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"The power of taxing people and their property is essential to the very existence of government."

— James Madison, U.S. President

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News From Court Rooms

KERALA HC : Central Excise : Having filed export applications with department, assessee cannot later claim that 'applications were filed in anticipation of export order and goods in question were never manufactured'. Assessee must show proof of export within 6 months or else, bear duty with interest and penalty. *(IETL Industries P Ltd – February 23, 2016).*

BOMBAY HC: Cenvat Credit: Where lower authorities as well as Tribunal had found that assessee-exporter was eligible for refund of Cenvat credit and refund claim had been granted after proper verification, department could not challenge grant of refund on mere argument that 'due verification had not been done'. Revenu's appeal dismissed. *(Automobile Corporation of Goa Ltd. – January 19, 2016).*

DELHI HC : Central Sales Tax : Where assessee applied for issuance of C-Forms in relation to inter-State purchases made by it and Assessing Authority declined to issue C-Forms on plea that inter-State purchases were not disclosed even in revised returns filed, since there was a valid explanation offered by assessee regarding mistake made by it in not disclosing purchases in revised returns filed, denial of C-Forms was not justified. *(Ingram Micro India P Ltd. – February 1, 2016).*

DELHI HC: Central Sales Tax Act, 1956 - Section 2 (g) (iv), Section 3 - inter-state sale – agreement transfer of right to use the equipment - lease agreement occasioning movement of goods from Maharashtra to Delhi - situs of sale - denial of C Form on the ground that since the situs of the sale was Delhi and the agreement transferring the right to use the equipment was executed at New Delhi the transaction could not be said to be an inter-state sale – HELD - It is only when the goods are available in the State and the agreement for transfer of the property in goods from the seller to the buyer is executed at that place it can be said that the situs of the sale is where the agreement is entered into. However, in the present case, there is a clear finding that the goods did move from Maharashtra to Delhi and were used in the distribution of electricity - The equipment was sent from Maharashtra to Delhi for use by the Appellant (Lessee) in Delhi and this movement was occasioned by the lease agreement which was entered into in Delhi - There can be no doubt that the lease agreement resulted in the movement of the goods from one State of another, and therefore, answers description of the inter-State trade under Section 3 (a) of the CST Act - The VAT Officer is directed to issue 'C' Forms as requested by the Appellant – assessee appeal allowed *(Tata Power Delhi Distribution Ltd Vs Commissioner of Sales Tax, Delhi)*

CESTAT, NEW DELHI : Central Excise: Brand name or trade name has a wider connotation and registration under Trademarks Act is not mandatory under CE Act, 1944. Hence, use of even unregistered marks of customers would lead to denial of SSI-exemption. *(Kusum Foundry & Metal Works P Ltd. – February 1, 2016).*

CESTAT, MUMBAI: Service Tax : For imposing penalty, provisions of Finance Act, 1994 prevailing at the time of Adjudication of the show cause notice shall apply but not the provisions prevailing during the show cause notice period. Revenue's appeal dismissed. *(Shrikrishna Associates – February 29, 2016).*

CESTAT, CHENNAI : Service Tax : When the assesse is not disputing his liability for discharging the statutory obligations and has paid the entire tax along with interest and 25% of the penalty and there after discharging his obligations as a tax payer, in view of the provisions of Section 73(4A) of the Finance Act, 1994 the proceeding should be deemed to have been concluded. *(HANS Interiors – March 16, 2016).*

DELHI HC : Delhi VAT : No dealer would be coerced by the officers of the Department of Trade and Taxes (DT&T) to make payment of any amount either towards alleged tax dues or otherwise either by cheque or cash at the time of a survey or inspection or any other proceeding including proceedings under Section 60 of the DVAT Act, 2004 is not valid. *(Gullu's – March 14, 2016).*

CESTAT, MUMBAI : Central Excise : Once the factum of death of the sole proprietor has come to the knowledge of the learned Commissioner the learned Commissioner should have dropped the proceedings rather than passing the impugned order. *(Bharati Mulchand Chheda – March 10, 2016).*

CESTAT, KOLKATA : Central Excise : Extracting minerals from beach sand using processes such as dredging, washing, magnetic separation, etc. amounts to 'conversion of ores into concentrates' and amounts to deemed manufacture under Chapter Note 4 to Chapter 26 of Tariff . *(Indian Rare Earths Ltd. – February 29, 2016).*

CESTAT, CHENNAI : Central Excise : Where assessee has furnished relevant certificate from relevant authority, exemption intended cannot be

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CESTAT, MUMBAI : Service Tax : The terms of the contract being very clear as an indivisible one vivisection for the purpose of levying service tax on erection installation and commissioning service is incorrect. Since the project is in relation to transmission and distribution of electricity the demand for service tax is not correct in law. *(Richardson & Cruddas (1972) Ltd.)*

CESTAT, Kolkata *:* Cenvat Credit : CENVAT credit with respect to motor vehicle chassis (Tractor) falling under Chapter 87 of the Central Excise Tariff Act, 1985 is not eligible. Penalty imposed under Rule 13 (1) of CENVAT Credit Rules, 2002 is set aside as appellant is a Government of India undertaking and cannot be said to have any malafide intention *(NALCO – March 29, 2016).*

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SUPREME COURT OF INDIA

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CIVIL APPEAL NO. 1410 OF 2007

CASIO INDIA CO. PVT. LTD.
Vs
STATE OF HARYANA

DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.

29th March, 2016

HF ▶ Dealer / Assessee

Sale of goods manufactured by an exempted unit would not be liable to tax even if these are sold by a subsequent dealer on Inter State Sale basis.

INTER-STATE SALES – NOTIFICATION U/S 8(5) – EXEMPTED UNIT – INDUSTRIAL POLICY - GOODS PURCHASED BY A NON-EXEMPTED DEALER FROM EXEMPTED UNIT – SOLD ON INTER-STATE SALE BASIS – WHETHER BENEFIT OF NOTIFICATION U/S 8(5) WOULD EXTEND TO SUCH SALES - HELD : YES – THE EXEMPTION IS GIVEN ON THE SALE OF 'GOODS' AND NOT CONFINED TO THE 'SALE BY THE EXEMPTED DEALER' – PROVISO IN NOTIFICATION CANNOT BE READ TO TAKE AWAY A RIGHT CONFERRED BY THE MAIN PROVISO – APPEALS ALLOWED – ASSESSEE HELD ENTITLED FOR EXEMPTION FROM PAYMENT OF TAX ON INTER-STATE SALES - *SECTION 8(5) OF CST ACT, 1956; SECTION 13B OF HGST ACT, 1973; RULE 28A OF HGST RULES, 1975*

INTERPRETATION OF STATUES – PROVISO – INCLUDED IN AN ENACTMENT TO QUALIFY OR CREATE AN EXCEPTION – CANNOT BE READ TO STATE A GENERAL RULE – SHOULD NOT BE USED FOR INTERPRETING THEMAIN PROVISION/ENACTMENT – CANNOT BE GIVEN A GREATER OR MORE SIGNIFICANT RULE IN INTERPRETATION OF THE MAIN PART OF THE NOTIFICATION.

Facts

The petitioner had purchased certain goods from a unit which was exempted under Rule 28A of the Haryana General Sales Tax Rules, 1975. As per said Rule, the successive sale of such goods within the State was exempt from payment of tax. By a Notification issued under Section 8(5) of the CST Act, 1956, dated 4.9.1995, the State had extended the similar benefit to the inter-state sales as well; provided no tax had been charged by such dealer on the sale of goods manufactured by him. The assessment had been framed holding that the benefit of Notification under Section 8(5) of CST Act is available only to the exempted unit and not to a dealer who has sold such exempted goods on inter-state sale basis after purchasing locally. The appellate authorities had upheld the said order. On reference, the High Court answered the questions against the assessee and in favour of Revenue holding that benefit of Notification u/s 8(5)

would not extend to subsequent purchaser of exempted goods. On appeal before the Supreme Court :-

Held:

On bare reading of Notification dated 4.9.95, it is clear that benefit of exemption is not for the sales by a dealer but for the sale of goods. That being the situation, the Notification has to be interpreted in the manner so that it achieves its object of granting exemption to the goods manufactured by an exempted unit. The proviso to the Notification is only clarificatory so that undue enrichment does not arise and cannot be read as to qualify or create an exception to what is in the enactment and the proviso cannot be read as to be stating the general rule. Hence the appeals are allowed and the benefit of Notification dated 4.9.95 would be extended to the petitioner dealer also.

Proviso in any enactment is generally added to qualify or create an exception to what is in the enactment and the proviso is not interpreted as stating a general rule. Except for the instances dealt with in the proviso, the same should not be used for interpreting the main provision/enactment so as to exclude something by implication. It is by nature of an addendum or dealing with a subject matter which is foreign to the main enactment. Proviso should not be normally construed as nullifying the enactment as taking away completely a right conferred. The proviso should not be given a greater or more significant rule in interpretation of main part of the Notification except as carving out an exception.

Cases referred:

- *International Cotton Corporation (P) Ltd. v. Commercial Tax Officer, Hubli (1975) 35 STC 1*
- *Pine Chemicals Ltd. and others v. Assessing Authority and others (1992) 85 STC 432*
- *Khadi and Village Soap Industries Association and another v. State of Haryana and others (1992) 85 STC 432*
- *State of Rajasthan v. Sarvotam Vegetables Products (1996) 101 STC 547*
- *Commissioner of Sales Tax v. Industrial Coal Enterprises (1999) 114 STC 365*
- *State Level Committee and another v. Morgardhsammar India Ltd. (1996) 101 STC 1*
- *Govt. of A.P & others. v. P. Laxmi Devi (2008) 4 SCC 720*
- *Ranbaxy Laboratories Ltd. v. Union of India and others (2011) 10 SCC 292*
- *Bansal Wires Industries Ltd. & another v. State of Uttar Pradesh and others (2011) 6 SCC 545*
- *Parle Biscuits (P) Ltd. v. State of Bihar & others (2005) 9 SCC 669*
- *NOVOPAN India Ltd. Hyderabad v. Collector of Central Excise and Customs, Hyderabad (1994) Suppl. 3 SCC 606*
- *Kedarnath Jute Manufacturing Co. Ltd v. Commercial Tax Officer AIR 1966 SC 12*
- *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha AIR 1961 SC 1596*
- *CIT, Mysore etc. v Indo Mercantile Bank Ltd AIR 1959 SC 713*

Present: For Appellant(s)
Mr. Balbir Singh, Sr. Adv.
Mr. Rupender Sinhmar, Adv.
Mr. Abhishek Singh Baghel, Adv.
Mr. Yash Pal Dhingra, Adv.

Mr. Rajiv Agnihotri, Adv.
Mr. Praveen Kumar, Adv.

For Respondent(s)
Mr. Sanjay Kumar Visen, Adv.
Mr. Kamal Mohan Gupta, Adv.

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DIPAK MISRA, J.

1. Regard being had to the similitude of the issue in all the appeals, they were heard together and disposed of by a common judgment. As the principal principle that constitutes the bedrock of the decision in the subject matter of assail in Civil Appeal No. 1410 of 2007, we shall advert to the facts exposited therein and also dwell upon the legal issue and, needless to say, that would govern the fate of all the appeals.

2. Presently to the layout of facts in Civil Appeal No. 1410 of 2007. The appellant-company is engaged in the business of manufacture and sale of Radio Pagers having its unit at plot No. 4, Phase-I, Udyog Vihar, Gurgaon, Haryana. It is registered under the provisions of Haryana General Sales Tax Act, 1973 (for short, "the Act"), Haryana General Sales Tax Rules, 1975 (for short, "the Rules") and the Central Sales Tax Act, 1956 (for brevity, "CST Act") In the year 1995-96, the assessee-company after purchase of Radio Pagers from M/s Bharati Telecom Limited was also engaged in inter- state sale of the said Radio Pagers and in course of the said transaction, did not charge any sales tax from the purchasers on the basis of Notification No. SO 89/CA.74/56/S.8/95 dated 04.09.1995 issued under Section 8(5) of the CST Act read with Rule 28A(4)(c) of the Rules. The appellant filed its return and claimed exemption placing reliance on the said notification, but the claim of exemption put forth by the assessee was not accepted by the assessing officer vide assessment order dated October 05, 2001. Being aggrieved by the order of assessment, the appellant preferred an appeal before the Joint Excise and Taxation Commissioner (Appeal), Rohtak Circle, Rohtak who dismissed the appeal vide order dated May 2, 2002.

3. Being dissatisfied with the order passed in appeal, the appellant knocked at the doors of the Sales Tax Tribunal, Chandigarh (for short 'the tribunal') which dismissed the appeal by its order dated September 9, 2002. The dismissal of the appeal by the tribunal compelled the appellant to prefer Writ Petition No. 2346 of 2003, seeking a direction to the tribunal to make a reference to the High Court. The High Court accepting the prayer of the assessee called for a reference from the tribunal, and the tribunal vide its order dated 14.10.2003 in S.T.M. No. 82 of 2002-03 made a reference to the High Court for its opinion.

4. After stating the case, the tribunal referred the following questions for the opinion of the High Court:- "(i) Whether the notification dated 04.09.1995 issued under Section 8(5) of the CST Act is relatable to the exemption of goods or the person selling it? (ii) Whether in view of the notification dated 04.09.1995 issued under Section 8(5) of the CST Act and Rule 28A of the Rules, the inter-state sales of the goods manufactured by an "exempted unit", even by any other dealer, is exempted from the levy of the Central Sales Act?"

5. Before the High Court it was contended by the assessee that the notification dated 04.09.1995 issued by the State Government provides for grant of exemption on the sale of goods manufactured in the State of Haryana by any dealer holding valid exemption certificate under Rule 28 of the Rules and not to the dealer and, therefore, the goods sold by the assessee in the course of inter-state trade were not liable to be taxed. In support of the said proposition, reliance was placed on ***International Cotton Corporation (P) Ltd. v. Commercial Tax Officer, Hubli (1975) 35 STC 1***, ***Pine Chemicals Ltd. and others v. Assessing Authority and others (1992) 85 STC 432***, ***Khadi and Village Soap Industries Association and another v. State of Haryana and others (1992) 85 STC 432, State of Rajasthan v. Sarvotam Vegetables Products (1996) 101 STC 547 and Commissioner of Sales Tax v. Industrial Coal Enterprises (1999) 114 STC 365***.

6. On behalf of the revenue, it was urged that the notification in question provided for grant of exemption only on the sale of goods manufactured in the State by a dealer holding valid exemption certificate under Rule 28 of the Rules, subject to the condition that such dealer had not charged tax under the CST Act on the sale of goods manufactured by it, and not in

respect of the sale of goods by other dealers in the course of inter-state trade. It was the stand of the revenue that the assessee had not been granted exemption certificate under Rule 28A of the Rules and as such, the goods sold by it in course of inter-state trade were not exempted from the tax under the CST Act merely because the same had been purchased from M/s Bharati Telecom Limited which possesses a valid exemption certificate. Reliance was placed on the decision of this Court in ***State Level Committee and another v. Morgardhsammar India Ltd. (1996) 101 STC 1***.

