, in the context of the Entry Tax Act read with Schedule I, such packing material is neither exempt nor chargeable at the rate of 1% on a true construction of the aforesaid notifications of 1993 and 1998. The High Court in turn has dismissed the revision petitions filed under the statute by the assessee following their own judgment in ***Nestle India Ltd. v. State of Karnataka***, a Division Bench judgment of the Karnataka High Court dated 22.3.2006. This is how the appellants have come before us in the present civil appeals.

6. Shri Arvind Datar and Shri Kavin Gulati, learned senior advocates, strenuously argued before us that the judgment in the ***Nestle case***, which was followed in the instant case, was incorrect inasmuch as according to them "packing material" is clearly an "input", if not a component part of manufactured tea, and would, therefore, qualify for exemption and/or lesser rate of tax as the case may be. They also argued that Explanation II to the Notification of 23.9.1998 made the position clear that even though packing material may be covered under item 3 of the said Notification, yet, as it is an input in the manufacture of the finished product

tea, it would be covered by Explanation II, and therefore would be taxable at the rate of 1% and not 2%. They further argued that words and expressions that are not defined under the Entry Tax Act but which are defined in the Karnataka Sales Tax Act, 1957 would have to be borrowed for the purpose of the Entry Tax Act. In this regard, in particular, they relied upon Section 5A of the Karnataka Sales Tax Act, and in particular Explanation I to the aforesaid Section which defined "industrial inputs" as meaning either a "component part" or "raw material" or "packing materials", and argued that packing material has been recognized as an input under the Karnataka Sales Tax Act, and should be so recognized under the Entry Tax Act read with the two notifications aforesaid. They also cited a large number of judgments of this Court and of the High Court to buttress their submission that packing material would certainly come within the expression "input" and would therefore be covered by the aforesaid two notifications.

Shri Kavin Gulati also specifically pointed out the Tea Marketing Control Order, 2003 made under Section 30 of the Tea Act, 1953 in which, "manufacturer" has been defined as a person who also produces value added products commercially known as tea, that is packet tea, tea box, etc., and therefore went on to argue that it is obvious that packing material used to market tea would necessarily be included.

7. Shri Patil, learned senior advocate appearing on behalf of the State of Karnataka, countered these submissions, and stated that the High Court was absolutely correct in interpreting the Entry Tax Act and the two notifications in the manner that it did in **Nestle** case. He argued that the context of the Entry Tax Act is most important and that decisions relatable to the Central Excise Act and to Sales Tax statutes would not therefore apply. His primary argument was that Schedule I of the Entry Tax Act itself made a clear distinction between packing materials, on the one hand, and raw materials, component parts and inputs, on the other, the Schedule making it clear that they were distinct and separate goods. He further adverted to the definition of the expression "goods" contained in the Entry Tax Act and argued that unlike in the Central Excise Act and in Sales Tax statutes, goods need not be marketable, the definition confining goods to "movable property" without more. He also argued that adverting to Section 5A of the Karnataka Sales Tax Act would be of no help in the facts of the present case inasmuch as we are not concerned with "industrial inputs" but inputs as understood by the Entry Tax Act read with Schedule I. According to him all the judgments cited by the appellants were distinguishable in that none of them pertain to any entry tax statute but were all under the Central Excise Act or Sales Tax statutes.

8. Having heard learned counsel for the parties, it is important to go back to a few fundamentals. As has been explained in ***Escorts Limited v. CCE, (2015) 9 SCC 109***, the definition of "manufacture" in the Central Excise Act is dependent upon the definition of "goods" defined by the Constitution in Article 366(12). This Court has therefore held:-

> *"It is clear on a reading of this Entry that a duty of excise is only leviable on "goods" manufactured or produced in India. "Goods" has been defined under Article 366(12) as follows:*
>
> > *"366.**Definitions.**—In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—*
> >
> > ***
>
> *(12) **'goods'** includes all materials, commodities and articles;"*
>
> *Each of these three expressions has been defined in Shorter Oxford English Dictionary as follows:*

> *"Materials".—the matter of which a thing is or may be made; the constituent parts of something.*
>
> *"Commodities".—a thing of use or value; a thing that is an object of trade; a thing one deals in or makes use of.*
>
> *"Articles".—a particular item of business.*
>
> *Although the definition of "goods" is an inclusive one, it is clear that materials, commodities and articles spoken of in the definition take colour from one another. In order to be "goods" it is clear that they should be known to the market as materials, commodities and articles that are capable of being sold.*
>
> *In the basic judgment which has been referred to in every excise case for conceptual clarity, namely, Union of India v. Delhi Cloth & General Mills Co. Ltd. [(1977) 1 ELT 199 : AIR 1963 SC 791 : 1963 Supp (1) SCR 586] , this Court held that for excise duty to be chargeable under the constitutional entry read with Section 3 of the Central Excise and Salt Act, two prerequisites are necessary. First, there must be "manufacture" which is understood to mean the bringing into existence of a new substance. And secondly, the word "goods" necessarily means that such manufacture must bring into existence a new substance known to the market as such which brings in the concept of marketability in addition to manufacture. …" [paras 8-11]*

9. However, on a perusal of the definition of "goods" in Section 2(A)(4a) of the Entry Tax Act, the said definition is an exhaustive one including all kinds of movable property and livestock. It is obvious from a reading of this definition that marketability does not appear to be a sine qua non for something to qualify as "goods" under the Entry Tax Act, unlike the Central Excise Act, and this basic fact will have to be kept in view while dealing with some of the judgments that have been cited before us. This is for the reason that anything that is tangible, without more, and enters a local area for consumption, sale or use therein is taxable, the taxable event being 'entry' and not 'manufacture' of goods, which, as has been noticed hereinabove, brings in the concept of marketability in the context of a duty of excise, which is absent in the context of entry tax. We might also add that Section 2(A)(8a) wherein the "value of the goods" is defined, also makes a distinction between "goods" as such, and "packing material", making it clear that charges borne by a dealer as cost of packing would have to be included in the "value of goods". In the context of the Entry Tax Act, the difference between 'goods' used in the manufacture of goods and "packing material" is also brought out by Schedule I. Packing materials are separately defined in Entry 66. On the other hand, raw materials, component parts and inputs, which are used in the manufacture of an intermediate or finished product, are separately and distinctively given in Entry 80 thereof. The context of the Entry Tax Act therefore is clear. When raw materials, component parts and inputs are spoken of, obviously they refer to materials, components and things which go into the finished product, namely, tea in the present case, and cannot be extended to cover packing materials of the said tea which is separately provided for by the aforesaid Entry 66.

10. The notification dated 23.9.1998 issued under Section 3 uses identical language as that contained in Entries 66 and 80 of Schedule I to the Entry Tax Act. Equally, notification dated 31.3.1993 is an exemption notification issued under Section 11A which also uses the identical language of Entry 80 of Schedule I. This being the case, it is clear that neither

notification can be read to include "packing material" as "raw materials, component parts or inputs used in the manufacture" of tea.

11. This brings us to an argument made by learned counsel for the appellants on the correct construction of Explanation II to the notification dated 23.9.1998.

12. What has first to be seen is that packing material, and raw materials, component parts and inputs are separately provided for under the Schedule to the Act. The same is also true of the aforesaid Notification. Packing material is contained in Entry 3 of the table whereas raw materials, component parts and inputs are contained in Entry 4. The rate at which they are taxed is also different – packing materials at 2%, whereas raw materials, components parts and inputs are taxed at 1%. This being so, the reason for inclusion of Explanation II appears to be that goods which are liable to tax, being finished goods in themselves, may yet be brought into a local area for use or consumption as raw material, component parts and inputs in the manufacture of an intermediate or finished product. It is only such goods that are liable to be taxed at the rate of 1%. It is difficult to accept the argument on behalf of the appellants that Explanation II makes it clear that though packing materials may be liable to tax at 2%, yet if they fall in Explanation II, they would be liable to tax at the rate of 1%. This would fly in the face of the scheme of Schedule I of the statute which, as has been held earlier, makes it clear that in no case can packing materials be said to be raw materials, component parts or inputs used in the manufacture of finished goods. For this reason alone we find it difficult to construe the notification dated 23.9.1998 in the manner suggested by the appellants.

13. Even otherwise, there is no such Explanation II contained in the exemption notification dated 31.3.1993. This being the case, if we were to accept the case of the appellants, they would be liable to tax at the rate of 1% under the 1998 notification but would not be exempt under the 1993 notification, thus rendering the same packing material liable to tax at the rate of 2% in the case of the Dharwad unit and 1% in the case of all other units. This would lead to an anomalous situation which can best be avoided by not accepting the argument on behalf of the appellants.

14. Equally, the argument based on Section 5A of the Karnataka Sales Tax Act is fallacious in that it is only for the purpose of "industrial inputs" that packing materials are included, and forms a separate scheme of taxation under the Sales Tax statute. We cannot accede to the argument that de hors the context of the Entry Tax Act, we should accept that industrial inputs include packing materials and that therefore, by parity of reasoning, "inputs" under the Entry Tax Act should also include packing material. This argument has therefore correctly been turned down by the High Court of Karnataka in the Nestle case.

15. We have now to deal with the judgments cited on behalf of the appellants. In ***Government of Andhra Pradesh v. Guntur Tobaccos Ltd., [15 STC 240]***, this Court had to decide as to whether the use of packing material should be regarded as execution of a works contract and not as a sale. This Court held on the facts in that case that packing material was part of the process of re-drying tobacco as it was necessary to pack it in a waterproof material to protect it from heat and humidity, so as to store tobacco for a sufficiently long period to avoid fermentation, and to make the tobacco mature for use in cigarettes, cigars, etc. The context of the judgment is entirely different from the facts contained in the present case and would thus have no relevance. Learned counsel for the appellants tried to draw succour from this judgment stating that the idea of packing tea is also to keep out moisture. While that may be so, that single fact cannot lead to a conclusion that would drive a coach and four through the scheme of the Entry Tax Act.

16. ***Brooke Bond Lipton India Ltd. v. State of Karnataka, 109 STC 265***, was cited next. This is a High Court judgment under the Karnataka Sales Tax Act, in which it was stated that packaging led to value addition for the purpose of excise and sales tax, and that it was a

possible view that packaged blended tea produced in the industrial unit of the appellant is a manufactured product in which packing materials are inputs. This was in the context of exemption notifications under the Sales Tax Act. As can be seen from paragraph 26 of the aforesaid judgment, the questions involved in that case were entirely different. Also, the test of what is "manufacture" was borrowed from the Central Excise Act as can be seen from paragraph 48 of the judgment. The High Court points to a new dimension to the word "manufacture" in the context of excise which would therefore include within it packing material as well in order that the goods be made marketable. This, as we have seen above, cannot be done in the context of the Entry Tax Act.

17. In ***Tata Engineering & Locomotive Co. Ltd. (TELCO) v. State of Bihar, (1994) 6 SCC 479***, this Court had to deal with a notification issued by the State of Bihar in the context of sales tax. The expression "raw material" and "input" was used in the notification. This Court held, following ***J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. S.T.O., (1965) 1 SCR 900***, that the expression "in the manufacture of goods" would normally encompass the entire process carried on by the dealer of converting raw materials into finished products. The precise question before this Court was whether products finished in themselves, such as tyres, tubes, batteries, etc., when purchased by the appellant for use in the manufacture of vehicles, could be said to be inputs. This Court held that as a vehicle cannot be operative without tyres, tubes, and batteries, obviously they were inputs in the sense of the dictionary meaning of what is "put in". Both the fact situation and the ratio of this judgment are far removed from the facts in the present case inasmuch as it is nobody's case that without the packing material manufactured tea cannot be said to exist as a finished product, it being "moveable property" and therefore "goods" under the Karnataka Entry Tax Act. This judgment is also therefore of no avail to the appellant.

18. ***M/s. Star Paper Mills Ltd. v. CCE, Meerut, (1989) 4 SCC 724***, is an excise case in which an exemption Notification exempted goods used as component parts in manufacture of any goods on which excise duty was leviable. This judgment defines the word "component" to mean a constituent part. In this context, it was held that paper core is a component part of paper delivered to the customer in rolls, but not in sheets as it was not necessary for manufacture of paper sheets. This case would have no application to the facts of the present case. It is obvious that packing material used to pack a product complete in itself, cannot possibly be included in the word "component" as it is not a constituent part of manufactured tea.

19. Three other judgments under the Central Excise Act were cited. The first of them, ***CCE v. M/s. Eastend Paper Industries Ltd., (1989) 4 SCC 244***, was concerned with the marketability aspect of central excise which, as has been held by us above, would not apply in the context of the Entry Tax Act. In that judgment, paper wrapping was held to be essential to make the concerned goods marketable. The second of these judgments ***CCE v. Ballarpur Industries Limited, (1989) 4 SCC 566***, again concerned a completely different fact situation. The question in that case was whether an admitted input, Sodium Sulphate, in the manufacture of paper, would not be construed to be a raw material only by reason that in the course of chemical reactions Sodium Sulphate is consumed and burnt up. This Court held that consumption and burning up would make no difference, as an 'input' need not always manifest itself in the final product. And in ***H.M.M. Ltd. V. CCE, (1994) 6 SCC 594***, it was held that a screw cap on a bottle containing Horlicks was a component part of Horlicks, it being an essential ingredient to complete the process of manufacture to make Horlicks marketable. This judgment again will not apply for the same reason indicated above, namely, that marketability is not relevant for the purpose of the Entry Tax Act.

20. ***M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur, (1965) 1 SCR 900***, is a judgment in which Section 8 of the Central Sales Tax Act was

pressed into aid on behalf of the appellant. In this case, the question was whether drawing materials, photographic materials etc. could be comprehended within the expression “in the manufacture of goods for sale” within the meaning of section 8(3)(b) of the Central Sales Tax Act, 1956. In order to determine whether such materials would qualify as such, this Court held that where any particular process is so integrally connected with the ultimate production of goods that, but for that process, manufacture or process of goods would be commercially inexpedient, goods required in that process would fall within the expression “in the manufacture of goods”. What has been said about the excise cases squarely applies here. The expression used in Section 8 of the Central Sales Tax Act is not “in the manufacture of goods”, but “in the manufacture of goods for sale”, bringing in the element of marketability.

21. It only remains to deal with the argument made on behalf of the appellant based on the Tea Marketing Control Order. Needless to add, a manufacturer for the purpose of the said Order is specifically a person who produces value added products commercially known as tea. The context of the said definition is for the purpose of registering manufacturers or producers and buyers of tea, having relevance therefore to the sale aspect of tea. As has already been held by us, the context of entry tax being different, we are afraid this argument also does not avail the appellant.

