

***Latest Judicial
Pronouncements in
VAT***

The Punjab VAT Act, 2005

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Appellate Authorities & Petition to Appeals

- **Section 62(1)(a)** permits an appeal against every original order passed under this Act or Rules by any officer **below the rank of DETC**, to **DETC(Appeals) Appellate Authority as per Rule 2(b)**. Section 62(4) provide that **appeals be filed within 30 days** from date of Communication of the order appealed against.
- **Section 63(1)** permits an appeal to be filed by a person or authorised officer, feeling **aggrieved with the order of Appellate Authority, before the PVAT Tribunal**. Section 63(2) also provides that appeals be filed **within 30 days** from date of Communication of the order appealed against.
- **Section 64 provides for Condonation of delay** in filing of appeals **in the interest of justice, for the reasons to be recorded in writing**.

Appellate Authorities & Petition to Appeals

- **Section 68(1)** provides an appeal shall lie to High Court from every order passed in appeal or revision by Tribunal, if the High Court is satisfied that the case involves **a substantial question of law.** **Section 68(2)(a)** provide that appeals be filed within 60 days from date of Communication of the order appealed against.
- **The appellate Jurisdiction of Supreme Court of India is governed by Article 136 of the Constitution of India.** This Article empowers the Supreme Court to grant leave to appeal against all types of orders passed by the various High Courts of India. Any order passed by the High Court either in a **Civil matter or Writ Petition** can be **challenged** in the Supreme Court of India by filing a **Special Leave Petition.**

WRIT PETITIONS

- **Under Article 32** of the Constitution of India any person can file a **Writ Petition in the Supreme Court of India seeking to protect his/her fundamental rights, guaranteed by the Constitution of India.** Any person can **directly approach the Supreme Court of India only in the above mentioned situation.**
- **Otherwise,** in cases where the **statutory rights or natural justice rights are violated by the State or any organization which can be termed as State,** High Court can be approached by a Writ Petition under **Article 226 & 227** of the Constitution of India. Many public interest litigations are filed by individuals and organizations seeking to protect the fundamental rights of the public. **But a Writ Petition cannot be filed against Private Companies or private organizations or individuals.**

Prior Minimum Payment of 25% for having relief in Appeal

- **Section 62(5) of the Act prior to 17.08.2011 read as under: -**

"(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 amount of tax, penalty and interest, if any."**

Rule 74(1) provides that while filing an appeal, the appellant may submit an application to appellate authority for staying recovery of balance 75% by giving cogent reasons therefore. Rule 74(2) states Appellate authority shall dispose of stay application within a period of 30 days from date of its submission, failing which it shall be deemed that recovery of balance amount has been stayed till the disposal of application.

Courts Verdict{Old Section 62(5)}

- In its order dated **14.07.2009** in **State of Punjab Vs. Malwa** Cotton Spinning Mills Ltd. Barnala (2009) 34 PHT 305 (**P&H**) held that Assessment framed after getting the period of limitation extended from the higher authorities-**Ext. Order is already set aside in other appeal-Insisting for Pre-deposit not justified in Time-Barred Assessment held void.**
- **In old section 62(5) Landmark Judgement came in M/s. Ahluwalia Contracts (I) Ltd. Vs. State of Punjab(2010) 37 PHT 53 (P&H) order dated 29.07.2010 it was held that **25 % should be worked out on Total Tax, Penalty & interest** and if the Petitioner had already paid more than 25% of it then appeal be entertained. **The view of Appellate Authority that 25% should be worked out on the balance amount of tax due, cannot be accepted****

Prior Minimum Payment of 25% of Addl. Demand for having relief in Appeal

- **Section 62(5)** of the Act was amended by Ordinance No.10 of 2011 Not. No.33-Leg./2011 **dt.17.08.2011** as L.A. of the State of Punjab was not in session, which was repealed vide Punjab Value Added Tax (Third Amendment) Act, 2011 vide Notification NO.39-Leg./2011 w.e.f **02.11.2011** but ratifying the actions taken under the Ordinance No.10 of 2011 when the words "**amount of tax**" were substituted with the words "**total amount of additional demand**". The amended provisions read as under: -

"(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).

Courts Verdict{New Section 62(5)}

- In its order dated **18.03.2013** in **Bhagwanpura Sugar Mills vs. State of Punjab** (2013) 46 PHT 192 **(P&H)** the Honourable High Court stated that Act has been already been amended so as to clarify 25% of the amount of tax, penalty and interest which is required to be deposited is of the amount of additional demand i.e. the difference between the tax already deposited and the demand by the assessing authority. **The ambiguity in the statute has been clarified by virtue of the amendment.** Therefore, we do not find any error in the order passed by the Tribunal.

