Issue 15
August 2015

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NOTICE & NOTIFICATION

U.T. Chandigarh

Punjab

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NEWS OF YOUR INTEREST

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SGA
LAW OFFICES
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PUNJAB & HARYANA HIGH COURT

CWP NO. 14096 OF 2015

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THE JAI HIND COOPERATIVE L&C SOCIETY LTD
Vs
STATE OF PUNJAB AND OTHERS

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA, J.

16th July, 2015

HF ▶ Revisional authority

Direction issued by High Court to decide the application of refund based on record made available by the petitioner.

REFUND – APPLICATION OF – APPLICATION FOR REFUND FILED- PETITIONER INSTRUCTED TO DEPOSIT ORIGINAL TDS CERTIFICATES BY DEPARTMENT – LETTER FILED CONTENDING DOCUMENTS ALREADY WITH THE RESPONDENTS – WRIT FILED PRAYING FOR DISPOSAL OF APPLICATION OF REFUND – DIRECTION ISSUED TO DEPARTMENT TO FINALLY DECIDE THE APPLICATION ON THE BASIS OF RECORD MADE AVAILABLE TO THEM BY THE PETITIONER BY THE DATE SPECIFIED IN THE ORDER- WRIT DISPOSED OF – *SEC. 39 OF PVAT ACT*

The petitioner had filed an application for refund. The AETC stated that the petitioner had not filed TDS certificates in original and instructed him to deposit them in order to have the refund decided. The petitioner replied to the same through a letter stating that the respondents had deducted the sales tax and had deposited the same with the respondents and that the respondents would have the necessary documents in their records. A writ is filed in this regard. The Hon'ble High court has held that the respondents would finally decide the application based on record made available to them by the petitioner and the petitioner would be at liberty to produce more documents within two weeks of the date of the order. The writ petition is disposed of accordingly.

Present: Mr. Munish Bansal, Advocate, for the petitioner.

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

1.The petitioner's grievance is that the respondents have not finally disposed of their application for refund dated 13.01.2015. By a communication dated 27.01.2015, the Assistant Excise and Taxation Commissioner, Bathinda stated that the petitioner had not attached

original TDS certificates. The petitioner was, therefore, instructed to deposit the same in order to have the refund application decided.

2. The petitioner replied to the same by a letter dated 23.02.2015. The petitioner, inter alia, stated that the respondents had deducted the sales tax and had deposited the same with the respondents and that the respondents would have the necessary documents in their records.

3. It is necessary for the respondents to take a final decision on the application for refund based on the record as has been made available by the petitioner and as is available with the respondents. The petitioner shall be at liberty to furnish any further documents also within two weeks from today. Whether the petitioner does so or not, final decision shall be taken by the respondents on the refund application latest by 15.08.2015.

4. The writ petition is accordingly disposed of.

PUNJAB & HARYANA HIGH COURT

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VATAP NO. 13 OF 2013

ELIS EXPORTS
Vs
STATE OF HARYANA AND ANOTHER

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S.SANDHAWALIA, J.

20th July, 2015

HF ▶ Department

Mistake of law on part of assessing authority on examination of documents and books of accounts while passing of assessment order is a valid ground for revision u/s 40 of the Act.

REVISION – REASSESSMENT – JURISDICTION OF REVISIONAL AUTHORITY TO EXAMINE THE ASSESSMENT ORDER ON ACCOUNT OF ESCAPED ASSESSMENT OF SALE OF DEPB LICENSES - ACCOUNT BOOKS AND DOCUMENTS EXPRESSLY STATED TO HAVE BEEN EXAMINED BY AUTHORITY BEFORE PASSING ASSESSMENT ORDER – REVISION ON BASIS OF ESCAPED ASSESSMENT OF SALE OF DEPB LICENSE LIABLE TO BE TAXED – APPEAL BEFORE TRIBUNAL QUESTIONING JURISDICTION OF REVISIONAL AUTHORITY INSTEAD OF REASSESSMENT – REVISIONAL JURISDICTION UPHELD - MISTAKE OF LAW AS SALE OF DEPB NOT TAXED BY ASSESSING AUTHORITY - NO PERVERSE FINDING BY TRIBUNAL FOUND IN THIS REGARD – APPEAL DISMISSED – *SEC 31 AND SEC 40 OF HGST ACT, 1973.*

The appellant had been exporting medicines. Returns were filed for the year 1998-99 and the gross turnover of export of Rs 4.94 crores was accepted as per books of accounts of the assessee and was exempted from tax. Again for the year 1999-2000 an assessment order was passed and not being satisfied with the return version, a notice was issued under the Act. The appellant produced books of accounts and relevant documents. It was expressly stated that the these books and documents were examined in detail and found to be maintained in the normal course of business and the assessing authority passed the order keeping in view the same. Nil demand was raised as assessing officer found gross turnover to be in respect of exports.

By a notice dated 20.2.2003 it was observed that the assessment order suffered from illegalities and improprieties as regards the sale of DEPB which had escaped assessment and therefore the assessment order needed revision. The appellant questioned the jurisdiction of revisional authority .It was decided on merits that appellant was liable to pay tax on sale of DEPB license to exporters. And the case was sent back to assessing authority for determining the tax liability on account of sale of DEPB by appellant.

An appeal was filed before Tribunal. A special bench upheld the revisional jurisdiction rejecting the contention that it was a case of reassessment.

On further appeal, it is observed by the High Court that the Tribunal came to a finding that the assessment order was passed on account of a mistake of law and that the assessing authority had considered the entire record and not brought to tax the sale proceeds of DEPB in view of the legal position perceived by it. In fact in most cases the sale proceeds of DEPB sale were not brought to tax before this assessment order. Since the Tribunal has rightly observed that the assessing authority has taken the case into consideration and all records have been examined in detail, thus the order of Tribunal is upheld and appeal is dismissed.

Cases referred:

Haryana Agro Industries Corporation Limited vs. State of Haryana and others, [2002] 125 STC 18 (P&H)
Bidar Sahakar Sakkare Karkhane Ltd. v. State of Karnataka [1985] 58 STC 65
Philco Exports vs. Sales Tax Officer and others, [2001] 124 STC 503 (Delhi)
Liberty Enterprises vs. State of Haryana and another, [2007] 5 VST 12 (P&H)
Jindal Drugs Limited and another vs. State of Maharashtra and another [2008 of 17 VST 164 (Bom)]
Yasha Overseas vs. Commissioner of Sales Tax & Ors., (2008) 8 Supreme Court Cases 681.

Present: Mr. Rohit Gupta, Advocate for the appellant

Ms. Mamta Singla Talawar, AAG, Haryana

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

1. This is an appeal under Section 36 of the Haryana Value Added Tax Act, 2003, against the order of the Special Bench of the Haryana Tax Tribunal dated 17.11.2009.

The Special Bench was constituted as the members of the Division Bench had differed on the question as to whether the revisional authority had jurisdiction under Section 40 of the Haryana General Sales Tax Act, 1973 (hereafter to be referred to as 'the HGST Act'). The Special Bench held that the revisional jurisdiction had rightly been invoked by the revisional authority. The appellant contends that assuming that the case on merits is well founded, it was a case for re-assessment under Section 31 by the assessing authority and not one for revision under Section 40.

2. Sections 31 and 40 of the HGST Act read as under:-

"31. Reassessment of tax - If in consequence of definite information which has come into his possession, the assessing authority discovers that the turnover of the business of a dealer has been under assessed, or has escaped assessment in any year, the assessing authority may, at any time within three years from the date of final assessment order and after giving the dealer a reasonable opportunity, in the prescribed manner, of being heard, proceed to reassess the tax payable on the turnover which has been under assessed or has escaped assessment."

"40. Revision- (1) The Commissioner may on his own motion call for the record of any case pending before, or disposed of by, any officer appointed under sub-section (1) of section 3 of the Act to assist him or any Assessing Authority or Appellate Authority, other than the Tribunal, for the purposes of satisfying himself as to the legality or to propriety of any proceedings or of any order made therein and may pass such order in relation thereto as he may think fit:

Provided that no order, shall be so revised after the expiry of a period of five years from the date of the order:

Provided further that the aforesaid limitation of period shall not apply where the order in a similar case is revised as a result of the decision of the Tribunal or any court of law:

Provided further that the assessee or any other person shall have no right to invoke the revisional powers under this sub-section (2) The State Government may, by notification, confer on any officer the powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.

(3) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard."

3. The appellant contends that the following substantial question of law arises in this appeal:-

"Whether on the facts and circumstances of the case, it was a case fit for revision under Section 40 of the Haryana General Sales Tax Act, 1973 or a case fit for reassessment under Section 31 of the said Act."

4. The appellant carries on business *inter alia* of the export of medicines. The appellant returned an aggregate turn over of about Rs.7.25 crores for the year 1998-99 in the quarterly returns filed with the Assessing Authority. At the time of assessment, the assessee contended that its true turnover as per books of accounts was only Rs.4.94 crores. The appellant furnished the balance-sheet along with a reconciliation statement which was accepted by the Assessing Authority. The assessing authority accepted the gross turnover to be Rs.4.94 crores as per the books. As the entire turnover of Rs.4.94 crores related to exports, the same was exempted from tax.

It is important to note a few aspects regarding the assessment order made by the ETO-cum-Assessing Authority under the HGST Act for the assessment year 1999-2000. The order *inter alia* states that the dealer had filed his returns assessing the gross turnover to be towards export out of India and accordingly had not deposited any tax. The order further states as follows. Being not satisfied with the returned sale version, a statutory notice was issued under Section 28(2) of the HGST Act. In response to the notice, the appellant produced the books of accounts and other relevant documents. It is important to note that the order expressly states that these books and relevant documents had been examined in detail and found to be maintained in the normal course of business. It is also important to note that the order states that there was some difference in sales in the return filed and in the books produced and that the appellant had furnished a reconciliation statement for the purpose of assessment. It is equally important to note that the Assessing Authority expressly stated that the account books of the dealer had been examined in detail and that the assessment order was passed keeping in view the same. The case was filed with a 'nil' demand as the Assessing Officer found the gross turnover to be almost entirely in respect of the exports.

A similar order was passed by the Assessing Authority under the Central Sales Tax Act, 1956. The order records that after allowing for the export claim no taxable turnover was left for the purpose of assessment and the case was filed ending in 'nil' demand.

5. This brings us to the disputed action initiated and taken by the Deputy Excise Taxation Commissioner under Section 40 of the HGST Act. By a notice dated 20.02.2003, addressed to the appellant, the revisional authority stated that he had examined and inspected the record for the said assessment year for the purpose of satisfying himself as to the legality and propriety of the assessment order. He recorded that he had observed that the assessment order suffered from the following illegalities and improprieties:-

"1. Sale of Duty Entitlement Pass Book Licence to exporters worth Rs.53,05,167/- has escaped assessment as per information and Rs.2278165 as per balance sheet."

The notice stated that the assessment order, therefore, needed to be revised. By the notice, the appellant was given an opportunity to explain as to why the order be not revised.

6. The appellant filed a reply to the above notice. For the purpose of this appeal, it is necessary only to note the appellant's contention that the revisional authority had no jurisdiction to invoke the provisions of Section 40 of the HGST Act.

7. The revisional authority by an order dated 28.04.2004 held that this was a fit case under Section 40. On merits, it was held that the appellant was liable to tax on account of sale of Duty Entitlement Pass Book (DEPB) license to exporters. The revisional authority accordingly sent the matter back to the Assessing Authority for determining the tax liability on account of sale of DEPB by the appellant.

8. The appellant filed an appeal before the Tribunal. As we mentioned earlier, the members of the Division Bench of the Tribunal differed on the question as to whether the jurisdiction under Section 40 was rightly invoked or not. The matter was, therefore, referred to a special bench, which answered the question in the affirmative.

9. As noted by the Tribunal, when the assessment order was passed, it was a contentious issue. The DEPB was held to be goods by a Division Bench judgment of the Delhi High Court dated 24.07.2001 in *Philco Exports vs. Sales Tax Officer and others, [2001] 124 STC 503 (Delhi).* A similar view was taken by this Court in *Liberty Enterprises vs. State of Haryana and another, [2007] 5 VST 12 (P&H)*, by the Bombay High Court in *Jindal Drugs Limited and another vs. State of Maharashtra and another [2008 of 17 VST 164 (Bom)]* and finally by the Supreme Court in *Yasha Overseas vs. Commissioner of Sales Tax & Ors., (2008) 8 Supreme Court Cases 681*. As we noted earlier, the assessment order was passed for the year 1998-99 on 18.05.2000 and for 1999-2000 on 27.4.2001 and for 2000-01 on 10.06.2002. The assessment orders in respect of the first two years were passed even before the judgment of the Delhi High Court. The Tribunal noted that while passing the assessment order dated 10.6.2002 for the assessment year 2000-01, the Assessing Officer had obviously not noted the above judgments.

On merits, it was admitted that in view of the judgment of the Supreme Court, which we will shortly refer to, the appellant was liable to pay tax in respect of the sale of DEPB. The only question urged before us was that even so it was, at the highest, a case for re-assessment under Section 31 and not for revision under Section 40.

10. Mr. Gupta, however, submitted that there is a clear demarcation between the powers under Section 31 and Section 40 of the HGST Act. In this regard, he relied upon a judgment of this Court in *Haryana Agro Industries Corporation Limited vs. State of Haryana and others, [2002] 125 Sales Tax Cases 18 (P&H)*. The Division Bench held:-

> *"8. A conjoint reading of the provisions quoted above shows that while section 31 speaks of reassessment of tax, section 40 provides for revision. Under section 31, the Assessing Authority can reassess the tax payable on the turnover which has been underassessed or has escaped assessment. This power can be exercised within three years from the date of finalisation of assessment and subject to the giving of notice and reasonable opportunity of hearing to the dealer. Section 40(1) empowers the Commissioner to suo motu call for the record of the case pending before, or disposed of by, any officer appointed under section 3(1) to assist him or any Assessing Authority or Appellate Authority for the purposes of satisfying himself as to the legality or to propriety of any proceedings or of any order made therein and pass such order in relation to said proceedings or order as he may think fit. The period of limitation prescribed for exercise of power under this sub-section is five years from the date of the order. Sub-section (2) of section 40 empowers the State Government to issue*

notification conferring on any officer the powers of the Commissioner under sub-section (1). Sub-section (3) of section 40 represents embodiment of the rule of hearing. It provides that no order under section 40 can be passed adversely affecting any person unless such person is given a reasonable opportunity of being heard.

9. The above analysis of sections 31 and 40 shows that the Legislature has conferred powers upon the Assessing Authority and the Commissioner to deal with different types of cases and has prescribed different periods of limitation for exercise of powers under the two sections. While the Assessing Authority can undertake the exercise for reassessment if it discovers that the turnover of the business of a dealer has been under-assessed or escaped assessment, the Commissioner has been vested with the power to call for the record of pending as well as decided cases to satisfy himself as to the legality and/or propriety of any proceedings or of any order and then pass appropriate order. In our opinion, the use of different phraseology in the two sections is clearly indicative of the Legislature's intention to confer powers upon different authorities to deal with different situation and, therefore, the power exercisable by one authority cannot be exercised by another authority. In other words, the power vested in the Commissioner to suo motu call for the record of pending proceedings or decided cases to satisfy himself as to the legality and/or propriety of the pending proceedings or final order cannot be used for dealing with a case of escaped assessment which is the exclusive preserve of the Assessing Authority. In view of this, we are inclined to agree with Shri Sawhney that the notices issued by respondent No.2 under section 40 of the Act were ultra vires of the powers of the said respondent and on that ground alone the impugned orders are liable to be quashed.

……. ……. …….. ……

13. In Bidar Sahakar Sakkare Karkhane Ltd. v. State of Karnataka [1985] 58 STC 65, a division the Bench of Karnataka High Court interpreted sections 12-A and 21(2) of the Karnataka Sales Tax Act, 1957 and held as under:

"The revisional power cannot be exercised in respect of a matter which falls within the power to reassess escaped turnover. The revising authority, in other words, should not trench upon the powers which are expressly reserved to the assessing authority under section 12-A of the Karnataka Sales Tax Act, 1957 the Deputy Commissioner, in exercise of his revisional jurisdiction, should not ignore that limitation. It is clear from the provisions of section 12-A of the Act that the reason for the turnover escaping assessment is immaterial. It might be by oversight, mistake or by design. If the record reveals no application of mind by the assessing authority in respect of a part of the turnover, then it must be deemed to have escaped assessment. It would therefore be a clear case falling within the exclusive jurisdiction of the assessing authority for reassessment, no matter whether that part of the turnover was in or outside the record of assessment. If, on the other hand, the assessing authority has applied his mind and erroneously excluded any part of the turnover, then certainly it would be a case for the revisional authority to revise the assessment.

Where the assessee, a co-operative institution having a sugarcane factory, included harvesting charges incurred in the purchase of sugarcane to the factory, the assessing authority without applying his mind omitted to include those expenses in the taxable turnover, and the Deputy Commissioner in exercise of his powers under section 21(2) of the Karnataka Sales Tax Act set aside the assessment and directed the assessing authority to redo the assessment by including in the purchase turnover, the harvesting charges incurred by the assessee.

Held, that since the assessing authority did not apply his mind to the disputed turnover, the revising authority could not have invoked the powers under section 21(2) of the Act."

The argument of Shri Jaswant Singh that the expression "legality or propriety" used in section 40(1) of the Act should be liberally construed so as to include a case of escaped assessment sounds attractive but having regard to the scheme of the Act, we are unable to accept the same. If the Legislature intended to invest the revisional authority with the jurisdiction and power to deal with all types of cases, then it would have incorporated a non obstante clause in section 40. In the absence of such clause, we are unable to interpret section 40(1) as empowering the Commissioner or other designated officer to exercise power conferred upon the Assessing Authority under section 31.

15. We are further of the view that the expression "legality or propriety" would take within its folds all types of illegalities and improprieties which may have crept in the proceedings pending before the Assessing Authority or which may have affected the final adjudication, but it cannot take within its sweep, the cases of escaped assessment because in such cases there is no assessment/adjudication by the Assessing Authority or Appellate Authority."

Mr. Gupta also relied upon the notice in that case, which was extracted in the judgment, and contended that the wording thereof was similar to the wording of the notice in the present case dated 20.02.2003. He relied upon paragraph-17 of the Division Bench judgment where the Division Bench held that notice did not even advert to the relevant provisions of the Act else it would have indicated that the proposed action was being taken on account of a particular illegality or impropriety.