22. We are, therefore, of the view that the High Court was correct in following its own earlier Division Bench judgment in the Nestle case. This appeal is, accordingly, dismissed.

———

SUPREME COURT OF INDIA

Go to Index Page

CIVIL APPEAL NO. 102 OF 2010

J.K. LAKSHMI CEMENT LTD.
Vs
COMMERCIAL TAX OFFICER

DIPAK MISRA AND C. NAGAPPAN, JJ.

16th September, 2016

HF ▶ Revenue

Assessee is not entitled to take benefit of two notifications issued U/s 8(5) of CST Act when the conditions of notification specifically provide so.

CONCESSIONAL RATE OF TAX—CENTRAL SALES TAX ACT—NOTIFICATION U/S 8(5)—STATE GOVERNMENT ISSUED NOTIFICATION DATED 6.5.1986 PROVIDING FOR REDUCTION OF CST RATE DEPENDENT UPON INCREASE IN TURNOVER FROM THE BASE YEAR I.E. 1984-85—ANOTHER NOTIFICATION ISSUED DATED 21.1.2000 PROVIDING FOR TAX @6% ON INTER-STATE SALE—ONE OF CONDITIONS PROVIDE FOR NON-AVAILMENT OF BENEFITS UNDER 1986 NOTIFICATION IF ELIGIBILITY CLAIMED UNDER 2000 NOTIFICATION—ASSESSEE CLAIMING BENEFIT OF 2000 NOTIFICATION ON THE TURNOVER NOT COVERED UNDER 1986 NOTIFICATION CLAIMING THERE IS NO DUAL BENEFIT—BENEFIT UNDER THE TWO NOTIFICATIONS CANNOT BE CLAIMED AT THE SAME TIME—RELIANCE PLACED UPON CIRCULAR DATED 1994 MISPLACED AS IT WAS ONLY FOR THE NOTIFICATION ISSUED IN THE YEAR 1994—BENEFIT CANNOT BE TAKEN BY APPLYING THE DOCTRINE OF *CONTEMPORANEA EXPOSITION*—APPEALS DISMISSED. SECTION 8(5) OF CST ACT, 1956

State of Rajasthan issued a Notification dated 6.5.1986 U/s 8 (5) of CST Act 1956 providing for reduced rate of Tax payable on Inter-State trade or commerce depending upon the increase in turnover of Inter-State sale in comparison to the Year 1984-85 subject to fulfilment of certain conditions. In the Year 1994 another Notification was issued providing for rate of tax of 4% on the Inter-State Sales of Cement provided that the dealer making Inter-State Sales under the said Notification shall not be eligible to claim benefit under the 1986 Notification. The Notification was valid from 1st April 1994 to 31st March 1997. A circular was issued by the Commercial Tax Department clarifying that the benefit under 1986 Notification would also be available for the sale of cement made against Form-C or Form-D but not for the Inter State Sale made without Form-C or Form-D. The said circular was withdrawn on 16.4.2001.

For the Year 2001-02 the Assessee filed its return and claimed the benefit under the Notification of 1986 as well as the Notification issued in the Year 2000. The said claim was rejected holding that the benefit under the 1986 Notification is not available after the issuance of circular in the Year 2001. The appeal filed by the Assessee was accepted and thereafter Revenue approached the Tax Board. The appeal was accepted and it was held that dual benefit

cannot be availed by the Assessee. The Revision petition filed before the High Court by the Assessee was dismissed. On appeal before Supreme Cour.

Held:

A plain reading of Notification issued in the year 2000 shows that a Dealer claiming benefit of concessional rate under the said Notification cannot simultaneously avail the benefits under the Notification issued in the Year 1986. The circular issued in the year 1994 allowing the benefit of both the notifications was only available upto 31.3.1997 when the said notification had been rescinded. Moreover the said circular had been withdrawn on 16.4.2001 specifically and therefore no benefit can be derived from said circular in the Year 2001-02. The argument based upon the doctrine of contemporanea exposition is also not acceptable as it has to be applied with caution and the said rule must give way when the language of the statute is plain and unambiguous. On a careful scrutiny of the language employed in the notification of Year 2000 it is difficult to hold that such Notification is ambiguous or susceptible to two views of interpretations. Moreover the circular having been withdrawn the said doctrine has no applicability to the facts of the present case. Accordingly Appeals filed by the Assessee are dismissed.

Cases referred:

- *Tata Cummins Ltd. v. State of Jharkhand 2006 (16) Tax update 199*
- *Vividh Marbles Pvt. Ltd. v. Commercial Tax Officer 2007 (17) Tax update 307*
- *State of Rajasthan v. J.K. Udaipur Udyog Ltd. and another (2004) 137 STC 438*
- *MRF Ltd. Kottayam v. Asstt. Commissioner (Assessment) Sales Tax and ors. (2006) 8 SCC 702*
- *UCO Bank, Calcutta v. Commissioner of Income Tax, West Bengal (1999) 4 SCC 599*
- *Central Excise, Bolpur v. Ratan Melting and Wire Industries (2008) 13 SCC 1*
- *G.P. Singh's Principles of Statutory Interpretation, 13th Edition-2012 at page 344*
- *Rohitash Kumar and others v. Om Prakash Sharma and others (2013) 11 SCC 451*

Present: For Appellant(s) M/s Gagrat & Co.
For Respondent(s) Mr. Milind Kumar, AOR
Mr. Jatinder Kumar Bhatia, AOR

******

DIPAK MISRA, J.

1. The appellant is a Public Limited Company incorporated under the Companies Act, 1956 and engaged in the business of manufacturing and selling Grey Portland Cement. In exercise of powers conferred by Section 8(5) of the Central Sales Tax Act, 1956 (for short, "CST Act"), the Government of Rajasthan had issued a Notification No. F4(72)FD/Gr.IV/81-18 dated 06.05.1986 allowing partial exemptions from the sales tax payable in respect of inter-State sales in the manner and subject to the conditions mentioned therein. Partial exemption was granted under the said notification at the rate of 50%/75% on the basis of increase in the percentage of the entire inter-State sales and decrease in percentage of stock transfers but the benefit under the said notification was not available on levy cement. From the assessment year 1989-90 to 1997-98 the appellant had been granted benefit of partial exemption under the notification dated 06.05.1986 except for the assessment year 1995-96 and 1996-97 as no claims were made by the appellants being not eligible.

2. It is necessary to state here that the State, in exercise of powers conferred by Section 8(5) of the CST Act, issued Notification No. F4(8)FD/GR.IV/94-70 dated 07.03.1994 superseding the notification dated 09.01.1990 and directing that in respect of inter-State sales of cement, tax payable under sub-sections (1) and (2) of the said Section shall be calculated at the rate of 4% without furnishing declaration in Form 'C', inter alia, subject to the condition that the dealer making inter-State sales under this notification shall not be eligible to claim

benefit provided by partial exemption notification dated 06.05.1986. This notification remained in force from 01.04.1994 to 31.03.1997.

3. The CCT vide Circular No. 2/94-95 dated 15.04.1994 clarified that inter-State sales of cement duly supported by 'C' and 'D' forms shall be eligible for benefit of partial exemption notification dated 06.05.1986 and that such benefit would not apply to inter-State sales which are not supported by declarations in declarations in Forms 'C'/'D'.

4. By Notification No. 97-122 dated 12.03.1997 issued under Section 8(5) of the CST Act, the State Government rescinded the Notification No. 94- 70 dated 07.03.1994 and directed that CST on inter-State sales of cement shall be calculated at the rate of 4% inter alia subject to fulfilment of the condition that the dealer making inter-State sales under this notification shall not be eligible to claim benefit provided by partial exemption notification dated 06.05.1986. This notification remained in force upto 31.03.1998.

5. As the factual score has been depicted, for the assessment year 1997- 98, dispute arose whether the sale of levy cement in the base year, i.e., 1984-85, can be included and taken into consideration for calculating the base year's figure for the purpose of calculating the benefits under the notification dated 06.05.1986. A re-assessment notice was issued to the appellant for disallowing the said partial exemption on the ground that while calculating the benefits under notification dated 06.05.1986 the appellant-company had not included the figure of sale of levy cement made in the base year, that is, 1984-85. The said re-assessment notice was challenged by the appellant which formed the subject matter of Writ Petition No. 1790 of 2001 which was dismissed by the Rajasthan High Court vide order dated 24.07.2002. A Special Appeal bearing No. 497 of 2002 was filed against the order dated 24.07.2002 before the Division Bench and on a reference being made by the Division Bench, the matter was referred to a larger Bench and the same is pending consideration. A similar dispute about inclusion of levy cement had also arisen for the assessment year 1991-92 which had been decided by the Tax Board, Rajasthan vide order dated 16.01.2003 in favour of the appellant which attained finality since no revision petition was filed by the State against the said decision. For the assessment year 1999-2000, the appellant was asked vide show cause notice dated 16.10.2001 to explain why the benefit of partial exemption under notification dated 06.05.1986 should not be disallowed on the ground that while calculating the benefits under notification dated 06.05.1986 the appellant had not included the figure of sale of levy cement made in the base year, that is, 1984-85. Against the said show cause notice writ petition bearing No. 4300 of 2001 was filed and vide order dated 14.08.2002 the High Court disposed of the said writ petition in light of the order dated 24.07.2002 passed in Writ Petition No. 1790 of 2001. Being aggrieved by the said order, the appellant had filed a DB Special Appeal No. 539 of 2002 which is pending consideration. We may immediately clarify that we are not concerned with the said assessment years.

6. For the assessment year 2000-2001, a Show Cause Notice dated 11.01.2001 was issued to the appellant seeking to disallow the benefit under notification dated 06.05.1986 on the ground that the appellant had not calculated the benefits under notification dated 06.05.1986 after including the figure of sale of levy cement in the base year, that is, 1984- 85. Against the said show cause notice Writ Petition bearing No. 551 of 2002 was filed which is pending before the High Court.

7. In exercise of power under Section 8(5) of the CST Act the State Government vide Notification No. 97-266 dated 21.1.2000 directed that tax payable under sub-sections (1) and (2) of the said Section on the inter- State sales of cement shall be calculated at the rate of 6% inter alia subject to the condition that the dealer making inter-State sales under this notification shall not be eligible to claim benefit provided under partial exemption notification dated 06.05.1986.

8. After a lapse of seven years from the previous circular dated 15.04.1994, the CCT issued another Circular No. 94-95/119 dated 16.04.2001 purporting to clarify the applicability of partial exemption notification dated 06.05.1986 vis-a-vis notification dated 07.03.1994 and subsequent notifications dated 12.03.1997 and 21.01.2000. By the said circular the competent authority purported to state that the dealer can avail of the benefit of either of these two notifications in any financial year meaning thereby that if he opts for the benefit under notification dated 06.05.1986 for the year 2000-2001, he would not be entitled to claim simultaneous benefit in respect of the same year under the notification dated 21.01.2000.

9. For the assessment year 2000-2001, a show cause notice dated 19.08.2003 was issued by the Commercial Taxes Officer to the appellant seeking to disallow the benefits under notification dated 06.05.1986 on a purported retrospective application of the Circular dated 16.04.2001. Appellant challenged the said show cause notice before the High Court by way of a Writ Petition bearing No. 6192 of 2003. The High Court vide order dated 18.11.2003 held that the said show cause notice dated 19.08.2003 was not justified as Circular dated 16.04.2001 could apply only prospectively and not retrospectively.

10. While finalizing the assessment for the assessment year 2001-2002, a show cause notice dated 19.08.2003 was issued purportedly based on Circular dated 16.04.2001 requiring the appellant to show cause why the partial exemption claimed under State Government's notification No. F4(72)FD/Gr.IV/81-18 dated 06.05.1986 should not be disallowed. The appellant submitted its reply but the assessing authority vide order dated 26.08.2003 rejected the claim of partial exemption only on the basis of Circular dated 16.04.2001 and imposed additional tax on the assessee for the assessment year 2001-2002.

11. The appellant filed an appeal before the Deputy Commissioner (Appeals), who allowed the appeal on 03.01.2004 holding that the appellant would be entitled to avail such partial exemption in respect of inter-State sales made on which concessional rate of 6% was not availed of by it under notification dated 21.01.2000.

12. Being aggrieved by the order of the appellate authority, the revenue approached the Rajasthan Tax Board in appeal contending, inter alia, that as per circular dated 16.04.2001 the benefit could not be claimed under notification dated 06.05.1986 if the unit had made sales under notification dated 21.01.2000. In essence, it was urged that benefit of both the notifications could not be availed of in the same financial year. The Tax Board allowed the appeal filed by the revenue. Against the order of the Tax Board, the appellant filed revision petition before the High Court and the learned Single Judge vide order dated 17.04.2009 considering the submissions put forth by the parties and upon analysing the principle stated in ***Tata Cummins Ltd. v. State of Jharkhand 2006 (16) Tax update 199, M/s Vividh Marbles Pvt. Ltd. v. Commercial Tax Officer 2007 (17) Tax update 307, State of Rajasthan v. J.K. Udaipur Udyog Ltd. and another (2004) 137 STC 438, MRF Ltd. Kottayam v. Asstt. Commissioner (Assessment) Sales Tax and ors. (2006) 8 SCC 702*** and other authorities came to hold that condition no. 3 of Notification No. 21.01.2000 has to be given its plain and clear meaning and cannot be restricted only to the specific transaction of sale covered by notification dated 21.01.2000 itself and when the condition no. 3 unequivocally states that once the assessee avails of the benefit of concessional rate of tax under notification dated 21.01.2000, he cannot get the partial benefit as envisaged in the Notification dated 06.05.1986 and accordingly repelled the stand of the assessee.

13. We have heard Mr. S. Ganesh, learned senior counsel for the appellant and Mr. Jatinder Kumar Bhatia, learned counsel for the respondent.

14. The seminal issue that arises for consideration, succinctly put, is whether the appellant is entitled to dual benefit of partial exemption under the notification dated 06.05.1986 and also the lower rate of tax @ 6% under notification dated 21.01.2000. To

answer the issue raised, it is necessary to refer to the notifications and the language employed therein to ascertain the fundamental intention therein and to appreciate whether grant of simultaneous exemptions and benefits would be contrary to the said notifications. The first notification dated 06.05.1986 reads as under:-

"Notification No.F.4(72)FD/Gr.IV/81-18, S.O. 23, May 6, 1986.