SC Position as on Date Sec.62(5)

- While hearing the lead petition SLP(C) No(s).37727/2013 arisen from the Judgement and order dated 09.12.13 of The High Court of Madras in the case of Dishnet Wireless Ltd. Vs. Commercial Tax Officer & ANR also decided writ petitions on same question W.P.(C) 69 of 2014 Amrit Bansapat Company Pvt. Ltd. Vs. State of Punjab in which case on 31.01.14 Hon'ble Supreme Court stayed the implementation and operation of section 62(5) of Punjab VAT Act, 2005. It was a blanket stay which was vacated on 07.03.2014 with orders dated 31.01.2014 modified that there shall not be any coercive steps for recovery of the amount in question.

Grounds of Appeal in HC Sec.62(5)

- **Article 14** of the Constitution of India which accord **Equality before law** states that "**the State shall not deny to any person equality before the law** or equal protection of the laws within the territory of India". It has been prayed before Hon'ble High Court in various writ petitions (Lead case) CWP 22437 Singla Builders & Promoters Ltd. Vs. State of Punjab of 2013 and in CWP No.8896 filed by PSPCL on 01.05.15 that provisions of **Sec.62(5) requiring mandatory pre-deposit of 25%** of tax, interest & penalty as a condition precedent for hearing appeal without giving any discretion to Appellate Authority to waive such deposit be declared as **Ultra Vires the Constitution of India being violative of Article 14.**

Grounds of Appeal in HC Sec.62(5)

- **Praying in the alternative for issuance of an appropriate writ declaring the provisions of section 62(5) as to be directory in nature** by reading down the said provision as to be that the **appellate authority has incidental and ancillary power** to waive the pre-deposit of tax, interest or penalty in appropriate cases for hearing of appeal, which it deems fit in the circumstances of the case.
- **Meanwhile** Hon'ble High Court till the finalisation of writ petitions; in the case of **Sobti Steels Jalandhar Vs. State of Punjab CWP 423 of 2015 & others** has stayed the recovery by **coercive steps** and the Tribunal has also been directed **not to dismiss the appeal for the want of 25% of pre-deposit** in every case.

Grounds of Appeal in HC Sec.62(5)

- **Not to dismiss the appeal for the want of 25% of pre-deposit in every case: -**

E.G. Reconsideration of Concessional Forms. First Appellate Authority insisted for Pre-deposit of 25%-High Court restored the matter to AA for passing fresh orders in case of **Maneesh Pharmaceuticals Ltd. V. State of Punjab (2015) 50 PHT 258 (P&H)** dt. 05.02.2015.

Pre-deposit of the amount for hearing appeal **not justified where assessment is time-barred** in case of **Samrat Plywood Ltd. Vs. State of Punjab (2015) 50 PHT 187(PVT)** dt.18.12.2014.

Pre-deposit u/s.62(5) is not essential **when order is perverse or void abinitio** held in the case of **Sunil Flour Mills, Abohar Vs. State of Punjab (2015) 50 PHT 199(PVT)** dt. 05.12.2014.

HC to Add. Solicitor General on Sec.62(5)

- High Court before the courts were closed has asked Addl. Solicitor General to move an Application to Honourable Supreme Court and get the directions from honourable supreme court that let the matter be decided by Jurisdictional High Court as Granting of Stay on Recovery Proceedings in every case is passing on a wrong message. It is giving boost to intentional adjustments and frauds due to stays on recovery.

ITC can be utilised for pre-deposit 62(5)

- Gillanders Arbuthnot & Co. Ltd., Ldh. Vs. State of Punjab(2010) 35 PHT 568 (PVT) order dated 02.03.2009.
- New Bharat Rice Mills, Batala vs. State of Punjab (2011) 39 PHT 509 (PVT).
- PVAT Tribunal **in Malwa Industries Ld. V State of Punjab** (2015) 50 PHT 311(PVT) decided on **09.01.2015** & **Prabhat Yarn Traders Vs. State of Punjab** decided on **08.04.15** & in various cases in recent past rejected the states contention regarding **admissibility of available ITC** and accepted appeal by stating that **25% of additional demand may be adjusted against the Input Tax Credit available to the appellant.**