11. The question whether the assessment order suffers from any illegality or impropriety in the present case at least is one of fact. The Tribunal construed the assessment order in detail and came to a positive finding that the assessment order was passed on account of a mistake of law and that the Assessing Authority had, in fact, considered the entire record and had not brought to tax the sale proceeds on account of the sale of DEPB in view of the legal position as he perceived it to be. We were, in fact, informed that prior to the assessment order, the proceeds for the sale of DEPB were not brought to tax in the case of most of the assessees. The point was first decided by the Delhi High Court and thereafter by several other High Courts and finally by the Supreme Court.

12. We are unable to say that the finding of the Tribunal that the Assessing Authority had taken the case into consideration is perverse, unreasonable or totally unsustainable. The Tribunal has taken the relevant facts in this regard into consideration. For instance, as we noted earlier, the assessment order was passed pursuant to the notice issued under Section 28(2) on account of the Assessing Authority not being satisfied with the returned sale version. Pursuant thereto, the appellant produced the account books and other relevant documents. The order expressly states that the same had been "examined in detail and found to be maintained in normal course of business". The issue, therefore, did not escape the Assessing Authority. The balance-sheet, admittedly, was also produced. The balance-sheet had attached to it the trading, profit and loss account for the year ending as on 31.03.2000. There is a specific entry regarding the sales of the DEPB. The balance-sheet was also examined by the Assessing Authority. Considering all the facts and circumstances of the case, the Tribunal's view cannot be said to be an impossible one.

13. The appeal, therefore, does not raise a substantial question of law.

14. The appeal is dismissed.

PUNJAB & HARYANA HIGH COURT

CWP NO. 14451 OF 2015

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M. AGGARWAL & CO.
Vs
STATE OF PUNJAB AND OTHERS

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S.SANDHAWALIA, J.

21st July, 2015

HF ▶ None

Assessing authority ought to follow the judgement of jurisidictional court if it applies to petitioner's case.

PRECEDENTS – ASSESSMENT - SHOW CAUSE NOTICE ISSUED AGAINST REJECTION OF INPUT TAX CREDIT – WRIT FILED APPREHENDING THAT ASSESSING AUTHORITY WOULD NOT FOLLOW LAW BINDING ON THEM – CONTENTION THAT AUTHORITY OUGHT TO FOLLOW JUDGEMENT PASSED BY THE JURISDICTIONAL COURT INSTEAD OF ONE PASSED BY BOMBAY HIGH COURT – WRIT DISPOSED OF WITH A DIRECTION TO FOLLOW THE JUDGEMENT OF THE DIVISION BENCH OF P&H HIGH COURT IF IT APPLIES TO PETITIONER'S CASE – ASSESSING AUTHORITY TO FURNISH DETAILED REASONS FOR THE DECISION IN RESPECT OF PETITIONER'S SUBMISSIONS – *SEC. 13 OF PVAT ACT.*

The petitioner has challenged the notice issued to show cause as to why ITC on purchases made by them in respect of a firm be not rejected and penalty and interest be not imposed. The petitioner filed a writ submitting that the assessing authority ought to follow the judgement of the division bench in this court in Gheru Lal Bal Chand which is a judgment of jurisdictional court. It was contended that the authority might follow the judgement of Bombay high court in case of Maha Laxmi Ginning Pressing and Oil Industries. The high court has disposed of the writ with a direction that the authority ought to consider the case of Punjab & Haryana High Court if that is applicable in the instant case and also take into account the that the provisions of Maharashtra Act are different from PVAT Act. The assessing authority shall furnish detailed reasons for the decision especially in respect of petitioner's submissions. Petition disposed of.

Cases referred:
Gheru Lal Bal Chand Vs State of Haryana and another [2011] 45 VST 195 (P&H)
Maha Laxmi Ginning Pressing and Oil Industries Vs State of Maharashtra and others [2012] 51 VST 1 (Bom)

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

1.The petitioner – a partnership firm has challenged a notice dated 13.05.2015 calling upon them to show cause as to why the input tax credit on the purchases made by them from M/s Salasar Ispath be not rejected and penalty proceedings under Section 56 of the Punjab Value Added Tax Act, 2005 (in short the Act) and interest under Section 32(3) of the Act be not imposed.

2. We do not see any reason to interfere with the proceedings at this stage. The petitioner has already appeared before the assessing authority. We would like to believe that the petitioner's apprehension that the authority would not follow a law binding upon it is not justified.

3. Mr. Goyal submitted that the assessing authority ought to follow the judgement of the Division Bench of this Court in *Gheru Lal Bal Chand Vs State of Haryana and another* [2011] 45 VST 195 (P&H), which is a jurisdictional Court, for two reasons.

Firstly, that the authority is bound by the judgement of the jurisdictional Court and not of any other Court except of course the Supreme Court.

Secondly, that the authority is likely to follow the judgement of the Bombay High Court in the case of *Maha Laxmi Ginning Pressing and Oil Industries Vs State of Maharashtra and others* [2012] 51 VST 1 (Bom).

4. If indeed the judgement of the Division Bench of this Court applies to the petitioner's case, there is no reason to believe that the assessing authority will not follow the judgement. Indeed, it would be bound to do so.

5. Mr. Goyal also states that the provisions of the relevant enactment in Maharashtra are different from those of the Act as applicable in Punjab. We are sure that the assessing authority will take that into consideration as well.

6. The writ petition is, therefore, disposed of.

7. The assessing authority shall furnish detailed reasons for the decision especially in respect of Mr. Goyal’s aforesaid submissions.

PUNJAB & HARYANA HIGH COURT

VATAP NO. 176 OF 2013

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AB SUGARS LTD
Vs.
STATE OF PUNJAB AND ANOTHER

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND HARINDER SINGH SINDHU

15th July, 2015

HF ▶ Revenue

Earlier judgment under the same enactment is binding precedent than later judgment under another Act even though earlier judgment did not consider these issues raised in later judgment.

PRECEDENTS – PURCHASE TAX – SUGARCANE – LEVY OF PURCHASE TAX ON SUGARCANE BY DEPARTMENT FOLLOWING SUPREME COURT JUDGEMENT IN CASE 'X' UNDER THE SAME ENACTMENT – TRIBUNAL UPHELD THE ORDER IGNORING ANOTHER SUPREME COURT JUDGEMENT RELIED UPON BY APPELLANT IN CASE 'Y' UNDER A DIFFERENT STATUTE – APPEAL BEFORE HIGH COURT – ARGUMENT RAISED BY APPELLANT BEFORE HIGH COURT NEVER CONSIDERED BY SUPREME COURT WHILE DECIDING CASE 'X' AS CONTENDED- PLEA THAT CASE 'Y' IDENTICAL TO ISSUE OF THE CASE OF APPELLANT AND OUGHT TO HAVE BEEN FOLLOWED – HELD, CASE 'X' IS DIRECTLY ON THE ISSUE BEFORE HIGH COURT UNDER THE SAME ENACTMENT - DIFFERENT VIEW CANNOT BE TAKEN EVEN THOUGH POINT BEING RAISED BEFORE HIGH COURT NOT CONSIDERED BY SUPREME COURT – JUDGMENT 'X' IS A BINDING PRECEDENT - APPEAL DISMISSED – *SEC. 4-B, 4(1) OF PGST ACT; BIHAR FINANCE ACT; PUNJAB SUGARCANE (REGULATION OF PURCHASE AND SUPPLY) ACT, 1953; BIHAR SUGARCANE SUGARCANE (REGULATION OF PURCHASE AND SUPPLY) ACT, 1981.*

Purchase tax was levied on sugarcane on purchase of sugarcane from sugarcane growers by the assessing authority. On dismissal of appeals below, an appeal is filed before High court.

It is contended by the appellant that the argument he is now developing before the High court was not considered by the Supreme Court in the case of M/s Jagjit Sugar Mills Co. Ltd. which has been applied by the department. Arguing against the applicability of the case, the appellant contended that the tax is not leviable under the PGST Act as is levied by the officer. It is to be levied under the Punjab Sugarcane (Regulation of Purchase & Supply) Act. For this the appellant relied upon the judgement passed by Supreme Court in the case of M/s Gobind Sugar Mills considering Bihar Finance Act.

While deciding in favour of revenue, the high court has held that the judgement of M/s Jagjit Sugar Mills is directly on the point before high court. It deals with the provisions and enactments that fall for consideration of the court. Therefore, keeping doctrine of precedent in view, the High court cannot deviate from the view taken by Supreme Court. Relying upon another judgement, it is held that the high court cannot question the correctness of the decision of Supreme Court even though the point raised before high court was not considered by supreme court. Judgement of Supreme Court cannot be assailed on the ground that certain aspects were not considered or brought to notice of supreme court. Different view cannot be taken on the ground that the Supreme Court did not consider the provisions of Punjab Sugarcane (Regulation of Purchase & Supply) Act. Once the principle is decided by the Apex court, it is the duty of High Court to follow it. Hence, the appeal is dismissed.

Case followed:
M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab and another 1995(1) SCC 67

Case distinguished:
Gobind Sugar Mills Ltd. v. State of Bihar and others (1999) 7 SCC 76.

Cases relied upon:
Suganthi Suresh Kumar v. Jagdeeshan (2002) 2 SCC 420
Director of Settlements A.P. and others v. M.R.Apparao and another (2002)4 SCC 638

Present: Mr. Sandeep Goyal, Advocate, for the appellants.

Mr. Piyush Kant Jain, Additional Advocate General, Punjab,
for the respondents.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

1.This is an appeal under section 68 of the Punjab Value Added Tax Act, 2005 against the order of the Value Added Tax Tribunal, Punjab dated 20.03.2008 upholding the order passed by the Deputy Excise & Taxation Commissioner (Appeals)-First Appellate Authority dismissing the appellant's appeal against the order of the Assessing Officer.

2. The appellants have pressed the following questions, which according to them, raise substantial questions of law:-

i) "Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in ignoring the judgment of M/s Gobind Sugar Mills and following the judgment of M/s Jagatjit Sugar Mills case despite the fact that the issue and facts in Govind Sugar Mills case are almost identical to the issues and facts of the present case?

ii) Whether in the facts and circumstances of the case, the appellant is liable to pay tax on the purchase of sugarcane under the provisions of Punjab General Sales Tax Act, 1948, when the Punjab Sugarcane (Regulation of Purchase & Supply) Act, 1953 is in force which is a special Act?"

3. The Assessing Officer-Deputy Excise & Taxation Commissioner and Value Added Tax Tribunal rightly held that the appellant is liable to pay tax on the purchase of sugarcane under the provisions of the Punjab General Sales Tax Act, 1948 (for short 'PGST Act') in view of the judgment of a bench of three learned Judges of the Supreme Court in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab and another 1995(1) SCC 67,* which was a judgment on the very provisions which fall for consideration before us.

4. Mr. Sandeep Goel, the learned counsel appearing on behalf of the appellant, however, contends that the authorities ought not to have followed and that we ought not to follow this judgment, although it would normally be binding on us as the Supreme Court failed to consider an argument now raised before us and which, it is contended, is supported by another judgment of the Supreme Court in *Gobind Sugar Mills Ltd. v. State of Bihar and others (1999) 7 Supreme Court Cases 76.*

5. We are unable to agree. In our view we are bound by the judgment of the Supreme Court in M/s Jagatjit Sugar Mill's case (supra) as the Supreme Court in this case dealt with the very provisions with which we are concerned. The question that arose in that case was whether the petitioner-sugar mill was liable to pay the purchase tax on the sugarcane purchased by it from the growers. The respondents therein contended that sugarcane was exempted from purchase tax inter-alia in view of section 4-B of the PGST Act. The Supreme Court noted the definitions in Section 2 of the PGST Act of the terms *"dealer', 'goods' 'purchase' 'sale' and 'turnover*'. The Supreme Court also noted Section 4 of the PGST Act which was the main charging section and section 5 which defines the expression 'taxable turnover'. Sections 4 and 4-B of the PGST Act, which were also noted, in so far as they are relevant, read as under:-

> ***"4. Incidence of taxation. - (1)*** *Subject to the provisions of sections 5 and 6 every dealer except one dealing exclusively in goods declared tax - free under section 6 whose gross turnover during the year immediately proceeding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the coming, into force of this Act and purchases made after the commencement of the East Punjab General Sales Tax (Amendment) Act, 1958:*
>
> *Provided that the tax shall not be payable on sales involved in the execution of a contract which is shown to the satisfaction of the assessing authority to have been entered into before the commencement of this Act.*
>
> ***"4-B. Levy of purchase tax on certain goods****. –*
>
> *Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule B from any source and –*
>
> *i. uses them within the Union Territory of Chandigarh in the manufacture of goods specified in Schedule B, or*
> *ii. uses them within the Union Territory in the manufacture of any goods, other than those specified in Schedule B, and sends the goods so manufactured outside the Union Territory in any manner other than by way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or*
> *iii. uses such goods for a purpose other than that of resale within the Union Territory, or sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, or*
> *iv. sends them out side the Union Territory other than by the way of sale in the course of inter-State trade or commerce or in the course of export out of the territory of India, and no tax is payable on the purchase of such goods under any other provision of this Act, there shall be levied a tax on the purchase of such goods at such rate not exceeding the rate specified under sub-section (1) of section 5 as the Central Government may direct".*

The question before the Supreme Court was whether the petitioner therein was liable to pay purchase tax on the sugarcane purchased by it from the growers of the sugarcane. This is the very question before us as well. Paragraphs 14, 22 and 23 of the judgment read as under:-

*"**14.** The contention of the learned counsel for the petitioner is this: Section 4-B, which levies purchase tax, expressly excludes the goods mentioned in Schedule B from its purview. In other words, Schedule B goods are exempt from tax on their sale by virtue of Section 6 and exempt from tax on their purchase by virtue of Section 4-B. The emphasis is upon the opening words of Section 4-B which reads: "Where a dealer who is liable to pay tax under this Act purchases any goods other than those specified in Schedule B from any source…." We find it difficult to agree. The said argument, in our opinion, is based upon an incorrect premise that purchase tax is levied by Section 4-B in the Act and not by any other provision. The said argument also ignores the fact that Section 4 levies tax not only upon "all sales effected" but also on "purchases made". If the assumption underlying the argument of the learned counsel for the petitioner were to be accepted then no purchase tax was leviable on Schedule C goods prior to introduction of Section 4-B. Similarly, no purchase tax should be leviable even now on Schedule C goods (Schedule C, even according to the counsel for petitioners, mentions goods subject to purchase tax) inasmuch as Section 4-B does not refer to Schedule C nor does Section 4-B levy purchase tax on the purchase of goods in Schedule C. In our opinion, the purpose of Section 4-B is altogether different. It is designed really to identify and affirm — in a broad sense, create — the levy of purchase tax in some cases and to provide for exemption from purchase tax in certain other specified situations. This is done in the interest of manufacturers-dealers, consuming public and other dealers — a common feature in almost all the sales tax enactments, as we shall presently demonstrate. To explain what we say, let us analyse the section. For attracting the levy of purchase tax under Section 4-B, the following requirements must be satisfied:*

(a) A dealer (liable to pay tax under the Act) purchases goods other than those specified in Schedule B from any source;
(b) No tax is payable on the purchase of such goods under any other provisions of the Act;
(c) The goods so purchased are used/disposed of etc. in one of the modes mentioned in clauses (i), (ii), (iii) or (iv).

***22.** It is, therefore, idle to contend that Section 4-B imposes purchase tax or is the only provision imposing purchase tax. As analysed hereinbefore, it is mainly designed to affirm or exempt, as the case may be, the purchase of certain goods from purchase tax in certain specified situations. It, of course, does not deal with the goods specified in Schedule B. Its object is to ensure inter alia that purchase of raw material is not taxed where the sale of manufactured goods brings in tax to the State or serves the national interest, as explained hereinbefore. If, however, manufactured goods are so disposed of as not to bring in tax to the State nor so as to serve national interest aforementioned, then the purchase of goods (broadly referred to as raw material in this judgment), the State retains and collects the purchase tax on raw material. Similarly, where the very goods are sold in such a manner as to bring in revenue to State by way of tax on their sale, (i.e., sale within the State, inter-State sale or export sale, as the case may be) then again the purchase of such goods is exempt from tax as explained and elaborated hereinabove.*

***23.** If so, the question arises which is the provision which levies the purchase tax? The answer is — Section 4(1) itself. Section 4(1) not only levies tax on all sales but also levies tax on all purchases as well. Of course, in no case will both the sale point and purchase point of the same transaction be taxed, which feature is indicated in sub-section (2-A) of Section 4 also. It is, therefore, obvious that where the sale of certain goods is exempt from tax by virtue of Section 6, their purchase will be taxed and*

conversely where the Act expressly taxes the purchase of certain goods their sale simultaneously will not be taxed — subject, of course, to any express provisions providing exemptions. In the case of sugarcane, it being an agricultural produce — and in cases where it is sold by the grower himself — such sale is exempt from tax by virtue of Section 6 read with Schedule B. If so, the purchaser thereof is liable to pay tax on its purchase by virtue of Section 4(1). That is the position in the cases before us. Since Section 4-B does not apply to Schedule B goods, the said provision is not relevant to the petitioners. The purchase tax on sugarcane is levied by Section 4(1), since it being an agricultural produce, and said to be sold by growers themselves, is exempt from tax on its sale under Section 6."