In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956(Central Act 74 of 1956), the State Government, on being satisfied that it is necessary so to do in the public interest, in supersession of the Finance Department Notification No. F.4 (72) FD/Gr. IV/81-36, dated December 3, 1985, hereby directs that, with immediate effect, any dealer, having his place of business and manufacturing goods in the State of Rajasthan, may claim partial exemption from the tax payable in respect of the sales by him of such goods in the course of inter-State trade or commerce by way of reduction at the rate of 50% of the tax so payable on increased sales upto 50% and at the rate of 75% of the tax so payable on increased sales made over and above the aforesaid 50%, in the manner and subject to the conditions as follows:-

(1) Such reduction of tax shall be allowed to a dealer only after and in respect of the increase which is effected in the percentage of the quantum of goods sold in the course of inter-State trade or commerce out of the total quantum of goods sold within the State and in the course of inter- State trade or commerce and dispatched to Head Office, Branch Office, Depot or agent outside the State for sale outside the State, during any accounting year as against such percentage during the accounting year 1984- 85.

(2) In the case of a dealer who commenced the manufacture of goods in the State of Rajasthan "on or after 1.1.1985", the average of the aforesaid percentages in respect of the other manufacturers in the State in the relevant industry during the accounting year 1984-85, calculated and determined by the assessing authority with the approval of the Commissioner, shall be deemed to be the percentage in respect of such dealer for the accounting year 1984-85;

(3) This increase effected in the percentage, as referred to in clause (1) above in respect of the sales in the course of inter-State trade or commerce, to be considered shall be limited to the extent of the decrease in the percentage in respect of the despatch of goods to Head Office, Branch Office, Depot or agent outside the State for sale outside the State, during the relevant accounting year as against such percentage during the accounting year 1984-85; and

(4) No claim for such reduction of tax shall be allowed in respect of levy- cement."

15. The notification dated 21.01.2000 is as under:-

"[No.F.4(1) FD/Tax Div. 97-266] Jaipur, 21st January, 2000

In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 the State Government being satisfied that it is necessary in the public interest so to do, hereby directs that the tax payable under sub-sections (1) and (2) of the said section, by any dealer having his place of business in the State, in respect of sale of cement made by him from any such place of business in the State, in the course of inter-state trade or commerce, shall be calculated at the rate of 6% on the following conditions, namely:-

1. *That the dealer shall record the correct name with full and complete address of the purchaser in the bill or cash memorandum for such inter- State sale to be issued by him;*
2. *That the burden of proof that the transaction was in the nature of inter- State sale shall be on the dealer; and*
3. *That the dealer making inter-State sales under this notification shall not be eligible to claim benefits provided by notification No.F.4(72) FD/GR.IV/81-18 dated 6.5.1986 as amended from time to time."*

16. On a careful scanning of the notification dated 06.05.1986, it is evident that it allows partial exemption from sales-tax on inter-State sales, subject to and in the manner stipulated therein. The exemption of 75% or 50% is granted with reference to the quantum of goods sold in the course of inter-State trade or commerce out of the total quantum of goods sold within the State, as against such percentage during the accounting year 1984-85, which is treated as the base year. As per the notification, it is applicable to a dealer who has his place of business; and he must be manufacturing goods inside the State. The intention is to encourage inter- State sale of goods manufactured and sold by a dealer in the State of Rajasthan. It has a purpose. The increase in quantum of goods sold in inter-State trade or commerce with reduction in quantum of stock transfers by way of branch or depot transfers on which NIL or no Central Sales tax is applicable would increase the revenue of the State. Clause 4 of the notification envisages that no reduction of tax is to be allowed in respect of levy cement. Computation of the total quantum of goods with reference to the exclusion of levy cement is not a subject matter of the present appeal and that is pending for consideration before the Appellate Bench and Single Judge of the High Court. Nevertheless, it is apparent that changes in figures of the quantum of goods, whether with reference to inter-State sales and intra-State sales in the base year and in the year in which benefit is claimed, would impact the determination and quantification of the benefit. Therefore, the exclusion or inclusion in the quantum or turnover is critical and significant.

17. The 21.01.2000 notification applies to a dealer having a place of business in the State and is in respect of sale of cement made by him from any place of business within the State in the course of inter-State trade or commerce. Apart from the above, certain other conditions are to be satisfied. They are (a) sales-tax in respect of inter-State sales as per the notification would be calculated at the rate of 6% and (b) the dealer making inter-State sales under notification dated 21.01.2000 would not be eligible to claim benefit provided in the notification dated 06.05.1986. Clause 3 of the notification lays down that if a dealer claims benefit under notification dated 21.01.2000, he is not eligible to claim the benefit under notification dated 06.05.1986. Benefit under the two notifications cannot be claimed at the same time. It is simple and clear.

18. A dealer making inter-State sales under the notification dated 21.01.2000 is disqualified and not eligible to claim benefit under the notification dated 06.05.1986. The reason is to deny dual benefit and also the notification dated 06.05.1986 computes the benefit

on the basis of turnover. Bifurcation and division of turnover would lead to distortion and cause anomalies.

19. To get over the aforesaid impasse, the learned counsel for the appellant has raised three contentions. The two notifications being beneficial should be liberally construed, for it cannot be assumed that the intendment was that if an assessee claims and was entitled to a relatively small or partial exemption under notification dated 06.05.1986, he would be deprived of the exemption even if he meets the conditions in paragraphs 1 and 2 of the notification dated 21.01.2000. The submission is that the assessee can get benefit of both the notifications but not the dual benefit in the sense that inter-State sales on which benefit of concessional rate of tax of 6% is not availed of could be granted partial exemption under notification dated 06.05.1986. Quite apart from the aforesaid argument, it is urged that partial exemption could be granted under the notification dated 06.05.1986 in respect of such intra-State sales not covered by the notification dated 21.01.2000; and benefit of partial exemption under notification dated 06.05.1986 would co-exist with the notification dated 21.01.2000, though in respect of different and distinct transactions. The second limb of argument is that this interpretation was the understanding of the respondents, as they had issued circular dated 15.04.1994 and pursuant to the said circular, the appellant and the other assessees were extended benefit of the notification dated 06.05.1986 and also the notification dated 07.03.1994, which has now been replaced and re- introduced in the form of notification dated 21.01.2000. The plea of consistency especially when the revenue in earlier years had accepted the said interpretation is highlighted. The last plank of argument is the circular dated 15.04.1994 was clarificatory and had rightly interpreted and expounded the interplay between the two notifications. Therefore, the circular dated 15.04.1994 under the notification dated 07.03.1994 would equally apply and would guide the interpretation of the notification dated 21.01.2000.

20. In order to appreciate the contentions raised, it is imperative to reproduce notification dated 07.03.1994 and the circular dated 15.04.1994, and the circular dated 16.04.2001 by which circular dated 15.04.1994 was withdrawn. The notification dated 07.03.1994 reads as under:-

> ***"Notification No.F.4 (8) FD/Gr.IV/94-70 S.O. No. 200, Jaipur, dated March 7, 1994.***
>
> *In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), and in supersession of this Department Notification No.F.4 (72) FD/Gr.IV/82-34, dated 27.06.1990, the State Government being satisfied that it is necessary in the public interest so to do, hereby directs that the tax payable under sub- sections (1) and (2) of the said section, by any dealer having his place of business in the State, in respect of the sales of cement made by him from any such place of business in the course of inter-State trade or commerce shall be calculated at the rate of 4 percent without furnishing of declaration in form "C" or certification in form "D" on the following conditions, namely:-*
>
> *(i) that the dealer shall record the name and full and complete address of the purchaser in the bill or cash memorandum for such inter-State sale to be issued by him;*
>
> *(ii) that the burden to prove that the transaction was in the nature of inter-State sale, shall be on the dealer; and*
>
> *(iii) that the dealer making inter-State sales under this notification shall not be eligible to claim benefit provided for by the*

notification No.F.4. (72) FD/Gr.IV/81-18, dated 6.5.1986, as amended from time to time.

This notification shall come into force from 1st April, 1994 and shall remain in force upto 31st March, 1997."

21. The circular dated 15.4.1994 is reproduced below:-

"Tax Policy circular No.2/94-95
STATE OF RAJASTHAN
COMMERCIAL TAX DEPARTMENT

No. Pa. 16/Budget/Tax/Commissioner/94-95/108 Dated 15/4/1994

To,
All Deputy Commissioners, Commercial Tax
All Assistant Commissioners, Commercial Tax
All Commercial/Assistant Commercial Tax Officers

Circular

The notification No. Pa. 4 (8) FD/Group-4/94-70 dated 7/3/1994 was issued by the State Government and the rate of central tax on the inter-State sale of cement is fixed unconditionally at 4 percent in case the declaration form-'C' or form-'D' is not submitted between 1/4/1994 to 31/3/1997. Under the said notification the trader doing the inter-State sale shall not be entitled to claim for the benefit made available through the notification No. F4 (72) FD/Group-4/61-18 dated 6/5/1986 amended from time to time.

It is made clear in this respect that the benefits made available through the notification No. F 4 (72) FDR-Group-4/81-18 dated 6/5/1986 as amended from time to time with respect to the inter-State sale of the cement done with the form-'C' or form-'D', but aforesaid benefit shall not be available in case the inter-State sale is done without the form-'C' or form-'D'."

22. The circular dated 16.04.2001 withdrawing the circular dated 15.04.1994 is as follows:-

"GOVERNMENT OF RAJASTHAN
COMMERCIAL TAXES DEPARTMENT
No.F-16 (Budget) Tax/CCT/94-95/119 Dated April 16th, 2001

All Dy. Commissioners
All Assistant Commissioners
All Commercial Taxes Officers.
All Assistant Commercial Taxes Officers.

Circular

A question has been raised as to the applicability of Finance Department notification No.F.4(72)FD/Br.IV/ 81-18 dated 06.05.1986 vis-a-vis notification No.F/(8) FD/Gr.IV/94-70 dated 07.03.1994 and similar subsequent notification dated 12.03.1997 and the existing notification dated 21.01.2000. The issue has been examined and it is clarified that a dealer can avail the benefit of either of these two notifications in any financial year. For instance, if he opts for benefit under notification dated 06.05.1986 for the financial year 2000-2001, he would not be entitled to claim simultaneous benefit in the same year under the

notification providing for reduce rate of tax on cement in course of inter-state trade or commerce without any supportive Form C or D. Consequently, if the benefit of notification dated 21.01.2000 is being availed in any financial year, the dealer shall be debarred from claiming any benefit under notification dated 6.5.1986 for the same assessment year.

Keeping in view the above status, the Circular No.F.16 (Budget)Tax/CCT/94-95/108 dated 15.04.1994 is hereby withdrawn and the dealers will be entitled to claim benefit of either of the two notifications in any financial year. Action may be taken accordingly.

Sd/-

(P.K.Deb) Commissioner"

23. As the factual score would depict, Notification dated 07.03.1994 was applicable from 1st April, 1994 to 31st March, 1997. It was not applicable with effect from 1st April, 1997. In such a situation, the plea of the appellant that dual benefits were availed of under notification dated 07.03.1994 post 1st April, 1997 is unacceptable and has to be rejected. Be it noted, by another notification No. 97-122 dated 12.03.1997, the State Government had rescinded notification dated 07.03.1994 and directed that the Central Sales Tax shall be calculated @ 4%, subject to the condition that the dealer making inter State sales in this notification would not be eligible to claim benefit of partial exemption under the notification dated 06.05.1986. The notification dated 12.03.1997 had remained in force upto 31st March, 1998. The circular dated 15.04.1994 in express words was not applicable to the notification dated 21.01.2000.

24. It is limpid that the circular dated 15.04.1994, when in force, had referred to the notifications dated 07.03.1994 as well as 06.05.1986. Under the notification dated 07.03.1994, the rate of central tax on inter-State sale of cement was unconditionally fixed at 4%, even when there was no declaration in Form C and Form D. The notification dated 06.05.1986 relating to inter-State sale required Form C and Form D, for availing the benefit. The circular did not in clear and categorical terms lay down that dual or multiple benefits under the two notifications could be availed of by the same dealer. It, however, appears that both the assessee and the Revenue had understood the circular dated 15.04.1994 to mean that inter- State transactions would qualify and would be entitled to partial exemption under the notification dated 06.05.1986, when accompanied with Form C and D and for inter-State sale transactions without Form C and D, benefit of notification dated 07.03.1994 would apply.

25. The understanding by the assessee and the Revenue, in the obtaining factual matrix, has its own limitation. It is because the principle of res judicata would have no application in spite of the understanding by the assessee and the Revenue, for the circular dated 15.04.1994, is not to the specific effect as suggested and, further notification dated 07.03.1994 was valid between 1st April, 1994 up to 31st March, 1997 (upto 31st March, 1997 vide notification dated 12.03.1997) and not thereafter. The Commercial Tax Department, by a circular, could have extended the benefit under a notification and, therefore, principle of estoppel would apply, though there are authorities which opine that a circular could not have altered and restricted the notification to the determent of the assessee. Circulars issued under tax enactments can tone down the rigour of law, for an authority which wields power for its own advantage is given right to forego advantage when required and considered necessary. This power to issue circulars is for just, proper and efficient management of the work and in public interest. It is a beneficial power for proper administration of fiscal law, so that undue hardship may not be caused. Circulars are binding on the authorities administering the enactment but cannot alter the provision of the enactment, etc. to the detriment of the assessee. Needless to emphasise that

a circular should not be adverse and cause prejudice to the assessee. (See : ***UCO Bank, Calcutta v. Commissioner of Income Tax, West Bengal (1999) 4 SCC 599***).

26. In Commissioner of ***Central Excise, Bolpur v. Ratan Melting and Wire Industries (2008) 13 SCC 1***, it has been held that circulars and instructions issued by the Board are binding on the authorities under respective statute, but when this Court or High Court lays down a principle, it would be appropriate for the Court to direct that the circular should not be given effect to, for the circulars are not binding on the Court. In the case at hand, once circular dated 15.04.1994 stands withdrawn vide circular dated 16.04.2001, the appellant-assessee cannot claim the benefit of the withdrawn circular.

27. The controversy herein centres round the period from 1st April, 2001 to 31st March, 2002. The period in question is mostly post the circular dated 16.04.2001. As we find, the appellant-assessee has pleaded to take benefit of the circular dated 15.04.1994, which stands withdrawn and was only applicable to the notification dated 07.03.1994. It was not specifically applicable to the notification dated 21.01.2000. The fact that the third paragraph of the notification dated 21.01.2000 is identically worded to the third paragraph of the notification dated 07.03.1994 but that would not by itself justify the applicability of circular dated 15.04.1994.