7. The High Court referred to Section 8(2A) and 5 of the CST Act and Rule 28A(2)(n) and (4)(c) of the Rules and notification dated 04.09.1995; distinguished the authorities cited by the assessee and came to hold that the expression "notional sales tax liability" as used in Rule 28A(2)(n) takes within its fold not only the amount of tax payable on the sales of finished goods of the eligible industrial unit under the Act but also the amount of tax payable under the CST Act on the sales of finished products of the eligible industrial units made in the course of inter-state trade or commerce and branch transfers or consignment sales outside the State of Haryana. Reference was made to clause (c) of sub-rule (4) of Rule 28A of the Rules to opine that the scope of exemption was extended to the goods manufactured by an eligible industrial unit availing exemption under Rule 28A at all successive stage(s) of sale or purchase subject to the condition that the dealer effecting successive purchase or sale furnishing a certificate in form ST-14A which is required to be obtained from the assessing authority duly filled in and signed by the registered dealer to whom such goods were sold. Thereafter, the High Court analysed the Rules and in that context stated thus:-

> *"A reading of the provisions reproduced above shows that the expression "notional sales tax liability" takes within its fold not only the amount of tax payable on the sales of finished goods of the eligible industrial unit under the State Act, but also the amount of tax payable under the Central Act on the sales of finished products of the eligible industrial unit made in the course of inter-state trade or commerce and branch transfers or consignment sales outside the State of Haryana (Rule 28A (2) (n)). Clause (c) of sub-rule (4) of Rule 28A extends the scope of exemption to the goods manufactured by an eligible industrial unit availing exemption under Rule 28A at all successive stage(s) of sale or purchase subject to the condition that the dealer effecting successive purchase or sale furnishes to the Assessing a certificate in form ST-14A which is required to be obtained from the Assessing Authority duly filled in and signed by the Registered dealer to whom such goods were sold. Sub-rule (6) of Rule 28A lays down the mechanism for grant of exemption/entitlement certificate. Sub-rule (7) envisages renewal of exemption certificate and lays down the procedure for grant of renewal. Section 8(2A) of the Central Act contains a non-obstante clause. It lays down that notwithstanding anything contained in Section 6(1A) or sub-section (1) or clause (b) of sub-Section (2) of Section 8, the tax payable under the Central Act by a dealer on his turnover in so far as the turnover or a part thereof relates to the sale of any goods, the sale or purchase of which is exempted from tax under the State Act or is subjected to tax at a rate lower than 4% shall be nil or shall be calculated at the lower rate. Sub-section (5) of Section 8 also begins with a non-obstante clause. It empowers the State Government to grant exemption from payment of tax or levy of tax at a lower rate on the dealer having his place of business in respect of the sales made by him in the course of inter-State trade or commerce. It also empowers the State Government to direct that no tax shall be payable under the Central Act or tax shall be calculated at lower rates in respect of all sales of goods or classes of goods as may be specified in the notification which are made in the course of*

> *inter-State trade or commerce by any dealer having his place of business in the State or class of dealers specified in the notification. Notification dated 4.9.1995 declares that no tax shall be payable under the Central Act w.e.f. 1.4.1988 on the sale of goods manufactured in the State of Haryana by any dealer holding a valid exemption certificate under Rule 28A of the Rules, provided that such dealer has not charged tax under the Central Act on the sale of goods manufactured by him."*

8. After so stating, the High Court referred to the notification dated 04.09.1995 and observed that it was not happily worded and thereafter, it proceeded to hold that the tribunal was correct in following its earlier order for arriving at the conclusion that the notification did not exempt the goods sold in the course of inter-state trade by dealer other than those who held valid exemption certificate granted under Rule 28A of the Rules. It further ruled that if the State Government wanted to extend the benefit of exemption from payment of tax under the CST Act to the sale of goods effected by a dealer in the course of inter-state trade irrespective of the fact that such dealer did not hold valid exemption certificate under Rule 28A of the Rules, then it would have incorporated the language of Rule 28A(4)(c) of the Rules in the notification and would not have put a rider that such dealer should not have charged tax under the CST Act on the sale of goods manufactured by it.

9. Thus, the ultimate conclusion recorded by the High Court is that successive sales of goods manufactured by dealer holding valid exemption certificate were exempt from payment of sales tax so long as they were inter-state sales but in respect of sale of goods by a dealer not holding exemption certificate under Rule 28A in the course of inter-state trade, the benefit of exemption envisaged under notification dated 04.09.1995 was not available to such dealer. The Division Bench proceeded to clarify that in respect of stages of sale which are exempt from payment of tax under the Act are covered by Rule 28A(4)(c) but notification dated 04.09.1995 was applicable only to sale of goods manufactured by the exempted unit. Being of this view, it answered the reference in favour of the revenue and against the assessee.

10. Mr. Balbir Singh, learned senior counsel appearing for the appellant, has submitted that though the notification was made under the CST Act, it exempts goods as well as manufacture. Learned senior counsel would submit that on a plain reading of the notification, it is demonstrable that the exemption is on the sale of goods and there is no reference to unit or category of dealers for the purpose of extending the exemption. Once the language is clear, submits Mr. Singh, there is no scope of searching for intendment and, in fact, a bare perusal of the notification is sufficient to determine its applicability or non-applicability. To sustain the submission, he has drawn our attention to the authority in ***Govt. of A.P & others. v. P. Laxmi Devi (2008) 4 SCC 720; Ranbaxy Laboratories Ltd. v. Union of India and others (2011) 10 SCC 292; Bansal Wires Industries Ltd. & another v. State of Uttar Pradesh and others (2011) 6 SCC 545 and Parle Biscuits (P) Ltd. v. State of Bihar & others (2005) 9 SCC 669***. Learned senior counsel has further contended that the High Court has committed an error in noting that in the notification, there is no similar expression as used in Rule 28A(4) of the Rules. According to him, the reasoning given by the High Court is fallacious on two scores, namely, (i) Rule 28A(4)(c) of the Rules exempts all subsequent sales made in the State of Haryana, as one product can be sold any number of times within the State, whereas there can be only one inter-state sale from the State of Haryana, and consequently there is no requirement of any reference to subsequent sale in notification dated 04.09.1995; and (ii) Rule 28A(4)(c) of the Rules provides a mechanism to confirm that goods are manufactured by a person holding exemption certificate in terms of Rule 28A by providing the requirement to furnish a certificate in the form of certificate ST-14A. Section 8(5) of the CST Act mandates the requirement of issuance of Form C by the buying dealer which is to be issued by the sales tax authorities of purchasing State and, therefore, there is no requirement for such mechanism to be provided in

the notification. It is highlighted by him that if the interpretation placed by the High Court is accepted, it would tantamount to making exempted goods chargeable to tax and further, the goods manufactured by eligible manufacturer would not remain competitive in spite of exemption being given to such manufacturer unless all subsequent stages including inter-state sales are exempt from payment of tax. The emphasis is on exemption at subsequent stages including inter-state sale. Mr. Singh has drawn immense inspiration from the proviso to the notification dated 04.09.1995 to bolster the submission that it restrains the eligible manufacturer from charging any tax on its sales as otherwise it would amount to unjust enrichment.

11. Mr. Sanjay Kumar Visen, learned counsel for the respective respondent(s), per contra, while supporting the order passed by the High Court, would submit that benefit of exemption has been granted for promoting new industry in the State and this is in consonance with Rule 28A of the Rules which provides unit holding a valid exemption certificate which sells goods purchased by it in the State without charging any tax and the said Rule also exempts all subsequent intra-state sales as such. Elaborating further, it is urged that notification dated 04.09.1995 issued under sub-section (5) of Section 8 of the CST Act can extend the benefit of tax exemption to only such inter-state sales of goods which are purchased inside the State by a unit holding valid exemption certificate and hence, the exemption from CST Act is subject to the condition that the dealer effecting inter-state sale should hold a valid exemption certificate irrespective of the goods sold in the course of inter-state trade and commerce and purchased by him inside the State. Learned counsel would submit that while interpreting a notification of the present nature, strict interpretation has to be followed as per law laid down by this Court in ***NOVOPAN India Ltd., Hyderabad v. Collector of Central Excise and Customs, Hyderabad (1994) Suppl. 3 SCC 606***.

12. To understand the controversy in proper perspective, it is necessary to refer to Section 8(2A) and 5 of the CST Act. They read as follows:-

> *"(2A) Notwithstanding anything contained in sub-section (1-A) of Section 6 or sub-section (1) or clause (b) of sub-section (2) of this Section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four percent (whether called a tax or fee or by any other name), shall be nil, or as the case may be, shall be calculated at the lower rate.*
>
> *xx xx xx xx*
>
> *(5) Notwithstanding anything contained in this Section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the official gazette, and subject to such conditions as may be specified therein, direct*
>
> *(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-state trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section(2) as may be mentioned in the notification.*
>
> *(b) That in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made in the course of inter-state trade or commerce, by any dealer having his place of business in the State or by any*

> *class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in sub-section(1) or sub-section (2) as may be mentioned in the notification."*

The aforesaid provision clearly enables the State Government to exempt the tax payable under the CST Act in public interest by issuing appropriate notification. For the said purpose, the State Government has to be satisfied and is also entitled to impose conditions which have to be specified in the notification.

13. Keeping in view the aforesaid provision and the notification which we shall refer to hereinafter, the factual score is to be appreciated. It is not in dispute that the appellant had sold the goods in question which were manufactured by M/s Bharati Telecom Limited that was holding a valid exemption certificate under Rule 28A of the Rules. The appellant had claimed central sales tax exemption of such goods in terms of notification dated 04.09.1995 by urging that such exemption was in respect of sale of goods which were manufactured by any dealer in the State of Haryana who held a valid exemption certificate. The core controversy pertains to the interpretation of notification dated 04.09.1995 which has been issued by the competent authority in exercise of power under Section 8(5) of the CST Act. It reads as follows:-

"Notification dated 4.9.1995"

> *"No.S.O.89/CA. 74/56/S.8/95 dated 4.9.1995 – In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 the Governor of Haryana being satisfied that it is necessary so to do in the public interest, hereby directs that no tax under the said Act shall be payable with effect from 1.4.1988, on the sale of goods, manufactured in the State of Haryana by any dealer holding a valid exemption certificate under Rule 28-A of the Haryana General Sales Tax Rules, 1975 during the period of exemption: provided that no tax under the said Act has been charged by such dealer on the sale of goods manufactured by him."*

14. The above notification has been issued in exercise of powers conferred by sub-section (5) to Section 8 of the CST Act by the Governor of Haryana in public interest. As per the notification, no tax is payable under the aforesaid Act w.e.f. 1st April, 1988 on sale of goods during the period of exemption that are manufactured in the State of Haryana by any dealer, who holds a valid exemption certificate under Rule 28A of the Rules. Proviso to the said notification stipulates that the dealers should have also not charged any tax under the Central Sales Tax Act on the sale of goods manufactured by him.

15. As mentioned earlier, sub-section (5) to Section 8 of the CST Act begins with the non-obstante clause and empowers State Governments to issue a notification in the official gazette subject to the condition(s) as may be specified and under clause (a) direct that no tax shall be payable by any dealer having his place of business in the State in respect of sale in the course of inter-state trade or commerce, etc. and under clause (b) in respect of all sales of goods or classes of goods, etc. In this context, Rule 28A is extremely relevant. The said Rule, as per heading relates to class of industries, period and other conditions for exemption/deferment from payment of tax. Sub-rule 1, 2(f), (j), (k), (l), (n) clauses (i), (ii), (iii), (4)(a) and sub-rule 4(2)(c) of Rule 28A are relevant and reproduced below:-

> *"Sub-Rule (1): The industries covered under this rule shall not be entitled to any deferment or exemption from payment of tax under any other provisions of these rules.*
>
> *Rule 2(f): 'Eligible industrial unit' means:*

(i) a new industrial unit or expansion or diversification of the existing unit, which-

(I) has obtained certificate of registration under the Act;

(II) is not a public sector undertaking where the Central Government held 51 per cent or more shares;

2(j): "eligibility certificate" means a certificate granted in Form ST-72 by the appropriate screening committee to an eligible industrial unit for the purpose of grant of exemption deferment;

(k) "exemption certificate" means a certificate granted in Form ST-73 by the Deputy Excise and Taxation Commissioner of the district to the eligible industrial unit holding eligibility certificate which entitles the unit to avail of exemption from the payment of sales or purchase tax or both, as the case may be;

(l) "entitlement certificate" a certificate granted in Form ST-72 by the Deputy Excise and Taxation Commissioner of the district to the eligible industrial unit holding eligibility certificate which entitles it to get deferment of sales tax.

(n) "notional sales tax liability" means –

(i) amount of tax payable on the sales of finished products of the eligible industrial unit under the local sales tax law but for an exemption computed at the maximum rates specified under the local sales tax law as applicable from time to time; and

Explanation: The sales made on consignment basis within the State of Haryana or branch transfer within the State of Haryana shall also be deemed to be sales made within the State and liable to tax;

(ii) amount of tax payable under the Central Sales Tax Act, 1956, on the sales of finished products of the eligible industrial unit made in the course of inter-State trade or commerce computed at the rate of tax applicable to such sales as if these were made against certificate in Form C on the basis that the sales are eligible to tax under the said Act.

Explanation: The branch transfers or consignment sales outside the State of Haryana shall be deemed to be sale in the course of inter-State trade or commerce.

Note:- The expression and terms, if any appearing in this rule not defined above shall unless the context otherwise requires carry the same meaning as assigned to them under the Act and rules made there under.

(3) Option – An eligible industrial unit may opt either to avail benefit of tax exemption or deferment. Option once exercised shall be final except that it can be changed once from exemption to deferment for the remaining period and balanced quantum of benefit.

(4)(a) Subject to other provisions of this rule, the benefit of tax exemption or deferment shall be given to an eligible industrial unit holding exemption or entitlement certificate, as the case may be to the extent, for the period, from year to year in various zones from the date of commercial production or from the date of issue of entitlement exemption certificate as may be opted as under.

> *4(2)(c) The goods manufactured by an eligible industrial unit availing exemption under this rule shall be exempt from the levy of tax at all the successive stage(s) of sale or purchase subject to the condition that the dealer affecting the successive purchase or sale furnishes to the assessing authority a certificate in Form ST-14A to be obtained from the assessing authority as against payment of such sum as may be fixed by the State Government from time to time, duly filled in and signed by the registered dealer by whom such goods were purchased."*

16. Sub-rule (1) makes it clear that industries are covered under this rule and the said industries would not be entitled to any deferment or exemption from payment of tax under any other provisions of these rules. The expression 'eligible industrial unit' is defined in clause (f) to sub- rule (2). Similarly, 'eligibility certificate', 'exemption certificate', etc. are defined in clauses (j) and (k) to sub-rule (2). Clause (n) to sub- rule (2) defines the expression 'notional sales tax liability' and clause (ii) states that the amount of tax payable under the CST Act on sales of finished product of eligible industrial unit made in the course of inter- state trade or commerce shall be computed at the rate of tax applicable as if the sales were made against form 'C'. In other words, inter-state trade or commerce of finished products of eligible industrial units will be treated as notional sales tax liability. The reference in this clause is to the eligible industrial unit and sales of finished products made by the said units, which are sold in the course of inter-state trade or commerce.

17. The purport and impact of Rule 28-A is with reference to eligible industrial unit, is not only clear from the definition clauses which define eligibility certificate, exemption certificate, etc. but also from sub-rule (4)(a) which stipulates that the benefit of tax exemption or deferment shall be given to an eligible industrial unit holding exemption or entitlement certificate for the period specified. Clause (c) to sub-rule (4)(2) postulates that goods manufactured by an eligible industrial unit availing of exemption under this Rule shall be exempt from levy of tax on all successive stage/stages of sale or purchase, subject to the dealer affecting the said purchase or sale furnishing a certificate in the form of ST-14A obtained from the assessing authority. This clause has the effect of granting exemption from levy of tax at all successive stages of sale and purchase in intra-state trade or commerce i.e. within the State of Haryana. To put it differently, it extends the benefit granted under clause (n)(ii) which relates to inter-state trade or commerce to intra-state sale or purchase. Such sales may be one or successive and tax at all stages is exempt. The exemption, therefore, is good specific, subject of course to other conditions being satisfied.

18. It is not disputed that on all intra-state sales no tax has been charged as the said transactions were treated as exempt by the tax authorities. However, in the course of inter-state sales, it is submitted by the revenue that the exemption would be limited and available only if the manufacturer i.e. the eligible industrial unit makes sale in inter- state trade or commerce, but if a third party, who had procured the goods from the eligible industrial unit makes inter-state sale, such trade or commerce would not be exempt. The contention of the State suffers from incorrect appreciation and understanding of the purport and objective behind Rule 28A and the notification in question. The basic objective and purpose is to exempt the goods manufactured in the State when they are further transferred in the course of inter-state or intra-state trade or commerce. Therefore, reference is made to the eligible industries and the goods manufactured by the said industries, which are entitled to exemption. The exemption notification refers to the sale of goods manufactured by a dealer holding a valid exemption certificate. The emphasis is on the goods manufactured. However, it is confined by the condition that the said manufacture should be within the exemption period and by a dealer holding an exemption certificate.