Validity of Rule 21(7) & (8) Iron & Steel

- **Notification No.S.O.9/P.A.8/2005/S.8/2014 dt. 25.01.14 amending Schedule E by prescribing Lower Rate** on Iron & Steel Goods(2.5%) and Non-Cenvat Paid Scrap(1%).VAT on Iron & Steel goods(**3.5%**) **w.e.f 11.03.15.**
- Notification No.S.O.8/P.A.8/2005/S.6/2014 dt. 25.01.14 amending Sr. No.16 of Notification dated 04.10.2013 on Advance VAT **prescribing Lower Advance VAT Rate** on Iron & Steel Goods(2.5%) & Non-Cenvat Paid Scrap(1%) **w.e.f. 01.02.14.** Advance VAT increased to 3.5%11.03.15
- Notification No.G.S.R.5/P.A.8/2005/S.70/Amd.(53)/2014 dt. 25.01.14 notifying new Rules 21(7), 21(8), 54(4)(I)(m) vide **The PVAT, (First Amendment) Rules, 2014 w.e.f. 01.02.14.**
- **Public Notice dt.31.01.2014** and Revised Public Notice both stated that **New Tax Regime** will be applicable w.e.f.01.02.14

Validity of Rule 21(7) & (8) Iron & Steel

- **Rules 21(7) allows ITC** on Iron & Steel Goods only to First Stage, Second Stage or Third Stage Taxable person(11.03.15). **Rule 21(8) effective 01.02.2014** stated where some goods as **input or output are lying in the stock** of a taxable person and **where rate of tax on such goods is reduced** from a particular date, then from that date ITC shall be admissible **at reduced rate** on sale of goods/on using the goods as input for manufacturing **which are lying in stock** on date of reduction of rate of tax.
- A writ Petition **C.W.P.No.5625 of 2014 dt.08.04.2014** was filed by **The Jalandhar Iron & Steel Merchants Association Vs. The State of Punjab & others** alongwith various other writ petitions praying to the Hon'ble High Court **to strike down Rule21(7) & (8) of The Punjab VAT Rules w.e.f. 01.02.14** as to be illegal, arbitrary and without authority of law and being so as to be **ultra vires to the provisions of The Constitution & The Punjab VAT Act, 2005.**

Grounds of Appeal Rule 21(7) & 21(8)

- Rule 21(7) is violative of Article 14 of the Constitution of India "Equality Before Law" being arbitrary, unreasonable and discriminatory.
- Article 19(1)(g) of the Constitution of India is violated as Rule 21(7) prescribe "Unreasonable Restrictions on freedom of trade or commerce."
- Tax paid by a taxable person to another taxable person accrues as ITC except in case of contingencies prescribed in section 13(5) of the enactment popularly known as "Negative List". However by way of Rules 21(7) & 21(8) the state has provided for an extended Negative List which is against the spirit of Legislature which provided for such contingencies in the Act itself.

Grounds of Appeal Rule 21(7) & 21(8)

- Entitlement of ITC Section 13(1) entitles a taxable person ITC in respect of inputs and capital goods in such manner and subject to such conditions, as may be prescribed.

“Can the conditions prescribed vide Rules be so much substantive in the nature so as to exclude the entitlement of ITC itself provided by enactment?”

Rules 21(7) is in the nature of Substantive Provision which could only be provided for by the Legislature.

- Entitlement and Usage of ITC are different

“Can Rule 21(8) in any manner reduce usage of ITC already entitled under Section 13(1) at the time of Purchase of goods itself. Can Rules supersede the Enactment?”

Grounds of Appeal Rule 21(7) &21(8)

■ **Anomaly in the Notifications & Public Notice**

“Advance VAT rate change on Iron & Steel Goods”

“The PVAT(First Amendment) Rules, 2014”

were **made effective from 1st February, 2014**. The Public Notice also stated that **“New Tax Regime”** will be applicable w.e.f 1st February, 2014.

But when u refer to Notification regarding VAT Rate change in Schedule E on iron & steel goods it was made notified on **25.01.14** with immediate effect.

“Can Rule 21(8) effective from 1st Feb., 2014 reducing the ITC on goods lying in stock be applied to iron & steel goods on which Rate was reduced from 25.01.2014?”

Courts Verdict on 21(8)

While disposing of various writ petitions including Jalandhar Iron & Steel Merchants Association(Regd.) Vs. State of Punjab & others on 20th May, 2015 the Honourable Punjab & Haryana High Court held that

“ITC @4.95% was available on purchase of Iron & Steel Goods meant “for resale” as per ist Proviso to section 13(1). Insertion of Rule21(8) provided reduced rate of ITC @2.75% on “sale” of goods lying in stock on 25.01.2014. In period of 25.01.2014 and 01.04.2014 Rule 21(8) could not be notified in the absence of statutory power to Empower the State to notify such a Rule as Enabling Provision i.e. Amended Proviso to Section 13(1) came into force on 01.04.2014.” PVAT(Second Amendment) Act, 2013 Not. No.49-Leg/2013 Notified on 15.11.2013. Amedment to ist proviso to sec.13(1) made effective from 01.04.2014.