28. In this context, we may note another contention that has been advanced before us. It is based upon the doctrine of contemporanea exposition. In our considered opinion, the said doctrine would not be applicable and cannot be pressed into service. Usage or practice developed under a statute is indicative of the meaning prescribed to its words by contemporary opinion. In case of an ancient statute, doctrine of contemporanea exposition is applied as an admissible aid to its construction. The doctrine is based upon the precept that the words used in a statutory provision must be understood in the same way in which they are usually understood in ordinary common parlance by the people in the area and business. (See : ***G.P. Singh's Principles of Statutory Interpretation, 13th Edition-2012 at page 344***). It has been held in ***Rohitash Kumar and others v. Om Prakash Sharma and others (2013) 11 SCC 451*** that the said doctrine has to be applied with caution and the Rule must give way when the language of the statute is plain and unambiguous. On a careful scrutiny of the language employed in paragraph 3 of the notification dated 21.01.2000, it is difficult to hold that the said notification is ambiguous or susceptible to two views of interpretations. The language being plain and clear, it does not admit of two different interpretations.

29. In this regard, we may state that the circular dated 15.04.1994 was ambiguous and, therefore, as long as it was in operation and applicable possibly doctrine of contemporanea exposition could be taken aid of for its applicability. It is absolutely clear that the benefit and advantage was given under the circular and not under the notification dated 07.03.1994, which was lucid and couched in different terms. The circular having been withdrawn, the contention of contemporanea exposition does not commend acceptation and has to be repelled and we do so. We hold that it would certainly not apply to the notification dated 21.01.2000.

30. In view of the aforesaid analysis, we do not find any merit in the instant appeal and the same is, accordingly, dismissed. There shall be no order as to costs.

Civil Appeal No. 6136 of 2013

31. In view of the judgment passed in Civil Appeal No. 102 of 2010, this appeal also stands dismissed. There shall be no order as to costs.

———

SUPREME COURT OF INDIA

Go to Index Page

CIVIL APPEAL NO. 9833 OF 2016

AMRIT BANASPATI CO. LTD.
Vs
STATE OF PUNJAB AND ANOTHER

DIPAK MISRA AND UDAY UMESH LALIT, JJ.

27th September, 2016

HF ▶ Remand/Directions

High Court to decide the questions of law raised before it in the Writ Petition subject to deposit of Rs.15 crores.

WRIT—ALTERNATIVE REMEDY—QUESTION OF LAW—HIGH COURT REFUSED TO ENTERTAIN WRIT PETITION—SLP FILED BEFORE SUPREME COURT—ENDS OF JUSTICE WOULD BE MET IN CASE THE JUDGMENT RENDERED BY THE HIGH COURT IS SET ASIDE AND MATTER IS REMITTED BACK TO DECIDE THE QUESTIONS OF LAW RAISED BY ASSESSEE—ASSESSEE REQUIRED TO DEPOSIT A SUM OF RS.15 CRORES BEFORE THE HIGH COURT WITHIN 6 WEEKS WHICH CAN BE WITHDRAWN BY THE REVENUE –HIGH COURT TO DECIDE WRIT PETITION WITHIN 6 MONTHS. – *ARTICLE 226 OF CONSTITUTION OF INDIA.*

On a Writ Petition filed by the Assessee to challenge the Assessment Order, the High Court refused to entertain the same on the ground of Alternative Remedy. Feeling aggrieved, SLP was field before Supreme Court contending that the dispute contains the adjudication of Questions of Law. The Supreme Court disposed of the matter by allowing the Assessee to raise such Questions of Law before the High Court subject to deposit of Rs. 15 Crores as a condition for hearing of a writ petition within 6 weeks. The Revenue is entitled to withdraw the said amount without any security. Petition disposed of.

Present: **For Petitioner(s)**

Senior Advocates: Mr. S. Ganesh, Mr. Dhruv Agarwal

Other Advocates: Mr. Kamal Budhi Raj, Mr. Aman Gupta, Ms. Shruti Agrawal, Mr. Abhinav Mukerji, AOR

For Respondent(s)

Advocates: Mr. Nikhil Nayyar, AAG, Mr. Kuldip Singh, AOR

******

ORDER

1. Leave granted.

2. Heard Mr. S. Ganesh, learned senior counsel for the appellant and Mr. Nikhil Nayyar, learned Additional Advocate General appearing for the State of Punjab. Having heard

learned counsel for the parties, we are of the considered opinion that the cause of justice would be best sub-served if the judgment rendered by the High Court in bunch of writ petitions is set aside and the matter is remitted to the High Court with a condition that the appellant, Amrit Banaspati Co. Ltd., shall deposit a sum of Rs.15 crores before the High Court within six weeks from today and the revenue would be at liberty to withdraw the same without furnishing any security and, therefore, the High Court shall address the issues which are raised by the appellant as questions of law. We request the High Court to dispose of the writ petitions within six months.

3. Liberty to mention before the High Court.

4. The appeal is disposed of accordingly.

———

PUNJAB & HARYANA HIGH COURT

VATAP NO. 43 OF 2015

MANJU SANITARY WARES
Vs
STATE OF PUNJAB AND ANOTHER

RAJESH BINDAL AND DARSHAN SINGH, JJ.

30th September, 2016

HF ▶ Revenue

Penalty for attempt to evade the tax is upheld by High Court where the view recorded by the authorities below cannot be said to be perverse.

PENALTY—ATTEMPT TO EVADE TAX—VEHICLE REPORTED AT ICC—CARRYING TWO CONSIGNMENTS—ONE CONSIGNMENT REPORTED BUT THE OTHER CONSIGNMENT WAS NOT RECORDED—GOODS DETAINED—PENALTY IMPOSED FOR NOT DECLARING ONE TRANSACTION—PENALTY UPHELD UPTO TRIBUNAL—APPEAL BEFORE HIGH COURT—ENTRY TAX DEPOSITED FOR ONE TRANSACTION BUT NOT FOR THE OTHER TRANSACTION—CLAIM OF DEPOSIT OF TAX IN BANK BEFORE DETENTION NOT PLAUSIBLE—PROCESS OF DEPOSIT OF MONEY STARTED ONLY AFTER GOODS WERE DETAINED—NO PERVERSITY IN ORDERS OF LOWER AUTHORITIES—NO INTERFERENCE REQUIRED—APPEAL DISMISSED. – *SECTION 51 OF PVAT ACT, 2005*

Vehicle containing two consignments approached the ICC while importing goods into the State. Entry Tax was deposited for one of two consignments belonging to sister concern. It was claimed that the amount of Entry Tax was deposited in the Bank of one agent who would have deposited the tax at ICC for both the consignments before the Detention was made. Goods were detained and penalty was imposed. The Authorities upto Tribunal found that the explanation of the Assessee regarding deposit of tax in bank cannot be accepted as the said amount was deposited after the process of detention of goods had started. On appeal before High Court it was pleaded that the detention has been made at 12.30 p.m. whereas tax has been deposited in bank of agent before that time. Rejecting this contention the High Court held that if the amount was to be deposited by agent for both the consignments then no explanation has been given as to how the tax was deposited for one of the consignments before detention. The deposit of tax had been made only after the process of detention had started for the other vehicle. No perversity can be found in the orders passed by the Lower Authorities and therefore, appeal filed by Assessee is dismissed calling for no interference by the High Court as no substantial Question of Law arises.

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

******

RAJESH BINDAL, J.

1. The present appeal has been filed raising the following substantial questions of law arising out of the order dated 9.4.2005 passed by Value Added Tax Tribunal, Punjab (for short, 'the Tribunal') in Appeal No. 243 of 2012:

> *"(i) Whether on the facts and circumstances of the case, the appellant has made any attempt to evade the tax even though Entry Tax had been deposited in the account of person who has to hand over money to the driver even before the goods have been detained?*
>
> *(ii) Whether on the facts and circumstances of the case, the findings recorded by the appellate authority and Tribunal are perverse in nature inasmuch as they have recorded that the goods had been detained at 10.52 AM, whereas the detention order records it to have been detained at 12.30 PM?*
>
> (iv) *Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in upholding the penalty under Section 51(7)(c) whereas the goods and vehicle were still within the premises of ICC?"*

2. Learned counsel for the appellant submitted that in the truck bearing No. RJ-31-GD-0770, two consignments from two different consignors for two different consignees were loaded. The destination was Moga. The goods imported were excisable. These were purchased by the appellant on concessional rate of tax against form 'C'. In one of the consignments, the consignee was M/s Manju Sanitary Ware, namely, the appellant, whereas in the other, the consignee was M/s Manju Enterprises. Statutory form No. 402 for export of goods outside the State of Gujarat was generated for both the consignments. The goods were declared at Information Collection Centre, Sito Gunno. The entry tax leviabe for one consignment imported by M/s Manju Enterprises was deposited by the agent, whereas for the second consignment, there was some delay as the amount was yet to be transferred by the appellant in the account of the agent. A certificate issued by the banker of the appellant regarding transfer of amount in the bank account of the agent has been produced. The goods were detained at the check post. The driver was coerced to sign on blank papers. Despite the appellant producing all the documents and showing the genuineness of the transaction, penalty was levied, which was upheld in appeal by the first appellate authority as well as the Tribunal.

3. The submission is that when the vehicle was still at the barrier, documents of both the consignments were with the driver, there was no question of non-declaration of one consignment. The purchase was on concessional rates against statutory form 'C'. In case, the goods are not entered in accounts of the appellant, he will have to pay higher rate of tax to Gujarat dealer, hence, there was no benefit to evade tax. The record was produced to show that the transaction was entered in the books of accounts and even statutory form 'C' was also issued.

4. On the other hand, learned counsel for the State submitted that the vehicle reported at the check post at 10.52 AM, when one consignment was declared and tax due thereon was paid. As the goods loaded in the vehicle were found to be more than what mentioned in the documents produced, the officer at the check post got suspicious and checked the consignment. It was during that process that it could be found out that there was second consignment as well, which was not declared. The transfer of money in the account of the agent and non-deposit thereof at the check post at the initial stage, is merely a story concocted by the appellant. Such an agent is not recognised in law. It is a private arrangement of the appellant. Once, according

to the appellant, the agent had deposited the tax for one consignment, when it was declared at the check post at 10.52 AM, the other consignment could also be declared and tax paid. The amount was not huge. It is only after the detention of the goods that the process for deposit of money in the account of the agent started for creating evidence. The amount transferred by the appellant in the account of the agent does not tally with the amount of tax involved. Three authorities have already gone into the issue. No interference is required at this stage as no substantial question of law arises.

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

6. The fact that there were two consignments originating from two consignors meant for two different consignees in the same vehicle is not in dispute. The vehicle reported at the check post at 10.52 AM, when the entry tax due thereon in case of one consignment was deposited. The consignee therein was M/s Manju Enterprises. The appellant is sister concern thereof. It is not in dispute that tax for the consignment in question was not deposited at the same time. The story put by the appellant claiming that the amount could not be deposited as it was transferred in the account of the agent late is merely to be noticed and rejected. The appellant claimed that the amount was transferred in the account of the agent before 11.00 AM, however, it was reflected in his account late. The fact was got verified by the first appellate authority from the banker of the appellant and it was revealed that the amount was deposited in cash at 12.27 PM. Still further, the amount deposited in the account of the so-called agent was Rs. 42,500/-, whereas the amount of tax due on both the consignments, which was to be deposited at the barrier, was Rs. 43,170/-, hence, even the amount also did not tally. Further, if the agent could deposit the amount of tax for one consignment before the amount was deposited by the appellant in his accounts, he could very well deposit the same for the second consignment as well. The process for deposit of money started only after the goods were detained and were in the process of verification to create evidence.

7. For the reasons mentioned above, we do not find that any substantial question of law arises in the present appeal. The findings recorded by the authorities below cannot be said to be perverse. The appeal is, accordingly, dismissed.

PUNJAB VAT TRIBUNAL

Go to Index Page

REVISION NO. 8 OF 2015

S.K. STEELS CORPORATION
Vs
STATE OF PUNJAB

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

3rd June, 2016

HF ▶ Assessee

Revisional Authority cannot impose interest and penalty for the first time in Revisional proceedings.

REVISION – PENALTY – INTEREST – INPUT TAX CREDIT – ASSESSMENT FRAMED – CASE TAKEN UP IN REVISION ON THE GROUND OF WRONG AVAILMENT OF INPUT TAX CREDIT – REVISIONAL ORDER PASSED DEMANDING TAX ALONGWITH INTEREST AND PENALTY – ON APPEAL, LEVY OF INTEREST AND PENALTY CONTESTED – NO ORDER IMPOSING PENALTY OR INTEREST PASSED BY ASSESSING AUTHORITY – REVISIONAL AUTHORITY CANNOT REVISE ORDERS QUA PENALTY AND INTEREST – APPEAL PARTLY ALLOWED – DEMAND OF PENALTY AND INTEREST SET ASIDE – CASE REMITTED BACK TO ASSESSING AUTHORITY TO PASS FRESH ORDER QUA PENALTY AND INTEREST – *SECTION 65 OF PVAT ACT, 2005*

Assessment of the dealer for the year 2012-13 was framed on 27.03.2014. The case was taken up for Revision and it was found that certain purchases are ingenuine and accordingly the Input Tax Credit was disallowed. Penalty u/s 56 and interest u/s 32 were also imposed. On appeal before Tribunal, it was decided that Revisional Authority cannot impose Penalty and Interest for the first time in view of the judgment of Hon'ble High Court in the case of ***M/s Chaudhary Tractor Company, Tohana, District Sirsa, Haryana, (2007) 10 STM 280 (P&H)****. Accepting the contention, the Tribunal:*

Held:
The Revisional Authority could only go into the legality or propriety of the order and pass appropriate orders but in case the original authority while framing the assessment had not imposed any Penalty and Interest, then the Revisional authority could leave the issue to be decided by the Assessing Authority. Accordingly, the appeal is partly accepted and order qua Penalty and Interest is set aside and case is remitted back to Assessing Authority to pass fresh order with regard to Penalty and Interest after following the procedure in accordance with law.

Case referred:

- *Chaudhary Tractor Company, Tohana, District Sirsa Vs. State of Haryana STC No.20 of 1992 (2007) 10 STM 280 (H.C. of P & H)*

Present: Mr. J.S.Bedi, Advocate counsel for the appellant.