19. We have reproduced the exemption notification above and referred to the language employed. At this juncture, it is absolutely necessary to understand the language employed in the proviso to the notification. If there was no proviso to the notification there would have been no difficulty whatsoever in holding that the exemption is qua the goods manufactured and was not curtailed or restricted to the sales made by the manufacturer dealer and would not apply to the second or subsequent sales made by a trader, who buys the goods from the manufacturer-dealer and sells the same in the course of inter-state trade or commerce. It is pertinent to note that, clause (ii) of sub-rule (n) refers to sale of finished products in the course of inter-state trade or commerce where the finished products are manufactured by eligible industrial unit. There is no stipulation that only the first sale or the sale by the eligible industrial unit in Inter State or Trade would be exempt. The confusion arises, as it seems to us, in the proviso to the notification which states that the manufacturer-dealer should not have charged tax. It needs no special emphasis to mention that provisos can serve various purposes. The normal function is to qualify something enacted therein but for the said proviso would fall within the purview of the enactment. It is in the nature of exception. [See : ***Kedarnath Jute Manufacturing Co. Ltd v. Commercial Tax Officer AIR 1966 SC 12]***. Hidayatullah, J. (as his Lordship then was) in ***Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha AIR 1961 SC 1596*** had observed that a proviso is generally added to an enactment to qualify or create an exception to what is in the enactment, and the proviso is not interpreted as stating a general rule. Further, except for instances dealt with in the proviso, the same should not be used for interpreting the main provision/enactment, so as to exclude something by implication. It is by nature of an addendum or dealing with a subject matter which is foreign to the main enactment. (See: ***CIT, Mysore etc. v Indo Mercantile Bank Ltd AIR 1959 SC 713***). Proviso should not be normally construed as nullifying the enactment or as taking away completely a right conferred.

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

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

22. In view of aforesaid analysis, we allow the appeals and set aside all the impugned orders and hold that assessees shall reap the benefit of the notification dated 04.09.1995 as interpreted by us. There shall be no order as to costs.

PUNJAB & HARYANA HIGH COURT

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VATAP 11 OF 2016

SABHARWAL ENTERPRISES
Vs
STATE OF PUNJAB AND OTHERS

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

10th February, 2016

HF ▶ Appellant

First Appellate Authority has the power to waive off the condition of pre-deposit for entertainment of appeal in appropriate cases.

PRE-DEPOSIT – APPEAL – ENTERTAINMENT OF – FIRST APPELLATE AUTHORITY- POWER TO WAIVE OFF CONDITION OF PRE-DEPOSIT – DISMISSAL OF APPEAL BY FIRST APPELLATE AUTHORITY FOR NON COMPLIANCE OF PRE-DEPOSIT – APPEAL BEFORE HIGH COURT – HELD:– EARLIER JUDGMENT PASSED BY THE SAME HIGH COURT FOLLOWED- FIRST APPELLATE AUTHORITY IS EMPOWERED TO WAIVE OFF CONDITION OF PRE-DEPOSIT IN DESERVING CASES- MATTER IS THUS REMANDED BACK TO DETC – APPEAL DISPOSED OF IN TERMS OF THE JUDGMENT SO PASSED. *SECTION 62(5) OF PVAT ACT, 2005*

Facts

Assessment was framed creating an additional demand. An appeal was filed before the first appellate authority which was dismissed for non compliance of S. 62(5) of the Act. The Tribunal dismissed the appeal too. An appeal is filed before High court against the orders passed by authorities below.

Held:

It is undisputed that the issue regarding condition of predeposit in this case stands concluded by the decision of this court in the case of Punjab State Power Corporation Limited V state of Punjab and others decided on 23.12.2015 in which is was held that the appellate authority has the power to waive off the condition of predeposit completely or partially in deserving cases. The matter is thus remanded to DETC and the present appeal is disposed of in terms of the judgment mentioned above.

Case referred:

- *Punjab State Power Corporation Limited (CWP No 26920 of 2013)*

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

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AJAY KUMAR MITTAL, J.

1. This appeal has been filed by the dealer under Section 68 of the Punjab Value Added Tax Act, 2005 (in short "the Act") against the order dated 1.10.2015 (Annexure A-3) passed by the Punjab Value Added Tax Tribunal (hereinafter referred to as "the Tribunal") in Appeal No. 209 of 2015, claiming the following substantial question of law:-

> *Whether on the facts and circumstances of the case, both the authorities below were justified in dismissing the appeals of the appellant by holding the condition of pre deposit of 25% as mandatory for the entertainment of appeal?*

2. A few facts relevant for the disposal of the present appeal as narrated therein may be noticed. The appellant is a dealer having TIN No. 03171154793 and is engaged in the trading of non-ferrous metal at Ludhiana. It had filed its quarterly and annual returns for the assessment year 2011-12 after claiming the ITC. A notice was issued to the appellant by the Excise and Taxation Officer. The assessment was framed for the assessment year 2011-12 vide order dated 16.9.2014 (Annexure A-1) by creating an additional demand of Rs.1,14,47,560/-. Feeling aggrieved by the assessment order, Annexure A-1, the appellant filed an appeal before the Deputy Excise and Taxation Commissioner (Appeals), who vide order dated 2.2.2015 (Annexure A-2) dismissed the appeal for non-deposit of 25% of the additional demand under Section 62(5) of the Act. Still dissatisfied, the appellant filed an appeal before the Tribunal. The Tribunal vide order dated 1.10.2015 (Annexure A-3) upheld the order of the Deputy Excise and Taxation Commissioner (Appeals) and dismissed the appeal. Thereafter, the appellant filed CWP No. 330 of 2016 which was dismissed as withdrawn by this Court vide order dated 8.1.2016 (Annexure A-4). Hence, the present appeal.

3. Notice of motion.

4. Ms. Sudeepti Sharma, Deputy Advocate General, Punjab, accepts notice.

5. We have heard learned counsel for the parties.

6. It is not disputed by the learned counsel for the parties that the issue involved in this appeal stands concluded by the decision of this Court in ***CWP No.26920 of 2013 (Punjab State Power Corporation Limited v. The State of Punjab and others)*** decided on 23.12.2015 wherein after considering the relevant statutory provisions and the case law on the point, it was held as under:-

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

allowing the condition of predeposit to continue as a condition precedent to the hearing of the appeal before it. Therefore, the power to grant interim protection/injunction by the first appellate authority in appropriate cases in case of undue hardship is legal and valid. As a result, question (c) posed is answered accordingly.

34. In some of the petitions, the petitioners had filed an appeal without filing an application for interim injunction/protection which are still pending whereas in other petitions, the first appellate authority had dismissed the appeal for want of pre-deposit and further appeal has also been dismissed by the Tribunal on the same ground without touching the merits of the controversy. Where the appeals are pending without an application for interim injunction/protection before the first appellate authority, the petitioner may file an application for interim injunction/protection before the appeals are taken up for hearing by first appellate authority and in case such an application is filed, the same shall be decided by the said authority keeping in view all the legal principles enunciated hereinbefore. The other cases where the first appellate authority had dismissed the appeal for want of pre-deposit without touching merits of the controversy or further appeal has been dismissed by the Tribunal, the said orders are set aside and the matter is remitted to the first appellate authority where the petitioners may file an application for interim injunction/protection before the appeals are taken up for hearing by the first appellate authority who shall adjudicate the application for grant of interim injunction/protection to the petitioner in the light of the observations made above. All the cases stand disposed of in the above terms."

7. In view of the above, the orders dated 2.2.2015 (Annexure A-2) passed by the Deputy Excise and Taxation Commissioner (Appeals) and dated 1.10.2015 (Annexure A-3) passed by the Tribunal are set aside. The matter is remanded to the Deputy Excise and Taxation Commissioner (Appeals) and the present appeal is disposed of in terms of the judgment in Punjab State Power Corporation Limited's case (supra).

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PUNJAB & HARYANA HIGH COURT

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CWP NO. 5700 OF 2016

EKOM ENTERPRISES CO-OWNERS, RAMPURAPHUL AND ORS.
Vs
STATE OF PUNJAB & OTHERS

AJAY KUMAR MITTAL AND RAJ RAHUL GARG, JJ.

28th March, 2016

HF ▶ Directions issued

SERVICE TAX – GODOWNS GIVEN ON RENT TO PUNGRAIN – NOTICES RECEIVED FROM SERVICE TAX DEPARTMENT TO PAY TAX ON RENTING OF GODOWNS – REPRESENTATION FILED BY ASSESSEE TO PUNGRAIN TO PAY THE TAX – NO DECISION TAKEN – DIRECTION GIVEN TO DECIDE THE SAME WITHIN 3 MONTHS AFTER GRANTING OPPORTUNITY OF HEARING.

Facts

In the present case the petitioner had entered into an agreement with the PUNGRAIN as per which it was to build godowns for storage of foodgrains by FCI and in return the amount was agreed between the parties which was firstly paid by PUNGRAIN to the petitioner and later FCI reimbursed it to PUNGRAIN. Petitioners wer issued notices by Central Excise & Service Tax Range asking for details of income received from renting/lending of immovable property to PUNGRAIN and payment of service tax thereon. The petitioners moved a representation to PUNGRAIN seeking payment of service tax. No decision is taken on the representation. Thus, a writ is filed.

Held:

The petitioner is granted liberty to file a detailed representation raising all the pleas within a period of 15 days from the date of receipt of order. The same has to be decided as per law by passing a speaking order within a period of three months.

Present: Mr. Gurminder Singh, Senior Advocate with
Mr. J.S. Gill, Advocate for the petitioners.

******

AJAY KUMAR MITTAL, J.

1. The petitioners have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the notices dated 20.8.2015, 1.10.2015, 9.11.2015 and 17.11.2015 (Annexure P-10 Colly) issued by Punjab Grains Procurement Corporation Limited (in short “the PUNGRAIN”) directing them to deposit the service tax on the income received from renting/lending of immovable property and withheld the godown rent. Further, a writ of mandamus has been sought directing respondent No.3 to release the storage charges of the godowns hired by the PUNGRAIN for

storage of agricultural produce under Private Entrepreneurs Scheme, 2008 (in short "the Scheme").

2. In the year 2010, under the Scheme, the PUNGRAIN invited tender form (Annexure P-1) under two bid systems for construction of covered godowns for Food Corporation of India (FCI) storage requirement for a minimum guarantee period of seven years on build, own and operate/lease basis for the storage of foodgrain at various locations of Punjab. In pursuance thereto, the petitioners applied for various locations in Punjab. The tender submitted by petitioners No.1 to 9 was not accepted by the PUNGRAIN but they were given counter offer (copy of the counter offer dated 24.2.2011 given to one of the petitioners is Annexure P-2) for construction of covered godowns under the Scheme at the lower rate which was accepted by petitioners No.1 to 9. The tender submitted by petitioners No.10 to 14 was accepted at the rate quoted by them. In pursuance thereto, the agreements (copy of the agreement dated 18.3.2011 executed between the PUNGRAIN and one of the petitioners is Annexure P-3) were executed between the PUNGRAIN and the petitioners. Thereafter, the petitioners constructed the covered godowns as per the conditions laid down in the agreement which was subsequently inspected by the Assistant General Manager along with XEN, PWD (B&R) vide inspection report dated 10.4.2012 (Annexure P-4). Thereafter, the Managing Director, PUNGRAIN, Chandigarh wrote letters to the District Manager of the concerned Districts to take over the godowns constructed under the Scheme, including letter dated 3.7.2012 (Annexure P-5) written to the District Manager, Bathinda. Vide another letter dated 26.7.2012 (Annexure P-6), in case of some of the petitioners, the direction was issued to the District Manager for taking over the godowns and execution of necessary agreements. In pursuance thereto, the agreements including the agreement dated 20.7.2012 (Annexure P-7) were executed. The amount as agreed between the PUNGRAIN and the petitioners is firstly paid by the PUNGRAIN to the petitioners and then the PUNGRAIN got reimbursed it from the FCI. As per the agreement dated 27.11.2012 (Annexure P-8) executed between the FCI and the PUNGRAIN, the FCI reimbursed the rent charges to the PUNGRAIN with a further 15% supervision charges on godown rent. The petitioners were issued various notices including the notices dated 3.2.2015, 20.2.2015 and 7.7.2015 (Annexure P-9 Colly) by the Central Excise and Service Tax Range asking for the details of income received from renting/lending of immovable property to the PUNGRAIN and payment of service tax thereon. Thereafter, the PUNGRAIN had issued the notices dated 20.8.2015, 1.10.2015, 9.11.2015 and 17.11.2015 (Annexure P-10 Colly) to the petitioners for stopping the payment of storage charges for the godowns. The petitioners moved a representation dated 2.9.2015 (Annexure P-11) to the Managing Director, PUNGRAIN, Chandigarh against the said notices, but no response has been received till date. Hence, the present writ petition.

3. Learned counsel for the petitioners submitted that the petitioners have moved a representation dated 2.9.2015 (Annexure P11) to the Managing Director, PUNGRAIN, Chandigarh for releasing the storage charges of the godowns, but no action has so far been taken thereon. They, however, prayed that liberty be granted to the petitioners to file a detailed and comprehensive representation before the appropriate authority by incorporating the grievance as raised in the present writ petition and direction be issued to the authority concerned to decide the representation expeditiously in a time bound manner in accordance with law.

4. After hearing learned counsel for the petitioners, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by granting liberty to the petitioners to file a detailed and comprehensive representation against the notices (Annexure P-10 Colly) raising all the pleas as raised in the present writ petition before respondent No.3 within a period of 15 days from the date of receipt of the certified copy of the order. It is directed that in the event of a representation being filed by the petitioners, the

same shall be decided in accordance with law by passing a speaking order and after affording an opportunity of hearing to them within a period of three months from the date of receipt of the representation. The petitioners shall be entitled to lead any evidence to substantiate their claim before respondent No.3.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 330, 315 & 316 OF 2014

EKAM INDUSTRIES

Vs

STATE OF PUNJAB

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

25th January, 2016

HF ▶ HF- None

First Appellate Authority has the inherent power to grant protection from condition of predeposit in appropriate cases.

PRE-DEPOSIT – APPEAL – ENTERTAINMENT OF – FIRST APPELLATE AUTHORITY- POWER TO WAIVE OF CONDITION OF PRE-DEPOSIT – DISMISSAL OF APPEAL BY FIRST APPELLATE AUTHORITY FOR NON- COMPLIANCE OF SECTION 62(5) OF THE ACT – APPEAL BEFORE TRIBUNAL SEEKING PROTECTION AGAINST PRE-DEPOSIT- IMPUGNED ORDER FOUND NEITHER VOID NOR JURISDICTION SO AS TO ALLOW PROTECTION SOUGHT- HOWEVER, IN LIGHT OF JUDGMENT PASSED BY THE HIGH COURT, FIRST APPELLATE AUTHORITY HAS INHERENT POWER TO GIVE COMPLETE OR PARTIAL PROTECTION IN DESERVING CASES – MATTER THUS REMITTED BACK TO FIRST APPELLATE AUTHORITY TO DECIDE QUESTION OF PROTECTION, IF DEMANDED BY ASSESSEE, AND DECIDE THE APPEAL ON MERITS THEREAFTER – APPEAL ACCEPTED - *SECTION 62(5) OF PVAT ACT, 2005*

Facts

An appeal was filed before first appellate authority against the assessment order which was dismissed for non-compliance of S. 62(5) of the Act. Aggrieved by the order an appeal is filed before Tribunal seeking protection regarding deposit of 25% of additional demand.

Held:

The assessment order is neither void nor without jurisdiction. However, First Appellate Authority has the power to grant protection in a fit and appropriate case if an application pleading the grounds for seeking protection is filed. This power is to be exercised in view of special nature of taxation and revenue laws. Only deserving cases can be granted complete or partial waiver. Thus, if court reaches a conclusion that protection can be granted on certain terms then it will do so and then entertain the appeal on merits. The appeal is accepted and matter is back to first appellate authority.

Case referred:

- *Punjab State Power Corporation Ltd. Vs the State of Punjab and others decided on 23.12.2015*

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

Mr. Amit Chaudhary, Addl. Advocate General for the State.

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

1. This order of mine shall dispose off three connected appeals No.330, 315 and 316 of 2014, Since all these appeals involve the common question of law, therefore, these are decided together. All these appeals were dismissed by the First Appellate Authority for non compliance of Section 62 (5) of the Punjab Value Added Tax Act, 2005.