Innocent purchaser cannot be disallowed Input Tax Credit

According to **section 13(15)** of Punjab VAT Act, 2005 **the onus to prove that the VAT invoice on the basis of which, ITC is claimed, is bonafide and is issued by a taxable person, shall lie on the claimant.**

The Punjab & Haryana High court had delivered a landmark judgment namely **Gheru Lal Bal Chand Vs. State of Haryana** and another (2011) 40 PHT 145 (P&H) **on 23/09/2011** disposing off 26 writ petitions

“No liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling registered dealer in the treasury unless it is fraudulent, or wilful collusion or connivance with the registered selling dealer or its predecessors is established.”

Innocent purchaser cannot be disallowed Input Tax Credit

The above contention was also supported with the observation of **Supreme Court in State of Punjab and Others V Atul Fastners Ltd., (2007)**

“The selling-registered dealer who had collected tax from the purchasing-registered dealer acts as an agent for the Government”

The Honourable Delhi High court had held in **Shanti Kiran India Pvt. Ltd. Vs. Commissioner Trade Tax (2013) 44 PHT 66 (Del) on 04/01/2013** **“Subsequent cancellation of the Registration Certificate of selling dealer cannot be the basis for denial of input tax credit.”**

Innocent purchaser cannot be disallowed Input Tax Credit

The court held that in absence of any mechanism enabling purchasing dealer to verify if selling dealer **deposited tax** for the period in question and in the **absence of any notification** in a manner that men in business ascertain that a **dealer's registration is cancelled**, the benefit of input tax credit cannot be denied.

- List of TINS of Cancelled Dealers.
- List of TINS of Locked Dealers.
- ITC Profile of suppliers in quarterly returns provided in dealers Login to ascertain genuineness of ITC well within time.

Sec.13(12) Amended

State tried to nulify the effects of Judgement to certain extent by the PVAT(Second Amendment) Act, 2013 Not. No.49-Leg/2013 effective from **15.11.2013** amending existing Rule13(12)

- **New Rule 13(12)** provides that

“Save as otherwise provided hereinafter, ITC shall be claimed only against original VAT Invoice and will be claimed during the period in which such invoice is recd. The ITC shall be utilized in accordance with the conditions mentioned in this section, **but in no case the amount of ITC on any purchase of goods shall exceed the amount of tax, in respect of the same goods or goods used in manufacture of same goods, actually paid, under this Act, into the Government Treasury.”**

Assessment

- **Section 29(1)** states that **acknowledgement** of quarterly or monthly return filed u/s.26 shall be **intimation**. However if any tax is due on the basis of return then intimation shall be sent to the person specifying sum so payable but **not after the expiry of two years from end of F.Y.** in which return is filed.
- **Section 29(2)** provides for **assessment by designated officer on his own motion** (a person fails to file return, return filed is not correct or complete, reasonable grounds to believe that a person is liable to pay tax but has failed to pay amount due, has availed ineligible ITC, provisional assessment was framed)
- **Section 29(3)** provides for **assessment by designated officer on direction by the commissioner;** of amount of tax payable by any person or class of persons for such period as may be specified in his order.

Limitation Period for Assessment

- PERIOD WITHIN WHICH ASSESSMENT IS TO BE MADE 29(4):The Punjab Value Added Tax (Second Amendment) Act, 2013 notified on 15th November, 2013 provides for

“Extension in the period of limitation from 3 years to 6 years for making assessments u/s.29(2) or (3) of PVAT Act, 2005 and extension in period of limitation for making assessments in respect of year 2006-07 till the 20th day of November,2014. Six years period to be counted from due date of annual statement or date when it was actually filed whichever is later. **Explanation 1 further provides that limitation period of six years shall also apply to those cases also where such period has not yet expired.”**

Sec.29(10A) & Explanation 2 to Sec. 29(4)

Not. **No.49-15th Nov. 2013** The PVAT(Second Amendment Act, 2013) which has inserted amended section 29(4) and new section 29(10A) has tried to **nulify the effects of Judgements of various courts on Time-Barred Assessments being held void.**

Explanation 2 to section 29(4) states "It is clarified that prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, **the Commissioner was not required to issue any notice to the concerned person before extending the limitation period of assessment.**"

New Sub section (10A) inserted to section 29 which states that **Notwithstanding any thing to the contrary contained in any judgement, decree or order of any court, tribunal or other authority,** an order passed by the Commissioner under sub-section (4) prior to commencement of the Punjab Value Added Tax (Second Amendment) Act, 2013, **shall not be invalid on the ground of prior service of notice or communication of such order to the concerned person.**"

Courts Verdict on Extension & Time-Barred Assessments.