6. Mr. Goel rightly did not even contend that the judgment is not applicable to the case before us. He, however, contended that the Supreme Court did not consider the argument which he developed before us. He contended that the petitioner is not liable to pay the purchase tax under the Punjab General Sales Tax Act, 1948 as purchase tax is levied under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. He submitted that the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 being a special enactment for levying purchase tax exclusively on purchase of sugar overrides the Punjab General Sales Tax Act, 1948. He further contended that on a harmonious construction of the two Acts, the State can levy purchase tax on purchase of sugarcane only under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. In support of this contention, he relied upon the judgment of the Supreme Court in *Gobind Sugar Mills Ltd. v. State of Bihar and others (supra).* 7. The Supreme Court in that case dealt with the Bihar Finance Act, 1981 and Bihar Sugarcane (Regulation of Supply and Purchase) Act, 1981 which are referred to in that judgment as 'the Finance Act' and 'the Sugarcane Act', respectively. It was contended that the State legislature having once provided for levy of purchase tax under the Sugarcane Act, cannot impose the same levy under the Finance Act. Analyzing the provisions of the Finance Act, the Supreme Court observed that it provides for levy of different types of commercial taxes which are generally leviable in the State of Bihar and that the object of the Sugarcane Act was to regulate the production, supply and distribution of sugarcane intended for use in sugar factories and for taxation of sugarcane and matters incidental thereto. Mr. Goel, relied upon paragraph 11 of the judgment which reads as under:-

***"11.** The next contention on behalf of the State, as noted above, is that the two enactments operate in different fields inasmuch as while the Finance Act is an enactment for the purpose of generating revenue for the State, the Sugarcane Act is enacted generally for the purpose of production, supply and distribution of sugar. The power of taxation contemplated under this Act is only incidental to further the object of Section 49(8) of the Sugarcane Act. In other words, an attempt was made to contend that the tax which was levied and collected under Section 49 of the Sugarcane Act was to be appropriated towards the requirements of the Board and the Council constituted under the Sugarcane Act. In this connection, it was contended that Section 3 of the Sugarcane Act contemplated establishment of the Sugarcane Board with specific power to fulfill the objects of the said Act. Therefore, the levy that was being collected as purchase tax under Section 49(1)(b) of the Act, being an exclusive levy for the purpose of the requirement of the Board, the same cannot be equated with the levy of purchase tax contemplated under Section 4 of the Finance Act. We do not find sufficient force in this argument to repel the contention of the appellant that the tax collected under Section 49(1)(b) of the Sugarcane Act is the same as is contemplated under Section 4 of the Finance Act but confined to sugarcane. A perusal of Section 49(8) of the Sugarcane Act shows that a part of the amount of purchase tax collected under its sub-section (3) is utilised for the purpose of the Board and the Council as grant but subsection (8) of*

Section 49 does not, in any manner, indicate that the entirety of this collection under sub-section (1)(b) of Section 49 is solely earmarked for the purpose of the expenditure of the Board or the Council. A perusal of Sections 6 and 9 of the Sugarcane Act clearly shows that the legislature has made separate provisions for the funds of the Board as well as the Council under the said Act, and only a portion of the collection under sub-section (1)(a) of Section 49 is earmarked for these purposes; hence, it is clear that the balance of collection goes to the State Exchequer/General Fund. So, there is no merit in the arguments advanced on behalf of the State that the collection of purchase tax under sub-section (1)(b) of Section 49 is for the purpose of creating a fund for the exclusive use of the Board and the Council created under the said Act."

8. We will assume that the observations of the Supreme Court in *Gobind Sugar Mills Ltd. v. State of Bihar and others (supra)* are of assistance to the appellant. It may have been possible for the appellant to rely upon this judgment to draw an analogy with the provisions of the enactments that fall for our consideration. However, the judgment in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab* (supra) is directly on point. It dealt with the provisions of the very enactments that fall for our consideration. It cannot be disputed that absent anything else we are bound by the judgment.

9. Keeping the doctrine of precedent in mind we are not entitled to take a different view based on Mr. Goel's additional submission founded on the provisions of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. In *Suganthi Suresh Kumar v. Jagdeeshan (2002) 2 Supreme Court Cases 420,* the Supreme Court held that the High Court cannot question the correctness of the decision of the Supreme Court even though the point raised before the High Court was not considered by the Supreme Court. In *Director of Settlements A.P. and others v. M.R.Apparao and another (2002)4 Supreme Court Cases 638,* the Supreme Court held that the decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not considered by, or that relevant provisions were not brought to the notice of the Supreme Court. It was further observed that once the Supreme Court decides the principle it would be the duty of the High Court to follow the decision.

10. We, therefore, cannot take a view different from the one taken by the Supreme Court in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab* (supra) on the ground that the Supreme Court did not consider the provisions of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953. Nor we are entitled to ignore this judgment on the basis of the judgment of the Supreme Court in *Gobind Sugar Mills Ltd. v. State of Bihar (supra) as* in *M/s Jagatjit Sugar Mills Co. Ltd. v. State of Punjab* (supra) the Supreme Court considered the very provisions that fall for our consideration. In *Gobind Sugar Mills Ltd. v. State of Bihar (supra)* different enactments fell for the consideration of the Supreme Court.

11. This is not even a case where the enactments considered in *Gobind Sugar Mills Ltd. v. State of Bihar (supra)* were identical to the Punjab General Sales Tax Act and the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 or that there were no difference between the two enactments. Section 49(8) of the Sugarcane Act which fell for consideration in *Gobind Sugar Mills Ltd. v. State of Bihar (supra)* expressly provides that a part of the amount of purchase tax collected under subsection (3) is to be utilized for the purpose of the Board and the Council as grant but did not indicate that the entirety of this collection was solely earmarked for the purpose of expenditure of the Board or the Council. Such a provision is absent in the enactments before us. Infact, the statement of object and reasons of the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 expressly state as under:-

*"**Statement of Objects and Reasons- "**With the promulgation of the Industries (Development and Regulation) Act, 1951, with effect from the 8th May, 1952, this regulation of sugarcane industry has become exclusively a Central subject. The State*

Government are now only concerned with the supply of sugarcane to sugar factories: moreover in view of lean financial position of the State, the State Government are not in a position to provide adequate funds for extensive Cane Development work in the areas supplying cane to sugar factories with the result that the factories are not getting cane of good quality. The Bill is being introduced in order to provide for a rational distribution of sugarcane to factories for its development on organized scientific lines making adequate funds available after imposing a tax on sugarcane purchases by factories, to protect the interests of cane growers and of the Industry and to put the new Act permanently on the Statute Books" (vide Punjab Government Gazette Extraordinary, dated the 9th October, 1953, p. 1630)."

12. Faced with this, Mr. Goel submitted that in any event in view of Article 266 of the Constitution of India the amounts collected under the Punjab Sugarcane (Regulation of Purchase and Supply) Act, 1953 would be transferred to the consolidated fund of India and the enactments thereafter cannot direct the manner in which the same is to be utilized. He further submitted that once the amounts are credited to the consolidated fund of India, the Act cannot say how it is to be utilized. Only the legislature can do so.

Even assuming this to be so we do not see how it can make a difference. The legislature has imposed the tax. The amounts collected may well be available to the legislature to be spent for the purposes mentioned therein and in the statement of objects and reasons. These are aspects which can be gone into only by the Supreme Court and not by this Court for accepting these submissions would in effect result in this Court holding that the judgment of the Supreme Court in Jagatjit Sugar Mill's case (supra) is not good law.

13. Considering the view taken by us on Mr. Goyal's submission, it is not necessary to consider Mr. Jain's further submission that the appellant has infact challenged the validity of the Punjab General Sales Tax Act, 1948 and that such a challenge could not have been taken before the authorities.

14. In the circumstances, the questions of law, are answered against the appellant. The appeal is accordingly dismissed.

PUNJAB & HARYANA HIGH COURT

CEA NO. 67-69 &71 OF 2014

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COMMISSIONER, CENTRAL EXCISE COMMISSIONERATE
Vs.
ELEGANT ENTERPRISES

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND HARINDER SINGH SINDHU

15th July, 2015

HF ▶ Respondent

Filing of appeal by Central Excise Officer without direction of Committee of Commissioners is not maintainable.

APPEAL- CESTAT – APPEAL FILED BY CENTRAL EXCISE OFFICER BEFORE APPELLATE TRIBUNAL ON BEHALF OF AUTHORITY – NO DIRECTION ISSUED TO THE OFFICER BY THE COMMITTEE OF COMMISSIONERS OF CENTRAL EXCISE TO FILE AN APPEAL-MERE TENDERING OF DOCUMENTS AT BAR DURING HEARING OF APPEALS NOT INDICATIVE OF COMPLIANCE OF SEC 35B(2) OF THE ACT- PREREQUIREMENT OF DIRECTION TO OFFICER NOT FULFILLED – APPEAL DISMISSED – *SEC 35B(2) OF THE CENTRAL EXCISE ACT, 1944.*

An appeal was filed before the Appellate Tribunal by the Central excise officer on behalf of the Appellate commissioner of central excise. But it was dismissed on the ground that no direction was given to the officer which is a prerequisite to file an appeal as per sec 35B (2) of the Central excise act. On filing of appeal before high court, the order passed by the Appellate Tribunal was upheld as compliance of sec 35B is necessary to file an appeal before appellate tribunal. Mere exchange of documents at Bar is not enough.

Cases relied upon:

Commissioner of Central Excise, Delhi-III (Gurgaon) vs. B.E. Office Automation Products Pvt. Ltd, (2010) 249 ELT 24
CCE, Vadodara vs. Rohit Pulp and Paper Mills, (1998) 101 ELT 5 (SC)

Present: Mr. Sukhdev Sharma, Advocate, for the appellant.

Mr. Abhishek Jaju, Advocate, for the respondent.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

1. We are informed that the appeals are against a common order and are identical in all respects. We, therefore, dispose of all the appeals by this common order and judgment.

2. These appeals have been filed against the order of the CESTAT dismissing the appellants' appeals on the ground that the appellants had not complied with the provisions of Section 35B(2) of The Central Excise Act, 1944. The said Section reads thus:-

> *"**35B. Appeals to the Appellate Tribunal**.- (2) The Committee of Commissioners of Central Excise may, if it is of opinion that an order passed by the Appellate Commissioner of Central Excise under section 35, as it stood immediately before the appointed day, or the Commissioner (Appeals) under section 35A, is not legal or proper, direct any Central Excise Officer authorised by him in this behalf (hereafter in this Chapter referred to as the authorised officer) to appeal on its behalf to the Appellate Tribunal against such order."*

3. It has been held by a Division Bench of this Court in ***Commissioner of Central Excise, Delhi-III (Gurgaon) vs. B.E. Office Automation Products Pvt. Ltd, (2010) 249 ELT 24*** that the compliance with the Section is necessary and that in the event of the failure to comply with the same, no appeal is deemed to have been instituted in the eyes of law. The Division Bench, in that case, dealt with Section 130 of the Customs Act, 1962, which is *para materia* to Section 35B(2) of the Central Excise Act, 1944, with which we are concerned.

4. The Supreme Court in ***CCE, Vadodara vs. Rohit Pulp and Paper Mills, (1998) 101 ELT 5 (SC)*** held that the provisions of Section 35B (2) are clearly required as a prerequisite to the direction to any Central Excise Officer to file an appeal. As no such direction was produced, the appeal was dismissed. In the present case also, Section 35B(2) has not been complied with. The documents tendered across the Bar during the hearing of these appeals also do not indicate compliance of the provisions of Section 35B(2) of the Act.

5. The appeals are, therefore, dismissed.

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CWP NO. 14727 OF 2015

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ARSS INFRASTRUCTURE PROJECTS LTD.
Vs.
STATE OF HARYANA AND OTHERS

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA, J.

22nd July, 2015

HF ▶ Assessee petitioner

Assessee cannot to be compelled to carry forward the amount of refund granted to him.

REFUND – PETITIONER ENTITLED TO REFUND AS PER ASSESSMENT ORDER – WRIT FILED AGAINST COMPULSION TO CARRY IT FORWARD – DEPARTMENT ORDERED TO REFUND THE AMOUNT ALONG WITH INTEREST IF PAYABLE – WRIT DISPOSED OF – *SEC 20 OF HVAT ACT.*

The petitioner was entitled to refund of about Rs 1,33,493/-.But the department was compelling him to carry forward the amount. A writ was filed against this. It has been held that the petitioner should be given the refund along with the interest if payable.

Present: Mr. Avneesh Jhingan, Advocate, for the petitioner.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Issue notice of motion.

1. Service of the notice is waived, as Ms. Mamta Singla Talwar, learned Deputy Advocate General, Haryana accepts notice on behalf of the respondents.

2. The petitioner has been granted a refund to the extent of about Rs. 1,33,493/-. The petitioner is entitled to the same as per the assessment order itself. The petitioner cannot be compelled to carry it forward.

3. In these circumstances, the amount shall be refunded by 31.08.2015 alongwith statutory interest, if payable.

4. The writ petition is accordingly disposed of.

PUNJAB & HARYANA HIGH COURT

CWP NO. 15113 OF 2015

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GREATWAYS OVERSEAS
Vs.
STATE OF PUNJAB AND OTHERS

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA, J.

27nd July, 2015

HF ▶ Petitioner

Application for renewal of Advance tax exemption to be processed by the authorities by the date fixed.

ADVANCE TAX – EXEMPTION- RENEWAL OF CERTIFICATE – APPLICATION FOR RENEWAL OF EXEMPTION CERTIFICATE FILED BEFORE ITS EXPIRY DATE – APPLICATION NOT CONSIDERED- REMINDER ADDRESSED TO THE DEPARTMENT POST EXPIRY — WRIT FILED WITH A GRIEVANCE THAT DELAY IN RENEWAL WOULD RESULT IN PAYMENT OF ADVANCE TAX AND THEN SEEKING REFUND – WRIT DISPOSED OF WITH A DIRECTION TO THE AUTHORITIES TO CONSIDER THIS MATTER IN A FAIR AND JUDICIOUS WAY – AUTHORITIES TO PROCESS APPLICATION OF PETITIONER FOR RENEWAL BY THE DATE FIXED BY COURT- *SEC. 6(7) OF PVAT ACT.*

The certificate of exemption of Advance Tax was granted to the petitioner which came to an end on 30.6.2015. The petitioner sought its renewal vide letter dated 22/6/2015. The application was not considered due to which a reminder was addressed on 8/7/2015. A writ is filed in this behalf. The grievance of the petitioner is that the delay in issuing of exemption certificate or renewal thereof would prejudice it as till it is granted the assessee would be bound to pay the advance tax and then seek refund. Also, it is not clear whether the petitioner would be entitled to any compensation by way of interest for the period for which advance tax was paid by him which ultimately is not payable by him.

Disposing of the writ, the court has directed the authorities to consider this matter in a fair and judicious way within 4 weeks from the date of the order being passed. The respondents are directed to process the petitioner's application for the renewal certificate of advance tax exemption by 15.8.2015.

Present: Mr. Avneesh Jhingan, Advocate, for the petitioner.

****

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Issue notice of motion.

1. Service of the notice is waived, as Mr. Jagmohan Bansal, learned Additional Advocate General, Punjab accepts notice on behalf of the respondents.

The petitioner has sought a renewal of the certificate of advance tax exemption granted to it under a notification dated 04.10.2013. Its existing exemption certificate came to an end on 30.06.2015. The petitioner had sought renewal by a letter dated 22.06.2015. The application not having been considered, the petitioner addressed a reminder dated 08.07.2015.

2. The exemption is processed in terms of the said notification clause 2 (d) whereof reads as under:-

"(2) who intends to dispose of such goods, in any of the following manner, namely:-

(d) by making zero rated sales as given under section 17 of the Act of such goods, or of the goods manufactured therefrom, he may make an application, to the Designated Officer, who, if after verifying all aspects of the case, arrives at a decision that the payment of the aforesaid tax, would result in refund, may exempt such taxable person from the payment of the said tax or reduce the rate of advance tax, with the approval of the Deputy Excise and Taxation Commissioner, In-charge of the concerned Division, by passing a speaking order, in this regard."

3. The notification does not prohibit the authorities from granting the exemption certificate even for a longer duration or even till it is otherwise revoked or terminated. The petitioner's grievance, as indeed it must also be the grievance of several other applicants, is that the delay in issuing the exemption certificate or any renewal in respect thereof prejudices it substantially for till it is granted the assessee would be bound to pay the advance tax and then seek refund. It is not clear as yet as to whether such an assessee would be entitled to any compensation including by way of interest during the period that the advance tax which ultimately is not payable is deposited with the authorities. The grievance is not without substance. It is, however, a matter which the respondents must in the first instance consider. We would request the respondents to consider addressing this grievance of the assessee in a fair and judicious manner.

For instance, the authorities may consider whether the exemption ought to be open-ended subject to the right to revoke the same and also insisting for information in the meantime. They may also consider whether the exemption certificate ought to be granted for a longer duration than for three months. It may also be possible to permit the parties to apply for the renewal well before the expiry date of the existing certificate and to direct the authorities to take a decision on such application, if any, before the expiry of the date of the existing certificate.

4. The writ petition is accordingly disposed of by requesting the authorities to consider what we have just said preferably within four weeks from today. The respondents are also directed to process the petitioner's application for the renewal certificate of advance tax exemption by 15.08.2015. The rights and contentions of the parties are kept open.

SGA
LAW OFFICES

PUNJAB & HARYANA HIGH COURT

CWP NO. 15286 OF 2015

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LUXMI TRADING COMPANY
Vs.
STATE OF PUNJAB AND OTHERS

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA, J.

29th July, 2015

HF ▶ Petitioner dealer

Interim stay on coercive action to recover entry tax on sugar.

ENTRY TAX – SUGAR – INTERIM ORDER – ORDINANCE PASSED LEVYING ENTRY TAX ON SUGAR AS PER THE SCHEDULE APPENDED- WRIT FILED CHALLENGING THE POWER OF PRINCIPAL SECRETARY TO NOTIFY THE SCHEDULE APPENDED TO THE ORDINANCE – RECOVERY OF TAX BY COERCIVE STEPS STAYED BY COURT TILL EXAMINATION OF POWER OF PRINCIPAL SECRETARY TO NOTIFY THE SCHEDULE AND INCLUDE SUGAR.

As per clause 4 of the ordinance it was provided that entry tax on the goods specified in the schedule would be levied. However, the appended schedule was notified by the Principal secretary, department of industries and commerce on 29.5.2015. The petitioner challenged the power of the principal secretary to notify the schedule and include sugar in it. An interim order has been passed by the court staying the recovery of entry tax on sugar by coercive action based on the schedule till further orders.

Present: Mr. Akshay Bhan, Senior Advocate,
with Mr. Alok Mittal, Advocate, for the petitioner.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Issue notice of motion returnable on 08.09.2015.

1. Service of the notice is waived, as Mr. Piyush Kant Jain, learned Additional Advocate General, Punjab accepts notice on behalf of the respondents. Let a complete set of paper book be supplied to him during the course of the day.

2. Clause 4 of the ordinance provides that there shall be levied and collected a tax on entry of goods specified in the Schedule. "Schedule" is defined in Section 2(k) to mean a Schedule appended to the ordinance. The Schedule was notified by the Principal Secretary, Department of Industries and Commerce on 29.05.2015. It is necessary to examine as to under what power the Principal Secretary has specified the Schedule and included sugar

therein.

3. In these circumstances, till furthers orders, no coercive action shall be taken for the recovery of tax based on the Schedule.

4. List again on 08.09.2015.

PUNJAB & HARYANA HIGH COURT

CWP NO. 15499 OF 2015

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TAX BAR ASSOCIATION, HISAR
Vs.
STATE OF HARYANA AND OTHERS

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA, J.

30th July, 2015

HF ▶ Tax Bar Association- Petitioner

Direction issued to respondents to accept manual tax returns filed for the current quarter.