2. The case wise facts of all these three appeals are enumerated as under:-

Appeal No. 330 of 2014

Assessment Year	Name of authority	Demand created	Date of order
2011-12	The Excise and Taxation Officer -cum- Designated Officer, Ludhiana-II	Rs.15,71,545/- Under PVAT Act	2.5.2013 Appeal dismissed on 14.7.2014

3. The Excise and Taxation Officer-cum-Designate Officer, Ludhiana-II vide order dated 2.5.2013, created additional demand of Rs.15,71,545/- under the Punjab Value Added Tax Act, 2005. On the ground that while scrutinizing the assessment for the year 2011-12, it was revealed that the annual statement filed by him was not correct and taxable person had claimed ITC for which he was not entitled as such, the designated officer vide his order dated 2.5.2013 disallowed the ITC and created the additional demand. The appeal filed by the appellant was dismissed on 14.7.2014 for non compliance of conditions as envisaged U/s 62 (5) of the Act, hence this second appeal.

Appeal No. 315 of 2014

Assessment Year	Officer Incharge	Demand created	Date of order
2012-13	The Excise & Taxation Officer-cum-Designated Officer, Ludhiana-II	Rs.98,51,972/- under PVAT Act and.	14.3.2014

4. The assessment for the year 2012-13 was scrutinized where upon the assessing authority disallowed the ITC for want of original purchase voters and created demand to the tune of Rs.98,51,972/- on 14.3.2014. The appeal against the said order was dismissed by the First Appellate Authority, Ludhiana on 4.7.2014 U/s 62 (5) of the Act.

Appeal No. 316 of 2014

Assessment Year	Officer Incharge	Demand created	Date of order
2012-13	The Excise & Taxation Officer-cum-Designated Officer, Ludhiana-II	Rs.81.08,188/- under PVAT Act and Rs.3530/- under CST Act, 1956 "	5.5.2014

5. On scrutiny of the assessment year 2012-13 it was detected that the appellant had wrongly claimed the ITC, therefore, the assessing authority vide order dated 5.5.2014 created additional demand to the tune of Rs.81,08,188/- under the Punjab Value Added Tax Act and Rs.3530 under the Central Sales Tax Act, 1956 respectively. The appeal filed by the appellant was dismissed by First Appellate Authority on 4.7.2014 for non compliance of Section 62(5) of the Act.

6. Arguments heard. Record perused.

7. I have perused the order passed by the assessing authority, the same is neither void nor without jurisdiction so as to grant absolute protection it regarding deposit of the 25% of the additional demand.

8. The provisions of Section 62 (5) of the Act are mandatory in nature which read as under:-

> *Section 62 (5). No appeal shall be entertained, unless such appeal is accompanied by satisfactory proof of the prior minimum payment of twenty-five per cent of the total amount of additional demand, penalty and interest, if any.*
>
> *EXPLANATION :- For the purposes of this sub-Section "additional demand" means any tax imposed as a result of any order passed under any of the provisions of this Act or the rules made thereunder or under the Central Sales Tax Act, 1956(Act No. 74 of 1956)."*

9. Similarly, Rule 71 (3) of the Rules also creates a bar for entertaining the appeal without payment of 25% of the additional demand. Hon'ble of Supreme Court of India in case of Sate of Punjab Maruti Udyog Ltd. and others Vol.99 STC page/468, while approving the judgment of the full Bench of Punjab and Haryana in case of Emerald International Ltd. Vs State of Punjab and others decided on 21.2.1997 observed that legality of the order can't stand in the way of the Tribunal/ First Appellate Authority for issuing a direction to comply with section 62 (5) of the Act and the Rule 71 (3) of the Rules framed thereunder.

10. In any case, it may be observed that the First Appellate Authority has inherent power to grant protection in a fit and appropriate case if some application pleading the grounds for seeking protection U/s 62 (5) of the Act is filed by the appellant. Similar observations were made in case of Punjab State Power Corporation Ltd. Vs the State of Punjab and others decided on 23.12.2015 wherein it was observed that the relaxation U/s 62 (5) of the Act could be granted in a fit and appropriate case. The relevant observations are reproduced as under:-

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

answered accordingly. The counsel for the appellant has stated that he is ready to move the application for seeking protection.

11. In the present case also, the appellant wants to move an application for protection.

12. In these circumstances and in the light of the judgment, the case is remitted back to the First Appellate Authority to entertain and decide the application for granting protection, if filed. If the Court reaches the conclusion that the protection can be granted on certain terms and conditions then it will do so and then entertain and decide the main appeal on merits.

13. The appellant is directed to appear before the First Appellate Authority on 15.3.2016.

14. Resultantly, these appeals are accepted, the Impugned orders passed by the First Appellate Authority are set-aside with the direction to decide the question of protection, if demanded and thereafter, hear and decide the appeal on merits. Copy of the order be placed in each file.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 403 OF 2014

NEW GURDIAL AGRO INDUSTRIES
Vs
STATE OF PUNJAB

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

15th February, 2016

HF ▶ Revenue

Input Tax Credit is not admissible where no evidence has been produced to show movement of goods from alleged selling dealer to appellant

INPUT TAX CREDIT – BOGUS PURCHASES – RETURNS FILED – INPUT TAX CREDIT DENIED ON THE GROUND OF BOGUS PURCHASES –APPEAL BEFORE TRIBUNAL – CONTENTION RAISED REGARDING DENIAL OF OPPORTUNITY OF HEARING AND BONAFIDE PURCHASES MADE BY APPELLANT – IMPUGNED ORDER CLEARLY REVEALED OPPORTUNITY GRANTED TO APPELLANT TO CONFRONT DISCREPANCIES BUT FAILED TO PRODUCE DOCUMENTS – MOVEMENT OF GOODS AND VAT XXXVI NOT SHOWN TO PROVE BONAFIDES – DENIAL BY ALLEGED SELLING DEALER REGARDING SALES TO APPELLANT – TAX OBSERVED TO HAVE BEEN DEPOSITED IMMEDIATELY AFTER PASSING OF ASSESSMENT ORDER WITHOUT OBJECTION INDICATING ACCEPTANCE OF ORDER – COLLUSION AND FRAUD FOUND ON PART OF APPELLANT WITH OTHER DEALERS WHO DID NOT SUFFER VAT IN THE STATE-INTEREST HELD TO BE RIGHTLY LEVIED FROM DUE DATE OF PAYMENT OF TAX – APPEAL DISMISSED - *SECTION 13 AND 32OF PVAT ACT, 2005*

Facts

The appellant had claimed ITC which was rejected on the grounds of bogus purchases made. On dismissal of first appeal an appeal was filed before Tribunal raising various contentions.

Held:

Regarding the contention that no opportunity was provided to appellant to confront discrepancies, it is clear in the order that the appellant was confronted with the discrepancies but it failed to produce any document in support of its claim regarding purchases from the dealers.

Movement of the goods has not been proved and declarations in form XXXVI have not been produced. The appellant had admitted its fault. The alleged dealer from whom purchases were made is found to be a dealer dealing in pickles, utensils etc. Moreover, it has denied any sales made to the appellant. The dealers from whom purchases have been made have not suffered VAT in Punjab and as such there is collusion and fraud on part of appellant.

The appellant was convinced with the order of designated officer and had deposited tax in treasury without any objection. Therefore, the interest u/s 32 is levied rightly and is rightly calculated from due date of payment of tax.

Cases referred:

- *Lakhi Ram, Surinder Singh, M.T., Rohtak Vs State of Haryana (2010) 35 PHT 424 (P & H).*
- *Avneet Distillers (P) Ltd. Vs State of Punjab Volume 15 STM decided on 4.5.2010.*
- *Gheru Lal Bal Chand Vs State of Haryana (2011) STM Volume 17 page 465 decided on 23.9.2011.*

Present: Mr. S.P.Garg, Advocate counsel for the appellant.
Mr. Sukhdip Singh Brar, 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 27.8.2014 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala (herein referred as the First Appellate Authority) dismissing the appeal against the order dated 5.11.2013 passed by the Excise and Taxation Officer-cum- Designated Officer, Nabha, District Patiala creating additional demand of Rs.13,64,592/- for the assessment year 2009-10.

2. The appellant firm is manufacturer and seller of harvestor combines and its parts in the name and style of M/s New Gurdial Agro Industries, Patiala Road Nabha and is a registered taxable person having registration No.03061050627. The annual statement for the assessment year 2009-10 was filed on time, however, on scrutiny the designated officer issued notice under Section 29 (2) of the Act, thereafter on 22.4.2013, after the transfer of the Excise and Taxation Officer, Nabha his Successor issued notice for 23.7.2013 to verify the annual statement.

3. On 29.10.2013, the appellant firm appeared alongwith Sh. S.C. Jindal, CA and produced the account books. On the examination of the account books, it transpired that the dealer had made huge purchases from following dealers:-

(1) M/s Staunch International, Ludhiana.
(2) M/s Satguru Impex, Ludhiana.
(3) M/s Chirag International, Nabha.
(4) M/s Prashar Enterprises, Mandi Gobindgarh.

4. The Designated Officer made verification of those purchases from the aforesaid firms through the authorities at Ludhiana, Mandi Gobindgarh as also through the department's computerized Information System. On verification of the records, the Designated Officer reached the following conclusion:-

(1) PURCHASES AMOUNTING RS. 39,95,190 FROM M/S STAUNCH INTERNATIONAL, LUDHIANA, TIN NO.03101154977

5. It was intimated by the Assistant Excise and Taxation Commissioner, Ludhiana-I to the Assistant Excise and Taxation Commissioner, Patiala, vide memo No.3891 dated 16.3.2011 that "during the course of scrutiny of returns of M/s Staunch International Ludhiana Tin No. 03101154977 by Sh. M.L Sharma ETO and Sh. Amrish Loomba, ETI, it has been detected that number of taxable persons of your district have shown purchases made from M/s Staunch International Ludhiana. Verification conducted in this regard has revealed that above mentioned firm is an exporter of pickles, utensils, aggarbattis etc. and does not deal in iron and steel. Sh. Krishan Kumar proprietor of the firm has denied making any sales to the taxable persons of your district through an affidavit....."

(2) PURCHASES AMOUNTING RS. 14,51,563/- FROM M/S SATGURU IMPEX LUDHIANA TIN NO.03241149244

6. It was found that no such TIN number has been allotted to any person and the firm does not exist.

7. It was also found from the perusal of returns filed by following selling parties M/s Chirag International, Nabha and M/s Prashar Enterprises, Mandi Gobindgarh that they have made purchases from cancelled dealers and had not paid any tax despite reflecting substantial sales which is evident from the data available with the department, as under:-

Sr.No.	Name of the selling dealer	GTO as per / Tax paid cardex	Tax paid
1.	M/s Prashar Enterprises, Mandi Gobindgarh TIN 03181122826	17,38,94,158	Nil
2.	M/s Chirag International Nabha TIN 03782067567	57,09,962	3510

(4) PRUCHASES AMOUNTING TO RS.1,16,66,497/- FROM M/S PRASHAR ENTERPRISES, MANDIGOBINDGARH.

8. Most of the purchases of this firm were from cancelled dealers during this year and during previous years and in case of the firms whose TIN is not cancelled, they had made further purchases from cancelled dealers as seen/verified from the office records available on dealer cardex as available on computer system.

9. As such the ITC availed by the dealer on the purchases involved, was not genuine and thus not admissible as the purchases in question were not genuine.

(5) PURCHASES AMOUNTING TO RS. 21,61,620/- FROM M/S. CHIRAG INTERNATIONAL, NABHA.

10. Most of the purchases of this firm were either from cancelled dealers or from M/s Prashar Enterprises, Mandi Gobindgarh (whose details have been discussed in para above) during this year and during previous years also. It was also found that in case of the firms whose TIN had not been cancelled, they had made further purchases from cancelled dealers as per the information available on dealer cardex on Department's Computer System.

11 .As such the ITC availed by the dealer on the purchases involved, was not genuine and thus not admissible as the purchases in question were not genuine.

12. When the taxable person was confronted with the aforesaid discrepancies then he failed to make any plausible explanation as also failed to submit any documents in support of the ITC claimed and regarding movement of goods. Ultimately, the Designated officer while holding that the appellant has made bogus purchases and claimed ingenuine ITC created additional demand to the tune of Rs. 13,64,592/- vide order dated 5.11.2013. The appellant filed the appeal against the said order which was dismissed by the First Appellate Authority on 27.8.2014.

13. Hence this second appeal.

14. The counsel for the appellant while challenging the aforesaid orders pleaded that the appellant had got deposited the tax even prior to the passing of the order which indicates the order was anti dated and has been passed by the Excise and Taxation Officer by misusing his authority.

15. To the contrary, the state counsel has urged that actually the appellant had accepted the order dated 5.11.2013 and deposited tax therefore the order can not be said to be anti dated.

16. Having considered the aforesaid contentions, I do not find any merit in the argument raised by the counsel for the appellant. The demand was created vide order dated

5.11.2013 so also the TDN was issued on the same day. The appellant in compliance with the orders deposited the amount through the treasury receipts which are detailed as under:-

(i) TR No.27, dated 7.11.2013 at Nabha; Rs.5,00,000/-.
(ii) TR No.13, dated 8.11.2013 at Nabha; Rs.5,00,000/-.
(iii) TR No.28, dated 14.11.2013 at Nabha; Rs.2,00,000/-.
(iv) TR No.29, dated 5.12.2013 at Nabha; Rs. 1,65,211/-.
Total Rs.13,65,211/-

17. The receipts indicate that the amount was deposited after the order was passed. It was next contended by the counsel for the appellant that no penalty could be imposed without notice so also the interest. This argument has also been apposed tooth and nail by the state. Having considered this contention, same lacks merit. In the present case, the penalty was not imposed U/s 56 of the Act, but U/s 60 of the Act for filing incomplete returns. It is apparent that the appellant filed incomplete returns, therefore the penalty to the tune of Rs.9,000/- was imposed U/s 60 of the Act. As regards the penalty U/s 53 to 56 of the Act, separate proceedings were initiated and demand would be created if required. Even otherwise this is not an appeal against the said order of the penalty. The counsel for the appellant has further tried to convince this Tribunal regarding rightful claim of the ITC by urging that at the time of the purchase of the goods, the appellant never knew that the seller either had no TIN number or not running that kind of business, as such they had bonafidely purchased the goods from the selling dealers, therefore, ITC can't be rejected. He has also cited the following judgments in order to buttress his contentions:-

(1) Lakhi Ram, Surinder Singh, M.T., Rohtak Vs State of Haryana (2010) 35 PHT 424 (P & H).
(2) Avneet Distillers (P) Ltd. Vs State of Punjab Volume 15 STM decided on 4.5.2010.
(3) Gheru Lal Bal Chand Vs State of Haryana (2011) STM Volume 17 page 465 decided on 23.9.2011.

18. The counsel has further contended that the appellant was not given any opportunity to confront the verification report made by the designated officer regarding bogus purchases.

19. To the contrary, the state counsel has taken me through the impugned order passed by the designated officer and has refuted the argument raised by the counsel for the appellant that he was not confronted with the discrepancies as indicated in the verification report. He has further contended that the bogus purchases have been made in collusion with the appellant, therefore, the principles as indicated in the judgment in the case of Gheru Lal Bal Chand do not apply to the facts of the case.

20. After hearing both the parties, I am unable to agree to the contentions raised by the appellant. As regards the contention with regard to providing of no opportunity to confront the appellant with the discrepancies in the verification report, it is mentioned in the order dated 5.11.2013 that the taxable person was confronted with the discrepancies even on the adjourned date i.e. 1.1.2013 Sh. S.C. Jindal, CA appeared on behalf of the firm and failed to produce any document in support of the ITC claimed regarding purchases from aforementioned dealer. Even the movement of the goods has not been proved and rather the appellant admitted his fault The appellant, in order to take his case within the preview of judgment delivered in case of Gheru Lal Bal Chand has tried to prove that he had made bonafide purchases from his selling dealers, knowing fully well that they were registered under the Act and they had made the payment of tax in the treasury. In the present case, no such evidence has been led in order to prove that the purchases were bonafidely made. In order to prove purchases, the proof regarding the movement of goods and declarations as made on form-XXXVI have not been proved. Some of the purchases were made from M/s Staunch International, Ludhiana but

verification reveals that he has been dealing in the business of only the pickles, utensils, aggarbattis etc. and he never dealt in iron and steel. The verification further reveals that M/s Staunch International, Ludhiana denied making any sales to the appellant through an affidavit. As regards, the purchases from M/s Satguru Impex, Ludhiana, inquiries revealed that this firm did not exist at all and the TIN number shown by the appellant was bogus. The inquiry further reveals that M/s Chirag International Nabha and M/s Prashar Enterprises, Mandi Gobindgarh, from whom he had suffered the purchases, had made purchases from the cancelled dealers and did not pay any tax. Therefore, it is apparent that the appellant made purchases from M/s Chirag International, Nabha and M/s Prashar Enterprises, Mandi Gobindgarh but the selling dealers had not suffered VAT in Punjab, as such invoices issued by these firms were the result of collusion or fraud therefore the appellant was not entitled to any ITC on such purchases.