- **TIME BARRED ASSESSMENTS SET ASIDE:-** Punjab VAT Tribunal in Olam Agro India Limited vs State of Punjab (2013) 45 PHT 135(PVT)- DECIDED ON 31.01.2013 held that Assessment FOR **A.YEAR 2007-08** to be framed by 20.11.2011 and completed on **30.11.2011** is barred by limitation therefore set aside as not sustainable.
- **OPPORTUNITY TO BE GIVEN BEFORE GRANTING EXTENSION:-** Punjab & Haryana High court in A B Sugars Pvt. Ltd. vs State of Punjab CWP No. 8555 of 2005 decided on **01-09-2009 [2010] 15 STM 90** had held that principles of natural justice must be followed before making an order for the extension of the period for the assessment, i.e opportunity of being heard must be given to the affected person **though it may not have been expressly provided.**

Continued.....

Extension & Time-Barred Assessments.

- **MANNER OF INVITING OBJECTIONS:-** Excise and Taxation Department, Punjab had adopted a tendency to display the list of persons in whose case extension u/s 29(4) is to be made and issue a public notice inviting objections against such proposed extension from such persons, on its website. No personal notice was issued to any affected person before passing the extension order.
- **PUBLIC NOTICE NOT BEING SPECIFIED MODE OF SERVICE OF NOTICE:-** Punjab VAT Tribunal in Olam Agro India Limited vs State of Punjab (2013) 45 PHT 406 (PVT) DECIDED ON 31.01.2013 held for A.Y.2006-07 that extension of time limit u/s 29(4) of Punjab VAT Act, 2005 from 3 years to 6 years, for making assessment of a person, by giving a public notice on the website of the department, is not valid extension. Such mode of service being not there in Rule 86, it is very difficult to say that the service of notice in the stated manner is in tune with the provisions of this Rule and persons to be affected by extension order were afforded an opportunity of being heard.

On 20.08.2013 in appeal filed by AETC Bathinda against Decision of PVT decision of Tribunal was upheld by Honorable P & H (AETC Bathinda Vs. M/s. Olam Agro India Ltd. (2013) 46 PHT 194 (P& H)

Courts Verdict on Extension & Time-Barred Assessments.

POWER OF EXTENSION TO BE EXERCISED WITHIN THE PERIOD OF LIMITATION:-

Punjab & Haryana High court in State of Punjab Vs. Des Raj Bhim Sain (2014) 47 PHT 249 (P & H) decided on 19-07-2012 had held that **Powers of Extension in the period of limitation u/s.29(4) by the Commissioner can be exercised only when the limitation period of 3 years for finalisation of assessment has not yet expired.**

Section 29(4A)

PVAT Tribunal In Balaji Cotton Mills vs. State of Punjab (2014)49PHT288(PVT) decided on 21.10.2013

P & H High Court In The state of Punjab & others vs. M/s. Bhagwanpura Sugar Mills decided on 11.08.2014 *VATAP No. 109 of 2013*

29(4-A) is a non obstante clause and overrides section 29(4) of the Act, thereby, rendering any extension granted as invalid. Therefore, the commissioner did not have the power to extend the period of limitation for framing of assessment for the year 2005-06 beyond 20.11.2009. Revenue appeal dismissed.

Courts Verdict on Extension & Time-Barred Assessments.

AS on Date

Amended Section 29(4) of the PVAT Act, 2005 extending period of limitation from 3 to 6 years has been challenged wide **writ petitions in Number of cases (e.g. CWP 24099 of 2014 Surindera Steel Sales Vs. State of Punjab and others)**

Where either Notices has been served & Assessment finalised for year 2006-07, 2007-08 after period of **6 years** specified under **section 44** of the enactment had already expired: -

"Every dealer to keep and maintain account books or other records, shall retain them until the expiry of six years after the end of the year to which these relate or for such other period, as may be required or until the assessment becomes final, whichever is later.

"Assessments or Recovery in above petitions has been stayed by interim orders"

"Hearing complete and Judgement reserved expected to be delivered on 29th June the days courts will open."

Manner of Assessment (Rule 47)

The PVAT(Amendment Rules), 2015 w.e.f. **15.04.2015** has substituted old Rule 47 with a New Rule 47: -

Rule 47(1) Commissioner shall formulate criteria for making assessment/ provisional assessment of a person or class of persons from time to time.

Rule 47(2) No designated officer u/s.29(2) or otherwise shall take up any case for for assessment/ provisional assessment **without prior approval of Commissioner.**

Rule 47(3) Cases to be taken up for assessment/provisional assessment during a F.Y. will be **displayed on web-site.**

Rule 47(4) Notice of not less than 10 working days shall be issued to the concerned person stating **Period & Grounds of Assessment/Provisional Assessment, Record to be produced, date, time & place for conduct of assessment.**

Rule 47(5) Concerned person shall produced all the documents and evidence on specified date & time along with written reply.