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

******

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

1. The case relates to the assessment year 2012-13. Sh. Paramjit Singh, Excise and Taxation Inspector-cum-Designated Officer, Jalandhar-I created a demand No.9, dated 27.3.2014. However, on verification of the accounts, it transpired that no verification was done regarding purchases and the ITC claimed thereon. Similarly, the statement furnished by the assessee mis-matched the ICC data and the statutory declaration forms have not been examined and verified. Consequently, revisional proceedings were initiated by the competent authority regarding which notice under Section 65 of the Punjab Value Added Tax Act, 2005 was issued by the Assistant Excise and Taxation Commissioner-cum-Revisional Authority, Jalandhar-I.

2. The Revision petition was contested, ultimately, the Revisional Authority, vide order dated 17.3.2015, while creating additional demand to the tune of Rs.1,07,15,915/- observed as under:-

> *"Sh. Narinder Bajaj, Advocate again appeared on 4.2.2015 but did not produce the account books or any other evidence to prove the genuineness of purchases. Due verification has been made from the computer system of the Department and out of total local purchases Rs. 27,27,99,557/- purchases worth Rs. 6,78,04,004/- have been found to be ingenuine and ITC is disallowed accordingly. In view of these facts a notice U/s 56 and 60 of the PVAT Act 2005 was issued for 19.2.2015. Sh. Narinder Bajaj, Advocate of the firm appeared before the Revisional Authority on 19.2.2015 but again failed to produce account books or any other evidence in his favour. On his request the case was finally adjourned to 17.3.2015. On 17.3.2015 Sh. Narinder Bajaj, Advocate appeared but did not produce the account books or any other proof of the genuineness of the firm and regarding ingenuine purchases amounting to Rs.6,78,04,004/-. Since the dealer has been afforded sufficient opportunities to produce necessary evidence but has failed to comply with the requirement of the law as well as directions of the Revisional Authority. Computer system has revealed that the dealer has claimed input tax credit of Rs.30,30,332/-on the purchases made from M/s New Star Metal, M/s Star Impex, M/s Jay Kay Iron Store, M/s A.V.Iron & Steel Trader, M/s Salasar Ispat, M/s Shiv Bhole Enterprises, Mandi Gobindgarh and M/s Subham Ispat. Further purchases of these selling dealers are either from ingenuine dealers or from those who have shown nil sales in their returns. Thus, it is quite apparent that both the selling and purchasing dealers have colluded and connived with one another to create and pass on the ingenuine ITC against such purchases which have not been made in reality. They have facilitated one another in defrauding the State exchequer. In view of these facts his ITC claim of Rs.30,30,332/- is disallowed and assessment is framed."*

3. Aggrieved by the said order, the petitioner has come up in revision.

4. At the very out set, Mr. J.S. Bedi, Advocate counsel for the petitioner has urged that though the Revisional Authority has imposed a penalty the tune of Rs. 33,04,295/- but it could not impose penalty u/s 56 of the Punjab Value Added Tax Act, 2005 for alleged ingenuine claim of ITC and similarly interest U/s 32 (3) and penalty U/s 60 of the Act could not be awarded for the first time, in the revisional proceedings when no such order of penalty and interest has been passed originally by the Assessing Authority. The revisional authority was

required to examine the legality and propriety of the order, therefore, it could not hold the reins to impose penalty and interest which was the domain of only Assessing Authority after following certain procedure as provided under law. In support of this contention, he has taken me through the judgment delivered by the Hon'ble High Court in case of ***M/s Chaudhary Tractor Company, Tohana, District Sirsa Vs. State of Haryana STC No.20 of 1992 (2007) 10 STM 280 (H.C. of P & H)*** decided on 29.5.2006.

5. Having perused the judgment passed by the Division Bench as well as the contentions raised before me by the counsel for the appellant, contention appears to be convincing. The Tribunal observes that Section 65 deals with the powers of revision by a commissioner or Designated Officer, who of his own motion or otherwise was competent to call for the record of any proceedings which are pending or having been disposed off by any authority subordinate to him for the purposes of satisfying itself as to the ***legality or propriety*** of such proceedings and may pass such order in relation thereto as he may deem fit.

6. It can't be disputed that the Assistant Excise and Taxation Commissioner was vested with the powers of revision U/s 65 to interfere in the order passed by any authority subordinate to him and he was fully competent s to go into legality and propriety of the order passed by the Assessing Authority. However, the issue is "whether the Revisional Authority could impose interest and penalty for the first time in the revisional proceedings particularly when no such penalty and interest were earlier imposed by the Assessing Authority?" The answer to this question would be certainly in negative, I find support to my this view from the judgment delivered in case of ***M/s Choudhary Tractor Company, Tohana, District Sirsa*** (Supra) . Other judgments in this regard which strengthen my view are as under:-

> *"Seth Auto Store Vs. the State of Punjab [November, 1998 STM 9 (STT-Pb.)]; Dasaunda Singh Waraym Singh's case (1996) 8 PHT 61 (P& H); Nagapai Alloys P. Ltd. Vs The State of Punjab [(2003) 6 STM 282 (STT-Pb.)]; Medlay Exports Vs. State of Punjab [(2007) thus STM 166(PVAT-Tri.)]; Super India Casting Inds. Vs. State of Haryana [(2011) 16 STM 150 (HC-P &H)].*

7. Thus while concluding, it may be observed that the Revisional Authority could only go into the legality or propriety of the order and pass appropriate orders for imposing tax, penalty and interest however in case the original authority framing the assessment had not imposed any penalty and interest then the revisional authority could leave the issue to be decided by the assessing authority.

8. Resultantly, this appeal is partly accepted, impugned order qua penalty and interest is set-aside and the case is remitted back to the Assessing Authority to pass the order with regard to the penalty and interest after following the procedure in accordance with law.

9. Pronounced in the open court.

———

PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 521 OF 2015

VARDHMAN BARTAN STORE
Vs
STATE OF PUNJAB

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

4th June, 2016

HF ▶ Assessee

Penalty U/s 51 imposed for under-valuation of goods is not sustainable merely on basis of the Statement of driver regarding price.

PENALTY – ATTEMPT TO EVADE TAX – COPPER SCRAP FOUND EXCESS IN VEHICLE – VALUE DETERMINED @ RS.280/- PER KG AND PENALTY IMPOSED – ANOTHER CONSIGNMENT OF SCRAP FOUND IN THE VEHICLE ALONGWITH INVOICE SHOWING THE VALUE @ RS. 77.45 PER KG – PENALTY IMPOSED MERELY ON THE BASIS OF STATEMENT OF DRIVER REGARDING PRICE – DRIVER NOT APPROPRIATE PERSON TO KNOW ABOUT THE PRICE OF GOODS – MATTER REMITTED BACK. - *SECTION 51 OF PUNJAB VAT ACT, 2005.*

A vehicle containing scrap of different types had reported at ICC Madhopur and on checking it was found that copper scrap weighing 700 kgs was in excess. The value of excess goods was determined at Rs.280 per kg and the penalty was imposed considering the total value of unexplained goods at Rs. 2,03,704/-. On appeal, the Tribunal:

Held:
The vehicle contained not only the unexplained goods but also other goods including copper scrap weighing 508.110 kgs in quantity. The said goods were covered by Invoice which showed that the value of scrap was Rs. 77.45 per kg. The penalising officer has determined the value of goods at Rs. 280/- per kg only on the basis of statement of driver of goods. The said statement cannot be relied upon as driver is not the appropriate person to know about price of goods especially when the other invoice containing the value was found in the same vehicle and has not been questioned. The order has been passed without application of mind and, therefore, the same needs to be set aside..

Present: Mr. J.S.Bedi, Advocate Counsel for the appellant.
Mr. B.S.Chahal, Dy. Advocate General for the State.

******

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

1. The order dated 5.3.2015 communicated on 27.11.2015 passed by the First Appellate Authority, Camp at Jalandhar, whereby, it dismissed the appeal against the order dated 23.12.2009 passed by the Designated Officer-cum-Assistant Excise and Taxation Commissioner, Information Collection Centre, Madhopur imposing penalty to the tune of Rs. 1,10,000/- against the appellant is under second appeal before the Tribunal.

2. On 10.12.2009, a vehicle bearing No.JK-02E-5589 loaded with metal scrap when arrived at the ICC, Madhopur, it was checked by the Detaining Officer, who observed that fourteen bags of 50 kgs each of copper scrap were found in excess and the driver of the vehicle failed to produce any documents pertaining to these excess goods. The case was forwarded to the Designated Officer who issued notice to the appellant whereupon the appellant appeared but failed to produce invoice for fourteen bags of copper scrap, each bag containing 50 kgs (total 700 kgs). Thus while assessing the value of the copper scrap @ 280 per Kg, determined the price of unexplained goods at Rs.2,03,704/- and imposed the penalty thereon as per law.

3. The Counsel for the appellant has stated that there were three types of scrap in the truck which was worth Rs.3,48,419.02/- and it was covered by Invoice No. 10458 dated 9.12.2009 despite the brass scrap, there was copper scrap also, which was 508.110 kgs in quantity. As per bill, the price of this scrap was 77.45 per kilogram therefore, the price of 700 kgs of scrap, which was in found excess and was not covered by the documents, was wrongly assessed @280 per kilogram totaling to Rs.2,03,704/-, therefore, the Designated Officer, at the most, could impose penalty while assessing the value of 700kgs of copper scrap @ 77.45 per kgs and not @ 280 per kg, as such the order is apparently illegal.

4. To the contrary, Mr. B.S.Chahal, Dy. Advocate General for the State has urged that the driver of the vehicle Mr. Dhanmantar Singh had admitted that, the price of the copper scrap was @ 280 per kg.

5. Having heard the rival contentions and having gone through the record of the case, it is observed that there were three types of scrap loaded in the vehicle No. JK-02E-5589 one of them was copper scrap which was 508 kgs and was covered by the invoice. As per the invoice, the value of the copper scrap was 77.45 per kg. This price has not been challenged by the department. The argument of the counsel that the price of 700 kg of copper scrap was assessed @ 280 per kg on the basis of price as allegedly disclosed by the driver carrying the copper scrap, however, the driver was not supposed to know the price, therefore, the Designated Officer should have held the enquiry to know the exact price of scrap or in the alternative would have assessed the price on the basis of the invoice produced by the driver before him.

6. Having taken note of the contentions raised by both the parties, it would have to be concluded that the driver was neither the appropriate person to know nor he was supposed to know about the price of the goods. The statement of Mr. Dhanmantar Singh appears to be tempered as a few lines have been added lateron in his statement, therefore his statement cannot be accepted as truthful in order to make the basis for determining the price of the goods. A regular procedure has been provided under the Act for determining the price of the goods which the Designated Officer has not followed. He, atleast, should have called for the owner of the goods to produce the documents regarding the price of the scrap or called for the quotations of the scrap dealers for determining the price of the scrap, but no such procedure was followed, therefore, the order of the penalty which has been rendered on the basis of the tempered statement of the driver can't be upheld.

7. On the bare examination of the orders passed by the authorities below, the same appear to have been passed without application of mind and without following the procedure as provided under law, therefore, the same deserve to be reversed.

8. Resultantly, I hereby accept the appeal, set-aside the impugned order and remit the case back to the Assessing Authority to decide the same afresh accordingly.

PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 277 OF 2015

A.G. FATS LTD.
Vs
STATE OF PUNJAB

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

4th June, 2016

HF ▶ Revenue

Input Tax Credit claim is rejected even if the name of selling dealers is not mentioned in the assessment order if those names were confronted during assessment proceedings.

ASSESSMENT – INPUT TAX CREDIT – NATURAL JUSTICE – ASSESSMENTS FOR THE YEARS 2011-12 AND 2012-13 FRAMED REJECTING THE INPUT TAX CREDIT ON THE PURCHASES MADE FROM SAME SELLING DEALERS FOR NON-DEPOSIT OF TAX BY THEM – NAMES OF THOSE DEALERS CONFRONTED IN PROCEEDINGS OF ASSESSMENT – ASSESSMENT ORDER PASSED WITHOUT MENTIONING THE NAME OF THOSE SELLING DEALERS – NO REQUIREMENT TO MENTION THE NAMES OF SELLING DEALERS IN THE FINAL ORDER IF CONFRONTED DURING ASSESSMENT PROCEEDINGS – PROPER NOTICE ISSUED – NO REASON TO INTERFERE – APPEALS DISMISSED. - *SECTION 13, 29 OF PUNJAB VAT ACT, 2005*

Assessments of the dealer for the yeas 2011-12 and 2012-13 were framed raising additional demands of Rs. 11,46,231/- and 12,87,899/- respectively. The demands were raised on account of rejection of Input Tax Credit on the purchases made from some dealers who had not deposited the tax. The mismatch report as well as the material was confronted to the appellant assessee during assessment proceedings but while passing the final order the names of those selling dealers were not incorporated in the order. The assessee filed the appeal contending that order is silent qua the names of firms whose purchases had been rejected. Further order is unsigned and the copies of reports filed by selling dealers have not been supplied and therefore Input Tax Credit cannot be rejected. Rejecting the contention.

Held:

The short order dated 4.5.2013 reveals that appellant was confronted with the said purchases and also the fact that tax was not deposited by the said firm. In the light of short order passed on 4.9.2013, detailed order was not required to contain the names of those selling dealers. The appellant has admitted that the sales were bogus as no tax was deposited by the selling dealer. The Input Tax Credit was rightly rejected. Insofar as proper notice is concerned, the same was duly served upon the appellant who appeared before the Designated Officer and was confronted with all the relevant details. No relief can be granted on this ground. Appeal is dismissed.

Present: Mr. J.S. Bedi, Advocate Counsel for the appellant.
Mr. B.S. Chahal, Addl. Dy., Advocate General for the State.

******

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

1. This order of mine shall dispose off two connected appeal Nos. 277 & 278 of 2015 against the order dated 12.2.2015 passed by The Deputy Excise and Taxation Commissioner (A), Jalandhar Division, Jalandhar (herein referred as the First Appellate Authority) dismissing the appeal against the orders dated 4.9.2013 and 29.11.2013 respectively passed by the Assistant Excise and Taxation Commissioner-cum-Designated Officer, Kapurthala (herein referred as the Assessing Authority) creating additional demand to the tune of Rs.11,46,231/- for the assessment year 2011-12 and Rs. 12,87,899/- for the assessment year 2012-13 under the Punjab Value Added Tax Act, 2005.