RETURNS – WRIT FILED BY TAX BAR AGAINST SYSTEM OF E- FILING OF RETURNS AND REFUSAL TO ACCEPT MANUAL RETURNS BY THE DEPARTMENT – RESPONDENTS READY TO ACCEPT MANUAL RETURNS FOR THIS QUARTER – TO ISSUE NOTIFICATION REGARDING E – FILING - WRIT DISPOSED OF BY GRANTING LIBERTY TO PETITIONER TO FILE MANUAL RETURNS – DATE OF FILING OF RETURNS EXTENDED UPTO 10 AUGUST, 2015 DUE TO UNCERTAINTY IN THE MATTER DUE TO TRANSITIONAL STAGE FROM MANUAL TO E-FILING – *SEC. 14 OF HVAT ACT, RULE 16 OF HVAT RULES.*

A writ is filed against the system of filing of e –returns introduced by the department and refusal to accept the manual returns. The respondents have stated that e- filing is being encouraged but atleast for this quarter they are not refusing manual returns and that they shall issue a notification in this regard. Hence, petitioner is granted liberty to file manual returns for this quarter. Due to uncertainty regarding the matter, time to file manual returns is extended upto 10.8.2015. The petitioner is open to challenge the notification to be issued by department, if any.

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Issue notice of motion.

1. Service is waived, as Ms. Mamta Singla Talwar, learned Deputy Advocate General, Haryana accepts notice on behalf of the respondents.

The petitioner's grievance is that the respondents have introduced a system of e-filing of the tax returns under the Haryana Value Added Tax Act, 2003 and that the respondents are refusing to accept manual returns.

2. Ms. Talwar appearing on behalf of the respondents, on having instructions, states that the respondents are undoubtedly encouraging e-filing of the tax returns, but that the

respondents are not at least for this quarter refusing to accept the manual returns. They intend issuing a notification.

3. The petitioner's grievance, therefore, stands redressed at this stage.

4. Needless to add that it is always open to the petitioner to challenge the notification, if any. In view of the said statement, the petitioner is at liberty to file the manual returns for this quarter. The respondents state that they will accept the same, if filed. As there was some uncertainty regarding the matter which is at a transitional stage from manual filing to e-filing, the time to file the manual returns or e-returns is extended only upto 10.08.2015.

5. The petition is accordingly disposed of.

PUNJAB & HARYANA HIGH COURT

CWP NO. 15294 OF 2015

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OCEAN METALS PVT. LTD.
Vs.
STATE OF PUNJAB AND OTHERS

S.J.VAZIFDAR, ACTING CHIEF JUSTICE AND G.S. SANDHAWALIA, J.

29th July, 2015

HF ▶ Petitioner

Direction is issued to the designated officer to pass assessment orders to comply with the orders of the tribunal.

COMPLIANCE OF ORDER – WRIT FILED PRAYING TO DIRECT RESPONDENTS TO PASS FRESH ASSESSMENT ORDER AS PER THE ORDER OF THE TRIBUNAL – RESPONDENT DIRECTED BY HIGH COURT TO FOLLOW THE ORDER OF TRIBUNAL BY THE DATE SPECIFIED FAILING WHICH OPEN TO PETITIONER TO SEEK INTEREST IN THIS WRIT PETITIONER BY SEPARATE APPLICATION.

A writ is filed praying that the respondent was not complying with the orders passed by the tribunal which had attained finality. Disposing of the writ, the high court has directed the respondent i.e. the designated officer to frame fresh assessment as per the orders of the Tribunal by 15.9.05 failing which it is opening to the petitioner to seek interest in this writ petition by a separate application.

Present: Mr. Sandeep Goyal, Advocate, for the petitioner.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

Notice of motion.

1. Service of the notice is waived, as Mr. Piyush Kant Jain, learned Additional Advocate General, Punjab accepts notice on behalf of the respondents.

The petitioner merely seeks an order directing the respondents to pass a fresh assessment order in accordance with the order of the Punjab Value Added Tax Tribunal dated 14.09.2012. That order has now attained finality. There is no reason why the order should not be complied with.

2. In these circumstances, the writ petition is disposed of by directing the respondent No. 2 – Excise and Taxation Officer-cum-Designated Officer, Jaitu, District Faridkot to pass the fresh assessment order as directed by the said order of the Tribunal dated 14.09.2012.

3. This order shall be complied with latest by 15.09.2015 failing which it will be open to the petitioner to seek interest in this writ petition itself by a separate application.

PUNJAB VAT TRIBUNAL

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REVISION NO. 1 OF 2014

S.K. WOOLEN MILLS
Vs.
STATE OF PUNJAB

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

10th May, 2015

HF ▶ Assessee

No revision can be made of an assessment order which is void being time barred.

REVISION – ASSESSMENT – ASSESSMENT YEAR 2005-06-ASSESSMENT FRAMED IN YEAR 2010 - ORDER REVISED IMPOSING TAX ON ASSESSEE – CONTENDED THAT ASSESSMENT WAS FRAMED BEYOND THE PRESCRIBED PERIOD OF LIMITATION, NO REVISION OF VOID ORDER CAN BE MADE – REVISION PETITION ACCEPTED – TAX IMPOSED QUASHED AND IMPUGNED ORDER SET ASIDE- *SEC 29(4) AND SEC 65 OF PVAT ACT.*

An Assessment for the year 2005-06 was framed in the year 2010. It ought to have been framed within three years i.e. 2009 as per sec 29(4) of the Act. No tax liability was imposed vide such order. Revision of this order was made by the Assistant Excise and Taxation officer and a tax demand was raised. First appeal was dismissed. A revision petition is filed before Tribunal contending that since the assessment order is itself void, no revision could be made against such void order. It is held by Tribunal that when the assessment order was not passed within time, such order could not be amenable to revision. Accepting the Revision petition, the impugned order and the tax imposed are set aside.

Case relied upon:
Excise and Taxation Commissioner and Another V/s. K.K.K. Mills (2012) 47 VST 31 (P&H)

Present: Mr. Avneesh Jhingan, Advocate Counsel for the appellant.

Mr. Jagmohan Bansal, Additional Advocate General for the State.

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

1. This revision petition is directed against the order dated 27.12.2013 passed by the Assistant Excise and Taxation Commissioner, Amritsar-I revising the assessment for the year 2005-06 and imposing a tax to the tune of Rs. 7.05,472/- under the Central Sales tax Act, 1956.

2. Originally, the Notified Authority, Amritsar-I, vide his order dated 16.03.2010, had framed the assessment for the year 2005-06 holding no tax liability against the appellant, but the Designated Officer (Assitant Excise and Taxation Commissioner, Amritsar-I) revised the assessment order dated 16.3.2010 by imposing the sale tax to the true of Rs. 7,05,472/-.

3. The Counsel for the appellant has strenuously contended that since the assessment for the year 2005-06 was famed after the period of three years as prescribed by the statute i.e. on 16.3.2010, therefore such order could not be revised by further order dated 27.12.2013 by the Assistant Excise and Taxation Commissioner, Amritsar-I. Since the lower authority has failed to appreciate this argument. Therefore, the revisional order cannot be sustained.

4. Having given my thoughtful consideration to this contention raised by the counsel, I find substance in the same. The assessment for the year 2005-06 is involved in this case. According to Section 29(4) of the Punjab Value Added Tax Act, 2005, the Assessing Authority was to frame the assessment within three years i.e. by 20.11.2009, but the Assessing Authority framed the assessment on 16.03.2010. As such the order of the assessment passed by the Notified Authority, Amritsar-I was bad having been passed beyond the period of limitation. Therefore, the revision of such a void order could not be made. Having examined the revisional order, the same appears to have been passed without application of mind.

5. Further more, I also find force in the contention of the counsel of the appellant that when the assessment order was not passed within time. Such order would not be amenable to revision. Similar observations were made by VAT Tribunal, Punjab in the judgment delivered in case of the Excise and Taxation Commissioner and Another vs. K.K.K. Mills (2012) 47 VST 31 (P&H). It was observed as under:-

> *"According to Section 11(3) of the PGST Act, the assessing authority is required to pass an assessment order within a period of three years from the last date prescribed for furnishing the last return in respect of any period. In the facts of the present case the last date for filing of return for the assessment year 2001-02 was April 30,2002 and the assessment could be framed upto April 30,2005. It is not disputed that the assessing authority framed the assessment on April 9, 2007 which was beyond the period of limitation. Once that was so, the assessment order was void and without jurisdiction. The recourse to revisional proceedings by the Excise and Taxation Commissioner after the expiry of more than five years which were initiated on September 8, 2008 was, thus, bad. The decision of the Tribunal is in consonance with the provisions of the statue."*

As such the impugned order being bad in law has to be set-aside.

6. Resultantly, I accept the revision petition and set-aside the impugned order. Consequently, the tax imposed is quashed.

7. Pronounce din the open court.

PUNJAB VAT TRIBUNAL

APPEAL NO. 506 OF 2013

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RANJIT PLASTIC INDUSTRIES
Vs.
STATE OF PUNJAB

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

21st May, 2015

HF ▶ Revenue

Purchase bills not to be considered towards adjustment of ITC for compliance of condition of predeposit as impugned order reveals ingenuine ITC availed by assessee.

PREDEPOSIT – APPEAL - ENTERTAINMENT OF – ADDITIONAL DEMAND RAISED – DISMISSAL OF APPEAL FOR NON COMPLIANCE OF PREDEPOSIT – APPEAL BEFORE TRIBUNAL - CONTENTION RAISED THAT APPELLANT IN POSSESSION OF PURCHASE BILLS WHICH COULD BE CONSIDERED FOR ADJUSTMENT OF ITC TOWARDS THE REQUIREMENT OF PREDEPOSIT — IMPUGNED ORDER REVEALED AVAILING OF INGENUINE ITC – TRIBUNAL HELD THAT ISSUE OF PURCHASE INVOICES COULD BE RAISED DURING ARGUING THE APPEAL – PURCHASE INVOICES NOT TO BE VERIFIED AT THIS STAGE – APPEAL DISMISSED GRANTING TIME TO APPELLANT TO DEPOSIT 25% OF ADDITIONAL DEMAND- *SEC. 13 & SEC 62(5) OF THE PVAT ACT.*

An additional demand was raised on assessment by the designated officer. The appellant filed an appeal which was dismissed for non compliance of condition of predeposit. An appeal was filed before Tribunal. The grounds of appeal indicate that the appellant is in possession of purchase certificates issued by the parties from whom he had purchased the goods. These purchase bills could be considered for adjustment of the ITC available to the appellant towards the amount required to be deposited for entertainment of appeal. However, it is observed that the same issue was raised before the assessing officer and the appellant had prayed for verification of purchase bills. But the order passed by the designated officer reveals that an ingenuine ITC had been availed by the taxable person to avoid payment of tax. Thus, the argument regarding verification of purchase bills is not to be considered at this stage. It could be raised during argument of the appeal on merits. Dismissing the appeal, one month time is granted to the appellant to deposit 25% of the additional demand failing which order of the first appellate authority would remain intact.

Present: None for the appellant

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

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

1. The Designated Officer cum Excise and Taxation Officer Ludhiana-II vide his order dated 18-4-2013 created additional demand to the tune of Rs. 41,31,391/-. The appeal filed by the appellant was dismissed by Ist appellate authority for non compliance of Section 62(5) of the PVAT Act 2005.

2. After filing of the appeal, none for the appellant appeared on various dates except on one date when Kulbir Singh Advocate appeared. Even today, none has appeared to present his case, therefore I have no option but to proceed against the appellant ex-parte. The order passed by the Excise and Taxation Officer is neither bad nor beyond jurisdiction.

3. Since the assessment for the year 2011-12 is involved, therefore the question of limitation does not arise. Though the Counsel has not come present today yet he has pleaded in the grounds of appeal that appellant is in possession of necessary certificates issued by the parties from whom he had purchased the goods and these deserve to be considered and if the same are considered than there will be no requirement of deposit of the 25% of the additional demand as the ITC allowable to him on the basis of said purchase bills could be adjusted, and his appeal could be entertained and decided on merits.

4. I have heard Mrs Sudeepti Sharma, State Counsel and perused the record. Having heard the contentions, it is observed that the issue with regard to claim of ITC was raised before the assessing officer and the appellant had prayed for verification of the purchase bills. On 9-4-13 the Designated Officer had passed the following orders:-

> *"On 09/04/2013 Sh. Y.P. Sikka (advocate) appeared as an authorized represenatative to plead in this case but failed to produce his power of attorney. On his request the undersigned apprised him with the facts that the taxable person has procured purchase invoices from the firms who are not carrying out their business activity in normal course and the transactions made by them are not bona fide as their own purchases in turn are suspicious and that they are making only paper transactions and thus have been cancelled as per the report received from the district office where such firms were registered. Thus an in genuine ITC has been availed by the taxable person to avoid payment of tax."*

5. In the light of the aforesaid observations, the appellant can not raise this issue again. However this issue could be raised while arguing the appeal on merits, but the aforesaid observations made by the Designated Officer would be sufficient to turn down the argument that the purchase bills may be verified at this stage.

6. The net result would be that the Ist appellate authority was justified in refusing to entertain the appeal without compliance of Section 62(5) of the Act.

7. Resultantly, the appeal being devoid of any merit is dismissed. However, appellant is provide one month more time to comply with the aforesaid provisions and to deposit 25% of additional demand within one month from today. On doing so his appeal would be entertained and decided on merits and on failure to do so, the order passed by Ist appellant authority shall remain intact.

PUNJAB VAT TRIBUNAL

APPEAL NO. 50 OF 2013

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PAN INDIA NETWORK INFRAVEST PVT. LTD
Vs.
STATE OF PUNJAB

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

11th May, 2015

HF ▶ Appellant

Evidence regarding receipt of goods by appellant from head office is necessary to show that it were the same goods being returned against the stock transfer challan.

PENALTY – EVASION OF TAX – STOCK TRANSFER- PROOF OF GOODS RECEIVED – GOODS IN TRANSIT – NO TAX CHARGED ON GOODS – PENALTY IMPOSED U/S 51(7)(b) OF THE ACT – APPEAL BEFORE TRIBUNAL – STOCK TRANSFER CHALLAN PRODUCED TO SHOW GOODS BEING RETURNED TO HEAD OFFICE – DOUBT RAISED ABOUT THE RECEIPT OF SAME GOODS EARLIER FROM HEAD OFFICE - APPELLANT READY TO PRODUCE RELEVANT DOCUMENTS – MATTER REMITTED – APPEAL ACCEPTED – *SEC 51(7)(b) OF THE PVAT ACT.*

The goods were in transit from Amritsar to Mumbai. The driver produced the documents at the ICC. The goods were supposedly taxable and were detained as no tax was charged on them. The plea of the appellant that the goods were being returned to Mumbai (Head office) on account of closure of business was not accepted and penalty u/s 51 was imposed. The first appeal was dismissed .On appeal before Tribunal, It was alleged by the department that the stock transfer challan was produced but no proof of these goods received from the head office, Mumbai to the branch office ,Punjab was shown. It is held by Tribunal that since the appellant has undertaken to produce the relevant document as a proof of receipt of these goods by him from head office which were now being returned against stock transfer challan, the case is remitted back to designated officer whereby the authorities would be satisfied by the appellant by producing the documents required. The appeal is accepted.

Present: Mr. Pankaj Gupta, Advocate Counsel for the appellant.

Mr. N.D.S. Mann, Addl. Advocate General for the State.

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

1. This appeal is directed against the order dated 25.08.2010 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala dismissing the appeal against

the order dated 28.7.2006 passed by the Assistant Excise and Taxation Commissioner, Information Collection Centre, Shambhu (Export) imposing a penalty of Rs.3,33,995/- u/s 51(7)(b) of the Punjab Value Added Tax Act, 2005.

2. On 16.7.2006, the driver of the vehicle bearing No. PB-10BG-2513 while carrying the goods from Amritsar to Mumbai while reaching at Information Collection Centre, Shambhu (Export) produced the following documents relating to the goods being transported:-

1. Challan no. 075 dated 14.07.2006 issued by M/s Pan India Network Infravest Pvt. Ltd., Amritsar for Rs. 11,11,986/- in favour of M/s Pan India Network Pvt. Ltd. Industrial Area, Navi Mumbai.
2. GR No. 8238985 dated 14.7.2006 from Amritsar to Mumbai. On scrutiny of the documents, the Detaining Officer observed that the goods were taxable but appellant was not charged tax, therefore the transaction required verification from the books of account. Consequently, he detained the goods u/s 51(6) of the Punjab Value Added Tax Act, 2005 (herein referred as the Act, 2005) and issued a show cause notice to the appellant through its driver for 18.7.2006. The appellant was confronted with the facts and he was asked to furnish the account books for verifying the transaction, but he failed to produce the accounts books.

3. The case was referred to the Designated Officer who issued a notice u/s 51(7)(b) of the Punjab Value Added Tax Act, 2005. In response to which the company appeared and represented that the goods were being returned to Mumbai as the same became unnecessary on account of closure of business. However, the plea of the appellant was not accepted and he was imposed a penalty of Rs. 3,33,995/- u/s 51(7)(b) of the Act, 2005.

4. The appeal preferred by the appellant was also dismissed.

5. The prime contention raised by the appellant is that no tax was required to be charged in case of stock transfer from branch to head office from where the goods in question had been received during the past three years. It was also explained that due to closure of the business of online lottery in the State of Punjab, the goods which were of capital nature were being returned to the head office at Navi Mumbai. It was also urged that a copy of the return for the period 1.4.2006 to 30.07.2006 was also produced before the Assistant Excise and Taxation Commissioner in order to show that the company is regularly filing its returns and stand duly registered in the State of Punjab. However, the Designated Officer did not agree with the contention. It is also urged that the goods were covered by proper and genuine documents. The driver had voluntarily reported about the aforesaid stock transfer and got generated the declaration in Form VAT-XXXVI. The goods in question were received by the appellant against the goods transfer challans from its head office at Mumbai during the year 2002-2005 and these were being returned to the head office against stock transfer challan due to closure business of online lotteries in the State of Punjab. Since the goods were reported at the Information Collection Centre and complete information was provided by getting Form VAT-XXXVI, therefore, there was no possibility of keeping the transaction out of books by the appellant and in case the transaction is not shown in the returns, its cognizance would have been taken by the concerned Assessing Authority at the time of assessment and not in summary proceedings by the officers at the Information Collection Centre. Thus, he has urged that the order imposing penalty and interest and the orders passed by the appellate court are set-aside.

6. To the contrary, Counsel for the appellant has stated that the appellant failed to prove the stock transfer by way of showing the account books. Though, the stock transfer challan was produced yet the goods transfer challan w.e.f. 2002-2005 regarding receipt of goods by the appellant in the state of Punjab has not been produced. Therefore, in the absence of proof of the goods received from head office at Mumbai to the branch office Punjab. It could not be said

that the goods were being returned and it were the same goods which were received through the goods transfer challan from the head office at Mumbai. Both the parties agreed that the issue could be resolved by way of production of the necessary documents as referred to above before the Assistant Excise and Taxation Commissioner, Information Collection Centre, Shambhu (Export). The appellant has undertaken to produce the relevant documents in support of the receipt of goods by the appellant from the head office at Mumbai and which was now being returned to the head office against the stock transfer challan.