(First Stage Taxation)

Notification **S.O.116 & 117 dated 13th December, 2013** Amended **Schedule A & E** appended to The Punjab Value Added Tax Act, 2005 effective **from 1st January, 2014** & introduced for first time levy of Vat at first point of sale on **six items** with two rates (14.5%+A.Tax and 22.5%+A.Tax). Then its scope was again enlarged vide **Notification No. S.O.17 dated 21.02.2014 w.e.f 1st March, 2014. 17 new items** with (6.25%+A.tax) were brought within the regime of first stage taxation. Then again scope was enlarged vide **Notification No. S.O.23 dated 25.03.2014 w.e.f 1st March, 2014. 2 new items** one with (20.50%+A.tax) were introduced.

Item No.15 of Schedule E consists items liable to First Stage Tax

(First Stage Taxation)

Honourable Punjab & Haryana High Court while deciding CWP No.7906 of 2014 in **Pepsico India Holding (P) Ltd. Vs. State of Punjab and other on 10.02.2015 held that: -**

Dealer is a manufacturer of **Branded sancks & Namkeen**

PERUSAL OF SECTION 8(3) “The State Govt. after **giving 15 days notice by notification, of its intention to do so, may by like notification, alter the rate of tax specified in any of the schedules**”

SHOWS ABSENCE OF ANY LEGISLATION CONFERRING POWER ON CONCERNED AUTHORITY TO ISSUE A NOTIFICATION WITH RETROSPECTIVE EFFECT – IMPUGNED NOTIFICATION SET ASIDE TO THE EXTENT OF RETROSPECTIVITY – WRIT ALLOWED – SECTION 8 OF PVAT ACT

Provisional Assessment

- **Section 30(1)** permits- provisional assessment for any period if (i) fraud or wilful neglect committed to evade or avoid tax (ii) due tax not paid (iii) return has not been filed **by recording the reasons in writing**. Section 30(2) requires **completion of P.A. within 6 months from date of detection** which can be further extended for 6 months by commissioner.

PVAT Tribunal in Singla Builders and Promoters Ltd. Vs. State of Punjab decided on 09.01.2015

(2015)50PHT280PVT has not accepted the interpretation of Date of Detection earlier given by PVAT Tribunal itself in **State of Punjab v V.S.Traders (2011) 16 STM 257** and

Manisha Spinning Mills vs. State of Punjab(2012) 41 PHT 454(PVT) dt. 12.01.2012 "Limitation to complete provisional Assessment is six months **from date of inspection**"

Provisional Assessment

- PVAT Tribunal in **Singla Builders and Promoters Ltd. Vs. State of Punjab** decided on 09.01.2015
(2015)50PHT280PVT

Surprise Inspection-01.08.2012

Issued Notice for-31.01.2013 for filing the provisional
Asst.

Appellant failed to explain entries on 21.03.2013

“21.03.2013 would be treated as date of detection.

Assessment framed on 28.05.2013 held within limitation”

Deemed Sales Hospital Services

- Medical Services are not Sales. **Transaction of supply of medicines,** vaccines, surgical items, x-ray films and plates etc. to the indoor patients in course of treatment held **do not come within the purview of definition of "Sale" but are incidental to Medical Service.** Hospital is not selling those items to the indoor patients but **infact they are being consumed,** utilised, administered to indoor patients-**Fortis Health Care Limited v State of Punjab(2015) 50 PHT 289(P&H)** decided on **23.01.2015.**

Tax on Sale of Pre-owned Cars

Haryana VAT Tribunal in G. E. Money Financial Sevices (P) Ltd. Vs. State of Haryana decided on **06.01.2014** has held that: -

“Pre-owned car means a **car purchased or acquired for resale by a car dealer** liable to pay tax from a person who owned the car as a consumer. It is only then that it could be the first sale of pre-owned car by a dealer liable to pay tax under the Act.

Honourable Delhi High Court in **Anand Decor vs. CTT**, New Delhi (2015) 50 PHT 153 (Del) decided on 23.12.2014 has held that: -

“**Sale of used motor vehicles and cars by the appellants in business of manufacture and trading of goods other than motor vehicles and cars, not to be included in sale price for levy of VAT”**

Submission of Statutory forms

1. Honorable Punjab & Haryana High Court in R. S. Cotton Mills Vs. State of Punjab (2008) 32 PHT 651 (P&H) decided on **24.09.2008** held that C form could be filed **even after filling of return or at assessment or appellate stage** and the same should be taken cognizance of.