2. Briefly stated the facts of the case are that the appellant had claimed the wrong ITC and while doing so he had not filed the correct returns. Notices U/s 29(2) of the Punjab Value Added Tax Act, 2005 (herein after referred as the Act of 2005) with Rule 47 of the rules as framed under the Act, 2005 was issued to him. During scrutiny of the case, it transpired that the appellant had made the purchases from such dealers who had not deposited the tax in the Government Treasury, therefore after calculating the total tax, Assessing Authority created demand to the tune of Rs. 11,46,231/- for the assessment year 2011-12 and Rs. 12,87,899/- for year 2012-13. The appeal filed by the appellant before the First Appellate Authority was also dismissed, with the observations that the objection regarding the manipulated signatures of the appellant is not correct. The appellant had made the signatures on the last page of the proceedings therefore it could be well assumed that signatures on the reverse page also relate to the appellant as the proceeding drawn on this page were followed by those recorded on the last page. The proceedings on the last page contain the observations regarding confronting the appellant of the purchases regarding which his selling dealers had not deposited the tax. It was also observed that the appellant did not deny about the non deposit of tax and the fault committed.

3. As regards the confronting of the appellant with the non deposit of tax by selling dealers, the Deputy Excise and Taxation Commissioner, made the following observations:-

> *"In the circumstances as explained above, the material, the mismatch report indicating the non deposit of the tax by the selling dealer was very well confronted to the appellant dealer. The Designated officer denied him input tax credit for the purchases made from the firms who did not pay the tax."*

4. Since the selling dealers did not deposit the tax, therefore, the Assessing Authority had rejected the ITC. Hence this second appeal.

5. The counsel for the appellant has first contended that the order is cryptic and non speaking and has been passed in a philosophical manner. The order is silent qua the name of the firms whose purchases have, been rejected. The First Appellate Authority has failed to appreciate that the order passed by the Assessing Authority is invalid for the reason that it is unsigned, therefore, it deserves to be reversed. The Assessing Authority has not mentioned name of the selling dealers while rejecting the claim of ITC. The First Appellate Authority has not assigned any reason for upholding the rejection of the ITC. The appellant was also not supplied the copies of the returns filed by the selling dealers, therefore, the ITC could not be rejected. The goods were purchased against the genuine invoices. Consequently, he has prayed for acceptance of the appeal.

6. On the other hand, Mr. B.S. Chahal, Dy., Advocate General has refuted the arguments while urging that the orders passed by the authorities below are well founded and well reasoned. The appellant was offered proper opportunity to explain the nature of the transaction and transactions of sale made from M/s Shiv Shakti Enterprises, Manoj Brothers, Abohar, M/s Shiv Nath Rai, Anil Kumar Abohar, M/s Jhunthra Enterprises, Abohar and M/s Arora Matches Company, Abohar and also quo non deposit of tax in the Government Treasury by those firms but he has failed to, make any plausible explanation regarding the same. All these facts are contained in the last order dated 4.9.2013, therefore the appellant knew fully well about the reasons and the details of the firms from whom the bogus purchases were made, therefore, it was not essential to reduce the same into writing in the final order dated 4.9.2013. It was also added that proper notice under Section 29 (2) of the Punjab Value Added Tax Act read with Rule 47 of the Rules was given which was replied and ITC was rejected on the valid grounds. The order sheet bears the signatures of the appellant at two places, now he can't come to contend that he was not confronted with the allegations on the basis of which the ITC was rejected or that he was not issued any notice U/s 29 (2) of the Act.

7. Arguments heard. Record perused.

8. The order passed by the First Appellate Authority is self speaking. It refers to the names of all the firms from whom the purchases were made and the short order dated 4.9.2013 also reveals that the appellant was confronted with the said purchases and also regarding non depositing of tax by the said firms. In the light of the short order passed on 4.9.2013, the detailed order was not required to be passed on that day as the short order dated 4.9.2013 could be read as part of the final order. The proceedings pending before the Assessing Officer are of summery nature, therefore no such detailed order containing everything in minute is required to be recorded. The appellant has admitted that the sales were bogus as no tax was deposited by the selling dealer. The circumstances further indicate that the said sales were made by the selling dealers with the connivance of the purchaser therefore, the ITC was rightly rejected.

9. As regards, the legal and proper notice, It may be observed that proper notices U/s 29 (2) of the Act read with 47 of the Rules of 2005 were duly served upon the appellant and he duly appeared before the Designated Officer who brought all the defects and discrepancies to the notice and knowledge of the appellant. The said purchases in fact have not been made but the ITC has been claimed by showing the bogus purchases. The counsel for the appellant has cited some judgments which are not applicable to the facts of the present case which is based on peculiar situation and the settled law of the land. As regards, the relief which he had claimed on the basis of "C" forms, the same has been granted to him.

10. Having gone through the judgments passed by the authorities below, the same appear to be well reasoned and well founded and do...not call for any interference at my end.

11. Pronounced in the open court.

———

PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 29 OF 2015

BHARTI TELEMEDIA LTD.
Vs
STATE OF PUNJAB

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

8th July, 2016

HF ▶ Revenue

Penalty under Section 51 upheld as large consignment of goods cannot be sent back after repair within 24 hours.

ATTEMPT TO EVADE TAX – PENALTY – CHECKPOST – GOODS REPORTED AT ICC BEING RETURNED AFTER REPAIRS – NOT ACCOMPANIED BY DOCUMENT SHOWING THE MOVEMENT OF GOODS FROM THE ASSESSEE TO JOB WORKER – EARLIER DOCUMENTS PRODUCED SHOWING MOVEMENT OF GOODS FROM ASSESSEE TO JOB WORKER ON PREVIOUS DAY – NOT POSSIBLE TO REPAIR GOODS I.E. SET TOP BOXES IN ONE SINGLE DAY – NO DOCUMENTS OR AGREEMENTS PRODUCED TO PROVE THE GENUINENESS OF TRANSACTION – PENALTY RIGHTLY IMPOSED – APPEAL DISMISSED – *SECTION 51 OF PVAT ACT, 2005*

A vehicle containing HD Set Top Boxes was reported at ICC on 26.5.2011 showing transfer of goods from M/s S.S. Mobile Technology, Mohali to M/s Bharti Telemedia Ltd., Rajpura. The documents contained the remark "Returned after repairs". However, documents through which goods were sent from Rajpura to Mohali for repair was not accompanying the goods and accordingly these were detained. The said documents were produced showing transfer of goods from Bharti Telemedia Ltd. to S.S. Mobile Technologies Ltd., Mohali worth Rs. 9,39,886/- on 25.5.2011 i.e. the previous day. Suspecting that goods cannot be repaired in such a short time, the penalty was imposed to the tune of Rs. 2,81,958/- u/s 51(7)(b). On appeal before the Tribunal.

Held:
Claim of assessee that goods were purchased from KOAN India Ltd. and were sent to M/s S.S. Mobile Technologies cannot be accepted as neither any agreement between KOAN and S.S. Mobile has been produced nor there is any endorsement on the documents regarding that. The goods were new one and duly packed in the boxes and therefore it cannot be presumed that these were taken for repair. Such a huge quantity of goods cannot be repaired in such a short span of time and therefore there appears to be concealment of material facts from the Department and the goods have been wrongly presented as to have been sent after repairs. Accordingly appeal is dismissed.

Present: Mr. Alok Krishan, CA for the appellant.
Mr. N.K.Verma, Sr. Dy. Advocate General for the State.

******

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

1. This appeal has arisen out of the order dated 6.2.2013 passed by the Deputy Excise and Taxation Commissioner-cum-Joint Director (Investigation), Patiala Division, Patiala dismissing the appeal against the order dated 8.6.2011 passed by the Excise and Taxation Officer-cum- Designated Officer, ICC, Lakhnaur, District Mohali, imposing a penalty to the tune of Rs.2,81,958/- under Section 51 (7) (b) of the Punjab Value Added Tax Act, 2005 (herein referred as the Act of 2005).

2. The appellant is a registered dealer under the Punjab Value Added Tax Act and has a Branch Office at Rajpura. The appellant firm has been supplying the HD Set Top Boxes at the houses of the consumers. On 25.5.2011, the company had sent 301 Set Top Boxes for job work at Mohali.

3. On 26.5.2011, Pawan Kumar, Driver of vehicle bearing No. PB-11U-1355, while carrying 301 HD Set Top Boxes, when reached the ICC, Lakhnaur he was stopped. When confronted, the appellant produced the following documents before the Checking Officer:-

1. Delivery Challan/Stock Transfer Note No.76 dated 26.5.2011 issued by M/s S.S.Mobile Technologies Pvt. Ltd. Branch Office F-242, 1st Floor, Phase 8-B, Industrial Area, Mohali in favour of M/s Bharti Telemedia Ltd., Village Gazipur, Rajpura Patiala High Way, Rajpura, District Patiala for a sum of Rs.2,10,000/-.
2. Consignment Note No.8151157, dated 26.5.2011 of Om Logistics Ltd., Mohali showing destination as Rajpura.

4. On scrutiny of the documents, the Checking Officer observed that though the goods have been shown as "Returned after repairs" by charging a sum of Rs.2,10,000/-, the goods were not accompanied by the documents by which they were sent from Rajpura to Mohali i.e. at premises of the company where the goods were sent for repairs, therefore, the Detaining Officer detained the goods and issued notice U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005 for 27.5.2011, whereupon Pawan Kumar, Driver appeared and produced a "Delivery Challan/Stock Transfer Note" of M/s Bharti Telemedia Ltd., Village Gazipur, Rajpura Patiala Highway, Rajpura in favour of M/s S.S.Mobile Technologies Pvt. Ltd., Branch Office F-242, Phase 8-B, Industrial Area, Mohali dated 25.5.2011 for showing that the goods worth Rs.9,39,886/- were sent on 25.5.2011. Pawan Kumar, Driver made the statement that the goods were new one and were packed in the boxes. None appeared on 29.5.2011 before the Detaining Officer, therefore, the Detaining Officer recommended action U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005 and, forwarded the case to the Designated Officer who issued a notice to the owner of the goods, for 3.6.2011. In response to which Mr. Ravi Chaudhary, Advocate appeared on 6.6.2011 and submitted his reply to the notice. When confronted with the goods, the appellant failed to produce any account books or other relevant documents in order to show any copy of the contract between the appellant and M/s S.S.Mobile Technologies Pvt. Ltd. Ultimately, the appellant was imposed penalty to the tune of Rs.2,81,958/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005.

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

6. Mr. Alok Krishan, C.A. for the appellant has contended that the goods were sent for repairs. The goods were HD Set Top Boxes. These boxes were purchased from KOAN India Ltd. and were sent to the S.S. Mobile Technologies Ltd. for repairs on 25.5.2011. The repairing firm after repairing the said Set Top Boxes had sent the same back on 26.5.2011. The goods were duly accompanied by the delivery note, therefore, there was no intention to evade the tax.

7. To the contrary, Mr. N.K.Verma, Sr. Dy. Advocate General, Punjab has submitted that there was no contract between the appellant and M/s S.S.Mobile Technologies Pvt. Ltd for repairing of the goods. Even if there was any contract between KOAN India Pvt. Ltd. and M/s S.S. Mobile Technologies Pvt. Ltd., the same is of no consequence and cannot be used in the favour of the appellant to consider that it was a case of stock transfer and not for sale. Secondly, the documents through which the goods were sent for repairs are sheer manipulation in order to evade the tax. Such huge volume of goods could not be processed for repairs and repair work completed within such a short time. No invoice issued by KOAN India Pvt. Ltd. for sending the goods to M/s S.S.Mobile Technologies Pvt. Ltd and no such reference has been found on the documents that goods were product of KOAN India Pvt. Ltd. and were being sent by Bharti Telemedia Ltd. to M/s S.S. Mobile Technologies Pvt. Ltd under the directions of the KOAN India Pvt. Ltd., therefore, penalty was rightly imposed by the Department.

8. On consideration of the arguments advanced by both the parties, I find no merit in the contentions raised by the Counsel for the appellant. The appellant has failed to place on record any document in order to show that the goods were the product of KOAN India Pvt. Ltd., and were already sold by it to Bharti Telemedia Pvt. Ltd. There is no endorsement on the documents that as per the alleged agreement between KOAN India Pvt. Ltd. and M/s S.S. Mobile Technologies Pvt. Ltd, the goods were being sent to M/s S.S. Mobile Technologies Pvt. Ltd for repairs. As per statement of Pawan Kumar which stands corroborated from the physical verification report made by the Detaining Officer that the goods were new one and were duly packed in the boxes and that the goods were not taken by Pawan Kumar for repairs. All these leaves no iota of doubt in the mind of the Tribunal to observe that the goods were not sent by the appellant to S.S. Mobile Technologies Pvt. Ltd. for repairs and the same were not sent back after repairs. The appellant has invented this device to transfer such huge quantity of the goods under the garb of stock transfer note. No evidence has been produced in order to establish that Bharti Telemedia, (the appellant) had collected the Set Top Boxes for repairs from his customers on their complaints. Had these goods been old and required repairs, these could not be found packed in the boxes.

9. While going to the worst, it would be important to see that the goods were allegedly dispatched on 25th May, 2011 and sent back on 26.5.2011 after repairs. If it is so, the goods must have reached in the evening of 25th May, 2011 and M/s S.S.Mobile Technologies Pvt. Ltd sent the same back on the next day i.e. 26.5.2011 after repairs. Consequently, the goods allegedly remained in the custody of S.S. Mobile Technologies Pvt. Ltd for repairs for less than 24 hours. In these circumstances, it is not feasible to repair such a huge quantity of Set Top Boxes within such a short time as before such goods are set in order, the company was supposed to go under some process for opening the boxes, examining the defect; to make the necessary corrections and then to seal the same in the boxes again. This long process required more than one day and could not be set in order in such short period, as such the story as set out by the appellant that the goods were sent for repairs and not for sale is totally incorrect. The appellant has concealed the material facts from the department and has wrongly presented that these goods were sent after repairs.

10. Having closely scrutinized the orders passed by the authorities below the same appear to be well reasoned and well founded calling for no interference by the Tribunal.

11. Resultantly, finding no merit in the second appeal, the same is hereby dismissed.
12. Pronounced in the open court.

———

PUNJAB VAT TRIBUNAL

Go to Index Page

APPEAL NO. 439 OF 2015

SHIV BHOLE TRADING COMPANY
Vs
STATE OF PUNJAB

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

15th September, 2016

HF ▶ Revenue

Penalty U/s 51(7) is sustained where e-TRIP under Rule 64A of PVAT Rules was not being carried for Intra-State sales.