21. As regards, the interest U/s 32 of the Act, the same appears to have been legally levied as it was leviable from due date for payment of due tax in the normal course. It may further be observed that the appellant appears to have been convinced with the order passed by the Designated Officer as immediately after the order was passed on 5.11.2013, the appellant deposited the tax without any objection.

22. Having gone through the impugned orders passed by the courts below, the same appear to be well reasoned and well founded and passed after providing proper opportunity of being heard to the appellant.

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

24. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 309 OF 2015

L.S. RICE EXPORTS PVT. LTD
Vs
STATE OF PUNJAB

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

19th February, 2016

HF ▶ Revenue

No evidence to show that goods in transit were meant for export thereby leading to upholding of penalty for attempt to evade tax.

PENALTY – ROAD SIDE CHECKING/ CHECK POST – ATTEMPT TO EVADE TAX – MIS-DESCRIPTION OF GOODS – GOODS IN TRANSIT FOUND TO BE RICE 'SELLA' INSTEAD OF RICE 'BASMATI' AS SHOWN IN INVOICE – FORM 'H' PRODUCED – GOODS DETAINED – GOODS ADMITTED TO HAVE BEEN WRONGLY MENTIONED – NO PURCHASE ORDER FOR EXPORTING RICE– PURCHASE ORDER PRODUCED MAY DAYS LATER AFTER DETENTION – DIFFERENCE IN PRICE AS MENTIONED IN PURCHASE ORDER AND MARKET PRICE NOT EXPLAINED – PENALTY IMPOSED – APPEAL BEFORE TRIBUNAL – HELD: DELAY IN PRODUCING PURCHASE ORDER INDICATES MANIPULATION – BILL OF LADING NOT CONNECTED TO GOODS SENT – FORM 'H' PRODUCED RELATES TO RICE AND PADDY – NO PROOF OF ADVANCE PAYMENT BY CONSIGNEE – DIFFERENCE IN MARKET PRICE AND PRICE MENTIONED ON PURCHASE ORDER NOT EXPLAINED – GOODS HELD TO BE SENT UNDER GARB OF BASMATI RICE TO PROJECT EXPORT TO EVADE TAX INTENTIONALLY – PENALTY UPHELD – APPEAL DISMISSED. - *S. 51(7) OF THE PVAT ACT, 2005*

Facts

The goods vehicle was intercepted. Documents were produced by the driver. On physical verification it was found that the sale was made against 'H' form and goods mentioned on the bill as 'Rice Basmati' were actually 'Rice Sella'. The goods were detained. It was admitted that the goods were wrongly mentioned as basmati rice by mistake. It was also admitted that the appellant had no purchase order for exporting Rice Sella. However, later he produced an import export certificate and purchase order issued by another firm. It was observed that there was a difference of rate as mentioned on the purchase order which was higher as compared to the market rate. Penalty was imposed u/s 51(7)(b) of the Act. On dismissal of appeal, an appeal is filed before Tribunal.

Held:

The appellant did not produce any export order on the date of detention which shows that the export order produced later is an afterthought. The export order does not show if it relates to rice 'Sella'. Also form H produced relates to rice and paddy. The bill of lading is not

connected to the goods sent. Thus, the documents do no indicate that the goods were for export. No explanation regarding difference in the market rate and one mentioned on purchase order is given. This shows that the purchase order is manipulated. No proof of advance payment as received from consignee was produced. The inference drawn is that the goods were transported under the garb of basmati rice projecting it was meant for export with an intention to evade tax. The appeal is dismissed.

Present: Mr. Rakesh Cajla, 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 has arisen out of the order dated 4.3.2015 passed by the Deputy Excise and Taxation Commissioner (A), Patiala Division, Patiala (herein referred as the First Appellate Authority) dismissing the appeal of the appellant against the order dated 3.9.2012 passed by the-Assistant Excise and Taxation Commissioner, Mobile Wing Chandigarh imposing a penalty to the tune of Rs.2,65,376/- under the Punjab Value Added Tax Act, 2005.

2. Briefly stated the facts of the case are that when the driver carrying basmati rice (as per the invoice) through vehicle No. PB-13N-9118 came from Samana to Chandigarh, he was intercepted at Ram Nagar and when confronted, he produced the following documents-

(1) Bill No.720, dated 17.8.2012 issued by M/s LS Rice Exports Pvt. Ltd., Samana in favour of M/s Jai Balaji for Rs. 8,84,585/-.

(2) GR No. 26141, dated 17.8.2012 issued by M/s Truck Operators Union, Samana.

3. On verification, it was detected that sale made against the "H" form and goods mentioned on the bill as "Rice Basmati, were varying as per physical verification of the goods conducted at the spot is on physical verification, the goods in the truck were actually found to be Rice Sella where as the invoice was regarding ‘Basmati Rice.’ Consequently, the goods were detained for further verification and a show cause notice was issued by the Detaining Officer for 19.08.2012.

4. On the aforesaid date, Sh. Sanjay Kumar, Director of M/s LS Rice Exports Pvt. Ltd., Samana appeared and claimed the goods. When confronted with the discrepancy regarding the actual goods and the goods as mentioned in the invoice, he admitted his fault stating that the goods were actually 'Rice Sella' and were not 'Basmati Rice/ He also stated that he had no purchase order for exporting the Rice Sella and further stated that he had received the order regarding this consignment through broker on phone.

5. The Detaining Officer released the goods on 21.8.2012 and forwarded the case to the Designated Officer who also issued notice U/s 51 (7) (b) of the Act of 2005 to the owner of the goods for 3.9.2012, in response to which the appellant appeared. The Designated Officer when again confronted the appellant with the aforesaid discrepancy, he reiterated that the goods were described as 'Rice Basmati' instead of 'Rice Sella' by mistake, but he explained that the goods were meant for export. In this regard, he produced certificate of import export and purchase order issued by M/s Jai Bala Ji Trading Company dated 14.8.2012.

6. The Designated Officer observed that the rate of Rice Sella as mentioned on the purchase order was Rs.43,900/- per MT which was higher then the actual market rate (34-35 per Kg) but the appellant failed to make any plausible explanation regarding the said discrepancy; he further could not answer to this contradictory stand as setup by him because he had earlier stated that he had no purchase order and the consignment deal was done through the

broker, the appellant had failed to produce the proof of the advance payment received from the consignee and the purchase order was procured one and an after thought.

7. Consequently, he imposed a penalty of Rs. 2,65,376/-. U/s 51(7)(b) of the Punjab VAT Act, 2005 against the appellant. The appeal filed by the appellant was dismissed on 4.3.2015. Hence this second appeal.

8. While assailing the impugned order, it was urged by the appellant that mistake in the invoice with regard to the quality of rice was bonafide as the rate of tax on rice basmati and Rice Sella is the same, therefore, the mistake would not make any difference. There is lack of mensera which may attract the penalty. The goods were against "H" form which means that the goods were being exported as such the same could not be subjected to tax. As such since there was no tax leviable on the 'rice sella' as exported by the appellant, therefore, the question of evasion of tax does not arise, the appellant had duly explained the goods by producing eh account books, therefore, penalty was wrongly imposed upon the appellant.

9. To the contrary state counsel has refuted the contentions as raised by the appellant and prayed for dismissal of appeal.

10. Arguments heard. Record perused.

11. It is not in dispute that the goods as recorded in the invoice were not the same as found in the vehicle, the invoice contains 330 bags of 'rice basmati with bardana' whereas the goods actually found in the vehicle were 'rice sella'. The goods were detained on 18.08.2012 at ICC, Ramnagar. At that time, he admitted that the goods in the truck were 'rice sella' and he had received this order of export through telephonic message from the broker and he had no export order in writing. The appellant did not produce any export order on 18.8.2012, therefore, the production of the export order at a later stage can be said to be an afterthought. Even otherwise, the export purchase order so claimed does not tally with the goods. The export order does not indicate that if it related to 'rice sella,' it is also noticed that purchase order was not produced at the time of detention. The Form 'H' which the appellant placed reliance also relates to rice and paddy and does not relate to 'rice sella. Similarly, the bill of lading has not been connected with the goods so sent by the appellant. Thus, if the story of the appellant had failed to connect the said invoice with the documents so relied upon by the appellant.

12. It would further be pertinent to mention here that the certificate of import, export and purchase order of M/s Jai Balaji Trading Company produced after 16 days of detention, reveals that rate of rice sella mentioned on purchase order was 439 per MT which was much higher than the actual market price (Rs. 34-35 per Kg of sella rice). The appellant has failed to make any explanation regarding the same. All this goes to show that the purchase order was manipulated lateron. Moreover, it was first transaction between the parties, but no proof of advance payment as received from consignee was produced, thus the inference would be drawn that the appellant was transporting the goods under the garb of basmati rice projecting that it was meant for export with an intention to evade the tax. It may also be noticed that normally rice basmati is exported against 'H" Forms and not the 'rice sella' which is another ground to draw the above referred inference.

13. Under these circumstances, this Tribunal is of the considered opinion that the orders passed by the authorities below are well reasoned and well founded and do not call for any interference. Hence this appeal being devoid of any merit is dismissed.

14. Pronounced in the open court.

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PUNJAB VAT TRIBUNAL

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APPEAL NO. 541 OF 2013

HANUMAN WELDING AND MILL STORE
Vs
STATE OF PUNJAB

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

15th February, 2016

HF ▶ Revenue

Interstate sale of goods by appellant to an unregistered consignee is inferred to be in collusion with an intention to evade tax.

PENALTY – ROAD SIDE CHECKING/ CHECK POST – ATTEMPT TO EVADE TAX – UNREGISTERED DEALER – GOODS IMPORTED FROM CHANDIGARH TO PUNJAB – ABSENCE OF TIN ON INVOICE – GOODS DETAINED SUSPECTING CONSIGNEE TO BE UNREGISTERED IN THE STATE – PENALTY IMPOSED AS GOODS ADMITTED TO BE MEANT FOR SALE AND CONSIGNEE TO BE UNREGISTERED IN PUNJAB – APPEAL BEFORE TRIBUNAL – HELD, SELLING TAXABLE GOODS TO AN UNREGISTERED DEALER IN PUNJAB IS IN COLLUSION WITH THE PURCHASER WITH AN INTENTION TO EVADE TAX - MERE REPORTING AT ICC NOT TO RULE OUT ATTEMPT TO EVADE TAX – DOCUMENTS NOT BEARING TIN CONSIDERED TO BE INGENUINE – PENALTY UPHELD – APPEAL DISMISSED - *S. 6(3)(A), S. 21(1), S 51(7), OF PVAT ACT, 2005*

Facts

The goods were sold by Appellant from Chandigarh to Bathinda company. The documents were produced at the ICC. It was detected that the consignee was unregistered person in Punjab as no TIN number was mentioned and goods were being imported from Chandigarh to an unregistered dealer. The counsel admitted that the goods were meant for trade and were taxable and that the consignee was an unregistered dealer. Penalty was imposed u/s 51(7) of the Act. On dismissal of appeals, an appeal is filed before Tribunal.

Held:

If the taxable goods are being imported into the state for trade then purchaser is obliged to be registered in the State of Punjab. If tradable goods are sold to such unregistered person, inference would be drawn that the goods were sold in collusion with the purchaser with the intention to evade tax. In such circumstances attempt to evade tax cannot be ruled out. Thus, the orders passed by authorities below are well founded and well reasoned. The appeal is dismissed.

Cases referred:

- *Osaw Agro Industries Ltd. vs. State of Punjab and another (2007) 30 PHT 344 (P&H)*
- *Citadel Architecture Solution Pvt. Ltd., Mumbai vs. The State of Punjab and others (2010) 35 PHT (PVT)*
- *Kothari Enterprises Pvt. Ltd. Calcutta vs. The State of Punjab and others (2002) PHT 41 469 (PVT)*

- *Makkan Paper Mills vs. State of Punjab & others (2007) 29 PHT 239 (P&H)*

Present: None for the appellant.
Mrs. Sukhdip Singh Brar, 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 30.1.2013 passed by the Deputy Excise and Taxation Commissioner (A)-cum Joint Director (Investigation) Patiala Division, Patiala (herein referred as the First Appellate Authority) dismissing the appeal against the order dated 24.3.2009 passed by the Excise and Taxation Officer-cum-Designated Officer ICC Banur imposing a penalty to the tune of Rs. 1,71,182/- U/s 51(7)(b) of the Punjab Value Added Tax Act, 2005.

2. the appellant M/s Hanuman Welding and Mill Store, # No. 5, M.W. Industrial Area Phase-1, Chandigarh had sold the goods to the M/s Royal Construction Company, Bathinda (an unregistered dealer) who was indulging in the business of job work.

3. On16.3.2009, when driver while carrying the welding and hardware goods in vehicle No. Ch-03L-6904 from Chandigarh to Bathinda was apprehended at the ICC Banur, he produced the following documents:-

(1) Invoice No. 10275, 10276, 10277 all dated 15.3.2009 issued by M/s Hanuman Welding & Mill Store, Chandigarh in favour of M/s Royal Construction Company C/o Petron Engineering (P) Ltd., Guru Gobind Singh Refinery Bathinda for Rs. 4,25,054/-, Rs. 23,561/- and Rs. 54,860/- respectively.

(2) GR No. 281, dated 15.3.2009 of Amit Ajay Jeep Services showing consignor and consignee as per the invoice.

4. On scrutiny of the documents, the Detaining Officer detected that the consignee of the goods i.e. Royal Construction company Bathinda was un-registered person in Punjab whereas the goods were being imported from Chandigarh (U.T.) to the premises of an un-registered person, therefore, while doubting the genuineness of the transaction, he issued notice u/s 51(6)(a) to the owner of the goods, in response to which Sh. Rajesh Kumar Aggarwal, partner of the appellant firm appeared. When confronted, he stated that the consignee had just started doing job work at Bathidna and did not apply for Registration Certificate under the Punjab VAT Act. He also disclosed that he had not imported any goods earlier out side the state of Punjab prior to this transaction. The case was forwarded to the Designated Officer who also issued notice to the appellant in response to which Sh. Rajesh Kumar Aggarwal partner of the firm appeared and explained that M/s Royal Construction (P) Ltd. Is Mumbai based and have been allotted works by M/s Petron Civil Engineering (P) Ltd. For executing some work at Bathinda Refinery Project Bathinda and the said company is not registered in the State of Punjab. The counsel has admitted that the goods were meant for trade and taxable and were being imported by unregistered dealer from outside the State of Punjab in violation of Section 6(3)(i) of the Punjab VAT Act.

5. After hearing the arguments, the Designated Officer vide his order dated 24.3.2009, imposed a penalty to the tune of Rs. 1,71,182/- u/s 51(7)(b) of the Act.

6. The appeal filed by the appellant was dismissed on 30.1.2013, hence this second appeal.

7. Both the parties submitted written arguments. None appeared on behalf of the appellant to say any thing when opportunity was given to him to make oral submissions.

8. Arguments of the State Counsel heard. Record perused.

9. After going through the rival written submissions raised by the parties, it transpires that the Royal Construction (P) Ltd. working under the Mumbai based company was unregistered dealer for the State of Punjab. The invoice indicates that the goods, meant for trade, were not sent for job work and the same were meant for sale and were taxable goods. The Counsel has admitted before the Designated Officer that Royal Construction (P) Ltd. was an unregistered dealer.