7. In view of the matter, this appeal is accepted and impugned orders are set-aside and the case is remitted back to the Designated Officer where the appellants would satisfy by relevant documents that the goods which were being received by the appellants from Mumbai to the State of Punjab were being returned by the stock transfer challan. The appellant is directed to appear before the Assistant Excise and Taxation Commissioner, Shambhu (Export) on 7.7.2015.

8. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 175 OF 2013

LITTLE BEE IMPEX
Vs.
STATE OF PUNJAB

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

21st May, 2015

HF ▶ Assessee

If provisional assessment has escaped notice while framing regular assessment, it can be rectified u/s 29(8) of the Act even if appeal against the provisional assessment is pending.

REMAND – JURISDICTION OF FIRST APPELLATE AUTHORITY – ASSESSMENT – RECTIFICATION – SCOPE OF SEC 29(8)- PENDENCY OF APPEAL AGAINST PROVISIONAL ASSESSMENT BEFORE DETC- REGULAR ASSESSMENT FRAMED WITHOUT NOTICING PROVISIONAL ASSESSMENT - MATTER REMANDED BY DETC ON REQUEST OF AETC TO RECTIFY THE REGULAR ASSESSMENT – APPEAL BEFORE TRIBUNAL QUESTIONING JURISDICTION OF FIRST APPELLATE AUTHORITY TO REMAND THE MATTER FOR RECTIFICATION INSTEAD OF DECIDING THE LEGALITY OF THE PROVISIONAL ORDER – HELD RECTIFICATION OF REGULAR ASSESSMENT COULD BE DONE EVEN DURING PENDENCY OF APPEAL – NO FETTERS UPON AETC TO RECTIFY THE ORDER U/S 29(8) OF THE ACT – REMITTING THE ORDER ON BASIS OF RECTIFICATION IS BAD IN EYES OF LAW – DETC DIRECTED TO DECIDE AFRESH REGARDING VALIDITY OF PROVISIONAL ASSESSMENT ORDER- AETC GIVEN LIBERTY TO RECTIFY REGULAR ASSESSMENT FRAMED – APPEAL ACCEPTED -*SEC 29(8) & 30 OF PVAT ACT***

A provisional assessment was famed by the designated officer raising a demand against which an appeal was filed before the first appellate authority. While this appeal was pending the AETC framed the regular assessment u/s 29 of the Act raising an additional demand and also imposed penalty u/s 60 vide order dated 25/11/2011.On knowing that provisional assessment was not brought to his notice while framing regular assessment, he stated before the first appellate authority that he wanted to amend the regular assessment dated 25/11/2011. The first appellate authority remitted the case back to the AETC to pass a fresh order after accepting the appeal. Aggrieved by this, an appeal was filed before the Tribunal questioning the jurisdiction of the first appellate authority in remanding the case for rectification by AETC instead of examining the legality or propriety of the provisional assessment.

Present: Dr. Naveen Rattan Advocate Counsel for the appellant.

Mr. N.D.S. Mann, Addl. Advocate General for the State.

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

1. The Excise and Taxation Officer-cum-Designated Officer, Ludhiana-I vide order dated 7.4.2010 created an additional demand to the tune of Rs. 13,00,000/- for the period from 1.4.2009 to 6.11.2009.

2. Feeling Aggrieved, the appellant preferred an appeal before the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana (herein referred as First Appellate Authority)

3. In the meantime, the Assistant Excise and Taxation Commissioner-cum-Senior Auditor, Ludhiana vide order dated 25.11.2011, had framed the regular assessment u/s 29 of the Punjab Value Added Tax Act, 2005, whereby he after considering the account books and sale and purchase vouchers created an additional demand to the tune of Rs. 3,05,682/- and also imposed penalty to the tune of Rs. 3,000/- u/s 60 of the Punjab Value Added Tax Act, 2005 vide order dated 25.11.2011.

4. Though, the assessment under Central Sales Tax Act, 1956 was also framed on 25.11.2011 but no demand was raised under the said Act. However during the pendency of the appeal the Assistant Excise and taxation Commissioner-cum-Senior Auditor came to know that the provisional assessment was not brought to his notice at the time of framing the regular assessment therefore assessment framed by him is not correct. Consequently, he appeared before the First Appellate Authority and made the statement that he wanted to amend the regular assessment dated 25.11.2011. In the light of the said statement, the First Appellate Authority accepted the appeal on 4.1.2013 and remitted the case back to the Assistant Excise and Taxation Commissioner-cum-Senior Auditor, Ludhiana to pass a fresh order.

5. The counsel for the appellant has urged that the First Appellate Authority has exceeded its jurisdiction while remanding the case. The scope of the appeal before the Deputy Excise and Taxation Commissioner was to examine the legality or propriety of the provisional assessment, but the same could not be set-aside on the ground that the Assistant Excise and Taxation Commissioner wanted to amend/rectify the regular assessment. As the Assistant Excise and Taxation Commissioner had unfettered powers to amend/rectify the assessment u/s 29(7) & (8) of the Act of 2005, therefore, the order of remand to that extent is not correct. To the contrary, the counsel for the respondent does not dispute with regard to the powers of the Assistant Excise and Taxation Commissioner to amend or rectify the assessment u/s 29(7) & (8) of the Act, 2005 (herein referred as the Act, 2005). Section 29(7) and (8) of the Act of 2005 are reproduced as under: -

29(7) The designated officer may, with the prior permission of the Commissioner, within a period of three years from the date of the assessment order, amend an assessment, made under sub-section (2) or sub-section (3), if he discovers under-assessment of tax, payable by a person for the reason that;-Such a person has committed fraud or wilful neglect; or

(a) such a person has misrepresented facts; or

(b) a part of the turnover has escaped assessment:

Provided that no order amending such assessment shall be made without affording an opportunity of being heard to the affected person.

(8) The designated officer may, within a period of one year from the date of the assessment order, rectify an assessment, made under sub-section (2) or sub-section (3), if he discovers that there is a mistake apparent on the record:

Provided that no order rectifying such assessment shall be made without affording opportunity of being heard to the affected person.

6. The proceedings u/s 30 of the act relating to provisional assessment are quite independent of the proceedings u/s 29 of the Act i.e. relating to the regular assessment. However, as per proviso appended to Section 30 of the act, tax liability of the taxable person was to be finally assessed after he filed the returns in the Form VAT-20. The provisional assessment has certainly to be considered at the time of framing the final assessment. If the Assessing Officer had not considered about the suppression of tax (as detected at the time of provisional assessment) at the time of framing the regular assessment, then he while exercising the powers under Section 29(7) and (8) of the Act of 2005, could amend/rectify the regular assessment as framed by him under sub-section (2) of sub-section (3) of the Act of 2005. The provisions regarding rectification under sub-section (8) of Section 29 can be invited only when the Designated Officer (respondent) discovers that there is a mistake apparent on the record. In this case, there is a mistake apparent on the record as the provisional assessment was not noticed at the time of regular assessment by the Assistant Excise and Taxation Commissioner vide which the tax and penalty were imposed upon the appellant. Notwithstanding the fact that the appeal against provisional assessment was pending, in the absence of any stay of proceedings, there were no fetters upon the Assistant Excise and Taxation Commissioner to rectify the regular assessment u/s 29(8) of the Act. Therefore, the order passed by the Deputy Excise and Taxation Commissioner remanding the case, merely on the ground that the Assistant Excise and Taxation Commissioner wanted to rectify the assessment already framed or amend the assessment, is bad in eye of law and has to be set-aside.

7. Resultantly, this appeal is accepted, the impugned order is set aside and the case is remitted back to the Deputy Excise and Taxation Commissioner with a direction to decide the appeal afresh by examining as to whether the order of the provisional assessment is valid. However, this order would not stand in the way of the Assistant Excise and Taxation Commissioner-cum-Senior Auditor, Ludhiana to rectify his own order after affording an opportunity to the appellant of being heard, the appellant is directed to appear before the First Appellate Authority, Ludhiana on 30.6.2015.

8. Pronounce din the open court.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 332 OF 2013

SPORTKING INDIA LIMITED
Vs.
STATE OF PUNJAB

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

21st May, 2015

HF ▶ Assessee

Assessment for the year 2005-06 could be framed within a period of three years from the date of filing of return in view of sec 29(4-A) of the Act.

ASSESSMENT – LIMITATION – ASSESSMENT YEAR 2005-06 – FRAMING OF ASSESSMENT IN YEAR 2011 – ASSESSMENT CONTENDED TO HAVE BEEN FRAMED AFTER EXPIRY OF LIMITATION PERIOD OF THREE YEARS – HELD, IN VIEW OF SEC 29(4-A) ASSESSMENT OUGHT TO HAVE BEEN FRAMED WITHIN THREE YEARS OF FILING OF RETURN – SEC 29(4-A) IS NON OBSTANTE CLAUSE AND OVERRIDES OTHER PROVISIONS - ASSESSMENT FRAMED AFTER 2009 IS THEREFORE, TIME BARRED – APPEAL ACCEPTED AND IMPUGNED ORDER SET ASIDE- *SEC 29(4-A) OF PVAT ACT* **.**

An assessment for the year 2005-06 was framed on 1.4.2011. It was contended that the assessment is time barred in view of sec 29(4-A) of the Act as it ought to have been framed by 2009 but has been framed after five years. It is held by Tribunal that as per section 29(4-A), the assessment for the year 2005-06 could be framed within three years w.e.f. the date when the annual statement was filed. No order of extension by commissioner could have been passed as it is a non obstante clause which excludes other provisions and provides for only three years period within which the assessment could be framed. Therefore, the appeal is accepted.

Cases followed:
M/s Des Raj Bhim Sen (2012) 43 PHT page/1
State of Punjab and Other versus Bhagwanpura Sugar Mills, VSTI (2014)
Commissioner of Income Tax versus Escorts Farm Pvt. Ltd (1989) 180 ITR page/280

Present: Mr. M.L. Garg, Advocate Counsel for the appellant.

Mr. S.S. Brar, Additional Advocate General for the State.

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

1. This appeal is directed against the order dated 31.12.2012 passed by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana dismissing the appeal against the order dated 1.4.2011 passed by the Excise and Taxation Officer-cum-Designated Officer, Ludhiana-II creating an additional demand of Rs. 49,11,509/-.

2. The assessment in this case was framed by the Excise and Taxation Officer-cum-Designated Officer, Ludhiana-II for the year 2005-06 on 1.4.2011. The Counsel has urged that the ld. Designated officer has created superfluous demand of Rs. 49,11,509.00 without giving any credit of notional Input tax Credit on purchases from exempted unit as per amended sub conditions (vi) of clause (4) of notification dated 6.4.2005 relating to the conditions for availing benefit of deferment and exemption on purchases made by the appellant from exempted units. It was also contended that the claim with regard to Input tax Credit on diesel is subjudice before the highest court i.e. Hon'ble Supreme Court of India and the appellant would be bound by the decision given by Apex Court in this regard. The counsel has also submitted that the order of the assessment having been passed on 1.4.2011 is barred by limitation in view of Section 29(4-A) of the Act of 2005. The issue was also raised before the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana, but he ignored the arguments without mentioning the same in the judgment. It was also urged that the Assessing Officer was bound to adjust excess Input Tax Credit available during the assessment year under consideration, but has shown, in calculation, this Input Tax Credit as carried forward to the next assessment year which is not in accordance with law. The refund of Rs. 37,93,153/- for the forth quarter of 2009-10 was due to the appellant which has been adjusted towards the demand due and it fulfils the stipulated requirement of prior payment of 25% for entertainment of appeal.

3. The plain argument as advanced by the counsel for the appellant is that the assessment for the year 2005-06 could be framed by 20.11.2009 but it having been framed after five years i.e. 1.4.2011 is clearly time barred. As such the said assessment can be dubbed as void.

4. To the contrary State has failed to advance any valid argument to the controvert this issue.

5. Heard, the main issue which required adjudication is whether the assessment for the year 2005-06 as framed on 1.4.2011 is time barred as per Section 29(4-A) of the Act. The assessments in the normal course of events are required to be framed within three years from the date, the last return is filed. Section 29(4) of the Act as it existed prior to the amendment which was effective from 15th Nov., 2013 reads as under:-

Section 29(4) *"An assessment under sub section (2) or sub-section (3), may be made within three years after the date when the annual statement was filed, whichever is later:*

PROVIDED THAT where circumstances so warrant, the Commissioner may, by an order in writing, allow assessment of a taxable person or a registered person after the years, but not later than six years from the date, when annual statement was filed or due to be filed by such person, whichever is later."

By the amendment of the aforesaid Section w.e.f. 15.11.2013, the new Section (4) has been substituted by the old Section, which reads as under:

An assessment under sub section (2) or sub-section (3), may be made within a period of six years after the date when the annual statement was filed or due to be filed, whichever is later.

6. However in the light of sub section 4-A added to the Section 29 of the Act, the assessments for the year 2005-06 were excluded from the impact of the amendment as the sub-section 4-A has not been omitted even after the amendment of sub section 94) of section 29 of the Act was brought on the statue book. Section 29(4-A) prescribes limitation for the cases of 2005-06, which reads as under:-

(4-A) Notwithstanding anything contained in sub-section (4), the assessment under sub section (2) or sub section (3), in respect of which annual statement for the assessment year 2005-06 has already been filed, can be made within a period of three years commencing from the 20th day of November, 2006.

7. On the plain reading of the Section 29(4) and (4-A) of the Act, it transpires that the unamended provisions of the Act are applicable to the present assessment therefore as per Section 29 (4-A) of the Act, the assessment for the year 2005-06 could be famed within three years w.e.f. the date when the annual statement was filed. In the ordinary course u/s 29(4) of the act the Commissioner by passing a specific order, could extend this period of limitation upto six years. The outer limit to extend the period for framing the assessment under the orders of the Commissioner is six years. The power to extend this period upto six years has been given by statue in cases where there is negligence, wilful, neglect on the part of the officer or to condone the circumstances viz. The officer is so loaded with the work that it was not practically possible for him to decide the return within the time fixed of the officer by vacation of office or transfer, arrest or suspension of the officer or other unforeseen circumstances. He may also extend such period if the mischief was created by the party who contributed to delay the assessment. The counsel for the appellant has argued that the Commissioner was competent to pass the order of extension after adjudication of the matter by separate individual order, but the counsel has failed to show any provision of law where some formal adjudication was required before passing such order however, the statute has imposed a duty upon the Commissioner to record the circumstances which warrant for extension. As such, it would be suffice to observe that the meaning of words "where circumstances so warrant" is subjective satisfaction of the Commissioner while passing such order, since the State is vested with the powers to extend the time for framing the assessment, the minimum and maximum limit to make such extension was fixed and it was not required for the Commissioner to make a formal adjudication but only requirement appears to be that the Commissioner would issue a notice, call for the objections and then after hearing the parties would record his subjective satisfaction regarding the circumstances which enable him to extend or deny the request for extending time. Without going further deep into this controversy, it would be suffice to say that in the present case, no order of extension was required to be passed by the Commissioner as the present case involves the assessment for the year 2005-06, the period of limitation within which the assessment could be framed is governed by Section 29(4-A) of the Act, which begins with the non obstente clause which excludes other provisions and provides for only 3 years period within which the assessment could be framed.

8. While adding this provision, the legislature was clear in its intentions not to frame the assessments by way issuing notice u/s 29(2) of the Act, after the expiry of three years commencing from 20.11.2006. In the instant case also, the assessment year 2005-06 was filed on 20.11.2006. Therefore, the assessment should have been framed upto 20.11.2009 and not beyond that.

9. I find support to my this view from the judgment delivered in the case of State of Punjab and another versus M/s Des Raj Bhim Sen (2012) 43 PHT page/1, wherein, their lordships while affirming the findings returned by the Tribunal, observed that the assessment for the year 2005-06 could not be framed beyond 20.11.2009. Subsequently, in the case of State of Punjab and Other versus Bhagwanpura Sugar Mills, VSTI (2014), B-842, the Hon'ble

High Court while relying upon the judgment delivered in case of Des Raj Bhim Sen (supra) affirmed the view that the assessment for the year 2005-06 without seeking permission to frame the assessment beyond 20.11.2009 from the competent authority, could not be framed after 20.11.2009.

10. In case of Commissioner of Income Tax versus Escorts Farm Pvt. Ltd (1989) 180 ITR page/280 observed that if the assessment is time barred then any decision taken on merits would be of no consequence and would have to be ignored. No judgment to the contrary has been brought to the notice of the Tribunal to take different view then what was framed by me in the present case.

11. Having examined the order passed by the First Appellate Authority, it may be mentioned that the order being non speaking is bad in eye of law. As such the same is bound to be set-aside and the order passed by the Designated officer being time barried has to be ignored.

12. Resultantly, this appeal is accepted and impugned orders are set-aside. However, the department would be at liberty to take any other step for amendment for the assessment by adopting any other procedure as provided under law.

13. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 547 OF 2014

SHANTI SALES (INDIA) PVT. LTD.
Vs.
STATE OF PUNJAB

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

14th July, 2015

HF ▶ Revenue

Assessment framed for the year 2009-10 in 2013 is within the limitation period in view of amended section 29(4) of the Act.

APPEAL – ENTERTAINMENT OF – PREDEPOSIT – ASSESSMENT – LIMITATION – ASSESSMENT YEAR 2009-10 – ASSESSMENT FRAMED IN YEAR 2013- DISMISSAL OF FIRST APPEAL FOR FAILURE OF PREDEPOSIT U/S 62 OF THE ACT – APPEAL BEFORE TRIBUNAL – CONTENTION REGARDING EXPIRY OF LIMITATION PERIOD RAISED – CONTENTION REJECTED HOLDING THAT LIMITATION IS TO EXPIRE AFTER SIX YEARS AS PER AMENDED SEC 29(4) OF THE ACT – THEREFORE, ASSESSMENT HELD TO BE FRAMED WITHIN THE REQUISITE TIME PERIOD – PLEA TO ADJUST THE AMOUNT DEPOSITED FOR ENTERTAINMENT OF A CONNECTED APPEAL WHICH STOOD ACCEPTED BY TRIBUNAL TOWARDS THE PREDEPOSIT IN THE PRESENT CASE – FIRST APPELLATE AUTHORITY TO DECIDE THE QUESTION OF ADJUSTMENT OF TAX – APPEAL DISMISSED WITH GRANT OF TIME TO APPELLANT TO DEPOSIT 25% OF ADDITIONAL DEMAND RAISED. – *SEC 62(5) AND SEC 29 (4) OF THE PVAT ACT.*

An additional demand was raised by the designated officer from the year 2009-10 vide assessment order dated 2013. The first appeal was dismissed for non compliance of sec 62(5) of the Act. On appeal before Tribunal, it was primarily contended that the assessment was time barred as it was framed after expiry of three years in 2013. This contention was rejected as limitation period expired after six years as per the amended sec 29(4) of the Act.