PENALTY—ATTEMPT TO EVADE TAX—INTRA STATE SALES—RULE 64A—GOOD REPORTED AT ICC WITH BILL—E-TRIP REQUIRED UNDER RULE 64A IS NOT PRODUCED—PENALTY IMPOSED—ON APPEAL BEFORE TRIBUNAL—CLAIM THAT RULE 64A IS DIRECTORY AND ITS VIOLATION CANNOT ATTRACT PENALTY U/S 51—PROVISIONS MANDATORY IN NATURE—GOODS IN QUESTION ARE SPECIFIED GOODS AS PER DIRECTIONS OF COMMISSIONER—NON ADHERENCE TO THE CONDITION OF RULE ATTRACT PENALTY U/S 51—ATTEMPT TO EVADE TAX IS WRIT LARGE—PENALTY UPHELD—APPEAL DISMISSED. — *SECTION 51 OF PVAT ACT, 2005.*

Assessee sold a consignment of refined oil to a party at Bathinda. For this purpose the bill was duly issued. The goods voluntarily reported at ICC Killianwali. The goods were detained on the ground that e-TRIP under Rule 64A was not covering the goods. Penalty was imposed on the ground of non-generation of e-TRIP. Appeal filed by First Appellate Authority failed. Second appeal was filed before the Tribunal. It was pleaded that condition of Rule 64A is not mandatory in nature the goods have been reported at the ICC. It was further contended that no penalty has been provided for violation of 64A of the Rules. Rejecting the contention, the Tribunal held, that the condition of carrying e-TRIP form is mandatory and in absence of the same, attempt to evade tax can be presumed. The violation of the procedure would attract penalty U/s 51, otherwise the purpose of incorporating such provision would stand frustrated. Finding no merits in the appeal, it is dismissed as attempt to evade the tax is writ large.

Case referred:

- *Krish Pack Industries Vs State of Punjab (2006) 28 PHT 27 (P&H)*

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

******

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

1.The Officer Incharge-cum-Excise and Taxation Officer, Information Collection Center, Killianwali, District Sri Mukatsar Sahib (herein referred as the Designated Officer) vide his order dated 2.12.2014 imposed a penalty to the tune of Rs.82,300/- U/s 51 (7) (b) of the Punjab Value Added Tax Act, 2005 (herein referred as the Act of 2005) against the appellant on the ground that the owner of the goods did not generate e-trip as prescribed under Rule 64-A of the Rules. The appeal filed by the appellant was dismissed on 4.9.2015.

2. Brief facts of the case are that the appellant is a taxable person registered under the Punjab Value Added Tax Act, 2005.

3. On 4.9.2014, the driver while loading the refined oil in the vehicle bearing No.HR-44A-3852 covered by invoice No.51, dated 4.9.2014 issued by the appellant in favour of M/s Shree Bala Ji Trading Company Bathinda for Rs.2,74,288/- when reached at ICC Killanwali, he could not produce the proper and genuine documents covering the goods i.e. goods receipt and e-trip as required under Rule 64-A of the Rules when confronted, the appellant admitted that the e-trip has not been generated. Consequently, the Detaining Officer forwarded the case to the Designated Officer who after holding enquiry and providing opportunity to the appellant imposed a penalty to the tune of Rs.82,300/- U/s 51 (7) (b) of the Act. The appeal filed by the appellant has been dismissed. Hence this second appeal.

4. The counsel for the appellant has contended that no reasoned and speaking order has been passed by the Designated Officer. The driver had reported the goods at the ICC, therefore, there was no requirement to furnish e-trip as required under Rule 64-A of the Act. It was also contended that the Act does not provide for any penalty for violation of Rule 64-A of the Rules. Since, the said transaction was covered by proper and genuine documents as provided U/s 51 (2 & 4) of the Act, 2005, therefore, the intention to evade the tax is not proved Rule 64-A of the Rules is directory and not mandatory in nature.

5. To the contrary, the State Counsel has urged that the violation of the Rule 64-A has been seriously taken into consideration by the legislature and has been made subject of penalty U/s 51 (7) (c) of the Act. The violation of Rule 64-A is not directory but mandatory in nature and the appellant was obliged to comply with the said Rule in letter and spirit. Such violation has been made punishable under the Act. Eventually, the counsel has prayed for dismissal of the appeal.

6. Arguments heard. Record perused.

7. Admittedly, the goods were being taken away from Killanwali to Bathinda. It is also not denied that the appellant had not complied with the Rule 64-A of the Rules by the generating e-trip. The goods which the appellant was carrying were specified goods as described by Rule-2 (hh) of the Punjab Value Added Tax Rules.

8. The "specified goods" means the goods of the certain value for the purposes of Rules 64-A and 64-B, respectively, as commissioner from time to time. The commissioner specified by the commissioner from time to time. The commissioner specified the “vegetable oil, audible or non audible" as "specified goods" for purposes of intrastate movement of such goods. Rule 64-A deals with the furnishing of mandatory information electronically for the specified goods covered under Rule 64-A in case of intrastate trade or commerce of goods popularly known as e-trip. It is not in dispute that the goods being transported were meant for trade. It is also not in dispute that the goods were being transported from the premises of the dealer to the premises of the consignee and not through transporter.

9. Procedure for information in respect of intrastate trade or commerce of goods through virtual Information Collection Centre has been laid down under:-

1. *The owner or person incharge of the specified goods, before putting the same into transit any intrastate destination, for trade or commerce1 by any mode of transition, shall submit information in Form VAT-12-A, through Virtual Information Collection Center on the official website of the department i.e. www.pextax.com; or any other website as may be specified by the commissioner.*

2. *Such owner or person incharge, after tendering of the aforesaid information through electronic mode, shall generate electronic receipt bearing unique number allotted to such person, as a proof for submission of the said information. The aforesaid receipt shall be a necessary document alonawith the goods receipt, trip sheet, log book, bill, cash memo, sale invoice, vehicle's record in which such goods are being transported or delivery challan etc, as the case may be, as a proof for such transaction.*

10. But in the present case, no such procedure has been followed by the appellant. The violation of Rule has been made subject to penalty U/s 51 (2) of the Act. Section 51 (2) of the Act reads as under:-

51(2) "The owner or person Incharge of the goods or a goods vehicle shall carry with him a goods vehicle record, goods receipt, a trip sheet or a log-book, as the case may be, and a sale invoice or bill or cash memo, or delivery challan containing such particulars, as may be prescribed1, in respect of such goods meant for the purpose of business, as are being carried in the goods vehicle or by any other means and produce a copy each of the aforesaid documents to an officer incharge of a check post or information collection centre, or any other officer not below the rank of an Excise and Taxation Officer checking the vehicle at any place.

Provided that a person selling goods from within or outside the State in the course if intrastate or inter-State trade or commerce, shall also furnish or cause to be furnished a declaration with such particulars, as may be prescribed:

Provided further that a taxable person, who sells or dispatches any goods from within the State to a place outside the State or imports or brings any goods or otherwise receives goods from outside the State, shall furnish particulars of the goods in a specified form obtained from the designated officer, duly filled in and signed."

11. The first provisio to Section 51 imposes mandatory condition upon the appellant to furnish declaration as prescribed under Rules when he is transporting the goods within and outside the State.

12. In these circumstances, the appellant is estopped to say that the intention to evade the tax is writ large and is revealed from the circumstances that by non generation of the e-trip as required under law he had intention to evade the tax. When the Act and Rules provide for obligation to be performed by the appellant to do something in the prescribed manner then it is obligatory on part of the appellant to conform to the provisions of law in letter and spirit and violation thereof would be certainly punishable. Otherwise the purpose of incorporating such provisions would stand frustrated. The driver also admitted in the case that e-trip has not been generated. Any incorporation of goods later in the account books would be treated as an after

thought and of no help to the appellant. I have gone through the judgment ***Krish Pack Industries Vs State of Punjab (2006) 28 PHT 27 (P&H)***. In that case, the main grievance of the appellant was that the authorities had not considered the explanation of the petitioner. They also did not consider about the principles of mensera before imposing penalty. Herein this case, I have considered all the issues as argued by the counsel for the appellant. Even the First Appellate Authority had also dealt with all the points as raised before him by the counsel for the appellant, therefore, the judgment as referred alcove is not applicable to the facts of the present case.

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

14. Pronounced in the open court.

———

NOTIFICATION (Haryana)

Go to Index Page

DRAFT AMENDMENT- EXEMPTION FROM LEVY OF VAT ON SALE OF "TECHNETIUM 99M GENERATORS" USED IN DIAGNOSIS OF CANCER

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 21st September, 2016

No. Web. 20/ST-1/H.A. 6/2003/S.59/2016. – The following draft of amendment which the Governor of Haryana proposes to make in exercise of the powers conferred by sub-section (1) of section 59 of the Haryana Value Added Tax Act, 2003 (6 of 2003), in Schedule, B and C appended to said Act, is published below for the information of persons likely to be affected thereby.

Notice is hereby given that the draft of amendment shall be taken into consideration by the Government on or after the expiry of a period of ten days from the date of uploading of this notification on the official web site www.haryanatax.gov.in together with objections and suggestions, if any, which may be received by the Principal Secretary to Government, Haryana Excise and Taxation Department, Chandigarh from any person with respect to the draft of amendment before the expiry of the period so specified and shall take effect with effect from date of publication of final notification, namely :-

DRAFT AMENDMENT

In the Haryana Value Added Tax Act, 2003 (6 of 2003),-

1 in Schedule B, under columns 1 and 2, after serial number 49 and entry thereagainst, the following serial number and entries thereagainst shall be inserted, namely:-

"49A	Technetium 99M Generators for use in diagnosis of cancer"

2 in Schedule C, under columns 1 and 2, for serial number 102(69) and entry thereagainst, the following serial number and entries thereagainst shall be substituted, namely:-

"102(69)	Radioactive chemical elements and radioactive isotopes (including the fissile chemical elements and isotopes) and their compounds; mixtures and residues containing these products **but not including Technetium 99M Generators for use in diagnosis of cancer**	2844:00:00".

ANURAG RASTOGI,
Principal Secretary to Government, Haryana,
Excise and Taxation Department.

NEWS OF YOUR INTEREST

Go to Index Page

VAT AMNESTY CLEARS TAX MUDDLE

Haryana government's decision to charge 1 per cent VAT from developers and builders for the period prior to April 1, 2014 is being touted as a win-win situation for the builders as well as the state government.

Besides ensuring prompter recovery of tax held up in litigations, the scheme named as 'Haryana Alternative Tax Compliance Scheme for Contractors, 2016' will also benefit the end users, claims the government.

The scheme, the government tells, will offer finality and eliminate the uncertainty about the payable tax.

According to the new scheme, a contractor may opt to apply within 90 days from the date of the notification of the scheme. He will have to pay 25 per cent of the total tax payable under the scheme along with the application, and the remaining 75 per cent tax can be paid in three equal quarterly installments.

Commenting on the scheme Haryana Excise and Taxation Minister Captain Abhimanyu said that the need to frame this policy arose because in the Supreme Court verdict in L&T case, builders were considered at par with contractors and they were held liable to pay VAT if they sold their flats during construction.

However, computation of VAT in such cases is a complex issue as it is to be paid on profits earned on construction activity, he said.

"Before Haryana, some other states, too, had come out with similar amnesty schemes. Delhi and Maharashtra levied 1 per cent each and Rajasthan zero per cent. We have decided to charge one per cent on the entire cost of the flat on projects up to March 31, 2014. This will end uncertainty and unnecessary litigations and will also save the interests of end users as developers will not be able to fleece them by charging more than 1 per cent VAT," the minister said.

The decision has been hailed by the National Real Estate Development Council (NAREDCO), the apex national body for the Real Estate Industry. Welcoming the move of Haryana Government NAREDCO President Parveen Jain said, "This decision of fixing one per cent VAT has put to rest the speculation and uncertainty prevailing earlier and all pending litigations, cases shall be abolished. The chaos and uphill task being faced by the builders and end-users regarding this aspect shall hopefully come to a halt by this decision and also it shall generate more government revenue".

Anurag Rastogi, Principal Secretary (Excise and Taxation Department) has claimed that the government is expecting to recover Rs 500 crore from the proposed tax recovery.

The scheme comes in the wake of resentment amongst developers and customers over Haryana government's decision to impose VAT with retrospective effect after a Supreme Court judgment.

Following the verdict of the Supreme Court in the case of firm L&T Limited (TS-156-SC-2013-NT) delivered on September 26, 2013, the builders and developers became liable to pay tax on construction of flats, dwelling units, buildings or premises, sold along with land or interest underlining the land, in pursuance of an agreement entered into before possession.

By virtue of the nature of the activity, calculation of VAT in the case of developers and builders is a very complicated exercise, said an official of the Excise and Taxation Department.

More often than not, the VAT recoverable in these cases remains withheld due to litigations in courts, he said.

A senior official of the department said requesting anonymity that though contractors were already paying VAT on the building material they used as per the applicability of the commodities, developers, who did the same construction work, were left out of the loop as the word developer was not clearly mentioned in the rules for categories of people liable to pay VAT.

He did not deny connivance at some level since an SIT constituted under Haryana Lokayukta had unearthed a scam to the tune of Rs 10,000 crore in this regard during Bhupinder Singh Hooda regime.

Much hue and cry was raised once the present Manohar Lal Khattar government imposed VAT on builders from the retrospective effect earlier this year.

Several builders in Haryana's real estate hub Gurgaon had written tol their homebuyers stating that due to the SC judgment, the builders would be liable to VAT, not prospective alone, but also on past projects. The retrospective amendment had invited severe criticism for Khattar government for being a dispensation with no consistent laws. This had led to the amnesty scheme to ease out things for the end-users as well as the builders.

Capt Abhimanyu said even the issues taken up by the Lokayukta's SIT would automatically be covered under this scheme.

Smelling the rat

In January 2015, a Special Investigation Team (SIT) constituted by the Haryana Lokayukta had unearthed a Rs 10,618-crore tax evasion scam in the Excise and Taxation Department. It has recommended a CBI inquiry into the affairs of the department.

Some of the companies that the SIT report mentioned were Robert Vadra's Skylight Hospitality, DLF, BPTP, Unitech, LT Foods and Sunstar.

The report had named a senior bureaucrat, who was then posted in the department, maintaining that the officer had tried to derail the probe.

The Lokayukta had constituted the SIT under Inspector General of Police (IGP) Shrikant Jadhav after receiving a complaint from Satbir Singh of Kaithal.

After receiving similar complaints from other parts of the state, the scope of the SIT was widened and it carried out a fact-finding exercise in other parts of the state.

The report has recommended registration of cases against traders, builders and department officers involved in the scam for causing a loss to the treasury.