10. Section 6(3)(a)(i) of the Punjab VAT Act provides that any person who imports taxable goods for sale or use in manufacturing or processing any goods in the State, the taxable quantum is R. 1; he is required to get himself registered as a taxable person u/s 21(1) of the Act. Section 21(1) of the Act also requires that no person other than a casual trader who is liable to pay tax under the Act, shall carry on business, unless he is registered under this Act. All this provides that if the goods are taxable in the State of Punjab and are being imported into the State then the seller was liable to sell such goods to the person who is registered in the State of Punjab irrespective of the price thereof. It is also not denied that invoice did not bear Tin number of the purchaser firm. If the tradable goods are sold to an unregistered person, then the inference would be drawn that the goods were sold to such unregistered person, then the inference would be drawn that the goods were sold to such unregistered trader in collusion with the purchaser with the intention to evade the tax. Even the Punjab importer who imports the goods from out side the State Punjab to the unregistered person under the provisions of the Punjab VAT Act, 2005, it cannot be expected that he would maintain the true and proper accounts. In such circumstances, even if the goods were voluntarily reported at the ICC, that would not rule out the possibility of attempt to evade the tax. As per provisions of Section 51(1) of the Act, the appellant was supposed to carry the goods accompanying the genuine documents but in the present case, since the invoices covering the goods were not bearing the TIN number of the purchaser who was importing the goods and was not registered as required under the provisions of Section 6(3)(a)(i) of the Act, it would be inferred that the goods were not covered by the genuine documents.

11. The counsel for the appellant has relied upon the judgments Osaw Agro Industries Ltd. vs. State of Punjab and another (2007) 30 PHT 344 (P&H): in this case a dealer from Ambala City, Haryana sent certain goods to Punjab Agriculture University Ludhiana. The goods were detained at the ICC on the ground that the appellant must also be registered in the State of Punjab, but in this appeal it was the importing dealer who was not registered in the State of Punjab.

12. M/s Citadel Architecture Solution Pvt. Ltd., Mumbai vs. The State of Punjab and others (2010) 35 PHT (PVT): In this case the goods were being sent from Jummu to Jalandhar for use in execution of work contract for Municipal Corporation at Jalandhar. The goods were detained at ICC, Madhopur. The Hon'ble Tribunal held that penalty could not be levied on the ground that goods were meant for an unregistered dealer. But in this case, the facts are little different, no proper address of the consignee was mentioned in the papers. Therefore, there is every likelihood of evasion of tax.

13. M/s Kothari Enterprises Pvt. Ltd. Calcutta vs. The State of Punjab and others (2002) PHT 41 469 (PVT): in this case Guru Nanak Dev Thermal Plant Bathidna had awarded a contract for supply of CI Pipes to BHEL, Bhopal who further asked M/s Kothari Enterprise Pvt. Ltd. Kolkatta to supply CI Pipes to Thermal Plant Bathinda. It was held by the Hon'ble Tribunal that it was not necessary for the M/s Kothari Pvt. Ltd. to get itself registered in the State of Punjab. In this case the importing dealer i.e. M/s Guru Nanak Dev Thermal Plant Bathinda is registered under the Act ibid in the State of Punjab and therefore the facts of this case are distinguishable.

14. The Counsel for the appellant has cited two other judgements i.e. Makkan Paper Mills and Xcell Automation reported as 29 PHT 239 and 29 PHT 253, which are discussed as under:

> *'However, straight jacket approach is not called for in the matter. Sometimes, new means are required to be adopted to check evasion by the evaders who are out of invent, still, newer ways to hoodwink the revenue. Reference of this case to assessing authority in each case will also not be safe method as the officers at the check post cannot be held to be mere receipt clerks for collection of data and papers.*

15. In the case of "Makkan Paper Mills vs. State of Punjab & others (2007) 29 PHT 239 (P&H)," the following guidelines have been laid down by the Hon'ble High Court for the exercise of power at the check post;

> *(1) Exercise of power at the check post, to be valid, could have reasonable nexus with the attempt at evasion.*
>
> *(2) Straight jacket approach is not called for and each instance of exercise of power has to be seen in the light of individual facts. Neither exercise of power can be restricted, wherever required for checking attempt at evasion nor can be extended to areas where there was no attempt to evasion.*
>
> *(1) In an appropriate case, the writ court may examine the exercise of power is found to be arbitrary, malafide and without nexus with attempt at evasion.*
>
> *(2) It there are disputed questions and there is reasonable nexus of exercise of powers with attempt at evasion, writ petition against imposition of penalty at the check post cannot be entertained.*
>
> *(3) Where relevant documents are duly produced but a bonafide plea against taxability is raised and there is neither mis-declaration nor concealment, exercise of power of imposing penalty at the check post on the ground of attempt at evasion may not be called for.*
>
> *From the conclusions arrived at by the Hon'ble High Court in both the cases relied upon by the petitioners, it can be safely presumed that the judgments are not in 'rem' but in 'persona' and therefore cannot be applied in the peculiar facts and circumstances of the present case. The appellant has invented this device for sale of the goods to a person who was not registered in the State of Punjab. All this was done with the intention to evade tax.*

16. Having gone through the impugned orders passed by the authorities below, the same appear to be well founded and well reasoned, as such the same do not call for any interference at my end. Hence this appeal being devoid of any merits is dismissed.

17. Pronounced in the open court.

PUNJAB VAT TRIBUNAL

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APPEAL NO. 422, 424-426 & 428 OF 2013

HEINZ INDIA PVT. LTD

Vs

STATE OF PUNJAB

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

25th January, 2016

HF ▶ Revenue/Department

Glucon –'D' sold in market in small packets as energy drink is not considered an industrial input to attract lower rate of tax.

ENTRIES IN SCHEDULE - GLUCON 'D' - INDUSTRIAL INPUT – GLUCON 'D' MANUFACTURED UNDER APPELLANT'S OWN BRAND FOR SALE AS ENERGY DRINK / FOOD SUPPLEMENT - LOWER RATE OF TAX PAID CONTENDING IT TO BE AN ITEM SPECIFICALLY INCLUDED IN LIST OF INDUSTRIAL INPUTS FALLING UNDER SCHEDULE 'B'; ENTRY 58 - ITEM 218- ASSESSMENT DONE – CHALLENGE AGAINST THE LOWER RATE OF TAX PAID BY APPELLANT IN VIEW OF IT HAVING UNDERGONE MECHANICAL PROCESSES AND BEING SOLD IN SMALL PACKETS TO CONSUMERS FOR CONSUMPTION – PLEA RAISED SEEKING PERMISSION TO PRODUCE C FORMS AND F FORMS - APPEALS DISMISSED – APPEAL BEFORE TRIBUNAL – HELD: GLUCON 'D' IS SOLD TO REACH CONSUMERS AND NOT AS AN INDUSTRIAL INPUT AS PER FACTS AND CIRCUMSTANCES OF THE CASE – CLASSIFYING IT UNDER SCHEDULE 'B' WOULD MEAN GOING AGAINST FUNDAMENTALS OF THE POLICY BEHIND FRAMING THE SCHEDULE - C FORMS AND F FORMS PERMITTED TO BE PRODUCED BEFORE AUTHORITIES – APPEAL DISMISSED ON MERITS.
ITEM 58 OF ENTRY 218 OF SCHEDULE B OF PVAT ACT, 2005

Facts

In this case the question that came up for consideration was whether the product Glucose 'D' In powdered form packed in small packing could be treated as an 'Industrial input' under schedule B or it is an unclassified item attracting VAT @ 13% when sold by appellant to wholesalers and retailers under its own brand. The appellant has been manufacturing the product and paying tax @4% on sales made to CSD depots. On assessment, the rate of tax was challenged on the said commodity as it was contended to be sold after treating, refining, reconditioning and mixing with some other items through a mechanical process thereby making it fit for consumers for instant use. The appellant submitted before authorities that it would produce C and F forms regarding its sales made to CSD depots. However, the appeal was dismissed by first appellate authority holding that the said commodity was not an industrial input. The certificates were not produced for claiming concessional rate of tax. An appeal is thus filed before Tribunal.

Held:

The Tribunal has held that the said commodity is sold as an energy drink in the market and not in bulk as an industrial input so as to attract the lower rate of tax. In facts and circumstances of the case, the appellant manufactures it under its own brand to reach consumers as medicines or food supplement and is sold in small packets at chemist shop. It is difficult to put in the bracket of industrial input particularly where it goes through a mechanical process. To classify under schedule B under Entry 218, it would be against the fundamentals of the policy behind framing the schedule. Also, the appellant prepares it after purchasing the Glucose from traders, therefore, while considering the case from that angle also this item cannot fall under entry 58 of Schedule B of the Act. The appellant is permitted to produce C forms and F forms for the assessment year 2008-09 and 2009-10 for consideration by authorities. The appeal is dismissed holding that the said commodity does not fall under item 218 of Entry 58 of Schedule B of the PVAT Act.

Cases referred:

- *Indian Aluminum Cables Ltd. Vs. Union of India reported in 21 ELT 3*
- *State of Punjab Vs. Fedral Gogul Goetze (I) Ltd. reported in 43 VST*
- *Goyal Motor Parts Vs State of Punjab reported in 38 VST 159 (P&H)*
- *CCE Vs. Carrier Aircon Ltd. reported in 199 ELT 577*
- *Reckitt & Colman of India Ltd. Vs. Asstt. Collr. Of C. Ex., Hyderabad, reported in 72 ELT 263 (AP)*

Case applied for:

- *Deepak Radios Pvt. Ltd. Vs. Union Territory of Chandigarh and Another (2009) 23VST 42 (P&.H)*

Present: Mr. Amar Partap Singh, Advocate counsel for the appellant.
Mr. Manjit Singh Naryal, Addl. Advocate General for the State.

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

1. This judgment of mine shall dispose off following six appeals against the orders dated 7.10.2014 passed by the Deputy Excise and Taxation Commissioner (First Appellate Authority), Patiala Division, Patiala in appeals against the order passed by the Assessing Authority dated 27.9.2012 creating demand under the Punjab Value Added Tax Act.

1. Appeal No. 422 of 2014 assessment year 2007-08 creating additional demand of Rs. 1,00,09,827/-.
2. Appeal No. 424 of 2014 assessment year 2008-09 creating additional demand of Rs. 78,80,722/-.
3. Appeal No. 426 of 2014 assessment year 2009-10 creating additional demand of Rs. 73,09,585/-.
4. Appeal No. 428 of 2014 assessment year 2010-11 creating additional demand of Rs. 75,20,628/- under the Punjab VAT Act.
5. Appeal No. 425 of 2014 assessment year 2008-09. The demand was created by the Assessing Authority but the case was remitted back for reconsideration after considering "C" and "F" Forms.
6. Appeal No. 427 of 2014 assessment year 2009-10. The demand was created by the Assessing Authority has ever the appellate authority remitted the case back to the Assessing Authority for reconsideration after examining "C" and "F" Forms.
7. Remanding the case to the assessing authority.

2. The appellant had also filed two others appeal No. 423 and 429 of 2014 creating additional demands of Rs.32,32,777/- and Rs.6,15,874/- for the assessment years 2007-08/and 2010-11 respectively and this Tribunal vide order dated 7.12.2015 had remitted these appeals to the assessing authority on the request of the counsel for the appellant that he had requisite 'C' and 'F' Forms for seeking deductions in the tax, however, he had requested that the decision, taken in the other six appeals by this Tribunal, would be binding upon the appellant quo those two appeals.

3. The appellant had already deposited requisite 25% of the additional demand, therefore, no question regarding compliance of Section 62 (5) is surviving.

4. Since all these appeals involve the common question of law, therefore, these are decided together. M/s Heinz India Pvt. Ltd. (herein referred as the appellant) is engaged in the business of manufacture and sale of food product. The assessment proceedings were initiated against the appellant by the Excise and Taxation Commissioner for the assessment year 2007-08 to 2010-11 by issuing notice for the assessment.

5. The department, while scrutinizing the assessment, had alleged that the tax paid by the appellant was not in accordance with the schedule. The appellant is manufacturing various items and Glucon-D is one of their properties. The items so produced from Glucon-D are not classifiable under entry No.58 (218) of schedule-B of Punjab VAT Act, but all are unclassified items taxable @ 12.5%. In this regard, the department relied upon the clarifications made by the Excise and Taxation Commissioner vide his order dated 13.11.2009. The department as such directed the appellant to show cause as to why the tax be not levied @ 12.5%. The appellant submitted the reply challenging the clarifications and submitted that their product Glucon-D is classifiable under entry No.58 (218) of schedule-B of Punjab VAT Act directing tax at the rate of 4%.

7. After hearing the parties, the Assistant Excise and Taxation Commissioner vide his order dated 27.9.2012, while disapproving submissions made by the appellant confirmed the fact that the appellant was liable to pay tax @ 12.5% on the items produced by him after purchasing the Glucon-D from M/s Roauette Riddhi Siddhi Pvt. Ltd. The Assistant Excise and Taxation Commissioner, while passing orders relied upon the clarification made by the Commissioner in the case of M/s Bala Ji Chemical, Barnala, dated 18.02.2008 and M/s Daulat Ram Chaman Lal Barnala decided on 13.11.2009. The appellate authority also confirmed the penalty and interest.

8. During the course of hearing of these second appeals, this Tribunal vide order dated 20.7.2015, directed the appellant to submit the following details:-

1) Properties of Glucon D
2) List of products manufactured by the appellant
3) Number of varieties manufactured
4) Method of formation and packing of Glucon D

9. In compliance with the aforesaid order, the appellant submitted the report. The relevant part which is reproduced as under:-

3. "In view of the above it is submitted that the appellant is selling following varieties of GLUCON-D. The details of the product along with the description of label is given below in the chart:-

Sr. No.	*Product name*	*Label*
1.	*Glucon-D Original*	*Glucose 99.4%, mineral (calcium*

		phosphate) and Vitamin-D
2.	*Glucon D Winter Shakti*	*Glucose 99%, mineral (calcium phosphate) and Vitamin -D, Flavour Ginger*
3.	*Glucon D Tangy Orange Flavour*	*Sucrose, Glucose (40%), Acidity Regular (E330), Added Flavours (Nature- Identical and Artificial Flavouring Substances), Minerals (Calcium Phosphate), Common edible salt, vitamin (vitamin C) and color (E110)*
4.	*Glucon D Nimbu Pani: Flavour*	*Glucose (52%) Sucrose, Acidity Regular (E330), Added Flavours (Nature Flavouring Substances), Minerals (Calcium Phosphate), Common edible salt, vitamin (vitamin C)*

4. The appellant is also enclosing following documents as Annexture-A-l collectively:

(i) Composition of Glucon D
(ii) Composition of Glucon D Winter Shakti
(iii) Composition of Glucon D Tangy Orange Flavour
(iv) Composition of Glucon D Nimbu Pani Flavour

5. Appellant is also enclosing certificate of analysis issued by Ana Laboratories whereby Glucon D is tested and the report on the composition of Glucon D has been issued. Same is enclosed as Annexure A-2.

6. The appellant is purchasing glucose from M/s Roquette Riddhi Siddhi Pvt. Ltd and the same is used in preparing Glucon-D. The appellant has enclosed the certificate issued by Roquette Riddhi Sidhi Pvt. Ltd whereby it is stated that Dexitrose Monodydrate Powder is manufactured and supplied to the appellant and the same is produced from maize. A copy of the certificate of plant origin issued by Roquette Riddhi Sidhi Pvt. Ltd is enclosed as Annexure A-3. Roquette Riddhi Sidhi Pvt. Ltd has also issued a certificate of analysis annexure A-4 which mentions the description of the product dextrose monohydrate white odourless crystalline powder having a blend, sweet taste.