2. Another Landmark Judgement by Hon'able Punjab & Haryana High Court in **M/s. Delton Cables Ltd. Vs. State of Haryana and others** (2015) 50 PHT 519 (P&H) delivered on **10.03.2015** held that: -

"Appellant filed appeal to Tribunal for allowing to furnish available C form"-Request granted

"After some time Assessee again filed application for allowing production of further C Form-Tribunal declined.

"High Court allowed saying that ends of Justice would be met"

VAT-Builders/Developers/Contractors/Promoters

- The Sales Tax Thrust on Builders and developers gained momentum post the recent rulings of Hon'ble Supreme Court in **Larsen and Tubro Limited v. State of Karnataka(2013) 46 PHT 369(SC) (Larger Bench)** which in principle accepted the law laid down in earlier Judgement in case of **K. Raheja case (2008) 32 PHT 468 (SC)** and lays few essential laws as under: -
 - a) **Any agreement** entered by builder/promoter **before the completion of construction** tantamount to **works contract** and hence, liable to Value Added Tax(VAT)/ sales tax.
 - b) Such agreement to construct a flat **eventually result into selling of flat with the fraction of land**. It is only when the flat is constructed then it can be transferred. The said activity will be covered by the term works contract.

VAT-Builders/Developers/Contractors/Promoters

c) In **tripartite agreement between owner of land, developer and purchaser of flat** there is nothing wrong if the transaction is treated as **composite contract** comprising of both a **works contract** and a **transfer of immovable property** and **levy of sale tax on the value of material involved in the execution of works contract.**

Honorable Punjab & Haryana High Court in the case of CHD Developers Limited, Karnal v State of Haryana and others(2015) 51 PHT 1(P&H) held on same lines that: -

1. Contract to build flat by Builders/Developers are W.C.
2. From the stage he enters into a contract with flat purchaser.

VAT-Builders/Developers/Contractors/Promoters

3. Deduction permissible under various heads would depend upon facts of each case on the basis of material available on record.

Value of taxable turnover- To Exclude Land

Maintains proper books of Accounts



Taxable turnover shall be Value of goods incorporated In the works contract as per Books of accounts

Does not maintain



State Legislature to prescribe formula to determine labour, service & cost of land "deductive method" or by fixing a % of works contract i.e. residuary clause.

VAT-Builders/Developers/Contractors/Promoters

Deductive Method



“Deductive Method” requires all the deductions to be made therefrom to be specifically provided for to ensure that tax is charged only on the value of transfer of property in goods used in the works **contract** on and after the date of entering into agreement for sale with the buyers. Where “Deductive Method” has been prescribed under the rules for ascertaining the taxable turnover, ordinarily it should include a residuary clause in consonance with the mandate of law so as to cover all situations which can be envisaged.

4. Liability of Contractor when sub-contractor has discharged its liability ceases and when sub-contractor has not paid its liability, both contractor and sub-contractors are jointly and severally liable.

Recent Important Judgements

1. Contractors whose TDS is deducted cannot be called upon to pay Advance VAT. Ayappa Infra Projects Pvt. Ltd. V State of Punjab(2015)50PHT97(P&H). (12.12.2014).
2. Hierarchy of appeals provided by the statute must be exhausted before resorting to writ Jurisdiction. Indian Technomac Company Ltd. Vs. State of H.P. (2015)50PHT454(HP). (04.08.2014)
3. Assessment order must be passed though **may not be communicated** within the period of Limitation. **Limitation for appeal commences** only after communication of order. Printtech v State of Haryana (2015)50PHT109(P&H). (25.07.2014)

Recent Important Judgements

4. **Authenticity of computerized bills** cannot be checked by asking the dealer to produce **CPU for verification**. Puskhar Enterprises, Mandi Gobindgarh V State of Punjab (2015)50PHT47(PVT). (25.11.2013).

5. **No Penalty** can be imposed **on mere statement of driver** without considering documents on record. Gupta Polymers (P) Ltd., Faridabad V State of Haryana (2015)50PHT207(HTT)(FB). (18.03.2014).

6. **In Condonation of delay** Courts should adopt **liberal approach** where delay is of **short** period whereas **proof required should be strict** where delay is **inordinate**. Super Metal Faridabad v State of Haryana (2015)50PHT250(P&H). (12.05.2014).

Recent Important Judgements

7. **Cross Examination** opportunity should be provided where information from third party has been relied by AA. State of Haryana V M/s. Hari Kewal Vanaspati Mills, Hisar (2015)50PHT67(P&H). (05.12.2014).

8. **Goods sold or purchased in Inter state trade** not required by Law to be got incorporated in certificate of Registration granted in CST Act. Jindal Drugs Ltd. V CCT,(Appellate Authority)(2014)49PHT467(J&K STAT).