The SIT had found out that officers of the Excise and Taxation Department in connivance with traders, builders and developers had caused a huge loss to the tune of Rs 10,618 crore to the state exchequer.

“The system of tax evasion and refund by corrupt means is a well established and unofficially approved system which is mutually beneficial to both sides,” the report had said.

Courtesy: The Tribune
17th September 2016

NEWS OF YOUR INTEREST

Go to Index Page

TRADERS DEMAND RELEASE OF RS 400 CRORE VAT REFUND

Over Rs 400 crore VAT refund is being awaited by traders of the state while they are being subjected to raids by the Income Tax Department, claimed the Punjab Pradesh Beopar Mandal (PPBM).

PPBM president Amrit Lal Jain said the mandal urged the government to release the VAT refund to infuse the much-needed liquidity in the market. He also requested the SAD-BJP coalition government to use its good offices to rein in the Income Tax Department to prevent them from conducting raids at business establishments.

He said these raids were being conducted at shops and showrooms while big establishments like corporate houses, affluent politicians and officials were not being touched.

He said this caused great inconvenience to traders who were already reeling under losses. The VAT refunds are supposed to be released within a span of 60 days by norm but these had been lying unpaid for the past seven months. Jain demanded the release of interest on the refund amount delayed by the Excise Department. Besides, he mooted several other changes like late filing of VAT return.

Courtesy: The Tribune
20th September, 2016

SGA
LAW OFFICES

NEWS OF YOUR INTEREST

Go to Index Page

CONSENSUS UNLIKELY ON TAX RATES AT GST COUNCIL MEET

Centre and states are also at odds over the issue of sharing administrative powers

The first meeting of the goods and services tax (GST) council scheduled for later this week is unlikely to reach a consensus on tax rates under the indirect tax regime or on the issue of sharing administrative powers between the centre and the states, government officials aware of the matter said.

The sub-committees formed by the empowered committee comprising state and central government officials to look into these issues and arrive at a basic consensual framework has met only once so far, one of the state government officials cited above said, requesting anonymity.

"The methodology for deciding the rates has to be arrived at. For this, clarity is needed on the exemptions list and the threshold. The exemption list has to be pruned from the existing one. A decision also has to be taken if a negative list of service tax will continue in the GST regime. Rates and dual control will be discussed, but a consensus looks unlikely. A lot of the ground work still remains to be done," the official said.

Since it is the first meeting, the main agenda will be to finalize the rules of conduct of business, another official said, also requesting anonymity.

A consensus on the revenue-neutral rate (RNR) or the tax rate at which there will be no revenue loss to the states under a GST regime has so far been elusive.

The states have expressed concern over the wide divergence in the RNR proposed by the government panel led by chief economic adviser Arvind Subramanian and the report commissioned by states and submitted by New Delhi-based think tank National Institute of Public Finance and Policy (NIPFP).

The standard rates proposed by the Subramanian panel are around 18%, while those proposed by NIPFP in its latest report are around 22-23%.

The centre had said that computation of the tax base will be another key factor that will go towards the calculation of the tax rate that protects the revenue of the states and the centre as well as keep the tax rate reasonable to minimize the inflationary impact on the common man.

Dual control has also been a major point of disagreement between the centre and the states with the latter insisting that all small traders with a revenue threshold of below Rs1.5 crore should be only under the administrative control of states. So far, the centre has not yielded on this issue, but has repeatedly assured the industry that every taxpayer will be under the administrative control of only one tax authority.

Calling it cross-empowerment, revenue secretary Hasmukh Adhia had said that it is possible to divide the scrutiny cases between the centre and the states as per mutual agreement.

Sumit Dutt Majumder, former chairman of the Central Board of Excise and Customs, said the way around the dual-control problem could be a small taxpayers unit along the lines of the large taxpayers' unit (LTU) existent at present.

"All income tax, excise and service tax issues are handled by the LTU for large taxpayers. Something similar can be done for small taxpayers below Rs1.5 crore wherein state GST and central GST officials can work together in the small taxpayer unit. The centre has the right to collect integrated GST (IGST). But if states' demand single control, then the Constitution may have to be further amended to allow states to collect IGST," he said.

The government is aiming to implement GST from 1 April, but finalizing these issues and the three draft GST legislation by mid-November will be crucial to adhere to this deadline.

GST, considered one of the most ambitious indirect tax reforms undertaken in independent India, will remove barriers across states and unite the country into a common market. It will subsume most of the indirect taxes levied by the centre and the states, including excise duty, service tax, value-added tax, entertainment tax, entry tax and luxury tax.

Courtesy: Live Mint
21 September, 2016

NEWS OF YOUR INTEREST

Go to Index Page

GST TO AFFECT FILM INDUSTRY BADLY

HYDERABAD: The South Indian Film Chamber of Commerce (SIFCC) will make a representation to the Union finance ministry on how GST would adversely affect the film industry. The film chamber has taken the opinion of tax consultants on the issue and will present the same before the Union finance ministry soon.

"As it is, the film industry is not doing well, and the GST will deal a deadly blow to it. We want to avert a crisis in the industry," said C Kalyan, president of SIFCC. Kalyan is also president of AP Film Chamber of Commerce and vice-president of Film Federation of India.

Though there is no entertainment tax on local language films in Tamil Nadu and Karnataka, both states will now have to impose GST because of the new decision of the Centre. In Kerala, however, entertainment tax of 25 per cent is levied per ticket.

Andhra Pradesh and Telangana have an entertainment tax of seven per cent for small films and 14 per cent for big films. If 22 per cent of GST is imposed, the industry will have to shell out more money towards tax. Moreover, there is no tax in panchayats of AP and Telangana, but now theatres in villages will also have to start paying GST.

"There is hardly any money flowing into film industry now. Some new producers are coming up with projects, which is actually keeping the film industry alive. Due to high taxation, even these people might shy away fearing losses," Kalyan said.

The SIFCC is specifically asking the Centre to exempt it from the GST. In the event that the finance ministry does not agree to this, the film industry is of the opinion that the tax should be collected from audience. The audience would then have to pay ticket rate, plus GST. As of now, entertainment tax is included in the ticket price itself.

Since entertainment tax will be scrapped after GST is introduced, the film industry is pointing out how GST would affect films in the south. Bollywood and Hollywood films, however, will stand to gain as in most states, the entertainment tax on non-local films is high. In AP and Telangana it is 24 per cent. If GST is introduced, non-local films will be benefited as the GST will be less than the entertainment tax slab now.

Courtesy: The Times of India
21st September, 2016

NEWS OF YOUR INTEREST

Go to Index Page

PHONE COMPANIES WANT SOPS TO STAY UNDER GST

NEW DELHI: Mobile phone manufactures have approached the finance ministry seeking continuation of the differential duty structure and the benefits that come with it, which they fear would become a casualty when the goods and services tax comes into effect.

Absence of these incentives could put at risk a manufacturing industry that is worth Rs 54,000 crore now and is set to grow to Rs 94,000 crore by the end of this fiscal year.

"We look forward to your kind support in establishing the proposed dispensation in GST and clearing the air on the principle of duty differential in the upcoming GST regime," the Indian Cellular Association wrote in a letter to Revenue Secretary Hasmukh Adhia.

The association represents major handset makers including Samsung, Apple and Micromax. ET has seen a copy of its letter sent on Saturday.

Mobile phone manufacturers were among the first to respond to the Prime Minister's Make in India call, making investments in local assembly facilities. Value of local production soared nearly threefold to Rs 54,000 crore in 2015-16 from Rs 18,900 crore in 2014-15, after a 29% on-year drop the year before. The change happened after the government imposed higher duties on imports of fully made phones compared with those made locally.

But the GST regime, which will have two components of central and state GST, can possibly upset the Make in India programme by levelling out the duty advantages for making locally versus imports, handset makers say.

Sources said incorporating duty differential under GST would require cooperation of different ministries.

Courtesy: The Economic Times
21 Septermber, 2016

NEWS OF YOUR INTEREST

Go to Index Page

SC RESERVES ORDER ON VALIDITY OF ENTRY TAXES IMPOSED BY STATES

The earliest plea against entry tax was moved by Jindal Stainless Steel in 2002, challenging the entry tax law imposed by Haryana

NEW DELHI: The Supreme Court on Wednesday reserved its order on the issue of validity of separate entry taxes on movement of goods, as per the laws of various state governments.

Entry tax is imposed by state governments on movement of goods from one state to another. It is levied by the state that receives goods.

A nine-judge constitution bench comprising of chief justice T.S. Thakur, justices A.K. Sikri, S.A. Bobde, Shiva Kirti Singh, N.V. Ramana, R. Banumathi, A.M. Khanwilkar, D.Y. Chandrachud and Ashok Bhushan had been hearing the matter over the past two months on a regular basis.

The earliest plea against entry tax was moved by Jindal Stainless Steel Ltd in 2002, challenging the entry tax law imposed by Haryana. Scores of petitions have followed thereafter.

In 2003, the plea was referred to a larger constitution bench and in 2008 the apex court formulated questions to be considered by the Constitution bench.

In 2010, the then chief justice S.H. Kapadia referred the case to a nine-judge bench.

However, with President, Pranab Mukherjee assenting to the constitution amendment bill that enables the implementation of this indirect tax reform on 8 September, the issue surrounding entry tax would be a thing of the past.

GST, a destination-based tax, is one of the most ambitious tax reforms undertaken in independent India. It aims to remove inter-state barriers to trade and integrate the country into a common market by subsuming a host of local levies.

GST would create a national market for goods and services in India, replacing various state taxes.

Courtesy: Live Mint
21 September, 2016

NEWS OF YOUR INTEREST

Go to Index Page

SWAMY WRITES TO PM MODI SEEKING 'STAY OF ALL OPERATIONS' OF GST'S IT BACKBONE

Showing no signs of let-up over Goods and Services Tax Network, BJP MP Subramanian Swamy has written to Prime Minister Narendra Modi seeking "stay of all operations" of the IT backbone of GST till it is restructured with government-owned financial institutions.

Arguing that the department of electronics and the finance ministry are fully capable of handling GST data, he said that "in effect, GSTN (with the current shareholding) is foreign controlled" and hence, needs to be restructured in national interest.

The Rajya Sabha MP said the GSTN, a special purpose vehicle, is dominated by private institutions and these entities are controlled by foreign shareholders.

"I am happy to learn from the media that you have taken a review meeting of finance ministry officials on the question of GST/GSTN implementation. As you may now be aware, GSTN, which is a data processing and tax revenue collecting private limited company, was never security cleared by the home ministry, whose clearance is mandatory," Swamy reasoned.

"I strongly urge you therefore to direct the complete stay of all operations of the presently constituted GSTN, and that it remains non-operational till it is restructured according to our national interest and after security certification by the home ministry," the letter said.

GSTN was formed under the previous UPA regime to set up the information technology framework for rolling out the indirect tax regime that will replace a string of local levies.

The central government holds 24.5% stake in GSTN while state governments together hold another 24.5%. The balance 51% equity is with non-government financial institutions like HDFC Bank, HDFC Ltd, ICICI Bank, NSE Strategic Investment Corporation and LIC Housing Finance.

Swamy said ICICI and HDFC shareholding is near about 65-80% owned by foreigners and "in effect GSTN is foreign controlled and hence, needs to be restructured".

The Harvard-trained economist said CAG has no power to look into financial transactions of GSTN, which will run into huge amounts once GST is implemented.

"Hence, there is reckless disregard to the use of public funds to benefit the private shareholders and employees," he wrote to the Prime Minister.

He also questioned annual salary of Rs 1 crore and other perks to CEO of GSTN.

"The Indian Revenue Service Association has unanimously resolved that GSTN is a facility which can be duplicated by the experience of the finance ministry's data processing of income tax receipts and with much greater experience and efficiency by CBEC," he said.

Swamy further said the computer programming supposedly done by GSTN has now been outsourced to Infosys at a huge payment of Rs 600 crore, of which almost Rs 400 crore have already been paid.

Swamy added that wife of a minister was made director in Infosys “just after the contract was signed”.

“The data obtained by private parties and foreign shareholders of indirect tax dues and payments of Indian taxpayers as well as details of travel from the point of manufacturing to the point of sale will help private parties rig national exchange outcome,” the member of Parliament said.

“I... am of the view that given the capacity of our department of electronics and finance ministry’s data processing capacity that GSTN should be restructured with government-owned financial institutions in place of the present two private banks and private companies. Only then, further progress in implementation of GST can take place.”

He also cautioned that the present GSTN will be set aside by the Supreme Court on a PIL as unconstitutional and not being in public interest.

Courtesy: The Hindustan Times
21st September, 2016

NEWS OF YOUR INTEREST

Go to Index Page

GST COUNCIL APPROVES FIVE SETS OF DRAFT RULES

NEW DELHI: Finance Minister Arun Jaitley today said five sets of draft rules relating to registration, payments, returns and refunds under the Goods and Services Tax (GST) regime were approved by the GST Council. He said the task of fixing GST rates, service tax assessments and compensation for the states remained yet unresolved and will be decided in the Council's next meeting on October 18-20.

"Rules for registration, payments, returns, refunds approved by Council," Jaitley said, adding, "Rates would be the big item to be discussed in next meet. Discussion regarding service tax assessments and the states' compensation will also continue in the next meet." This was the second meeting of the Council. The first one was held on September 22. The first meeting had decided that the annual turnover limit for exemption will be Rs 20 lakh while it would be Rs 10 lakh in the North-Eastern and hill states. The GST Council also decided that the states will have jurisdiction over assessees with annual turnover of less than Rs 1.5 crore.

The Finance Minister said the government was working on a target date of April 1, 2017 for the rollout of the GST in the country. In his opening remarks at the fourth meeting of the Parliamentary Consultative Committee meeting here, he said the government so far is following the road map for implementation of GST "as per the schedule". He said till September 16, 2017, one year after the provisions of the Constitution (101st Amendment) Act, 2016 being brought into force, the Constitution empowers the Central government to levy excise duty on manufacturing and service tax on the supply of services.

The Finance Minister said, similarly the Constitution Amendment Act empowers the state governments to levy sales tax or Value Added Tax (VAT) on the sale of goods till that time. Some of the major suggestions included need for absolute clarity and transparency with regard to where taxes will be collected, assessed and where the appeal will be filed in case of GST regime. The members said it will be challenging task to tackle complex situation arising out of implementation of the GST law in a federal system.

Some of the members suggested there was a need for launching a large-scale awareness campaign especially for the small traders as most of them are still unaware about the complex procedures and processes under the GST regime.

Courtesy: The Tribune
30th September, 2016