8. The appellant has also enclosed the manufacturing process of Glucon-D as Annexure A-5 which prescribes the following method of manufacturing process which is reproduced as under:-

> *"The method of manufacturing of Glucon-D involves the following steps:-*
>
> 1. *Weighing of major ingredients involved in the recipe-Glucose, Sugar, Citric Acid etc.*
> 2. *Weighing of minor ingredients involved in the recipe-flavour, color, vitamins and minerals*
> 3. *Blending of minor ingredients with sugar in a blender and creation of premix mixture as an intermediate.*
> 4. *Discharge of pre-weighed major ingredients pneumatically into a Forberg/Nauta mixer followed by the premix intermediates (all ingredients passed through stainless steel sieve of 20 mesh).*

5. *Mixing of all the ingredients in a Forberg/Nauta mixer for 10 minutes.*
6. *Collection of sample from the mixture for Quality analysis.*
7. *Discharge of the final mixed product into the hopper and sieved through 12 mesh before packing*
8. *Packing product in sachets followed by sealing."*

10. The Counsel for the appellant while assailing the orders passed by the authorities has urged that the appellant is in possession of the certificates "C" and "F" for consideration of authorities and the same could not be produced at the appropriate time as the same could not be procured. Therefore, the First Appellate authority was right in remitting the cases back for this purpose. While processing the second issue regarding the taxability of Glucon-D, he has urged that the clarifications/observations made by the authorities including the Excise and Taxation Commissioner, Punjab are on the basis of product, usabilities, one being used as "industrial input" and other for direct consumption by the consumer. The commissioner has taken into consideration the aspect of the end user and pack sizes. However, the appellant has relied upon the fact FAQs/Circulars/Clarifications, wherein the answer to the question No.46 has been made to the effect that items which are mentioned at Entry 46 (now Entry58 of the Punjab Value Added Tax Bill, 2005), the industrial input and packing material would be taxable @ 4% irrespective of the use either by way of industrial input or by trading. He has further urged that Once the goods are: listed in a particular entry and legislature, in its wisdom, has included the item in the list even of multiple use, it would be treated as covered by specific entry provided therefore. In this regard, he has placed reliance on the judgments M/s Indian Aluminum Cables Ltd. Vs. Union of India reported in 21 ELT 3, State of Punjab Vs. Fedral Gogul Goetze (I) Ltd. reported in 43 VST. It was further argued that in case of Goyal Motor Parts Vs State of Punjab reported in 38 VST 159 (P&H), it was observed that when there is a specific entry in the list, its end use is immaterial to decide the controversy. He also referred to the judgment delivered in the case of CCE Vs. Carrier Aircon Ltd. reported in 199 ELT 577, M/s Reckitt & Colman of India Ltd. Vs. Asstt. Collr. Of C. Ex., Hyderabad, reported in 72 ELT 263 (AP) and 76 ELT A55 (SC), in order to buttress his arguments. Thus, he has pressed for determining the Glucose-D as an item falling at item No. 58, Entry No.218 of Schedule-B taxable at the rate of 4%.

11. To the contrary, the State Counsel has submitted that all certificates relating to the sale of Glucose-D at the CSD stores could not be produced for a period of three years pending assessment proceedings despite the fact that the Assessing Authority had given various opportunities to produce such certificates. Thus, the claim of the appellant on that account has rightly been disallowed. These certificates were also not produced before the Appellate Authority. The Designated Officer had relied upon clarifications given by the Excise and Taxation Commissioner, Punjab in case of Balaji Chemicals, Sekha Road, Barnala. The said clarification made U/s 85 of the Punjab Value Added Tax Act, 2005 has been challenged in appeal but the same was dismissed as such it has attained finality.

12. While refuting the judgments as relied upon by the counsel for the appellant, the State Counsel , has argued that the judgments are on their own facts. The judgment passed by the Hon'ble Allahabad High Court in the case of Commissioner of Sales Tax V/s M.G. and Company, Delhi is on the basis of the entries as contained in the Sales Tax Act of that State which is not in question in the present case.

13. Arguments heard. Record perused.

14. On critical analysis of the arguments raised by the rival parties the following features emerge from the business held by the appellant:-

(i) *The appellants are manufacturers and the traders of product manufactured by them while involving Glucose-D as one of the properties of those items and sell the same under their own brand name.*

(ii) *The properties of Glucon-D which originally are Dextrose Nonohydrate or D-Glucose Molecular Formula C6-H1-20-6- H2-0 it is a white crystalline powder, odourless and sweet to taste.*

(iii) *The Vitamin-D, calcium citric acid and phosphate are not the properties of Glucon-D but are added in the glucose to increase nutrition value of product and to manufacture the new product for sale in the brand name of the company.*

(iv) *Some other additives are added to make the product stable* during shelf life. 100% Glucose, without any additive, *can not be stable in market conditions. Even in some products, Glucose to the extent of 50% or less is used in manufacturing the product.*

(v) *It also reveals that in order to cater to consumption needs of the consumers. The appellant is selling manufactured items by using Glucose-D as one of the properties and the same is sold to the traders in whole sale or retail in various small pack sizes to meet the individual needs.*

(vi) *The Glucose-D is allowed to pass through a mechanical process. After making many additions and preservatives and using anti caking agents like phosphates, resulting into new product.*

15. It is not sold in bulk as an "Industrial Input" but thrown in the market as energy food/medicine for the use of the customers directly in small pack sizes by the company in its own brand name. The appellant has not stated in its report dated 18th September, 2015 that they are not trading the Glucose-D or are selling as an "Industrial Input" to be used for manufacturing other products. Rather, it has been mentioned that they purchase Glucose as Industrial Input from Roquette Ridhi Sidhi Pvt. Ltd. for manufacturing their products and the after manufacturing the same sell it in their brand name "Heinz" to its customers. It is also not mentioned in the report that the appellant company understands treats, considers or sells it to as an "Industrial Input". Rather it appears that the Glucon-D is used as one of the constituents in preparation of an item of energy/food supplement to be sold in the market in small pack sizes.

16. It may further be observed that the question with regard to taxability over liquid Glucose, solid Glucose and Glucon-D was raised before the Excise and Taxation Commissioner, Punjab U/s 85 of the Act in case of Daulat Ram Chaman Lal, H.O. Sadar Bazar, Barnala whereupon, Sh. A.Venu Prasad, IAS, Excise and Taxation Commissioner vide order dated 13.11.2009. After considering Excise Tariff No. 1702 observed as under:-

"The Departmental representative pointed out that the solid glucose/glucose powder is consumed as such and is not used in the manufacturing of confectionary goods, for example Glucon-C and Glucose-D powder are used as such. Had this glucose been covered under the Excise Tariff No. 1702.00 then the entry should have been glucose only. The solid glucose/glucose powder was intentionally left out as the same is not an "industrial input." Therefore, the solid glucose/glucose powder is taxable @ 12.5% being an unclassified item."

17. Sh. A.Venu Prasad, Excise and Taxation Commissioner, Punjab also took the similar view vide his order dated 8.2.2008 in case of Balaji Chemicals, Sekha Road, Barnala. He again, vide his order dated 18.10.2010 clarified that this rate of tax i.e. 4% is applicable only

when it is sold as an "Industrial Input" and in bulk form. In all other cases, where it is sold as final product for direct consumption in small packings, the rate of tax will be 12.5% and surcharge as applicable (being unclassified item).

18. As regards, the arguments pertaining to question No. 46 of the FAQs/Circulars/Clarifications, this is a question, the answer to which was given by an officer of the Department, its foundation can't be traced to any notification or circular. It is also not based on any instructions or rules over which the department may rely. This is a question of interpretation to be made by the authorities or the courts so as to find out the exact meaning of the "Industrial Input" or the rate of tax when the goods are used as Industrial Input or when these are put to use after shaping, treating, tempering or manufacturing other items by mixing the additives, preservatives and vitamins.

19. The appellant though has named its item as Glucon-D/Glucose-D with an intention to get the same covered by entry No. 218, item No.58 of Schedule-B in order to pay the lesser tax, yet the following items, as is apparent from the documents annexed to the report annexure-5, are sold in different flavours in the market:

Sr. No.	Product name	Label
1.	Glucon-D Original	Glucose 99.4%, mineral (calcium phosphate) and Vitamin-D
2.	Glucon D Winter Shakti	Glucose 99%, mineral (calcium phosphate) and Vitamin -D, Flavour Ginger
3.	Glucon D Tangy Orange Flavour	Sucrose, Glucose (40%), Acidity Regular (E330), Added Flavours (Nature- Identical and Artificial Flavouring Substances), Minerals (Calcium Phosphate), Common edible salt, vitamin (vitamin C) and color (E110)
4.	Glucon D Nimbu Pani Flavour	Glucose (52%) Sucrose, Acidity Regular (E330), Added Flavours (Nature Flavouring Substances), Minerals (Calcium Phosphate), Common edible

20. Besides the aforesaid items, internet shows that the appellant is manufacturing other items also catering to the needs of the consumers.

21. All these things go to show that the appellant is projecting the sale of Glucon-D only with intention to evade the tax.

22. As regards the classification of Glucon-D, the appellant has referred me to the judgments delivered in cases of Commissioner of Central Excise, Delhi Vs Carrier Aircon 2006 (199) Ltd. E.L.T. 577 (S.C.), Indian Aluminium Cables Ltd Vs. Union of India 1985 (21) E.L.T. 3 (S.C.) page/284, Dunlop India Ltd. & Madras Rubber Factory Ltd. Vs. Union of India and Others 1983 (13) E.L.T. 1566 (S.C.) page/241, M/s Indian Aluminum Cables Ltd. Vs. Union of India reported in 21 ELT 3, State of Punjab Vs. Fedral Gogul Goetze (I) Ltd. reported in 43 VST 100 and Goyal Motor Parts Vs State of Punjab reported in 38 VST 159 (P&H).

23. Having gone through the aforesaid judgments, the same are on their own facts and are not relevant to the facts of the present case. On critical analysis of the aforesaid judgments and the law of land, it may be observed that in order to determine elements which contribute to classify an item, the end use of the product by itself may not be material but number of factors have to be taken into consideration for this purpose viz. fiscal entry; basic character; function and use of the goods, how the people in trade and commerce conversant with the subject,

generally treat and understand them in the usual course; the intention of the dealer who sold the goods and the knowledge with regard to the manner in which the goods would be put to sale. While putting the facts situation of the present case, on the aforesaid parameters, it comes out that the Glucose-D is not sold in bulk as an industrial input for manufacturing of an item. Appellant is purchasing Glucose from Roquette Ridhi Sidhi Pvt. Ltd. and the said firm has mentioned that Glucose (Dextrose Monohydrate Powder) is manufactured and supplied to the appellant. The said powder is used by the appellant in manufacturing other items for sale to the consumer.

24. In cases where it is to the knowledge of the seller that the item is sold an "industrial input", it may attract the entry No. 218 item 58 of Schedule- 13 attracting lesser rate of tax. But in the facts and circumstances of the present case, when the appellant manufactures the item in such a manner so as to reach the consumers as a medicine, an energy drink or-a food supplement and sold in small packets then it would be very difficult to term said product as an industrial input. The said product is prepared through a mechanical process with the help of Glucon-D, vitamins, calcium, phosphate, other chemicals, flavours and preservatives. In such circumstances, claim to be classified as item No.58 Entry No. 218 of Schedule-B would be against the very fundamentals of the policy of taxation and intention of framing the schedule. It is also a matter of common knowledge and experience that the people/consumers of the country behave, understand treat and purchase such brand of "Heinz" as an energy drink or beneficial at the time of or for the treatment of disease and not as an Industrial Input for manufacturing other items and the products as manufactured by the appellant are sold by the chemists whereas, industrial glucose is sold by traders who deal in chemicals and industrial Inputs. The appellant prepares these items after purchasing the Glucon-D from traders, therefore, while considering the case from that angle also, this item cannot attract entry 58 of Schedule-B of the Act. The intention of the legislature was to tax the traders and whole sellers of Industrial Input at such a rate but never proposed to charge tax at a lower rate from those manufactures who manufactures and sell the goods out of Industrial Input for sale to the consumers. It may also be noticed that when the Glucon-D passes through a manufacturing process many flavours, chemicals, vitamins and anti caking agents are mixed and it comes out to be a different item and does not remain as "Industrial Input".

25. As regards the 'C' and 'F' Forms for the assessment year 2008-09 and 2009-10. The appellant has sought permission to produce those forms for taking into consideration for seeking benefit on the concessional supplies, it would be appropriate opine that the 'C and 'F' Forms, which could not be produced earlier, can be taken into consideration even at the appellate stage, particularly when the appellant has the genuine reasons for not producing the same earlier. Since such forms being issued by the department could not manipulated lateron, therefore, it would be expedient in the interest of justice to grant such permission and the view taken by the First Appellate Authority that case could be remitted back for that purpose is correct.

26. I find support to my this view from the judgment delivered in case of Deepak Radios Pvt. Ltd. Vs. Union Territory of Chandigarh and Another (2009) 23VST 42 (P&.H) wherein it was observed as under :-

> *"Held, that there is no principle of law discernible from Section 51 (1A) of the Punjab General Sales Tax Act, 1948 or rule 29 (xi) of the Punjab General Sales tax Rules, 1948 confining production of declaration in form ST-XXII-A by the dealer only before the Assessing Authority and that no such documents can be produced before the appellate authorities. Such documents could be produced at any stage in the assessment proceedings. They could be produced before the Assessing Authority, Commissioner, Tribunal or even the High Court. It is the*

production of the documents, which is mandatory, but not the stage at which such documents are produced. However, the dealer has to furnish sufficient cause for late production of the beneficial documents. The case of the appellant right from the day of filing the returns for the last quarter of 2001-02, had consistently been that no tax was imposable upon it as it had sold goods on which tax had been paid at the point of first sale. Therefore, all the orders including the assessment orders were liable to be set-aside."

27. As such, it would be appropriate if the Assessing Authority reconsiders the case of the appellant qua 'C' and 'F' Forms for the assessment year 2008-09, 2009-10 if the same are produced before it.

28. Resultantly, these appeals, are dismissed with the aforesaid observations that the items as produced by the appellants are not covered by Entry Mo. 218 Item 58 of Schedule-B of the Punjab Value Added Tax Act; and would attract unclassified items, however, as regards 'C' & 'F' Forms. The appellant may produce the said forms whereupon the appellate authority would, proceed in accordance with law. Copy of the order be placed in each file.

29. Pronounced in the open court.

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NOTIFICATION

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AMENDMENT IN THE FINANCE BILL, 2016 REGARDING CST

THE FINANCE BILL, 2016
(BILL NO. 18 OF 2016)

A BILL to give effect to the financial proposals of the Central Government for the financial year 2016-17.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:-

CHAPTER 1

PRELIMINARY

1. Short title and commencement.-(1) This Act may be called **the Finance Act, 2016.**

(2) Save as otherwise provided in this Act, sections 2 to 112 shall be deemed to have come into force on the 1st day of April, 2016.

CHAPTER XII

MISCELLANEOUS

[* * *]

PART II

AMENDMENT TO THE CENTRAL SALES TAX ACT, 1956

221. AMENDMENT OF ACT 74 OF 1956.- In the Central Sales Tax Act, 1956, in section 3, after *Explanation 2,* the following *Explanation* shall be inserted, namely:-

"*Explanation 3.-* Where the gas sold or purchased and transported through a common carrier pipeline or any other common transport or distribution system becomes co-mingled and fungible with other gas in the pipeline or system and such gas is introduced into the pipeline or system in one State and is taken out from the pipeline in another State, such sale or purchase of gas shall be deemed to be a movement of goods from one State to another."

STATEMENT OF OBJECTS AND REASONS

The object of the Bill is to give effect to the financial proposals of the Central Government for the financial year 2016-17. The notes on clauses explain the various provisions contained in the Bill

ARUN JAITELY

PRESIDENT'S RECOMMENDATION UNDER ARTICLES 117 AND 274 OF THE CONSTITUTION OF INDIA

[Copy of letter No. F.2(8)-B(D)/2016, dated the 23rd February, 2016 from Shri Arun Jaitely, Minister of Finance, to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject-matter of the proposed Bill, recommends, under clauses (1) and (3) of article 117, read with clause (91) of article 274, of the Constitution of India, the introduction of the Finance Bill, 2016 to the Lok Sabha and also recommends to the Lok Sabha the consideration of the Bill.

2. The Bill will be introduced in the Lok Sabha immediately after the presentation of the Budget on the 29th February, 2016.

Notes on clauses

* * *

MISCELLANEOUS

Clause 221 of the Bill seeks to amend section 3 of the Central Sales Tax Act, 1956, so as to *insert* an *Explanation 3* therein to provide that where the gas sold or purchased and transported through a common carrier pipeline or any other common transport or distribution system becomes co-mingled and fungible with other gas in the pipeline or system and such gas is introduced into the pipeline or system in one State and is taken out from the pipeline in another State, such sale or purchase of gas shall be deemed to be a movement of goods from one State to another.