Also, it was pleaded that as one of the connected appeals was accepted by Tribunal for which a sum of Rs 1 lac was deposited by appellant as predeposit, the amount may be adjusted towards 25% of additional demand raised in present case.

Dismissing the appeal, it is held that question regarding adjustment of the amount already deposited is left to be decided by the Ld. DETC. However, appellant is given two months time for pre deposit of additional demand for entertainment of appeal.

Present: Mr. B.K. Gupta, Advocate counsel for the appellant.

Mrs. Sudeepti Sharma, Deputy Advocate General for the State

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

1. An additional demand of Rs. 2,89,843/- has been created under the Punjab Value Added tax Act, 2005 by the Designated officer-cum-Excise and Taxation Officer, Ludhiana-III on 13.12.2013. On appeal, the Deputy Excise and Taxation Officer(A) Ludhiana Division, Ludhiana vide order dated 15.10.2014 dismissed the same for non compliance of Section 62(5) of the Punjab VAT Added Tax Act, 2005.

2. The prime contention raised by the counsel for the appellant is that since the assessment for the financial year 2009-10 has been framed after the expiry of 3 years i.e. on 13.12.2013, therefore the assessment is time barred. As such the order being void there would be no fun to deposit 25% of the additional demand.

3. Having considered the contentions the same do not hold water as the section 29(4) stood amended with effect from 15.11.2013 and the assessment in question was pending adjudication at that time. Therefore, the amendment being procedural in nature, would apply to the pending assessments also. In this view of the matter, the limitation to frame the assessment for the year 2009-10 is to expire after 6 years whereas the assessment was framed within few days beyond 3 years. Consequently, the argument stands repelled.

4. Faced with the situation, the counsel for the appellant has stated that a connected appeal No. 546 of 2014 was accepted and remitted back by the Tribunal, the appellant had deposited a sum of Rs. One lac on account of the additional demand in that case. Since, that appeal has been accepted, therefore, the said amount of Rs. 1,00,000/- may be adjusted towards 25% of the additional demand for entertaining the appeal. Having heard the contentions, this fact is to be decided by the Deputy Excise and Taxation Commissioner (A), Ludhiana Division, Ludhiana.

5. Resultantly, this appeal is dismissed, however, if the appellant deposits 25% of the additional demand within two months from today then his appeal would be entertained. However, the Deputy Excise and Taxation Commissioner may consider feasibility of adjustment the tax already deposited in this case or refund if any admissible to the appellant qua the Appeal No. 546 of 2014. The appellant is directed to appeal before the Deputy Excise and Taxation Commissioner on 14.9.2015.

6. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

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BEFORE SH. ANURAG VERMA, IAS,
EXCISE & TAXATION COMMISSIONER PUNJAB

Querist: MCCAIN FOODS INDIA PVT. LTD.

30th April, 2015

The products like French fries, smiles, super wedges, potato triangles, alloo tikki and veggie nuggets are frozen ready to eat product taxable @ 14.5% under item 6 of Entry No. 15 of Schedule E.

ENTRIES IN SCHEDULE – CLARIFICATION – SECTION 85 - ALOO TIKKI, FRENCH FRIES, SUPER WEDGES ETC – CLARIFICATION SOUGHT REGARDING RATE OF TAX – CONTENDED TO BE NOTHING BUT PROCESSED VEGETABLES AND TAXABLE UNDER ITEM 8 OF ENTRY 15 OF SCHEDULE E @ 6.25% - HELD TO BE 'FROZEN READY TO EAT PRODUCT' DIFFERENTLY MARKETABLE THAN ITS RAW MATERIALS – RAW MATERIALS USED ARE SEPARATE GOODS – PRODUCT IN QUESTION IS NOT A FROZEN PRODUCT PACKED AND FROZEN TO INCREASE SHELF LIFE(LIKE PEAS) – HENCE, TAXABLE UNDER ITEM 6 OF ENTRY 15 OF SCHEDULE E @ 14.5% PLUS SURCHARGE- *ITEM NO. 6 & 8 OF ENTRY 15 OF SCHEDULE E OF PVAT ACT..*

The applicant has sought clarification regarding the rate of tax on the processed vegetable products sold by it like French fries, smiles, super wedges, potato triangles, aloo tikki and veggie nuggets etc. It was contended that these products being nothing but processed form of vegetables(Processed form of potato and other vegetables like peas and carrots)and were taxable under item no.8 of Entry No. 15 of Schedule E of the Act. The department has held that the raw materials used in manufacturing of these products are separate goods and are differently marketable commodities .The product offered by applicant is not the frozen potatoes like frozen peas which are processed and packed to increase shelf life. The product in question is altogether a new product i.e. frozen ready to eat product. Their nature is different from the raw materials used. Therefore, it is held that the goods in question are taxable under Entry 15 , item no. 6 of schedule E and is hence taxable@ 15.95%(14.5% plus 10 percent subcharge thereon)

Cases relied upon:

State of Madras v. Swasthik Tabacco Factory (1996) (17 S.T.C. p. 316) (SC)
Belimark Tobacco Co. V. Government of madras (1961) (12 S.T.C. p. 126)

Cases referred:

CCE v Agro Odour (P) Ltd, (1986 (26) ELT 460 (T))
Central Excise v Rajasthan State Chemical Works (1991) 55 ELT (444) SC)

Editorial Note

This is for the information of our readers that there is a clerical mistake in the order. The entries 6 & 8 under item 15 in schedule E have been interchanged while reproducing them in the order.

*****

ORDER

1. M/s McCain Foods India Pvt. Ltd., C-5, SDA Commercial Complex, Hauz Khas, New Delhi has made an application before the undersigned u/s 85 of the PVAT Act, 2005 seeking determination of a question.

2. The applicant is registered under the Punjab VAT Act, 2005 holding TIN-03082160587 and is engaged in the manufacturing and selling of processed vegetable products like French fries, Smiles, Super Wedges, Potato Triangles, Aloo Tikki and Veggie Nuggets etc. In the State of Punjab. These products are used by leading fast foods chains, hotels, restaurants, catering companies and are also used fir in-home consumption.

3. The requisite fee has been deposited by the applicant in the government treasury. He has also certified that no proceedings relating to the issue involved in this question are pending at the level of the Designated Officer or at the appellate level.

4. The applicant has sought determination of the following questions:

> "*a. Under which Schedule i.e. Schedule E or Schedule F and under which entry their product falls?*
>
> *b. Whether their products would be taxable only at the first point of sale or at all stages of sale?''*

5. Ms. Poonam Miglani and Ms. Nimisha Chaudhary, Tax Consultants from BMR and Associates Gurgaon appeared before the undersigned. She submitted that their products are nothing but the processed form of vegetables. She further submitted that their products like Burger Patty and Veggie Nuggets are processed form of potato and other vegetables like peas and carrots etc.

6. She further submitted that in the judgment in the case of CCE v Agro Odour (P) Ltd, (1986 (26) ELT 460 (T)), it has been observed that "Vegetable means class of vegetables which grows in a kitchen garden or in farm and one used for table. It should not be construed in the technical sense or in botanical point of view; it should be understood in common parlance." She referred to the dictionary meaning of "Process". She submitted that according to Oxford Dictionary, "process" is defined as follows:

> *"...a systematic series of mechanized or chemical operations that are performed in order to produce something..."*

She relied on the judgment in the case of Collector of Central Excise v Rajasthan State Chemical Works (1991) 55 ELT (444) SC). The relevant paras relied upon by the applicant are reproduced as under:

> "*11. The nature and extent of processing may vary from one class to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered the original commodity experiences a change. Whenever a commodity goes under a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity...*

....

13. The natural meaning of the word "process" is a mode of treatment of certain materials in order to produce a good result, a species of activity performed on the subject matter in order to transform or reduce it to certain stage...

...The activity contemplated by the definition is perfectly general requiring only the continuous or quick succession. It is not one of the requisites that the activity should involve some operation on some material in order to its conversion to some particular stage. There is nothing in the natural meaning of the word "process" to exclude its application to handling. There may be a process which consists only in handling and there may be a process which involves no handling or not merely handling but use or also use. It may be process involving the handling of the material and it need not be process involving the use of material. The activity may be subordinate but one in relation to further process of manufacture".

7. As per the applicant's submission, there product is a processed form of vegetables and nothing else. According to their understanding, their product is taxable under Item No. 8 of Entry No. 15 of Schedule E of Punjab Value Added Tax Act, 2005.

8. I have carefully considered the submissions made by the applicant. I am of the view that the products manufactured and sold by the Applicant i.e. French fries, Smiles, Super Wedges, Potato Triangles, Aloo Tikki and Veggie Nuggets etc. are frozen ready to eat products. The products are taxable under Item No. 6 of Entry No. 15 of Schedule E of Punjab Value Added Tax Act, 2005. Any frozen ready to eat product cannot be consumed directly. It has to be either reheated, fried, steamed, pressure cooked or undergo any other form of cooking before the final consumption.

Item No. 8 of Entry No. 15 of Schedule E of Punjab Value Added Tax Act, 2005 reads as follows:

All types of branded and packaged food products i.e. chips wafers, chocolates, toffees, chewing gums and bubble gums, ice creams, breakfast cereals, muesli, corn flacks, pasta, macroni, biscuits, frozen desserts, **frozen ready to eat products,** meal makers, instant soups, instant noodles, ready to eat products, custard powder, bakery products, baby foods, coffee powder, ice tea, coffee premix, tea premix, branded snacks and namkeens, ketchups and spreads	14.5 per cent

Item No. 6 of Entry No. 15 of Schedule E of Punjab Value Added Tax Act, 2005 reads as follows:

Processed fruits and vegetables i.e. Fruit jam, jelly, pickles, fruit squash, paste, fruit drinks and fruit juice (whether in sealed container or otherwise)	6.25%

In Item No. 6 of Entry No. 15 of Schedule E of Punjab Value Added Tax Act, 2005, items to be taxed under 6.25 per cent are clearly specified. **"i.e."** is an abbreviation used for "that is to say" **"i.e."** is used to explain, clarify or rephrase a statement rather than listing options, in which case e.g. should be used. Thus, under Item No. 6 of Entry No. 15 of Schedule E of Punjab Value Added Tax Act, 2005, only the items specified therein i.e. "Fruit jam, jelly, pickles, fruit squash, paste, fruit drinks and fruit juice (whether in sealed container or otherwise)" are taxable.

9. The applicant submitted that their product is only the processed form of vegetables. It is clarified here that raw materials used in the manufacturing of the final product i.e. French fries, Smiles, Super Wedges, Potato Triangles, Aloo Tikki and Veggi Nuggets etc. are separate goods. The product offered by the applicant is not the frozen potatoes like frozen peas which

are processed and packed to increase their shelf life. The product offered by the applicant is altogether a new product i.e. frozen ready to eat product. The nature and characteristics of the final product are totally different from the raw materials used. The raw materials used and final product are different marketable commodities.

10. In the State of Madras v. Swasthik Tabacco Factory (1996) (17 S.T.C. p. 316) (SC) the dealer in tobacco purchased raw tobacco; by processing it in a prescribed manner, converted it into chewing tobacco and sold it as such in small paper packets. The said process has been described by the Supreme Court, relying upon the decision of a Division Bench of the Madras High Court in Belimark Tobacco Co. V. Government of madras (1961) (12 S.T.C. p. 126) thus: "Taking, however, the cumulative effect of various processes to which the assessee subjected the tobacco before he sold it, it is clear that what was eventually sold by the assessee was a manufactured product, manufactured from the tobacco that the assessee had purchased. Soaking in jiggery water is not the only process to be considered. The addition of flavouring essences and shredding of the tobacco should establish that what the assessee sold was a product substantially different from what he had purchased."

11. In light of the above, I am of the considered view that French fries, Smiles, Super Wedges, Potato Triangles, Aloo Tikki and Veggie Nuggets etc. are frozen ready to eat products specified item which falls under Item No. 6 of Entry No. 15 of Schedule E to the Punjab VAT Act, 2005 and is thus taxable @ 15.95% (i.e. 14.5 percent plus 10 percent surcharge thereon).

The question is therefore determined accordingly.

PUBLIC NOTICE (U.T., Chandigarh)

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NOTICE FOR EXTENDING DATE FOR FILING OF RETURNS

EXCISE AND TAXATION DEPARTMENT U.T., CHANDIGARH
(Additional Town Hall Building, Sector 17, Chandigarh)

PUBLIC NOTICE

Kind attention: Dealers/Lawyers/Charter Accountants/Other stakeholders

On account of the recent amendments made in the form VAT -23 and VAT-24 the return module has undergone a change. The date of filing of return for the quarter ending June, 2015 has been extended from 30th July, 2015 to 15th August, 2015. However, there is no extension for deposit of VAT/CST and taxes are to be paid as per provision of the PVAT Act as applicable to U.T. Chandigarh

Sd/-

Asstt. Excise & Taxation Commissioner,

U.T. Chandigarh

Endst. No. 2017 Dated 27/7/15

A copy is forwarded to the following for information and necessary action

pl.

1. The Director, Public relation, U.T. Chandigarh
2. The President, Income Tax and sales Tax Bar Association, Chandigarh with refer to their latter dated 13.7.2015

SGA
LAW OFFICES

NOTIFICATION (U.T., Chandigarh)

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NOTIFICATION REGARDING RATE OF TAX ON DIESEL

CHANDIGARH ADMINISTRATION
EXCISE & TAXATION DEPARTMENT

NOTIFICATION

The 17th July, 2015

No. E&T-ETO(Ref.)-2015/1914 - In exercise of the powers conferred by sub-section (3) of the Section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act No. 8 of 2005), as extended to the Union Territory, Chandigarh and all other powers enabling him in this behalf, the Administrator, Union Territory, Chandigarh, hereby makes the following amendment in Schedule „E" appended to the said Act w.e.f. 18.07.2015.

AMENDMENT

In the said Schedule "E", at Serial No. 8 and the entries relating thereto, the following rate of tax shall be substituted, namely;

"8.	Diesel	-	16.40 %"

-sd-
Sarvjit Singh, IAS,
Secretary Excise & Taxation,
Chandigarh Administration.

SGA
LAW OFFICES

NOTIFICATION (Punjab)

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NOTIFICATION REGARDING AMENDMENT IN SCHEDULE "E" - DIESEL

PUNJAB GOVT. GAZ. (EXTRA), JULY 15, 2015
(ASAR 24, 1937 SAKA)

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

NOTIFICATION

The 15th July, 2015

No. S.O. 30/P.A.8/2005/S.8/2015.-Whereas the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest ;

Now, therefore, in exercise of the powers conferred by sub-section (3) of Section 8 of the Punjab Value Added Tax Act, 2005 (Punjab Act, No.8 of 2005), and all other powers enabling him in this behalf; the Governor of Punjab is pleased to make the following amendment in Schedules "E" appended to the said Act, with effect from 16-07-2015 by dispensing with the condition of previous notice, namely:-

AMENDMENT

In the said Schedule, for serial number 1 and entries relating thereto, the following serial number and entries relating thereto, shall be substituted, namely :-

"1 Diesel other than premium diesel	13.4 per cent.".

D.P. REDDY,
Financial Commissioner Taxation and
Secretary to Government of Punjab,
Department of Excise and Taxation.

SGA
LAW OFFICES

PUBLIC NOTICE (Punjab)

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NOTICE FOR EXTENDING DATE FOR FILING OF VAT-15

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION

PUBLIC NOTICE

Kind Attention: Dealers/Chartered Accountants/Lawyers/Other Stakeholders

This is to inform all the concerned that the last date of e-filing of VAT-15 for the 1st Quarter of 2015-16 has been extended till 4th August, 2015.

Dated: 30th July, 2015

Excise & Taxation Commissioner, Punjab

SGA
LAW OFFICES

NOTIFICATION (Haryana)

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NOTIFICATION REGARDING AMENDMENT IN RULE 25 OF HVAT RULES

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 23rd July, 2015

No.19/ST-1/H.A.6/2003/S.60/2015.—Whereas, the State Government is satisfied that circumstances exist which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 60 read with the proviso to said Sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following rules further to amend the Haryana Value Added Tax Rules, 2003 by dispensing with the condition of previous notice, namely:-

1. (1) These rules may be called the Haryana Value Added Tax (Amendment) Rules, 2015.

   (2) These rules shall be deemed to have come into force with effect from 17th May, 2010.

2. In the Haryana Value Added Tax Rules, 2003, in rule 25;-

   (a) for sub-rule (2), the following sub-rules shall be substituted, namely:-

   "(2) In case of turnover arising from the execution of a works contract or job work, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract and shall exclude –

   (i) the charges towards labour, services and other like charges; and
   (ii) the charges towards cost of land, other charges relatable to land, if any, paid to the Government or its agency, subject to the dealer maintaining proper records such as invoice, voucher, challan or any other document evidencing payment of above referred charges to the satisfaction of the Taxing Authority.'';

   (3) For the purpose of clause (i) of sub-rule (2), the charges towards labour, services and other like charges shall include:-

   (i) labour charges for execution of works;

   (ii) charges for planning and architect's fees;

(iii) cost of consumables such as water, electricity, fuel etc. used in the execution of the works contract in which the property in goods is not transferred in the course of execution of the works contract;
(iv) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
(v) other similar expenses relatable to supply of labour and services;
(vi) profit earned by the contractor to the extent it is relatable to supply of labour and services subject to furnishing of a profit and loss account of the works sites:

Provided that where the amount of charges towards labour, services and other like charges are not ascertainable from the books of accounts of the dealer or the dealer fails to produce documentary evidence in support of such charges, the amount of such charges shall be calculated at the percentages of valuable consideration specified in the Table given below:-

TABLE
PERCENTAGES FOR WORKS CONTRACTS OR JOB WORKS

Sr.No.	Type of Contract	Labour, service and other like charges as percentage of valuable consideration
1	Fabrication and installation of plant and machinery.	Twenty five percent
2	Fabrication and erection of structural works of iron and steel including fabrication, supply and erection of iron trusses, purloins and the like.	Fifteen percent
3	Fabrication and installation of cranes and hoists.	Fifteen percent
4	Fabrication and installation of elevators (lifts) and escalators.	Fifteen percent
5	Fabrication and installation of rolling shutters and collapsible gates.	Fifteen percent
6	Civil works like construction of buildings, bridges, roads, dams, barrages, canals and diversions.	Twenty five percent*
7	Installation of doors, doorframes, windows, frames and grills.	Fifteen percent
8	Supply and fixing of tiles, slabs, stones and sheets.	Twenty percent
9	Supply and installation of air conditioners and air coolers.	Fifteen percent
10	Supply and installation of air conditioning equipment including deep freezers, cold storage plants, humidification plants and de-humidors.	Fifteen percent
11	Supply and fitting of electrical goods, supply and installation of electrical equipments including transformers.	Fifteen percent
12	Supply and fixing of furniture and fixtures, partitions including contracts for interior decoration and false ceiling.	Fifteen percent
13	Manufacturing/fabrication of Railway coaches and wagons on under carriages supplied by Railway.	Twenty percent
14	Fabrication or mounting of bodies of motor vehicle and trailers.	Twenty percent
15	Sanitary fitting for plumbing and drainage or sewerage.	Thirty percent
16	Laying underground surface pipelines, cables or conduits.	Thirty percent
17	Dyeing and printing of textiles.	Thirty percent

18	Supply and erection of weighing machines and weighbridges.	Fifteen percent
19	Painting, polishing and white washing.	Thirty percent
20	Tyre retreading	Forty percent
21	Photography and Printing Contracts	Thirty percent
22	Electroplating, Electro Galvanizing and Anodizing and the like	Forty percent
23	All other contracts not specified from serial number 1 to 22 above.	Twenty percent

* In case of the works contract mentioned at serial number 6 where land is also transferred alongwith other property in goods, the deduction of twenty five percent shall be allowed after excluding the cost of transferred land as determined under this rule:

Provided further that where the dealer claims deduction on account of labour, services and other like charges exceeding the percentages of valuable consideration specified in the above Table, the assessing authority, after examining the claims, may allow the claim of the dealer and shall record reasons in writing for accepting the claim of the dealer.