9. **Manufacture & Prepare** both have different connotation. E.g. Report, Hotel Room or Food is prepared. **The Act of preparing the drinks** does not change the nature of drink nor is any Manufacturing activity. Asia Resort Ltd. V Addl. ETC-cum-Appellate Authority (2014)48PHT361(HPTT).

Determination of Disputed Questions by ETC

Section 85 provides that If any question arises otherwise than in proceedings before a court or before the commencement of assessment of a person u/s.29 the commissioner shall subject to the provisions of this Act and the Rules framed thereunder, make an order determining such questions. **Rule 89** provides a fee of **Rs.2500/-** for same. **No time limit prescribed** for determination of disputed question by the Commissioner.

Recent Amendments(E-trip & E-icc)

1. Punjab Vat(Fourth) Amendment Rules,2013 notified on 10.07.2013(1st Public notice on 17.07.2013; Second Public Notice on 01.08.2013 stayed field inspections till 31.08.2013)

- Compulsory Information in form 12-A for Intrastate movement of specified goods of certain value for trade or commerce shall give information on Virtual Information Collection Centre on official site.(Rule 64-A, E-trip). Goods notified cotton, sarson, Plywood, Iron & Steel except scrap, Yarn, Vanaspati Oil, with value Rs.50000 or more have been exempted from list of specified goods vide orders from office of ETC dated 31.01.2015

- Compulsory Information in form 12 for Interstate movement i.e. export by **any mode of transition-of specified goods of certain value** for trade or commerce shall

Recent Amendments(Advance Tax)

give information on Virtual Information Collection Centre on official site.(Rule 64-B, E-icc). Iron & Steel, Hosiery & Readymade Garments, M.S.Pipe, G.I. Pipe, Plastic Pipe, Rice, Nut Bolt & Fastners with value Rs.50000 or more.

- **Compulsory Information in form 12** for Interstate movement- **any goods of any value** imported into the state **by air, railway or dry port** before taking delivery or before putting them into transition by Road- for trade or commerce shall give information on Virtual Information Collection Centre on official site.(Rule 64-C, E-Icc).

2. Notification dated **04.10.2013** levying **Advance tax** on various items in exercise of powers u/s.6(7) of PVAT Act, 2005 and dispensing with the provisions of entry tax. Two important things.

Continued.....

Recent Amendments (2nd Amnd. Act., 2013)

- (i) **Whether Advance VAT is available as ITC. Answer is No** as section 13(1A) has been deleted vide (Not. No.49-15th Nov. 2013 The PVAT(Second Amendment Act, 2013) w.e.f. 04.10.2013. It has been provided vide proviso in section 6(7) that advance tax shall be counted towards final tax liability of the taxable person at the end of each tax period.
 - (ii) **Refund** due to excess Advance Tax allowed or not?
 - (iii) **Original-30 items. 5 new items** added from 7-03-13
 - (iv) **Maximum rate of Advance VAT** cannot exceed the rates including surcharge applicable under this Act. [Modified Section 6(7) inserted vide PVAT (Second Amendment Act, 2013)]
- 3. Insertion of section 46-A regarding power of purchase under priced goods increased by 10% + freight & other expenses.**
- 4. section 56 fraudulently claimed Refund under Star Rating Scheme. penalty maximum of five times.**

Purchase Tax

- Sec.19(3) requires **first purchaser of schedule H** goods to **Register** for VAT as sec.19(1) levies VAT on taxable turnover of purchase of such goods at **rate applicable as per schedules**. (Wheat, Paddy, Cotton, Sugar-cane, Milk)
- Section 19(2) specifies that in case of **Milk first purchase will be when made for manufacture of taxable goods**. E.g. if purchased by Halwai for sweetmeats then no purchase tax. If purchased by Nestle then purchase tax. Proviso to Sec.19(2) further provides that **on subsequent sale of such goods VAT** on sale price shall be leviable.
- **Section 19(4) permits ITC** of purchase tax if such goods are sold within state/interstate/exported or used for manufacture of goods sold in state/interstate/exported.
- **Section 19(5)** specifies that ITC of purchase tax on goods or products mfd. Therefrom sold interstate will be available to the extent of **CST chargeable under CST Act**.

Purchase Tax

- **Section 20(1)** levies VAT on taxable turnover of purchase of goods at rate applicable as per schedules when **taxable goods purchased by taxable person from other than taxable or registered person and used in manufacture of tax free goods or dispatches such goods outside the state otherwise than by way of sale** as such or after being used in manufacture or disposes of such goods in any other manner otherwise than by way of sale .
- **Section 20(2)** levies VAT on taxable turnover of purchase of goods at rate applicable as per schedules when **taxable goods purchased by Registered Person** from other than taxable or registered person and **disposes of such goods in any manner.**

THANK YOU