* * *

NOTIFICATION (Punjab)

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NOTIFICATION REGARDING CHANGE IN RATE OF ADVANCE TAX ON YARN

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

NOTIFICATION

The 31st March, 2016

No. S.O. 36/P.A. 8/2005/s.6/2016.-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 (7) of section 6 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 the Government of Punjab Department of Excise and Taxation. Notification No. S.O. 90/P.A.8/2005/S.6/2013 dated the 4th October, 2013, with effect from 1st day of April, 2016, namely:-

AMENDMENT

In the said notification,-

(i) For serial number 4, the following shall be substituted, namely:-

"4.	All types of yarn (including cotton yarn), their waste and sewing thread,"; and	3.3

(ii) For serial number 10, the following shall be substituted, namely:-

"10.	100% polyester yarn, polyester top, polyester chips, polyester staple fiber and its waste, acrylic fiber."	5.5

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

NOTIFICATION (Punjab)

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NOTIFICATION REGARDING AMENDMENTS IN SCHEDULE 'A', 'B' & 'E'

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

NOTIFICATION

The 31st March, 2016

No. S.O. 37/P.A.8/2005/S.8/2016.- 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 'A', 'B' and 'E' respectively, appended to the said Act, with effect from 1st day of April, 2016, by dispensing with the condition of previous notice, namely:-

AMENDMENT

(1) in Schedule 'A', for serial number 4, the following shall be substituted, namely:-

"4. All types of feed (including supplements, grass, hay and straw), for aquatic fish, pig, poultry and cattle."

(2) in Schedule 'B', -

(i) serial number 94 and entries relating thereto, shall be deemed to have been omitted on and with effect from 1st day of October, 2013;

(ii) for serial number 134 the following shall be substituted, namely:-

"134. 100% polyester yarn, polyester top, polyester chips, polyester staple fiber and its waste, acrylic fiber"; and

(iii) in serial number 145, the words and sign "Stone bajri." Shall be omitted; and

(3) in Schedule 'E', after serial number 29, the following shall be inserted. Namely:-

"30. Stone bajri and sand when carried in, -

(i)	tractor trolley;	Rs. 4,000/- per trip
(ii)	ordinary truck having capacity up to 9 mertric ton; and	Rs. 7,000/- per trip

(iii)	any other vehicle bigger than vehicles mentioned in item (i) and (ii) above.	Rs. 10,000/- per trip

31.	All types yarn (including cotton yarn), their waste and sewing thread	3.3%”

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

NOTIFICATION (Punjab)

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NOTIFICATION REGARDING AMENDMENT OF RULE 3 OF PVAT RULES, 2005

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

NOTIFICATION

The 31st March, 2016

No. G.S.R. 28/P.A.8/2005/S.70/Amd.(58)/2016.-In exercise of the powers conferred by sub-section (i) of section 70 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 rules further to amend the Punjab Value Added Tax Rules, 2005 namely:-

RULES

1. (1) These Rules may be called the Punjab Value Added Tax (Second Amendment) Rules, 2016.
   (2) They shall come into force on and with effect from the date of their publication in the Official Gazette.
2. In the Punjab Value Added Tax Rules, 2005, in rule 3, in sub-rule (1), for the words and sign “managing the business.”, the words “managing the business:” shall be substituted and thereafter, the following proviso shall be measured, namely:-

   “Provided that the Punjab Bureau of Investment Provisional, on receipt an application from a person for registration under the aforesaid sections, shall immediately issue of provisional registration number to such person and shall send his application to the concerned designated officer, for further enquiry. The designated officer concerned after making necessary enquiry, if satisfied, shall issue the registration certificate on priority and send the same to the aforesaid Bureau, for handing over the registration certificate and permanent Tax Identification Number (TIN) to the said person within a period seven days from the date of his making the application.”

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

CIRCULAR (Haryana)

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INSTRUCTIONS REGARDING SERVICE OF NOTICE IN FORM N-2 FOR INITIATING PROCEEDINGS U/S 15(2) OF THE ACT.

From

The Excise and Taxation Commissioner,
Haryana, Panchkula.

To

All Jt. Excise and Taxation Commissioners (Range),
All Dy. Excise and Taxation Commissioners (ST),
All Dy. Excise and Taxation Commissioners (PGT),
In the State of Haryana.

Memo No. 398 /ST-6,
Panchkula, dated the 21.03.2016

Subject:- **Instructions regarding service of Notice in form N-2 for initiating proceedings U/s 15(2) of the Act.**

Memo

On the subject cited above, it has been observed that in absence of proper service of notice in form N-2, appeals are being decided against State. The proper service of notice in form N-2 is mandatory under law for proceedings u/s 15(2) of the HVAT Act.

I am directed to stress upon you that before proceeding for assessment u/s 15(2) of HVAT Act it should be ensured that above notice be served and name and capacity of the receiptant be recorded in office copy of the notice. However in any case, if service of notice is not feasible, the process prescribed under law be strictly followed. These receipts should be countersigned by process server. The Assessing Authorities should also mention regarding service of notice on the order sheet and assessment order. Every possible effort should be made to retain on record an evidence towards service of notice for future reference.

Any violation of the above instructions will be viewed seriously and action will be initiated against the erring officer official as per CSR.

Addl. Excise and Taxation Commissioner (T),
for Excise and Taxation Commissioner, Haryana.

CIRCULAR (Haryana)

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GUIDELINES REGARDING REGISTRATION/AMENDMENT/CANCELLATION CERTIFICATES UNDER HVAT ACT, 2003/CST ACT AND RULES FRAMED THEREUNDER

From

The Excise & Taxation Commissioner,
Haryana, Panchkula.

To

All Joint Excise & Taxation Commissioner's(Range),
In the State of Haryana.
All the Dy. Excise & Taxation Commissioner's(ST),
In the State of Haryana.

Memo No. 307 / ST-5,
Panchkula, dated 01.04.2016

Subject: **Guidelines regarding Registration/Amendment/Cancellation Certificates under HVAT Act, 2003/CST Act and Rules framed thereunder.**

Memo:

On the above cited subject the matter has been considered in this office to facilitate Ease of Doing Business and in view of formulation of Enterprise Promotion Policy, 2015 in the State. On consideration, it has been decided to issue guidelines to all the Assessing Authorities in the State providing timelines for the issue of Registration Certificate and its Amendment/Cancellation under the provisions of HVAT Act 2003/CST Act and Rules framed thereunder.

It is not out of place to mention here that Section 11 of the HVAT Act, 2003 provides that every dealer liable to pay tax or any dealer seeking voluntary registration shall apply, to the assessing authority of the ward, for registration under the HVAT Act. Rule 11 of the HVAT Rules, 2003 lays down the procedure for registration. Rule 13 lays down the procedure for amendment in registration certificate and Rule 14 lays down the procedure for cancellation of registration certificate. Proviso to sub- rule 7 of Rule 11 provides that an assessing authority shall dispose of the application for registration within 60 days of the date of receipt of the said application in the office concerned. No time limit prescribed for disposal of applications for amendment and cancellation under the HVAT Rules, 2003.

Under the back drop of above provisions and to facilitate Ease of Doing Business and in view of formulation of Enterprise Promotion Policy, 2015 in the State, it has been decided that Assessing Authority shall dispose of application for registration within 15 days of the date of receipt of application. In case any deficiency is noticed by the assessing authority, he shall issue a notice to the applicant, within five days from the receipt of the application, to remove the deficiency within a further period of five days. In case the applicant fails to remove the deficiency within the stipulated period, the application would be liable to be rejected. Further, the assessing authority shall dispose of the application for amendment in Registration Certificate and its supporting documents, if any, within fifteen days of the date of receipt of the said application. Further, the assessing authority shall dispose of the application for cancellation of Registration Certificate and its supporting documents if any, within fifteen days of the date of receipt of the said application.

The above guidelines be brought to the knowledge of all the Assessing Authorities and Taxation Inspectors working under your control. It is again stressed upon that Assessing Authorities may be advised to adhere to the time lines mentioned above for the grant/issue of Registration Certificate and its Amendment/Cancellation under the provisions of HVAT/CST Acts and Rules framed thereunder. The checklist as Annexure 'A' for the site visit/inspection for the grant of Registration under HVAT/CST Act and Rules framed thereunder is enclosed.

Addl. Excise & Taxation Commissioner (T),
for Excise & Taxation Commissioner, Haryana.

CHECKLIST: ANNEXURE 'A

PROCEDURE OF SITE VISIT/INSPECTION FOR THE GRANT OF REGISTRATION UNDER HVAT/CST ACT

Prior to the grant of registration under section 11(3) of the Haryana Value Added Tax Act, 2003, the Assessing Authority either himself or through authorized enquiry agency i.e. Taxation Inspector shall conduct enquiry to verify the correctness and genuiness of the requisite information/document mentioned in the application as required as per Rule 11(7) of the Haryana Value Added Tax Rules, 2003/CST Rules. The physical verification of the business premises shall be conducted by visiting at the spot before granting registration to the dealer. The enquiry agencies shall submit his/her report to the concerned Assessing Authority within 48 hours from the date of verification. The checklist for the purpose of the verification is as under:

Sr. No.	Verification of information/document of business premises
1.	Verification of location of business premises/branch(es) of the firm mentioned in application for Registration Certificate.
2.	Verification regarding nature of business.
3.	Verification regarding constitution of the business i.e. antecedents of proprietor/partners/any authorized person as per Rule 11(5).
4.	Verification regarding details of properties owned by proprietor/partners/firms/sureties/companies etc.
5.	Verification regarding genuineness and solvency of sureties.

6.	Verification whether sign board is displayed on the premises.
7.	Verification regarding list of goods required to be purchased at concessional rate of tax u/s 7 of the Act.
8.	Verification of documents submitted/uploaded alongwith application for Registration Certificate under the HVAT/CST Act and Rules framed thereunder.
9.	Any other verification of documents mentioned in Rule 11(5) of the HVAT Act Rules/CST Rules.

NOTIFICATION (Haryana)

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NOTIFICATION REGARDING AMENDMENT OF Rule 42 of HVAT RULES, 2003

HARYANA GOVERNMENT
EXCISE AND TAXATION DEPARTMENT

Notification

The 11th March, 2016

S.O. No. 7/ST-1/H.A. 6/2003/S.60/2016.-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, namely:-

1. These rules may be called the Haryana Value Added Tax (Amendment) Rules, 2016.

2. In the Haryana Value Added Tax Rules, 2003, in rule 42, for serial number 1 and entries thereagainst, the following serial number and entries thereagainst shall be substituted, namely:-

“1.	Committee comprising of three senior most Additional Excise and Taxation Commissioners from department side posted at the Head Quarter and an officer not below the rank of Deputy Excise and Taxation Commissioner nominated by the Commissioner as the Member Secretary. The senior most amongst these and Additional Excise and Taxation Commissioners shall be the Chairman.	above twenty five lakh rupees”

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

NEWS OF YOUR INTEREST

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DC GETS EXCISE AND TAXATION, TALWAR TO BE NEW ADC

CHANDIGARH: Maintaining a balance among officers of the UT and states, UT Administrator Kaptan Singh Solanki today assigned the charge of various departments.

Sources said while making reshuffle, Parimal Rai, Adviser to the Administrator, focused on some areas such as health, education and transport that have been given to the senior and experienced officers.

The Excise and Taxation Department and the Labour Department have returned to Ajit Balaji Joshi, Deputy Commissioner, while Amit Talwar, PCS, will be Additional Deputy Commissioner and Land Acquisition Officer. He will also hold the charges of Additional Secretary, Urban Planning, Divisional Manager, CTU, and Director Transport-cum-(ex-officio) Additional Secretary Transport, Registering and Licensing Authority.

Parimal Rai, Adviser to the Administrator, will also hold the charge of Chief Vigilance Officer.

KK Jindal, who joined recently, has been given the charges of Secretary Personnel/Vigilance, Labour, Employment, Hospitality, Industries, Technical Education and Secretary Transport.

Jitender Yadav has been given the charges of Director Higher Education and Secretary, House Allotment Committee (Lower).

Prince Dhawan has been retained and will hold his earlier departments. Kriti Garg, SDM South, will also hold the charge of Joint Chief Electoral Officer and Director, Museum and Art Gallery.

The charge of SDM East has been assigned to Bhupesh Chaudhary in addition to his own duties.

Some more departments such as Public Relations, Environment Science and Technology have been added to the Home Secretary, which increase his departments' number to 17, while the number of the Finance Secretary departments has remained 11.

Courtesy: The Tribune
30th March, 2016

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NO NEW TAXES IN HARYANA BUDGET, ROCKETING REVENUE DEFICIT A WORRY

CHANDIGARH: Reading out the budget speech for 2016-17, Haryana finance minister Capt Abhimanyu on Monday announced no new taxes in the budget estimates and listed out a slew of small-time tax exemptions.

Behind his tax cuts lay a spiralling revenue deficit of over Rs 12,000 crore (as per 2016-17 budget estimates), higher by over 14 % as compared to the 2015-16 revenue deficit of about Rs 10,000 crore. The finance minister, however, was quick to put the blame for the increase in revenue deficit on account of taking over of 75 % outstanding debt of state's two power distribution companies under Ujwal DISCOMs Assurance Yojana (UDAY).

"The 2016-17 budgetary estimates have been substantially impacted by this singular decision. The state government has decided to take over debt of `25,950 crore in two tranches in 2015-16 and 2016-17 under UDAY,'' the state finance minister said. Later, at a briefing, the FM said the debt liability in power sector was an inheritance of the previous Congress regime but taking over the liability was a wise decision of the BJP government.

Another downside is the increase in debt liability from about Rs 1,14,000 crore to about Rs 1,40,000 crore which includes the impact of debt liability takeover under UDAY.

Feeling good

However, where the Finance Minister has reasons to feel pleased is the increase in revenue receipts and capital expenditure. "The revenue receipts for 2015-16 are expected to be Rs 54,167 crore while the revenue receipts for 2016-17 are projected at Rs 62,955 crore. The total revenue receipts as ratio of GSDP is projected at 10.7 % in 2016-17,''he said

The FM said he proposed to increase the capital investment to Rs 8,788 crore in 2016-17 (excluding UDAY), an increase of 29.8 % over 2015-16 revised estimates. He was upbeat over the 15.4% growth in the 2016-17 budgetary estimates as compared to 2015-16. The increase is after discounting the financial takeover of 75 % of the accumulated debt of power distribution companies.

Courtesy: The Hindustan Times
22nd March, 2016

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HC NOTICE TO HARYANA ON VADRA-PROMOTED FIRM'S PLEA

CHANDIGARH: Acting on a petition by Skylight Hospitalities — a company promoted by Congress President Sonia Gandhi's son-in-law Robert Vadra — against notice on imposition of tax, the Punjab and Haryana High Court today asked the authorities concerned not to pass final orders in the matter till the next date of hearing on April 4.

The Division Bench of Justice Ajay Kumar Mittal and Justice Raj Rahul Garg also issued notice to Haryana and other respondents. Notice regarding stay was also issued.

The case hovers around imposition of tax for the company's deal in Gurgaon with realty major DLF. The company was seeking directions to the respondents for supplying complete record on the basis of which notice, dated October 12, 2015, was issued under Section 16 of the Haryana VAT Act, 2003. Directions were sought against assessment proceedings until complete and relevant information was furnished.

The company claimed that the 43-page document provided to it was not sufficient to prepare its defence. The company also claimed non-supply of relevant documents despite representations.

Elaborating, counsel Kartikeya Iyer claimed representations were made upon receiving the notice to provide record submitted by the Town and Country Planning Department on the land deal and assessment that the company sold the licence to DLF for Rs 58 crore.

The representations were submitted on October 26, November 3, November 27 and December 12 last year.

But rather than providing the petitioner company with relevant information, the state authorities were continuing with proceedings in haste, counsel for the company argued.

The Gurgaon (west) Excise and Taxation Officer-cum-Assessing Authority had on October 12 last issued a notice to the company.

It was claimed that the licence granted to the firm for developing a commercial project at Gurgaon was covered under the definition of word "goods" under the Haryana VAT Act.

The licence was sold by the company to DLF for around Rs 58 crore "The proceeds of the sale would, therefore, constitute sale price eligible to tax under the HaryanaVAT Act, 2003," the notice said.

The firm, on the other hand, abmitted it had not sold the licence and only transferred the same to DLF after government permission.

Courtesy : The Tribune
29th March, 2016