(4) In case the works contract mentioned in sub-rule (2) is of the nature wherein the agreement executed between the land owner and the contractor or similar other agreement is of the nature of collaboration or joint development where the contractor constructs the building/units, and consideration for the construction is given by the land owner in the form of share in the land with or without additional money exchange, the value of works contract carried out by the contractor for the land owner shall be the highest of the following amounts,-

(i) Actual value of construction, including profit, transferred by the contractor to the land-owner in accordance with the books of accounts maintained by the contractor.

(ii) Where proportionate land is transferred by the land-owner to the contractor by executing a separate conveyance/sale deed, the value stated in the deed for the purpose of payment of stamp duty as reduced by consideration paid by the contractor to the land owner through any mode of payment.

(iii) On the basis of circle rate of proportionate area of land transferred by the land-owner to the contractor prevailing at the time of execution of agreement between them, as reduced by the consideration paid by contractor to the land-owner through any mode of payment:

Provided that where separate circle rates for land and construction have not been notified in respect of certain buildings or properties, then circle rate for land and construction prevailing in that locality for other buildings or properties, in respect of which separate circle rates have been notified, shall be taken into consideration for the purpose of determination of value under this sub-rule:

Provided further that the value of works contract under this sub-rule shall not be less than the circle rate of construction applicable on the date on

which agreement between the land-owner and the contractor for the construction of property was executed.

Explanation.- The taxable turnover in relation to contractor's share of construction for activity carried on by him for the intended purchaser shall be calculated separately as per provisions of this rule.

(5) For the purpose of clause (ii) of sub-rule (2), the cost of land in a works contract carried on by the developer for the intended purchaser shall be the highest of following:-

(i) Where separate conveyance/sale deed of the land has been executed between the developer and the intended purchaser, the consideration amount of land stated in that deed; or

(ii) Where separate conveyance/sale deed of the land has not been executed for transfer of land between the developer and the intended purchaser and transfer of land is mentioned in the conveyance deed of the constructed unit, then the value of land in the value of composite works contract shall be determined on the basis of notified circle rates of land prevailing at the time of execution of agreement between the developer and the intended purchaser:

Provided that where separate circle rates for land and construction have not been notified in respect of certain properties, then circle rate for land and construction prevailing in that locality for other properties in respect of which separate circle rates have been notified, shall be taken for the purpose of determination of value under this sub-rule:

Provided further that where land has been valued at circle rate and the value of conveyance/sale deed of the constructed unit with the intended purchaser exceeds the circle rate, then the difference between the two shall be proportionately divided between the value of land and the works contract (comprising material and services).

For example, in case of composite works contract, circle rate of land is Rs. 2 crore and circle rate of construction is Rs. 1 crore, and the consolidated value of sale deed (inclusive of land and cost of construction) is Rs. 3.60 crore. Difference of Rs. 0.60 crore shall be divided in the ratio of 2:1; and thus, value of land for the purpose of this sub-rule shall be Rs. 2.40 crore.

Explanation:- (a) The term ―intended purchaser‖ for the purpose of this sub-rule means the person who agrees to buy the property before completion of construction and pays the consideration, in full or part, before such completion.

(b) For the purpose of this sub-rule, construction shall be deemed to be complete at the time of issuance of completion certificate by the competent authority, or at the time and in the manner notified by the State Government for this purpose;

(iii) in the case of works contract where the payment of charges towards the cost of land is not ascertainable in accordance with the preceding clauses of this sub-rule, the amount of such charges shall be calculated @ 25% of the total value of the contract, except in the case of construction of commercial buildings/complexes where it shall be calculated @ 40% of the total value of the contract; or

(iv) in the case of works contract, where only a part of the total area to be constructed is being transferred, the charges towards the cost of land shall be calculated on a pro-rata basis through the following formula.

Proportionate super area multiplied by Value of land as determined in this sub-rule
divided by
Total plot area multiplied by Floor Area Ratio

Explanations:

(a) Proportionate super area for the purpose of this clause means the covered area booked for transfer and the proportionate common area to be constructed, attributable to it.

(b) Floor Area Ratio = Total constructed area divided by Total Plot Area.

(6) In the case of works contract where only a part of total constructed area is being transferred, the deduction towards labour, services and other like charges mentioned in sub-rule (3) and input tax credit under section 8 of the Act shall be calculated on a pro-rata basis.

(7) (i) Where an agreement is executed by the developer with the intended purchaser after commencement but before completion of construction, the taxable turnover of sale shall be the total value of agreement, as reduced by cost of land and pro-rata amount of labour, services and like charges, determined in accordance with this rule.

(ii) Tax shall be payable at the time of an amount receivable or actually received, whichever is earlier, in whatever form or manner, from the intended purchaser in relation to (i) above.

(iii) The developer shall be eligible to deduct labour, services, other like charges in relation to (i) above in the tax period when output tax becomes payable.‖.

ROSHAN LAL,
Additional Chief Secretary to Government Haryana,
Excise and Taxation Department.

PUBLIC NOTICE (Haryana)

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NOTICE REGARDING GSTIN

GOVERNMENT OF PUNJAB
DEPARTMENT OF EXCISE & TAXATION

PUBLIC NOTICE

Kind Attention: Dealers/Chartered Accountants/Lawyers/Other Stakeholders

1. As you are aware that Goods and Services Tax (GST) is likely to be implemented with effect from April 1, 2016.

2. In GST regime, every dealer will be given a unique GSTIN.

3. This GSTIN will be linked with the Permanent Account Number (PAN in income tax) of the dealer.

4. Those dealers whose Tax Identification Number (TIN in VAT regime) is already linked with the valid PAN are likely to be issued a GSTIN with bare minimum additional formalities.

5. In light of this, Government of India has asked all the States to request their dealers to provide information regarding their PANs.

6. In order to facilitate you to provide your information regarding PAN, a pop will appear in your login. You are requested to submit you PAN details.

7. Providing the information regarding PAN will facilitate your smooth transition from VAT regime to GST Regime.

Dated: 23-July-2015 Excise & Taxation Commissioner

It is brought to the notice of all the Dealers registered under the Haryana Value Added Tax Act, 2003 (HVAT, 2003) that the Excise & Taxation Department, Haryana is undertaking a comprehensive computerization of all its activities. Under this initiative, the Dealers will be able to get online Registration, Payment of Tax, Filing of Returns, Forms, and Refunds etc. They will not have to come to the Department for their various work. To enable the online process for each Dealer, the Department has to provide a User ID and a Password. Therefore, it is requested that the Dealers may provide their e-mail, Mobile No. and Proprietor/Firm/Company copy of PAN No. to their respective wards in the Department before 12th March, 2015 in the prescribed format below, so that their User ID and Password could be sent on their emails.

TIN _____
Name of the Firm _____
E-mail ID _____
Mobile Number _____
PAN of the Proprietor/Firm/Company
(As applicable) _____
Signature and Stamp of Authorized Person _____

The Dealers whose above said information is not provided, shall not be able to use the online facilities provided by the Department and the Dealers who have already provided the said information to the Department, need not give it again.

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NOTIFICATION (Haryana)

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NOTIFICATION REGARDING AMENDMENT IN SCHEDULE A AND D OF HVAT ACT

EXCISE & TAXATION COMMISSIONER, HARYANA, PANCHKULA
HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

The 15th July, 2015

No. 18/ST-1/H.A. 6/2003/S.59/2015. - Whereas, the State Government is satisfied that circumstances exist, which render it necessary to take immediate action in public interest;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 59 read with proviso to said Sub-section of the Haryana Value Added Tax Act, 2003 (6 of 2003), the Governor of Haryana hereby makes the following amendment in Schedule A and D appended to the said Act, with immediate effect, by dispensing with the condition of previous notice, namely:-

AMENDMENT

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

(i) in Schedule A, against serial number 4, under column 3, for the figures and signs “11.5%”, the figures and signs “16.4%” shall be substituted; and

(ii) in Schedule D, against serial number 3, under column 3, for the figures and signs “11.5%”, the figures and signs “16.4%” shall be substituted.

ROSHAN LAL,
Additional Chief Secretary to Government Haryana,
Excise and Taxation Department.

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CENTRE AGREES TO SWEETEN GST DEAL; CONGRESS STICKS TO DISSENT

NEW DELHI: The prospects of the GST bill clearing parliamentary hurdles perked up with the government agreeing to a sweetener by way of a five-year compensation to states for any revenue loss due to the indirect tax rollout.

The concession is a key element of the recommendations finalized by the parliamentary select committee that completed its deliberations on Monday. Congress continues to oppose the bill on various grounds but the government reckons that it will not be easy to break ranks with regional parties that had been demanding the compensation clause.

The GST law is seen as part of pro-reform efforts to make taxation simpler and improve ease of business and government managers feel that Congress may need to factor in the cost of coming across as cussedly anti-reforms. Congress leaders, however, indicated that they will persist with their demand that the bill be made more consumer-friendly.

On Monday, the select committee accepted the demand from regional parties such as Trinamool Congress and Samajwadi Party to compensate states for revenue loss for five years in what is being seen as a signal by the government to consolidate its support base in Rajya Sabha to counter Congress's objections to the bill to amend the Constitution.

Crucially, DMK representatives such as Kanimozhi made herself scarce from the meeting on Monday, raising expectations that her party may back the crucial legislation meant to roll out the ambitious tax reform from April. For the move to fructify, it is crucial for the BJP government at the Centre to ensure that the Constitution amendment bill is passed during the monsoon session of Parliament so that it can be ratified by states. Once the bill is passed, the Centre and states will have to enact three other laws for GST to be implemented.

Sources familiar with the deliberations in the committee said the Congress, which will submit a dissent note, will have to disrupt the House to block the Constitution amendment bill as several parties now appeared to be on board.

Since the bill seeks to amend the Constitution, it needs the support of two-thirds of members present in the House and voting. But even a small number of MPs can disrupt the proceeding as the House needs to be in order for voting to take place.

The BJP and its allies have 67 members in the 245-strong upper House, with Congress and its allies having 78. Ninety members, including those from SP, Trinamool, JD(U), BSP, AIADMK and BJD are part of the non-aligned bloc. But several parties from states such as Uttar Pradesh, Bihar, West Bengal and Odisha are not averse to GST given that the 'consuming' states stand to benefit.

Currently, the 'producing' states gain as local taxes are levied at the factory gate, a move that is expected to dent the revenues of states such as Maharashtra, Karnataka, Tamil Nadu and Gujarat, which are demanding additional compensation.

The Centre has been trying to explain to states that they would be better off under the new regime as it is expected to be more efficient.

Congress, however, is yet to give up its opposition to the bill and on Monday moved dissent on the panel's report, arguing that it was based on compromises and exclusions. The select committee is likely to submit its report to Rajya Sabha later in the week. The Left parties may join Congress in filing a dissent note, sources said.

The Congress has objected to the proposed composition of the GST Council, the provision to allow manufacturing states to impose an 1% additional levy to cover for potential losses apart from its demand to protect the revenues of local bodies. Further, Congress is demanding an 18% cap on GST rate to avoid any burden on consumers.

Courtesy: Times of India

21st July, 2015

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COMMUTERS HIT AS PETROL PUMP DEALERS GO ON STRIKE IN HARYANA

More than 2,300 fuel pumps in Haryana on Monday stopped selling petrol and diesel to consumers as petroleum dealers on Monday went on an indefinite strike to press for various demands, including lower value-added tax (VAT) on diesel.

As many as 2,310 fuel pumps across the state went on strike from 6am, All Haryana Petroleum Dealers Association senior vice-president Palwinder Singh Oberoi said.

However, some pumps, directly owned by oil companies such as Indian Oil, Bharat Petroleum Corporation Limited and Hindustan Petroleum Corporation Limited, were open.

Dealers refused to meet Haryana BJP chief Subhash Barala on Sunday to resolve the matter, saying they would talk only to Haryana chief minister Manohar Lal Khattar.

The monthly sale of diesel in Haryana stands at 53 lakh kilo litres, dealers said.

Petroleum dealers are agitated over the alleged failure of the Haryana government to keep the tax on diesel lower than that in neighbouring states. They demanded that tax on diesel should be lower by 1-2% than the rates prevailing in neighbouring states. They claimed uniformity in tax rate on diesel in northern states would hit the sale of diesel in Haryana as 70% of the total sale of diesel is consumed by vehicles, including truck operators from other states.

Auto-rickshaw, taxi services hit

Auto-rickshaw and taxi drivers were the worst hit due to the fuel pump dealers' strike in Rohtak. "We don't have money to buy diesel in bulk and buy it on a daily basis. Most of us will have to wait for the strike to end," said auto-rickshaw driver Bhupinder Singh.
The dealers were firm on their demands. "The strike may be extended if the government does not withdraw its decision," said Bhushan Goel, the vice-president of the All Haryana Petroleum Dealers Association (AHPDA).

Long queues seen at company-owned outlets

The common man bore the brunt of the strike in Karnal, Kurukshetra, Panipat and Yamunanagar. Long queues were seen at pumps owned by oil companies in Karnal.
A government school teacher not willing to be named said that the state government should take strict action against pump dealers. "It is a business dispute. Why should the common man suffer? Petrol and diesel are essential commodities and those who have suspended its supply should be liable for punitive action," she said.

NK Dua of Karnal's Sector 8 said though the decision to increase VAT on diesel would affect the common man but suspending its sale was not right. "If the pump dealers fear losses, they should have suspended supply to government vehicles. They won't gain sympathy if they hold the common man to ransom," he added.

"Our office-bearers were approached by the state authorities for talks with officials on Monday evening but we have rejected the proposal. Nothing less than a rollback is acceptable," said AHPDA president Dinesh Goyal.

BKU backs strike call

The Bharatiya Kisan Union (BKU) has come out in support of the petrol pump owners. BKU state president Gurnam Singh Charuni said, "The Haryana government's decision to increase VAT on diesel affects farmers too."

Courtesy: Hindustan Times
20th July, 2015

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DEPT DETECTS VAT EVASION OF OVER RS 10 CR BY TRADERS

Using information technology (IT) to its advantage, the UT Excise and Taxation Department has detected suspected evasion of value added tax (VAT) of over Rs 10 crore by traders conducting business in the city.

The suspected evasion of VAT, in the shape of fake input tax credits (ITCs) claimed by dealers while filing their returns, have been detected in around 500 cases across the city. A fall in the revenue is said to be the main reason behind the exercise.

Using a software, coded "mismatch", that provides complete details of fake ITCs being claimed by a particular dealer, officials have detected cases in which the input tax credits claimed by the "selling dealer" do not match with those of the "purchasing dealer".

Ravinder Kaushik, Assistant Commissioner (Excise and Taxation), UT, confirmed that such cases had been detected and notices were being sent to the defaulters.

Using the software, the input and output credit claims filed by traders across the city (divided into nine wards) were matched. In the initial exercise, the claims filed during one of the four quarters of the financial year 2014-2015 were scrutinised. If the claims of the entire financial year are scrutinised, the evasion could be more. "Through the notices, the traders have been asked to clarify. The mismatch can be due to different reasons," said an official.

The department has now asked the dealers to take due care while filing the returns for the quarter ending June 30, 2015, as the cross-matching of the return would be done immediately after the submission of the returns and the result would be conveyed without any delay.

Puspinder Duggal, a chartered accountant, however, said the department had changed its software and differences had started cropping up. If such notices were to be issued, what was more important was that checks for accuracy such as

TIN verification should have been incorporated in the software itself beforehand.

Even in the new forms, there are little checks. For example, in Form 23 and 24, bill-wise information is required, but there are no checks if the fields containing the date and bill number are left blank.

Courtesy: The Tribune
26th July, 2015

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FOUR NORTHERN STATES RAISE VAT, NEUTRALISE DIESEL PRICE CUT EFFECT

Four northern states — Punjab, Haryana, Delhi and Himachal — ruled by different political parties (Akali Dal-BJP, BJP, Aam Aadmi Party and Congress, respectively) have unanimously decided to increase value added tax (VAT) on diesel and ensure uniformity in the regional fuel price.

With this, retail price of diesel in all four states will fall to anywhere between Rs 49.72 and Rs 50.60 per litre.

Price per litre

State	Current	Revised
Delhi	50.22	Rs. 49.72
Haryana	50.15	Rs. 50.10
Punjab	51.25	Rs. 50.03
HP*	48.41	Rs.50

(*To be effective after 10 days)

The hike means the retail price of diesel has not been cut by Rs 2 per litre as it has been done in other states after oil marketing companies announced a cut in retail prices last night.

Retail price of diesel in Punjab will come down by Rs 1.20 per litre, in Delhi by 50 paisa but in Haryana it will remain unchanged.

The decision has been taken to offset the loss in VAT collection on diesel due to reduction in diesel price.

Sources said Delhi and Himachal were the first ones to increase the rate. Himachal increased it from 11.5 per cent to 16 per cent and Delhi from 12.5 per cent to 16.5 per cent (plus environment cess).

The uniform diesel price — the first item to have uniform tax rate — in the region is also the first victory of the northern regional cooperation on taxation, formed in May this year. Though Chandigarh has not joined the move, it is expected to raise VAT on diesel by 3 per cent soon. A delegation of the Punjab Government, led by Deputy CM Sukhbir Singh Badal, had urged UT Administrator Kaptan Singh Solanki yesterday to bring diesel prices on a par with other states.

“We have achieved our first major success in having a uniform VAT collection.

Next on the agenda is uniformity in VAT on petrol and automobiles. This will ensure that none of the four states and Chandigarh loses its business to the neighbouring states," said Sukhbir, who is one of the proponents of uniform taxation in the region.

Sources in the Chandigarh Administration have confirmed that a proposal to increase VAT and Central Sales Tax on diesel from 11.68% to 16% has been moved for approval before the UT Administrator.

The BJP, which protested the hike in Delhi by the AAP government, found itself in a piquant situation after BJP-ruled Haryana followed the suit by increasing it from 11.5% (plus 5% surcharge) to 16.4%. By including the surcharge, VAT will be up from 12.07% to 17.22%.

In Punjab, where other than VAT and a 10% surcharge, Re 1 per litre infrastructure cess is also levied on diesel, the total VAT (inclusive of surcharge and cess) has been increased from 14.3% to 17.25%.

Courtesy: The Tribune
6th July, 2015

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GST BILL MAY RUN INTO TROUBLE AS CONG READY WITH DISSENT NOTE

In no mood to allow the government a walkover on the Goods and Services Tax Bill, the opposition Congress has finalised dissent notes for submission to the Select Committee of Rajya Sabha reviewing the tax reform legislation.

The 21-member committee will adopt the final report on the Bill this Monday when it meets to complete its task. The report is to be presented in the Rajya Sabha within a week of Parliament opening for the monsoon session on July 21. The panel members are learnt to have met today and held clause-by-clause discussions on the Bill. Congress MPs, including Madhusudan Mistry and Mani Shankar Aiyar, would submit dissenting notes on the report, arguing against the current draft that has failed to include the party's five "non-negotiable demands" (see box).

"We have finalised dissenting notes, which present our long-held view on the GST Bill," said a senior Congress leader. The party believes that without its support, the government would find it tough to manage two-third majority (180 MPs) to pass the Bill in the Rajya Sabha. The note draws hugely from arguments put forth by former PM Manmohan Singh during a meeting of Congress CMs on June 9.

Singh, who also attended a meeting of the Congress strategy group held to discuss the GST and other major legislations, said, "If the revenue-neutral GST rate is in excess of that prevailing elsewhere, we may not be able to derive adequate benefit from the tax. The provision of 1% additional levy on the supply of goods which, unlike the GST is an origin-based and not consumption-based tax, also needs a fresh look.

"There is also merit in the demand by states for 100% compensation for revenue losses in the first five years, unlike the provision in the present Bill for 100% compensation in the first three years; 75% in the fourth year and 50% in the fifth year."

Oppn's 5 demands

1 Withdrawal of additional 1% levy on goods as goods pass through several states and the end tax could end up being prohibitive
2 Revenue-neutral GST rate to be fixed at 18% instead of current 27%
3 Inclusion of tobacco, electricity, petrol and alcohol among items to be covered by GST
4 Provision of a dispute redressal mechanism system in the law
5 100% compensation for five years to states that lose money due to the proposed tax reform

Courtesy: The Tribune
17 July, 2015

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HARYANA PETROLEUM DEALERS DEFER STRIKE FOR A MONTH

CHANDIGARH: Petrol pumps in Haryana resumed services on Tuesday after petroleum dealers suspended their indefinite strike against non-fulfilment of their demands, including hike in value-added tax (VAT) on diesel, following an assurance by the state government to favourably ensider the demands.

Haryana Petroleum Dealers Association (HPDA) president Dinesh Goyal told HT that petroleum dealers withdrew their strike that began on Monday, after he state government assured them that it would act assured them that it would act on dealers' two demands in a month's time.

The assurance was given during a meeting of a delegation of dealers, including Goyal, with state BJP president Subhash Barala and senior officials of the excise and taxation department, including additional chief secretary Rohan Lal, on Monday evening.

"Since the government has agreed to some of our demands, we will wait for a month for the government to act and in case of its failure to do so, we will again hold a meeting to decide on the future course," Goyal added.

He said that with the VAT hike, the diesel in Haryana now was costliest in the region, thus causing a major loss to Haryana dealers.

He added that the state Government had agreed to consider their demands after reviewing the value of sale of diesel in the state in the next three months.

Besides, he said, the HPDA had for long been demanding exemption of tax on evaporation loss of petroleum products as per the law and the state government had agreed to it.

Likewise, he said, the government had also agreed to give rebate on the property tax on the filling stations on which it had been charging commercial property tax.

There are 2310 filling stations in Haryana.

Courtesy: Hindustan Times
22nd July, 2015

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PAR PANEL READIES REPORT ON GST, GOVT GIVES IN ON MAJOR DEMAND

NEW DELHI: A Parliamentary Committee, which scrutinized the crucial GST Bill, has prepared a draft report wherein the government has agreed to provide compensation to states for any revenue loss for five years, thus giving in to one of the major demands from several opposition parties.

The report will be considered by the Select Committee of Rajya Sabha tomorrow when it is expected to be adopted for presentation in Parliament which convenes on Tuesday.

According to sources, the government will move an official amendment to the Goods and Services Tax (GST) Bill, a Constitution amendment legislation that is aimed at overhauling the tax structure in the country.

The amendment relates to Clause 19 of the Bill, amended version of which now reads as: "Parliament may, by law, on recommendation of the GST Council, provide for compensation to the states for loss of revenue arising on account of implementation of GST for a period of five years," a source told PTI.

The earlier version said the compensation would be paid for "up to five years", the source said.

The opposition parties also wanted that the word 'may' be changed to 'shall' in the said clause. However, the government argued that as per the Constitution, both words mean the same thing.

The panel completed the consultation process on Friday last when clause-by-clause discussion took place on the bill.

As per the schedule, the report is to be submitted to Rajya Sabha by July 24, three days after the commencement of the Monsoon Session of Parliament.

Congress is preparing a dissent note which would say that it cannot support a bill which is not "simple and comprehensive".

While Congress is in favour of the proposed indirect tax regime, it wants a ceiling of 18 per cent on the GST tax rate. It is also against granting of power to states to levy 1 per cent additional tax as it would have a cascading effect and cause market disruptions.

Sources also said Congress wants the Centre's representation in the GST Council, which will oversee the implementation of the new tax regime, to be reduced to one-fourth from the current proposal of one-third. It, however, did not get support from most of the other parties.

The GST Bill has been passed by Lok Sabha and was referred to the Select Committee by Rajya Sabha, where the ruling NDA government does not enjoy majority. The government aims to roll out GST from April 1 next year.

Courtesy: Times of India
20nd July, 2015

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SALES TAX BAR ASSN TO DEFY GOVT ORDER ON ONLINE RETURNS

The District Sales Tax Bar Association today asked traders to defy the state regarding online filing of VAT returns and urged them to file their returns manually.

Additional Chief Secretary Roshan Lal said that no manual returns would be accepted though the last date of filing of returns would be extended.

A meeting of the members of the association was held here today to consider the difficulties arising out of the orders in this context.

Surender Bansal and Sanjay Jain, president and secretary, respectively, of the association, said that the last date for filing the returns for the first quarter of the financial year (April to June) was July 31.

“However, neither the Excise and Taxation Department is equipped to accept online returns nor the traders have been able to understand the tedious process involved,” the two maintained.

They said that the department has so far not issued any notification for filing online returns and even if they did these would be rendered invalid. The members assured the traders that the department was bound to accept manual returns.

However, Lal clarified that the department was not going to accept manual VAT returns from this year. “Our notification is ready for publication. We will extend the last date for filing of the returns, but the department would not accept manual returns, he added.

Courtesy: The Tribune
22nd July, 2015

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UNIFORM DIESEL PRICE: PUNJAB DEALERS' GAIN, CONSUMERS' LOSS

CHANDIGARH: Punjab's petrol pump owners have not just managed to get diesel prices hiked in their state only, but also in neighbouring Haryana and Chandigarh. Miffed over imposition of infrastructure development (ID) cess in May, petrol pump owners in Punjab grabbed the proposal for uniform tax structure for the northern states with both hands.

Lower diesel rates in Haryana due to additional surcharge in Punjab had been a sore point for the dealers and the excise and taxation department had been repeatedly turning down their requests to wave it off to attract long-distance truckers, who preferred to get refueled in Haryana.

However, after the imposition of the cess, there was visible loss of revenue, virtually as much as was planned to be raised from the cess. The Punjab government took note of this and vigorously pushed the uniform tax plan mooted at a meeting with representatives of Delhi, Haryana, Punjab and Himachal last month.

Sources said that Punjab government even convinced UT administrator to effect a massive hike in VAT on diesel in Chandigarh to ensure that the disparity was removed. Petrol pump owners in Punjab have emerged as the biggest beneficiaries in this even as consumers in all three places are being made to shell out more in the name of uniform pricing.

At a recent meeting of Punjab's petrol pump owners with officials of the state government, it was pointed out that VAT collections of had started dipping. May 2015, witnessed a drop of approximately Rs 40 crore and June collections were likely to be down by around Rs 35 crore.

But the petrol pump owners don't agree. "Rate difference between the states encourages illegal pilferage, smuggling of diesel across the borders, which is detrimental to the larger interests of the state and the dealer community. The business of Punjab dealers started shifting to Haryana and with time the difference in retail prices between Punjab and Haryana started increasing due to rise in VAT by the Punjab government from time to time," said Ashwinder Mongia, president of Mohali Petroleum Dealers' Association.

"For such a long time, petrol and diesel have been cheaper in Chandigarh. Earlier, officials of Chandigarh administration gave in to demand from Punjab to hike liquor prices and now fuel has been made costlier to benefit Punjab's interests," said a retired UT official on condition of anonymity.

Haryana also gained due to diesel price difference and Punjab was losing its share as the price difference till July 15 was around Rs 1.52 per litre.

Courtesy: The Tribune
21st July, 2015

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3% INCREASE IN VAT ON DIESEL ON THE ANVIL TOO

While Punjab and Haryana raised the value added tax (VAT) on diesel in their respective states today, the UT Administration is all set to hike the levy in the city by 3 per cent.

At present, VAT on diesel in Chandigarh is 9.68 per cent. Besides, customers are charged 2 per cent Central Sales Tax (CST) as there are no oil depots in the city. Petrol pumps in the city get diesel supply from Ambala. The fuel is priced at Rs 46.94 in the city.

In Punjab, the VAT on diesel was raised to 17.25 per cent while Haryana raised it to 16.4 per cent today.

UT Finance Secretary Sarvjit Singh said the issue of raising the VAT on diesel was under consideration and no decision had been taken yet.

Sources said the UT Administration had proposed to hike the VAT on diesel by 3 per cent. The proposal has been forwarded to UT Administrator Prof Kaptan Singh Solanki, who would soon take a decision in this regard.

Amanpreet Singh, general secretary, Chandigarh Petroleum Dealers Association, said they had met the UT Finance Secretary and MP Kirron Kher. Association members said the Administration should consider that dealers in Chandigarh also pay 2 per cent Central Sales Tax above VAT since there was no oil depot here.

“In such a case, VAT should be on the lower side in the city in comparison with the tariff prevailing on its periphery,” Amanpreet said.

Later year, MP Kirron Kher had managed to get the VAT on diesel reduced from 12.5 per cent to 9.68 per cent.

Recently, a meeting of the finance ministers of the northern states was held in which it was decided to have a uniform rate for petroleum products in northern states.

As neighbouring states of Punjab and Haryana have hiked the VAT on diesel, the UT Administration was under pressure to hike the levy in the city, sources added.

Courtesy: The Tribune
16th July, 2015

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TAX EVASION: DERA BASSI BUILDER'S OFFICE RAIDED

DERA BASSI: A raid was conducted at the office of a private builder here on Tuesday, where a tam of excise and taxation officers (ETO) seized documents of Gupta builders and promotorers (GBP).

While verifying the documents, the team learnt that the builder had not submitted the tax deducted at source (TDS) for the last two years. The team headed by the assistant director investigation-cum-excise and taxation officer (mobile wing) Sunita Jagpal Verma inspected the eight units of the builder.

An official said on Monday a mobile wing team had detained a vehicle of GBP carrying marble from Chandigarh to Dera Bassi without paying sales tax. The team asked the vehicle's drive to produce the documents concerned. They had procured the bill without a barrier stamp which indicated that the marble was transferred without the payment of sales tax.

However, wile taking the vehicle into custody; the team recorded a statement in which the driver confessed that this had been going on for a long time. This prompted the team to conduct a raid at the builder's office.

Verma said the seized documents had been sent to senior officers for further examination and course of action. However, she did not give more details of the case.

The managing director of the company Satish Gupta denied that his company had violated any sales tax rules.

Courtesy: Hindustan Times

29th July, 2015

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CABINET OKAYS AMENDED GST BILL

The Cabinet today approved amendments to the GST Bill to compensate states for revenue loss for five years on introduction of the uniform nationwide indirect tax regime, as has been suggested by Rajya Sabha Select Committee.

The Union Cabinet, chaired by Prime Minister Narendra Modi, this evening agreed to the recommendation made by the Select Committee on compensation to states to win over support of regional parties such as the TMC of West Bengal and Odisha's BJD in getting the landmark Constitution Amendment approved by the Upper House where the ruling NDA does not have a majority.

The Cabinet decided that the modalities for levy of 1 per cent tax over and above the GST rate by states as well as the 'band' rate would be finalised while framing the rules, sources said.

The Rajya Sabha Select panel, headed by BJP's Bhupender Yadav, in its report last week suggested GST rate to be no more than 20 per cent and levy of 1 per cent additional tax by states only on actual sales and not on inter-company stock or inventory transfer.

The Constitution Amendment Bill for a Goods and Service Tax (GST), to replace all indirect taxes such as excise and sales tax on all products, except alcohol, has already been passed by the Lok Sabha and is pending passage in the Upper House.

The amendment approved by the Cabinet on compensation seeks to give an assurance to states for making up for revenue loss they may suffer in first five years of introduction of GST.

The government plans to roll out GST from April 1, 2016, a very tight schedule considering the fact that the Bill has to be approved by Rajya Sabha and half of the 30 states. The Rajya Sabha panel had recommended an explanation to be included in the provision that would make it clear that the 1 per cent levy would be on goods sold and not on inter-company inventory transfers.

To increase the resources of states, the committee suggested that the "band" rate should be defined in the GST laws. The proposal would provide option to states to levy additional taxes within the band on specified goods and services to raise additional resources to meet local needs.

The final GST rates would be decided by the GST Council, chaired by Finance Minister, with Centre having one-third votes and states together having two-third votes.

The Committee had suggested that the provision in the bill, which provided the Centre "may" compensate states for a period up to five years for any revenue loss, be substituted by a commitment for this compensation for five years. — PTI

Courtesy: The Tribune
29th July, 2015

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FATE OF GST BILL HANGS IN BALANCE AS OPPN HARDENS STAND

On a day when Moody's questioned the pace of India's reforms process, the fate of many proposed legislations concerning reforms in tax, real estate and land acquisition among others, were hanging in the balance as the opposition hardened its stand against the government.

Faced with the opposition's non-cooperation in the Rajya Sabha where the ruling NDA is in minority, the Narendra Modi government tried exercising its executive authority and issuing ordinances to implement its reforms agenda.

But government sources told HT that rolling out the goods and services tax (GST) could not be done through an ordinance as it is a Constitution (Amendment) bill. This would mean a delay of at least a year in the implementation of the GST that was planned to roll out on April 1 next year.

In an informal meeting with ministerial colleagues on Wednesday, parliamentary affairs minister M Venkaiah Naidu is said to have conceded that passing the GST and land bill may be difficult in the current monsoon session.

"On the GST, Congress filed a 7-point dissent note. Six out of those 7 points were related to provisions of (former finance minister) P Chidambaram's bill. It was a dissent against Chidambaram's bill," finance minister Arun Jaitley told Times Now on Thursday.

And since the opposition is so vehemently against the amendments to the land bill, the government is not keen on pushing it in the current session.

BJP sources said the government was confident of transacting "some business" in the remaining days of the session. The Centre hopes to get parliamentary approval for some non-contentious legislations like SC/ST (Prevention of Atrocities) Bill, Juvenile Justice Bill, and Whistleblower (Amendment) Bill, among others.

There are only 9 working days left in the current session. Given that the opposition is in no mood to relent, there is unlikely to be any move on the part of the government to extend the session.

Courtesy: Hindustan Times

31st July, 2015

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FINMIN WORKING ON GST RATE, SAYS REVENUE SECY

The Finance Ministry is working on a rate for the Goods and Services Tax (GST) and has indicated that a reasonable rate will be the key to its success.

"Working closely on GST rates. Reasonable rates are key to its success. Passage of Bill in Parliament to take us to next activities," Revenue Secretary Shaktikanta Das said in a tweet.

The proposed GST would subsume Central indirect taxes (service tax, central excise duty etc.) and state indirect taxes (VAT, luxury tax) into a single tax.

The Union Cabinet yesterday approved amendments to the GST Bill to compensate the states for revenue loss for five years as suggested by the Rajya Sabha Select Committee.

The GST Constitution Amendment Bill would now be taken up for discussion in the Rajya Sabha. The government proposes to roll out the new indirect tax regime on April 1, 2016, but if the Bill is not passed in Parliament soon it will be difficult to implement within the deadline. Preparations for launching the GST will require many months.

After the Bill is passed, the next step will be for the Centre to prepare GST laws and a GST Council would be set up to decide on the rates and to decide on exemptions and thresholds.

The Rajya Sabha Select Committee has suggested that the GST rate should not go beyond 20% as higher rates could fuel inflation and erode the confidence of consumers.

Comparing to global examples, the GST rate ranges from 16-20%. However, there are some exceptions like Japan, Australia and Germany, where the rates are 8%, 10% and 23%, respectively.

A sub-committee of Empowered Committee of state Finance Ministers on GST had earlier suggested 27% RNR. But the rate is being reworked by the sub-committee in view of taxation of petroleum products as also the 1% additional tax which states can levy as part of the GST rollout.

While liquor has been completely kept out of the GST, petroleum products like petrol and diesel will be part of the new regime from a date to be decided by the GST Council.

Industry body Assocham said the implementation of GST would lead to a simplified tax regime and easier compliance norms. This is projected to increase GDP annually by 0.9-1.7% with an accompanying increase in tax revenue of around 0.2% of GDP. Twenty per cent reduction in logistics costs of non-bulk goods is expected due to a rationalised tax regime. This would make domestic production of goods and services more cost effective with ensuing 3.2-6.3% annual gain in exports.

Courtesy: The Tribune
31st July, 2015